



# Federally Speaking



Number 4

by Barry J. Lipson

*The Western Pennsylvania Chapter of the Federal Bar Association (FBA), in cooperation with the Allegheny County Bar Association (ACBA), brings you **Federally Speaking***

## **Fed-pourri™**

**Lawyer Beware!** – As some of you know, your columnist also writes the trademarked column CorpLaw® Commentaries, which appears elsewhere in this issue of the Lawyers Journal. Recently, it was time to spend the big bucks and renew this mark for another ten-year term. But this time there were differences. Not only was a “discount” possible, but also the new system actually may discourage some clients from paying legal fees to have their trademarks renewed. How, you ask? Simply, all you need to do is find the correct web page of the **U. S. Patent and Trademark Office** (<http://www.uspto.gov/teas/eTEASforms.htm>), click here, click there, fill in here, fill in there, type here, type there, and before you know it you have yourself done all that is necessary to renew your trademark. And the discount? As you pay by credit card, be sure to use one that offers a rebate! Intellectual Property Attorney Beware!

**Our own Judge Judy!** -- Not only has our own Judge Judith K. Fitzgerald been designated Chief Bankruptcy Judge for the **U.S. Bankruptcy Court for the Western District of Pennsylvania**, not only has she been re-appointed for another fourteen-year term, and not only has she been chosen to serve on that most elite of bodies, the Advisory Council of the Western Pennsylvania Chapter of the Federal Bar Association, but now she has been selected to receive Honorary Membership in the national Federal Bar Association. This well occur and be celebrated by FBA members, members of the Judiciary and their guests at a grand, complementary, by invitation only, Reception and Cocktail Party, to be held at the HYP Club on Tuesday, June 12, 2001, starting at 5 pm. If you seek inclusion on this blue ribbon invitee list, please contact West Penn President Joe Perry (412/281-4900).

**No More Prequant Chads?** - Finally, Sen. Christopher Dodd (D-CT) and Sen. Thomas Daschle (D-SD) in the **Senate**, and Rep. John Conyers (D-MI) in the **House**, have introduced the "**Equal Protection of Voting Rights Act**" (S.565, H.R. 1117). This Bill would help assist State and local governments to meet their constitutional duty of providing equal protection for all voters, including requiring that, for federal elections, all voting machines must meet the same high performance standard, all voters must receive a sample ballot well before going to the polls, and no voter should be turned away from the polls simply because of confused records. From the 2000 elections, most observers believe it has become clear that reforms are necessary if we are to ensure that the votes of all Americans are counted and counted fairly.

**Endangered Species Act Endangered!** - "One of the reasons that the **Endangered Species Act** works is that **Congress** gave citizens a right to petition and to sue," said Rodger Schlickeisen, President of Defenders of Wildlife, "Congress set those statutory deadlines on purpose because they knew that agencies would have a hard time acting on their own in an atmosphere of political controversy." This deadline provision requires a prompt response from the **Fish and Wildlife Service** in citizen lawsuits, which has been the primary tool used by such groups as Defenders of Wildlife to obtain protection for animals and plants. Now, under the Bush plan, the administration wants Congress to place this deadline provision "under a bush" for at least the next year, by legislating that during such period the Service would not be bound by Court set deadlines. If Congress adopts this plan, the Service would be barred from spending any money to carry out new Court Orders or settlements, but instead would devote available funds to listing the endangered species cases it deemed to be top priorities. There are currently cases involving more than 400 species before the Courts.

**Will Lead Now Lead?** – After renouncing campaign promises to limit carbon dioxide emissions, blocking implementation of more stringent controls on arsenic in water, pulling out of the **Global Warming Treaty**, suspending mine cleanup requirements, etc., the Bush administration is now permitting to go into effect Clinton-era regulations requiring stricter disclosures by manufacturing and processing plants of the release into the environment of a total of 100 pounds or more a year of lead or lead compounds, down from the prior easier standard of 10,000 pounds a year, which will require reporting by an additional 3,600 firms, including manufacturers of electronic circuit boards, batteries, and even pipe organs. Clinton regulations increasing the necessity for **Clean Water Act** digging permits for development projects in environmentally sensitive swamps, marshes, bogs and other wetlands areas, were also allowed to go into effect. Will "Lead" now lead us into a friendlier environmental environment?

**Shades of Nazi Germany** - The **FBI** testified last year that secret evidence is being used in 11 immigration cases. In such cases, immigrants have been deported or kept in jail based on such secret evidence. Former **CIA** director R. James Woolsey (now a member of a legal defense team helping five Iraqis who were denied asylum because of secret evidence) has advised that the use of secret evidence is a practice "one would expect to find in Iraq, not the U.S." However, legislation (HR 1266) has now been introduced by Reps. David Bonior (D-MI), Bob Barr (R-GA), John Conyers (D-MI) and Tom Davis (R-VA), to deter immigrants from being deported, detained or denied any benefit under the **Immigration and Nationality Act**, based on secret evidence. This bill would establish procedures for handling classified information in immigration cases, similar to those in criminal cases, to protect both the due process rights of immigrants and national security interests. Instead of using secret evidence, an unclassified summary of the classified information, approved by the Court, would be used. Indeed, in the past such secret evidence has sometimes consisted of nothing more than rumor and innuendo. Thus, in a 1950's case, a WWII "war bride" was denied entrance into the U.S. based on "confidential information" obtained from her husband's jilted ex-lover.

**An "E-Sign of the Times"** – Imagine creating a brilliant original lead, only to find, upon surfing the Web, that it had already been previously "e-stolen" (well almost, not the "an"). Certainly, an "e-sign of the times." Another "e-sign of the times" is the **Electronic Signatures in Global and National Commerce Act of 2000** or the **E-Sign Act**. According to an article electronically published under the title E-Sign of the Times, by

Wittiel & Winn (Kirkpatrick & Lockhart Web page, <http://www.kl.com/PracticeAreas/Technology/pubs/page20.stm>), the **E-Sign Act** “will reduce the uncertainty surrounding the use of electronic media in transactions and permit more businesses to realize the cost savings possible with electronic commerce,” for the “Act effectively sweeps away a myriad of anachronistic and inconsistent state and federal law requirements for paper and ink documents and signatures, and permits electronic commerce to proceed on a substantially uniform legal basis nationwide.” It prohibits the denial of enforceability, validity or legal effect to a contract based solely on it having an “electronic signature” or being in electronic form. But as Ervin, Cohen & Jessup of Beverly Hills cautions, “the exchange of cursory e-mails between a supplier and customer – ‘I think \$1000 per unit.’ ‘Sounds good.’ – could create a binding contract,” both in and/or between Beverly Hills and the North Hills.

**When Life Means Life** – Nowadays most jurors would expect that one sentenced to life imprisonment could be paroled someday, and, therefore, where the jury found aggravating circumstance, might sentence such a killer to death rather than life imprisonment, if they believed there was any chance he/she might get out on the streets again. In Wesley Aaron Shafer, Jr. v. South Carolina (2001 U.S. LEXIS 2456; 149 L. Ed. 2d 178 (2001)), the **U.S. Supreme Court** found that the failure to instruct the jury that parole was NOT available if the defendant was sentenced to life imprisonment, constituted a denial of due process. Since the jury's only sentencing options were death or life imprisonment, the **Supreme Court** ruled that such instruction was required to rectify the jury's apparent confusion, especially in view of the jury's clear lack of understanding concerning what a life sentence meant. The trial court's instruction that “life imprisonment meant until the death of petitioner,” and counsel's statement that “petitioner would die in prison,” were found to be insufficient to inform the jury concerning the unavailability of parole.

**When Life Means Life: Part 2** -- The "Unborn Victims of Violence Act" (H.R. 503), has been passed by the House. If enacted into law, as the first federal law recognizing a fetus as an independent "victim" of a crime, it would give a fetus legal rights distinct from those of its mother. Supporters of the bill claim that it is merely intended to punish violent offenders. Opponents see it as “a dangerous attempt to separate a woman from her fetus in the eyes of the law,” alleging that it would be “the first step toward eroding a woman's right to determine the fate of her own pregnancy.” Oh, yes, the bill was reportedly “drafted with the assistance of the National Right to Life Committee,” who “ain’t” pro-choice. By the by, does it, ironically, appear to you that “pro-choicers” are usually against the death penalty, and “pro-lifers” usually favor the death penalty?

### **The FEDERAL CLE Corkboard™**

Tues, June 12, 2001--FBA Meets FBI: The Seminar, FBI Special Agent Jack Shea,  
FBA LearnAbout™ Monthly Luncheon Series\*

Tues, July 17, 2001--Mediation in Federal Agencies, Joel Pretz and Kim Bobrowsky,  
FBA LearnAbout™ Monthly Luncheon Series (this month 3<sup>rd</sup> Tues)\*

Tues, August 28, 2001--The Electronic Courtroom, Judge Robert J. Cindrich  
FBA Late Afternoon (4-5:30 PM) Seminar\*

Tues, September 11, 2001—Federal Mediation and Conciliation Service  
FBA LearnAbout™ Monthly Luncheon Series\*

September, 2001 –United States Supreme Court Review – TBA  
FBA All Day Seminar\*

Tues, October 9, 2001—Social Security Nuts and Bolts, Karl Osterhout, Esq.  
FBA LearnAbout™ Monthly Luncheon Series\*

\*FBA-For information and reservations call Rick Taylor at 412/566-1626.  
Check this Column each month for possible revisions.

\*\*\*

*The purpose of **Federally Speaking** is to keep you abreast of what is happening on the Federal scene All Western Pennsylvania CLE providers who have a program or programs that relate to Federal practice are invited to advise us as early as possible, in order to include mention of them in the **Federal CLE Corkboard**™. Please send Federal CLE information, any comments and suggestions you may have, and/or requests for information on the Federal Bar Association to: 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)).*

Copyright© 2001 by the Federal Bar Association, Western Pennsylvania Chapter.