



THE FEDERAL BAR ASSOCIATION NEWSLETTER

SAN ANTONIO CHAPTER

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1998 Host National Convention

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<http://fedbarsatx.org>

Editors' Note

Much has happened since the last installment of our Chapter Newsletter. We have had a change in officers (see below), the launching of a new website and the initiation of several new luncheon programs. Our Chapter web site – <http://fedbarsatx.org> – provides up to the minute information regarding Chapter events. You can register for the monthly luncheon on line and find out about upcoming seminars.

Upcoming Luncheon Program

December 19, 2001 - Annual "Do's and Don't's" Luncheon. The briefing clerks who work for our district and magistrate judges will be there to pass on their secrets as to what their bosses like and don't like in our pleadings, courtroom practice, and relationship with the court. This luncheon is not to be missed!

All luncheon programs are at noon at the Crystal Steakhouse. Cost is \$16.00 at the door. Please make reservation in advance by e-mailing FBA Secretary Juanita Hernandez at bev.bentley@odnss.com or faxing her at (210) 277-2702. You may also register on line at the Chapter's website - www.fedbarsatx.org.

St. Mary's Scholarship Award

This year's scholarship award goes to Robert J. Kraemer, a second-year law student. Robert was selected because he received the highest grade

in federal civil procedure last year. The award consists of a plaque and \$1,500.00 cash. Congratulations, Robert!!

Out with the old, in with the new (officers, that is).

Congratulations to Richard Billeaud for offering superb leadership as President of the Chapter last year, especially for his fine work in developing a seminar on the changes to the rules of civil procedure. Maury Deaver is President for 2001-2002, joined by fellow officers Vienna Gerlach (President-Elect), Elizabeth Smith (Vice President), and Jay Aguilar (Treasurer). Juanita Hernandez joins the elected officers as our new Secretary. All officers and the Chapter's 15 directors are listed at the Chapter's web site. We are especially pleased to count as one of our directors Magistrate Judge Pamela Mathy.

Federal Court Practice Seminar

For those of you who may not know, the FBA offers this seminar several times a year. This seminar is recognized by the federal judiciary as satisfying part of the admission requirements for practice in the Western District of Texas, but it is also suitable for attorneys who are beginning to be in federal court more than they had anticipated and for experienced federal practitioners needing a refresher course (and CLE!). It is an all-day seminar, with excellent

speakers, covering all aspects of federal practice.

Our next Federal Practice Seminar will be held on Friday, December 14, 2001, at the Airport Hilton. Registration starts at 8:00 a.m. 7.5 hours of CLE has been approved. More registration information is available at our web site. You can also call the Chapter President at (210) 885-9811.

Speaking of the Federal Practice Seminar, some of you may have questions regarding admission into the Western District of Texas. Nancy Hermer of the Clerk's Office provides below an explanation of the process.

Admission to Practice in the Western District of Texas

For local attorneys seeking admission to practice in the Western District of Texas, the process is as easy as the "Texas Two Step".

The first step the U.S. District Clerk's Office is involved in is accepting the completed application for submission to the Admissions Committee. This step usually starts with requesting an application. The applications mailed from this office have a cover letter and order that explain the "extra requirements" needed in the San Antonio Division. These "extras" include an original, current (not more than 30 days old) Certificate of Good Standing from the State Bar of Texas, as well as certificates from any federal courts in which you are licensed. Also required in the San Antonio Division are three letters of reference concerning your character and standing from licensed attorneys in the Western District of Texas.

These applications are then presented to the Admissions Committee which meets about every two months. Hopefully, when submitted to the committee, these applications are all "in step" and ready for approval.

The next step (the other left foot) for local (resident) attorneys of the San Antonio Division

is the requirement to attend a seminar. The Clerk's Office works closely with the Federal Bar Association in this regard. The Federal Bar presents an excellent seminar. In the past several years, the Federal Bar has averaged about three seminars a year. An added plus in attending this seminar is that the ceremony to admit the attorneys (those who have previously approved by the committee) have been held immediately after the seminar. Judge Prado and Magistrate Judge John Primomo have spoken at these seminars and in that way has also been available to perform the admission ceremony.

Attendance at this seminar also provides an excellent opportunity for those attorneys to meet some speakers from different federal positions or agencies in the Western District of Texas. From reports that I have heard, attorneys who have been admitted feel very fortunate (not only to attend this outstanding seminar), but they are no longer required to take a written exam - they merely attend the seminar. (I heard the exam was not easy).

My name is Nancy Hermer and I am responsible for attorney admissions in the San Antonio Division of the U.S. District Clerk's Office. I sincerely hope this brief explanation will make your admission process go as smoothly as the "Texas Two-Step". Welcome to the Western District of Texas and if the Clerk's Office can assist you in any way, please do not hesitate to contact us. We can be reached at (210) 472-6550, ext. 222.

Editors' Note: Ms. Hermer has worked tirelessly to assist attorneys seeking admission into the Western District of Texas. Her pleasant demeanor, cheerful attitude and dedication have been invaluable to both the Federal Bar and local attorneys.

The following are excerpts from the Western Pennsylvania Chapter FBA Newsletter. They are included to give you an update of topics of interest in federal litigation, developments in Washington and the Department of

Justice, and a sense of what other chapters do with their newsletter.

Federally Speaking
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 the editorial column Federally Speaking

WAR DECLARED THRU 2005? The major provisions of the "USA Patriot Act," a/k/a the Anti-Terrorism Legislation, curtailing civil liberties "sunset" or "shall cease to have effect on December 31, 2005." This legislation, enacted as a direct response to the events of September 11, 2001, which has been referred to by some as "draconian," certainly places our Federal Justice System on a war footing. It eases the detention of some suspects without charges, and allows police to secretly search the homes of suspects, tap their home and cell telephones and track their use of the Internet. But some thought has been given to Ben Franklin's caution that those who "can give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." In addition to the most "draconian" provisions "sunset" in four years, the Attorney General's power to detain/incarcerate non-citizens based on mere suspicion is limited to seven days (if deportation proceedings have NOT been commenced); the use of "Carnivore" devices, which scan "through tens of millions of emails and other communications from innocent Internet users as well as the targeted suspect," as reported on in the October 5, 2001 Federally Speaking column, is regulated by excluding general access to the "content" of the messages and by requiring Carnivore Reports to Congress; and the Inspector General of the U.S. Department of Justice (DOJ) is required to designate an official who shall review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the DOJ, publicize the responsibilities and functions of and how to contact this official, and semi-

annually submit Reports to Congress on the implementation of this requirement and the details of the abuse complaints received. Hopefully, we will not re-visit the subsequently Constitutionally condemned internment of "ethnically objectionable groups," as was the fate of ethnic Japanese during the Second World War.

Commercial Terrorists" Utah-Style. During the 2001 legislative session, Utah created a new crime called "Commercial Terrorism," applicable to all persons or business (Utah House Bill 322, Domestic Terrorism of Commercial Enterprises). A "Commercial Terrorist" (C.T.) is any individual who "enters ... a building of any business with the intent to interfere with the employees, customers, personnel, or operation of a business." And get this; you are a C.T. who unlawfully "enters" a place of business, if you cause "the intrusion of any physical object, sound wave, light ray, electronic signal or other means of intrusion" under your control, into such building. Well, U.S. District Court Judge Bruce Jenkins, in a post-World Trade Center ruling, declared Utah's "Commercial Terrorism" statute facially unconstitutional and permanently enjoined the law from taking effect. This ruling resulted from a lawsuit brought on behalf of the Utah Animal Rights Coalition, whose members feared that under the statute, the lawful demonstrations they regularly conduct on sidewalks in front of Utah businesses would be classified as criminal activity. While the World Trade Center "Political Terrorists" would certainly have violated this statute if the Twin Towers had been in Utah, hopefully there are more traditional criminal sanctions to deal with their ilk without criminalizing a whole spectrum of basically benign and even Constitutionally protected human conduct. Potential C.T.'s of the World beware! None know what future "intrusions" the legislature may want to ban.

MICROSOFT Remedies: "The harshest and broadest possible?" Paul Harvey, Jr., here's "the rest of the story:" The pressure was building. Not only had the U.S. Supreme Court

refused to hear Microsoft's appeal plea to throw out Judge Thomas Penfield Jackson's original guilty verdict as the U.S. Court of Appeals for the District of Columbia had thrown out Judge Jackson's "breakup" remedy, but the new Judge, Hon. Colleen Kollar-Kotelly, had informed Microsoft that if a settlement was not reached any remedies against that company would be "the harshest and broadest possible." It is also reported that the new Microsoft Judge intimated that these "harshest" remedies could include the opening of the Windows source code to competitors and serious curbs on Microsoft's anti-competitive behavioral conduct. Remedial Hearings were already set for March 2002, and the Judge was ready to require mediation. Well, Ripley, "believe it or not," the resolve of even "Micro" softened, and Bill Gates and crew now appear to be in a settling frame of mind.

BETTY CROCKER TO WED DOUGHBOY

. The FTC Commissioners, with FTC Chairman Timothy J. Muris again not voting, by "default" declined to challenge another major food industry merger, this time the proposed acquisition by Betty Crocker's General Mills, Inc. of the Doughboy's Pillsbury Company, from Diageo plc (Part 2). According to Commissioners Anthony and Thompson, "all of the Commissioners believe that General Mills' proposed acquisition of Pillsbury violates the antitrust laws"

(Thompson), and "when the competitive overlaps are this great, the underlying antitrust violation is this clear-cut, efficiencies are scant or non-existent, and the risk of consumer injury is this high, the standards for an acceptable settlement should be quite stringent" and were not met here (Anthony). "Moreover, accepting the proposed settlement would shift the risk inherent in this approach to the consumer, and would send a signal to the market that such shifting is appropriate. It is not" (Thompson). "Order or no Order," however, Commissioners Swindle and Leary are "convinced" that the parties participating in these nuptials "will honor the letter and the spirit of their promises" to the FTC staff that would have appeared in a Consent Order if one had been approved (FTC

File Number 001-0213). BUT AT THE U.S. JUSTICE DEPARTMENT On the same day the FTC declined to challenge the merger of General Mills, Inc. and The Pillsbury Company, the U.S.

Department of Justice filed an antitrust lawsuit to block the proposed acquisition of Newport News Shipbuilding Inc. by General Dynamics Corporation, on the grounds that if the merger were allowed to proceed, it would eliminate competition for nuclear submarines, harm competition for other military ships, and substantially lessen competition in surface combatants. Newport News is the sole supplier of nuclear aircraft carriers to the U.S. Navy, as well as one of two suppliers of nuclear submarines. General Dynamics, the other supplier of nuclear submarines, is one of the nation's largest military suppliers, developing and producing numerous military platforms and systems, surface combatants, the M-1 Abrams tank, armored troop carriers, and various surveillance, communications, and intelligence systems. These two companies are also leaders on the only two teams working to develop electric drive technology for nuclear submarines and surface combatants. "Our armed forces need the most innovative and highest quality products to protect our country. This merger-to-monopoly would reduce innovation and, ultimately, the quality of the products supplied to the military, while raising prices to the U.S. military and to U.S. taxpayers," advised Charles A. James, Assistant Attorney General in charge of the Department's Antitrust Division.

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