

The BROWARD BARRISTER

JUNE, 1974

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Executive Offices, 735 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

GENERAL MEETING Wednesday, June 19, 1974

— 12:00 NOON —

The Sheraton Hotel
303 North Atlantic Boulevard
Fort Lauderdale, Florida

LUNCH: \$5.00

Speaker:

JUSTICE BEN F. OVERTON, SR.

Justice Ben F. Overton, Sr., is the new Supreme Court Justice. He is a native of Green Bay, Wisconsin and a graduate of the University of Florida College of Law. He served as Assistant Attorney General in 1952 and then entered private practice in St. Petersburg where he served as City Attorney from 1954-1957. He was appointed Circuit Judge for the Sixth Judicial Circuit in 1964 and reelected without opposition in 1966 and 1972. He was sworn in as Justice of the Supreme Court on March 27, 1974.

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YOUNG LAWYERS SECTION MEETING

Thursday, June 27, 1974

— 12:00 NOON —

Governors' Club Hotel

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BROWARD COUNTY TRIAL LAWYERS ASSOCIATION

Did you know that there is an organization in Broward County, Florida known as the BROWARD COUNTY TRIAL LAWYERS ASSOCIATION?

The BCTLA is an independent, county-wide, professional organization of lawyers whose interests are focused mainly on general trial practice. Membership in the BCTLA is open to members of The Florida Bar who are in good standing with the Bar and who do not, for the most part, represent Defendants in personal injury litigation or workmen's compensation proceedings.

The meetings are held on the first Wednesday of each month commencing at 6:30 p.m. at different locales in the county, the site of which is announced in advance of each meeting. At the monthly meetings, there is an opportunity to meet with, and discuss, your cases and trial experiences with some of the most experienced trial attorneys in Broward County. The annual dues are \$10.00.

The BCTLA has planned an exciting program schedule for 1974. The programs' format will generally be in two parts. In the first part of the program, such eminent local trial attorneys as Sheldon Schlesinger, Maurice Fixel, Ray Ferrero, Ed Middlebrooks, John Thabes, Len Robbins, Richard Kirsch, Jack Spellacy, and others, will speak on such subjects as jury selection, opening statements, expert witnesses, direct examination, cross examination, the medical expert, demonstrative evidence, summation, comparative negligence, uninsured motorist litigation, arbitration, commercial litigation, products liability, the new wrongful death act, domestic relations litigation, and other subjects of interest. The second half of the program will be workshop session with a round table discussion format.

If you would like to join BCTLA, please contact A. J. Thomas, Jr. for an application.

Young Lawyers Elect Officers,

The newly elected officers for the Young Lawyers Section are: President, John Hume; President-Elect, E. Hugh Chappell, Jr. and Secretary-Treasurer, Ed Sciarretta.

Board Members For New Year

Executive Board members for the coming year are: Richard Culver, Gary Esler, Daniel Kahn, Michael McNerney, Ledford A. Parnell, Jr., and Raymond Posgay.

COURT DECISIONS

By Henry J. Prominski

The Supreme Court of Florida in an opinion that received considerable publicity granted the diploma privilege to Benjamin Harris Ervin, 290 So. 2d 9 *In Re: Florida Board of Bar Examiners.*

The opinion was picked up by the news media presumably because the petitioner was the brother of Supreme Court Justice Ervin who did not take part in the opinion.

Legally the Supreme Court rationale is interesting leading to its conclusion that one who thought about entering law school prior to the expiration time of the diploma privilege qualified for admission to the Bar. Florida Statute 454.031 (3) States:

"No person shall be entitled to admission to practice without examination as to legal attainments; provided, that any person enrolled on or before the 25th day of July, 1951, as a student in any law school chartered and conducted within this state or approved by the Supreme Court shall be entitled to admission...."

Mr. Ervin, according to the Supreme Court decision, decided to attend law school in 1950. In the latter part of 1950 or 1951 the petitioner made a firm

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and abiding determination to enter Law School commencing June 14, 1951. In June the petitioner entered the military service. Upon terminating military service he did enter The University of Miami Law School in June 1953 and graduated February 1956. The Court decreed that it would be harsh and inequitable not to allow Ervin to have the diploma privilege not withstanding the fact that he did not enroll within the required time. The argument is most circuitous and one des wonder how the firm and abiding determination to enter Law School was proven.

This is a rare instance in Legal juris-

prudence where the Court decided an issue on what resided within the dark recess of the mind.

One also wonders if a party facing life imprisonment or pecuniary disaster would be afforded the benefit of "his firm and abiding determination" by the Supreme Court.

Justice Boyd dissented on the grounds that the Statute means enrolled in Law School and not intended to enroll.

State vs. Mayhew

The Supreme Court of Florida in the case of *State vs. Mayhew* 288 So. 2d 243 reversed the Duval County Circuit Court which had held that Florida Statute 847.04 was unconstitutional. Florida Statute 847.04 provides:

"Whoever, having arrived at the age of discretion, uses profane, vulgar and indecent language, in any public place; or upon the private premises of another, shall be guilty of a misdemeanor of the second degree, punishable as provided in So 2d 775.085 or 775.083; but no prosecution for any such offense shall be commenced after twenty days from the commission thereof."

The Appellee in a public place within hearing of others used indecent language to wit: "*Mother F-----*."

The Supreme Court concluded that obscene speech is not protected by the United States Constitution. The Court analogized obscene words to the use of words which are generally considered "fighting words", and rationalized that constitutionally one could limit words that would plainly cause a breach of the peace and further concluded that the present statute taken in this light is not vague. The Statute conveys a sufficient definite warning as to the prescribed conduct when measured by common understanding and practices.

Freedom of Speech may be narrowly limited when profane and obscene language is within the category of "fighting words" that could induce a breach of the peace.

The Court appears to have reached a sound conclusion in light of our society and jurisprudence notwithstanding the present trend of permissiveness as long as the statute is reasonably definable and the First Amendment restriction is one of general acceptance by society. There can be no quarrel with this decision. The law is a living flexible organism and when certain obscene words become a part of our everyday vocabulary and are not either patently offensive or generally reacted to by actions falling within the category of breach of the peace, their restrictions will no longer be constitutionally accepted.

This is a broad area of the Constitution and Law which will need individual attention by our courts. It is conceivable that the manner, place and general reception of words have a great effect on whether or not they may be legally curtailed. It is the same basic legal proposition of shouting fire in a crowded theater.

The First Amendment applications can also be visualized in the area of dress. A certain costume or form of clothing presently being worn by some of our young generation certainly may be considered an insult or in the category of "fighting words" precipitating a possible breach of the peace. While other current modes such as streaking might well be constitutionally protector as an expression of Constitutionally guaranteed Free Speech since certainly a Streaker will be accepted in our current society as amusing and not prone to inciting breach of the peace through expression within the category of "fighting words."

Town of Lantana v. Pelczynski

With election time fast approaching, the case of *Town of Lantana v. Pelczynski*, 290 So. 2d 566, recently decided by the Fourth District Court of Appeal, becomes more important. This case held that the City of Lantana's ordinance

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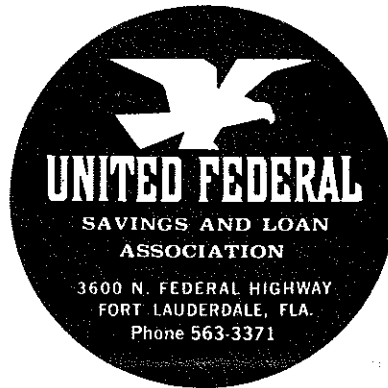
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making it unlawful to make any charges against a candidate during the seven days preceding an election was held unconstitutional. The Court held that the ordinance constituted a prior restriction on Freedom of Speech generally condemned by the United States Supreme Court. The time immediately preceding an election is the period during which the public's need for knowledge is at its height. The decision seemed to say that one cannot make charges that have been previously known within this period of time but newly learned charges which the electorate should know are permissible. Prior restrictions of Freedom of Speech cannot be justified on the basis that there may be some abuse. This also applies to false as well as to true statements.

There was a strong dissenting opinion by Judge Walden which held that the right of Freedom of Speech is not an absolute right. It might be required to yield to valid statements furthering local interest springing from public necessity. Judge Walden felt this ordinance did serve a laudible purpose and guaranteed against a perversion and abuse of the democratic election process which process is utterly essential to the continued good political health of our nation. There are limitations as to spending, contributions, distribution of election material and many more.

Judge Walden further sharply distinguished the precedence upon which the major decision was based.

STATUS REPORT ON U.P.C.

The final draft of the Florida Revised Probate Code (Note: It is no longer called "Uniform Probate Code") has been submitted to the appropriate committees of the Senate and House. It is now being considered therein. If adopted, it becomes effective on July 1, 1975.

Our committee has not at this time seen a draft of the version of the Bill actually submitted for consideration.

The present position of our committee is that the submitted Bill has many improvements over the U.P.C. It did not, however, embody all of the amendments that the Broward County Bar Committee espoused. It is hoped that the U.P.C. Study Commission will be reappointed for another year to work out further details and amendments regarding the submitted Bill.

J. Peter Friedrich
Co-Chairman

Professional Ethics Committee Advisory Opinion No. 73-42

A member of The Florida Bar has requested that the committee reconsider Opinions 65-73, 64-18 and 64-53. All three of these prior Opinions state that it is improper for a lawyer to list himself as an attorney in the classified section (yellow pages) of a phone directory covering an area in which the lawyer does not maintain an office.

Having reconsidered the issue, the committee remains of the opinion that such a practice is improper. While there may be circumstances in which a lawyer would be justified in listing himself alphabetically in the white pages covering an area in which he does not maintain an office, there is no justification for such a listing in the yellow pages.

Officers, Committee Members Elected at BCBA May Meeting

The May meeting of Broward County Bar Association was a tremendous success—thanks to Eugene B. Rimes and Ronald Anselmo who organized the golf and tennis games.

Trophies were given to the winners at dinner.

Election of officers was held and the following members were elected for the ensuing year:

President, William F. Leonard; President-Elect, George A. Patterson; Secretary, Ray Ferrero, Jr.; Treasurer, Lawrence J. Meyer and Past President, Nicholas J. DeTardo.

Executive Committee — Ronald Anselmo, Paul B. Anton, Drake M. Batchelder, Russell E. Carlisle, Richard J. Cory, Jerome F. Pollock, Henry J. Prominski, Maurice O. Rhinehardt, Barry J. Stone and Angeline G. Weir.

WELCOME, NEW MEMBERS

HARRISON E. BULL, a native of Harvey, Illinois, received his undergraduate degree from Western Michigan University and his law degree from Southwestern University. He is associated with John T. Carlon, Jr., Fort Lauderdale, Florida.

FREDERIC C. BURESH, a native of Charles City, Iowa, received his undergraduate degree from the University of Iowa and his law degree from Chicago Kent. He is associated with Anthony V. Pace, Jr., Fort Lauderdale, Florida.

RICHARD M. CAPALBO, a native of Westerly, R.I., received his undergraduate degree from Fairleigh Dickinson University and his law degree from New England School of Law. He is associated with Anthony V. Pace, Jr., Fort Lauderdale, Florida.

WILLIAM K. GORDON, a native of Chicago, Illinois, received his undergraduate and law degrees from the University of Florida. He is associated with the firm of Berryhill, Avery, Schwenke & Williams in Fort Lauderdale, Florida.

JOHN L. LINDQUIST, a native of Rockford, Illinois, received his undergraduate degree from Rockford College and his law degree from Syracuse University. He is associated with the firm of Grimditch & Bentz, P.A., Pompano Beach, Florida.

CHRISTIAN D. SEARCY, a native of Jacksonville, Florida, received his un-

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dergraduate degree from the University of Virginia and his law degree from Stetson University. He is associated with the firm of Howell, Kirby, Montgomery, D'Aiuto & Dean, Fort Lauderdale, Florida.

HARRY SUSHEK, a native of Tel-Aviv, Israel, received his undergraduate degree from U.C.L.A. and his law degree from the University of Buffalo. He is associated with Val L. Osinski, Pompano Beach, Florida.

BRUCE A. WEIHE, a native of Oak Park, Illinois, received his undergraduate degree from Davidson College and his law degree from the University of Florida. He is associated with the firm of Ferrero, Middlebrooks & Houston, Fort Lauderdale, Florida.

MARTIN ZEVIN, a native of Newark, New Jersey, received his undergraduate degree from Rutgers University and his law degree from the University of Miami. He is associated with the firm of Zimmerman, Haywood & Portley, Pompano Beach, Florida.

ROBERT STEWART ZIPPIN, a native of New York, New York, received his undergraduate degree from Cornell University and his law degree from Temple University Law School. He is associated with the firm of Walsh and Dolan, P.A., Fort Lauderdale, Florida.

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

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NEW PREPAID GUIDELINES CRITICIZED; FEE SCHEDULES GET MIXED REVIEWS

Recent amendments to the ABA Code of Professional Responsibility "may create antitrust problems for bar associations which propose to develop open panel" prepaid legal services plans. So said the Justice Department's Bruce Wilson, Deputy Assistant Attorney General for the Antitrust Division during May 14 hearings on prepaid legal services before the Senate Judiciary Subcommittee on Citizen Interests.

Annual Report of Broward Law Library Committee

Construction of a new jail kitchen directly above the law library began in June of 1973, forcing the close-down of the law library. The County Commission was asked to temporarily relocate the law library. Space was provided in the unfinished ninth floor of the courthouse and the entire law library facility was moved upstairs.

The main project of the Law Library Committee for the 1973-74 term was the drafting of a law library bill to present to the 1974 legislature. The purpose is to have enacted a general law which would enable creation of county law libraries and branch law libraries wherever needed throughout the state without requiring the passage of individual special acts. This project was undertaken because of the Committee's concern regarding the constitutionality of special acts creating county law libraries; specifically, the sections which provide for law library revenues from court filing fees and attorneys' occupational license taxes. Repeal of these laws would cut off funds and thereby paralyze existing county law libraries.

An excellent bill was drafted by John Stanford and submitted to Robert Curtis for passage through the legislature.

I thank the Committee for giving of their time willingly and devotedly to the concept of operating one of the best law libraries in the state.

Any suggestions by the Bar for improving our services to you and the public will be appreciated.

Arthur J. Franz
Chairman

Broward County Bar Association

Statistics For May, 1974

Telephone calls _____ 2,014
Referrals _____ 206
Visitors in Office _____ 116

Open vs Closed Panels

The Antitrust Division is still analyzing the Code amendments adopted by the House of Delegates in February, but, concluded Wilson, serious antitrust problems would exist if the implementation of the provisions discriminated between open and closed panel plans in matters such as advertising, thereby restraining trade. Wilson also reiterated the Justice Department's concern over the possibility of illegal price-fixing in open panel plans governed by lawyer-dominated boards.

Senator John Tunney (D-Cal), Chairman of the Subcommittee, urged that the Antitrust Division expedite its analysis of the ABA Code amendments and publicize its conclusions for the guidance of state bar associations contemplating adoption of the Code amendments.

Mr. Wilson commended the organized bar on the "good attitude" which it had shown in cooperating with the Antitrust Division's continuing inquiry into the antitrust implications of minimum fee schedules.

Senate Witnesses

The ABA policy on prepaid legal plans came under heavy criticism in the May 14-15 hearings from witnesses representing labor unions and consumer groups favoring the closed panel approach to providing legal services.

Help, Help, Help!!!

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

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