

# COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

Volume 3/Number 12

December, 1979



*Best of Wishes*



*Holiday*

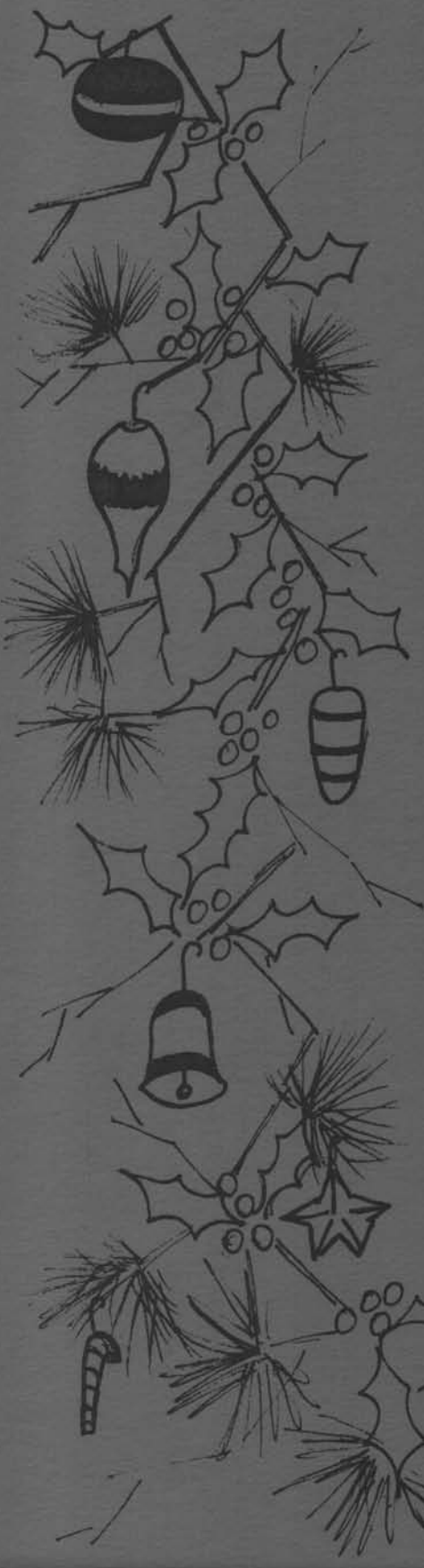


*For The*



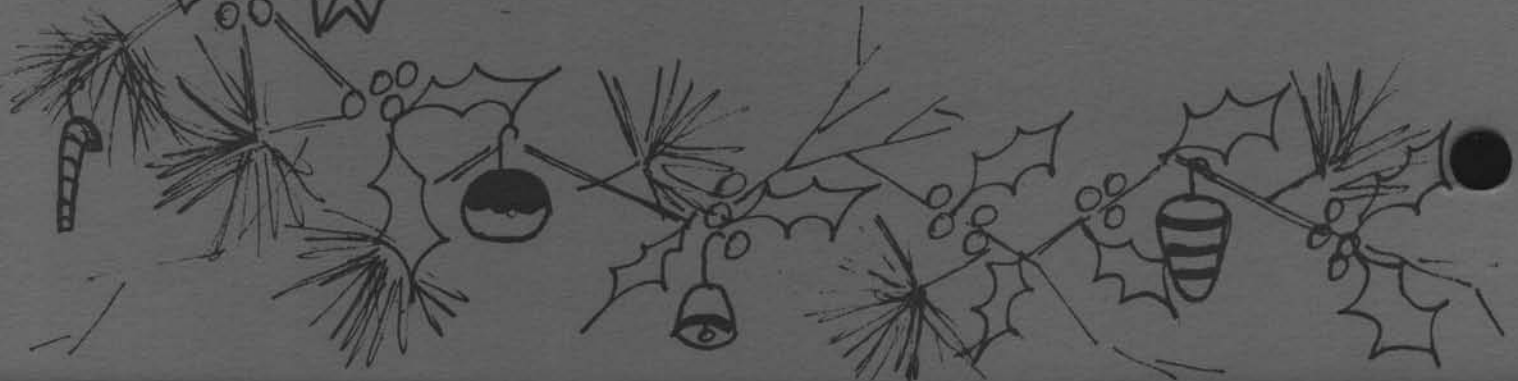
*Season*





## *A Holiday Message From The Chief Justice*

As 1979 passes into history, I would like to take this opportunity to wish the best for all of you who are a part of Alabama's Judicial Branch of Government. The year of 1979 has been a good year for progress in our judicial system. With the dedicated effort of all of you in the system, I am confident that 1980 will allow us to further improve the delivery of justice in our great state. I sincerely appreciate your loyalty and support and again, wish for all of you and your families the blessings of a prosperous new year.



## MADISON COUNTY COMPUTERIZES JURY SELECTION PROCESS

Under the supervision of Presiding Circuit Judge John D. Snodgrass and Circuit Clerk Billy D. Harbin, the court system of Madison County now has a fully operational computerized method to select and notify jurors.

Funds for this project, which was started two years ago, were provided through the Judicial Planning Commission and the Alabama Law Enforcement Planning Agency.



*SNODGRASS, HARBIN WATCH AS COMPUTER PRINTS JUROR QUESTIONNAIRES...Kathleen Patterson of Madison County Data Processing Department assists.*

The project was conducted in two phases. The first phase was accomplished during the later months of 1978 and consisted of compiling a master list of all people in Madison County who were eligible to serve as jurors. These names were taken from the voter registration, vehicle registration and drivers' license lists. The drivers' license list was made available to the project by the Administrative Office of Courts' Information Systems Division. The initial compiled list contained over 117,000 names.

The second phase of the project was accomplished during the current year and consisted mainly of the preparation of the various computer programs and the design of the forms to be used in support of the project.

Generally, the functions that are accomplished by the computer are: (1) Preparation and updating of the master list (the master list was updated during the current year and now contains 144,000 names); (2) From the master list the computer uses a computation specified by law to randomly select those jurors to be sent a juror questionnaire; (3) The computer then prepares a questionnaire for mailing; (4) As the names are manually drawn from the trial box, the computer prepares a juror summons for those jurors selected to serve as petit and grand jurors.

The approximate cost of the project is \$10,000.

## PERSONNEL DIVISION OF AOC ANNOUNCES LEAVE ACCOUNTING CARD PROCEDURES

The following procedures will be followed in auditing the 1979 leave accounting cards and transferring balances to the 1980 cards. As soon as possible after Dec. 26, all court offices will perform audits of the 1979 leave accounting cards on their assigned personnel. Each employee and the appropriate administrator will certify as to the accuracy of the information thereon by signing the card.

The employee information and the annual, sick and compensatory (if any) leave balances will be brought forward to the 1980 leave accounting cards. Each office will then mail the 1979 leave accounting cards and the

*(Continued On Page 6)*



## MULTIPLE VOIR DIRE: ONE SOLUTION TO ELIMINATING JUROR BOTTLENECKS

One of the things members of the jury management team are discovering in their 14-county study of the state's jury systems is that jurors don't like the hurry up and wait procedure.

If jurors are going to serve, they want to go ahead and serve. The selection process, as some jurors report, is a bottleneck.

The "multiple voir dire" system could be a help in easing that bottleneck. It has been used for untold number of years in various circuits over this and other states.

Multiple voir dire, or multiple examination practices, increases juror usage and speeds case flow. On a Monday, for example, several juries could be empaneled, even though the trial could come on different days. By this process, the juries would know the trial dates, what cases they would be hearing and when to come to court.

Using this method to select juries, the trials proceed as scheduled but start with opening statements and the presentation of the evidence as soon as the jurors are sworn.

Trial-day settlements with the resulting jury cancellations are reduced. The cost savings comes because the pool of prospective jurors is used only on the day of selection. The uncertainty of the trial date is eliminated.

In one state where the practice of multiple voir dire has been in use for more than 10 years, as many as 20 six-member juries can be chosen from a panel of 50 people in 10 hours or less.

By making full use of telephone answering devices, the court clerk is able to keep up with the selected jurors to update them on any unexpected schedule changes. Even if a three-week trial should be settled at the end of the second day, the next trial could be brought forward with little inconvenience to jurors and other parties in the case with little loss of court time.

Judges who use the multiple voir dire system think of it as a matter of convenience for the courts in expediting trial schedules. Also, lawyers who practice

under it find it beneficial for their daily planning.

The system appears to work fine in civil cases. In criminal cases, however, the multiple voir dire system hits a snag.

The major problem is that present laws require consent of all parties before the jury is allowed to separate. This consent is not always obtained thereby the system becomes impossible to implement.

Another minor problem is that pretrial publicity could possibly cause the juror to form an opinion before hearing the evidence in the case.

Since jurors are not sworn until the day of the trial, though, the court may allow for additional voir dire by counsel on the day of the trial to ascertain whether biased opinions had formed.

By using alternative jurors previously selected and made available on the day of the trial, judges could excuse jurors due to such situations.

Multiple voir dire is just one procedure the jury management team is examining to make time spent by jurors in the court system more practical and convenient.

## TAPLEY WILL VISIT EIGHTH, NINTH CIRCUITS

Administrative Director of Courts Allen L. Tapley will meet with judges, clerks and court system employees in the eighth and ninth judicial circuits during January at the invitation of Presiding Judges Newton Powell in Decatur and Randall Cole in Ft. Payne.

In addition, Tapley will speak on the Alabama Court System in Decatur on Jan. 15 to Decatur High School government and economics students, the Decatur Lions Club and the Council of Civic Club Presidents.

In DeKalb County on Jan. 22, he will speak to the Rainsville Kiwanis Club, the Ft. Payne Rotary Club and to students at Ft. Payne High School.

Tapley is also scheduled to speak to the Auburn Lions Club on Jan. 29 and plans to visit Mobile on Feb. 5 to address the Mobile Lions Club.

On Nov. 14, he was the guest speaker at the Andalusia Lions Club.

## ~~~~~ PROFILE: Justice Richard L. Jones ~~~~~

When he was a practicing Birmingham attorney, Supreme Court Justice Richard L. Jones thought he would like to be a trial judge at some point during his legal career.

He was involved with some of the early notions of court modernization as a member of the state and local Bar Associations after U.S. Senator Howell T. Heflin became state bar president and involved the bar with reforms in the court system.

But then, Heflin came on the bench as chief justice and things began to happen in the state court system.

So in 1972, "Red" Jones decided to seek a seat on the Alabama Supreme Court. He was elected and is now serving his second six-year term.

"I joke and tell people that after practicing law for 24 years and having someone 'guess' at my cases, I wanted to have the last 'guess.'"

Jones is a big story teller in the true Southern tradition.

"Some people, especially Northerners, just don't know how to tell a good story. In the Southern tradition, the story is not the point. It's the telling of it. You have to drag on every word and tell every detail. The art of storytelling is reciting details."

Aside from Jones' lighter moments, he is very seriously dedicated to his position as justice, and has a very clear idea of the direction the court is going in the future. Aside from the basic problems of eliminating backlogs and providing for more cooperative efforts between state and federal courts, Jones sees a coming change in the structure of the appellate courts.

"I think we'll see a consolidation of the appellate courts providing for a 15 or 16 member court of appeals combining the civil and criminal courts of appeals and a reduction of the Supreme Court to seven members. While the present system (a five-member court of criminal appeals and a three-member court of civil appeals) has worked reasonably well, its overall efficiency can be improved by consolidation. Very few states still have separate intermediate appeals courts."

Jones also foresees a new judicial building built in connection with a major capital expansion sometime in the next eight to 10 years. This would permit a centralization of all appellate court functions and facilities, Jones said.

"Mostly, I would like to see our court stay current and continue to be a progressive, hard-working court," he said.

Jones presently resides in Birmingham where he maintains an office at Cumberland Law School. He teaches a two-hour class and four years ago he began an annual lecture series held in conjunction with the law school's Law Week program.

A native of Carrollton, Jones received his LL.B. from the University of Alabama. He has served two tours of duty with the Army and now holds the rank of Colonel in the Army Reserve.

During his 24 years as a trial lawyer in Aliceville with his uncle, State Senator Albert Davis, in Bessemer with Lipscomb and Brobston, and in Birmingham with Jones, Propst and Topazi, he became active in the Alabama Trial Lawyer's Association and served one term as president of that organization.

Outside his official role, Jones enjoys golfing and



*Justice Jones*

*(Continued On Page 6)*

## PERSONNEL DIVISION OF AOC ANNOUNCES LEAVE ACCOUNTING CARD PROCEDURES

*(Continued From Page 3)*

leave request and approval forms used during 1979 to the Administrative Office of Courts no later than Jan. 5, 1980.

The Personnel Division will check the leave accounting cards against the leave request forms and contact the appropriate administrator if errors are found. Because of the relatively high number of errors discovered in the leave accounts during the last audit, administrators and employees are requested to place special emphasis on accuracy of these leave accounting cards before certifying and forwarding to the AOC.

Leave accounting procedures are further covered in Chapter V of the Personnel Procedures Manual.

## PROFILE: JUSTICE RICHARD L. JONES

*(Continued From Page 5)*

fishing. He is very active in the Shades Valley Presbyterian Church where he serves as elder and teaches a young adult Sunday School class.

"Working on the bench is an exciting job, it never gets dull. Each new record is a brand new vista. I'm still amazed at how many commonplace everyday activities are still unsettled.

"It's good to work with bright, independent minds. And while I'm bragging, there is no such thing as a one-member opinion on our court."

Jones attributes this concordance to the court's currency with respect to cases.

"Staying current makes us more active and able to participate in each opinion without worrying about our own backlogs.

"The thing that I lament the most is that the court gets drawn into salary and retirement disputes. We shouldn't have to politic and lobby. The state should be willing to pay judges enough to attract the best people it can get. If we're going to attract our best people from the bar to the bench, we must be willing to pay them adequate salary, not to make them wealthy, but to make them financially independent.

"The thing that I regret the most is that a salary structure has been permitted that allows approximately 80 percent of the state's circuit judges to be paid more than the chief justice. This is not to complain about the circuit judges pay. Their salary structure is

just now approaching adequacy."

Jones is presently a commissioner to the Uniform State Laws Commission, a member of the Code Revision Committee and the Alabama Judicial Conference. He is married to the former Jean Leslie and they have three children, Rick, Marilyn and Leslie.

SUPREME COURT APPOINTS COMMITTEE  
ON COURT REPORTER CERTIFICATION

The Supreme Court has appointed an advisory committee to study the feasibility of the court promulgating rules for the certification of court reporters.

Established Oct. 29, the committee will also have the responsibility of proposing rules for the certification should it recommend that the court promulgate such rules.

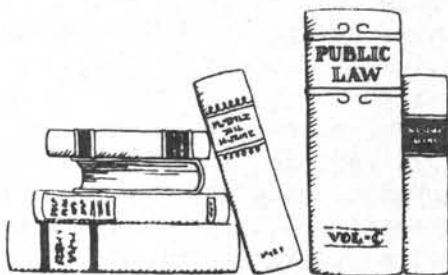
Members of the committee are Criminal Appeals Judge William M. Bowen; Circuit Judges Billy C. Burney (chairman) and James T. Gullage; Clerk and Register Polly C. Eubanks; Court Reporters Paul D. Smith and Richard Wilson; and Attorneys Robert McDavid Smith and Albert J. Tully.

A committee from the Alabama Shorthand Reporters Association has requested the court to make and promulgate rules governing the certification of court reporters in the state since the court, as provided by the Alabama Constitution, has responsibility to make and promulgate rules governing the administration of all courts.

The committee is expected to make its recommendations to the court by August 1980.



## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

Service By Registered Mail ConstruedTo Permit Service By Certified Mail

In an opinion dated Nov. 5, 1979, the attorney general determined that certified mail is precisely the same as registered mail in that a return receipt is provided, but differs from registered mail in that it provides no insurance.

Certified mail is used where the sender has a need for proof of delivery, but has no need for insurance because the item to be delivered has little or no intrinsic value. Thus, the requirement that notice of a referendum election be given by "registered mail" as per Section 2 of Act 432 (1979 regular session) may be construed to permit notice by "certified mail" because such would carry out the manifest intent of the legislature and meaning of the statute.

Heirs' Rights To Annual And Sick Leave

Recently, the attorney general determined that the spouse or heirs of a deceased state employee are entitled to payment for deceased's accumulated annual leave although they are not so entitled to accumulated sick leave. Personnel Rule XI, Section 2(a) supplementing Code 1975, Section 36-26-35, provides that state employees are to be paid, upon termination of service, for the actual number of days of annual leave earned up to a maximum of 60 days.

Accordingly, the spouse or heirs are due to receive such amounts due the de-

ceased employee. However, there is neither statutory nor rule authorization for payment of accumulated sick leave to an employee upon termination of service other than by reason of retirement. Moreover, Personnel Rule XI, Section 2(b) states that payment for sick leave is not a right but a privilege.

Thus, the spouse or heirs are not entitled to payment for the deceased's accumulated sick leave.

Juvenile Probation Officers May NotServe On The County Commission

The attorney general determined in an opinion dated Nov. 21, 1979, that although juvenile probation officers are not public officials because they serve at the pleasure of the appointing judge rather than for a definite term, they are still precluded from serving on the county commission.

This is because Section 36-10-8, Code 1975, makes it a crime for any member of the county commission to be employed in any way under any contract for work with the county.

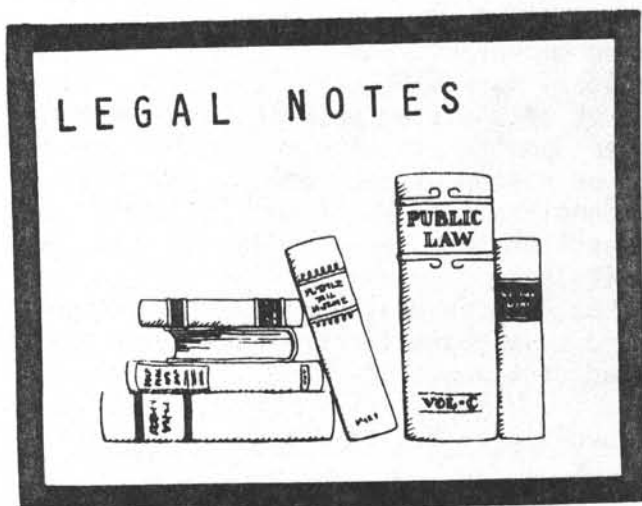
Because juvenile probation officers are paid in part by county funds, a pecuniary interest within the meaning of this section is created.

Travel AuthorizationFor Judicial Inquiry Commission

In an opinion dated Nov. 21, 1979, the attorney general ruled that members, officers and employees of the Judicial Inquiry Commission are within the judicial department so that out of state travel for such personnel must be authorized by the chief justice.

Act 539 (1979 regular session), amending Code 1975, Section 36-7-21, requires that the chief justice authorize in writing out of state travel by officers and employees of the judicial department.

Since the Judicial Inquiry Commission was created by the Judicial Article, Amendment 328, Section 6.17, Constitution, and is totally related to the judiciary in its functions, duties and responsibilities, the attorney general concluded that the Commission is within the judicial department and must obtain the authorization for travel.



### Amendment To Rules 18 And 19,

### Alabama Rules Of Judicial Administration

Effective Jan. 1, 1980, Rules 18 and 19, Alabama Rules of Judicial Administration, will be amended so as to delete "littering highway" from the list of traffic infractions for which a schedule of fines is suggested in Rules 18 (11)(A)(4), 18(11)(B)(3) and 19(B)(2)(a), ARJA, because the attorney general determined that only those infractions listed in Title 36, Code 1940, now codified in Title 32, Code 1975, are traffic infractions for purposes of utilizing the Uniform Traffic Citation. Littering the highway is found in Title 23, Code 1975.

Additionally, Act 79-439 (1979 regular session) amended Section 23-5-5, Code 1975, to provide that the minimum fine for littering the highway is now \$100 and the maximum fine is now \$500. Accordingly, the Administrative Office of Courts is removing this offense from the list of offenses in the UTC Manual for which the UTC may be used. This offense will also be removed from the back of the UTC itself. This will be reflected on the UTC Series D.

The offense designated as "Blocking the Highway" on the schedule of fines listed in Rules 18 and 19, supra, and on the UTC presently in use has been changed to "Stopping on Highway" because Section 32-5-150, Code 1975, denominates this particular offense in this fashion. This change will also be reflected on the UTC Series D.

### Amendment To Rule D

### Alabama Small Claims Rules

Effective Jan. 1, 1980, Rule D, Alabama Small Claims Rules, has been amended so that service of process in cases in the small claims division of district court shall be by the sheriff unless, at the plaintiff's request, the court allows some other person to make service.

The sheriff or constable may elect to make service by either personal service or certified mail. Because the method of service employed is an administrative decision on the part of the sheriff or constable, there will be no additional cost to the plaintiff if certified mail is used.

Following is an outline of the process.

A. Where personal service is used the following procedures shall be followed:

(1) The sheriff or constable shall locate the defendant and deliver the summons, a copy of the complaint and any accompanying documents to the person to be served.

(2) The person making such service shall endorse that fact on a copy of the summons and return it to the clerk.

(3) The clerk shall make the appropriate entry on the docket sheet of the action. The return, indicating the date of service, shall be the basis for which the time for answering shall run.

(4) If personal service cannot be completed within 30 days, the sheriff or constable shall endorse that fact and the reasons therefor on the process and return the summons and a copy of the complaint to the clerk.

(5) The clerk shall make the appropriate entry on the docket sheet of the action and forthwith notify by mail the attorney of record or if there is none, the party at whose instance process was issued.

(6) The clerk shall enter the fact of notification on the docket sheet.

B. Where Certified Mail is used, the following procedures shall be followed:

(1) Where service by Certified Mail is completed:

(a) The sheriff or constable shall place the summons and a copy of the complaint in an envelope addressed to the per-

*(Continued On Page 10)*



## NEWS CLIPS FROM THE STATE PRESS



—Advertiser photo by Phil Searsbrown

**Seated (from left): Godbold, Embry**

**...standing Sentell, Bloodworth, Holmes, Bookout**

## Legal education seminar for local attorneys set

A seminar entitled "Avoiding Falling on Your Face in State and Federal Appeals Courts" will be presented by the Montgomery County Bar Association Thursday evening.

The program, one in a series of continuing legal education seminars for local attorneys, will include presentations by several distinguished jurists, according to its moderator, J.O. Sentell, clerk of the Alabama Supreme Court.

The seminar is designed to increase the effectiveness of appellate advocacy in state and federal appeals courts, according to Walter R. Byars, president of the county Bar Association.

"This is a practical program," Byars said. "It includes a summary of the many mistakes made by lawyers in appellate briefs and oral arguments, and mistakes in the record."

Sentell said the following judges will address these mistakes and offer some remedies for them: Judge John C. Godbold of the U.S. Fifth Circuit Court of Appeals, Justices T. Eric Embry and James N. Bloodworth of the state Supreme Court, Judge Richard L. Holmes of the state Court of Civil Appeals, and Judge John G. Bookout of the state Court of Criminal Appeals.

Each will field questions from the lawyers following his address.

*Montgomery Advertiser*

Although the legal education seminars will continue, Sentell said, Thursday's program will be the only one dealing with appellate advocacy and will not be repeated.

## State courts will hold budget line

Alabama Chief Justice C. C. Torbert Jr. said today that the state's trial court system can operate on its current level of funding and he will not ask the legislature to increase the 1980-81 budget for the trial courts above that level.

Torbert said that improved accountability of budgetary spending through the new expense accounting system developed by the Administrative Office of Courts, coupled with increased savings in the area of jury management by trial judges and clerks of court, will enable the system to hold the line on any budget increase for the 1980-81 fiscal year.

*Roanoke Leader*

## Samford gets Judge Bob Key as new Trustee



Circuit Judge Robert E. Lee Key of Evergreen has been elected to the Samford University Board of Trustees.

Judge Key, who has served Alabama's 35th Judicial Circuit since 1965, was added to the 41-member board by action of the Alabama Baptist State Convention at its annual Fall meeting in Huntsville Wednesday of last week. Samford is an agency of the convention.

Board members re-elected by the 1,500 messengers to the 157th annual meeting of the church body were Boyd Christenberry, Montgomery; J. Hilliard Felton, Russellville; C. W. Gross, Tuscaloosa; Dr. William K. Stephenson, Decatur; Robert B. Hall, Dothan; Ray Pearman, Huntsville; Dr. P. Joe Whitt, Aliceville; and Austin Dean, Cullman.

Judge Key and the eight members re-elected will fill terms to expire in 1983.

An Evergreen native, Judge Key is a graduate of George Washington University and the University of Alabama Law School. After practicing law in Evergreen, Key served 14 years (1952-65) as Circuit Solicitor of Alabama's 21st Judicial Circuit.

He is active in the American Judicature Society and numerous other professional organizations. A Civic and church leader, he has been listed in "Who's Who in America" since 1976.

*Evergreen Courier*

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## JUSTICE SHORES ADDRESSES SENATE SUBCOMMITTEE, DESCRIBES PROGRESS

A great deal remains to be done in improving state courts, Supreme Court Justice Janie Shores told a Senate subcommittee earlier this month. Chairing the panel was former Chief Justice and present Senator Howell T. Heflin.

Heflin, chairman of the subcommittee on jurisprudence and governmental realtions, is studying a plan to set up a non-profit national corporation to improve state courts. The proposed State Justice Institute would be a way for the federal government to give money and technical help to state courts, Heflin said.

Mrs. Shores said it is "inevitable that the states will handle an increased case-load" and that they will be dealing with a number of federal questions.

"It is entirely appropriate that Congress should address itself to the delivery of justice" at the state level, she said.

## RETIRED JUDGE PELHAM DIES AT 93

Retired Circuit Judge Joseph M. Pelham died in November after a lengthy illness. He was 93.

Pelham retired in 1959 after serving more than a quarter of a century as circuit judge of the 1st Judicial Circuit.

Shortly after retirement, he became one of the state's first supernumerary circuit judges and in that capacity, he approved photography inside a Mobile courtroom during a 1959 murder trial.

## COURT EMPLOYEES NAMED CN REPORTERS

Three court employees have been added to the list of liaison reporters for *Court News*.

They are Judge David Enslen, 24th Circuit; Glen Singleton, 23rd Circuit; and Suzanne Clingan, 3rd Circuit.

Presiding judges who have yet to name a liaison for their circuits are reminded to do so as soon as possible.

## Amendment To Rule D

### Alabama Small Claims Rules

(Continued From Page 8)

son to be served with the return address of the sheriff or constable shown on the envelope and place the sealed envelope in the U.S. mail as certified mail with instructions to forward, return receipt requested, with the necessary postage thereon and instructions to the delivering postal employee to show to whom delivered, date of delivery and address where delivered on the return receipt. Where the defendant is a natural person, restricted delivery shall also be requested.

(b) The sheriff or constable shall endorse the fact of service by certified mail on a copy of the summons and return it to the clerk.

(c) The clerk shall make an appropriate entry on the docket sheet of the action.

(d) The sheriff or constable shall immediately forward the return receipt when received by him to the clerk.

(e) The clerk shall enter the date of delivery as evidenced by the return receipt on the docket sheet of the action. This date shall be the basis for which the time for answering by a defendant shall run.

(2) Where certified mail is refused by the addressee.

(a) The sheriff or constable shall personally serve the summons and a copy of the complaint and any documents in the same manner as provided in (a) above.

(3) Where service is incomplete for reasons other than refusal by addressee.

(a) The sheriff or constable shall return the summons and a copy of the complaint along with the return receipt to the clerk.

(b) The clerk shall forthwith notify, by mail, the attorney and enter the fact of notification on the docket sheet.



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## CIRCUIT JUDGE JAMES SHARBUTT TO RETIRE IN JANUARY

Circuit Judge James Hughston Sharbutt of the 18th Judicial Circuit will retire effective Jan. 7, 1980.

A native and lifelong resident of Vincent, Judge Sharbutt has held his present position since 1971. Prior to the time of his election to the judgeship, Sharbutt was district attorney for the 18th Circuit for four years. He served as mayor of Vincent from 1949 to 1966.

After graduating from the University of Alabama Law School in 1950, Sharbutt practiced law until his election to the district attorney's position.

Sharbutt is a member of Phi Alpha Delta legal fraternity, the Alabama, Shelby County and Talladega Bar Associations, the Alabama Board of Bar Commissioners, the Vincent Civitan and Exchange Clubs.

He is a member of the board of directors of the United Federal Savings and Loan Association of Childersburg, Vincent branch.

Sharbutt is a member of the Vincent Calvary Baptist Church where he serves as an active Deacon and church treasurer.

Outside his official roles, Sharbutt enjoys hunting. He is married to the former Virginia Lee Stallworth of Repton.



*Judge Sharbutt*

## JUDGE BILLY MAX PAUL TO RESIGN,

## ACCEPT A WASHINGTON APPOINTMENT

Clarke County District Judge Billy Max Paul officially resigned his position Dec. 1 in order to accept a Washington appointment as soliciting general for the territories for the Department of Interior.

A successor to Paul has not yet been named.

As soliciting general for the Virgin Islands, Puerto Rico, American Samoa and Guam, Judge Paul will handle the legal affairs between the U.S. and these territories.

Officials have told Paul that he will be required to travel to the territories about twice a year.

Paul has been in his present position since September of 1978.



*Judge Paul*



BLOUNT COUNTY COURTHOUSE HALLOWEEN...  
From left to right, front to back,  
Phyllis Hicks, Alice Allcorn, Gloria Fortner, rebecca west, Linda Smith, Marsha Beam, Sandra Campbell and Cheryl Wester.



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## MRS. SYBIL CARLSON OF AOC STAFF

### NAMED SECRETARY TO JUSTICE SHORES

Supreme Court Justice Janie Shores has appointed Mrs. Sybil Carlson of the Administrative Office of Courts staff, as her secretary. Mrs. Carlson has been with the AOC since 1974 with her most recent position being secretary to Administrative Director of Courts Allen L. Tapley.

Tapley announced that Susan L. Mims, who has been secretary for the Research, Planning and Development division of AOC, will replace Ms. Carlson as his secretary.

"This is a fine opportunity for Sybil and a promotion which is well-deserved," Tapley said.

Justice Shores' present secretary, Dorothy Johnson, retires this month.

### JUVENILE JUDGES ELECT NEW OFFICERS

New officers of the Alabama Association of Juvenile Court Judges who were elected at that association's annual business meeting in Birmingham on Dec. 7 are as follows:

president, District Judge David Enslen; vice president, Circuit Judge Lewis Lackey; and secretary-treasurer, District Judge Phyllis Nesbit.

### TORBERT ONE OF NINE JUSTICES CHOSEN TO REVIEW EUROPEAN COURT SYSTEMS

Chief Justice C.C. Torbert Jr. recently returned from a European tour where he and eight other judges and court administrators reviewed the court systems in order to compare the European judicial systems with those of the United States.

Expenses for the eight-day trip were paid by the German Marshall Fund of the United States. The Marshall Fund was established by the West German government as an independent U.S. foundation to provide opportunities for Americans and Europeans to address common problems of industrial societies.

The chief justice will prepare a paper for presentation to the Marshall Fund.

## GOVERNOR APPROVES COST-OF-LIVING INCREASE FOR STATE EMPLOYEES

During the last legislative session, a conditional cost-of-living bill was passed. This bill granted the governor authority to approve a cost-of-living increase for state employees in a range from zero to seven percent, based upon the availability of funds. In a memorandum from the governor's office dated Dec. 5, Gov. Fob James stated there are sufficient funds to approve the cost-of-living increase for the entire fiscal year.

The cost-of-living increase will be made in quarterly lump sum payments. The comptroller's office has indicated that the payment for the period Oct. 1 to Dec. 31 will be made on Jan. 18, 1980. As a reminder, the salary rates will be adjusted but not to reflect this increase, until Sept. 30, 1980.

The following groups of officials or employees are not eligible for the cost-of-living increase: retired active judges, circuit judges, supernumerary judges, special service employees, part-time warrant clerks and part-time magistrates.

All other employees are eligible, provided they have been employed for the entire quarter. Individuals who have questions regarding this cost-of-living increase, should contact Woody Parramore or Barbara Erickson of the personnel office at the Administrative Office of Courts.

Employees who do not receive the cost-of-living increase and feel they are eligible should also contact Parramore or Ms. Erickson at the personnel office in order to clear the matter.

## Notes From The Appellate Bench

### CASES ARGUED BEFORE

THE SUPREME COURT OF ALABAMA

IN DECEMBER, INCLUDED THE

FOLLOWING ISSUES:

#### Jury Arguments

Whether reference by defendant's counsel to plaintiff's expert witness as a "hired gun" in final argument was prejudicial.

#### Adequacy of Jury Award

Whether a jury verdict in a personal injury case in which the jury awarded plaintiff only specials and loss of earnings and nothing for pain and suffering was adequate.

#### Statute of Limitations

Whether the applicable statute of limitations in a medical malpractice case barred the claim. (78-780)

#### Conflict of Laws

Can the personal representative of an estate confer jurisdiction on a foreign state over the estate? Is a foreign judgment subject to Alabama's non-claims statute and Alabama's statutory procedure for survival of action? (78-717)

#### Deadlocked Corporation

Whether stockholders who own 50 percent of the stock in a closely held corporation owe a duty to the holder of the other 50 percent of the stock? (78-564)

#### Deceit

Whether a representation in a mobile home brochure was false and misleading and whether the jury should award punitive damages.

### Eminent Domain

What is the proper formula for apportioning a condemnation award between the lessor and a lessee whose lease has an unexpired term of several years? (78-344)

### Insurance

Whether an incident wherein the insured ran his vehicle into a restaurant was an "accidental occurrence." (78-486)

### Wills

Will provision read: "Upon the death of my brother--and the termination of the life estate in my real estate bequeathed to him in this paragraph; I give, devise and bequeath unto my beloved sisters, M.D. and G.D., or to the survivor of them, all of my real estate absolutely and in fee simple." Whether M.D.'s interest vested at the time of the testator's death or was it contingent on her survival of the life tenant?

### Wrongful Death

Whether Alabama's wrongful death statute is unconstitutional because it allows the recovery of only punitive damages. (78-709)

### Insurance

Whether a policy provision covering accidents arising out of the "use" of a vehicle imposes on the insurance company a duty to defend when the "use" alleged was the negligent entrustment of the vehicle by one other than the car's owner.

### Other Issues Argued

Other issues argued involved the propriety of granting summary judgments, the liability of a city in a slip and fall case, whether an applicant to take the Bar Examination should have been found to have good character and whether requests for instructions can be made by merely referring to a particular section of the Alabama Pattern Jury Instruction Manual.



## JPC TO MEET IN JANUARY TO REVIEW FUTURE COURT IMPROVEMENT PROGRAMS

The Judicial Planning Committee will meet on Jan. 9 to 11 to review proposals for future improvement programs for the Unified Judicial System. This meeting is the culmination of a year's efforts by the committee to identify issues and concerns representative of all segments of the court system.

In November, the Administrative Office of Courts' staff met to discuss issues identified and to make preliminary recommendations for future court improvement programs. This information will be presented to the JPC at the January meeting.

Representation on the JPC includes appellate, circuit, district and municipal judges, clerks and registers, district attorneys, public defenders and court administrators.

Members of the committee are: Chief Justice C.C. Torbert Jr.; Administrative Director of Courts Allen L. Tapley; Supreme Court Justices Hugh Maddox and Richard L. Jones; Criminal Appeals Judge John G. Bookout; Circuit Judges J. Edward Tease, Kenneth F. Ingram, Joseph D. Phelps, John D. Snodgrass; District Judges Joseph N. Poole, W.H. Lumpkin, Wadell Zanaty Jr.; Clerks Stella Pierce and Billy D. Harbin; Municipal Judge Matthis W. Piel; Court Administrator W. Robert Merrill; District Attorney Lavern Tate; and Public Defender Ralph Burroughs.

Staff support for the planning committee is provided by the Research, Planning and Development division of the AOC.

## INDICTMENT AND WARRANT MANUAL DISTRIBUTED, OTHERS AVAILABLE FROM AOC

An Indictment and Warrant Manual has been developed for use with the Alabama Criminal Code and some criminal laws that remain unchanged. The manual is designed to formulate indictments and warrants for use with the Alabama Criminal Code which becomes effective Jan. 1, 1980. It may be used for violations of state laws and municipal ordinances that encompass state misdemeanors.

The manuals were distributed to warrant-issuing officials during recent seminars. Municipal courts not represented at the seminars may request copies by calling the Administrative Office of Courts, Municipal Courts division.

Officers will find it helpful to have a copy of the Code of Alabama 1975, Title 13A Criminal Code with Commentaries to use along with the manual. This book contains definitions of terms used in the Criminal Code, cross references and other information not found in the manual nor the 1979 Cumulative Supplement to the Code. Copies of the paperback pamphlet may be obtained by contacting: Robert Harris, The Michie Company, 200 South Lawrence, Montgomery, AL 36104. The cost of the pamphlet is \$12.50 plus tax.

## ARMSTRONG APPOINTED SHELBY JUDGE

Gov. Fob James has appointed Shelby County District Judge Robert R. Armstrong Jr. of Alabaster as a new circuit judge in the 18th Judicial Circuit.

Armstrong replaces retiring Judge James H. Sharbutt of Vincent.

The governor also appointed Patricia Mengenast Smith of Pelham to succeed Armstrong on the district court.

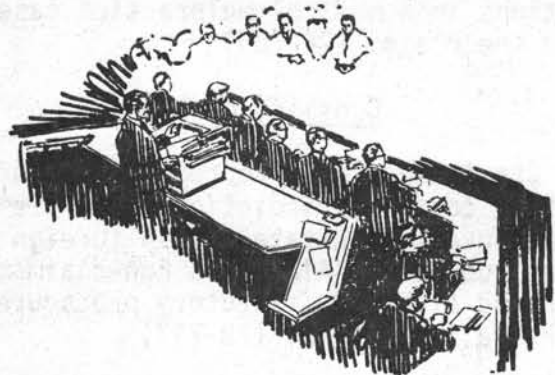
The new circuit judge has been Shelby County district judge since March of 1979.

Mrs. Smith has been assistant district attorney in Shelby County.

## FINAL CASE DISPOSITION REPORT FOR 1979 DUE TO AOC BY JAN. 5

To ensure prompt and accurate processing for the final case disposition report for 1979, the Administrative Office of Courts requests receipt of the Case Disposition Reports (blue card) for the month of December no later than Jan. 5.

If any questions arise concerning the report, Camille Ashley or Lyn Holman may be contacted at the AOC.







*In jest we pose  
Small gifts to those  
Who've made our year so nice.  
It is with thought  
That we have brought  
These gifts all wrapped in spice.*

*These presents to all  
May seem but small  
But to us they are so dear.  
We hope these "truths"  
Won't be abused  
Throughout the coming year.*

*They're here to please  
The wit, and ease  
The tensions of '79.  
And if your name  
Did not make fame  
Just wait until next time.*

Circuit Judge Joseph M. Hocklander, Mobile:  
Certificate of Completion from the Ayatollah Khomeini's advanced management school.

Mobile County Commission: Another source list for their jury selection process.

Circuit Judge Joseph D. Phelps, Montgomery:  
The Alabama Press Relations Association Creativity Award for getting the most TV, radio and newsprint coverage of a birthday party.

Circuit Judge G.H. "Spud" Wright, Opelika:  
A lip-hair transplant so that he can have a real mustache.

Circuit Clerk Ron Harwell, Sumter County:  
After having read a jury verdict finding the defendant guilty rather than not-guilty, a new pair of glasses.

Court Administrator Cedric Woodruff, Mobile:  
A carton of birthday cards.

Circuit Judge Inge Johnson, Tuscumbia:  
Meritorious citation for productive "labor" relations

Circuit Judge Edgar Russell Jr., Hawkeye Morrow, Clerk Mary Shipley and the Hale County Jury Commission: The David Bronner award for reducing governmental expenditures by totally eliminating jury costs in 1979.

Circuit Judge Jack Wallace, Clayton: Honorary membership in the state Tax Assessors Association.

Circuit Judge Billy Burney, Moulton: A Seiko calendar alarm watch so he will know when conferences really begin and end.

Circuit Judge John Davis, Montgomery: Catastrophic insurance coverage in the event another "Johnny" falls on his office.

Circuit Judge H.E. Holladay, Pell City: A happy "Holladay" and a coat rack to assemble on New Year's Day.

Circuit Judge William Byrd, Alex City: The UJS's Fred Astaire look-alike award.

Register Joyce Martin, Double Springs: Due to the energy crisis, a block of ice rather than a refrigerator to prevent spoilage.

Circuit Judges Julius Swann Jr. and Cyril L. Smith, Gadsden: A wall plaque engraved with their real social security numbers.

District Judge Tigger Burke, Greensboro: An invitation to actually attend a judicial conference.

Clerk Stella Pierce, LaFayette: A pair of "floor shine" shoes.

Chief Justice C.C. Torbert Jr., Montgomery: Another all-expense paid trip to Europe given in appreciation from Don, Gusti and Sid.

St. Clair County: A public defender to go with the new state prison.

Circuit Judge Leslie Johnson, Florence: The Guinness World's Record for having consumed more hors d'oeuvres during a single party than thought humanly possible.

Municipal Judges Jerry Bates, Ardmore, James Garrett, Vestavia and Douglas Ghee, Ohatchee: Official identification cards to prove to the U.S. Supreme Court security guard that they are really judges from Alabama.

Municipal Judge Bill Coplin, Demopolis: A free taxi ride around Chicago.

Municipal Judge Murray McClusky, Sylacauga: A contract to play the defendant in any future mock trials.

Supreme Court Justice James Bloodworth, Montgomery: A search and seizure.

Alabama Supreme Court: A copy of Alibaba and the Forty Thieves (for stealing Administrative Director of Courts Allen L. Tapley's secretaries).

**COURT NEWS**

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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