

Civil Justice Reform – Organizations

Atlantic Legal Foundation – How You And Your Law Firm Partners Can Best Support Its Activities

The Editor interviews **William H. Slattery**, President, **Martin S. Kaufman**, Senior Vice President and General Counsel and **Briscoe R. (“Sandy”) Smith**, Senior Vice President and Counsel, Atlantic Legal Foundation, Inc. (“Foundation”). The Editor (Al Driver) is a member of the Foundation’s Advisory Council.

Editor’s Note: Partnering between inside and outside counsel has expanded its scope. Not only does partnering involve the handling of specific cases and matters, but it also encompasses activities that address more pervasive concerns of legal departments and their corporate clients. Because it is so important for outside counsel to reflect the image of the client they represent in such areas as diversity and dedication to pro bono and other community concerns, partnering in those areas has become well established. This newspaper provides a showcase for law firms to demonstrate the ways in which they partner in these areas in an effort to publicize best practices that other firms may wish to emulate. The result is that more firms become involved, thereby vastly increasing the impact of the total effort.

The need for partnering in civil justice reform and other areas where the public and private spheres intersect has been of growing importance. This is closely related to the growth of a plaintiffs’ bar that has become aware of the immense profit opportunities in litigation against corporations.

The focus has shifted from representation of clients as a professional duty to an almost assembly-line manufacture of litigation directed against corporations as a way of building a personal fortune – and the playing field has tilted in favor of plaintiff’s lawyers. Their wealth has enabled them to make vast expenditures to influence legislation, the selection of judges and judicial outcomes. Restoring a level playing field has become a serious concern of corporate counsel – and to achieve this they need the help of organizations like the Atlantic Legal Foundation that by reason of their dedication to the values of the free enterprise system make valuable contributions to preserving a fair civil justice system and to other institutions that are of concern to corporate counsel.

The purpose of this interview is to explore with the staff of the Foundation how corporate counsel and the law firms with which they partner can best support its activities.

Editor: Bill, please give us an overview of the Foundation’s mission.

Slattery: We advocate the rule of law, free enterprise and individual liberties, sound science and school choice. If a matter is brought to our attention, we will consider it carefully and act where appropriate. For example, in response to suggestions, we may assemble panels of distinguished individuals to discuss major issues. Our 2005 conference focused on the erosion of the attorney-client privilege. We had distinguished

panelists, as well as Ted Olson, Senator Arlen Specter and Professor Geoffrey Hazard. The 2005 conference was chaired by Bob Lonergan, the general counsel of Rohm and Haas, a member of our Board of Directors. Alan Raul, a member of our Advisory Council, and his firm Sidley Austin provided enormous support. We are now in the process of planning a “major conference” in 2007 on current issues in civil litigation. This will be of immense interest to the corporate community. As we did in 2005, we plan to make CDs of all our conferences available.

Editor: One of the Foundation’s principal activities is filing amicus briefs and becoming involved as counsel in cases involving issues of integrity of the judicial process or otherwise relating to its mission. It plays a major role in eliminating the use of junk science at the state and federal level. Its brief was cited in the Supreme Court’s opinion in the landmark *Daubert* case. What can corporate counsel and the law firms with which they partner do to support these activities of the Foundation?

Kaufman: The first, and most important way they can help us is to let us know about cases of importance to their corporate clients that raise issues concerning the fairness of our judicial system or that pertain to other issues in which we are involved. Of course, assistance in preparing a brief and the weight of their names on the brief is invaluable.

As a result of a suggestion that we received, we are now working on a brief in a case involving the arbitrability of certain types of disputes. This case is representative of the many cases that are brought to our attention by corporate counsel.

Editor: School Choice is another issue in which you are involved. Tell us how law firms made it possible for the Foundation to handle charter school matters that it could not otherwise have undertaken.

Slattery: An issue of importance to corporations is the quality of our educational system. Charter schools play an increasingly important role in improving the system. There are well over one million students nationwide attending charter schools. They provide an environment in which teachers and school administrators find new ways to motivate students because they are not affected by the inertia and resistance to change that affects some public schools or by the constraints imposed by unions. By providing competition for our public schools, they provide a needed yardstick to measure the performance of public schools and provide an incentive for them to improve. They provide an alternative for students who are the victims of failing public schools. By building a highly educated workforce, they play an important economic role.

We have all seen the surveys showing

how poorly our students score when compared to students in other countries. Their low scores in mathematics and science may well account for the fact that our universities are producing so few engineers and scientists when compared to developing countries like India and China. Attracted by the abundance of talent in those countries, global companies are now building facilities there rather than in the United States.

Smith: Charter schools are frequently located in poor urban areas where the public schools have been designated as failing or are otherwise deficient. In such areas, a charter school may represent the only alternative to a school with a high dropout rate, deplorable physical conditions and an underperforming teaching staff. Some major corporate legal departments are concerned because so few minorities are entering law school. These companies sponsor efforts to reach down into the primary and secondary levels to preach the benefits of a legal career to minorities at those levels and encourage their law firms to do the same. Because there are so many minorities in poor urban areas, charter schools not only can provide minorities with the educational preparation required to pursue a successful legal career, but through competition can provide an incentive for the public schools to do a better job.

Kaufman: Thanks to law firm support, we were able to defend the rights of charter schools and their students in recent administrative proceedings. One proceeding involved a charter school that had its charter approved by the New Jersey Department of Education back in January of this year. Its students had purchased uniforms, withdrawn from their public schools and were otherwise poised to attend class. Everything was set to go for the school to open in the first week of September. Nevertheless, on August 31, the Commissioner of Education withdrew the school’s charter. After we filed a challenge to the decision, we got a favorable decision on September 20 from the State Board of Education, which unanimously reversed the Commissioner.

David Apy of McCarter & English, a member of our Advisory Council who is an expert in charter school law, provided invaluable expertise. He acted as counsel of record and joined with us in a collaborative effort to produce the best results in the case. Together we worked hard within a tight two-week time frame that enabled the school to open on time.

This case is a good example of a proceeding which we could not have handled without the help of a law firm qualified to practice in New Jersey and knowledgeable about its procedures and where Foundation lawyers are not admitted to practice.

This is not the only instance where McCarter & English helped. They also assisted us in a case involving the revocation of a charter in Paterson, New Jersey.

Slattery: Another law firm contributes to our effort to provide charter schools in several states with the information they need to address important legal concerns. Jackson Lewis, a firm well known for its expertise in employment law, prepared, on our behalf a 70 page book called *Leveling The Playing Field – What New York Charter Schools’ Leaders Need To Know About Union Organizing*. This has been distributed widely to charter schools throughout New York State. With their help, we have just published two books adapted for use by charter schools in New Jersey and Massachusetts and other editions are in preparation. Roger Kaplan of the firm is on our Advisory Council and has played a key role in this process.

Smith: Jackson Lewis also provided the labor law advice that we needed to assist a charter school in The Bronx to resist an effort by a labor union to organize its staff with the practical result that the union has been rejected.

Editor: All Americans are interested in attracting the best quality people to our armed forces. This is of special importance to corporate counsel because their responsibilities demand that they be concerned about protection of their clients’ facilities and staff from terrorist attacks. Tell us how a law firm helped the Foundation play a role in opposing an effort to make recruiting such people more difficult.

Slattery: Outside counsel was essential to us in connection with our brief in *Rumsfeld vs. Forum for Academic and Institutional Rights*. A group of law professors challenged the constitutionality of the Solomon amendment, which provides that colleges and universities must make their facilities available to military recruiters on the same basis that they make them available to other recruiters or face the loss of certain federal funds. Had the challenge been successful, it could have hampered the efforts of our armed forces to recruit candidates. We decided that it would be important to bring to the attention of the Supreme Court the views of former high ranking officers and cabinet members on this issue.

Kaufman: In *Rumsfeld*, through the good offices of Philip Sellinger, one of our Board members, we partnered with his law firm, Greenberg Traurig. That firm through the connections of one of its Washington partners, Joe Reeder, a former Undersecretary of the Army, was able to enlist retired generals and admirals and former secretaries of defense to join our brief. This undoubtedly added to the weight of the brief we filed with the Supreme Court.

Although I did the initial draft of the brief, Phil and Joe worked in a collaborative effort involving many iterations of the brief. We were pleased with the outcome, which was a unanimous decision of the Supreme Court upholding the constitutionality of the Solomon amendment.