



Atlantic Legal Foundation 2010 Annual Report

The Year in Review

In 2010 we continued to press for the application of the rule of law and to advocate limited constitutional government in courts and administrative agencies throughout the country.

Of special interest are two cases raising key issues regarding the obligations of lawyers to clients and to the broader society: the Foundation filed a brief in the Second Circuit Court of Appeals arguing for the reversal of a lawyer's conviction for his client's failure (based on good faith advice of counsel) to disclose an allegedly material corporate relationship in a complex securities transaction. The threat of criminal prosecution for legal advice of transactional lawyers chills the attorney-client relationship; our legal system requires the lawyer to render legal advice undistracted by an interest of self preservation. We also urged the Supreme Court of the United States to grant *certiorari* where we contended that due process protections of the Constitution prohibit the representation of government units by private attorneys with a direct contingent financial interest in the outcome of the litigation. Lower court rulings proceeded on a fundamental misunderstanding of the objective of private counsel to win a case and the responsibility of government lawyers to see that justice is served and not just to obtain a judgment. Unfortunately, the Court declined review.

Friend of the court briefs also were filed in the Supreme Court in cases involving procedural issues of broad application. *Wal-Mart Stores v. Dukes* involves class certification in an employment-gender discrimination suit on behalf of 1.5 million employees in a vast number of different locations and a wide variety of fact settings. The Ninth Circuit avoided the rigorous analysis required of expert testimony at the class action determination stage.

On behalf of the National Association of Manufacturers, we challenged the EPA's use of unilateral administrative orders in non-emergency situations on the basis that such orders will require businesses involved in environmental disputes with the government to bear the costs of remediation prior to any adjudication of liability. While our challenge may influence future EPA actions, the U.S. Court of Appeals in the District of Columbia did not overturn the EPA's conduct in this proceeding.



Bill Slattery
President

Dan Fisk
Chairman

The Federal District Court in New Jersey, after a 9-day trial, rejected the constitutional arguments of our client, a small white-male-owned entrepreneur denied the opportunity of bidding on government contracts, notwithstanding critical admissions of the expert witness presented by the defense.

For more than ten years, the Foundation has been an energetic supporter of school choice and improvement of public education, most importantly on behalf of charter schools. Early on, charters were challenged by those wedded to the status quo and while the opposition is now somewhat disguised, we continue to welcome opportunities to support these innovative, accountable and generally effective public schools.

Advocacy of the admissibility of sound scientific principles and challenges to the admissibility of "junk" science, on behalf of a number of highly respected scientists, continued, as discussed later in this report.

The Foundation was proud to present its Annual Award for 2010 to W. James McNerney, Jr., at a banquet held in Washington D.C. Mr. McNerney is chairman, president and chief executive officer of The Boeing Company, the world's largest aerospace company and top U.S. exporter. His remarks in accepting the Foundation's tribute are re-produced in this report.

The Foundation's Board of Directors and Advisory Council rendered conspicuous service. Their members reviewed and approved cases and projects we took on and participated as friends of the court clients in appropriate cases. We welcomed Thomas E. Birsic, Frank R. Jimenez, Vincent A. Maffeo, Nevin Sanli and Andrea E. Utrecht to the Board of Directors and C. Thomas Harvie to the Advisory Council. Their affiliations and backgrounds are detailed below.

The Board and Advisory Council were saddened by the passing of Ernest B. Hueter, a long-time director. An endowment to support the Foundation's work has been established in his honor.

For more than 30 years, Atlantic Legal has stayed a course true to the rule of law, limited government, free enterprise and constitutional safeguards as the world of politics and civil discourse has changed and changed again. We are grateful to our supporters, leadership and staff, enabling the Foundation to continue and expand its important work.

Dan Fisk

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In The Courts

The Foundation recently has filed briefs in state and federal courts in cases covering diverse substantive and procedural issues. Here is a sampling of the matters in which the Foundation was involved with particularly broad public impact. The complete roster of cases is available on the Foundation's website, www.atlanticlegal.org.

***Wal-Mart Stores v. Dukes* —U.S. Supreme Court. Class Action Certification Procedure**

Atlantic Legal partnered with New England Legal Foundation in filing a brief on the merits in what promises to be an important case establishing the test for certification of class actions in federal court.

The U.S. District Court for the Northern District of California certified a class of approximately 1.5 million current and former female employees of Wal-Mart, who worked in thousands of different Wal-Mart stores throughout the United States in different job titles and at different times and who claimed that they were discriminated against on the basis of sex in job promotions and job assignments, notwithstanding the fact that Wal-Mart gives regional, district and store managers substantial autonomy in making job assignments and in promoting employees.

The putative class representatives claim that Wal-Mart has a company-wide policy that is "vulnerable" to gender stereotyping and discrimination, based largely on the testimony of their sociologist expert witness. We argue that the expert's testimony was not adequately scrutinized for reliability by the district court, despite Wal-Mart's motion challenging the testimony under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), and that both the district court and the Ninth Circuit erred in failing to apply the *Daubert* standard to expert testimony proffered by plaintiffs to satisfy Rule 23's class certification requirements. We further argued that Federal Rule of Evidence 702 and the Court's holding in *Daubert* create a single standard for evaluating the reliability of expert testimony, whether at trial or at the certification stage of a class action, and that scrutiny of proffered expert testimony is no less important at the certification stage than at any other point in the litigation process. The failure to apply sufficiently rigorous standards in Rule 23(a) determinations conflicts with the Supreme Court's own class certification jurisprudence, and increases the likelihood that classes will be certified improperly, requiring defendants to litigate meritless class actions. In such situations, business defendants are faced with the choice between hazarding trial and possible liability for huge money judgments or settling for large sums despite the weakness of the plaintiffs' class claims.

***United States v. Collins* —U.S. Court of Appeals, Second Circuit. Overcriminalization —Criminal Liability for Legal Advice**

The Foundation filed an *amicus* brief in support of a transactional lawyer in a criminal case arising out of the acquisition of Refco Financial, once a leading commodities brokerage firm, by Thomas H. Lee Partners, a private equity investor, and Refco's subsequent collapse.

Joseph Collins was a senior corporate partner of long-standing and substantial reputation in the Chicago office of Mayer Brown, a large national law firm. Collins was the "relationship partner" for Refco, but there was no allegation that Collins materially benefited from Refco's fraudulent conduct or his representation of Refco in the transaction.

Refco held itself out as a thriving and profitable enterprise when, in fact, it was hiding hundreds of millions of dollars of intercompany debt that rendered the company insolvent. Refco's principals were convicted of securities fraud in

separate cases based on their direct participation in the accounting fraud that concealed Refco debt.

Collins was convicted on five counts of securities fraud, primarily for failing to disclose to T. H. Lee or its counsel the existence of an agreement that was allegedly material to the transaction. Collins testified that, as a lawyer, he believed that the agreement did not need to be disclosed, that he had been assured by executives of Refco that it was not material, and because if the acquisition were consummated the agreement would become moot.

On appeal, Collins argues that the trial court “hamstrung” the defense with respect to the central question in the case—whether Collins had crossed the line from good faith legal representation of Refco’s interests to knowing participation in Refco’s fraud. The government called a number of T.H. Lee’s outside lawyers and lawyers for another bank that was involved in the transaction as fact witnesses. Several of them testified, over objection, that in their lay opinion the agreement should have been disclosed. Collins argues on appeal that the defense was improperly precluded from eliciting from these and other government witnesses, also experienced lawyers who had participated in the transactions, that, in their opinion, the agreement was not material and its disclosure was not necessary. Collins also argues that he was improperly precluded from calling an expert in transactional law who would have provided a framework and independent corroboration of Collins’s explanation of his actions as a lawyer, and that these evidentiary rulings resulted in an unbalanced and misleading record, and prevented Collins from effectively presenting his defense.

Atlantic Legal’s brief, co-authored with Jack Auspitz, a senior partner at Morrison & Foerster, a prominent securities lawyer, addresses a general theme related to all these issues: That lawyers can reasonably disagree with each other and take opposing positions about whether a document or a transaction is “material” and whether it need be disclosed during a transaction, and that the well-reasoned decision by a lawyer that a document or a transaction need not be disclosed does not prove or imply that the lawyer was acting in bad faith. The brief stresses that the legal profession as a whole is at risk when prosecutors act as if the decisions lawyers make can be “criminalized” and that the criminalization of those decisions will result in a loss of trust between lawyers and their clients, who might conclude that a lawyer’s advice is influenced by the lawyer’s fear of prosecution, not by objective evaluation of the best course of action for the client. The main theory of the prosecution on which the conviction rested was that Collins failed to insist on disclosure of a document that in his judgment was not material, and that theory could be turned against any transactional lawyer who makes a difficult judgment call. The Foundation argued that there are no bright line rules in this context: such issues inherently call for professional judgment, and when reasonable minds might disagree about a matter of professional judgment there can be no criminal intent.

***Bruesewitz v. Wyeth*
—U.S. Supreme Court.
Preemption of State
Law Claims by
National Childhood
Vaccine Injury Act**

The Supreme Court has ruled that parents or guardians of children injured by improperly designed vaccines must rely on a federal compensation system and may not sue vaccine manufacturers under state law. The question presented was whether Section 22(b)(1) of the National Childhood Vaccine Injury Act of 1986—which expressly preempts certain design defect claims against vaccine manufacturers “if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warning”—preempts all vaccine design defect claims, regardless of whether the vaccine’s side effects were unavoidable.

This case raised important public health policy issues. Vaccines are a cornerstone of public health and a very cost-effective way of dealing with numerous widespread and serious diseases. A decision discouraging pharmaceutical companies from developing and producing vaccines would have had a strong negative impact on public health and health costs.

The Foundation filed a brief in support of Wyeth on behalf of a Nobel Laureate in Medicine, the dean of the University of Puerto Rico School of Public Health, the Dean *emerita* of the University of California School of

Public Health, a former senior official of the World Health Organization, an official of the European Centre for Disease Control, and several other prominent health scientists. The purpose of the brief was to educate the justices about the importance of childhood vaccination to public health and to the health of the persons vaccinated, the relatively low risk of harmful side effects, and the cost-effectiveness of vaccination programs in the United States and worldwide.

***Atlantic Richfield v.
County of Santa Clara*
—U.S. Supreme Court.
Prosecution of
Government Claims
by Private Contingent
Fee Attorneys**

A number of states and localities have entered into contingent fee arrangements with private attorneys to prosecute public nuisance claims: the private attorneys stand to recover substantial fees if the cases are successful, but nothing if defendants prevail.

The California Supreme Court has permitted private contingency fee counsel to prosecute claims involving abatement of lead paint while acknowledging that the contingency fee prosecutors “have a conflict of interest that potentially places their personal interests at odds with the interests of the public and of defendants in ensuring that a public prosecution is pursued in a manner that serves the public, rather than serving a private interest.” Nevertheless, the California court permitted contingent fee arrangements, provided that the public-entity attorneys retain complete control over the course and conduct of the case; government attorneys retain a veto power

over any decisions made by outside counsel; and a government attorney with supervisory authority must be personally involved in overseeing the litigation.

Supporting the petition for *certiorari*, Atlantic Legal argued that the limits imposed by the California court are ineffective in guaranteeing the defendants’ due process rights. As a practical matter it is virtually impossible to implement the safeguards the court imposed without intrusive and disruptive judicial inquiry and court supervision of the attorney-client relationship between the government entity and its outside counsel. Moreover, no amount of supervision of the private contingency fee lawyers by government attorneys and no amount of post hoc review of contingent fee counsel’s performance by a court can cure the appearance of impropriety. The court denied the petition in January 2011.

***GEOD Corp. v. New
Jersey Transit Corp.*
—U.S. District Court, D.N.J.
Equal Protection -
Reverse Discrimination**

After a bench trial, the court handed down a decision dismissing our client’s claims that New Jersey Transit’s subcontracting goals for disadvantaged business enterprises on federally funded mass transit projects are not “narrowly tailored” to remedy discrimination in the awarding of prime contracts or subcontracts on NJT capital projects.

Essentially, the court credited the testimony of NJT’s expert, who had testified that he had identified discrimination by NJT in awarding prime contracts, but not in the awarding of subcontracts by prime contractors.

She found it unimportant that NJT’s Disadvantaged Business Enterprises program was directed solely to mandating goals for subcontracts, and therefore did not “fit” the discrimination in prime contracting NJT’s own expert had identified, nor did she credit the statistical showing, in NJT’s own “disparity study”, that Asians were overutilized as subcontractors

on NJT projects and that their inclusion as DBE who are qualified to satisfy the “DBE goal” renders the program “over inclusive.” The client elected not to pursue an appeal.

Charter School Advocacy

Many observers view the year 2010 as a positive one for charter schools in legislatures and state houses across the country. According to the Center for Education Reform, some 61 percent of newly elected governors support charter schools and strong charter laws. At the same time, the influence of union control over public schools received attention in the much publicized documentary "Waiting for Superman." Charter schools are now a permanent fixture in public education offering innovative programs and accountability.

The Foundation's Charter School Advocacy Program advised several charter school organizers whose applications had been rejected. In Ohio we filed a brief on behalf of a major charter operator seeking to afford charter officials the same protection against personal liability as enjoyed by other corporate officials. The court held that charter officers are public officials and strictly liable if they receive or collect public money under color of office. In New York we contended unsuccessfully that the Public Employment Relations Board's jurisdiction was pre-empted by the National Labor Relations Act (thus ensuring secret ballot elections when unions seek recognition).

2010 Annual Award To Boeing Chairman, President and CEO Jim McNerney

Each year since 1988, Atlantic Legal has honored a person who exemplifies the ideals and principles of public service and private enterprise. On March 10, 2011 the Foundation presented its award for 2010 to Boeing's W. James McNerney, Jr. at a sold-out dinner in Washington, D.C.

Mr. McNerney oversees the strategic direction of the Chicago-based, \$68.3 billion aerospace company. With more than 160,000 employees across the United States and in 70 countries, Boeing is the world's largest aerospace company and a top U.S. exporter.

Before taking the helm at Boeing in 2005, Mr. McNerney was chairman of the board and CEO of 3M, then a \$20 billion global technology company. He joined 3M in 2000 after 19 years at the General Electric Company where he held senior executive positions. Prior to joining GE, Mr. McNerney worked at Procter & Gamble and McKinsey & Co., Inc.

Mr. McNerney chairs the President's Export Council, which operates as an advisory committee on international trade.

He is a director of Procter & Gamble, a director of IBM, a member of The Field Museum Board of Trustees in Chicago, a trustee of Northwestern University, and a member of the Northwestern Memorial HealthCare Board. He also serves on the executive committee of The Business Roundtable. He is the former chair of The Business Council, the US-China Business Council and the American Society of Corporate Executives.



"U.S. Competitiveness at a Crossroads"

Jim McNerney, Chairman, President and Chief Executive Officer, The Boeing Company

Good evening. Thanks to the Atlantic Legal Foundation for inviting me here tonight. After looking at the list of previous speakers, I'm feeling pretty humble to be included among the giants of the public and private sectors who have preceded me, including General P.X. Kelley, former Commandant of the Marine Corps, who I just met, as well as Fred Fielding, former Counsel to Presidents Reagan and George W. Bush, who is here tonight.

I admire very much the work of the Atlantic Legal Foundation, your willingness to stand up for the principles you believe in, and the way you use your expertise in the legal realm to support others fighting for those same principles. In particular, I commend your commitment to a civil justice system that respects free enterprise and economic liberty.

Let me also acknowledge Dan Fisk and Bill Slattery for their leadership of the Foundation. Like them, I lead an organization of very high performers, and I understand both the rewards...and the unique challenges inherent in doing that!

Tonight, I'd like to spend some time talking about a topic that's important to both our professions: U.S. competitiveness — why I believe it is at risk, and what we need to do to re-ignite and sustain it for the long term.

When it comes to strengthening U.S. competitiveness, I believe there are many areas where common ground exists — or at least should exist — and where the business community, government and groups like the Atlantic Legal Foundation can come together for the benefit of the nation. There is no question, though, that hard work, careful consideration of the best ideas from across the spectrum, and a little courage will be required.

But we also need a sense of urgency. I think it's important we heed the advice of one of our nation's most famous lawyers, President Abraham Lincoln, who said, "The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done today."

The work of securing the United States' long-term competitiveness and economic strength is far too important to be put off or overwhelmed by partisan concerns.

Our global leadership and prosperity — in essence our very way of life — are what's at stake.

"The work of securing the United States' long-term competitiveness and economic strength is far too important to be put off or overwhelmed by partisan concerns."

We all know these are tough times for people and communities across the country as they struggle with persistently high unemployment and the lingering effects of the financial crisis. This also has affected budgets across all levels of government, and within public and private community organizations.

The antidote as I see it — whether at the local, state or national level — is economic growth and job creation. We simply aren't growing the economy fast enough to produce the jobs needed to employ the unemployed ... and absorb the annual influx of new working-age adults.

While there are many pressing issues involved, we will do ourselves — and future generations of Americans — a huge disservice if we look at the situation as a short-term problem only. Unlike past recessions, we have emerged from this latest one into a much more competitive — and truly global — economy.



Rising incomes and rising standards of living and education around the world have created billions of potential new customers for U.S. goods and services — a welcome opportunity for growth, to be sure. But those same forces have also given rise to aggressive new competitors seeking to further improve their place and their position in the world. As a result, many U.S. companies must compete globally ... not only for customers ... but also for ideas, talent, technology and capital.

In aerospace, for example, for decades Boeing has faced only one other company — Europe's E-A-D-S / Airbus — in the market for large commercial airplanes. Today, we are preparing for the inevitable entry of as many as four additional low-cost, state-supported competitors in this market space — companies from China, Russia, Canada and Brazil.

They all see the same opportunities that we do — a market that Boeing forecasts will support delivery of nearly 31,000 new commercial airplanes worth \$3.6 trillion over the next 20 years. We expect that roughly 80 percent of those airplanes will go to customers outside North America. Just for perspective, only 10 years ago, about 45 percent of all commercial airplane deliveries were made outside North America.

“Many U.S. companies must compete globally ... not only for customers ... but also for ideas, talent, technology and capital.”

And on the defense-and-space side of our business, which is about half of annual Boeing sales, the share of revenue from international customers has doubled over the last few years and continues to rise. Within the next few years, we expect international sales to reach 25 percent of our defense revenues, up from 7 percent just a few years ago.

At the same time, about 95% of our 160,000 employees are based in the U.S., where we also contract with 22,000 U.S. businesses supporting more than 1.2 million supply chain jobs.

So you can see that, for Boeing, as for many other companies, winning at home in the 21st Century (in terms of creating jobs and growing our economy) now means winning abroad on all those points. And that raises the bar in many ways for U.S. companies and U.S. workers.

Now, I am optimistic that as a nation we can compete. And I believe that the innovation and productivity of American businesses and the American worker will remain the keys to our growth and prosperity. But sustaining these historic competitive advantages in a global marketplace under difficult economic circumstances compels us to take action to strengthen the system that supports them both.

In my view, we as a nation need to focus our efforts in three areas:

- First, revitalize the U.S. economy and enable innovation-fueled growth
- Second, level the playing field for international trade and increased U.S. exports
- And third, strengthen our industrial base and prepare our future workforce for tomorrow's jobs and careers.

To the first point, suffice it to say that our unsustainable levels of federal spending, deficit and debt need to be brought under control quickly if we are to remain the world's largest economy.

“...our unsustainable levels of federal spending, deficit and debt need to be brought under control quickly if we are to remain the world's largest economy.”

As many of you know, even under the most optimistic current projections, we will have debt exceeding 100 percent of our economy by 2020.

The actions taken over the course of the past couple of years to stabilize our financial system included some difficult (from a free-market perspective) but necessary decisions on the part of both the Bush and Obama administrations.

I applaud both presidents and the Federal Reserve for averting economic catastrophe. And there is no doubt in my mind that they did.

Most business leaders and economists will tell you, however, that the combined effect of these choices and other spending decisions has us heading down an unsustainable path. Many of those same people will also tell you that our necessary drive toward fiscal restraint must not come at the price of our long-term competitiveness. Our deficit spending is unsustainable, but we have to make smart — rather than wholesale — choices about how we address it.

Nothing in the budget should be totally off limits, but there are some things — like education, certain tax regimes, and areas of basic research — that help us compete around the world and can make the United States a more attractive place to do business. Let's be sure not to gut the things we need to sustainably grow our own economy and put Americans to work ... in exchange for budgetary expediency.

For instance, to stimulate our economy we need tax and regulatory policies that encourage innovation in the private sector and make it as easy to grow a business at home as it is to do elsewhere. Tax incentives for businesses that encourage in-

novation make sense for everyone — the business community, labor and policy makers. The tax agreement reached earlier this year between the administration and Congress, which included extension of the R&D tax credit and other growth-oriented provisions, was a step in the right direction. But more work remains to be done to provide the kind of certainty and sustained confidence that U.S. businesses need to unlock greater potential investment in innovation — and in America — over the long haul.

"To stimulate our economy we need tax and regulatory policies that encourage innovation in the private sector and make it as easy to grow a business at home as it is to do elsewhere."

The more we innovate, the more competitive we become, the more sales we generate, the more people we employ, and the faster we replenish the treasury with tax receipts. It's a pretty simple formula.

At Boeing, we see innovation as the way we will win against the growing list of competitors I mentioned earlier. We invest billions of dollars annually in research and development on the kind of game-changing innovation that will provide our customers a substantial competitive advantage over their competitors.

A great example is the Boeing 787 Dreamliner, which is the best-selling new jetliner of all time ... with 843 orders from 57 customers in 37 countries around the world. Those sales totals are no accident.

They reflect the huge gains the 787 will bring in operating efficiency and passenger comfort, and significant reductions in the environmental footprint of airplanes. As the world's first commercial jet built predominantly of light-weight, carbon composite material, the 787 will use about 20 percent less fuel and be about 30 percent less expensive to maintain than the airplanes it will replace — this in an industry where gains of 4 or 5 percent are considered breakthroughs. And its advanced materials and manufacturing technologies will change the way airplanes are built for many years to come.

Once we get it delivered — which, admittedly, has been no small matter — it will help our customers profit while providing their customers an exceptional experience.

Ultimately, we believe that airlines everywhere will want to buy products and services that provide their customers the best experience and their business with the best value — and we intend to be their supplier of choice by leading in innovation.

That brings me to the second area for action: trade and exports.

For much of the last 100 years, the U.S. economy has been the bedrock of growth for companies all over the world. But today, with 95 percent of the world's people and control of greater than 70 percent of its purchasing power now outside the United States, the world no longer relies on the U.S. as the sole engine for world economic growth. In fact, as we're seeing in the aerospace industry, the reverse is now true: Nearly half of the revenues and profits of the S&P 500 now come from international markets.

To his credit, President Obama is on the record supporting an aggressive trade and export policy to revitalize the U.S. economy. Many international markets have recovered faster and are growing more rapidly than the U.S. market, and they offer the best opportunities for accelerating our own economic recovery.

The President's Export Council, which I am privileged to lead, is tasked with developing recommendations to expand exports, drive job growth and move us toward the president's goal of doubling U.S. exports in five years.

"Many international markets have recovered faster and are growing more rapidly than the U.S. market, and they offer the best opportunities for accelerating our own economic recovery."

Doubling our exports over five years is an ambitious goal, but if we can clear the way for U.S. businesses to do what they naturally do best — which is to compete — I think it's achievable.

In 2009, the baseline year for the president's goal, U.S. exports totaled over \$1.5 trillion, which was down, due to the recession, from \$1.7 trillion in 2008. And through November 2010, U.S. exports expanded by 17 percent. Exports are about 12 percent of our GDP, and about 10 million U.S. jobs are tied to them.

Manufacturing companies like Boeing account for about \$1 trillion of our annual exports and support millions of direct jobs (and many multiples of that in the case of indirect jobs) across the country. With the majority of the world's consumers living outside our borders, the magnitude of our export opportunity is limited only by our failure to pursue it.

Last year, the President's Export Council made concrete recommendations that could boost exports by about \$350 billion. This year — beginning with our meeting tomorrow — the Council will present ideas worth an equal or greater amount. Among the areas we're focusing on are international tax policy, export-control reform, visa and immigration reform, the protection of intellectual-property rights, veterans retraining, reauthorizing and growing the Export-Import Bank, and getting small- and medium-sized businesses more engaged in exporting.

This work is all about leveling the international playing field for American workers, and we can talk about it more during the Q&A, if you'd like. But for now, I'd like to highlight just one of the recommendations that the Export Council has made: advancing stalled free-trade pacts. This is an area that offers substantial near- and long-term opportunities for economic growth and job creation. While we have seen some progress on this front — as evidenced by last fall's agreement with Korea — there's still quite a lot more to be done ... including getting that agreement ratified by Congress.

Free trade agreements often get drawn into the crossfire of political debate. But as many here already know, FTAs actually normalize trade relations and allow the U.S. to get into new markets, while our FTA partners tend, typically, to already have access to the U.S. market. FTAs also level the playing field with trade competitors from Europe and other places who already have agreements in place in markets where we do not. So inaction only hurts us.

The United States had a manufactured-goods trade surplus with its FTA partners of \$21 billion in 2008, \$26 billion in 2009, and another \$21 billion in 2010. Our manufactured-goods trade deficit is with non-FTA countries. FTAs are part of the solution, not part of the problem.

For example, under the Korea agreement, U.S. officials estimate that our exports to Korea will grow by nearly \$11 billion — and thousands of U.S. jobs will be created. It will eliminate a big competitive disadvantage for U.S. workers by removing the current tariff of 11 percent that is applied to U.S. exports to Korea — a benefit that many of our trade competitors with Korea already enjoy.

"Expanded trade will mean expanded opportunities for everyone —although it must be governed by a strong set of rules, including intellectual-property-rights protection, that are rigorously enforced."

So Congress should move to ratify this agreement as soon as possible. It is also important that we seize this moment — now that we have demonstrated that solutions could be reached — to help advance our other stalled FTAs (Panama and Colombia), and negotiate new ones such as the Trans-Pacific Partnership.

At its core, trade is a policy issue where business, labor and government leaders can and should join hands for mutual

benefit. Expanded trade will mean expanded opportunities for everyone — although it must be governed by a strong set of rules, including intellectual-property-rights protection, that are rigorously enforced. We need to pursue both goals simultaneously.

Finally, the third area for action reflects two pressing concerns that I have about our future in this more integrated and competitive global economy:

- first, a shrinking U.S. defense and space industrial base
- and second, an even-faster shrinking pool of U.S. workers who are skilled in the problem-solving fields of science, technology, engineering and math.

Our defense and space industrial base historically has been one of the United States' greatest strategic assets. In addition to providing for our national security and expanding our knowledge of the Earth and beyond, defense and space

innovation has spawned countless technological advances that have both created and invigorated other industries.... think digital electronics and microprocessors, microwaves, cell phones, GPS, the Internet, and much more....all of which has helped sustain our economic might and global leadership in innovation.

However, as a result of increasing budget deficits and program terminations, the U.S. defense and space industry is in danger of atrophying our ability to do leading-edge development work. For the first time in a century there is no U.S. team actively working on a major all-new Department of Defense airplane development program. In addition, there is no active new rotorcraft development program, nor is there a new NASA human space flight program.

This comes at a time when global competitors are making defense and space development top priorities. (Please raise your hand if you took note of the recent unveiling of the first Chinese stealth fighter).

Now, we know that the U.S. defense investment accounts are likely to get smaller, rather than larger, and that there is tremendous pressure on all other areas of discretionary spending, too. At the same time, though, decision makers in Congress and the Administration need to remember the vital connection between our nation's economic power; its military strength; and its capacity to innovate, explore and discover. At the core of that connection is the need for a sustained and strong defense and space industrial base.

Closely related is that other cause for concern: the shrinking pool of U.S. workers skilled in science, technology, engineering and math. While some countries, (including India and China), are funneling more and more of their best and brightest students into these so-called STEM areas of study, the number of U.S. students graduating with engineering degrees, in particular, has stagnated — and in some cases, declined.

Further aggravating the situation is the lack of progress on immigration reform. For example: Because of immigration restrictions imposed in the last decade, the best and brightest U.S.-educated foreign students tend to go home to compete against U.S. companies, instead of staying here to help energize American competitiveness (as many of them would prefer to do).

As a result, despite everything you hear about the “jobs shortage” in the United States (and, don't get me wrong, unemployment is very real problem), Boeing and other technology-based organizations are facing an impending “skills shortage.” That is to say, we can't find enough qualified engineers, scientists and other technical workers to meet our needs.

“Nothing is more fundamental to sustaining our ability to compete and win against enterprising new competitors than a strong pipeline of future American innovators.”

“Because of immigration restrictions imposed in the last decade, the best and brightest U.S.-educated foreign students tend to go home to compete against U.S. companies, instead of staying here to help energize American competitiveness (as many of them would prefer to do).”

When many of us in this room were growing up, our generation was inspired by the mission of sending a man to the moon and beginning to explore the universe. That drove huge increases in the number of students pursuing engineering and science degrees.

I hope that we as a nation will find another mission — or missions — to inspire and employ today's young people....and

that as a nation of immigrants ourselves, we will find a way to address national security concerns while still welcoming to America talented, hardworking individuals who share our dreams and ideals.

Nothing is more fundamental to sustaining our ability to compete and win against enterprising new competitors than a strong pipeline of future American innovators.

In closing, there's no question that the issues and challenges we face today are big and complex. Resolving them effectively will require unprecedented cooperation between the public and private sectors — between business and government — aided by the courage to set aside personal or political agendas to focus on the good of the nation.

Every American has a vested interest in ensuring our competitiveness, so each of us needs to do what we can to support it. And we need to follow the example of Lincoln and do it now.

Thank you again for inviting me here tonight.



Dick Wilson, Alan Moghissi, Tom Gottshall and Briscoe Smith



Dan Fisk and Bill Slattery with Annual Award Honorees
Fred Fielding and General P.X. Kelley



Boeing's Dick Hauser, Tim Keating and Michael Luttig



Bob Lonergan and Doug Foster



Adm. Edmund Giambastiani (U.S. Navy, Ret.), Jim McNerney and
Bob McDonald, Chairman, President and CEO, Procter & Gamble



Frank Jimenez, Alan Yuspeh, Greg Nixon and Vince Maffeo



Dinner Chair Bill Primps introducing Jim McNerney



Jim McNerney addressing "United States Competitiveness at a Crossroads"



Dan Fisk presenting Tiffany Mantel Clock to Jim McNerney



Annual Award Dinner honoring Jim McNerney

Annual Award Recipients 1988-2010

2010



W. James McNerney, Jr.
Chairman, President and CEO
The Boeing Company

2009



Chad Holliday
Chairman of the Board
DuPont

2008



William C. Weldon
Chairman of the Board and CEO
Johnson & Johnson

2007



Hon. Fred F. Fielding
Counsel to President George W. Bush
Former Counsel to President Ronald Reagan

2006



Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce

2005



Edward D. Breen
Chairman and CEO
Tyco International Ltd.

2004



Hon. George J. Mitchell
Former United States Senator
Chairman, The Walt Disney Company
Partner, Piper Rudnick LLP

2003



Maurice R. Greenberg
Chairman and CEO
American International Group, Inc.

2002



Henry A. McKinnell, Jr., Ph.D.
Chairman and CEO
Pfizer Inc

2001



Hon. William S. Cohen
Former Secretary of Defense
and United States Senator

2000



Norman R. Augustine
Retired Chairman and CEO
Lockheed Martin Corporation

1999



General P. X. Kelley
Former Commandant of the Marine Corps

1998



Hon. Rudolph Giuliani
Mayor of New York City

1997



Hon. Donald Rumsfeld
Former Secretary of Defense

1996



Bruce Atwater
Retired Chairman and CEO
General Mills, Inc.

1995



Alfred C. DeCrane, Jr.
Chairman and CEO
Texaco Inc.

1994



Malcolm S. Forbes, Jr.
Chairman and CEO
Forbes, Inc.

1993



Amb. Carla Anderson Hills
United States Trade Representative

1992



Paul H. Henson
Retired Chairman and CEO
Sprint Corporation

1991



Walter B. Wriston
Retired Chairman and CEO
Citicorp

1990



Irving S. Shapiro
Retired Chairman and CEO
DuPont

1989



Edmund T. Pratt, Jr.
Chairman and CEO
Pfizer Inc

1988



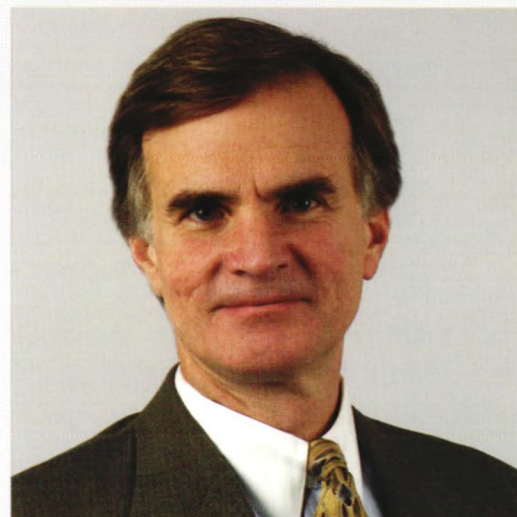
Hon. William E. Simon
Former Secretary of Treasury

New Board Members

Thomas E. Birsic is a member of K&L Gates, based in Pittsburgh, PA. He maintains an active trial, arbitration and counseling practice focused principally on complex commercial and insurance coverage litigation. Mr. Birsic has extensive jury and bench trial experience involving complex, plaintiff-oriented commercial cases.

In addition, he has tried numerous international and U.S. based commercial arbitrations to conclusion. He has been inducted as a Fellow of both the American College of Trial Lawyers and the International Academy of Trial Lawyers.

Mr. Birsic currently serves as the co-leader of K&L Gates' global litigation and dispute resolution group and is a member of the firm's Management Committee. He is a graduate of the University of Notre Dame and the University of Pittsburgh School of Law.



Thomas E. Birsic

Frank R. Jimenez is Vice President and General Counsel for ITT Corporation based in White Plains, NY. He has global responsibility for all legal matters for the company and serves on the company's Strategic Council. Mr. Jimenez previously served under Presidents Bush and Obama as the General Counsel of the Navy, leading a global office of nearly 850 staff as chief legal and ethics officer. In this position, he was one of seven Senate-confirmed Pentagon civilians of four-star equivalent rank overseeing the U.S. Navy and Marine Corps.

Earlier in his career, Mr. Jimenez served as Chief of Staff of the U.S. Department of Housing and Urban Development and led Secretary Mel Martinez's senior management team for the \$34 billion, 10,000 employee agency. Prior to HUD, he was Deputy Chief of Staff and Acting General Counsel for Florida Governor Jeb Bush, where he handled comprehensive policy, personnel and legal matters on the senior management team. Previously, he practiced complex commercial and white-collar litigation as a partner in the Miami office of Steel Hector & Davis LLP (now Squire Sanders & Dempsey LLP). Mr. Jimenez received his law degree from the Yale Law School, and he holds Master's degrees in Business Administration from the University of Pennsylvania's Wharton School and in National Security and Strategic Studies from the U.S. Naval War College.



Frank R. Jimenez



Vincent A. Maffeo

Vincent A. Maffeo is Executive Vice President, General Counsel and Audit of Science Applications International Corporation with responsibility for the areas of Legal; Contracts, Pricing and Procurement; Risk Management; and Internal Audit. He joined SAIC, after serving from 1995 to 2009 as senior vice president and general counsel of ITT Corporation.

He began his career as an associate with Simpson Thacher & Bartlett. Mr. Maffeo is a former chair, Corporate Counsel Group, Public Contract Law Section of the American Bar Association.

Mr. Maffeo is a graduate of Harvard Law School, and graduated summa cum laude from Brooklyn College (City University of New York). He also served as a lieutenant in the Judge Advocate General's Corps, U.S. Naval Reserve.



Nevin Sanli

Nevin Sanli, ASA is President and Co-Founder of Sanli Pastore & Hill, Inc. He is responsible for the overall management of the firm, including client engagements, litigation support, expert witness testimony, strategic planning and relationship management.

Mr. Sanli, an Accredited Senior Appraiser, Business Valuation Discipline, has been a financial consultant for about 20 years specializing in business valuation, litigation consulting, economic and financial research, statistical and investment analysis and mergers and acquisitions.

Mr. Sanli has served as an officer and/or on the boards of directors of numerous professional and non-profit organizations. He currently is active in associations which focus on providing education and the promotion of topics relevant to business valuation.

He is a graduate of the University of California at Irvine.

Andrea E. Utecht is the Vice President, General Counsel and Secretary of FMC Corporation, a \$3.0 billion publicly traded chemical company headquartered in Philadelphia, PA.

Prior to joining FMC in July 2001, Ms. Utecht was Senior Vice President, Secretary and General Counsel of ATOFINA Chemicals, Inc., a subsidiary of the TotalFinalElf Group, also headquartered in Philadelphia. Ms. Utecht had been with ATOFINA and its predecessor companies for twenty years, holding a number of positions both within and outside the legal function, including three years as Vice President for Acquisitions and Divestitures.

She received a BA (Magna Cum Laude, Phi Beta Kappa) from Elmira College (NY) and is a graduate of the University of Pennsylvania's joint MBA/JD program. She also holds an MS in Operations Research from the University of Pennsylvania.

She is a member of the ABA Subcommittee of General Counsel and a past member of the Board of Directors of the Association of American Corporate Counsel.



Andrea E. Utecht

New Advisor

C. Thomas Harvie graduated from Stanford University in 1965, and in 1968 received a J.D. from Yale Law School. Following two years in the U.S. Army, including a tour in Vietnam assigned to the Staff Judge Advocate, he practiced law at the New York City law firm of Debevoise and Plimpton. In 1976, he accepted a position in the law department of Cleveland-based TRW. While at TRW, he attended the Advanced Management Program at Harvard Business School. Mr. Harvie filled positions of increasing responsibility at TRW and, in 1995, he was recruited to Goodyear in Akron as Senior Vice President and General Counsel.

He retired from Goodyear in November 2009. He is a trustee of Hiram College, the Cleveland Institute of Music and the Northeast Ohio Council on Higher Education. He is also a director of Cedar Fair, a New York Stock Exchange-traded company which owns and manages amusement parks and hotels in the United States and Canada.



C. Thomas Harvie

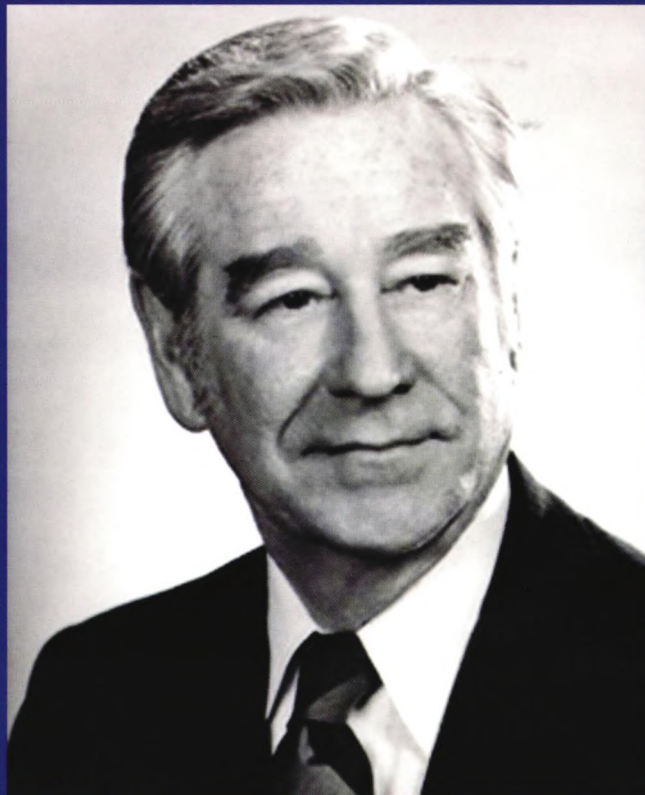
Long-Time Director Ernest B. Hueter

Ernest Boyd Hueter, public servant, civic leader, businessman, writer and highly decorated WWII veteran died of natural causes on February 26, 2010 in Arlington Hospital, Virginia.

In 1947, following his service in the Army, he joined Interstate Brands (Bakeries) Corporation and rose to become president and chief executive officer and subsequently was appointed chairman of the board. During his leadership of Interstate, the company grew to become one of Fortune's top 500 companies.

In 1980, Mr. Hueter was asked to assume the presidency of the National Legal Center for the Public Interest, a not-for-profit legal educational foundation based in Washington, D.C. He created a new mission and implemented new programs for the organization and guided it through its successes until he retired in 2004. He joined the Atlantic Legal board in 1980 and was a valuable contributor throughout his 30-year tenure.

A resolution adopted by the board after his death noted his "patriotism, infectious humor, sage counsel and warm friendship".



Ernest Boyd Hueter

Board Dinner Speakers



Brian P. Tierney, publisher of *The Philadelphia Inquirer*, spoke to our Board, Council and guests on March 11, 2010 at The Union League in Philadelphia about the present problems and future prospects of newspapers in America.

Ernie Patrikis, Atlantic Legal director and White & Case partner, discussed "*Federal Legislation to Clean Up After the Credit Crisis: The Good, the Bad and the Ugly*" with our Board, Council and guests at the Harvard Club of New York City on June 10, 2010.



Intern Program



The Foundation had the assistance of capable interns again this year. The interns did legal and fact research, assisted with drafting and document preparation. Foundation officers led seminars for the interns covering school choice issues, development and application of the *Daubert* trilogy as well as equal protection questions.

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Atlantic Legal's Board of Directors and Advisory Council include the active and retired chief legal officers of some of America's most respected corporations, distinguished scientists and academicians and members of national and international law firms.

The Foundation currently concentrates primarily on four areas: representing prominent scientists and academicians in advocating the admissibility in judicial and regulatory proceedings of sound expert opinion evidence; parental choice in education; corporate governance; and, application of equal protection under the law by government agencies.

Atlantic Legal's cases and initiatives have resulted in the protection of the rights of thousands of school children, employees, independent businessmen, and entrepreneurs. In case after case, Atlantic Legal brings about favorable resolutions for individuals and corporations who continue to be challenged by those who use the legal process to deny fundamental rights and liberties. Please visit www.atlanticlegal.org and www.DefendCharterSchools.org where the Foundation's most recent activities are detailed.

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A copy of the Foundation's latest annual financial report may be obtained from the Foundation or from the New York Attorney General's Charities Bureau, Attn: FOIL Officer, 120 Broadway, New York, NY 10271. A copy of the official registration and financial information of the Atlantic Legal Foundation (Cert. 1257) may be obtained by calling the Pennsylvania Department of State at (717) 783-1720. Registration does not imply endorsement.



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