The BROWARD BARRISTER

APRIL, 1974
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GENERAL MEETING
WEDNESDAY, APRIL 17, 1974
12:00 NOON

THE SHERATON HOTEL
303 North Atlantic Boulevard
Fort Lauderdale, Florida

Lunch: $5.00

SPEAKER:
DEAN JOSHUA M. MORSE, III
COLLEGE OF LAW—FLORIDA STATE UNIVERSITY

Please Use the Enclosed Card for Reservations

YOUNG LAWYERS SECTION MEETING
SATURDAY, MAY 4, 1974
5:00 P.M.

HARBOR BEACH CLUB
Corner of South Ocean Boulevard and Harbor Beach Parkway

Free for members $5.00 per couple for non-members

Send reservations to:
Mr. Drake Batchelder
Suite 2410, One Financial Plaza
Ft. Lauderdale, Florida 33394

REPORT OF BOARD OF GOVERNORS MEETING

By John S. Neely, Jr.

PROPOSED PROBATE CODE. The Board of Governors of The Florida Bar met in Key West on March 14, 15, and 16. One of the first matters discussed was the proposed Probate Code. For about a year now the so-called Uniform Probate Code has been a much discussed item among Florida lawyers. There is a push going in Florida to adopt this Uniform Probate Code, and that push has been resisted by many lawyers and probate Judges in the State. At the Board meeting we were presented with a copy of the latest version of the proposed Probate Code which has incorporated the best provisions of the Uniform Probate Code and has incorporated the existing Florida law with improvements. Copies of this new proposed Code have been distributed to the Presidents of the Bar Associations in Broward County and to Jim Camp and Pete Friedrich. Copies of this proposed Code are rare and expensive to reproduce, but if any one wishes a copy he should contact me and I shall try to get a copy to him.

ADMINISTRATIVE AIDE FOR THE PRESIDENT. The day-to-day administration of the programs of The Florida Bar has become quite a burden for the Executive Director and his staff and for the President of the Bar. The Board heard a report concerning these increasing difficulties and approved the concept of an administrative aide for the President. This aide hopefully will be a recent law clerk, and the Board hopes to create a position which has the prestige and attractiveness of a position as clerk for a Federal Judge. In addition, the Board approved the concept of a second Assistant Executive Director to administer the programs of the Bar, freeing the first Assistant Executive Director to handle the legal affairs of the Bar—that is, the administration of the Grievance program and the Unauthorized Practice of Law program and other related programs involving the Bar from a legal point of view. This action will also free the Executive Director for more of the administrative burden of the Bar including the increased necessity for legislative contracts, an increasingly important activity of the organized Bar with the great growth of legislation involving the practice of law in recent years.

1974-1975 *BUDGET.* The Board heard the report of next year's Budget Committee (of which I was privileged to be a member) and learned that to continue certain existing important programs of the Bar it would be necessary to use all anticipated dues income plus an accumulated cash reserve—creating a deficit budget. Having attended numerous Budget Committee meetings, I can personally assure you that this budget was not lightly considered; and it was the unanimous recommendation of the Committee that a deficit budget be proposed, coupled with a petition to the Supreme Court for a realistic dues increase. If the dues increase is not approved by the Supreme Court, the Committee will recommend against the deficit budget and will recommend curtailment of numerous important programs.

The Budget Committee report was coupled with a report from the Dues Structure Committee which recommended that the Bar seek an amendment to the Integration Rule and ask the Court to allow a maximum annual dues of $100.00. The Committee also recommended that the military classification in the dues structure be deleted as no longer appropriate. A separate provision for military dues was inaugurated when many lawyers were drafted into the military service. The Committee considered that most lawyers now in military service are officers serving as Judge Advocates with much more adequate compensation than that provided when the Rule was instituted. The Board approved both of

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those recommendations and also decided that no distinction should be made for out-of-state members.

Numerous amendments to the proposed Budget were then made, and to my personal surprise the Board increased the budget rather than reducing it. One notable increase was in the budget provision for the unauthorized practice of law. The Board voted to increase that budget by $12,000.00. The total proposed budget for the year 1974-1975 is $1,790,-875.00. The Board approved a petition asking the Court to allow a dues cap of $100.00 and approved a petition to seek dues of $75.00 per member during the year 1974 and 1975. While this will appear to you to be a dramatic increase in dues, I urge each of you to consider it favorably, particularly in consideration of present inflationary trends, the size of dues to such voluntary associations as The American Bar Association, and the size of other professional expenses such as municipal occupational licenses.

JUDICIAL QUALIFICATIONS COMMISSION. The Board heard a report by Robert Edwards of Miami substituting for Richard Earl, the Chairman of the Judicial Qualifications Commission. Mr. Earl was particularly concerned about the Supreme Court's recent decision in the case involving Judge Turner in Miami. Mr. Earl recommended a Bar sponsored constitutional amendment to strengthen the Judicial Qualifications Commission, and separate it so that it would no longer be an arm of the Supreme Court but would act as an independent body. He also suggested that the Judicial Qualifications Commission be given power to make its own rules and suggested that its record become public after its report is filed (in essence, finding probable cause). President Hadlow appointed a special committee of three Board members to examine the Turner decision and the Earl report and to report back to the Board or its Executive Committee as quickly as possible.

LEGISLATION. In a busy legislative calendar, the Board considered that the most important proposed legislation for the Bar to support is that providing for substantial pay raises for the judiciary. The Bar considered the following scale appropriate:

(1) Supreme Court Justices—$45,000 per year;

(2) District Court Judges—$42,000 per year;

(3) Circuit Court Judges—$40,000 per year;

(4) County Court Judges (in counties of over 40,000 people)—$36,000 per year;

(5) County Court Judges (in counties of less than 40,000 people)—$34,-000 per year.

Board member Leland Stansell of Miami moved to rescind the Board's earlier action supporting merit selection and retention of Judges. His motion lost decisively. A lot of philosophy was exchanged during the debate, but the thoughts I considered most important were that every State which has adopted a merit retention plan has kept it and has wholeheartedly endorsed it and, that the major abuse in the elective process for Judges is money and the need for judicial candidates to go out and raise money for elections. It is my personal view that merit selection and retention offer the greatest hope for the strengthening of the judiciary in Florida. The picking of Judges is an activity which does not belong in the adversary elective process, in my opinion. I urge each of you to give serious thought to merit selection and retention, for they shall be the subject of considerable discussion in the next several years.

LONG RANGE PLANNING RETREAT. Board member Ed Atkins of Miami reported on the recent Florida Bar Long Range Planning Retreat held at the Remuda Ranch near Naples. The Bar invited approximately 130 Judges, lawyers, politicians, public officials, educators, newsmen, and other laymen to participate in the Retreat. The purpose of the Retreat was to examine the role of the legal profession in society, to examine its future and to determine ways that its service can be improved. I was privileged to attend the Retreat as a dis-

cussion leader and found the participation of the group members to be excellent. They were concerned and they were interested. This project has the potential of being one of the more outstanding projects of The Florida Bar in recent years. The final written product should be useful to the Bar for quite some time.

PREPAID GROUP LEGAL SERVICE. Hugh Reams of St. Petersburg reported on his Committee's study concerning prepaid legal services and announced the Committee's conclusion that there is very little demand in Florida at this time for such prepaid legal services. It was the Committee's opinion that plans will be made and approved in the future, and the Reams Committee recommended an amendment to Article XIX of the Integration Rule to make prepaid legal plans feasible. The recommendation was approved by the Board, and a petition will be filed to amend Article XIX.

JUDICIAL POLLS. On the report of James F. Crowder, Jr. of Miami, the Board approved statewide judicial polls and approved the Committee's recommendation that the polls would be confidential in non-election years. In those years, the results of the polls would be given to the Judges involved for their information only with the hope that Judges would be able to correct errors in such things as judicial demeanor, fairness, impartiality, and the like. In election years, the results of the polls would be published in graph form so that electors would be able to see the individual Judge's standing in the eyes of the lawyers who practice before him and would be able to judge his improvement or lack of improvement over a period of years between the elections. (An interesting thought expressed at the Bar Retreat was that if merit retention is to be adopted, The Florida Bar must discharge its obligation to inform the public about the quality of Judges to be retained or removed from office, and the best way to do that is a well-run, well-structured Bar poll.)

MODEL EVIDENCE CODE. The Board approved the suggestion of the Trial Lawyers Section that the Bar oppose legislation to adopt a model Evidence Code. The Code—to the extent it has been published—contains some novel revisions of the law of evidence as we have come to know it. The major problem with the Code is that it has not been disseminated widely enough for the lawyers in the State to read it and react to it.

CREDIT CARDS. President Hadlow announced that he would appoint a special committee to deal with the question of the use of credit cards for the payment of legal services. If the committee favors the use of credit cards, the matter will be submitted to the Integration and By-Laws Committee for a proposed change in the Integration Rule, as the Ethics Committee has always said that the use of credit cards would be unethical under the provisions of the present Integration Rule.

DISCIPLINARY MATTERS. President Hadlow also announced that he would recommend to President - Elect Urban that time be spent next year considering a revision of the disciplinary proceedings in the State of Florida in the following particulars:

(1) Paid Bar counsel, perhaps four in number, to keep disciplinary cases moving, and

(2) The establishment of a separate disciplinary body to remove the review of disciplinary cases from the Board of Governors. California and some other States have followed the procedure of establishing a separate board, and it is President Hadlow's view that the increasing number of disciplinary cases to be reviewed is seriously encroaching on other matters to which the Board needs to give attention.

VIDEO TAPES IN LEGAL PROCEEDINGS

By Henry J. Prominski

The use of video tapes has now progressed to the point where it is becoming feasible for use in legal proceedings. Video tape depositions add a new dimension to the preparation for trial, and particularly in a case where a witness is questioned on his sanity or his predisposition for anger, etc., the deposition proves invaluable. It also shows and allows the jury to view the eyes, mannerisims and other physical aspects of the witness rather than having his deposition just read from a printed page.

There are now local video tape deposition reporters. A recent demonstration of the video tape jury trial was presented to the Broward Bar Association Committee of Judges. Judge Louis Weissing of the Broward Circuit Court is Chairman of a special committee to check into the feasibility and legal aspect of video tape, both at depositions and at jury trials.

In the November, 1973, issue of the International Bar Journal there is a very interesting article dealing with all aspects of video tape testimony. One use of the video tape is to present a physical experiment to the judge and jury which is not readily available. In *Soleman v. Symington* Wayne Corp., 430 Fed. 2d 28, a personal injury action concerned itself with the strict liability of automobile hoist. The video tape showed experiments with the hoist to demonstrate expert testimony as to the physical propensities of the hoist. Obviously it was impossible to bring the automobile hoist into the courtroom.

In Florida, as early as 1969, in the case of *Paramour v. Florida,* 229 So. 2d 855, the Supreme Court of Florida sustained the trial court's ruling admitting in evidence a defendant's confession recorded on video tape. A personal injury action in St. Petersburg in 1972 also admitted the introduction of a doctor's testimony by video tape.

The new American Bar Association Code of Judicial Conduct, Cannon (7) (a) does permit the use of electronic or photographic means for the presentment of evidence for the perpetuation of a record or for other purposes of judicial administration. Also, there is a great future in video tape legal seminars, half-hour closed circuit programs to continually keep the attorney abreast of new developments. The Continuing Legal Education Committee of The Florida Bar Association is experimenting with video tape presentations in their seminars. That is, a live seminar would be

given in one city, say Orlando, and video taped to Palm Beach.

All in all, video techniques present a new exciting avenue of communication for the legal profession, both for judicial administration, for education, for speedy administration and justice. Under proper guidelines they can be of great benefit to the legal profession.

SUPREME COURT DECISIONS

By Henry J. Prominski

In the *State of Florida vs. Egan* (287 So 2D, pg. 1) the Supreme Court of Florida upheld the Common Law offense of nonfeasence. The Broward County Grand Jury returned an indictment for the Common Law offense of nonfeasence and in response to a motion to dismiss for vagueness and ambiguity, the lower court struck down Section 775.01 of The Florida Statute stating it was in violation of the Constitution of the State of Florida in that it was too vague and indefinite to inform a defendant of the charges placed against him. The lower court also went on to state that the need and reason for Common Law Crime has passed and ceased to exist.

Justice Boyd for the Court stated that the Common Law is a part of our Jurisprudence and is in effect in so far as it has not been superseded or abolished by statute. Justice Boyd went on to pose the question what is vague about a statute that clearly states that the Common Law of England in relations to crimes except so far as the same relates to modes and degrees of punishment, shall be in full force in this state where there is no existing provisions by statute on the subject. The Court after examining the definitions of nonfeasence in Common Law stated that whether or not it is easier for the public or a defendant to determine the crime by researching the history of Common Law or the Case Law of the state is not material. There is a history of Common Law, it has not become petrified, it does not stand still.

Attending to the second question the Court stated that it is a strange argument to state that the Common Law should be disregarded because it is not necessary. There is a perfect example in the Instant Case that you need Common Law because there are no statutory provisions for nonfeasence. The Court concluded "We emphasize that this statute can not be used against public officials who exercise their power of office in a way displeasing to certain segments of the public, unless such conduct directly conflicts with written laws prescribing the obligations of the offices which they hold."

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The Supreme Court of Florida in upholding the right of reply statute (F.S. 104.38) moved a giant step forward in protecting the rights of citizens. This case arose when the appellant plaintiff below, who was a candidate for the State Legislature demanded that the Miami Herald publish verbatim his reply to two of their editorials attacking his personal character. The Miami Herald refused and this action was brought ending in judgment for the Miami Herald, with the lower court finding the statute unconstitutional. The Supreme Court reversed *Tornillo vs. Miami Herald Publishing Company* (287 *So. 2D, pg.* 78). Some seventeen persons filed as amicus curiae on behalf of the Publishing Industry. The per curiam opinion stated that the 1st and 14th amendments of the Constitution expresses the concept of Freedom of Expression as seen by our founding fathers and this means a fully informed electorate. The public need to know is most critical during an election campaign. In tracing the history of Freedom of the Press, the Court quoted Justice Learned Hand:

> "However neither exclusively, nor even primarily are the interests of the newspaper industry conclusive; for that industry serves one of the most vital of all general interests; The dissemination of news from as many different sources and with as many different facets and colors as possible. "The court also reiterated Florida Case Law *"In Pennekamp vs. Florida,* 328 *U.S.* 331, 66 *S. Ct.* 1029 *9OL. ED.* 1295 (1946) The Supreme Court of the United States emphasized that the power of the press must be tempered with responsibility when it explained:
> "In plain English, freedom carries with it responsibility even for the press; freedom of the press it not a freedom from responsibility for its exercise."
>
> "But the public function which belongs to the press makes it an obligation of honor to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free press may readily become a powerful instrument of injustice."

The newspaper industry serves one of the most vital of all general interests to disseminate news from as many different facets and colors as possible. The first amendment did not create a priviledged class which through a monopoly of instruments of the newspaper industry would be able to deny the people the Freedom of Expression guaranteed by the 1st amendment.

It is indeed difficult to understand what the objection of the newspaper industry is if they truly want to serve the public and disseminate all news. Unfortunately the news media are no longer reporters of information, but merely commentators, news analysis, editorialists and all kinds of verbage mixed in with the news. A newspaper always invariably takes a stand for or against a public official or a future public official and they control what the public shall read in this regard. The one out of favor with the newspaper has great difficulty in having his views published. This statute that the newspaper seeks to hold constitutional does nothing more than guarantee that both sides are presented to the people.

Justice Boyd dissented primarily on the grounds that there are no standards as to when a newspaper must carry a reply. This appears to be a weak argument in light of the 1st Amendment freedoms which state that both sides must be heard. It seems that any contrary, conflicting views should be published by the newspaper, without any specific guidelines as to when it would apply or in what form.