

# The **BROWARD BARRISTER**

DECEMBER, 1974

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Executive Offices, 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

## GENERAL MEETING, WEDNESDAY, DECEMBER 18, 1974

12:00 Noon

THE SHERATON HOTEL  
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PROGRAM: "Legal Education and Specialization"  
by Dean Soia Mentschikoff,  
University of Miami Law School

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### BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

Wednesday, January 8, 1975  
(MEMBERS ONLY)

5:00 p.m. Case Evaluation Committee  
and Trial Clinic  
(bring your cases and  
questions)

6:30 p.m. Cash Bar

7:00 p.m. Dinner — \$10.00

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### YOUNG LAWYERS CHRISTMAS COCKTAIL PARTY

December 10, 1974

7:00 — 9:00 P.M.

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### Retired Justice TOM C. CLARK Will Launch Nova Law Forum

The Law Center of Nova University will present its first distinguished lecturer in the Nova University Law Forum Tuesday, Dec. 10, 1974, when the Honorable Tom C. Clark, retired Justice of the United States Supreme Court, will address students and lawyers on "Enforcement of Legal Ethics in the United States."

Justice Clark, Chairman of the American Bar Association's National Coordination of Disciplinary Enforcement, will speak in the Hollywood-Mailman Building at 2:00 o'clock, p.m., on the Nova campus.

Members of the Broward County Bar are invited to attend and may make reservations by calling 587-6660, extension 284. A reception will follow the lecture.

### Broward County Legal Secretaries Association

The BCLSA has several committees, one of which is the Employment Committee. It is the Chairman's wish to work with attorneys to help them find a secretary. Any attorney who is looking for a secretary may contact the Employment Chairman, SARAH THOMAS, at 776-6550.

Broward County Bar Association  
733 N.E. Third Avenue  
Fort Lauderdale, Florida 33304  
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## Nova Law School Plans Program for Lawyers and for Law Students

One of the important functions of a Law Center is to provide a dynamic meeting ground for the professional community and the student body. Initially, the Center for the Study of Law will fulfill this function by establishing programs for Nova law students, members of the Bench and the Bar, and the community at large, as well as a forum for discussion of topics of national, state and local interest.

## Student Discussion Groups

The first effort will be student-oriented. The Law Center will invite members of the legal profession to preside over informal student discussion groups. Judge Gerald Mager, of the Fourth District Court of Appeal, was the first guest moderator at the Nova Law Center on November 14.

## Nova University Law Forum

The second program, to be launched December 10th by an address by retired United States Supreme Court Justice Tom C. Clark (see announcement elsewhere in this issue), is the Nova University Law Forum. The Forum will be a series of topical discussions by prominent scholars, lawyers and members of the judiciary, delivered on a regular basis throughout the year.

## Sponsored Lectureship

Every Law School hopes for a sponsored lectureship, similar to the Justice Cardoza lectures at the City Bar of New York, or the DeVane lectures at Yale. The Nova Law Center has the same aspirations, for a lectureship not only pays tribute to noted members of our profes-

sion, but allows a law center to bring the finest legal minds to the community.

We invite you to visit the Nova Law Center and participate in our future programs, and your guidance and suggestions will be most appreciated.

T. E. BAYNES  
*Assistant Professor of Law*

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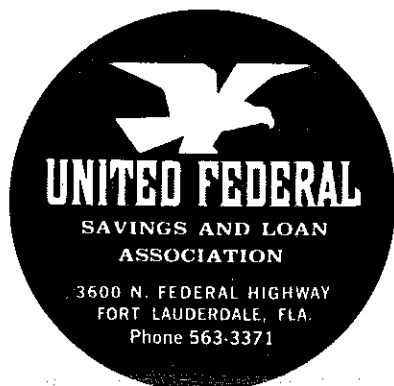
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Left to right: Carl Hiasen, Clair White, William Zloch, E. B. Griffis, N. B. Cheaney.

The meeting of Broward County Bar Association on November 13, 1974 was a most successful event with much reminiscing about the "old days." The master of ceremonies, "J. B." Patterson, imparted much knowledge about the attorneys who have been practicing law in Broward County for thirty five years or more. Those members honored were:

Stanley Beckerman, Thomas O. Berryhill, Francis K. Buckley, Grace W. Burwell, Jim H. Carter, N. B. Cheaney, Robert J. Davis, George W. English, E. B. Griffis, E. R. Heimbarger, Carl A. Hiasen, John Lloyd, G. H. Martin, J. B. Patterson, William F. Hunter, Jr., C. H. Landefeld, Jr. and Sherwood Spencer.

## Whither Punitive Damages?

Ever since the Florida Supreme Court decided that a corporation should be liable for punitive damages, in the landmark case of *Winn & Lovett Grocery Co. v. Archer* (1936) 171 So. 214, the application of the principle to practice has presented problems. It is one thing to say, in somewhat purple prose, that "There is but one vulnerable point about these ideal existences, called corporations; and that is, the pocket of the monied power that is concealed behind them; and if that is reached, they will wince. When it is thoroughly understood that it is not profitable to employ careless and indifferent agents, or reckless and insolvent servants better men will take their places, and not before." (p. 221) It is another to apply that concept to the realities of present day corporations, and to establish guidelines that the trial bar, trial judges, juries, and appellate judges can realistically understand and follow.

For many years little attention was

paid to the manner in which a jury assessed punitive damages against a defendant. Discretion was largely left up to the jury, and they often had very little on which to go. This ultimately began to worry some appellate judges, who began to question, and overturn, punitive damage awards when they found little evidentiary basis for the amount awarded. However, the matter was complicated by a majority rule precluding the introduction of evidence of financial worth when punitive damages were sought against more than one defendant, for the substantial financial worth of one defendant could work a serious hardship on co-defendants of limited means joined in a general verdict incorporating a substantial punitive damage award.

*Lehman v. Spencer-Ladd's, Inc.* (Fla App 1964) 167 So.2d 731, affirmed in part (Fla 1966) 182 So 2d 402, confronted the latter question, and recommended that punitive damages be made subject to special verdicts, (and

the rules have been so changed) so that differing amounts could be assessed against jointly liable defendants with different financial resources. As the Supreme Court said in affirming, "This procedure, with the allowance of evidence of financial worth of the tortfeasors, will make possible the attainment of the objective and purpose of punitive damages, if a defensible one remains, i.e. punishment of each wrongdoer by exacting from his pocketbook a sum of money which, according to his financial ability, will hurt, but not bankrupt."

Attempts to implement this worthy objective, however, have run into two quagmires, and have produced some muddy decisions. Our appellate judges have wrestled vigorously with the questions of when they should second guess a jury and reduce or overturn a punitive damage award, and what kind of financial evidence is admissible, appropriate and sufficient to support punitive damages.

Three recent decisions have dealt with the financial worth, net worth, financial resources and pecuniary ability (yep, all those terms have been used) question regarding a punitive damage-assessable defendant. In *Tallahassee Democrat, Inc. v. Pogue* (Fla App 1973), 280 So 2d 512, the First District quashed a trial



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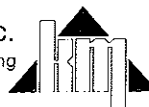
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court order requiring the corporate defendant to produce its income tax returns for two years and its most recent profit and loss statement on the grounds that the requisitioned documents would not necessarily portray a true picture of the defendant's financial worth, and further suggested that only a properly authenticated financial statement would be sufficient. This, however, precipitates further problems. First, most financial statements are prepared by independent CPAs or accountants hired for that purpose, and are usually, at best, six or more months old at time of trial. Second, when they are in fact prepared by CPAs or accountants hired for that purpose, they are subject to the absolute privilege accorded communications and information exchanged between the client and the accountant by F.S. 473,141, which, in effect, puts within the control of the reckless defendant the power to exclude from the jury the very evidence the First District Court says the jury needs to make an award of punitive damages that will be judicially approved.

The Broward-born case of *International Union of Operating Engineers, Local No. 675 v. Lassiter* (Fla App 1974) 295 So 2d 634 made a serious attempt to resolve some of the dangling doubts left by earlier cases, both as to the extent of jury discretion and elucidation of the financial resources proof requirement. And it probably would have helped, were it not for the case of *Aaron v. Rinaldi* (Fla App 1974) 296 So 2d 632, decided about a month after the opinion on rehearing was entered in the *Lassiter* case.

In *Lassiter*, the matter of financial resources proof was covered more helpfully than the jury discretion question. In its initial opinion, the court went along with the debatable "net worth" theory, stating proof of the defendant's net worth was necessary to support a punitive damage award, and further deciding that the plaintiff, who had entered only evidence of income, had failed to meet this requirement. However, on the

petition for rehearing, the court clarified and amplified its prior proof requirement holding. Citing the "financial resources" language of Florida Standard Instruction 6.12, and Black's Law Dictionary definition of "resources" and "net worth," the court backed away a bit by saying that it intended, by stating its "net worth" requirement, to establish net worth as a minimum requirement of proof under the umbrella of "financial resources," and that the latter term gives a trial judge a more liberal standard with which to judge a particular offer of proof, allowing such matters as "income, cash flow, expenses, anticipated income, anticipated diminutions of income, anticipated casualties and, as in the instant case, proofs as to assessments of the membership possibilities. These items, among others of like moment, would be receivable in addition to net worth figures under the scope of financial resources."

The court went on to conclude, in summary, "in the case of punitive damages a claimant, as minimum, must prove the defendant's net worth. And in addition thereto, all such other evidence as he may wish as will reflect the defendant's financial resources may be received in evidence and considered by the jury. If this is not done, and if this is not to be the rule, there can be

no professional basis whereby an award of punitive damages can be made the subject of appellate review."

Well, that certainly states the matter clearly, doesn't it? Or does it? It doesn't address the problems pointed out in our discussion of the *Tallahassee Democrat* case, the currency of the net worth statement and its possible privileged status. And, worst of all, it is apparently totally contradictory to a decision rendered by the Third District in the *Aaron* case, finalized just after the *Lassiter* case.

James D. Camp, Jr.

(Continued next month)

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#### SCHEDULE OF NON-COURTHOUSE HEARINGS — CIRCUIT COURT

Date	Pompano	Hollywood
Dec. 10	Judge Hare	Judge Ferris
Dec. 17	Judge Moe	Judge Fischer

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