

# The BROWARD BARRISTER

MAY, 1973

Volume 2

Number 5

PUBLISHED BY THE BROWARD COUNTY BAR ASSOCIATION  
Executive Offices, 735 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

## General Meeting . . Wednesday, May 23rd

PLANTATION GOLF AND COUNTRY CLUB

7050 WEST BROWARD BOULEVARD  
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GOLF: 12:30 - 1:30 P.M. (Tee Off) — \$11 Per Person

COCKTAILS: 6:30 P.M. (CASH BAR)

DINNER: 8:00 P.M. \$10 PER PERSON

(For additional information see the enclosed flyer)

A day of fun is planned for the members of Broward County Bar Association and their wives or dates. Gene Rimes has planned the golf outing and the trophies are ordered and all is ready to go. SO SEND IN YOUR RESERVATION NOW, IMMEDIATELY.

SEE ENCLOSED FLYER FOR RESERVATIONS

### Libel and Slander or Be Careful When You Speak

Libel and slander received an extensive review in the case of Wolfson vs. Kirk, 273 So 2d 774, Fourth District. Wolfson brought an action against former Governor Kirk, alleging defamation when the governor stated on a television show "when I was running Haydon Stone, we invited him (Wolfson) out of the office." The trial court dismissed on the grounds that there was no cause of action for slander, per se in that no allegation referred to the business or reputation of Wolfson and that he was not identifiable as the subject of the alleged defamation.

The Fourth District Court of Appeal reversed and remanded. The words are construed as the "common mind" would have naturally understood them and the Court is not limited to the words themselves but may consider extrinsic facts and circumstances to the extent that they might reasonably give meaning to the language used. If the Court finds the language reasonably capable of two or more meanings one of which is defaming the trier of fact should determine whether the language used was actually understood in a defamatory sense. Here

the Court held it should go to the jury to determine whether or not the words were reasonably understood in a defamatory manner.

The Court further concluded that the defamed person need not be named in the communication if the whole contained sufficient facts or references from which the injured person may be determined by the persons receiving the communication.

Again the Court held that the allegations of the complaint were sufficient to indicate that Wolfson was intended as the subject of the remarks and was so understood to be by the listeners.

The defamation if false and injurious to social, official and business relations of life may be slander per se which presumes malice and specific damages need not be proven.

*Henry J. Prominski*

### Dues! Dues! Dues!

THE TIME FOR ANNUAL DUES IS HERE. THE ANNUAL NOTICE IS ENCLOSED WITH THE BARRISTER. YOUR PROMPT PAYMENT WILL BE APPRECIATED.

### Young Lawyers Section Meeting

MAY 24, 1973

NOON

Heilman's Restaurant

1701 East Sunrise Boulevard

Fort Lauderdale, Florida

Election of Officers

### Correction

In the April Barrister Angelo Marino, Jr. was welcomed as a new member of the Bar Association. The article also indicated that he graduated from Stetson Law School when, in fact, he did not. He graduated from Ohio State University college of Law.

We apologize for the inconvenience that this has caused Mr. Marino. In the future, it would be appreciated if any error made in the Barrister could be brought to the attention of the Barrister Staff by calling 764-8040.

Broward County Bar Association  
735 N.E. Third Avenue  
Fort Lauderdale, Florida 33304  
764-8040

#### OFFICERS

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### Monthly Chuckle!

"I have listened carefully and intently to you for quite some time now, Counsellor," said the judge in acid tones, "but I am no wiser."

The abashed lawyer nervously shuffled his papers.

"I hardly expected Your Honor to be," he retorted, "but I thought you might be better informed!"

### One For Cooperation Two For Miranda

If your client calls you and, in a worried voice, asks you what to do when two Revenue agents have appeared at his place of business with a subpoena to examine his books and records, and have just advised him of his constitutional rights regarding a tax investigation, are you prepared to advise him how to proceed?

An income tax audit is a relatively common-place and un sinister proceeding. Verification of travel, entertainment and other items of deduction occur routinely. However, the criminal aspects of the Internal Revenue Code such as wilful violations of our tax laws, carry severe criminal penalties. The first harbinger of a criminal tax investigation will be the presence of a "special agent" of the intelligence division. Criminal tax investigations are virtually always conducted by two or more agents. The usual civil audit is conducted by one agent alone. If your client is confronted by two agents, it is very likely that he will be given a constitutional warning similar to those required in Miranda

even though most Federal Courts of Appeal have not required such warnings in a non-custody interrogation.

Even though your client may seem "worried" when he calls you, upon examination of his tax status it may well be that he has no tax liability. For example, even if his returns have not been correctly prepared he may have overstated his gross income and have a very minimum exposure or even have a refund due. Further, there may have been no "wilfulness" within the meaning of the criminal statutes or it may be that having prepared a return with a fraudulent intent, the taxpayer may both have over-reported his gross income or his net tax liability through ignorance, faulty accounting, or other error. Technical adjustments may result in a termination of any criminal investigation provided that your client has not already made irrevocable admissions of guilt. In such a case, silence can indeed be golden.

It is unlikely that your client will gain anything by full cooperation with the agents at this point. It is very likely that he will lose by doing so before his advisers have had an ample opportunity to review his situation and appraise him of his rights and legal situation. His cooperation will not persuade the agents to give up their investigation except under the most unusual circumstances. The response that your client makes while he is nervous and apprehensive, may be just the piece of information which the intelligence division needs to make a case against him. The harder he tries to vindicate himself, the more convinced the agent may become that he is untrustworthy and a suspicious person. In fact, if he makes false statements to the Revenue agents, he may be guilty of an independent criminal offense apart from any under investigation.

Your best advice to your client at this point may be to tell him to take the special agents' invitation and refer the matter to his attorney. You may then desire to speak with the agent yourself and advise him, that as a part of your customary procedure, you wish to review your client's situation with him privately and that you will cause a power of attorney to be filed with the agent. You should then request that the agents cease any further discussions with your client and request that they leave his premises.

*(Continued on Next Page)*

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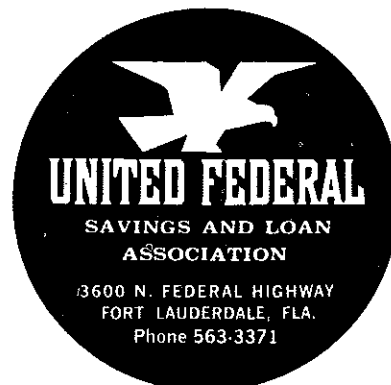
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## PROPOSED BUDGET FOR 1973-74

The proposed budget for 1973-74 is presented for your consideration. It will be submitted for a vote at the annual meeting, May 23, 1973. If there are any questions regarding any items, please call the office of Broward County Bar Association 764-8040.

### BROWARD COUNTY BAR ASSOCIATION PROPOSED BUDGET

June 1, 1973 - May 31, 1974

	Estimated 1972 - 1973	Actual* 1972 - 1973	Estimated 1973 - 1974
<b>RECEIPTS:</b>			
Dues .....	\$19,470.00	\$20,120.00	\$20,485.00
Advertising .....	1,200.00	1,320.00	1,600.00
Interest .....	800.00	250.86	-----
10% Referrals .....	6,000.00	5,771.35	6,000.00
Transfer of Unspent Surplus .....	5,278.46	-----	-----
Estimated Unappropriated Reserve .....	-----	-----	6,000.00
<b>Total .....</b>	<b>32,748.46</b>	<b>27,462.21</b>	<b>34,085.00</b>
<b>DISBURSEMENTS:</b>			
Salaries .....	12,400.00	11,090.00	13,520.00
FICA .....	645.00	603.33	790.92
Dues .....	100.00	102.50	100.00
Service Contracts .....	80.00	106.60	108.00
Equipment Rental .....	125.00	127.92	130.00
Printing .....	2,700.00	2,265.75	2,800.00
Supplies & Postage .....	1,800.00	2,089.29	1,800.00
Telephone - Utilities .....	1,200.00	1,791.61	2,784.00
Insurance .....	200.00	188.78	200.00
Rent .....	2,400.00	1,685.00	-----
Committee Expense .....	2,000.00	805.49	1,000.00
No-Fault Insurance Education .....	2,000.00	-----	-----
Seminars .....	1,000.00	209.32	-----
Expense Allowance .....	1,500.00	521.32	1,500.00
Building Fund .....	2,000.00	-----	-----
Equipment Purchase .....	-----	1,563.48	500.00
Maintenance & Moving .....	-----	635.00	300.00
Mortgage Payments .....	-----	2,373.00	4,068.00
Building Purchase-Down Payment .....	-----	13,552.06	-----
Contingency .....	2,598.46	2,461.99	4,484.06
<b>Total .....</b>	<b>32,748.46</b>	<b>42,182.64</b>	<b>34,085.00</b>
<b>Hold over of Designated Funds:</b>			
Medical-Legal Committee .....	-----	-----	400.00
No-Fault Insurance Education .....	-----	-----	2,000.00
<b>Total .....</b>	-----	-----	<b>\$2,400.00</b>

\*Based on eleven months.

Similarly, the same 5th Amendment rights apply to your client's books and records. In your capacity as his attorney, you can also assert his self-incrimination privilege in this area as well. The 5th Amendment rights are generally not applicable to corporate books and records, but a corporation is fully protected against an illegal search and seizure under the 4th Amendment.

The wiser course in counselling your client is to be conservative regarding the waiver of his constitutional and other legal rights in a criminal tax investigation. It is far easier to adopt this method of approach rather than create arguments designed to retrieve rights that have once been abandoned.

*Donald H. Norman*

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## Negligence

The recent case of Jones vs. Hoffman, So. 2d 529, exemplifying the modern legal thinking of the Fourth District Court of Appeal, would put an end to contributory negligence as a bar to recovery and establish a doctrine of comparative negligence for personal injury actions. The Court, through Judge Mager, examined the history of the common law doctrine of contributory negligence, concluding that one per cent negligence can relieve all liability, that this doctrine is unjust, inequitable and primitive in its goal for achieving justice between parties who are both at fault.

Although there is some question to the select conclusions presented by Judge Mager, such as one per cent negligence by a defendant would relieve all liability and that the burden of an accident is placed on one of the parties in the face of evidence that both are to blame, the criticisms of the contributory doctrine, although ignoring the strength of the jury system, is valid.

Judge Mager further goes on to criticize the legislature for not keeping time with the changing law, in legislating comparative negligence for the State of Florida.

Judge Mager does overlook the fact that our judicial review committees, the legislative committees and the Bar Association and others daily concerned with our legislative system have not seen fit to abolish the doctrine of contributory negligence. This is not to say that justice would be better achieved with a doctrine of comparative negligence, for Judge Mager does argue convincingly that "one per cent" of contributory negligence should not completely defeat a claim. Perhaps legislation would not be the answer since invariably legislative bills tend to become overly complicated, difficult to understand and generally omit at least one basic fact as the new law relates to practical application. There is perhaps too much legislation anyhow and unless the doctrine of contributory negligence could be modified to apply to special situations it would be best to leave its change or abolishment to the judicial process.

Judge Mager does acknowledge our jury system to be able to cope with a drastic change in our negligence doctrine and does rely on their innate ability to balance the negligence of two parties in arriving at an equitable result.

No fault insurance is also mentioned as no reason for perpetuating the contributory negligence doctrine although the necessity or materiality of this argument is not apparent.

## The Court Concluded:

"We therefore decide that contributory negligence should not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, but any damages allowed shall be diminished in proportion (percentage) to the amount of the negligence attributable to the person bringing such action or on behalf of whom such action is maintained."

Judge Owen dissented but only in disagreement that such a change in our basic law should be left not to the District Court but to the Supreme Court of Florida.

*Henry J. Prominski*

## Help, Help, Help!!!

There is a desperate need for articles for the Barrister. All contributions will be most welcome . . . ideas, articles, suggestions, etc.

**"Light is the task when  
many share the toil"**

## Young Lawyers Section Notice of Proposed By-Law Amendment

Pursuant to the requirements of Article VIII of the By-Laws of the Young Lawyers Section of the Broward County Bar Association, notice is hereby given and published that a proposed amendment to Article II, Section 1 of the said By-Laws shall be considered and voted upon at the next regular meeting of the Young Lawyers Section to be held on May 24, 1973. The proposed amended Section 1 shall read as follows:

"All members of the Broward County Bar Association in good standing who have not reached their 36th birthday by the beginning of the fiscal year, and who have paid the dues of the Young Lawyers Section in advance at the commencement of the fiscal year, said dues to be determined from time to time by the Executive Council, shall be members of the Young Lawyers Section. Each member shall be entitled to vote at elections and to participate in all other activities of this Young Lawyers Section."

## Administrative Order No. 27

Filing Fee to Record Final Judgment of Dissolution of Marriage.

WHEREAS, the purpose of this Order is to aid in the collection of filing fees to record Final Judgments of Dissolution of Marriage, therefore, it is

ORDERED that the Clerk of the Circuit Court shall at the time a Petition is filed for a Dissolution of Marriage collect the \$3.00 filing fee necessary to record the Final Judgment.

DONE and ORDERED at Fort Lauderdale, Broward County, Florida, this 21st day of March, 1973.

James F. Minnet,  
Chief Judge  
Seventeenth Judicial Circuit

## The Florida Bar Annual Convention

DIPLOMAT HOTEL  
HOLLYWOOD, FLORIDA  
JUNE 13-16, 1973

Robert C. Scott, General Chairman

## Have You Moved?

There have been many moves of offices in the past two months. If you have *not* notified the following of your correct address and telephone number PLEASE DO SO NOW.

Broward County Bar Association  
The Florida Bar  
American Bar Association  
Clerk of The Circuit Court

## Change of Address

The Broward County Bar Association office has been moved to

735 N.E. Third Avenue  
Fort Lauderdale, Florida 33304

The telephone numbers are as follows:  
Broward Co. Bar Association 764-8040  
Legal Aid 764-8110  
Lawyer Referral Service 764-8310