

# The BROWARD BARRISTER

MARCH, 1976

Volume 5

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

## GENERAL MEETING, THURSDAY, MARCH 18, 1976-12:00 NOON

### THE GOVERNORS' CLUB HOTEL

236 S.E. 1st Avenue  
Fort Lauderdale, Florida

— Buffet: \$3.75 —

PROGRAM: The Goldfarb Decision and Anti-Trust Implications,  
Lawyer Advertising and Competitive Bidding  
by Michael Franck, Executive Director, State Bar of Michigan

With the Designation Plan came limited advertising of specialties. This will affect all lawyers in Florida. Mr. Franck is well versed on this topic and was one of the participants in the ABA film "Lawyer Advertising: A Report to the Bars". He is also Chairman of the Section of Bar Activities for the ABA and was the chairman of the Special Committee on Resolutions of Fee Disputes.

You are urged to attend this meeting.

PLEASE USE THE ENCLOSED CARD TO MAKE RESERVATIONS.

### YOUNG LAWYERS SECTION MEETING

THURSDAY, MARCH 25, 1976

12:00 Noon

THE GOVERNORS' CLUB  
236 S.E. First Avenue  
Fort Lauderdale, Florida

Lunch: \$3.75

Program: Comments on the Medical-  
Malpractice Act, 1975

By Sheldon Schlesinger

Please send reservations with check to:

Michael J. McNerney  
2881 E. Oakland Park Boulevard  
Fort Lauderdale, Florida 33306

(Make checks payable to:—  
Young Lawyers Section)

### BROWARD COUNTY TRIAL LAWYERS ASSOCIATION MEETING

WEDNESDAY, APRIL 7, 1976

5:00 p.m. Case Evaluation Committee

6:00 p.m. Workshop: Problem Solving  
Clinic. (Bring your own cases  
and questions)

6:30 p.m. Cash Bar

7:00 p.m. Dinner — \$10.00

THE SHERATON HOTEL  
303 N. Atlantic Blvd. (A1A)  
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Speaker: RAY FERRERO, Esq.

Topic: "Soft Tissue Injuries"

RSVP before March 31.

Please send reservation with check to:

Dale Sanders, Esquire  
Suite 1500, One Financial Plaza  
Fort Lauderdale, Florida 33394  
Phone: 764-4646

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### OPERATION: UPDATE/TRANSITION

Sponsors: BCBA & BCTLA

March 17, 1976-4:30 p.m.

### BANKRUPTCY

Speakers: Samuel Heller  
J. Edward Houston

Room 250, Broward County  
Courthouse

April 21, 1976

Administrative Law  
County & City Appearances

(\$1.00 printing donation requested)

### REMINDERS

LAW DAY, U.S.A. — The Response to  
the request by the Law Day Committee  
for volunteers to give a portion of April  
30 for free legal advice has been most

gratifying. If you have not returned  
your time designation sheet, please do  
so immediately.

LOW COST DISSOLUTION PROGRAM:  
Applications for membership on this  
special panel are still being accepted.

There appears to be a very real need  
for this program and applications for  
the Low Cost Dissolution Program (for  
clients) are being taken. If you have  
questions, please call the Bar Associa-  
tion office, 764-8040.

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

**OFFICERS**

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Ray Ferrero, Jr. .... *President-Elect*  
Lawrence J. Meyer ..... *Secretary*  
Ronald P. Anselmo ..... *Treasurer*  
Norma Howard ..... *Executive Secretary*

**RADIO TALK SHOW**

In the fall of 1976, a radio talk show was begun on radio station WAVS, with Chase Adams and Gaylord Wood as moderators. This was started as a thirty minute program on each Saturday morning. The program proved so popular that the time was extended to an hour.

Each week a specific topic is selected and two attorneys who are experts in these fields are chosen to speak. The show is "live" and the public can call the participants during the program with questions.

This is an excellent show and has been very well received by the public. However, there is a need for more moderators and program participants. If you are willing to help, please call the Bar Association office, 764-8040.

**\*BETTER ABSTRACTS**

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**PRESIDENT'S MESSAGE**

One of the things which strikes one most strongly as the effort to obtain more judges proceeds, is the tremendous degree to which we lawyers have allowed ourselves to be pushed out of the legislative arena. It actually seems that for the most part lawyers have no voice at all in that which is happening in Tallahassee. To recognize that as lawyers, whose basic training and hard-earned experience have completely revolved themselves around the development, passage and execution of proper laws, rules and regulations, we have for the most part let all of our knowledge and experience be ignored within the primary body within our State which makes the laws, is to realize that we must accept certain responsibility for the deficiencies which result in the legislation emanating from that body. Is it therefore not understandable that one professional group in reasonable furtherance of its own self-interest is able to practically write the legislation it wants and be certain of its passage without such legislation's having full regard for the interests of the people who will be affected thereby? Is it not further understandable that one candidate for the highest office in our land has the temerity to consider it a very strong part of his campaign that his campaign advertising pointedly makes it clear that he is not a lawyer? (Note that he does not say he is not a surgeon, not a psychiatrist, not an anesthesiologist, not a butcher, not a fireman. He obviously believes that he may, with complete disdain for our profession, say that he is not a lawyer. Of course he knows he is safe in doing so because under the present circumstances many of the people want to hear that and most of the lawyers will not make the slightest effort to object to that type rhetoric.) This is not to say that the candidate to which I refer is by qualifications or experience any less able than any other candidate to hold our nation's highest office, but the point is made merely to emphasize to you how far we have allowed our noble profession to be rebuked. Another example to consider is that when the sole lawyer legislator in our legislative delegation, Representative George Williamson, called a meeting to consider the extremely important matter of the need for additional judges in our county so that the business of the people in our county courts could be properly done, only four members of the delegation showed up.

While many of you may not agree, it seems that it is about time lawyers working together and in support of each other began to take additional steps to get our views counted. To me that means we must be willing to get into the legislative fray and support good legislation and contest bad legislation. That is not to imply that our association should lobby for any particular legislation because our association cannot do this and maintain our present tax status.

But tax consequences do not prevent us as individuals from getting involved in those very matters which affect us and the people we represent daily. How do we get involved? I suggest that each of us determine that for herself or himself. But do get involved. J. B. Spence of Miami, who spoke to our monthly meeting in February, told us that he writes letters to a certain Miami newspaper almost every week replying to various matters raised editorially and otherwise in that paper. That is one way in which he gets involved. There are other ways. You are able to support issues and candidates through the use of your valuable time and through your contributions. When Justice Alan Sundberg of our Supreme Court spoke to our monthly meeting in September, he related a story that when Benjamin Franklin was asked by a lady what type government had been established by the convention which framed the United States Constitution, Franklin replied, "A republic, madam, if we can keep it." As usual, Franklin's assessment has proven true; and we simply must increase our efforts to help keep it.

George A. Patterson, President



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## ELECTIONS

### The Florida Bar:

You have received your ballots from The Florida Bar for the President-Elect and your representative on the Board of Governors. Please do not forget to vote . . . Deadline — March 15.

Candidates for President-Elect are:  
James E. Cobb  
Russell Troutman

Candidates for your representative on the Board of Governors are:  
Donald H. Norman  
Arthur M. Wolff

### Broward County Bar Association:

The report of the Nominating Committee was presented in the February Bar-rister with rules for submitting other nominations. Deadline for names is — March 15, 1976.

★ ★ ★ 1776-1976 ★ ★ ★

## NOTICE OF MEETING

Institute on International and Comparative Law — June 29-August 7 University of Paris

For information, contact Professor Ralph H. Folsom, School of Law, University of San Diego, Alcalá Park, San Diego, California 92110

American Bar Association Section of Science and Technology  
"Emerging Legal Issues and Impacts of Electronic Data Processing"

May 13 - 14, 1976

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limited to lawyers.

For more information write to ABA National Institute, ABA, 1155 E. 60th Street, Chicago, Illinois 60637.

### \*Federal Rules of Evidence

Sponsored by Nova Univ. Law Center  
April 23, 1976 — (8:15 a.m.-4:45 p.m.)  
Bahia Mar Yachting Center,  
Fort Lauderdale, Florida  
Registration: — \$65

For registration and complete information, contact Albert Powers, Asst. Dean, Nova Law Center, 3301 College Avenue, Fort Lauderdale, Florida 33314.

### DISSOLUTION OF MARRIAGE

Continuing Legal Education, The Florida Bar, March 12, 1976, Holiday Inn, A1A and Las Olas Boulevard, Fort Lauderdale, Florida

### CIVIL TRIAL PRACTICE

Continuing Legal Education, The Florida Bar, April 23, 1976, The Holiday Inn, A1A and Las Olas Boulevard, Fort Lauderdale, Florida.

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## COMMITTEE SELECTION

A list of standing committees of the Broward County Bar Association is enclosed for your convenience in making preference selections for the year beginning June 1, 1976. Your president-elect, Ray Ferrero, Jr. will begin working on committee appointments in April. This is not an easy task, and your cooperation is needed.

Every effort will be made to appoint attorneys to committees of their preference. However, it will be necessary to

appoint attorneys to committees where need exists.

Please return your preference list by April 5, 1976.

★ ★ ★ 1776-1976 ★ ★ ★

## HISTORY COMMITTEE

A special committee has been appointed to compile a history of Broward County Bar Association. It is an impossible task to contact each member individually, but if any of you have information that can be used in this work . . . pictures, letters, law lists, bar activities, anything . . . please let the committee have the use of this information. Not everything can be used, but the more information available, the more accurate and interesting will be the history.

Please send all information to the Bar Association office. If you have questions, please call. Your help is needed.

★ ★ ★ 1776-1976 ★ ★ ★

## COURT DECISIONS

by Henry J. Prominsky

The United States Court of Appeals for the First Circuit certified a question to the Supreme Court of Rhode Island: May a non-negligent Plaintiff Mother who is foreseeable in the vicinity of her minor child but not in danger herself recover damages for mental and emotional harm accompanied by physical symptoms caused by observing the death of her child resulting exclusively from the negligence of the Defendant in driving a truck which struck the child, although she suffered no physical impact?

The Supreme Court of Rhode Island in *D-Ambra vs. United States* 338 Atl. 2nd, 524 held that the mother could maintain an action for negligent infliction of emotional distress despite the fact that she was never endangered of physical injury. Here the mother witnessed her four year old son struck and killed by a

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United States mail truck. Florida has long required impact to the injured party in order to recover for mental pain and anguish. *Kirksey vs. Jernigan* 45 So2nd, 188, has been the landmark case. *Hollie vs. Radcliffe* 200 So2nd 616, allowed a cause of action where there was no physical injury but there was an impact on the vehicle in which the Plaintiff was a passenger. The impact increased a manifestation of a pre-existing physical problem. Florida has further allowed recovery for mental pain unconnected with physical injury where it is reasonable to imply malice or there is a want of care or attention or great indifference to the persons to justify punitive damages.

This was also one of the Kirksey doctrines. In *Johnson vs. Herlong Aviation* 271 So2nd 226, the Second District of Florida held that there was a genuine issue of material fact whether a Plaintiff wife was entitled to damages for mental pain and anguish as a result of a fright during an airplane trip in which the airplane developed severe vibrations. The Court further stated that the impact doctrine with respect to recovery for mental pain and anguish no longer serves useful purposes. The Fourth District Court off Appeal, in 1973, in the case of *Shaughnessy vs. State Farm Fire and Casualty Company* a percurium affirm of the 17th Judicial Circuit which denied the cause of action to a mother who underwent emotional distress, loss of sleep, pain and suffering as a result of her child falling into an unguarded swimming pool. The Fourth District now in *Stewart vs. Gilliam* 271 So2nd 466, in a decision by Judge Mager rejected the impact rule. The Court however, distinguished emotional disturbances without physical effect from physical consequences of mental or emotional disturbances caused by negligence in absence of physical impact. Here the Plaintiffs were owners of property on which, as a result of an intersectional accident in front of the home, the vehicles jumped over the curb, one vehicle coming to rest on an oak tree on the property and

the other vehicle striking the home itself, causing minor damages to the dwelling.

The Plaintiff suffered personal injuries including a shock which resulted in coronary insufficiency resulting in a mild cardiac infraction in the left lateral cerebral lesion. The decision traced the history of recovery without impact and dwelled upon *Dillion vs. Legg*, a California case, which allowed that fear, shock or the like should be reasonably foreseen and if so, when occasioned by the Defendant's negligence, is a proper subject for damages. There is also a zone of impact rule which would further allow anyone within the zone of the physical impact to be reasonably within the realm of those affected by the impact and emotional injuries subject for recovery. There is the rule of the *Restatement of Torts*, Section 436, which would allow recovery for fright or other emotional disturbances if the negligence creates an unreasonable risk of bodily harm applied where the bodily harm to the other results from shock, fright or harm to a member of an immediate family occurring in his presence. Judge Mager also states that for every legal wrong there is a remedy and every litigant is entitled to have his cause submitted to arbitrament of law. It is a little difficult to distinguish this maxim from mental injury or mental problems without physical effect. I assume from the case that we would need a heart attack, an extreme problem with the digestive system or similar happening to recover. Pure mental anguish and suffering loss of sleep, etc., would not be sufficient for recovery. It is also a little difficult to reconcile the Shaughnessy case with the instant decision, although the two decisions are contemporary in time. In any event the Stewart decision was reversed by the Supreme Court of Florida in 291 So2nd 593, the Court concluded with:

The impact rule is a judicial creation just as are many other substantive rules of tort law. Since it was judicially

created we are of the view that if this court should reach the conclusion that such rules was inequitable, impractical or no longer necessary it may be judicially altered or abolished.

The Supreme Court held to task Judge Mager for abolishing the impact rule stating that this was a province of the Supreme Court of Florida and it quashed the decision of the Fourth District reaffirming the impact doctrine for the State of Florida. There were three dissents, Justice McCain, Justice Adkins and Justice Ervin who wrote a dissenting opinion. Justice Ervin, in a long and Scholarly dissent would allow a cause of action where objective physical injury is produced as a result of emotional distress, approximately caused by the Defendant's negligence and conduct regardless of the absence of any physical impact. It is hoped and anticipated that the Supreme Court of Florida will join the growing list of jurisdictions allowing a cause of action for non-impact injuries.



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