

# COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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*WHAT'S A COURT REPORTER? It's my dad, Doug Smith demonstrates on the front of his shirt at a recent meeting of Shorthand Reporters in Gadsden. Doug's dad, Paul, is president elect of the State Shorthand Reporters Association.*

## JUDICIAL COLLEGE ORIENTATION, PLANNING CONFERENCE SCHEDULED FOR TUSCALOOSA NOVEMBER 2 & 3

Ernst John Watts, dean of the National Judicial College and Thomas B. Russell, director of the Oregon Judicial College, will be the featured speakers at the Alabama Judicial College's Orientation and Planning Conference November 2-3.

The conference will be the official opening of the Alabama college and is scheduled to be held at Farrah Hall on the University of Alabama campus in Tuscaloosa where the college is headquartered. The conference will feature an update on the progress of the college. Also included will be an orientation on teaching techniques the college may employ, the relationship of Alabama's judicial education to that on the national level and planning sessions for each group to make final recommendations to the college on conferences, seminars, and specialty courses.

Participants at the conference include all presiding circuit judges, the officers and education committees of all judicial associations, all court administrators, members of the Unified Judicial System Steering Committee, members of the Judicial College Advisory Committee, selected staff of the Administrative Office of Courts, faculty and other invited guests.

Chief Justice Torbert, in a personal letter of invitation, urged participation

## JUDICIAL COLLEGE ORIENTATION, PLANNING CONFERENCE SCHEDULED FOR TUSCALOOSA NOVEMBER 2 & 3

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in this conference which will give guidance and direction to the Alabama Judicial College.

Mr. Russell will deliver the conference's keynote address on November 2 and Dean Watts will speak on "The National Perspective of Judicial Education" at a banquet that evening.

Participants on the program in the order they will appear include: Circuit Judge Joseph D. Phelps, acting dean of the Alabama Judicial College; Dr. David Mathews, president, University of Alabama; Chief Justice C. C. Torbert; Mr. Russell; Ms. Thelma Braswell, associate dean; Frank Gregory, Montgomery court administrator; District Judge John Karrh of Tuscaloosa; Albert Copeland, attorney from Montgomery; E. C. Hornsby, attorney from Tallassee; Oakley Melton, attorney from Montgomery; Dean Watts; District Judge William H. Lumpkin, chairman, Judicial College Advisory Committee; Robert Martin, Administrative Office of Courts; Ray Jenkins, editor, The Montgomery Advertiser/Alabama Journal; Dr. Clarke Edwards, news director, WSFA-TV in Montgomery; Steve Stewart, editor, The Monroe Journal, Monroeville.

Program times for November 2 are as follows: Keynote address by Mr. Russell - 2:25 p.m.; a report from the dean of the college by Judge Phelps - 2:50 p.m.; preview of Judicial College by Ms. Braswell - 3:20 p.m.; "Jury Management - More Efficiency for the Money," a discussion by Mr. Gregory - 3:25 p.m.; "Small Claims - A Court for the People," a discussion by Judge Karrh - 3:45 p.m.; "Pre-Trial Conferences - An Aid to Case Disposition," a panel discussion by Judge Phelps, Mr. Copeland, Mr. Hornsby and Mr. Melton: "A National Perspective of Judicial Education", banquet address by Dean Watts - 7:30 p.m.

The program on November 3 is as follows: "Report from the Judicial College Advisory

Committee," by Judge Lumpkin - 8:30 a.m.; "The Courts and the Media," a panel discussion by Mr. Martin, Mr. Jenkins, Dr. Edwards and Mr. Stewart - 8:50 a.m.; meetings of officers and education committees - 10:50 a.m.; closing remarks by Chief Justice Torbert - 12:00 noon.

The chief justice said that a special debt of appreciation is due Dr. Mathews and the University of Alabama for the cooperative effort made in the initial funding and provision of facilities for the college. "We are proud to have the university as a partner in this effort," Chief Justice Torbert said.

### DWI INSTRUCTORS

### SEMINAR SCHEDULED

The Alabama Judicial College, in cooperation with the Municipal Division of the AOC, will host a DWI Instructor's Seminar in Tuscaloosa. The program will begin at 1 p.m. on November 15 and conclude at noon on November 16. Some 100 participants are expected.

The objective of the program will be to explain how best to teach the four sessions of the DWI school. The ADC has authorized two days per diem for district judges who wish to attend. Please call Bob Simpson at the AOC for further information.

### MAGISTRATE SEMINARS

### RATED OUTSTANDING

A series of six regional training seminars for municipal court magistrates has just been completed by the Alabama Judicial College and the Municipal Courts Division of the Administrative Office of Courts.

A total of 178 persons participated in the seminars, including judges, clerks, magistrates and other municipal officials. Those in attendance rated the meetings as outstanding. Some of their comments include: "very helpful; very beneficial; good non-technical treatment; has increased my knowledge of the importance of magistrates; made me more confident and comfortable with my position; plain language; learned duties and limitations of magis-

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## SHORTHAND REPORTERS HOLD TRAINING SESSION AT GADSDEN STATE JR. COLLEGE



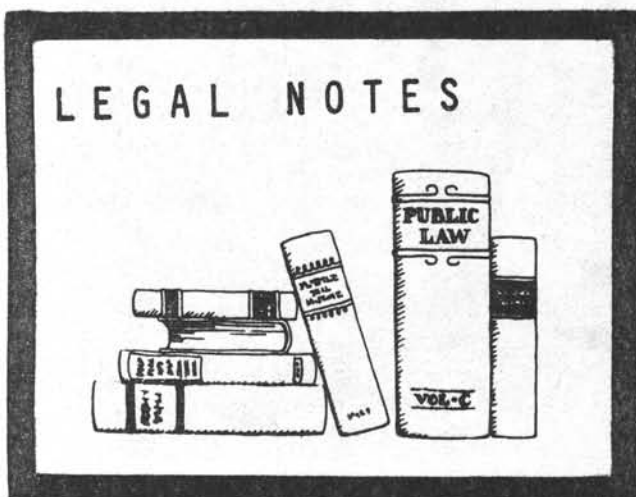
ALABAMA SHORTHAND REPORTERS recently participated in a training session at Gadsden State Junior College. Pictured above are officers of the state association and participants in the conference. From left to right are: Jeannette Crowe of Birmingham, secretary; Dr. Robert C. Miller, director of the School of Court Reporting at Gadsden State Junior College; Virginia Sims of Mobile, vice president; Bill Braun, director of the Northern Tech School of Court Reporting in Minneapolis, Minn.; Mary Ann McNeel, an official court reporter from Dallas, Texas; Paul Smith of Tuscaloosa, president elect; Richard E. Peppey, immediate past president of the National Shorthand Reporters Association, from Milwaukee, Wis.; Dale Tyler of Birmingham, president of the state association; David Miller of Bessemer, treasurer. The seminar at Gadsden State was sponsored by the Alabama Judicial College and the Administrative Office of Courts in cooperation with the State Shorthand Reporters Association. The two-day training session was held September 27-28.

## MAGISTRATE SEMINARS RATED OUTSTANDING

(Continued from Page 2)

trates; helpful to talk with other magistrates regarding their problems and procedures; the conference has been presented very well; the speakers are the best; I have enjoyed this session immensely; would gladly come again."

Those magistrates who were not able to attend are urged to attend future training sessions. Please contact Vicky Surles or Janet Stambaugh at 1-800-392-8077 or 8078 for information.



### Opinions of the Clerk of the Supreme Court

In two recently released opinions, Mr. J. O. Sentell, Clerk of the Supreme Court of Alabama, has addressed questions relating to filings under Rule 7, Rules of Judicial Administration.

In the first opinion, Mr. Sentell determined that the filing of a petition for rule to show cause in a contempt proceeding is a "filing" within the meaning of Rule 7, Rules of Judicial Administration, whether the petition is filed prior to a final decree or pursuant to an interlocutory decree, and that a

docket fee is required to be collected at the time the petition is filed.

In the second opinion, which is set out in its entirety below, Mr. Sentell determined that a circuit clerk may collect a \$35.00 docket fee on an appeal of a civil case from the district court to the circuit court because the filing of the appeal is a "filing" under Rule 7, Rules of Judicial Administration.

\* \* \* \*

### OPINION OF THE CLERK SUPREME COURT OF ALABAMA

"There has been submitted the following inquiry regarding Rule 7, Alabama Rules of Judicial Administration:

'Would you please advise me in writing as to what authority, if any, I have to collect a docketing fee for district court civil cases appealed to circuit civil court.'

"Section 12-2-19(d), Code of Alabama 1975, authorizes the Clerk of the Supreme Court to 'give his opinion in writing on any question of the interpretation of any rule of administration promulgated by the Supreme Court to any other officer or official of the state who shows a need for such opinion and requests the same.'

"It is my opinion that Rule 7, Alabama Rules of Judicial Administration, considered with §§12-19-71, 12-12-70 and 12-12-71, Code of Alabama 1975, authorizes a circuit clerk to collect a docket fee on an appeal of a civil case from the district court to the circuit court. Rule 7, supra, is as follows:

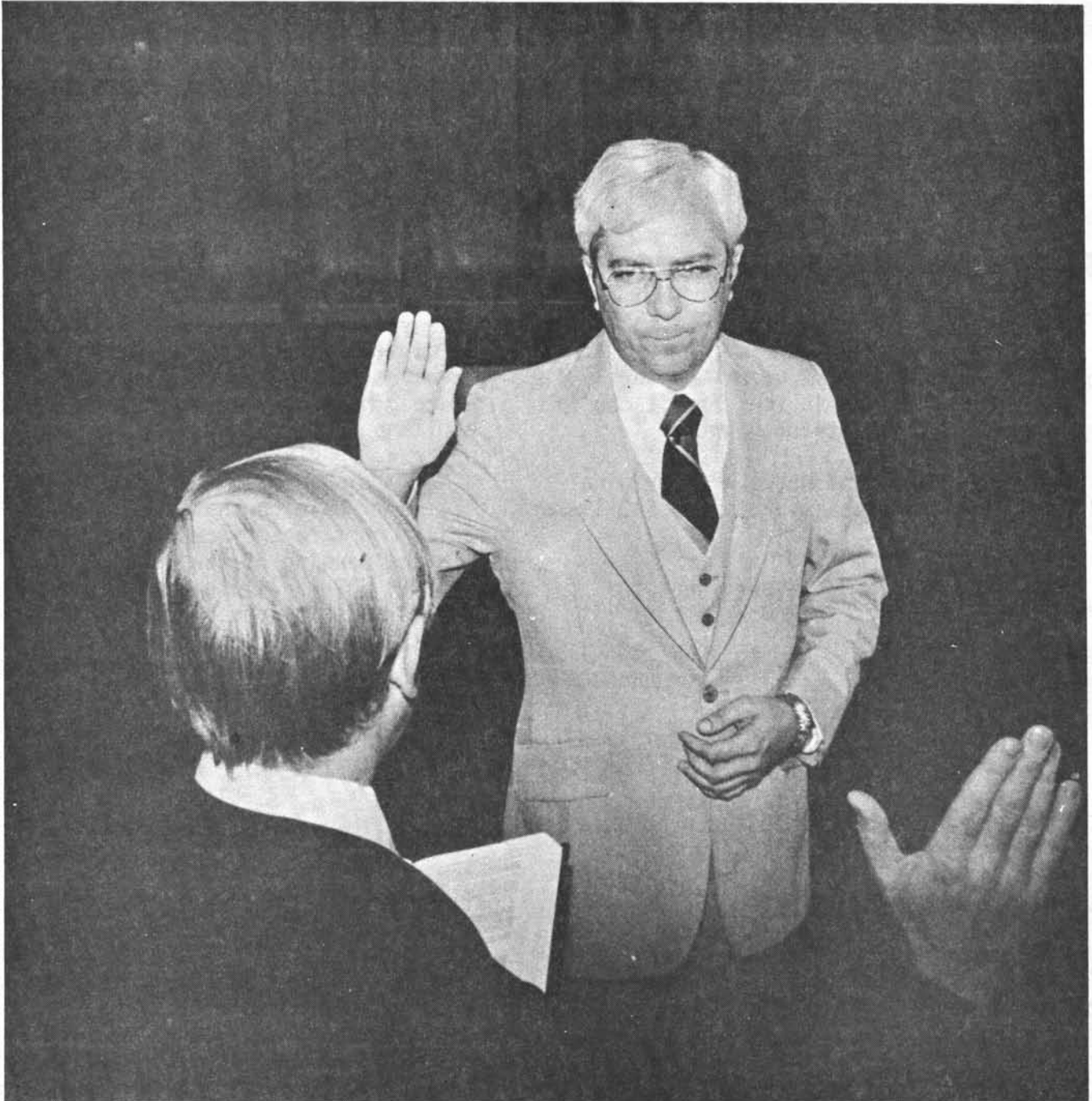
### FEES FOR MISCELLANEOUS FILINGS

'Any filing for which there is no express cost under the consolidated fee structure shall be treated as an original filing for cost purposes.'

"'Consolidated fee structure' in Rule 7 means the fees prescribed in Chapter 19 of Title 12, Code of Alabama 1975. Opinion of the Clerk, No. 11, 356 So.2d 636 (1978)."

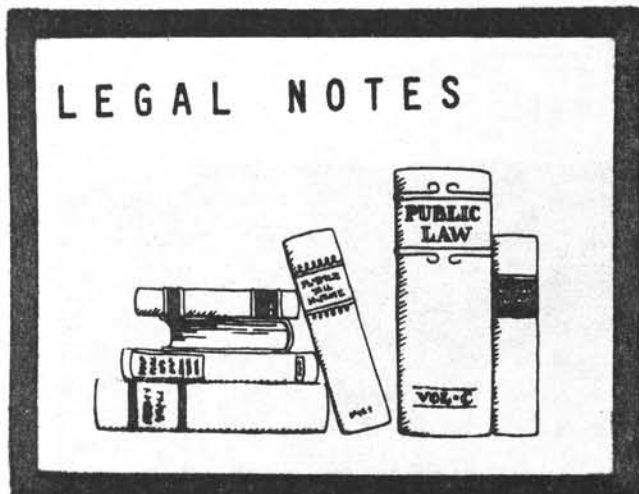
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NEW CIRCUIT JUDGE DANIEL B.  
BANKS TAKES OATH OF OFFICE



PRESIDING CIRCUIT JUDGE John D. Snodgrass of the 23rd Judicial Circuit in Huntsville, gives the oath of office to Circuit Judge Daniel B. Banks, Jr., recently appointed to the circuit bench.





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"There is no express cost under Chapter 19 of Title 12 for filing in the circuit court an appeal from the district court.

"In my opinion, the words, "an original filing for cost purposes," refer to §12-19-71(3).

"The part of §12-19-71 pertinent to this opinion reads as follows:

'The docket fees collected in civil cases shall be:...

(3) Thirty-five dollars for cases filed in circuit court.'

"The right of appeal and the procedure for appeals from the district courts to the circuit courts are stated in §12-12-70, Code of Alabama 1975.

"The prevailing rule in Alabama is that an appeal is the institution of a new statutory proceeding. Ohio Cas. Ins. Co. v. Gantt, 256 Ala. 262, 54 So.2d 595 (1951); Anders Bros. v. Latimer, 198 Ala. 573, 73 So. 925 (1917); Cook v. Adams, 27 Ala. 294 (1855); Mazange v. Slocum & Henderson, 23 Ala. 668 (1853). The rationale of this rule is stated in Anders Bros. v. Latimer, supra, as follows:

'An 'appeal,' in this state, is the mode of commencing a new and independent suit in this court,

the object of which is a revision of the proceedings of the inferior court. It is the mode of initiating a judicial proceeding before a court of competent jurisdiction.'

"Section 12-12-71, Code of Alabama 1975, provides that, with certain exceptions not pertinent to this opinion, 'all appeals from final judgments of the district court shall be to the circuit court for trial de novo.'

"In Rudolph v. State, 286 Ala. 189, 238 So.2d 542 (1970), the Supreme Court of Alabama wrote:

'The very word de novo itself means anew, afresh, trying anew the matters involved in the original hearing as if they had not been heard before and as if no decision had been previously entered.'

"It is my opinion that an appeal from a district court to a circuit court is a case within the meaning of the words, 'cases filed,' in §12-19-71; that a filing of an appeal is a filing under Rule 7, Rules of Judicial Administration; and that the fee for docketing an appeal from the district court to the circuit court is \$35.00."

/s/ J. O. Sentell  
J. O. Sentell  
Clerk of Supreme Court

\* \* \* \*

#### Cost for Service of Process

The question still exists as to whether or not it is proper to charge for service of process when the first attempt at service was unsuccessful. In order that this problem be finally resolved, an official opinion from the Attorney General has been requested. Some time will be needed by the Attorney General's office to reply to our request. Therefore, until the opinion is received, circuit and district clerks should continue dealing with this situation as they are currently doing.

## SCRUGGS' CIVIL, CRIMINAL CHARGES AVAILABLE ON REQUEST

It has come to the attention of the Administrative Office of Courts that some judges do not have Scruggs' Criminal Charges or Scruggs' Civil Charges available for their use. This is a most valuable judicial tool compiled by the Honorable Edward N. Scruggs, presiding judge of the 27th Judicial Circuit, an esteemed jurist. Those judges desiring copies of this publication should advise Mr. Chuck Pinkham, special assistant to the administrative director of courts, Administrative Office of Courts, 817 South Court Street, Montgomery, Alabama 36130, of their need for these documents no later than Wednesday, November 15, 1978. He will arrange to have the necessary copies printed and mailed shortly thereafter.

## CHIEF JUSTICE AUTHORIZES COURTS' HOLIDAY SCHEDULE

Chief Justice Torbert has authorized a holiday schedule for court employees and officials in accordance with the holiday schedule adopted by the Governor for other state employees. The Administrative Office of Courts will observe that schedule as set out below. However, in view of the need for some flexibility in regard to holidays, the Supreme Court has provided, in Rule 77 (c), Alabama Rules of Civil Procedure, and Rule 5, Alabama Rules of Judicial Administration, that the circuit or district courts may establish by local rule that the office of clerk or register shall be open on particular legal holidays. The Administrative Office of Courts suggests that, if there is a need for a variation in the holidays set out below, local officials cooperate in such arrangements. However, should any employee be required to work on the below scheduled holidays, that employee should be given compensatory time at a later date.

Thanksgiving - Thursday and Friday  
November 23 and 24  
Christmas - Thursday and Friday  
December 25 and 26  
New Year's - Monday and Tuesday  
January 1 and 2

## PROPER PROCEDURE TOLD FOR HANDLING UTC APPEALS

There seems to be some confusion as to how uniform traffic tickets (UTC-1) sent to circuit courts on appeal should be handled. The following is the correct procedure:

The lower court sends the white copy of the completed ticket to the circuit court, retaining the yellow copy in the lower court. The space on the ticket for "Findings" and "Orders of the Court" should be completed by the lower court prior to forwarding. After adjudication, the circuit court will complete two copies of the UTC-5 (Supplemental Disposition Form) and attach them to the white copy of the ticket and return them to the lower court. The lower court will then attach a copy of the UTC-5 to each ticket, retaining the yellow and forwarding the white to DPS. At no time will the circuit court make any notation on the ticket itself. The UTC manual will be revised to reflect this procedure by January 1, 1979.

## WHITE COPY OF UTC SHOULD BE SENT TO DPS

The Department of Public Safety (DPS) frequently receives the "Court Record Copy" (yellow copy) of the UTC along with the white DPS copy. We wish to direct court clerks' attention to page 3-2 of the UTC manual, paragraph 4, which is quoted in part: "Copy 1 is the Court Record Copy and will be filed in the Court. Copy 2 (white) when completed will be forwarded to DPS."

The remainder of paragraph 4 requests that the back of the white copy be completed prior to mailing to DPS. This information is important for entry into the automated drivers history files.

## OLD COURT RECORDS PROVIDE A GOLD MINE OF INFORMATION

Court records from days gone by in Alabama are providing a gold mine of information for historical and literary researchers. The work of AOC records management analyst Deborah Hay with the inventory of



## OLD COURT RECORDS PROVIDE A GOLD MINE OF INFORMATION

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the state's court records, which date from 1819, has put her in contact with some interesting people doing many and varied types of research into court records. Deborah relates she has found two men writing books on famous murder trials, one professor interested in cases involving free blacks during reconstruction, and yet another gentleman writing his dissertation on the penitentiary system in the south and using Alabama as his case study.

Research brings the old records to life. "People digging into the past somehow enliven us all, and shed new light on topics long overlooked," Deborah says. She is trying to keep abreast of work done in the courts' material because, as an archivist, it is her duty to help all comers and insure that duplication of research is avoided. Deborah asks that, if court officials have anyone come in to work in records, PLEASE tell her so that she can help in their quest.

## CHIEF JUSTICE APPOINTS PERSONNEL APPEALS BOARD FOR UNIFIED JUDICIAL SYSTEM

Chief Justice C. C. Torbert, Jr. has appointed a five-member board designed to hear personnel appeals within the structure of the judicial personnel system. Circuit Judge Hardie B. Kimbrough, presiding judge of the 1st Judicial Circuit, Grove Hill, has been named chairman of the board and appointed for a three-year term. The chief justice designated retired Circuit Judge Ingram Beasley of Birmingham as vice-chairman. Judge Beasley has been appointed for a one-year term. Other members of the board are: District Judge Aubrey Ford, Jr., judge of the district court of Macon County, for a three-year term; Circuit Court Clerk Julia L. Trant of Dothan, appointed for a two-year term; and Ms. Claudene C. Perran, an employee of the circuit clerk's office in Cherokee County, appointed for a two-year term.

Appointment of this board to hear appeals within the personnel system properly remove judgment of appeals from the administrative director of courts, who must work on a daily basis with both administrators and employees.

The appeal procedure chapter to the personnel manual will be mailed soon. All administrators should ensure that employees have the opportunity to review this appeal procedure.

## STATE TRAFFIC FATALITIES

### DROP OVER FIRST EIGHT MONTHS

Alabama experienced an overall decrease of 14 traffic fatalities during the first eight months of 1978 over the same period in 1977. As shown in the comparison below, all categories of fatalities note decreases except motor vehicle occupants, which shows only a slight increase. The following comparative totals were supplied by the Office of Highway and Traffic Safety (OHTS).

	<u>1977</u>	<u>1978</u>
Pedestrians	81	78
Bicyclists	11	5
Motorcyclists	51	42
Motor Vehicle Occupants	<u>583</u>	<u>587</u>
Total	<u>726</u>	<u>712</u>

"Although we consider this to be a definite trend in the right direction, the municipal division will continue working with traffic courts, OHTS and law enforcement agencies to further reduce traffic fatalities on the state roads," says Angelo Trimble, coordinator of the AOC's municipal court division.

## BIRTHDAY MAY MEAN

### DRIVERS LICENSE RENEWAL

"This year's birthday may mean it's time for you to renew your Alabama driver's license," said Col. M. L. Hilyer, Alabama Department of Public Safety director. "If you are not sure when your driver's license expires, take it out and look at it. If the 'Year of Expiration' block says 1978 and your birthday is coming around again, be sure to renew your license."



NEWS CLIPS FROM THE STATE PRESS

# District Court Is The 'Showcase' Of Justice's System

By SKIP VAUGHN  
Times Staff Writer

Madison County District Court, the talk of the county's court system in recent weeks, is the only contact most people ever have with the county's judicial system.

On the criminal side, the court handles traffic offenses, misdemeanors involving a fine or time in the county jail, and preliminary litigation in felony cases. Civil cases include the Small Claims Court with a simplified procedure allowing individuals to represent themselves, and civil cases involving \$5,000, or less where no jury demand is made.

With Friday's appointment of Huntsville lawyer Hartwell Lutz, who joins Judge Dan McCoy, there are again two Madison County district judges. Lutz fills the vacancy created by the appointment of Judge Daniel Banks to the circuit bench.

"Ninety percent of the people that ever go to court probably would go to a district court in Alabama," said Judge Banks. "It handles the largest volume of cases. Ninety percent of the people get their opinion of what court is like there."

A DISTRICT court was formed in every county in Alabama in January 1977 by the 1975 Judicial Article passed by the Legislature. Before then there were county courts and general sessions courts.

The district court's criminal jurisdiction includes misdemeanor cases involving a fine and punishment in the county jail as opposed to felony cases involving time in a penitentiary. Common cases include assault and battery, destruction of property, issuing a worthless check, public drunkenness, and highway intoxication.

District Court has preliminary jurisdiction in felony cases for the purpose of providing a preliminary hearing — a hearing to determine if there's probable cause to hold a person and bind him over to a grand jury.

Civil jurisdiction includes civil action not exceeding \$5,000 where no jury demand is made. There are no jury trials at the district court level. Small claims court has jurisdiction of claims up to \$500, with a simplified procedure to allow persons to represent themselves.

COURT OFFICIALS say the district court is a court of limited jurisdiction but is just as important as the higher Circuit Court level. Circuit judges hear appeals from the district level.

"I take all courts to be equally important in their function," said Presiding Circuit Judge John David Snodgrass. "Their role is to judicate the rights of individuals. I don't think you can rate courts in terms of importance."

Preliminary hearings in district court have been criticized by some as being unnecessary since someone released in a preliminary hearing may later be indicted by a grand jury.

"You're entitled to a preliminary hearing within 30 days of the date of your arrest," said Judge Banks, who served as district judge for a year and four months. "Without that intermediate process, you might be in jail for five months before you get out. If it saves just one person — keeps one innocent person out of jail — I think the whole procedure is worth it."

DISTRICT Attorney Fred Simpson said preliminary hearings were created because in rural counties the grand jury only meets twice a year so hearings were formed to see if someone should be released or locked up awaiting grand jury action. However in Madison County, Simpson said, the grand jury meets every 30 days so the preliminary hearing is usually for purposes of "discovery" by defense counsel.

"At one time I felt that wasn't proper," Simpson said of lawyers using the hearing to see state's evidence. The district attorney said

he "experimented" about two or three years ago by holding a grand jury every few weeks to offset the preliminary hearing step. He said this reduced the number of hearings but also reduced his assistants' familiarity of their cases.

"Now I think a preliminary hearing is used by both the defense and prosecution. Now its used by us to see if we have a good case or not."

"I'm all for preliminary hearings because it's an opportunity to weed out some of the cases," he said. "It helps the prosecution the same as it does the defense."

SIMPSON also said he feels the district court is just as important as circuit court. He said the district judge doesn't rule on the same evidence, but rules on more cases than the circuit judge because of preliminary hearings and misdemeanors.

Judge McCoy was appointed as a general sessions judge in November 1974. The old general sessions court was established in 1973 and had civil jurisdiction not to exceed \$3,000 and small claims jurisdiction up to \$250.

HUNTSVILLE TIMES

## Appeals courts are caught up

MONTGOMERY, Ala. (AP) — Alabama Chief Justice C.C. Torbert Jr. said Friday that the state's three appellate courts will begin a new term Monday with totally current dockets.

Torbert said the new term will mark the ninth consecutive year that the state Court of Civil Appeals has started with no backlog. Similarly, he said the state Supreme Court will be starting with a current docket for the seventh straight year and the state Court of Criminal Appeals for the sixth straight year.

Praising the justices and judges on the appellate courts for their "diligent work," Torbert said the zero backlog status of the courts was achieved despite an increase in the caseload in recent years.

"The attention these judges have paid to their job is providing the people of Alabama undelayed justice in their appellate courts," Torbert said.

During the 1977-78 court term, the Supreme Court disposed of 572 cases and petitions, the Court of Criminal Appeals completed work on 837 matters, and the Court of Civil Appeals handled 230 cases.

MOBILE PRESS-REGISTER

## CHIEF JUSTICE SCHEDULES BRIEFING ON STATE'S JUDICIAL SYSTEM NOVEMBER 10TH

## NEWS MEDIA INVITED

## TO CUMBERLAND MEET

Chief Justice C. C. Torbert, Jr. has invited the news media of the state to a briefing on the status of Alabama's Unified Judicial System November 10 at Cumberland Law School on the campus of Samford University in Birmingham.

"We have seen a tremendous improvement in the manner justice is dispensed in our state over the past several years," the chief justice said, "and I have asked leaders from the judges' and clerks' and registers' associations along with Administrative Director of Courts Allen L. Tapley, to join with me in a two-hour session with the news media to discuss these improvements and the future goals of our court system."

Torbert said the meeting is designed to answer any questions the news media might have concerning the judicial branch of government. "I feel we in the system should periodically give reports and answer questions about the system," he

said, "because we are all public officials and employees and what we do is of vital importance to the people of our state."

Dean Donald Corley of Cumberland has arranged for the meeting and has made facilities available at the law school. The media will join the chief justice and other officials at a dutch luncheon after the meeting.

## ONE NEW CIRCUIT, TWO

## NEW DISTRICT JUDGES NAMED

Circuit Judge Daniel B. Banks, Jr. has taken office in the 23rd Judicial Circuit, Huntsville, filling the vacancy left by the death of Circuit Judge Jim Esco. State Representative Hartwell Lutz has been appointed to fill the vacancy on the Madison County District Court left by the appointment of Judge Banks to the circuit court. Attorney Roger Halcomb has been appointed to the District Court of Jefferson County to fill the vacancy left by the death of Judge J. Dawson Britton. District Judge Billy Max Paul has been reappointed district judge in Clarke County. Cedric Woodruff has been named court administrator for the 13th Judicial Circuit by Presiding Judge Joe Hocklander. Circuit Judge W. G. Hawkins has stepped down as presiding judge, 9th Circuit, and Judge Randall L. Cole has been named presiding judge.

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## COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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