

Introductory Remarks of Albert A. Foer, Founder and Former President of the American Antitrust Institute, Presenting the Alfred E. Kahn Award for Antitrust Achievement to Professor Robert H. Lande, AAI 27th Annual Policy Conference, The National Press Club, Washington, D.C. (June 4, 2026)

History records that the AAI's founding Board of Directors in 1998 was composed of myself, the late Jonathan Cuneo, and Robert H. Lande. AAI's first annual conference took place in June 2000 and its theme was "An Agenda for Antitrust in the 21st Century." The Award we now name in honor of the late Fred Kahn, was initiated at that first conference, and we called it simply the Antitrust Achievement Award. Its recipient was Joel Klein, a legendary Assistant Attorney General for Antitrust, and he was introduced by his boss, Attorney General Janet Reno. It was her first and only major antitrust speech. Altogether, a memorable first conference.

The award was later renamed in honor of Fred Kahn, the godfather of consumer-oriented deregulation, an early recipient of the award who passed away in 2010. In 2014 the Alfred E. Kahn Antitrust Achievement Award was presented to John M. Connor, the world's leading cartel researcher. I mention this because that year the award was presented by Bob Lande, who was (even back then) a member of the AAI's board.

Bob's presentation speech that day was about the many ways in which John Connor could be compared to the great basketball player Larry Bird, also from John's state of Indiana. Bob went on about the nature of greatness shared by Connor and Bird, which you can read on the AAI website. Bob said he would not go into *all* of the details, because—and here I am quoting directly from the transcript: "I'd have to read you his 70 page Vitae. But Bert would yank me off this stage before I read very much of it."

Now you know that Bob's an unusually modest guy and if I tried to recite all of *his* Vitae to you, he'd yank me off this very same stage. I avoided such stage-management when I spoke at a celebration of his long career at the University of Baltimore Law School in 2024, by focusing on what I then called "The Bridge from Chicago to Biden: The American Antitrust Institute in Perspective." Bob was a principal architect of that bridge.

Actually there is only one way I can compare Bob to Larry Bird, and it is a stretch since Bob cannot palm a basketball, but he can palm a ping pong ball and is a terrific table tennis player. Although more mild-mannered than Clark Kent or Marty Supreme as he appears in his everyday antitrust costume, at the end of the table he turns into a kind of one-man Epic Fury, giving no quarter to the opponent.

He has another interesting hobby: Bob Lande is a numismatist, a collector of coins, who gives no quarters in that arena either.

Back in the 1970's, Bob and I met as young policy attorneys in the FTC Bureau of Competition. We stayed in close touch as two decades sped by and in 1997, I met with Ralph Nader, the patron saint of consumer advocacy, to explain an idea that had been festering in my mind ever since our FTC years. Ralph liked my idea and urged me to talk to a guy he identified as Robert *Landy*—I always thought Bob Lande had a more down-to-earth surname. Bob had recently approached Ralph to offer to provide the consumer community with pro bono advice on antitrust. The suggestion to reach out to Bob Lande then led the two of us to Jon Cuneo, the lawyer for the Committee to Support the Antitrust Laws. The three of us—obstetricians, all—delivered the AAI.

What did Bob bring to the new organization? First, his sterling reputation as a gentleman and a scholar. He had first made his national academic reputation through a famous article in the 1982 *Hastings Law Journal*, where he thoroughly demolished Robert Bork's efficiency-only interpretation of the legislative purpose of antitrust. He demonstrated that Bork's story was wrong historically, the victory of conservative ideology over well-documented fact. The Lande thesis—that there was no single motivation for the antitrust laws—always illuminated the AAI's understanding of the mission of competition policy.

Over his career at the AAI, Bob made many notable presentations at our conferences and continued to pour forth important law review articles on topics like vertical integration, the incipency function of Section 7, and creative remedies. His research and writing were meticulous and therefore could not be ignored by those who disagreed with his stance in favor of aggressive antitrust policies and interpretations.

I recall one occasion when we thought it might be possible to team up with two important holders of a more conservative outlook, Josh Wright and Douglas Ginsburg, and the four of us co-signed a statement, drafted mainly by Bob, calling for stricter provisions in remedies to keep certain types of convicted cartelists from returning to the jobs and industries in which they had violated Section 1 of the Sherman Act. Despite this potentially powerful coalition of left and right, we could not sell the idea to the DOJ. Needless to say, this was not the only effort of the AAI that was unsuccessful. Thanks in large part to Bob's dogged creativity, AAI always strove to exist on the cutting edge, while recognizing that success in shaping the future rarely is achieved without setbacks.

Bob Lande has been, and always will be, the only founding director of the AAI who served continuously for at least 28 years. He was an influence on—and often a leader in—all the important decisions that determined our course, which took AAI from the hopes of the Klein-era *Microsoft* anti-monopoly case, through dark ages of the Chicago School's dominance through varying conservative and progressive national antitrust regimes, and now must help move us beyond the clutch of a corrupt transactional executive branch to a new vision of competition policy that will serve the public interest in an independent, objective manner.

For his many inspirational contributions to the field of antitrust, we are delighted to recognize Robert H. Lande as the 27th honoree of the Alfred E. Kahn Award for Antitrust Achievement. Hurrah for the AAI! Long live the AAI!

Remarks of Professor H. Lande, Venable Professor of Law Emeritus, University of Baltimore School of Law, Accepting the Alfred E. Kahn Award for Antitrust Achievement , AAI 27th Annual Policy Conference, The National Press Club, Washington, D.C. (June 4, 2026)

Thank you Randy and the AAI Board of Directors, so very much, for this incredible honor. And thank you Bert, so very much, for your extremely kind introduction.

I remember the first time Bert and I discussed his idea for AAI almost 30 years ago. Over lunch at a Chinese restaurant. His vision was audacious—because it had never been tried before. There were liberal and conservative groups that sometimes dealt with antitrust issues. But there had never been an organization similar to AAI that was only devoted to antitrust. And certainly not a progressive group.

When Bert explained his plan I became excited and absolutely wanted to be a part of it! And to do whatever I could to help because I knew that the cause of vigorous antitrust enforcement would greatly benefit from AAI. I knew that progressive antitrust surely would be much better off if its supporters united. Cooperated. Worked together to share ideas and solve common problems. I just knew that the whole of the enforcement-minded antitrust community, together, would be much more effective than the sum of its parts.

It wasn't just a matter of combining ideas and resources. It was also a question of morale. It can be discouraging to think that you're an almost-lone voice crying out for more antitrust enforcement. Thinking you're almost the only one who really cares. It's so much better to be part of a community. To be able to enter a room full of 100 like-minded people—like all of you—and to be able to look around and know, "I'm not the only one. We'll help each other. And one day, together, we'll prevail."

Another reason I wanted to join AAI was because I knew that Bert would be the perfect leader. He had all the right qualities.

The other co-founder was Jon Cuneo, an incredible, in so many ways force of nature, attorney from the private bar. The private bar offered far more than just the possibility of resources for AAI. They also knew where the problems were in the antitrust system. They knew what prevented victims from receiving compensation. Where the serious roadblocks were, as opposed to theoretical or tiny issues.

But they often didn't have time to fully grapple with more than the cases they were working on. For them, research and scholarship was usually an optional extracurricular activity, whereas for an academic... well, it's what academics must do.

I remember one fine policy-laden project I developed decades ago together with a member of the private bar. We thought of it and thought through it together, outlined it together, and divided it into sections we each would write a first draft of. I'd finish my sections and send them to him. But the press of work caused him to repeatedly postpone starting. After I sent him my final section, he reluctantly told me to do the entire project

myself. Since I was an academic, the project was part of the essence of my job, so of course I finished it.

For AAI to succeed, I firmly believed it needed a strong research and policy development component. It needed this to combat the defenders of monopolies and cartels, not just in the courtroom, but also in the world of ideas and advocacy in other parts of the antitrust system. As you probably know, it's sometimes said that antitrust is the area of the law that has been most affected by scholarship. I wanted AAI to have as much influence on the field as possible.

I was acutely aware of conservative money sponsoring one-sided research by biased academics. Scholarship that often was relied upon by courts and enforcers. I hoped AAI would provide objective research that would add balance to the debate. I joined AAI with the goal of helping make sure it had a strong policy and research mission. I knew many progressive law professors and economists. I worked to help link AAI with them. Just as Jon Cuneo helped link AAI with the private bar.

I'd like to give you an example of the kind of research AAI has been able to undertake. A project that, as a practical matter, probably could not have been carried out by academics or private attorneys alone.

Years ago—and still today—many conservatives have caricatured private antitrust enforcement in extraordinarily harsh terms. For example, one academic wrote, “Many class action suits generate substantial fees for counsel but produce little if any, benefit to the alleged victims of the wrongdoing.”¹ Another claimed that “often” in private cases “administrative costs swallow the entire recovery.”² An FTC Commissioner called private cases “almost as scandalous as the price fixing cartels that are generally at

¹ Professor Cavanagh ably summarized this belief: “Many class action suits generate substantial fees for counsel but produce little, if any, benefit to the alleged victims of the wrongdoing. Coupon settlements, wherein plaintiffs settle for ‘cents off’ coupons while their attorneys are paid their full fees in cash . . . are of dubious value to the victims of antitrust violations . . . [and] defendants are not forced to disgorge their ill-gotten gains when coupons are not redeemed.” Edward Cavanagh, *Antitrust Remedies Revisited*, 84 Or. L. Rev. 147, 214 (2005) (footnote omitted). However, Professor Cavanagh provides only an anecdote to support these conclusions. He offers no data to show that the type of antitrust settlements he describes are typical, or to demonstrate how often they result in useless coupons.

² Daniel Crane, *Optimizing Private Enforcement*, 63 Vand. L. Rev. 675, 683 (2010).

issue....”³ Defense counsel testifying before the Antitrust Modernization Commission compared private cases to the Salem witch trials.⁴

Conservative critics made these types of allegations without any empirical support for their assertions, or with just an atypical anecdote.⁵ However, their conclusions were repeated over and over as if they were true, and they became the conventional wisdom in the field. They poisoned antitrust’s “atmosphere” and undermined the credibility of lawyers for the victims.

These widespread beliefs about private enforcement caused Bert Foer, when he was the head of AAI, to launch an empirical study to help determine the extent to which private enforcement helped the victims of anticompetitive behavior and promoted competition more generally. Professor Josh Davis and I ran this study, assisted by a small army of research assistants.

All of the material we needed was in the public record. But as a practical matter it often was extremely difficult to find. Members of the private bar would rightly have been suspicious of an unknown academic asking for help locating relevant old information in light of the many academics funded by conservative organizations. These cases’ lawyers naturally would have been reluctant to spend the considerable amount of time needed to locate the critical material on behalf of academics who might distort the results, or bury those results they didn’t like.

But when we told them we were working on an AAI project it was as if we had recited a magic spell, and they all cooperated wonderfully. They did this because they knew the information would be analyzed objectively. This made our work so much easier, faster, and less costly.

³. J. Thomas Rosch, at one time a commissioner of the Federal Trade Commission, considered treble damage class action cases “almost as scandalous as the price-fixing cartels that are generally at issue. . . . [T]he plaintiffs’ lawyers . . . stand to win almost regardless of the merits of the case.” See J. Thomas Rosch, Comm’r, Fed. Trade Comm’n, Remarks to the Antitrust Modernization Commission 9–10 (June 8, 2006), available at <http://www.ftc.gov/speeches/rosch/RoschAMC%20Remarks.June8.final.pdf>. Similarly. When Steve Newborn, co-head of Weil, Gotshal and Manges’ Antitrust/Competition practice, was asked which areas of antitrust need reform, he replied: “[c]lass actions: they are increasingly beneficial only to plaintiffs’ law firms and not to consumers.” Q&A with Weil Gotshal’s Steven A. Newborn, LAW360 (May 26, 2009), <http://competition.law360.com/articles/103359>.

⁴. Abbott Lipsky wrote: “[I]t is possible that the treble-damage claims unintentionally assume some of the characteristics of . . . unwise legal methods that produced or at least inflamed the Salem Witch Trials” Abbot B. Lipsky Jr., Private Damages Remedies: Treble Damages, Fee Shifting, Prejudgment Interest 4–5 (2005), available at http://govinfo.library.unt.edu/amc/commission_hearings/pdf/Lipsky.pdf.

⁵. See, e.g., *infra* note 2. The rest of the allegations discussed in this talk did not even provide an anecdote in support.

⁶. See Robert H. Lande & Joshua P. Davis, *Defying Conventional Wisdom: The Case For Private Antitrust Enforcement*, 48 Georgia L. Rev. 1 (2013) (winner of the 2014 Antitrust Writing Award in the category of Best Academic Private Enforcement Article, given by Concurrences and George Washington University); Robert H. Lande & Joshua P. Davis, *Toward an Empirical and Theoretical Assessment of Private Antitrust Enforcement*, 36 Seattle U. L. Rev. 1269 (2013).

⁷. *Id.* The total cash payments were at least \$33.8 billion.

We studied the 60 largest private Antitrust cases we could identify.⁶ It's noteworthy that none were even remotely like the cases conservative critics said were typical, or that often, or usually occurred. Rather, together these 60 cases returned tens of billions of dollars to the victims of illegal activity—all in cash, not in products, discounts or coupons.⁷ Not including the legal fees and administrative costs, which were on average modest percentages of the recoveries.⁸

Moreover, our study demonstrated that, together, these 60 private cases probably deterred more anticompetitive collusion than every collusion case brought by the highly esteemed U.S. DOJ anti-cartel program, combined, during the same period.⁹ A conclusion that economists at DOJ tried unsuccessfully to rebut.¹⁰

Not only was this project one that probably couldn't have been completed by academics alone, or by private attorneys alone. It was just one of many, many, similar projects AAI has carried out over the years.

This synergistic cooperation will of course continue under Randy's incredible leadership because, as we all know, he's doing a fantastic job re-molding the alliance of progressives that Bert assembled, and directing it into the future.

I'm now retired from teaching, but not from scholarship, and not from AAI.

As you heard a few minutes ago, an article I co-authored just won the Cohen Award for the best Clayton Act scholarship of 2025.¹¹ This article contains a textualist analysis of the second half of the Clayton Act, the "tend to create a monopoly" clause.¹² We show that if enforcers and judges use textualism to interpret this clause, this should lead to more vigorous merger enforcement.¹³

And as for AAI, I plan to continue doing whatever I can for it, both on its Board of Directors and on specific projects that arise. In this way I hope I can continue to contribute to the work of this fantastic organization.

⁸. *Id.*

⁹. See Robert H. Lande & Joshua P. Davis, *Comparative Deterrence from Private Enforcement and Criminal Enforcement of the U. S. Antitrust Laws*, 2011 B.Y.U. L. Rev. 315 (2011).

¹⁰. See Robert H. Lande & Joshua P. Davis, *The Extraordinary Deterrence Of Private Antitrust Enforcement: A Reply To Werden, Hammond, and Barnett*, 58 Antitrust Bull. 173 (2013).

¹¹. *Id.*

¹². See Robert H. Lande, John M. Newman & Rebecca Kelly Slaughter, *The Forgotten Anti-Monopoly Law: The Second Half of Clayton Act Section 7*, 103 Texas L. Rev. 711 (2025).

¹³. *Id.*