



# Atlantic Legal Foundation

## 2012 ANNUAL REPORT

### The Year in Review

Atlantic Legal Foundation continued its work in courts across the country to uphold the rule of law and to curb over-reaching government intervention in commercial and personal affairs. In doing so it represented an impressive array of clients wanting to have their voices heard in important cases.

Perhaps the most decisive development came in *Sackett v. Environmental Protection Agency*, where a unanimous Supreme Court of the United States held that private property owners (wishing to build a single family home on a small plot, having received state and local approvals) could challenge the issuance of an EPA administrative compliance order in federal court because the EPA provided no effective, impartial pre-enforcement review. On behalf of the National Association of Manufacturers, Atlantic Legal argued that Supreme Court precedent teaches that due process requires a pre-enforcement judicial hearing except where a government agency must act in an emergency setting. In his concurring opinion, Justice Alito said that the position taken by the federal government in the case “would have put the property rights of ordinary Americans entirely at the mercy of Environmental Protection Agency employees.”

Also in the Supreme Court, in *Koontz v. St. Johns River Water Management District*, the Foundation challenged a state court ruling requiring a land owner to make improvements to government-owned property located far from his proposed development before receiving government permission to proceed with his own project. We partnered with the Center for Constitutional Jurisprudence (the public interest law arm of the Claremont Institute) and the Reason Foundation, a national nonpartisan and nonprofit think tank. Similar due process concerns were raised in another regulatory takings case, *Ilagan v. Ungacta*, where we joined in the petition for *certiorari* with the National Federation of Independent Business, the Cato Institute and others.

The Foundation represented several prominent scientists with substantial experience in nuclear safety issues (including four Nobel laureates) in supporting the operator of a nuclear generating plant's challenge to Vermont laws which would force the plant to shut down. The legal issue is whether the Vermont laws are pre-empted by the federal Atomic Energy Act, which gives the Nuclear Regulatory Commission sole jurisdiction to determine based on health and safety considerations whether nuclear plants can operate. In our Second Circuit Court of Appeals brief, we argue that the Vermont laws conflict with the purpose of federal regulation in that Congress sought to prevent state regulation in the area of nuclear safety because of the complexity of the technical issues involved.



The Foundation also appeared, again representing the National Association of Manufacturers, in a Ninth Circuit appeal challenging government compelled private speech, *CTIA-the Wireless Association v. City and County of San Francisco*. Here the City enacted an ordinance requiring cell phone retailers to display posters and brochures containing the City's views as to the alleged health risks of cell phone use, a matter about which there is considerable scientific dispute. Atlantic Legal's brief focused on the degree of First Amendment scrutiny required where the government seeks to require private citizens to communicate the government's message, arguing that none of the traditional levels of scrutiny had been met; and, the City had available numerous alternatives to inform the public of its concerns about cell phones that do not compel private citizens to speak. The Ninth Circuit Court of Appeals agreed with our position.

In another appeal of national significance, the Foundation urged the Supreme Court to enforce an arbitration clause containing a "class arbitration waiver," and to reverse the holding of a divided Second Circuit that a class action is the "only economically feasible way" for the plaintiff to pursue a federal antitrust claim. The Second Circuit's ruling, we argue, runs counter to recent Supreme Court precedents and to legislative policy in favor of arbitration expressed in the Federal Arbitration Act. The case is now before the high court for the third time, and has resulted in the filing of an unusually large number of friends of the court briefs.

In three cases during the year, Atlantic Legal continued to champion the use of sound scientific principles in the courtroom — as it has for more than two decades, a record unequalled by any other public interest legal foundation. Particularly gratifying was the Pennsylvania Supreme Court's unanimous ruling precluding bogus expert testimony as to causation in an asbestos liability case. Our brief in *Betz v. Pneumo Abex LLC* was filed on behalf of several prominent scientists, including a Nobel Prize winner in medicine, and experts in lung disease and the effects of asbestos. The brief was cited on several important points in the court's analysis and, according to one leading asbestos defense lawyer, "I've never seen a court cite so frequently to an amicus brief before... it clearly made a difference."

The *Betz* ruling may be persuasive in a subsequent Pennsylvania Supreme Court appeal, *Ravert v. Monsey Products*, another asbestos causation case, where we filed a brief representing thirteen scientists including a Nobel laureate in chemistry and a Nobel laureate in medicine.

In a third asbestos case, *Dixon v. Ford Motor Company* this time before the Maryland Court of Special Appeals, the Foundation's brief was favorably cited by the court, which held that the plaintiff's "single fiber" theory was scientifically untenable.

Atlantic Legal's list of impressive Annual Award recipients continues to grow. In March 2013, at a Washington D.C. banquet, William H. Swanson, Chairman and CEO of Raytheon Company, received the Foundation's Twenty-Fifth Award. Professor Richard Wilson, Mallinckrodt Professor of Physics *Emeritus* at Harvard University, and a long-time member of the Foundation's Advisory Council, accepted our fourth Lifetime Achievement Award.



We were very pleased to welcome two new board members, both with sterling credentials, outlined later in this report: William G. Primps, Esq. and Jay B. Stephens, Esq.

This brief snapshot of the Foundation's recent activities highlights the significant legal issues the Foundation has advocated and, importantly, the stature of those we have represented. We are grateful to our board, advisors, staff and loyal supporters all of whom enable the Foundation to carry out its mission.

Bill Slattery  
President

Dan Fisk  
Chairman



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## In The Courts

### Constitutional and Procedural Issues

#### Atlantic Legal Challenges Government-Compelled Private Speech

Atlantic Legal filed a brief on behalf of the National Association of Manufacturers in *CTIA-The Wireless Association v. City and County of San Francisco*, in the Ninth Circuit Court of Appeals. The case raises significant issues of First Amendment protections for commercial speech.

San Francisco enacted an ordinance which required cell phone retailers to display a large poster in their premises, affix stickers to cell phone displays, and distribute a lengthy leaflet, containing the City's "recommendations" about who should use cell phones and when and how they should be used.

If the mere possibility that some hypothetical health risk might exist were a sufficient justification for compelling private speech, local, state or federal government agencies would be able to require individuals, businesses and other organizations to communicate opinions with which they strongly disagree about a wide range of products.

Strict scrutiny, which bars most government limits or interference with speech, we argued, is the appropriate standard to apply in this case because the ordinance compels cell phone merchants to convey a message with which they disagree and which is neither factual nor non-controversial: that radiation from cell phones is dangerous. The district court erred in not applying a strict scrutiny standard to all mandates of the ordinance and also erred by failing to apply heightened scrutiny because the court allowed the city to compel private parties to convey a controversial government message based on, in the court's own words, "the mere unresolved possibility that" a product may or may not be harmful.

We argued that the First Amendment guarantees "both the right to speak freely and the right to refrain from speaking at all" and that the ordinance does not pass any level of scrutiny because the city has not shown that the ordinance and the speech it compels were appropriately tailored to prevent or remediate any realistic health or safety risks, and its enforcement therefore should have been enjoined completely. The government sought to require private citizens to communicate the government's message, and heightened scrutiny is the rule, not the exception, when the government forces a private party to speak.



## Supreme Court Urged to Overturn Decision in Regulatory Takings Case

Atlantic Legal filed a brief in *Koontz v. St Johns River Water Management District* in the Supreme Court of the United States, a constitutional challenge to a requirement that a landowner make improvements to government-owned property located nowhere near his proposed development in order to receive a government permit for proceeding with his own project.

For over eleven years, a Florida land use agency refused to issue the permits necessary for Coy A. Koontz, Sr. to develop his commercial property, because Koontz would not accede to a permit condition requiring him to make improvements to 50 acres of government-owned property located miles away from his project—a condition that was determined to be wholly unrelated to any impacts caused by Koontz's proposed development.

A Florida trial court ruled that the agency's refusal to issue the permits was invalid and affected a temporary taking of Koontz's property. After the appellate court affirmed, the Florida Supreme Court reversed, holding that, as a matter of federal takings law, a landowner can never state a claim for a taking where a permit is not issued based on a landowner's objection to an excessive exaction, and the exaction demands payment of money, rather than dedication of personal property to the public.

Atlantic Legal and other friends of the court contend that regulatory limits on economic use of property are as much "takings" as are physical appropriations, and that the Florida authorities imposed unconstitutional conditions on the use of the Koontz property.

## Atlantic Legal Supports Nuclear Power Plant Owner's Right to Continue Operating

The owners and operators of a nuclear generating plant sued the State of Vermont, seeking to block enforcement of a state law that effectively would have shut the plant down. The plant had operated safely and reliably for more than 20 years, and the United States Nuclear Regulatory Commission had renewed the plant's operating license for another 20 years. A reliability assessment by a consultant selected by the Vermont Department of Public Service concluded that the plant "is operated reliably" and "[o]verall, many station managerial and technical areas meet or exceed industry standards for performance."

In our brief in the Second Circuit Court of Appeals, we argue that the Vermont laws were preempted because they enroach on an area that Congress has specifically reserved to the federal government and because the effect of the Vermont laws conflicts with the purpose of federal regulation.

Both the text and legislative history of the Atomic Energy Act lead to the conclusion that Congress sought to prevent the states from regulating in the area of nuclear safety because of the complexity involved.

We argue further that the rule proposed by Vermont, which would foreclose further judicial inquiry if the state legislature merely expresses a purported non-safety purpose in the statute's preamble — no matter how much other evidence there is of a safety purpose, or how implausible the purported non-safety purpose may be — should be rejected, because it would enable a state legislature to avoid preemption merely by reciting a non-safety related purpose. We also point out that the Vermont laws are examples of the "Not in My Back Yard" syndrome, evidenced by the fact that local Vermont electric utilities have contracted to purchase electricity from a nuclear power plant in New Hampshire.

The Foundation's clients include scientists experienced in nuclear safety issues, four of whom are Nobel laureates and a fifth is a former chairman of the Nuclear Regulatory Commission.



## Supreme Court Asked to Overturn Decision Refusing to Enforce Arbitration Agreement

The Foundation filed a brief on behalf of several current and retired general counsel of major corporations and on behalf of the International Association of Defense Counsel urging the Supreme Court to reverse the Court of Appeals for the Second Circuit in *American Express Company, et al. v. Italian Colors Restaurants, et al.*, an important case involving enforcement of arbitration agreements.

Plaintiffs are retail businesses which accept American Express cards for their customers' purchases. Each plaintiff entered into an agreement with Amex with (1) an arbitration clause providing that all disputes between Amex and the merchant are to be resolved by arbitration and (2) a "class arbitration waiver" that requires that the arbitration be between each merchant singularly and Amex. Plaintiffs filed a class action complaint alleging that Amex's "Honor All Cards" policy,

which requires merchants who accept Amex charge cards to accept its credit cards as well, constitutes an unlawful "tying" arrangement.

Amex moved to compel arbitration. Plaintiffs argued that, because of the prohibitive costs of proceeding individually, the class action waiver precluded them from vindicating their federal statutory rights.

In our brief we argue that this case is controlled by *AT&T Mobility LLC v. Concepcion*, in which the Court held that the Federal Arbitration Act preempted the application of a state law "unconscionability" doctrine to a class action waiver provision in an arbitration agreement, and reaffirmed the FAA's overarching policy of enforcing arbitration agreements according to their own terms and that the Second Circuit's attempt to limit *Concepcion* to cases in which state law governing the enforceability of class action arbitration waivers is invoked was incorrect. The circuit court had concluded that class action arbitration waivers that invoke federal statutory claims and therefore rely solely on the "federal substantive law of arbitrability" instead of state law may be invalidated. We argue that neither the FAA nor *Concepcion*, and a recent line of other Supreme Court cases interpreting the FAA, supports such a limited reading. The FAA's central purpose "is to ensure that 'private agreements to arbitrate are enforced according to their terms.'" *Stolt Nielsen S.A. v. AnimalFeeds Intl Corp.*, 130 S. Ct. 1758, 1773 (2010)) and that is true "even when the claims at issue are federal statutory claims, unless the FAA's mandate has been 'overridden by a contrary congressional command.'" *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 669 (2012).

We further argue that the Second Circuit's refusal to enforce the class action waiver clause of a valid arbitration agreement is an example of judicial "hostility" to arbitration that the FAA was intended to override, and that the lower court's decision would impair the FAA's strong federal policy favoring the enforcement of arbitration agreements.

## Foundation Urges Supreme Court Review of Class Action Standing Requirements

Atlantic Legal filed a brief in *Ticketmaster v. Stearns*, which involved standing to sue in a consumer class action, brought in federal court, but primarily on causes of action created by California state law. Our brief was in support of a petition for *certiorari* in the United States Supreme Court.

The questions presented were whether in federal court all members of a putative class – not just the named plaintiff – must have Article III standing to sue and whether the Ninth Circuit erred following California's rule that only a named plaintiff need have standing to sue, regardless of the lack of standing of putative class members, disregarding the requirements of Article III standing. The Ninth Circuit held that a federal class action could be certified even though some members of the putative class did not have standing to bring suit on their own.



Relying on a state court's interpretation of state law, the Ninth Circuit reversed the district court's denial of class certification, believing that it was bound to follow a decision of the California Supreme Court in a different case which, as a matter of California law, allowed claims to proceed on a class basis regardless of whether all class members were injured by the defendant's alleged misconduct.

Atlantic Legal's brief contends that Article III standing requirements should not be defined by state law. Even Congress cannot dilute Article III's standing requirements by granting by statute the right to sue to a plaintiff who would not otherwise have standing. *A fortiori*, a state court or a state legislature cannot negate Article III's standing requirements. We argue that the Ninth Circuit's holding contradicts the Supreme Court's holding in *Wal-Mart Stores v. Dukes* that "a class cannot be certified on the premise that [the defendant] will not be entitled to litigate its statutory defenses to individual claims" (S.Ct. at 2561) and that there is a clear "circuit split." Two federal courts of appeals examined the standing issue in light of the same California state law and came to diametrically opposed conclusions.

This case is important because, as we pointed out in our brief, the federal courts are seeing an increasing volume of class litigation and class actions often coerce unwarranted settlements, even though the petition was denied.

### Westchester County Defends Refusals to Adopt Source-of- Income Legislation

The Foundation filed a brief on behalf of the Building and Realty Institute of Westchester and the Mid-Hudson Region, Inc. in the Second Circuit Court of Appeals in *United States v. Westchester County, New York*. At issue is the obligation of the County, acting through its county executive, to promote legislation banning "source of income" discrimination in public housing.

The litigation arises out of a 2009 settlement agreement between the County and the federal government which called upon the County to "*promote*, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income' discrimination in housing." (emphasis added) Legislation before the County Board of Legislators in 2009 would have added "source-of-income discrimination" to the list of prohibited housing discrimination practices applicable in

the County. The definition of a legitimate "source of income" in the proposed 2009 law would have included funds procured from the federal Section 8 housing voucher program and would have provided a specific \$50,000 civil penalty for each violation of the source of income housing discrimination provision. The 2009 legislation was not adopted by the Westchester County Board of Legislators. The County argues that "promote" does not require the legislature to pass, or the county executive to sign, the legislation and that whatever the county executive was required to do related only to the specific 2009 bill, and was not a perpetual obligation with respect to subsequently introduced legislation.

As outlined in the Foundation's brief, landlords are subjected to substantial burdens if they determine to participate in the federal Section 8 program. That program is voluntary and landlords not wishing to participate need not do so. Adoption by Westchester of the kind of source of income legislation proposed in 2009, and, subsequently, in 2010, would convert a voluntary federal program to a mandatory one.

Atlantic Legal argues "...that state and local source of income laws, such as the one the United States now seeks to compel Westchester County to enact, are preempted by the federal Section 8 legislation under the [United States] Supreme Court's conflict preemption doctrine, namely that a state law is preempted where it stands as 'an obstacle to the accomplishment and execution of the full purposes and objective of Congress'."



# Sound Science in the Courtroom

## Pennsylvania Supreme Court Rejects “Any Exposure” to Asbestos Causation Theory

In an important victory for sound science in the courtroom, the Pennsylvania Supreme Court has held unanimously in *Betz, et al. v. Pneumo Abex LLC*, that an expert's testimony that “any exposure” to asbestos substantially contributes to mesothelioma irreparably conflicts with his testimony that mesothelioma is a dose-response disease. The court held that the trial judge properly held a hearing on the admissibility of that testimony and correctly excluded it.

Plaintiff sued numerous companies that allegedly manufactured or supplied a variety of asbestos-containing friction products, alleging that the decedent was exposed to them during his 44-year career in the automotive repair industry. The defendants' motion challenging the admissibility of the “any exposure” theory was granted. The Superior Court reversed, holding that the court's decision was based neither on a scientific theory nor on the evidence before it.

The Foundation filed a brief in the Pennsylvania Supreme Court on behalf of several scientists, who are experts in lung disease and in the nature and effects of various types of asbestos. Our brief was cited several times in the court's opinion on important points in the court's analysis. The brief addressed proper scientific method, principles of toxicology and epidemiology, and legal issues such as the standard of admissibility of scientific evidence and the requisite proof of causation under Pennsylvania law. We specifically criticized plaintiff's expert's failure to even estimate the dosage of asbestos to which the decedent was exposed or the type or types of asbestos to which he was exposed.

In affirming the trial court's exclusion of the expert testimony, the court said that while the expert testified that he was presenting the medical literature as he understood it, he never indicated that his opinion was based on a particular clinical diagnosis. “Indeed, he expressed no familiarity whatsoever with [decedent's] individual circumstances,” the court said. “Instead, [he] offered a broad-scale opinion on causation applicable to anyone inhaling a single asbestos fiber above background exposure levels. In doing so, he took it upon himself to address (and discount) the range of the scientific literature, including pertinent epidemiological studies,” the court ruled.

In addition to being cited often by the court, Atlantic Legal's brief received praise from several prominent asbestos litigation specialists.

The *Betz* decision should figure prominently in a similar Pennsylvania asbestos-causation appeal — *Ravert v. Monsey Products* where the Foundation has also appeared on behalf of thirteen distinguished scientists. Our brief argues that this case exemplifies intermediate Pennsylvania appellate court's obdurate resistance to the Supreme Court's tightening of the standards of proof in asbestos product liability cases, such as *Betz*.

In *Ravert*, we contend that the trial court correctly rejected precisely the type of expert testimony it labeled as a “fiction”. The expert affidavits proffered by plaintiffs lack any empirical evidence concerning specific products or Mr. Ravert's actual exposure to respirable asbestos fibers from roofing cement or coatings generally or Monsey's products specifically. In addition, those expert affidavits do not explain how plaintiff's experts link their conclusions to any clinical data. They are, in other words, the mere unsupported assertions of the affiants, and thus not competent evidence.



## Challenges to Admissibility of Junk Science in Maryland Asbestos Case

Atlantic Legal filed a friend of the court brief in *Dixon v. Ford Motor Company*, an important case involving the admissibility of medical causation testimony in Maryland.

The case arises from claims that Joan Dixon developed pleural mesothelioma as a result of her exposure to asbestos from different products. She claims to have been directly exposed to asbestos while personally performing drywall sanding work and cleaning up after renovation projects at her home and other construction projects. Mrs. Dixon also claims to have been secondarily exposed to asbestos-containing dust brought home in work clothes worn by her husband while he worked as a construction worker and auto repair mechanic. Mr. Dixon testified that 95% of the cars he worked on were Ford cars and that all of the replacement brakes were purchased from a Ford dealer.

The Foundation's brief considers the "junk science" that the trial court allowed into evidence from plaintiff's causation expert, namely, that "every exposure is a substantial contributing factor." This is the same issue which the Foundation has briefed in Pennsylvania, Illinois and California.

We argue that there is no scientific basis for the "every exposure" theory, that there are numerous epidemiological studies contradicting that theory, and that even notoriously cautious government agencies, such as the EPA, have found that the type of asbestos used in automobile brakes has an almost zero probability of causing mesothelioma.

## Foundation Honors William Swanson and Richard Wilson



### "Business' Critical Role in STEM Education for U.S. Competitiveness"

**William Swanson**  
**Chairman and CEO of Raytheon Company**

It is an honor to be here tonight, and to be recognized by the Atlantic Legal Foundation with its Annual Award. Thank you for this tremendous recognition.

Reading through the names of the past award recipients, it really means a lot to me to be in such esteemed company.

I'd also like to congratulate Dr. Wilson on his Lifetime Achievement Award.

I realize I'm outnumbered as an engineer in a room full of lawyers, but we're really not all that different.

In fact, engineers and lawyers have a lot in common.

- We take the complicated and make it simple



- We seek truth and logic
- We enjoy a good argument or debate on the merits of things

That's why I really value what lawyers do. And I especially want to thank those of you here who have done work for Raytheon. These are important partnerships. You help us be successful and grow as a company, by providing expertise, resources and global access.

And within Raytheon, I really appreciate the value of good general counsel, which is why we're blessed to have Jay Stephens on our leadership team.

- Jay is someone I can count on to tell me what I need to hear
- And I want to personally thank Jay for all that he does for Raytheon, for me, our Board, and most importantly our customers

I also want to thank the Atlantic Legal Foundation for its consistent support of the principles of public policy that benefit industry and the private sector.

Under the leadership of its Chairman, Dan Fisk, the Foundation is at the forefront of advancing the rule of law and free enterprise with programs supporting sound science in the courtroom and corporate governance.

Atlantic Legal also supports something near and dear to my heart: educating the next generation as a leader advocating for school choice and charter schools.

In our free-enterprise system, education is vitally important, especially science, technology, engineering and math, or STEM, education.

We take it for granted, but STEM fields have long been drivers of U.S. economic growth. And they're the foundation of innovation in this era of global competitiveness. Yet in this new century, our leadership position is being challenged by:

- Increased global competition
- The "Baby Boomer" generation now entering retirement
- Waning student interest in STEM

This is something I see firsthand as the head of a technology and innovation company, and I'd like to spend the balance of my time talking about "Business' Critical Role in STEM Education for U.S. Competitiveness."

Now I could read you pages of stats and figures to frame our nation's STEM challenge, but I thought it would be more interesting to present them in a short video, and thanks to the Raytheon team, I can do that. Can we please roll the video.

***("Our STEM Challenge" video is shown)***

I think that frames our STEM challenge nicely. The takeaway is that while there are challenges, we all have a part to play, working together, to strengthen STEM education to make a difference.

Yet, the truth is that for various reasons, one of the players, the business community, isn't always as engaged as it should be.

I hear business leaders complain about the system and the issues they're having finding qualified people. Well, I was taught that you can't complain about the system if you don't try to change it.

Business and the private sector have an obligation, and I've always believed that they need to be part of the solution.

Since virtually every business is dependent on technology today, we all have a stake in replenishing the STEM pipeline with new talent for the future.

Businesses certainly see the benefits of a stronger STEM pipeline, with a highly skilled workforce driving innovative new products, systems and solutions. This in turn fosters job growth and increases the competitiveness of our country.

Fortunately, many in the business community are already engaged.



However, I've been challenging those businesses still on the sidelines to put on their helmets and pads, and get onto the field. If ever there was a moment, this is the moment.

Join us in strengthening and deepening our collective efforts and impact. Let's give a competitive advantage to our youth, our businesses and our country.

We need everyone's help to inspire today's students at all levels to develop an interest in STEM so they'll be excited and prepared to pursue STEM education.

Once they're in the pipeline, we need to sustain that interest so that they stay on track to rewarding STEM careers.

So, what can businesses do? The business community and private sector have much to contribute, including:

- Visibility into workforce trends and needs
- Results-oriented focus
- Marketing skills
- Public-policy advocacy
- Corporate philanthropy
- Volunteerism – employee volunteers who use science, technology, engineering and math every day, and who very much WANT to help!

Whether the steps are big or small, we can all do something.

One area where business engagement is needed is helping improve workforce alignment. Too many students and adults are training for jobs in which labor surpluses exist and demand is low, while high-demand jobs, particularly those in STEM fields go unfilled.

As job creators, businesses are on the frontlines of this supply/demand dynamic. So, they have a tremendous opportunity to work together with academia to identify and address the structural misalignment between education and workforce needs.

This is something we've been focused on at the Business-Higher Education Forum (where I've been Chair and I'm currently a member of its executive committee). Our goal of improving alignment is to better develop and maintain the employee skills that will keep our companies competitive in the 21st century.

Another area businesses can play in is providing role models and volunteers. I am proud to be an engineer. Those of us in STEM careers know how exciting our professions are. We need to share that excitement and passion every chance we get.

Sometimes all it takes is a single moment or spark to inspire a future engineer or scientist to pursue a STEM career, and many times this inspiration comes from eager volunteers and mentors.

Raytheon employees love working with students, and it's so inspiring to hear the stories from our volunteers, and to see the excitement on their faces.

And they're having quite an impact. Last year, our employees logged 200,000 volunteer hours on activities that include mentoring and tutoring, science fairs and math team coaching, school visits, and so forth.

I was talking to U.S. Secretary of Education Arne Duncan at a White House Roundtable on business and education, and he mentioned three big ways business can engage in the STEM Agenda. They are:

- Advocate for standards in the states
- Help parents be more active and engaged
- Make sure corporate giving has a return on investment

Excellent insight; simple, strategic, and they reinforce accountability, and I think they're things business and the private sector can get behind.

The important thing is to get engaged – as part of the team. Don't do it alone. Become partnered and aligned with other like-minded organizations and groups.



As with any great team, we're more successful when we're working together. A lot of groups are doing well-intentioned activities, but if they aren't aligned, they may be missing an opportunity to have an even greater impact.

I've told you some of the things businesses can do. Let me now briefly sketch out some of the things we are doing at Raytheon to show that there's a range of different ways to plug into the need.

At Raytheon, our research helped us to focus on the STEM challenge from the perspective of math and science education in the crucial middle-school years.

We set as a goal to encourage students to develop and sustain an interest, so they would be prepared and confident to pursue STEM disciplines later.

We wanted our approach to be interactive, experiential and exciting – to reflect the scientific and engineering culture of our company – to inspire the volunteerism of our employees.

From that vision, our MathMovesU® initiative was born. Created in 2005, it began as a virtual, Web-based experience through MathMovesU.com that engages students on their own terms to show how math and science can be used in exciting ways to pursue exciting goals.

Today, MathMovesU now has several facets, and we've teamed with others who share our passion and our vision.

- It's a sports experience with the New England Patriots and the Kraft family at The Hall at Patriot Place Presented by Raytheon with an interactive football game that uses math called "In The Numbers."
- MathMovesU is a competitive experience through MATHCOUNTS, which is the equivalent of the National Spelling Bee for Middle School math competitors, and during the national-level competition, over 200 of the best "Mathletes" from across the country compete. We're honored to be title sponsor through 2018.
- And it's a *ride experience* at Walt Disney World® called *Sum of all Thrills™*, where children of all ages – and the children in all of us – can design their own ride, from smooth to most challenging, using mathematical and engineering principles, and then to experience the ride. To date, nearly 2 million Epcot guests have experienced the ride.

In total, the MathMovesU program has touched the lives of millions of students, teachers and parents.

As our impact has grown in numbers, it's also broadened, from a middle school focus, to today, when we're involved in every aspect of the STEM pipeline up through higher education.

This growth has added new dimensions to our efforts that include:

- Leveraging the skills of our engineers
- Tapping into community colleges
- Strengthening our partnerships

Raytheon engineers have gotten involved by drawing upon their systems engineering skills to model the U.S. STEM education system at a national level.

More than 75 Raytheon engineers spent three years and more than 12,000 hours to examine student capabilities and interest in STEM – as students move from grade school, through high school, college, and into the workforce.

It's never been a lack of ideas that prevented a solution. But can a great idea be scaled? Can it be evaluated before experimenting on students?

To answer these kinds of questions, the STEM Modeling Tool contains hundreds of variables, and it can review and assess different scenarios to see what would happen.

After demonstrating the proficiency of the model, Raytheon donated it to Business-Higher Education Forum. Since then, BHEF has worked with partners to develop enhancements to the model and promote its use by U.S. educators and policymakers.

Now, Version 2.0 is being released with the support of the Office of Naval Research to answer the question framed by the President's Council of Advisors on Science and Technology:

- How can we develop the workforce we need by graduating an additional 1-million STEM college graduates by 2020?



In the area of higher education, one of my concerns, as I mentioned earlier, is workforce alignment. Another concern I have as a leader is the inner city, and are we doing enough there.

Pairing these two concerns led us to take a closer look at another new dimension for us: community colleges. I'm a member of the Massachusetts Competitive Partnership leadership and the organization has started a "Learn and Earn" Co-op program linking our community colleges with businesses in the state ... and Raytheon is part of this exciting effort.

We ran a successful pilot last spring, and we now have a full, semester-long program up and running with 35 students in the program at State Street, BJ's, Suffolk Construction, EMC, Bank of America, Fidelity and Raytheon.

Another organization we partner with is the Museum of Science, Boston. In working with them, we saw what an impact they were having in supporting the training of STEM teachers through its Engineering is Elementary® program.

This program taps into the natural curiosity of elementary-school students and their ability to solve problems, and it helps foster engineering and technology thinking through hands-on, storybook-based learning in math and science.

We wanted to help them expand the program, and in 2011, we made \$2 million in donations to:

- Accelerate teacher training by establishing professional development hubs in Boston, Phoenix, Ariz., Huntsville, Ala., and here in Washington.
- Fund teacher scholarships to expand program access for teachers from inner-city, rural and disadvantaged areas.

MathMovesU, the STEM Modeling Tool, Community College "Learn and Earn," and the Museum of Science – these are just four of the ways we're excited to be involved in STEM education and outcomes. So in the interest of time, I'd like to play my last short video that summarizes these and the many more ways Raytheon is engaged in STEM education.

***("Raytheon and STEM Education" video is shown)***

I wanted to mention that the last initiative we showed, MathAlive!™, debuted last year at the Smithsonian. It's an interactive museum experience that explores exciting math-powered activities, and Raytheon is proud to sponsor its multi-year tour of science centers and museums across the country.

It's already been a huge success with total attendance of more than half-a-million during its first year (with stops in Washington, Phoenix, Huntsville and now Houston).

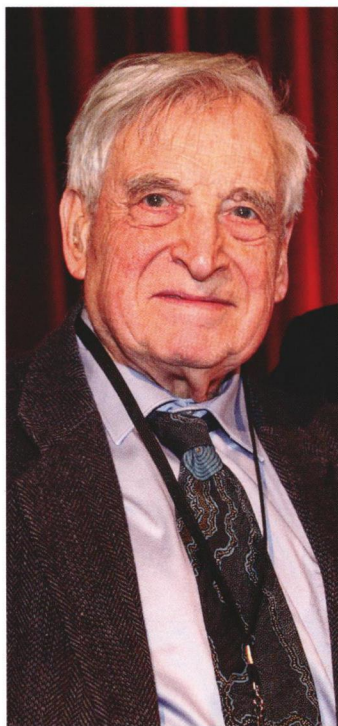
As I close, I've told you why business should be engaged, how they can be engaged, and how my business is engaged.

Now let me repeat my challenge to those businesses still on the STEM education sidelines: "Put on your helmets and pads, and get on the field." It's the right thing to do for business, and it's the right thing to do for our country.

If we seize this opportunity, I'm confident that together we can contribute to the strong STEM talent pipeline that is so critical for our nation; that is so critical for us to continue to be a leader in technology and innovation in this era of global competitiveness.

Thank you for the opportunity to speak about this important subject, and thank you again for this outstanding honor.





## **“Scientists Need to Recognize the Importance of the Law; Without the Atlantic Legal Foundation This Would Not Have Happened”**

**Professor Richard Wilson  
Mallinckrodt Professor of Physics, Emeritus  
Harvard University**

*Professor Richard Wilson delivered the following address at the Atlantic Legal Foundation's Annual Award Dinner on March 11, 2013 as the recipient of the Atlantic Legal Foundation's fourth Lifetime Achievement Award.*

*Professor Wilson is past Director of the University's Regional Center for Global Environmental Change. He also served as Chair of the Department of Physics at Harvard and was Chair and is currently a Member of the visiting committee to the Department of Radiation Medicine at Massachusetts General Hospital.*

*Professor Wilson is a founder of the Society for Risk Analysis and is a pioneer in the field of risk analysis. His areas of expertise include elementary particle physics, radiation physics, chemical carcinogens, air pollution, groundwater pollution by arsenic, and human rights. He has been a consultant to the United States government and the governments of numerous foreign countries on matters of nuclear safety, toxicology, epidemiology, public health and safety, and risk assessment.*

*Professor Wilson is the author or co-author of more than 930 published books and papers and is the recipient of numerous awards.*

I would like to thank the Atlantic Legal Foundation for this award. I do want to make one correction. It implies that I have been a strong supporter of the Foundation. It's really the complete reverse of that. The Foundation has done a great deal to support something I've been trying to push for 40 years, which is that scientists need to recognize the importance of the law. Without the Foundation, this would not have happened.

Most scientists don't realize the importance of the law. It is clear that they think that their work is important, which it probably is, and they write scientific papers which someone looks at occasionally -- and they might even get politicians to accept them. They often say that scientific truth is what matters. I didn't realize for quite a long time that what matters is not always what the scientists say in their papers, but what the courts say. The implication of that realization is that you've got to persuade the court to reach the right result.

Back in 1960, there was a realization that two things were quite dangerous -- one of these was cigarette smoking, and my father died of that, and the other was exposure to asbestos. A leading physician named Irving Selikoff wrote a scientific paper (which has been corrected and modified over the years) with a man named Herbert Seidman that pointed out that lung cancer is not very common if you don't have exposure to one or other of these things.

In their paper, Selikoff and Seidman mentioned that a heavy cigarette smoker has ten times the chance of lung cancer; that nonsmokers exposed to asbestos have three times the risk of lung cancer; and that the risk for those who are exposed to both rises to thirty times. It is clear that cigarette smoking is much more dangerous by itself than asbestos is. That's the risk assessment. However, there is a fundamental distinction



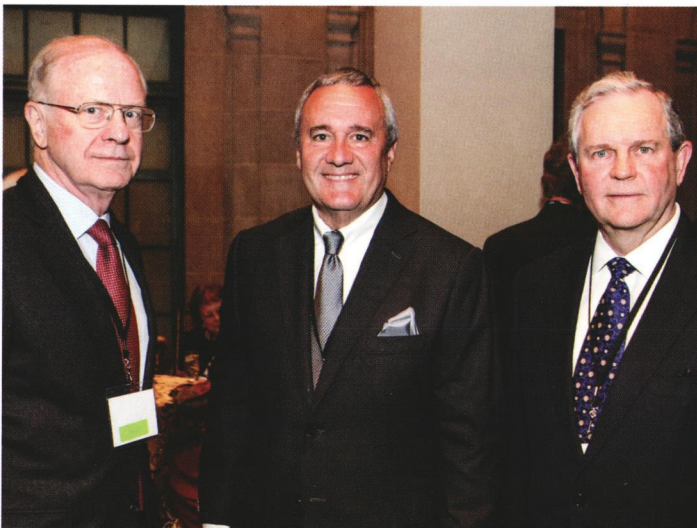
between risk assessment and risk management. Thus, the outcomes for companies managing those risks can be quite different. Johns Manville which was responsible for managing a lesser risk (asbestos) sank into bankruptcy, while Philip Morris which managed a greater risk (cigarettes), is still going strong.

In some situations, the risk assessment of the American public plays an important role. This is illustrated by its shifting attitudes about nuclear power. Up to about 1970, it enjoyed strong public support, but then public opposition began to grow even though nuclear power was becoming sensible and economic. I then focused my life on trying to persuade people that nuclear power was a better alternative than power generated by fossil fuels, which create more air pollution.

About 1985 I was introduced to the Atlantic Legal Foundation. I worked with Atlantic Legal in developing a brief directed against Governor Mario Cuomo's efforts to shut down the Shoreham nuclear power plant, which was then operating at very low power and had been given a license by the Nuclear Regulatory Commission to go full power. Although this brief failed in the New York Court of Appeals three-to-two, and led to abandonment of the plant, it led to other things, particularly the Foundation's role in discussing the role of expert witnesses in court cases. Normally, a witness can only testify with respect to something he or she has personally seen and/or heard. An expert witness can use his or her expertise to diverge from what he or she actually personally experienced. This came up in the Supreme Court in three different cases, and I was very honored to be able to help the Foundation draft the brief in each one of those three and find distinguished scientists to support us. The fact that Foundation did this was absolutely fantastic.

Other cases followed and in the last twenty years we (Atlantic Legal and I) developed a procedure of submitting a brief *amicus curiae* on behalf of distinguished scientists, often with Nobel prizes, in about twenty cases where an expert witness abused his privilege and used "junk science". It takes work, which of course I do pro bono, but I am proud of it and hope Atlantic Legal is, too.

## Photographs from the Annual Award Dinner, Washington D.C.



Bob Haig, Bill Swanson, Jay Stephens



Bill Kilberg and Fred Fielding





Gus duPont, Dick Wilson, Roger Kaplan



James Wholey, Frank Broidy, Steve Harmelin



Kathy Warye, Jeff Sherman, Danny Ly, Jennifer Luray



Dan Fisk, Bill Swanson, Jay Stephens

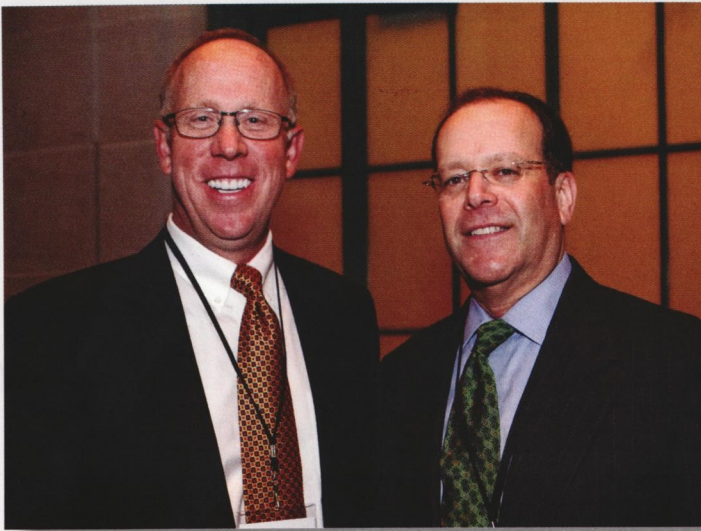


Bill Primps, Doug Foster



Dick Hauser, General P.X. Kelley, Fred Fielding





Doug Gneiser, Steven Diamond



Ken Jacobs, Tom Birsic, Bruce Heiman, Mark Ruge



Robert Lambert, Malcolm Sweeting, David Wilkins, John Reilly



Douglas Patin, Joel Brown, Jack Selden



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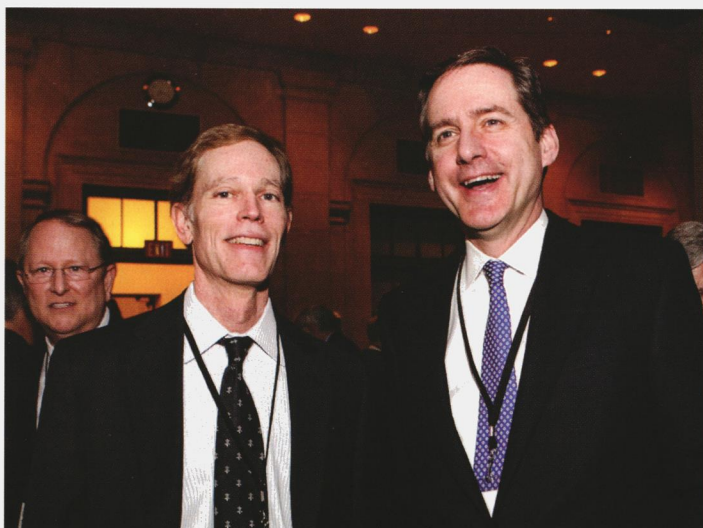
Elaine Wilson, Bradley Farnsworth, Andree Wilson, Dr. Steven Lamm,  
Dick Wilson, Joanne Lamm



Steven Topetzes, Anthony D'Iorio



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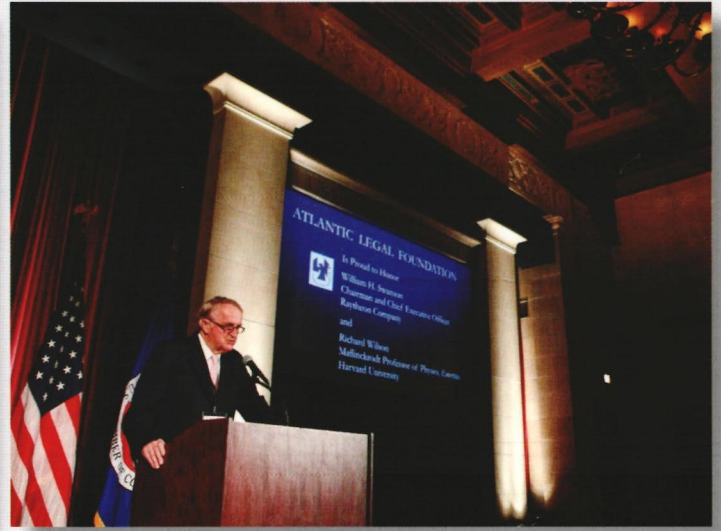


John Kenney, Jack Selden





Martin Kaufman



Bill Slattery



Jay Stephens



Dick Wilson, Dan Fisk



Bill Swanson, Dan Fisk



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2012



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*Chairman and CEO of Raytheon Company*

2011



**Edward J. Ludwig**  
*Chairman of the Board  
BD*

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.**  
*President and CEO  
Forbes, Inc.*

1993



**Amb. Carla Anderson Hills**  
*United States Trade Representative*

1992



**Paul H. Henson**  
*Retired Chairman and CEO  
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1991



**Walter B. Wriston**  
*Retired Chairman and CEO  
Citicorp*

1990



**Irving S. Shapiro**  
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DuPont*

1989



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

1988



**Hon. William E. Simon**  
*Former Secretary of Treasury*

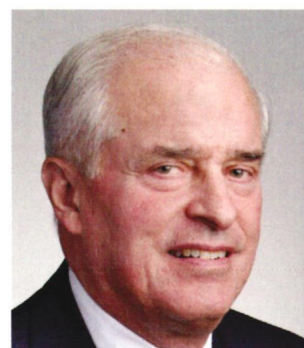


## New Directors

William G. Primps is a Partner in the New York office of Dorsey & Whitney LLP and member of the trial group. He is a highly-experienced litigator with a practice focused on antitrust, energy, insurance and regulated industries. His clients include major insurance and re-insurance companies and alternative energy providers, including the largest operator of wind turbines in China as well as a U.S.-based manufacturer of wind turbines. He has represented Canada's largest state-owned utility company, a major paper company in a large antitrust litigation, as well as major financial institutions and Fortune 500 companies.

He has served as a trustee and deputy mayor of Bronxville, N.Y. and as a director of the Bronxville School Foundation. He is currently President of the Ivy Football Association.

Mr. Primps is a graduate of Yale University and Harvard Law School.



**William G. Primps**

Jay B. Stephens is senior vice president, general counsel and secretary of Raytheon Company. He is a member of Raytheon's senior leadership team and participates in the operational management and strategic planning of the company. Mr. Stephens provides leadership for the company's legal and regulatory affairs, ethics and compliance programs, and corporate governance activities. He is also responsible for corporate staff activities in the areas of real estate, risk management, and safety and environmental quality.

Prior to joining Raytheon, he served as Associate Attorney General of the United States.

Before assuming that position, Mr. Stephens was corporate vice president and deputy general counsel for Honeywell International (formerly AlliedSignal).

From 1993 to 1997, he was a partner in the Washington, D.C., office of the law firm of Pillsbury, Madison and Sutro, where his practice focused on complex litigation, regulatory matters and corporate governance issues.

In 1988, Mr. Stephens was appointed U.S. Attorney for the District of Columbia. For five years he provided leadership, policy guidance and litigation oversight for the nation's largest federal prosecutor's office.

From 1986 to 1988, he served in the White House as Deputy Counsel to President Reagan.

From 1973 to 1985, Mr. Stephens served in a variety of positions with the U.S. Department of Justice and in the private sector, including Principal Associate Deputy Attorney General, Assistant U.S. Attorney and Assistant Special Watergate Prosecutor. He also worked as an assistant general counsel with the Overseas Private Investment Corporation and as an associate with the Washington law firm of Wilmer Cutler & Pickering.

Mr. Stephens graduated from Harvard College, attended Oxford University on a Knox Fellowship, and earned his Juris Doctor degree from the Harvard Law School. He currently serves as president of the National Association of Former United States Attorneys. Mr. Stephens also serves on the advisory board of the Georgetown Law School Corporate Counsel Institute, as well as on the General Counsel Committee of the National Center for State Courts, and as a trustee of the American Friends of New College, Oxford.



**Jay B. Stephens**



## New Advisor



**Michael S. Nadel**

Michael S. Nadel is a partner in McDermott Will & Emery LLP and is based in the firm's Washington, D.C., office. He is an experienced trial litigator with multiple jury and bench trials to his credit. His practice focuses on intellectual property litigation and complex commercial disputes. Currently, he has an active practice before federal district courts in the Eastern District of Texas, the Eastern District of Virginia, and other major patent jurisdictions, as well as the U.S. International Trade Commission. Additionally, he has successfully litigated large-scale contract and tort disputes.

Mr. Nadel also has an active appellate practice. He has argued before numerous federal and state appellate courts.

Mr. Nadel is a graduate of George Washington University Law School and the University of Pennsylvania. He serves as a member of the board of directors of BBYO, Inc., the B'nai B'rith Youth Organization.

## Board Speaker



**The Honorable  
Michael B. Mukasey**

The Hon. Michael B. Mukasey, former Attorney General of the United States and United States District Court Judge, Southern District of New York, currently a member of Debevoise & Plimpton, LLP, spoke to the Board, Council and guests on May 30, 2012 at the Harvard Club of New York City. He discussed current national security concerns.

## Interns

Atlantic Legal again hosted an outstanding group of student interns during the spring and summer of 2012, including law students from Columbia Law School, Fordham Law School and the University of Michigan School of Law and a lawyer from India who received an LL.M. degree from NYU Law School. They undertook many tasks — substantive and administrative — and participated in seminars designed to put the Foundation's projects in legal and historic perspective. It was a mutually-beneficial experience for both the interns and the Foundation.



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\* Includes Annual Award Dinner supporters



# Atlantic Legal Foundation: Mission and Programs

The Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm with a demonstrable three-decade record of advancing the rule of law by advocating limited and efficient government, free enterprise, individual liberty, school choice and sound science. To accomplish its goals, Atlantic Legal provides legal representation and counsel, without fee, to parents, scientists, educators, and other individuals, corporations, trade associations and other groups. The Foundation also undertakes educational efforts in the form of handbooks, reports and conferences on pertinent legal matters.

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 constitutional guarantees to individuals and corporations faced with authority of 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](http://www.atlanticlegal.org) and [www.defendcharterschools.org](http://www.defendcharterschools.org) where the Foundation's most recent activities are detailed.

## Atlantic Legal Foundation

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Larchmont, NY 10538  
(914) 834-3322  
Facsimile (914) 833-1022

### **New York City Office**

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**William H. Slattery, Publisher**

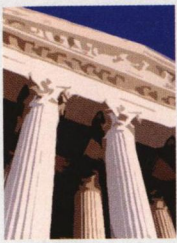
**Briscoe R. Smith, Editor**

**[www.atlanticlegal.org](http://www.atlanticlegal.org)**

**[www.defendcharterschools.org](http://www.defendcharterschools.org)**

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