# The BROWARD BARRISTER

OCTOBER, 1975 Volume 4

Number 10

PUBLISHED BY THE BROWARD COUNTY BAR ASSOCIATION

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

#### GENERAL MEETING - THURSDAY, OCTOBER 16, 1975

- 12:00 Noon -

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# BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

Wednesday, November 5, 1975

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 SECTION MEETING

Thursday, October 23, 1975

12:00 Noon

#### THE PLAYERS CLUB

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Speaker: Russell Troutman

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## OPERATION: UPDATE/TRANSITION

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Wednesday, October 15, 1975

4:30 P.M.

#### CONSTITUTIONAL ISSUES

Speakers: Bruce Rogow Professor, Nova Center For the Study of Law

Ray Sandstrom, Esquire

Room 250 — Broward County Courthouse

November 19, 1975-4:30 P.M.

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bership the additional space is needed. So please make your contribution today.

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Judge Warren	Judge Franza
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Judge Minnet	Judge Booher
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Judge Richardson	Judge Fischer
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#### PRESIDENT'S MESSAGE

Basic to the development of any outstanding lawyer as well as to the development of any outstanding bar association is a willingness to unselfishly exert one's time and effort toward increasing that intangible we call professionalism. Certainly all of us individually recognize that we are willing to make the sacrifices necessary to further that goal. But what, we may ask, about the other members of our association. Let me assure you that it has been my experience so far that your fellow lawyers in Broward County are without par in their willingness to spend their time and resources toward the improvement of our practice and our profession. It takes one only a short time in this position to be almost overwhelmed by the recognition of the immense amount of time and effort being gratuitously spent by members of our association, particularly through our committees, in an attempt to make things a little better for us and thereby benefit the public whom we serve.

You should be proud of the members whom you elected to serve on the Executive Committee of our association because each one of them has been active and interested in methods to bring about the continued improvement of our practice and our association. Our committee chairmen have also been outstanding in their efforts to arrange for and hold committee meetings wherein committee goals have been established and written reports have been made to document their efforts.

We will not begin to concentrate on taking action to implement the programs being contemplated by our committees. These times are presenting many challenges to us in Broward County, and if we as members of the Broward County Bar Association do not begin programs to meet them, no one else will. You, as individual members of our association, hold the key to the future of our profession. If you have suggestions or ideas to improve practices which are not satisfactory to you let me know what they are.

GEORGE A. PATTERSON President 

Highlights of Board of

**Governors Meeting** 

#### Low Income Assistance Needed

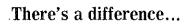
It becomes increasingly more evident everyday that whether we like it or not we need a panel of over 100 lawvers. each of whom would be willing to handle a "no-asset" uncontested dissolution of marriage proceeding for a fee not to exceed \$125.00. These would be referred through the Bar Association office, and would be available only to low income individuals with little or no assets. Before the Bar Association spends the time to establish a workable plan we need to have a list of the lawyers who would be willing to participate.

Please write the Bar Association office immediately if you are willing to be a member of such a panel.

#### September 11-13, Gainesville, Florida The recent meeting of the Board of Governors began at 1:30 Thursday afternoon and adjourned at 3:45 p.m. on Sat-

urday. A lengthy grievance agenda occupied most of the first afternoon and the majority of Friday afternoon. Janet Reno, Assistant State Attorney

from Dade County, appeared to discuss the Grand Jury report of ambulance chasing in that area. She indicated that at least seventeen lawyers were involved in "hardcore" ambulance chasing activities. The Board voted to send a full

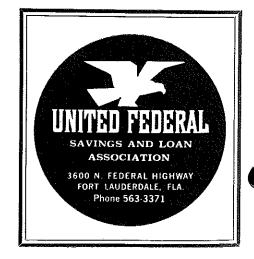


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time investigater to Dade County and to form a joint medical-legal insurance task force to deal with this pressing problem.

A number of committee reports were presented: the Expansion of Legal Profession deferred its final report until a recent survey of the legal profession in Florida has been tabulated; The Law Student Section Study Committee recommended that the Bar change the status of the Section to that of a standing committee of the Bar. A more complete report will be made in Duck Kev at the October 30-November 1 meeting. The Budget Committee recommended a small amendment to complete the required pension plan contributions for the staff employees for the Bar. The Tax Section announced its contribution of \$3,000 to the Bar Center. The Group Insurance Committee reported approximately 7500 malpractice insurance policies are in force in Florida, and approximately 1800 attorneys have taken advantage of major medical insurance through the Bar's group insurance plan. Regretably, a 46% rate increase may be expected in the malpractice rates due to loss experiences of the past several years. When adopted, these rates should prevail for two years or until 1978. The Insurance Committee also reported success in establishing a tax deductible retirement program with individual retirement accounts tied to flexible premium retirement annuities to be soon available for members of the Florida Bar.

The Integration Rule and By-Law

Committee reported that the Supreme Court approved the publication of official notices in the Florida Bar News, Approval of credit cards, para-legals, changing the dues year to the fiscal year, and the Bar's petition requesting review of the Supreme Court's changes in the Designation Plan are still before the Court awaiting action in September or October.

The Integration Rule and By-Law Committee met on short notice, without an opportunity for our Broward Bar members to present their views on reapportionment of the Board of Governors, as announced by the President at the annuel meeting. Due to the unfavorable committee view of this subject, President Farrior has agreed to agenda the item of reapportionment at the October 30-November 1 meeting at Duck Key, as an early item. It is believed that a delegation from the Broward Bar will appear to present a plan for reapportionment.

Chairman Earl Hadlow, of the Designation Coordination Committee, presented a plan to reorganize the committee for the forthcoming year. The Board approved his recommendation that a separate Specialization Committee be formed to continue to study the need for certification in designated areas of practice.

Tom Wolfe, the Continuing Legal Education Chairman, reported on the gear-up for Designation Education. Other sources of educational study will be approved, such as special law school courses, practicing law institute courses, and the like. The committee is attempt-

ing to define the "private study" provisions added by the Supreme Court in their amendments to the Designation Plan.

The Travel Committee reported four trips for 1976: a ski trip to Switzerland leaving January 31, a South Pactific trip leaving March 1, and an eight day Alaska trip leaving July 17, and a Far Eastern trip leaving October 21.

The Board also voted to present amendments to the Integration Rule to the Supreme Court which would limit contingent fees to one-third of the recovery if settled before suit; forty per cent of the recovery if settled after suit or at trial; forty-five percent of the recovery if appealed or postjudgment relief required, with a twenty-five percent cap on any recovery in excess of \$500, 000 at any stage in the proceedings. Also approved were recommendations for written contingent fee contracts, closing statements on contingent fee cases, and written participation agreements on any forwarding fees which may only be paid with the written consent of the client.

Bill Sherman, Chairman of the Legislation Committee, will hold a hearing on requests for Bar sponsorship of legislation at Pier 66, October 10 at 9:00 a.m. Any interested members should attend.

Don Norman

#### \* \* \* \*

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# \* \* \* \* \* \* SENIOR BAR MEMBER ROBERT J. DAVIS

by Mary Copeland

When Bob Davis got out of the Ohio

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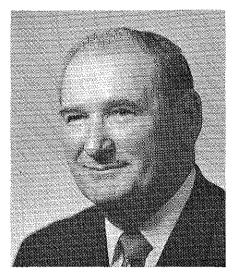
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State University Law School in 1925, the job opportunities didn't look as good as he thought they should around Columbus.

"I met a man who'd just come back from Florida," Davis, now 75 and retired explained. "He said all you had to do was go to Miami, stand on a street corner and say you were a lawyer and you'd get two or three abstracts handed to you."

He went to Miami and got a job running errands for Jesse MacBeth's law firm. He was admitted to the Florida Bar in 1926 and was sent to Dania to represent MacBeth's real estate clients.

He worked for MacBeth for two years but a killer hurricane had turned Florida's land boom to a bust and the nation's financial depression had gotten off to an early start in South Florida.

"I went out on my own and got any kind of work I could find," Davis said. "There were a lot of foreclosures, divorces, mostly equity work. I worked as a sole practitioner 'til 1946 when I took in Dick Kirsch. I though he was just about the brightest young man around at that time."

Jack Spellacy later joined Davis and Kirsch and continued a partnership un-

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til 1963. Davis returned to a one-man practice until 1969, when he retired.

"I think I filed more divorce suits than any other lawyer in the county," he remembered of the thirties and forties when Florida's 90-day residency requirement put the state in competition with Nevada for the divorce trade.

During this time he also won the distinction of being one of the first Republicans ever elected in Broward. In 1928 during a national Republican victory he tecame prosecuting attorney for misdemeanors. Other Republicans were elected to the school board that year, he says.

"I won because the other fellow (John Kennedy) made everybody mad," Davis said, taking no credit for a particular political strategy. "He figured I didn't have a chance, being a Republican, and normally that would have been good figuring."

He was defeated in a 1932 re-election bid by Gary Miller. He used his prosecu-



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tion experience to expand his practice to include criminal law. Bootleggers and moonshiners were enriching South Florida's criminal law practice at the time.

He can still recall one of the grimmer days in Fort Lauderdale's history which most natives claim never to have known about, even though Time Magazine has written about it in recent years. A Black man was lynched on the site of what is now Davie Boulevard for having allegedly raped a white woman.

"I heard there was going to be a lynching and I made myself very prominent in town, sitting on a bench on Andrews Avenue. I didn't know where or when or who and I didn't want to know."

He's noted many changes in the local legal profession, in prosecution and private practice.

"When I was prosecutor gambling and liquor were the big issues," he said. "But I had no investigator and I could not prosecute without somebody to testify. The patrons weren't going to testify and we had very few complaints.

"When I came here we didn't have any local rules of procedure. We had a little thin book on chancery practice. By the time I learned that they'd changed around to another set of rules, they came out with federal rules and then they were amended. I think our rules are pretty well simplified now."

Davis, who has become a world traveler in retirement, never had an office code of behavior that some other senior bar members have valued.

"I never had a code of behavior," he explained, "because I was afraid I'd break all the rules myself."

# \* \* \* \* \* \* COURT DECISIONS

Henry J. Prominski

A rather disturbing opinion came out of our Fourth District Court of Appeals: The case of Trachsel vs. The City of Tamarac, 311 So. 2nd 137. Here the owners of land in Tamarac sought to have a city zoning ordinance declared unconstitutional. The ordinance rezoned the parcel of land from C-1 to B-1. The rezoning was done at the initiative of the city of Tamarac. There apparently was no change in circumstance in the neighborhood and the only reason for the rezoning was presumably a master plan. The Appellate Court found because the magic words "health, safety, and welfare" were used as the basis for rezoning that this was proper. This conclusion of a reasonable relation to the health, safety, and welfare was found by the

Appellate Court to be within the "fairly debatable" theory on rezoning.

This decision gives carte blanche authority to a municipality to take away valuable property rights under the guise of a master plan whether or not the specific property affected is reasonably related to public health, safety, and welfare. A master rezoning plan under most conditions would presumably have some relation to the health, safety, and welfare of somebody somewhere in the city. It is shocking to find that this broad brush rezoning can take away a person's property with or without a specific relationship to the immediate neighborhood. Surely there must be some concrete attachments to the particular property such as the well-established criteria that the neighborhood has changed so that the old zoning no longer is applicable, that the health, safety or welfare is directly affected by the parcel of land such as a rezoning from high-density traffic use in an area where there are schools or things of that nature. To rezone because it looks pretty on a master plan without due regard to the value of the property, the owners' use of the property, the zoning at the time the property was purchased, and property patterns in the neighborhood would seem to call for a clearer definition of "fairly debatable."

It was refreshing to see that Judge Walden dissented. In his dissent, Judge Walden pointed out that the physical facts of the property and the zoning just do not warrant a change and that the existing conditions should be given more priority.

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The full circle in Mary Carter agreements has now taken place. Imperial Elevator Co., Inc. vs. Hannah Cohen, reported in 311 So. 2nd 732, held that the jury is entitled to be advised of Mary Carter agreement. The Court reversed and remanded that the Mary Carter agreement be introduced into evidence and presented to the jury for their deliberation. Here, there was a Mary Carter agreement on the eve of trial subsequent to all discovery and the Court held that the fact that it was entered into so late and not available to the defendant for discovery required a new trial to let the defendant put the Mary Carter case before the jury. The Court seemed to say that not only would the defendant have the opportunity to put the Mary Carter agreement into evidence, but that it must. The Mary Carter agreement relates to credibility and demeanor of witnesses and their interest in the outcome of the case as well as the conduct of counsel during the course of the trial.

It would appear that this is essential to be placed before the jury. The Court reasoned from Ward vs. Ochoa, 284 So. 2nd 385, which held that not only are Mary Carter agreements admissible but that it will be reversed if the court rules it inadmissible. This appears to be a logical conclusion that the Mary Carter agreement should be known to the jury, for how are they to properly evaluate the witnesses and the liability of the parties without all the facts in the case?

# \* \* \* \* \* Welcome, New Members

JAMES D. ACOSTA, a native of Crestview, Florida, received his undergraduate and law degrees from the University of Florida. He is associated with DiGiulian, Spellacy, Bernstein, Lyons & Sanders, Ft. Lauderdale, Fla.

G. WILLIAM ALLEN, JR., a native of Cleveland, Ohio, received his undergraduate degree from Washington & Lee University and his law degree from Ohio Northern University. He is associated with Walton, Lantaff, Schroeder, Carson & Wahl, Fort Lauderdale, Florida.

THOMAS JOSEPH ANSBRO, JR., a native of Cleveland, Ohio, received his undergraduate degree from Loyola University of Chicago and his law degree from the University of Florida. He practices alone in Fort Lauderdale, Florida.

PAUL LAWRENCE BACKMAN, a native of Jamaica, New York, received his undergraduate degree from Long Island University and his law degree from The John Marshall Law School. He is associated with Sheldon H. Hoffman, Hollywood, Florida.

STEPHEN WOLF BAZINSKY, a native of Newark, New Jersey, received his undergraduate degree from Miami-Dade Jr. College North and his law degree from the University of Miami. He is associated with Walton, Lantaff, Schroeder, Carson & Wahl, Fort Lauderdale, Florida.

WILLIAM SAMUEL BLATT, a native of New York, N.Y., received his undergraduate degree from C.W. Post College and his law degree from Brooklyn Law School. He is associated with Ferrero, Middlebrooks & Houston, Ft. Lauderdale, Florida

MARVIN T. BORNSTEIN, a native of Indianapolis, Indiana, received his undergraduate and law degrees from Indiana University. He is associated with McMillan, Unruh & Koehner, CPA, Fort Lauderdale, Florida.

- THOMAS E. BRANDT, a native of Chicago, Ill., received his undergraduate degree from Florida Atlantic University and his law degree from the University of Miami. He is associated with Tripp and Niles, Fort Lauderdale, Florida.
- JOHN WILLIAM CARRY, a native of Orlando, Florida, received his undergraduate degree from Wabash University and his law degree from the University of Cincinnati. He is associated with John A. W. Camillo and John F. Howard, Fort Lauderdale, Florida.
- RICHARD D. COMERFORD, a native of Newark, N.J., received his undergraduate degree from Georgetown University and his law degree from Georgetown Law Center. He is associated With Robert J. Fogan, P.A., Fort Lauderdale, Florida.
- ROBERT J. COMPTON, a native of Camden, New Jersey, received his undergraduate degree from Utah State University and his law degree from Memphis State University. He is a member of the firm of Pace and Compton, Fort Lauderdale, Florida.
- HOWARD L. CONKLIN, a native of New York, N.Y., received his undergraduate degree from Syracuse University and his law degree from Fordham University. He is associated with Tripp and Niles, Fort Lauderdale, Florida.
- DONALD K. CORBIN, a native of Greenville, Ohio, received his undergraduate and law degrees from Indiana University. He is associated with English, McCaughan & O'Bryan, Fort Lauderdale, Florida.
- JONATHAN J. DAVIS, a native of Quantico, Virginia, received his undergraduate degree from the University of Pennsylvania and his law degree from Hastings College. He is associated with Walton, Lantaff, Schroeder, Carson & Wahl, Fort Lauderdale, Florida.
- SCOTT A. DiSALVO, a native of Reading, Pa., received his undergraduate degree from Kutztown State College and his law degree from the University of Missouri. He is associated with Carey, Dwyer, Austin, Cole & Selwood, P.A., Fort Lauderdale, Florida.
- FRANCIS M. FOLEY, a native of Holyoke, Mass., received his undergraduate degree from Holy Cross College and his law degree from Boston University. He is associated with Brow-

- ard Co. Title Co. Pompano Beach, Fla.
- GARY STEVEN GOSTEL, a native of Brooklyn, N.Y., received his undergraduate and law degrees from the University of Miami. He is associated with Friedman, Britton & Stettin, Ft. Lauderdale, Florida.
- MARTIN L. HOFFMAN, a native of Germany, received his undergraduate degree from City College of New York and his law degree from St. John's University. He is a member of the firm of Hoffman & Kupfer, Fort Lauderdale, Florida.
- DAVID ALAN HOINES, a native of St. Paul, Minnesota, received his undergraduate degree from San Jose University and his law degree from Boston University. Hs is associated with George F. Hess, II, Fort Lauderdale, Florida.
- LAWRENCE M. KUPFER, a native of Brooklyn, N.Y., received his undergraduate and law degrees from Florida State University. He is a member of the firm of Hoffman & Kupfer, Ft. Lauderdale, Florida.
- HENRY LAFFER, a native of Jersey City, N.J., received his undergraduate degree from Rutgers College and his law degre efrom the University of Florida. He practices alone in Fort Lauderdale, Florida.
- STEPHEN JAMES McDONALD, a native of Toronto, Ontario, received his undergraduate and law degrees from the University of Miami. He is associated with Bernhard Garfinkel, P.A., Hollywood, Florida.
- A. MATTHEW MILLER, a native of New York, N.Y., received his undergraduate degree from the University of Miami and his law degree from New York Law School. He is a member of the firm of Miller and Schwartz, P.A., Hollywood, Florida.
- PATRICK C. RASTATTER, a native of Erie,, Pa., received his undergraduate and law degrees from the University of Florida. He is a member of the firm of Glass, Krathen & Rastatter, Fort Lauderdale, Florida.
- SHELDON MARK SCHAPIRO, a native of Chicago, Ill., received his undergraduate and law degrees from the University of Florida. He is a member of the firm of Glass, Krathen & Rastetter, Fort Lauderdale, Fla.

- MARK S. SCHECTER, a native of Brooklyn, N.Y., received his undergraduate degree from the U.S. Merchant Marine Academy and his law degree from Cumberland School of Law at Samford University. He is associated with Kirsch & Mills, P.A., Fort Lauderdale, Florida.
- ALLAN H. SHEPTOW, a native of Erie, Pa., received his undergraduate degree from Princeton University and his law degree from the University of Pennsylvania. He is associated with Ruden, Barnett, McClosky, Schuster, & Schmerer, P.A., Fort Lauderdale, Florida.
- R. JOEL WEISS, a native of Philadelphia, Pa., received his undergraduate degree from Temple University and his law degree from the University of Miami. He is associated with Bernhard Garfinkel, Hollywood, Florida.
- DENNIS M. USDAN, a native of New York, N.Y., received his undergraduate degree from the University of Vermont and his law degree from Boston University. He is associated with Gerald T. Nolan, Fort Lauderdale, Fla.

#### 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.

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#### 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"