



Report

MID-ATLANTIC LEGAL FOUNDATION

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SPRING 1985

Foster Elected President of Mid-Atlantic Legal Foundation



Douglas Foster, a litigation partner in the former New York City law firm of Lovejoy, Wasson & Ashton, was elected President of Mid-Atlantic Legal Foundation on June 19, 1985.

Mr. Foster is a graduate of Williams College and Columbia Law School. He also received an MA from Cornell University. Prior to entering the law, Mr. Foster served in the U.S. Army Counter Intelligence Corps and was on the faculty of The Hill School, Pottstown, Pa.

Mr. Foster began his legal career with the New York City firm of Chadbourne, Parke, Whiteside & Wolff. He has served as Assistant Commissioner of the New York City Department of Investigation.

Mr. Foster is a member of the Board of Governors of the Bronxville, New York Field Club. He is counsel to the Bronxville Planning Board. He is Vice President of the Camp Dudley Board of Managers.

Mr. Foster is married and the father of four children, two of whom are graduates of Hamilton College, Clinton, N.Y. and two of whom are students at Bronxville High School.

Discovery Deadlines In Carroll Case

In *Carroll v. Blinken*, six students at three campuses of the State University of New York are challenging the mandatory payment of student activities fees, a portion of which are paid over to the New York Public Interest Research Group (NYPiRG). As in *Galda v. Bloustein*, the plaintiffs in *Carroll* claim that the mandatory payment of such fees violates fundamental constitutional rights to freedom of political thought and association.

On May 21, Magistrate Nina Gershon set August 6, 1985 as the deadline for fact discovery and September 15, 1985 as the deadline for depositions of expert witnesses. A further pretrial conference has been set for September 18. It is likely therefore that this case will be heard by the District Court in the fall of this year.

State Store Issue

Since the repeal of Prohibition all sales of wines and spirits in Pennsylvania have been exclusively through a state-owned and operated system called the "state store" system. Despite the fact that public opinion polls consistently reflect that over two-thirds of the citizens of Pennsylvania favor abolishing this system, the system remains intact in 1985.

The current Governor of Pennsylvania is committed to terminating the state store system and has availed himself of the Pennsylvania "sunset review" provision, which requires the legislature to affirmatively vote to reinstate the state store system or modify it. Absent such a vote

to reinstate, the "sunset" provision will mandate the state store system out of existence.

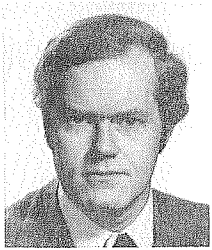
Pursuant to their "sunset review" responsibilities, a state senate committee has been holding hearings regarding the issue. MATLF provided legal representation for a "citizen/taxpayer/consumer's" testimony on June 7, 1985 before the Pennsylvania Senate Law and Justice Committee. MATLF's client suggested replacing the state store system with a "free enterprise" system.

The committee is scheduled to issue a report and/or a proposed bill to be voted upon early this fall. The Governor has stated publicly that if the state store system is reinstated by a plurality vote in the legislature, he will veto the result, thereby requiring the legislators to over-

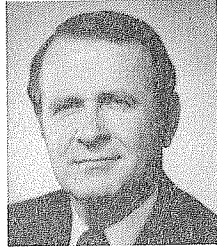
ride his veto by a two-thirds majority. Those opposed to the Governor's veto threat have vowed to file a lawsuit.

Our client is currently attempting to form a coalition of citizens and taxpayers who are interested in participating in the process of creating a "free enterprise" system of wines and spirits sales in Pennsylvania. It is envisioned that if the issue results in litigation, this coalition, and potentially other parties interested in a "free enterprise" system in Pennsylvania, will attempt to intervene on behalf of the Governor. MATLF expects to continue its representation of its client, the coalition he is creating, and, possibly, a larger coalition which may be formed in order to demonstrate that a "free enterprise" system can more effectively and responsibly serve the needs of Pennsylvania consumers than the existing state monopoly.

Foundation Elects Robinson, Shafer



Roger W. Robinson



Robert L. Shafer

Mid-Atlantic Legal Foundation (MATLF) recently elected two Directors and a new Vice Chairman to its Board of Directors.

Roger W. Robinson, Chairman, CYMA Corporation, a Philadelphia-based general contracting and construction management firm, was elected a Director of MATLF and Vice Chairman of the Board of Directors.

Robert L. Shafer, Vice President-Public Affairs and Government Relations, Pfizer Inc., New York City, was elected a Director of MATLF.

Mr. Robinson continues to serve as Chairman of MATLF's Legal Advisory Council. Mr. Shafer continues to serve as Chair-

man of MATLF's Public Affairs Advisory Council.

Mr. Robinson is a graduate of Cornell University and Harvard Law School. He practiced law in New York City and served as Assistant Counsel to Governor Nelson A. Rockefeller. Before joining CYMA Corporation he was General Attorney at Bethlehem Steel Corporation for several years.

Mr. Shafer is a graduate of St. John's University, Collegeville, Minn., and earned his law degree at Georgetown University. Before joining Pfizer Inc. he was Legislative Assistant to Congressman Alvin E. O'Konski of Wisconsin.

Abrams Petitions PSC On Utility Contributions

Supporters of Mid-Atlantic Legal Foundation are familiar with our First Amendment student fee cases.

Galda v. Bloustein involves student fees paid at Rutgers, the state university of New Jersey, which are then paid over to the New Jersey Public Interest Research Group (NJPIRG); and *Carroll v. Blinken* involves fees paid at three constituent colleges of the State University of New York (SUNY), a portion of which go to the New York Public Interest Research Group (NYPIRG). The plaintiffs in both *Galda* and *Carroll* complain that compulsion of their student fee support of NJPIRG and NYPIRG violate their rights to freedom of political thought and association.

Both cases have been vigorously defended by both PIRGs and by both state universities, principally on the ground that the PIRGs allegedly provide a sufficient quantity of educational value to justify the fee compulsion.

By reason of their positions as state employees, the SUNY defendants in New York (Chancellor, trustees, college presidents) are being defended by Robert Abrams, New York's Attorney General.

On June 12, 1985, Mr. Abrams petitioned the New York Public Service Commission (PSC) to establish a rule which would prevent the inclusion of utilities' charitable contributions in rates charged to customers.

Mr. Abrams' petition cites as authority *Galda v. Bloustein* and *Abood v. Detroit Board of Education*, upon which *Galda* relies. He points out that Mid-Atlantic Legal Foundation is representing the plaintiffs in *Galda* and has been a donee of New York Telephone and Con Edison.

The petition asserts that Mid-Atlantic is an organization with distinct points of

view and details several Mid-Atlantic actions in support of that claim including actions: "to limit the liability of drug companies for damages sustained as a result of using DES"; "to uphold a Nuclear Regulatory Commission decision that a method for safely disposing of high-level radioactive wastes need not be a precondition to granting nuclear reactor operating licenses"; and, "to uphold EPA's revised, and more lenient, rules regarding implementation of the Clean Air Act." Mr. Abrams also asserts, very correctly, that Mid-Atlantic has appeared before the PSC to oppose the formation of a citizens' utility board.

Of particular interest, moreover, is Mr. Abrams' allegation in support of his petition that *Mid-Atlantic* "has brought lawsuits... in cases in which it sought to stop student funding of the New York and New Jersey Public Interest Research Groups."

Supporters will recall that in both the *Galda* and *Carroll* cases *objecting students* challenge the *mandatory* payment of student fees which go to NYPIRG and NJPIRG, which plaintiffs claim to be political action groups or, in Mr. Abrams' words, groups "with distinct points of view."

Both the *Galda* and *Carroll* cases complain of constitutional violations by the States which, in Mr. Abrams' words, are "repugnant to this country's most fundamental values."

Mid-Atlantic Legal Foundation agrees with Mr. Abrams that "to force a man to support ideas with which he disagrees is sinful and tyrannical."

It would appear that the State of New York has embraced the constitutional principles upon which the Foundation's stu-

dent fee cases are based, although the State's application of them remains somewhat selective.

Blue Route Update

In August, 1984 a coalition again brought suit against both the federal and Pennsylvania Departments of Transportation to halt completion of the construction of the Blue Route because of purported deficiencies in the evaluation of the environmental impact of the proposed route. Mid-Atlantic Legal Foundation participated in representing a coalition which intervened on behalf of the government defendants to promote completion of this highway project, which has been in planning for over 20 years. In March, 1985 the District Court granted summary judgment in favor of the defendants on all counts, and thus ordered the completion of the Blue Route.

Significantly, all of the plaintiffs in the District Court have left the case except for one civic association, which filed an appeal to the Third Circuit. Even though over 40 alternative routes were considered during the process and even though it is virtually inarguable that not building the Blue Route would cause enormously harmful consequences to both the traffic flow and economy of the affected areas, the appeal focuses on whether the District Court properly evaluated and approved the government findings that all "prudent and feasible" alternatives were adequately considered in the planning process, especially the "alternative" of not building the highway.

Oral argument has been scheduled for September, 1985.