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

General Meeting . Wednesday, January 16th

12:00 Noon

THE SHERATON HOTEL

303 North Atlantic Boulevard, Fort Lauderdale, Florida

Lunch: \$5.00

SPEAKER: ARMOND R. CROSS,
Chairman, Florida Parole and Probation Commission

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Young Lawyers' Section Meeting

THURSDAY,
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12:00 Noon

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SPEAKER:
HON. THOMAS E. LEE, JR.
Chief Judge, Eleventh Judicial
Circuit, Dade County

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Lawyer Referral Panel

A new Lawyer Referral Panel will
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Membership dues for the panel are
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District Court of Appeal Fourth District

Effective immediately and until furth-
er notice, cases scheduled for oral argu-
ment on any **MONDAY** which involve
counsel practicing outside of the West
Palm Beach area will not be called
earlier than 11:00 A.M. (unless coun-
sel is present earlier) in order to allow
counsel to avoid Sunday travel.

William C. Owen, Jr.
Chief Judge

Legal Holidays 1974

The following dates are official holi-
days of the Circuit and County Courts
in Broward County for 1974 and both
Circuit and County Courts will be closed
for business on these days:

New Years Day	January 1
Washington's Birthday	February 18
Good Friday	April 12
Memorial Day	May 27
Independence Day	July 4, 5
Labor Day	September 2
Columbus Day	October 14
Veterans Day	November 11
Thanksgiving	November 28, 29
Christmas	December 25

Library News

The Broward County Law Library
is now housed in temporary space on
the ninth floor of Broward County
Courthouse. The hours are from 8:30
a.m. to 5:00 p.m.

Constitutionality of Capital Punishment

By Henry J. Prominski

Florida's new death penalty was re-
cently upheld by the Supreme Court in
the case of *State vs. Dixon*, 283 So 2d 1.
Four cases were consolidated presenting
the issue of constitutionality of the new
Florida Capital Punishment statute. The
court began with a statement that care-
ful reading of the U.S. Supreme Court
decision did not actually abolish Capital
Punishment. The Florida Court gleaned
that the Supreme Court out-lawed the
quality of discretion and the manner in
which it was applied that created the
unconstitutionality. Discretion and judg-
ment are essential in the judiciary pro-
cess; however, if the discretion is capri-
cious and discriminatory in its applica-
tion, that is the test for unconstitution-
ality.

The Court then went on to answer
the question that Capital Punishment is
not *per se* violative of the U.S. or Flor-
ida Constitutions and went through the
steps in the trial system under the re-
cently enacted Capital Punishment law
Exemplifying the statute's constitution-
ality when aggravating circumstances
are present. The Court went on to state

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the terms "heinous," "atrocious," and "cruel are definable and are circumstances for which death is presumed to be the proper sentence unless over-ridden by one of the mitigating circumstances provided in the Florida death statutes.

The two justices, dissenting with Justice Ervin, focus on the fact that several states have provisions for a similar bifurcated trial system, which have been held unconstitutional and criticized by the U.S. Supreme Court. The trial judge and jury still have the discretion to determine the individual aggravating and mitigating circumstances. Florida, there-

fore, does not comply with the National standards set by the Supreme Court of the United States. Justice Boyd held that Florida's current Capital Punishment statutes are inadequate to meet the requirements of the Supreme Court of the United States primarily basing his reasoning on the shift of discretion from the jury to the judge, this still being unconstitutional.

Uniform Probate Code

The following is an outline of the formal report that was submitted to the Uniform Probate Code Study Commission in Jacksonville, Florida, on December 7, 1973. The oral presentation was made by J. Peter Friedrich. The Probate Division Committee is to be congratulated for its concentrated study of the proposed Code.

The Probate Division of the Circuit Court Committee of the Broward County Bar Association has conducted a review of the Proposed uniform probate code (House Bill 997) and we respectfully tender the following comments and proposals for your deliberative consideration.

Succinctly stated, our committee's view is similar to the postures already adopted by the Clearwater Bar Association and the Seminole County Bar Association, which we understand have already been presented to your committee.

We are of the firm opinion that our present probate code has considerable merit and that the underlying statutory structure should be retained. At the same time, we feel that our present probate laws should in certain respects be updated and modernized commensurate with the needs and dictates of our contemporary society. While we concede that certain revisions of our present probate statutes are called for, we feel strongly that we should not supplant an essentially brand-new probate code as envisioned by House Bill 997, and thereby abandon a reservoir of case law built up and refined in Florida over a period of forty years. We further agree that there are various aspects of the proposed uniform probate code that should be considered favorably by your committee. At the same time, it is felt that additional changes in our probate statutes, not now contemplated by the proposed code, should be added to the body of our statutory probate law.

The task of completely re-writing and substituting a whole new body of statutory law is, at best, an horrendous task. Further, to pursue a program of revising and updating the present code is, in itself, no small chore. To do either properly, we feel, requires more time than has been allotted by the legislature to the study commission, if such a program is to have meaningful participation by the probate judges, the legal practitioners, the bankers association and the title company representatives (unless the individuals in those categories are able to take a six months leave of absence to devote their full time and energies toward such a program). To pursue a precipitous program of a wholesale revision of our probate law will simply invite and create confusion and chaos in the body of our probate law and result in statutes which will work more of a detriment to the public, which we are trying to serve, not to mention the courts, the legal profession, the banks and the title companies.

Approaching the topic from an affirmative point of view, we favor the following:

1. An increase in the dollar amount of an estate which would be subject to administration unnecessary proceedings' e.g., \$30,000.00.
2. Availability of dower to the widow

***BETTER ABSTRACTS**

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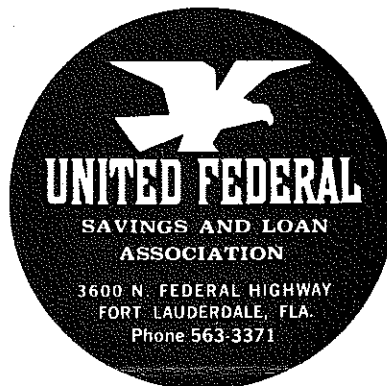
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or widower as it now stands, vis a vis the augmented share.

3. The reduction of time within which dower must be elected, from nine months to seven months. Thus the ambiguity caused by the amendments to the two separate dower statutes by the 1973 legislature needs to be clarified and resolved.

4. The self-proving provision pertaining to wills (incidentally section 731-071 should be revised to conform with the requirements of our present statute of wills pertaining to the formality of the execution of wills in that the acknowledgement and affidavit of the testator and witnesses should recite that the will was signed by the testator in the Presence of the witnesses).

5. The reduction of the number of a notice to creditors and claimants need be published from four times to two times and the reduction of the period within which creditors and claimants must file claims from six months to four months.

6. The viability of a power of sale provision in a will (to overcome the Smith Decision).

7. The use of a simple notice procedure where in personam rights are involved instead of citation as now required.

8. The use of a durable power or attorney.

9. Simplification of statutory language and definitions as used in the UPC but the elimination of nebulous and imprecise terms, e.g. ". . . shown by statements of the testator . . ." as set forth in 732.301 of the proposed code.

10. Permitting legatees to act as a witness to a will without invalidating a will or the bequest to such legatee-witness, provided there is one other disinterested witness to the will.

11. The 120 hour survivorship period in intestate estates.

12. Upon request and direction of the testator in his will, the inventory shall be permitted to remain confidential and not available for examination except upon petition of an interested party for good cause shown, e.g., by creditor, by beneficiary or title company. This provision, we feel would tend to discourage promoters, would-be salesmen, and others from harrasing widows and family members and also would eliminate the inquisitive review of probate files for no good reason.

13. The requirement of notice of probate to heirs in a testate estate, and if no contest of the will is instituted within four months from the giving of said notice, then the will would stand. This type of provision would stand in lieu of our present formal notice of probate (732.28).

14. Elimination of the publication of notice to interested parties (except where the address of the interested party is unknown and then only two times for two consecutive weeks) and in lieu thereof, require the forwarding of notice pertaining to the matter at hand to interested parties. For example, see section 734.041 of our present probate statutes.

15. The requirement of filing a death certificate with the petition for probate or within thirty days after the filing of the petition for probate.

We are not here presenting a detailed enumeration of the myriad of objections we have to the proposed uniform probate code (the term "uniform" being used loosely since in fact even if House Bill 997 were adopted, it would not be uniform with the laws of any other state) because many of these objections have already been presented on more than one occasion to your committee by several interested groups. We prefer not to unduly burden you with a repetition of these objections.

To reiterate our position, we favor maintaining our present probate statutes

with appropriate amendments giving due consideration to the favorable aspects of the proposed uniform probate code and other suggested revisions as herein presented. We therefore stand in opposition to the adoption of the uniform probate code, per se, as presented in House Bill 997.

Probate Division of the Circuit Court Committee of the Broward County Bar Association.

James D. Camp, Jr., Chairman
J. Peter Friedrich, Co-Chairman

Welcome, New Members

WILLIAM E. ASHCRAFT a native of Illinois, received his undergraduate degree from Anderson College and his law degree from the University of Florida. He is associated with the firm of Spear, Deuschle & Capp, in Fort Lauderdale, Florida.

JAMES J. BELCHER a native of Louisiana, received his undergraduate degree from Georgia Institute of Tech. and his law degree from the University of Florida Law School. He is associated with the firm of Kelley, Tompkins, Frazier & Kelley, in Fort Lauderdale, Florida.

ALAN JAY BRAVERMAN a native of Pennsylvania, received his undergraduate degree from the University of Maryland and his law degree at the University of Miami. He is associated with the firm of Miller & Squire, in Fort Lauderdale, Florida.

IRWIN COHEN, a native of New York, received his undergraduate degree from Brooklyn College and his law degree from the University of Toledo. He is a member of the firm of Cohen and Cohen, P.A. in Hallandale, Florida.

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JOSEPH DeGANCE a native of New York, received his undergraduate and law degree from the University of Florida. He is associated with Philip Jansen, in Fort Lauderdale, Florida.

JAY L. FABRIKANT, a native of New York, received his undergraduate degree from Brandeis University and his law degree from the University of Miami. He is associated with Stanley L. Seligman in Hollywood, Florida.

PENN DUNLOP FARRINGTON, a native of Florida, received his undergraduate and law degree from the University of Miami. He is associated with Cecil T. Farrington in Fort Lauderdale, Florida.

WILLIAM THOMAS GRIMM a native of Pennsylvania, received his undergraduate degree from Lafayette College and his law degree from the University of Virginia. He is associated with the Investment Corporation of Florida.

WILLIAM GROSSBARD received his undergraduate degree from Fordham University and his law degree from the University of Miami. He is associated with the firm of Grossbard & Rosenberg, in Davie, Florida

HARRY J. HAMILTON, JR. a native of New Jersey, received his undergraduate degree from St. Peter's College and his law degree from the University of Miami. He is associated with the firm of Hamilton, Tatum & Heston, in Fort Lauderdale, Florida.

FRANK JOSEPH HESTON a native of Pennsylvania, received his undergraduate degree from Spring Hill College and his law degree from the University of Miami. He is associated with the firm of Hamilton, Tatum & Heston, in Fort Lauderdale, Florida.

STEVEN LEE JOSIAS a native of New York, received his undergraduate degree from The Citadel and his law degree from Notre Dame. He is associated with the firm of Zeiher &

Brinkley, in Fort Lauderdale, Florida.

DAVID J. KAUFMAN a native of New York, received his undergraduate degree from City College of New York and his law degree from George Washington University. He practices alone in Coral Springs, Florida.

JAMES WELDON KNIGHT, JR., a native of Texas, received his undergraduate degree from Auburn University and his law degree from Samford University. He is associated with the firm of Carey, Dwyer, Austin, Cole & Selwood, P.A. in Fort Lauderdale, Florida.

HARVEY S. LANGBERG a native of Pennsylvania, received his undergraduate degree from Penn State University and his law degree from the University of Miami. He is associated with the firm of Ruden, Barnett, McCloskey, in Fort Lauderdale, Florida.

WILLIAM B. LeCATES a native of Pennsylvania, received his undergraduate degree from Bucknell University and his law degree from Dickinson School of Law. He is associated with the firm of Carlisle & Tworoger, in Fort Lauderdale, Florida.

MARTIN I. LIPNACK a native of New York, received his undergraduate degree from Brooklyn College and his law degree from Brooklyn Law School. He is associated with the American Title Insurance Co. in Miami, Florida.

ROBERT STALEY McCAIN a native of Illinois, received his undergraduate degree from Wabash College and his law degree from Indiana University. He is working in the Public Defender's Office, in Fort Lauderdale, Florida.

HOWARD R. MESSING, a native of New York, received his undergraduate and law degrees from Syracuse University. He is an assistant Public Defender.

GEORGE F. MOULD a native of New York, received his undergraduate degree from Syracuse University and his law degree from Syracuse University. He is associated with the firm of Fleming, O'Bryan & Fleming, in Fort Lauderdale, Florida.

ROBERT E. MURDOCH a native of California, received his undergraduate degree from Duke University and his law degree from the University of Florida. He is associated with the firm of Fleming, O'Bryan & Fleming, in Fort Lauderdale, Florida.

HARRY S. RELEIGH, JR. a native of Massachusetts, received his undergraduate degree from Oklahoma University and his law degree from Notre Dame Law School. He is associated with the firm of McCune, Hiaasen, Crum, Ferris & Gardner, in Fort Lauderdale, Florida.

RAYMOND B. RAY a native of Florida, received his undergraduate degree from the University of South Florida and his law degree from the University of Florida. He is associated with the firm of Ferrero, Middlebrooks & Houston, in Fort Lauderdale, Florida.

Congratulations

The Program Committee would like to thank the firm of Fleming, O'Bryan and Fleming for its excellent representation at the December meeting. There were twenty eight representatives from the firm. Congratulations.

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