



# THE FEDERAL LEGAL FORUM

of the Western Pennsylvania Chapter of the Federal Bar Association

## OFFICERS

Francis J. DiSalle, *President*  
Thomas P. McGinnis, *1<sup>st</sup> VP*  
Arnold Y. Steinberg, *2<sup>nd</sup> VP*  
Linda A. Michler, *3<sup>rd</sup> VP*  
Sylvia Denys, *Secretary*  
John F. Perry, *Treasurer*

## ADVISORY COUNCIL Chair

Regional Director Gerald Kobell  
*National Labor Relations Board*

## Honorary Member

Justice Sandra Day O'Connor  
*United States Supreme Court*

## Members

Donetta W. Ambrose  
*Chief Judge, U.S. District Court  
Western District Pennsylvania*  
Daniel I. Booker  
*Reed Smith Shaw & McClay*  
Dean Nicholas P. Cafardi  
*Duquesne University School of Law*  
James C. Diggs  
*Senior V.P. and General Counsel  
PPG Industries, Inc.*  
Robert V. Barth, Jr., Clerk  
*United States District Court  
Western District of Pennsylvania*  
Chief Judge Judith K. Fitzgerald  
*United States Bankruptcy Court  
Western District of Pennsylvania*  
Amy Reynolds Hay  
*Chief, Civil Division,  
U.S. Attorney's Office*  
Dean David J. Herring  
*University of Pittsburgh  
School of Law*  
Barry J. Lipson  
*National FBA Third Circuit  
Vice President*  
Judge Bernard Markovitz  
*United States Bankruptcy Court  
Western District of Pennsylvania*  
Judge Sean J. McLaughlin  
*United States District Court  
Western District of Pennsylvania*  
President John E. Murray, Jr.  
*Duquesne University*  
Judge Richard L. Nygaard  
*United States Court of Appeals  
for the Third Circuit*  
Judge D. Brooks Smith  
*United States Court of Appeals  
for the Third Circuit*  
*Western District of Pennsylvania*  
Senior Judge Joseph F. Weis, Jr.  
*United States Court of Appeals  
for the Third Circuit*  
Judge Donald E. Ziegler  
*United States District Court  
Western District of Pennsylvania*

## THE UNWRITTEN RULES OF PROFESSIONAL CONDUCT

Donald E. Ziegler  
*Senior United States District Judge*

The practice of law in Western PA has been marked for generations by civility, mutual respect and a sense of professionalism. These traditions, which I refer to as "The Unwritten Rules of Professional Conduct," have been passed down from generation to generation, and they have made Western Pennsylvania a unique venue in which to practice.

But the customs and traditions of our bar may be changing. We see in Federal Court (and in the state courts as well) Rambo lawyers employing a scorched earth theory of discovery; unnecessary motion practice; needless bickering over discovery, and a lack of civility, in many instances. Female lawyers complain that they are treated differently by their male counterparts at depositions or conferences than at a proceeding at which a judge is present. Sharp practice, which was once foreign to our bar, is on the rise. Finally, some lawyers have sacrificed their independence as clients seek more pugnacious lawyers.

If our customs and traditions are changing, as many assert, the changes are due to three factors, in my judgment. First, we see in Federal Court the interstate practitioner, who brings to our bar a different legal culture. There can be no dispute that the traditions of our bar differ from the practice of law in many cities of this nation. The second factor is billable hours. Billable hours are the curse of the legal profession, and they represent the worst way to measure the value of a lawyer. Billable hours reduce the practice of law to a business rather than a profession, and they have led to stress, burnout and a general unhappiness with the practice of law by associates and partners alike. Ironically, some of the finest lawyers in this community have never charged a billable hour in their careers.

The third factor is the sheer number of lawyers. Jim Smith once noted that there are more lawyers in Allegheny County on a per

capita basis than any other county in the United States. As a result, some lawyers seem to feel that rudeness is the norm because they will never encounter their opposition in another case during their careers. However, experience teaches that courtesy is important within the legal profession, and that the Golden Rule should never be left with the United States Marshal at the courthouse door.

Judges also are not above criticism, and we should constantly strive to set a standard of civility that permits a lawyer to be the best that he or she can be. Judges should never forget that the practice of law in today's environment is difficult, and that lawyers are under severe pressure from clients and courts alike. One national publication recounted that a recent argument in a federal appellate court was marked by "brutal interruptions" of counsel, as well as rude and inconsiderate remarks from the bench that bordered on the abusive. There is no place for such conduct in a court of law; and judges and justices should be reminded that their authority comes from their commissions and not necessarily their competency. An overspeaking judge is no well-tuned cymbal.

It is worthwhile, therefore, to memorialize some of the traditions that make Western Pennsylvania a unique venue in which to practice.

**I. Default Judgments:** The trial bar has traditionally delayed the entry of judgment for want of an appearance or answer. If a defendant is insured and negotiations have occurred prior to suit, it is common practice to contact the adjustor and advise that suit has been filed and that no appearance has been entered. If the defendant is a corporation, or uninsured, plaintiff's counsel should notify the defendant in writing that suit has been filed and, unless counsel is obtained within a reasonable period of time, a default or judgment will be entered.

**II. Opening Judgments:** The law favors a trial on the merits. Hence, if counsel moves to open a default or judgment within a reasonable time, tradition requires that the non-moving party should not oppose the motion. It makes no sense to require your

client to bear the expense of resisting a motion that will be granted by the court absent exceptional circumstances.

**III. Pleadings:** A complaint or answer should contain a short and plain statement of the claim or defense. It is not necessary, especially in Federal Court, to plead every fact that may be developed at trial, or to set forth a defense that plainly has no relevance to the claim. An answer should contain a brief statement that certain paragraphs of the complaint are admitted and the following are denied. The success of your client's claim or defense will not be measured by the weight of the pleadings.

**IV. Interrogatories:** It is a tradition of our bar that interrogatories should be precise, limited and relevant to the issues in dispute. Fed.R.Civ.P. 33 supports this practice by limiting the number of interrogatories to twenty-five (25), including all subparts. Most of the information can be obtained with a few incisive questions, a letter to opposing counsel requesting pertinent documents and a carefully prepared deposition.

**V. Motions to Produce:** It is the tradition of our bar to produce documents following a written request from opposing counsel. Motions to produce are unnecessary in Western Pennsylvania because our tradition requires that counsel produce all relevant documents upon request without court intervention and without narrow interpretations of such requests.

**VI. Depositions:** Most depositions are unnecessary and far too long. Moreover, counsel should provide reasonable notice and accommodate the schedule of opposing counsel. Deponents from outside the jurisdiction should be deposed by telephone in accordance with Fed.R.Civ.P. 30(b)(7). I find ironic the fact that the federal criminal trial bar routinely tries cases involving freedom and liberty within 70 days after an indictment is returned, without interrogatories, depositions or motions to produce, while the civil trial bar requires two years to prepare a civil case involving money or property.

**VII. Fed.R.Civ.P. 11:** The Court of Appeals has made clear that Rule 11 sanctions may be imposed only in the exceptional circumstance where the claim is patently unmeritorious or frivolous. *Dura Systems, Inc. v. Rothbury Invest., Ltd.*, 886 F.2d 551, 556 (3d Cir. 1989). Litigants misuse the rule when sanctions are sought against a party whose only sin is being on the unsuccessful side of a ruling or judgment. Equally important is the recommendation of the Court of Appeals that, once a violation of Rule 11 is found, the district court should look to non-monetary sanctions such as a warning, an apology or requiring attendance at the Bench-Bar Conference, without golf, of course. *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 482 (3d Cir. 1987).

**VIII. Discovery:** It is a tradition of our bar that discovery should be minimized to reduce the expense to clients and resolve disputes without judicial intervention. Cooperation has been the hallmark of the trial bar, and seldom do we resist the discovery of discoverable material or pursue discovery for the

sake of billable hours. One prominent practitioner in this jurisdiction has concluded we have come so far from the original purpose of the discovery rules that we should jettison Rules 26-37 of the Federal Rules of Civil Procedure. He opines that unnecessary discovery has imposed enormous financial burdens on corporate America with little social benefit to consumers or claimants. One may argue with the conclusions of David Armstrong, but it is clear that the cost of litigation is directly related to the scope of discovery with the result that a sizeable number of citizens cannot afford a lawyer and a fair number of corporations have turned to house counsel. In short, after a decade of unparalleled financial success, it should be unnecessary to remind the bar that restraint is in its own best interest.

**IX. Extensions of Time:** It is a tradition of our bar to grant reasonable requests from opposing counsel to extend or postpone discovery. Trial lawyers are busy professionals with acute demands on their time by courts and clients. It is oft-times difficult for an active trial lawyer to adequately prepare a case for trial when he or she has been engaged in another federal or state court proceeding. Custom and mutual respect require that such requests should be granted because seldom, if ever, will a client be prejudiced.

**X. Arbitration:** Allegheny County has a rich tradition of arbitration of civil disputes. The Court of Common Pleas has maintained a successful program for many years. Arbitration will expand in the federal courts this decade. The insurance industry requires arbitration for many claims, by contract. Yet, when counsel are urged by the court to arbitrate a dispute voluntarily by selecting a prominent senior member of the bar to serve as a neutral, and abort an orgy of discovery, many lawyers immediately object. The reason is often economic. In view, however, professionalism includes a desire to present a client's claim or defense to a neutral party with deliberate speed and as inexpensively as possible. Clearly, forum selection and dispute resolution require innovative and fresh thinking by the bar as we have begun the third millennium with burgeoning dockets and limited judicial resources.

The foregoing precepts represent a sampling of the traditions and customs that make Allegheny County and Western Pennsylvania unique venues in which to practice—traditions that have enriched the personal and professional lives of lawyers, enhanced the administration of justice and advanced the cause of all litigants. It behooves the bench and bar to preserve the norms that make the practice of law in this jurisdiction a challenging, rewarding and satisfying experience.

## **FEDERALLY SPEAKING #27**

*Barry J. Lipson*

Welcome to Federally Speaking, an editorial column compiled for the members of the Western Pennsylvania Chapter of the Federal Bar Association and all FBA members. Its purpose is to keep you abreast of what is happening on the Federal scene, whether it be a landmark US Supreme Court decision, a new Federal regulation or enforcement action, a "heads ups" to Federal CLE opportunities, or other Federal legal occurrences of note. Its threefold objective is to educate, to provoke thought,

and to entertain. This is the 27<sup>th</sup> column. Prior columns are available on the website of the U.S. District Court for the Western District of Pennsylvania <http://www.pawd.uscourts.gov/Headings/federallyspeaking.htm>.

**U.S SUPREME COURT UPDATE**  
**"GREAT THEATER AND LOTS OF FUN."** The Pittsburgh Federal Courthouse hosted the comprehensive all-day Federal Bar Association West Penn Chapter/Duquesne Law School U.S. Supreme Court Update on March 12, 2003, featuring U.S. Supreme Court Clerk William Suter, Major General, US Army JAGC (Ret.), not to be confused with U.S. Supreme Court Justice David Souter, who had joined the Court only the year before General Suter came aboard in 1991. "We get 8,000 petitions filed a year, and a lot are frivolous, but it says 'Equal Justice for All' on the courthouse and we believe that," Suter advised. A little over "three percent of the 2,000 paid petitions," that is petitions filed by law firms or governmental bodies, are granted each year, and of the other 6,000 "*pro se style*" petitions, "only about 0.2 percent are granted," totaling about 80 written opinions a year. Most cases heard involve important federal questions or conflicts between the Circuits. The importance of this historic event, where for the first time in Pittsburgh twenty Western Pennsylvanians were sworn-in to the U.S. Supreme Court by the nineteenth "Clerk of Court" (the first having been appointed in 1790), was not lost on the Pittsburgh press. The Post-Gazette reported that "Suter, known as an entertaining speaker," noted "among his many observations ... that the media has mislabeled the Court as arch-conservative when he said the five justices most often identified as right-wingers are often 'all over the place' in their opinions on cases. He said he views the Court as moderate." The Tribune-Review, in addition to listing the names of all admitees, reported on Suter offering "amusing anecdotes on the serious subjects covered by the Court," including his observation that "oral arguments before the Justices are 'great theater and lots of fun,'" and his concluding with an invitation to the lawyers present to arrange a Supreme Court tour for them, the apex of which would be "the secret basketball court on the top floor — 'the highest court in the land'." Presenters U.S. Court of Appeals Judge D. Brooks Smith, U.S. Attorney Mary Beth Buchanan, ACLU Legal Director Witold (Vic) Walczak, Duquesne Law Professor and Program Chair Ken Gormley, Pitt Law Professor John Parry, Columnist and Event Chair Barry J. Lipson, and Supreme Court practitioners Harry Litman and Thomas McGough, together with U.S. District Clerk Bob Barth's "crying" the Court in, and Chief U. S. District Judge Donetta Ambrose's remarks, made this a most memorable major jurisprudential event. We are most pleasantly pleased that for the proper processing of the proliferating *suits* and *cases* filling the Supreme Court's files, our Highest Court is a "*Two-Suiter*."

**FED\_POURRI™**  
**UNPRECEDENTED "CERT" PETITION** Congress established the U.S. Foreign Intelligence Surveillance Court (the FISA Court) to in secret review, permit and limit, as necessary, first "electronic surveillance" (50 USC §1803), and then "physical search" (50 USC §1822(c)), conducted in the name of "national security;" and even provided for a partial, if not "impartial," appellate process. Thus, the FISA Review Court, which is comprised of three judges "publicly" designated by the Chief

Justice from the U.S. district courts or courts of appeals, one of whom has been "publicly" designated by the Chief Justice as the Presiding Judge, sit "together" as "a court of review which shall have jurisdiction to review the *denial* of any application made under this chapter. If such court determines that *the application was properly denied*, the court shall immediately provide for the record a written statement of each reason for its decision and, *on petition of the United States* for a Writ of Certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision" (emphasis added). But what if the United States is not denied its "snooping" application to, for example, bug Snoopy's doghouse? Who may then appeal? Not Snoopy! Not Peanuts! Not anyone! So appears to say Congress by its silence on this issue. But is this the American way? The ACLU, the National Association of Criminal Defense Lawyers, the American-Arab Anti-Discrimination Committee, and the Arab Community Center for Economic and Social Services, think not! They believe the FISA Court of Review's overturning of the unanimous decision of seven (7) other Federal Judges (later joined by an eighth) forbidding "law enforcement officials" from "directing or controlling ... the use of the FISA procedures to enhance [non-espionage] criminal prosecution" should itself be overturned (see *Federally Speaking, Nos. 20 & 24*; see also 50 U.S.C. 1801, et seq), and have filled with the U.S. Supreme Court a "Motion to Intervene as a Party" and a "Petition for Writ of Certiorari," both unprecedented (and un-provided for by FISA). If the High Court grants their Motion to Intervene, they will become parties and presumably may appeal. If not, it is the ACLU's position that under the All Writs Act, 28 U.S.C. § 1651(a), which provides that the Court "may issue writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," the Supreme Court should still hear this appeal. The U.S. Supreme Court has already "cautioned that the threat to society is not dispositive in determining whether a search or seizure is reasonable" (*City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)), and how can they resist explaining the constitutionality, or lack thereof, of the FISA Review Court's novel "come close" rule? (That Review Court found that as "the procedures and government showings required under FISA ... come close" to meeting "the minimum Fourth Amendment warrant standards ... FISA as amended is constitutional because the surveillances it authorizes are reasonable.") Emphasis added. How can the High Court turn down such an opportunity for "great theater and lots of fun"? Snoopy again challenging his "Red Baron" here, and the Earl of Ash's crofters defending croftly national security!

**"DEFERENCE" NOT "ABDICATION" SAYS HIGH COURT!**  
"Deference does not by definition preclude relief. ... Even in the context of Federal habeas, deference does not imply abandonment or abdication of judicial review." So wrote Justice Kennedy in a U.S. Supreme Court opinion in which Rehnquist, C. J., and Stevens, O'Connor, Scalia, Souter, Ginsburg, and Breyer, JJ., joined; Scalia, J., filed a concurring opinion; and only Thomas, J., dissented. *Miller-El v. Cockrell*, 123 S. Ct. 1029; 154 L. Ed. 2d 931(2003). This was the High Court's reaction to the Fifth Circuit's application of the provision of the a presumption that state court findings are correct without a determination that the findings would result in a decision which

was unreasonable in light of clear and convincing evidence (28 U.S.C. §2254(d)(2)), in denying a petition for a 28 U.S.C. §2253 Certificate of Appealability (COA). According to the Supreme Court, the COA inquiry does not require full consideration of the factual or legal bases supporting the claims. The prisoner need only demonstrate “a substantial showing of the denial of a constitutional right” (28 U.S.C. §2253(c)(2)), and he satisfies this standard by demonstrating that reasonable jurists could disagree with the District Court’s resolution of his case or that they would find the lower courts’ assessment of the constitutional claims to be “debatable.” In *Miller-El*, where the Dallas County prosecutors used peremptory challenges to exclude 10 of the 11 African-Americans eligible to serve on the jury in this capital murder trial, the High Court found the debate as to whether the prosecution acted with a race-based reason when striking prospective jurors was raised by a number of issues, including the statistical evidence demonstrating that 91% of the eligible African-Americans were excluded; by the evidence of the State’s use of racially disparate questioning; and by the state courts’ failure to consider the historical evidence of racial discrimination by the Dallas County District Attorney’s Office. Indeed, Justice Kennedy pointedly advised that: “Our concerns here are heightened by the fact that, when presented with this evidence, the state trial court somehow reasoned that there was not even the inference of discrimination to support a *prima facie* case.” Thus, the Supreme Court seemed quite displeased by the lower Federal courts’ “abdication,” without question, to the state court’s evaluation of the demeanor of the prosecutors and jurors in the Miller-El trial, their excessive deference to the prosecutors’ denial of racial motives in jury selection, and their failure to consider the admittedly “massive” evidence presented on behalf of Miller-El.

RICO PEAKO’ED? Has RICO reached its apex? In Chapter 28 of *Advising Small Businesses* your columnist in 1998 reported that the “Racketeering Influenced and Corrupt Organizations Act (RICO) claims are being used more and more in conjunction with antitrust claims in private antitrust actions” (18 U.S.C. §1962). While RICO, which greatly expands the penalties available for other crimes such as for extortion under the Hobbs Act, was originally enacted to combat organized crime such as the Mafia, it has been widely expanded into non-organized crime (in the traditional sense) areas, and “white collar” areas such as antitrust, securities fraud, etc. Thus, Justice Ginsburg, in her concurrence in *Scheidler v. National Organization For Women, Inc.*, 123 S. Ct. 1057; 154 L. Ed. 2d 991 (2003), advised “RICO, which empowers both prosecutors and private enforcers, imposes severe criminal penalties and hefty civil liability on those engaged in conduct within the Act’s compass...It has already ‘evolved into something quite different from the original conception of its enactors,’ *Sedima, S. P. R. L. v. Imrex Co.*, 473 U.S. 479, 500, 87 L. Ed. 2d 346, 105 S. Ct. 3275 (1985), warranting ‘concerns over the consequences of an unbridled reading of the statute,’ *id.*, at 481. The Court is rightly reluctant, as I see it, to extend RICO’s domain further by endorsing the expansive definition of ‘extortion’ adopted by the Seventh Circuit.” In *Scheidler* the Supreme Court held that even though the abortion opponents’ activities were criminal and deprived the abortion supporters of their ability to exercise their property right to lawful abortions, such deprivation did not

by itself constitute extortion within the meaning of the Hobbs Act since the opponents did not obtain any property from the supporters they could exercise, transfer, or sell and, therefore, there was no RICO violation. The ACLJ “praise God for this TREMENDOUS VICTORY” and advises this “decision precisely reflected our argument that pro-life protestors cannot be liable for ‘extortion’ and ‘racketeering’ - like the drug dealers or organized crime for which RICO was created.” Whether this 8-1 decision actually reflects a reluctance to label “right to lifers” as racketeers, or heralds a braking of the upward spiral of RICO, remains to be seen.

SEVENTY-SEVEN DAYS TOO LATE! Seventy-seven days after Texas executed Leonard Rojas by lethal injection, Judge Price of the Court Of Criminal Appeals Of Texas, “On Motion To Protect Applicant’s Right To Federal Habeas Review,” in *Ex Parte Leonard Uresti Rojas*, No. 39,062-01(2/12/03), filed a statement dissenting to the denial of the Motion to Protect Applicant’s Federal Habeas Review, in which Johnson and Holcomb, J.J., joined. How did this happen? According to Judge Price, this “Court should have granted relief to the applicant because it appointed an attorney who should not have been appointed to represent a capital defendant in his one opportunity to raise claims not based solely on the record...We appointed counsel to file an application for writ of habeas corpus under Texas Code of Criminal Procedure...We denied relief without written order December 9, 1998...The one-year statute of limitations for filing a petition for Federal habeas relief under the Antiterrorism and Effective Death Penalty Act began February 2, 1999. See 28 U.S.C. § 2244(d) (1999). ... Once habeas relief was denied by this Court, habeas counsel failed to take any action to preserve the applicant’s right to Federal habeas review. Indeed, he did not even notify his client that the Court had denied relief in his case. He claims he was unaware that he was responsible for filing in Federal District Court for the appointment of counsel or a motion to substitute counsel. As a result of habeas counsel’s omission, the applicant’s Federal habeas petition was not heard on the merits. The Federal District Court that reviewed the applicant’s Federal petition denied relief on the basis that the petition was filed too late. *Rojas v. Cockrell*, No. 3:00-CV-0716-D (N.D. Tex. 9/6/01). The Fifth Circuit panel that reviewed the applicant’s case affirmed on the same basis. *Rojas v. Cokrell*, No. 01-11204 (5<sup>th</sup> Cir. 6/7/02), cert. denied, 71 U.S.L.W. 3351 (11/18/02). The facts of which the Court should have been aware when it appointed habeas counsel show that counsel was not competent to represent the applicant in this case. The attorney we appointed to represent the applicant had received two probated suspensions from the State Bar of Texas.” Another case of irreversible error?

#### **FOLLOW-UP**

BY ZEUS, THEY LET IT STAND! The U.S. Court of Appeals for the Ninth Circuit has let stand the 2-1 decision of its three-judge panel that the phrase “under God” in public school recitations of the Pledge of Allegiance is unconstitutional [that’s all that was decided], by declining *en banc* to rehear *Newdow v. U.S. Congress* (292 F. 3d. 597 (9<sup>th</sup> Cir. 2002); see *Federally Speaking*, No. 18). The historical perspective is that there was no Pledge of Allegiance until 1892, when socialist clergyman and editor Francis Bellamy wrote for *The Youth’s Companion*

the original “Godless” generic Pledge of Allegiance: “I pledge allegiance to my flag and to the Republic for which it stands: one nation, indivisible, with liberty and justice for all.” (The word Bellamy really wanted to add, but was dissuaded from, was “equality” not “God.”) Sixty-two years later, during the era of the Cold War and McCarthyism, Congress inserted “under God” (but not “equality”) into the Pledge, primarily through the efforts of the Knights of Columbus, a Catholic men’s club, to distinguish the Pledge from similar rhetoric used by the so-called “godless communists.” According to the Panel’s opinion, written by Circuit Judge Alfred T. Goodwin, which the full Ninth Circuit let stand, inserting “under God” is as unconstitutional as inserting ‘we are a nation under Jesus,’ a nation ‘under Vishnu,’ a nation ‘under Zeus,’ or a nation ‘under no god,’ because none of these professions can be neutral with respect to religion,” and, therefore, would be a government endorsement of religion in violation of the First Amendment. According to Susan Jacoby of *Newsday*, at the 1787 Constitutional Convention our founding fathers extensively debated using the word “God” in the U.S. Constitution “and the secularists prevailed.” But, by Zeus, we await hearing from the U.S. Supreme Court, pending which the Circuit Court has stayed its Order dropping “under God” in Public School recitations.

**POSTSCRIPT.** Confused by this column’s literary allusions to the “Earl of Ash,” and his “crofty” ways? Your imaginations are, of course, free to make what you will of these verbal pictures. However, according to Webster, an “Earl” is a member of the third grade of the British peerage, similar, I guess, to an Executive Branch Cabinet Secretary (President, Vice President, Cabinet Secretary); an “Ash” is a tough-wooded tree with furrowed bark and pinnate leaves; and “crofts” are small enclosed fields or farms worked by “crofters” (and sometimes referred to as “creeps,” which are enclosures only young animals can enter). Also, while not used as such in this column, “crafty’s” definitions range from “skillful, ingenious” to “guileful, wily.” What does all this mean here? Why, that such peer is of Cabinet Secretary rank, heading a tough, wrinkled, symmetrical fiefdom, who’s walled fields are worked skillfully, ingeniously, wily and with stratagem. What more could the Earl want from any observer or, indeed, from his own Justice Department crofters?

\*\*\*

*You may contact columnist Barry J. Lipson, Esq., FBA Third Circuit Vice President, at the Law Firm of Weisman Goldman Bowen & Gross, 420 Grant Building, Pittsburgh, Pennsylvania 15219-2266 (412-566-2520; FAX 412/566-1088; E-Mail [blipson@wgbglaw.com](mailto:blipson@wgbglaw.com)). The views expressed are those of the persons they are attributed to and are not necessarily the views of the FBA, this publication or the author. Back issues are available on the United States District Court for the Western District of Pennsylvania website: (<http://www.pawd.uscourts.gov/Headings/federallyspeaking.htm>).*

## **THE YOUNG LAWYERS DIVISION — A NEW BEGINNING**

*Charles A. Lamberton  
Chairman*

Welcome to the maiden issue of the Western Pennsylvania Federal Bar Association (“WPaFBA”) Newsletter. It is my great pleasure to introduce the Young Lawyers Division. As Chairman, I hope you will join me in our continuing mission to educate, motivate and serve all Young lawyers in Western Pennsylvania.

Since its inception in 1959, the YLD has assisted Young lawyers in learning the ins and outs of local practice. We have also helped them develop lasting relationships within the bar, and find rewarding ways to employ their legal skills outside the office. These extra-office services, embodied in our creed “to educate, motivate and to serve,” are the hallmarks of our organization. They enable young lawyers to develop valuable friendships and important sources of referrals. Most important, they remind us we are fiduciaries of the public with a responsibility to serve the communities in which we live and work.

As young lawyers, we have a responsibility to reach out to those who need our services. Every day, in every case, we see living examples of the unequal distribution of fortune, talent and education. Although we all come into the world meriting neither more nor less advantage than any other, some of us are born with means and opportunity, while others are not.

It is our special duty as young lawyers to enable the disenfranchised and underrepresented to participate in the civil and criminal court system on equal terms. We do this because we can and because it is right. It is the return we provide for the investments made in us by our country.

More than ever, young lawyers should be concerned about the direction of federal law and policy. Although the 1990’s produced unprecedented concentrations of wealth among corporate interests, the vast majority of Americans did not share in it. In fact, the real incomes and wealth holdings of most people are lower today than they were 10 years ago. Current federal policies have only worsened the problem.

Consider, for example, the following facts: This year, the federal government will post a record on-budget deficit of \$468 Billion. The Congressional Budget Office projects the federal government will run deficits in the hundreds of billions every year through 2011, adding an estimated \$2.36 Trillion (that’s \$2,360,000,000,000.00) to the national debt. Every penny of these deficits will be funded by selling government bonds. These government bonds will compete with corporate stocks and bonds for funds from the investing public.

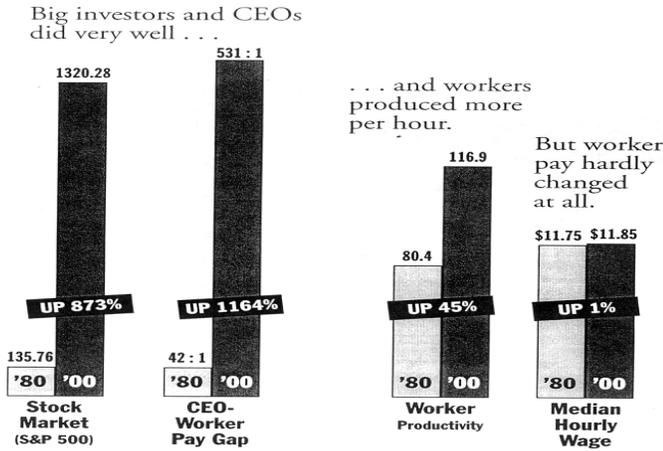
When investors invest by purchasing government bonds rather than private stocks or bonds, private borrowers get “crowded out” of the financial markets because the government consumes an increased share of the economy’s total savings. In addition, because the government’s sale of public debt instruments represents an increase in the demand for borrowed money, the price of borrowing money – i.e. interest rates – goes up. Not only, then, are fewer funds available to private entities for investment in capital goods and job creation, but private entities must also increase the prices they pay to investors (in the form of interest on corporate bonds and dividends on stocks) to compete with the newly issued public debt. These phenomena are the unavoidable consequence of deficit spending, and represent a dual drag on the economy.

As the national debt continues to grow, so also does the interest paid each year to service it. In 2002, interest on the national debt cost taxpayers \$333 Billion. This expense exceeded the combined budgets of the Departments of Education, Transportation and Labor, together with the budgets of the EPA, IRS, SEC and NASA by a factor of two, and was the second highest expenditure in the entire federal budget. Interest expense on the national debt between 2003 and 2003 is expected to exceed \$4.3 Trillion. Over this period,

an average family of four will pay \$70,700.00 in taxes just to service its share of the national debt.

Despite massive aid packages from the federal government, corporations cut 2.4 Million jobs from payroll since January, 2001, sending the unemployment rate up from 3.9% to 6%.

### The Economy of the 1980s & 1990s Who Really Benefited?



The ratio of CEO pay to median worker pay has increased from 45:1 to 534:1 since 1980.

During the same period, workers' median real hourly wages stagnated at about \$11.60/hour even though worker productivity increased by 45%.

Between 1976 and 1998, the percentage of household wealth owned by America's wealthiest 1% increased from 22% to 38%.

Since 1955, the combined federal income and payroll taxes levied on the top 1% of income earners (those with incomes above \$250,000 per year) declined from 86% to 34%, while the taxes levied on the middle quintile of income earners (the 20% of the population earning between \$39,000 and 59,000 per year) increased from 10% to 19%.

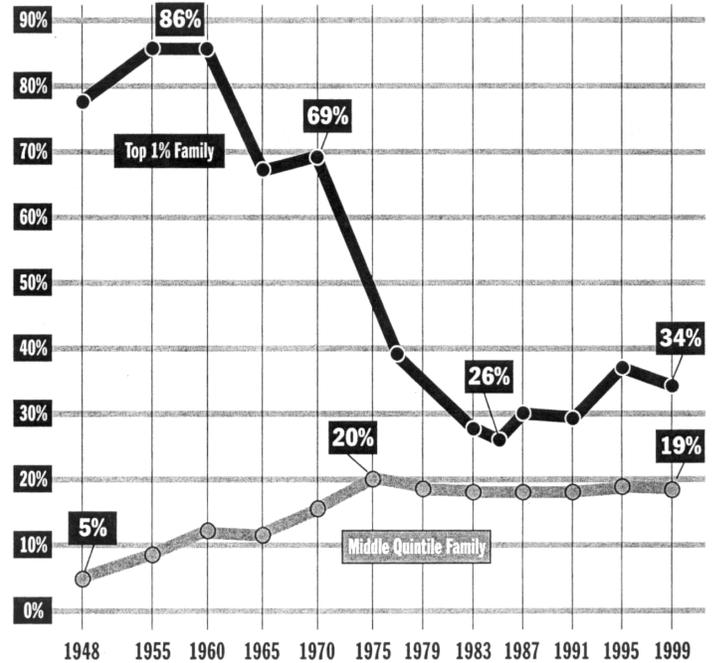
Between 1977 and 1998, the average annual income tax paid by the top 1% of income earners decreased by \$36,710, while the average annual income tax paid by the middle quintile of income earners went up.

Since 1944, the percentage of annual federal taxes paid by corporations declined from 33% to 15%, while the percentage of federal taxes paid by individuals increased from 44% to 73%.

As these data suggest, there is a great need for leadership from young lawyers. It is imperative that Young lawyers reflect upon their civic responsibilities and exercise the privileges of citizenship. We must speak out, we must persuade, and (of course) we must vote.

To be certain, we have our own hurdles to clear. Not the least among them is the staggering weight of school loans. At the same time as the cost of higher education has soared to record levels, federal grant and low interest loan programs have been slashed and cut. This double whammy has created an indentured class of young legal professionals, and prevents many young lawyers from ever considering employment with public-interest organizations that cannot match the starting salaries of the megalith corporate law firms. It should not be this way. After investing so heavily in our educations, and working so hard to obtain our law degrees, we ought to have

Effective federal tax rates (income tax + payroll tax) for the top 1% and the middle quintile of families, 1948-1999



the freedom to choose public-interest work, government employment or other non-six figure legal careers if that is what we want to do.

Unfortunately, however, many young lawyers graduate law school with a negative net worth in excess of \$100,000.00. Law school tuition costs have jumped 140% at public law schools and 76% at private ones since 1991. Debt levels for newly minted lawyers rose 59% between 1993 and 2000, to an average of \$84,400.00 (a number that does not include the \$18,900.00 in average debt owed on college loans, which is up 66% from 1997). To cope with their mortgage-sized school loan payments, many young lawyers search out the largest law firms in the largest cities, hoping to find a high-salary job. But this increase in the supply of young lawyers lowers the market rate for the lawyers' services. And because preference is all but eliminated from the employment equation, law firms can effectively force young lawyers to bid for available jobs.

In its policies if not its rhetoric, the Bush Administration has turned a blind eye to the needs of college and graduate students. Pell grants, historically the cornerstone of needs-based federal financial aid, were first on the Administration's hit list of domestic education programs. Mr. Bush's budget for Fiscal Year 2004 freezes the maximum Pell Grant at \$4,000.00, a decrease in real terms from 2003 and 2002, and far below the amount necessary to keep pace with rising tuition costs. Twenty years ago, Pell grants paid 79% of the costs of attending a typical 4-year public university. Today that number is 39%. That has not seemed to matter much to Mr. Bush, however, at least when the trade-off between an adequately financed public education system is a \$2 Trillion tax cut for the wealthiest 5%.

Mr. Bush's blithe indifference to students and young professionals is not limited to cuts in Pell grants. Mr. Bush's budget also slashes Perkins loans by \$106 Million and cuts \$30 Million from college work study programs. Mr. Bush has also

proposed to change the federal student loan program to require students to pay variable interest rates rather than the current fixed rates. This proposal is estimated to add approximately \$6,000.00 to an average student's college debt.

Young lawyers must strive to be lawyer-citizens, not simply one-dimensional practitioners of the law. We must harness our civic energies and apply them to every facet of our practices and professional lives. If we do this, the world will become a better place, for us, for our countrymen, and for generations of young lawyers to come. Please join me as the Young Lawyers Division embarks on this exciting mission. I hope to see you soon.

## FROM THE EDITOR

Sylvia Denys  
Editor, *The Federal Legal Forum*

Welcome to *The Federal Legal Forum*, the new publication of the Western Pennsylvania District Chapter of the Federal Bar Association. In addition to news and events of interest to lawyers who practice frequently or exclusively in the federal district court, the *Forum* will provide a series of articles about the Judges and personnel who continuously and cheerfully serve us in the district court (and the circuit court), as well as other articles and noteworthy news.

We have carefully chosen the name of this publication—it is intended to be a forum to which all federal judges and lawyers who are FBA members will contribute. We hope to generate discussions and debates concerning the legal issues that currently dominate the media, as well as cases and controversies that may not be so familiar or popular. We invite you to contribute your views and to engage the federal legal community in the type of civilized debate that occurs too infrequently in our busy world.

Although we are launching the *FLF* as a quarterly publication, we hope to grow into a

bimonthly or monthly forum, which depends upon your input and your support of our sponsors.

Please give us your written contributions, your feedback, your ideas, and your gripes—all relating to federal law and the federal courts. *The Federal Legal Forum* is the place to convey your views.

We are eagerly waiting to hear your views, and we hope you appreciate the articles that have been submitted for this inaugural issue by Judge Donald E. Ziegler, Barry Lipson, Arnold

Steinberg, and the new chairperson of the Young Lawyers' Division, Charles Lamberton. Thanks to all of our contributors and to our publisher for this issue, the Engineers' Society of Western Pennsylvania.

Please send all comments, questions, and articles to my law office:

Sylvia Denys  
Editor, *The Federal Legal Forum*  
1220 Grant Building  
330 Grant Street  
Pittsburgh, PA 15219-2257  
412.681.6554  
facsimile 412.681.6557  
[civright@telerama.com](mailto:civright@telerama.com)

## MARK YOUR CALENDAR!!!

### JUNE 18

Lunch with the Judges and Federal Lawyer  
of the Year Award  
Noon at the HYP-Pittsburgh Club  
Make your reservations no later than 13 June 2003

### JUNE 30

Lunch with Judge Joy Flowers Conti  
Noon at the Engineers' Society

### JULY 15

Lunch with Judge Arthur J. Schwab  
Noon at the Engineers' Society

## RESERVATION FORM

I plan to attend the Wednesday, June 18, 2003, Luncheon at noon, at the HYP-Pittsburgh Club, 619 William Penn Place, Pittsburgh.

I am enclosing payment for the luncheon at \$19.95 per person, for \_\_\_\_ person(s), in the amount of \$\_\_\_\_\_. (Tables of 10 available at \$199.50.)

Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip \_\_\_\_\_  
Day Telephone Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_  
Please select an entree:  
Beef \_\_\_\_\_ Chicken \_\_\_\_\_

Please send this reservation form, together with your check, no later than June 13, 2003.

Make checks payable to:  
Western PA Federal Bar Association  
c/o Susan Santiago  
Two Gateway Center, 15<sup>th</sup> floor  
Pittsburgh, PA 15222  
412.281.4900



Western PA Federal Bar Association  
Suite 1000, Oliver Building  
Pittsburgh, PA 15222

## **ENGINEERS' SOCIETY OF WESTERN PA (ESWP)**

Please contact an ESWP representative with any questions.

ENGINEERS' SOCIETY OF WESTERN PENNSYLVANIA

337 FOURTH AVENUE

PITTSBURGH, PA 15236

PHONE: 412.261.0710 FAX: 412.261.1606

[eswp@eswp.com](mailto:eswp@eswp.com)

YES! You CAN have lunch in the Members Dining Room; world-class atmosphere, great pricing and fast service!

Full menu service available for breakfast, luncheon, or dinner meetings

Convenient downtown location, central for all

Comfortable, private settings for groups from 2-200

The facilities can be used (through special arrangements) for evening and weekend meetings, seminars, parties, weddings or any other group event.

**THE ENGINEERS' CLUB IS NOT JUST FOR  
ENGINEER'S ANYMORE!!!**

**JOIN TODAY!**