



Report

MID-ATLANTIC LEGAL FOUNDATION

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MARCH 1986

Supreme Court Refuses Review of Galda Case

On March 10, the United States Supreme Court denied the *certiorari* petition of Rutgers and NJPIRG. Thus, the Third Circuit's decision that the mandatory student fee levied by Rutgers to support NJPIRG is unconstitutional stands. The Third Circuit has issued its mandate to the District Court, to enjoin Rutgers from collecting such fees.

This is a great victory after a long fight, including a two-week trial and two appeals. As *The Wall Street Journal* editorial of March 12 stated: "The

question of whether such a movement (Ralph Nader's) can reach into a state university and extract unwilling support from students has finally been settled. It can't. Yet one more political abuse of public institutions has been corrected."

"The Foundation is delighted with the result," commented Douglas Foster, President of the Mid-Atlantic Legal Foundation. "The *Galda* decision reinforces what we all cherish, namely that no one should be forced to support a political or ideological group."

Media Supports Court Decision

Prestigious publications, such as *The Wall Street Journal*, have reacted favorably to the U.S. Supreme Court decision on the *Galda v. Rutgers* case. In an editorial shortly after the decision, *The Journal* lauded the Court's action.

"The Supreme Court Monday agreed that it was unconstitutional for Rutgers University to collect student fees for use by the New Jersey Public Interest Research Group, one of Ralph Nader's fleet of state-level-'student' groups," the paper wrote.

"The question of whether such a movement can reach into a state university and extract unwilling support from students has finally been settled. It can't. Yet one more political abuse of public institutions has been corrected.

"That the New Jersey PIRG was political hardly seemed worth debating. On issues ranging from ERA to a nuclear freeze, it was very much in harmony with the positions of the Naderite wing of the Democratic Party, sometimes known as the San Francisco Democrats. Yet, since 1972, it has been able to wangle more than \$800,000 from university students.

"In 1979, three students at Rutgers' Camden campus sued the university with the aid of the Mid-Atlantic Legal Founda-

tion. Seven other students later joined the suit. A district judge initially upheld Rutgers on the ground that it had agreed to return the \$2.50 per-semester fees to students who demanded it. But the appeals court held that it was illegal to extract such a fee even temporarily. Students were being required to 'fund a political entity devoted to the attainment of fixed ideological objectives,' definitely not an 'educational' pursuit.

"Perhaps the most disturbing thing was Rutgers' insistence, right up to the Supreme Court, that it was in the right. Moreover, it was supported by the National Association of State Universities and Land Grant Colleges.

"We've come a long way, but, intellectually, there's still a ways to go."

A leading New Jersey newspaper, *The Newark Star-Ledger*, also commented vigorously on the decision, in a lengthy editorial that concluded: "College-level students clearly should have a right to avoid the compulsory funding of organizations dedicated to the furtherance of ideas and projects with which they disagree. That is a basic premise which universities should be able to embrace without difficulty."

Some Galda Profiles

Joseph Galda, the lead plaintiff and a young man of principle and conviction, was a freshman at Rutgers College of Arts and Sciences in Camden when suit was commenced. Before the district court issues its final order, the suit will have spanned both his college and law school careers. In May, 1986, Mr. Galda will graduate from Rutgers-Camden Law School and become an associate at the law firm of Drinker, Biddle and Reath in Philadelphia.

Myrna P. Field, Mid-Atlantic's President from 1978 to 1984 when she left to open her own practice in Philadelphia, was the lead litigator through all proceedings, including the February 1984 trial.

Joseph W. Marshall, III, was staff attorney at Mid-Atlantic from 1979 to 1984 when he left to establish his own practice at Goldman, Koplin & Marshall in Philadelphia. He remains in the *Galda* case. Through its course, he participated in the trial, presented the oral argument before the Third Circuit on the second appeal, and served as attorney of record in opposition to the petition for *certiorari*.

John G. Collins, in his capacity as Mid-Atlantic Vice President-Law, counseled the litigators and helped develop the legal arguments.

Bradford S. Smith, a member of the firm of Smith & Smith, Cinnaminson, New Jersey, acted as Mid-Atlantic's New Jersey counsel of record in the district court.

More information on the *Galda* case is carried on page three.

Governor Wilson, James Wyer Elected to Foundation Board

Former New York Governor Malcolm Wilson and newly-elected chairman of the Foundation's Legal Advisory Council, James I. Wyer, have been elected to the Mid-Atlantic Legal Foundation Board of Directors.

Governor Wilson held public office for 36 years, starting in 1938, serving as Assemblyman from Yonkers for 20 years and as Lieutenant Governor for 15 years. He took the oath of office as Governor in 1973, following the resignation of Nelson A. Rockefeller.

Governor Wilson was practicing law with the White Plains, NY firm of Kent, Hazzard, Wilson, Jaeger, Freeman & Greer before being elected Lieutenant Governor and he currently serves as counsel to the firm. For the past decade, before retiring earlier this year, he served as Chairman and Chief Executive Officer of The Manhattan Savings Bank.

MATLF Files *Amicus* Brief in Coal Case

On February 24, 1986, Mid-Atlantic Legal Foundation filed an *amicus* brief with the United States Supreme Court in a matter involving the unconstitutional "taking" of property entitled: *Keystone Bituminous Coal Association, et al. v. Peter S. Duncan, et al.*

The Foundation supported the petitioning coal companies, which had argued unsuccessfully before the Third Circuit that the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act was unconstitutional on its face. The Act requires the coal companies, among other things, to leave 50% of their coal in the ground as support for certain structures, without any compensation. Mid-Atlantic not only represented itself, but also the Tri-State Coal Operators Association and an individual officer and shareholder of a coal company.

On March 24, the Supreme Court granted *certiorari*, a most satisfying result. The Foundation expects to participate in the briefing on the merits and to continue its working relationship with the coal companies and their counsel. It is expected that the case will be argued in the fall for petitioners by Rex Lee, the former Solicitor-General of the United States. Mr. Lee and the attorneys from Pittsburgh who represented petitioners throughout were most complimentary of The Foundation's brief and appreciative of its help.

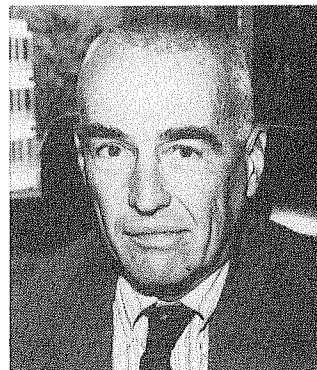
He is a graduate of Fordham Law School and Fordham College and has received 22 honorary degrees during his distinguished career.

Mr. Wyer, the new chairman of the Legal Advisory Council, has been a member of the Council since 1984. He is Vice President and General Counsel of American Cyanamid Company and head of its legal department. He joined the company in 1956 after serving as an associate with Dewey, Ballantine, Bushby, Palmer & Wood in New York City.

Mr. Wyer earned a B.A. degree from Yale University and his LL.B. from Yale Law School. He was President of the Association of General Counsel in 1984 and serves on the Executive Committee General Counsel's Group of the Chemical Manufacturers Association.



Malcolm Wilson



James I. Wyer

Arabis, Galiardo Named To Legal Advisory Council

Stanley L. Arabis and John W. Galiardo have been elected to the Foundation's Legal Advisory Council.

Mr. Arabis is Chief Counsel Regulatory and Product Liability Law for Sun Company in Radnor, PA. He also has served as Chief Counsel, Labor, Health and Safety Law; and Chief Counsel, Commercial and Regulatory Law. In 1977, participating as Presidential Executive on loan from Sun, Mr. Arabis was Special Assistant to the nation's Assistant Secretary of Labor for Policies.

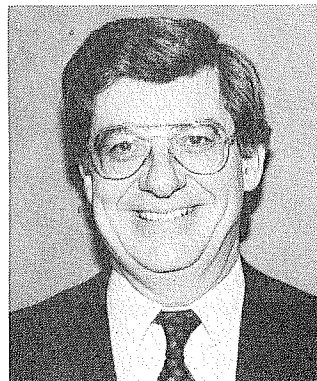
He received a bachelor's degree in mechanical engineering and worked for

General Motors while earning his law degree from Temple University. He also has served as an attorney for Gulf Oil Corporation.

Mr. Galiardo has been Vice President and General Counsel of Becton, Dickinson & Co. in Paramus, NJ since 1977. For six years before that, he was Assistant General Counsel for E.R. Squibb & Sons, Inc. in Princeton, NJ, and served as an attorney for nine years with Dewey, Ballantine, Bushby, Palmer & Wood in New York. He is a graduate of the University of Maryland and Columbia Law School.



Stanley L. Arabis



John W. Galiardo

Galda: Docket Summary

The following highlights of the history of the *Galda* case were distilled from a 14-page district court docket. Not separately shown are entries reflecting extensive discovery and equally extensive related motion practice, complaint amendment to add parties, and two motions for class action treatment both denied by the district court.

September 6, 1979	Complaint filed
October 28, 1980	Rutgers motion for summary judgment
December 1, 1980	NJPIRG motion for summary judgment
June 19, 1981	Summary judgment granted for defendants
July 20, 1981	Plaintiffs' notice of appeal to Third Circuit
August 10, 1982	Third Circuit reversal of summary judgment
January and February, 1984	Ten-day trial
June 20, 1984	District court order of dismissal
July 19, 1984	Notice of appeal to Third Circuit
August 28, 1985	Third Circuit reversal of district court dismissal and direction to enjoin compelled payment
March 10, 1986	Defendants' petition for <i>certiorari</i> denied

MatLF to File Brief Supporting PBGC

In October 1985, the Board authorized the Mid-Atlantic Legal Foundation to become involved in an issue concerning a Chapter 11 debtor-employer terminating his employee pension obligations. This issue impacts upon the premium rates paid by a corporation to the Pension Benefit Guarantee Corporation ("PBGC"), a quasi-governmental agency which insures American workers' pension benefits from a company's failure to meet its pension obligations.

It appears that the earliest "ripe" case to resolve this issue, involving a significant conflict between the Bankruptcy Code and ERISA, will be scheduled in the Second Circuit Court of Appeals this spring. MatLF's staff has been in communication with pertinent parties and experts in this matter and expects to file a brief, in support of the PBGC, arguing the undesirable ramifications of allowing the Bankruptcy Code to prevail, both upon the corporate rate-paying community and upon the public interest.

Blue Route Completion Cleared

On March 24, 1986 the United States Supreme Court refused to hear the appeal of those attempting to block completion of this long-delayed highway project. In October, 1985 the Third Circuit had ordered the road completed. The Supreme Court decision marks the "end of the road", after nearly 20 years, of legal battles over construction of the Blue Route.

Mid-Atlantic Legal Foundation participated in representing the intervenors, a group of affected persons and associations, including the regional Chamber of Commerce, which sought completion of the project.

Carroll Discovery Extended

Largely due to the busy schedules of expert witnesses for both sides, depositions have been rescheduled. It is likely, therefore, that discovery will be ended and a pretrial order issued in the summer of 1986, with trial in the fall.

The case involves compelled payment of student activities fees allocated by student governments at various campuses of the State University of New York to the New York Public Interest Research Group.

Delay in Ending State Liquor Store Monopoly

Pennsylvania's state-owned wine and spirits monopoly, the state store system, continues to operate because the legislature availed itself of a provision in the state's sunset review act. The provision allows a one-time postponement until the end of 1986. By that time the legislature will have to reauthorize, terminate or modify the system by actually voting on the issue. Governor Richard Thornburgh has vowed to veto reauthorization of the system if there is no meaningful change. His right to do so may be challenged by litigation.

MatLF continues its legal representation of Pennsylvanians for a Responsible End to the State Store System ("PRESS"), a citizen's coalition formed in 1985 to voice the public's desire to end the system. Since its founding in August, PRESS membership has grown to over 2,000. PRESS expects to remain active during 1986 and to participate in any resulting litigation on behalf of the "public". The Foundation will represent PRESS in any such litigation.

Foundation Representing Maryland C of C in Employer Rights Case

In a Maryland case, now in that state's appellate courts, the issue of what an employer must do to make an offer of suitable employment to a striking worker will be decided. The significance of the issue lies in the fact that Maryland law provides a bar to a striker's collecting unemployment compensation if the company makes such an offer and the striker rejects it.

The Maryland Chamber of Commerce requested MatLF's assistance in voicing

its concerns and perceptions of the public interest aspects involved in the matter. At its February meeting, the Foundation's Board approved our participation in this matter on behalf of the Maryland Chamber of Commerce.

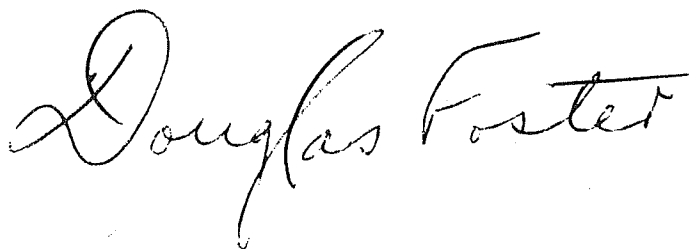
The staff is in the process of making arrangements to participate in this appeal, in which the affected union is the appellant. The Foundation will support the position of the appellee employer.

An Open Letter to Readers

This is a year of decision for Mid-Atlantic Legal Foundation. Established ten years ago to give voice in the court room to those who believe in our free enterprise system and oppose undue governmental restraints, the Foundation has undertaken a number of matters consistent with those principles. Some of the current matters are discussed in this report.

At a time when we are seeking to expand our involvement in issues of significant interest and are adding quality people to our Board and Legal Advisory Council, as this report reflects, we find that our contributions are lagging significantly behind our expenses. Indeed, our contributions have hit an unsatisfactory plateau over the past several years.

As a result, we need your help and the help of everyone who believes in the free enterprise system. With your support the Foundation can be a more forceful and influential voice in the battle against creeping socialism and government interference.



Your Support is Needed

Please help us in representing the true public interest at all levels of the judicial and administrative processes. Mid-Atlantic Legal Foundation charges no fees for the services it renders. Your tax-deductible contribution will be used to help defend private rights, free enterprise and sound economic development.

To: **Mid-Atlantic Legal Foundation** / 400 Market Street / 3rd Floor / Philadelphia, Pa. 19106

Yes, I support your defense of the traditional American values.

Enclosed is my tax-deductible contribution.

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