

COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

Vol. 3

October, 1979

CORRECTIONS' PROGRAM

INMATES WARN YOUTHS ABOUT LIFE OF CRIME

Many of the state's juvenile delinquents and young first-time offenders are avoiding prison sentences under present laws, but many of these offenders are not avoiding visits to Alabama's penal institutes to hear the tales of loneliness and deprivation suffered by those who are there.

And if the endeavors of the inmates who address the youths should be fulfilled, none of the young people who are brought before them will ever have to spend time behind bars.

The Alabama Board of Corrections with the cooperation of Kilby Correctional Facility and other state prisons has undertaken a youth program in an effort to deter crime in those individuals who have no past record of criminal activity, and nip-in-the-bud criminal activities that have already surfaced in some youths.

The Youth Program is part of the Board of Corrections' ongoing education program. According to John Hale, public information officer with the Board of Corrections, the program has evolved into a multi-faceted one designed to reach several different



*KILBY PRISONER ADDRESSES GROUP
...Deputy Warden Jim Murphy (second from right) looks on.*

youth groups.

Average classrooms of students, students from alternative schools, youngsters who have been placed on

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UA CONTINUES SUPPORT FOR JUDICIAL COLLEGE

The University of Alabama will continue to assist in supporting the state Judicial College located at the university campus in Tuscaloosa.

Chief Justice C.C. Torbert Jr. said that on behalf of the judges, clerks and registers and other court officials and employees, he would like to extend appreciation to university President Dr. David Mathews and the university for its support of the state's continuing judicial education program.

"This joint effort by the university and the Administrative Office of Courts is invaluable to our justice system," Torbert said. He also expressed appre-

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INSIDE THIS MONTH

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- ...PROFILE: Justice James Faulkner
- ...Law Institute's Bob McCurley meets with Clerks on new Criminal Code
- ...Juror Workshop Allows Feedback for Judges, Lawyers

INMATES WARN YOUTHS ABOUT LIFE OF CRIME

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probation by juvenile offender courts and some other borderline offenders visit the prisons where they are taken on extensive tours of all the facilities. Some are fed lunch in the dining hall with the inmates and finally, all groups are gathered in the chapel to hear testimony from several inmates.

During this time of face-to-face contact, the inmates tell it like it is. The emphasis is on the losses suffered as the result of criminal behavior--the loss of loved ones, home, job and freedom. But the inmates also tell of the physical abuse suffered from other inmates and the crowded conditions encountered in most penal facilities.

The "rap" session varies slightly for each visiting group since the inmates talk a bit more directly to those with histories of criminal activity.

The program began in 1974 in the Huntsville school system when Hale and others from the Board of Corrections began helping prepare law courses.

"Their course of study followed the system up to the conviction, but there was no study of what happened after a criminal was convicted," Hale said.

"We then began bringing these groups of students through the prisons on short tours, but with the expanding program, we have also expanded the tours," Hale continued.

The program next expanded to the Huntsville Alternative School and as police agencies and judges began to hear about the program, they began sending young offenders on regular tours as part of a sentence or probationary stipulation.

"We just wanted to design a long, in-depth tour that would have some effect on the youths," Hale explained.

"Our guys (the inmates) are very calm. They play up what the kids will lose if they have to come to prison. We do the same type thing at Tutwiler (prison for women) for the female offenders," Hale

said.

The Birmingham Police Department has been sending a group to Kilby every month, and Circuit Judge Randall Thomas of Montgomery sends a group there on a regular basis.

Lawrence County District Judge James E. Farrior recently brought a group of juveniles through Kilby, and says he plans to bring more groups in the future.

"I was very impressed with the approach of the speakers. The inmates were very sincere in wanting to help the young kids who are getting off on the wrong foot by showing them what can happen to them," Farrior said.

Hale says the Board of Corrections is trying to keep records on results of the program, but they've been getting the kind of feedback that's hard to document.

"Some of the alternative school teachers say they've seen total turnarounds in some of the students after their visits, and some of the sheriff's deputies who ride down with the students say the visit is the total conversation on the way home," Hale said.

"We hate to brag too much about the program because it's not a sure-cure for crime, but if it helps any of the youths brought here, then it's worth the effort."

Hale said the inmates are very cooperative and more of them are wanting to participate in the program than can be used.

He added that Kilby Deputy Warden Jim Murphy has been very receptive to the program and his attitude has become a vital part of its success.

UA CONTINUES SUPPORT

FOR JUDICIAL COLLEGE

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ciation for the efforts on behalf of the Judicial College by Col. Floyd Mann, executive assistant to Dr. Mathews.

The university will continue to provide funding support, office space and the resources of the university for the operation of the Judicial College during the current fiscal year.

IN MARENGO COUNTY

INNOVATION, COOPERATION KEY TO CORRECTIONAL SUCCESS

Sheriff William H. "Billy" Smith Jr. of Marengo County has proven that a rural jail with limited financial and other resources can be transformed into a positive correctional experience for inmates with a little cooperation and a lot of innovation.

Even before a court order was issued in 1975 enjoining the state prisons from accepting any prisoners from the counties until the population in the state institutions was decreased to capacity, Sheriff Smith was making alternative preparations to traditional incarceration in order to house the abundance of prisoners soon to be sentenced to state terms and left with him in Marengo County.

Prior to the issuance of the court order, Smith shifted to a system of multiple jailers working on a shift basis. In addition, he met with the director of the local West Alabama Mental Health Center and suggested a cooperative rehabilitation effort be conducted in the jail. The agreement was that the sheriff's department would furnish facilities and funding and the mental health center would provide a psychologist on a contractual basis. A grant from the Law Enforcement Assistance Administration was secured and Dr. Michael Haley was employed by the mental health center.

Though the various components of the Marengo County program delve into several areas of inmate services, it is all under the broad umbrella of mental health services.

The first alternative offered to the inmates under the program was the opportunity to participate in a community work release program developed through local legislation and a contract with the State Board of Corrections. Several diagnostic tools were used to select inmates to participate in the program, but Smith says the most valuable tool was the input from local law enforcement officials who had dealt with the inmates in the community.

Certain work release inmates make payments each month, through the Department of Pensions and Security, to their eligible children. According to Smith, this program serves not only to increase the level of responsibility for the inmate



*Marengo County Sheriff
William H. "Billy" Smith Jr.*

fathers, but also serves to decrease the burden placed on the taxpayer for Aid to Dependent Children payments.

As a result of the initial work release program, several other habilitative opportunities developed. Through a cooperative agreement with the Alabama Department of Education, the jail was approved as a GED testing center and Dr. Haley was approved to administer the tests.

Through another cooperative effort with the Alabama Vocational Rehabilitation Service, inmates who are either mentally retarded or otherwise handicapped are established in a VRS community program.

Smith says some of the most popular programs operative in the jail are the community volunteer programs which provide such services in the jail as holiday gift-giving, monthly movies and referral sources for inmates with particular problems.

A volunteer program soon to start is a "Life Skills Training" program to be conducted by the Marengo County chapter of the American Association of University Women. Smith said this program will provide basic

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INNOVATION, COOPERATION KEY TO CORRECTIONAL SUCCESS

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training in subjects selected by the inmates ranging from remedial reading and writing to electronics.

Since inception in 1975, 91 inmates have participated in the work release program and 14 have completed the GED test. The program has received several national awards. In 1978 the Marengo County jail was selected as one of seven model jails nationwide for delivery of mental health services in jails, chosen by the Western Interstate Commission for Higher Education working under a grant from the National Institute of Corrections Jail Center. In 1979, Smith's program received the National Rural Justice Award given by the American Rural Health Association.

"Contrary to the thinking of many traditionalists in corrections, the mental health services do not conflict with the security requirements of the jail," Smith says. "Instead, they seem to compliment security efforts. As a matter of fact," Smith continues, "security problems have decreased since the implementation of the program and incidents of violence and vandalism within the jail have diminished to a point that they are practically negligible."

One of the most noticeable traits of the program has been the decrease in recidivism rate of inmates participating in the program--from a previous high of 50 percent to a present low of seven percent.

"Additionally," Smith said, "the turnover rate for jail employees is extremely low."

JUDICIAL PLANNING COMMITTEE

HEARING ABOUT COURTS

During the past eight months, members of the Judicial Planning Committee and staff from the Administrative Office of Courts have heard over 1,000 public officials and citizens telling what they think about Alabama's court system and giving

their ideas on ways to make it better.

According to Court Planner Peggy Walker, the JPC and AOC staff have heard from every segment of the state's justice system and from many outside the system during this listening process.

On Oct. 24, the JPC met in Montgomery to review everything said about the courts and discuss what the people who make up the system said was needed.

In the coming month, members of the JPC and the AOC staff will be involved in a very demanding assessment of current court organization and operation. All the information which has been provided through the various committee meetings will be compiled into some organized, workable form. Basically, this involves taking all comments and suggestions and transforming these into statements of goals, objectives, programs and activities.

"Through the many meetings and discussions, we have directly or indirectly been told the type of court system we should have in the future. This future vision will be translated into statements of goals and objectives which will provide the direction for the activities and programs our courts will undertake in coming years," Walker added.

In November, the AOC staff will participate in a two-day meeting to discuss the various alternatives which have been identified and to identify resources available to undertake programs.

Following this extensive meeting, staff recommendations for future court programs and activities will be prepared for submission to the JPC in a multi-day meeting planned for January.

At this meeting, members of the JPC who represent the various components of the court system will begin the review and analysis of the recommendations of the staff.

"All the work won't be completed in one meeting. Some issues will be significantly clear but others will require additional research. But, the process of laying a future planning foundation for the court system will have been initiated," Walker added.

PROFILE: Justice James H. Faulkner

Alabama Supreme Court Justice James H. Faulkner is a firm believer in judicial seminars and continuing legal education. He feels these are the areas which bring a variety of fresh new ideas to the courts as well as keeping judges abreast of recent developments in the legal field.

"We have a good situation with the Judicial College here in Alabama and the American Bar Association holds good national conferences. One of the benefits of attending those conferences is that we come away with a lot of new ideas.

"I feel the court system as a whole is doing a tremendous job, and not only are we recognized as one of the top systems in the nation, but we are now receiving national acclaim for efficiency and currency," Faulkner said. He noted that recent national surveys rank Alabama as having one of the best judicial systems in the country.

Faulkner likes for the Alabama court system to be known as a progressive, young court system, not necessarily liberal, but abreast of current events and recognizing changes.

Hailing from Louisville, Mississippi, the Supreme Court Justice is a second cousin to another famous Mississippian, author William Faulkner. His wife, the former Eleanor Jane Wyatt of Birmingham, is also a writer and is currently working on a novel. They have two children and one granddaughter who is not quite a year old.

Born on St. Patrick's Day, Faulkner graduated from the University of Alabama Commerce School in 1947 and the School of Law in 1949. Following an engagement with the U.S. Marine Corps where he served from 1940 until his discharge in January 1942,



Justice Faulkner

he accepted an appointment as cadet, U.S. Army Air Corps. Commissioned in September 1942, he flew 51 missions in the Middle East, European and Asian Theatres, receiving the Distinguished Flying Cross, Soldier's Medal, Air Medal with Oak Leaf Clusters and the Greek Military Cross.

After law school, he practiced law in Birmingham until 1951 when he left to serve with the Treasury Department. In 1955 he was appointed trust officer of the Birmingham Trust National Bank. After his association with the law firm Bowers, Dixon, Dunn and McDowell from 1958 to

1964, he opened private law offices in Birmingham and Montevallo where he practiced until election to the Supreme Court in 1972. He has since been elected to a second term on the bench.

Faulkner says of his present position as justice, "I'm as political as I ever want to be.

"One of the main reasons I came onto the Supreme Court bench was to be a part of the reform of the judicial system. It is very satisfying to have been a part of the reform that brought our court system out of the 19th Century into modern times. The Unified Judicial System is one of the most efficient systems ever devised and justice is rendered and meted out now more impartially than ever before.

"I would like to see the court system looked upon with the respect that it's due. I want the public and professional leaders of this state to know that they have the finest appellate court.

"It should be one of the aims of this state at large to see that the high court has proper facilities and that the personnel of that court are properly compensated

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JURORS FIELD QUESTIONS

IN MONTGOMERY WORKSHOP

It was almost like the jurors were on trial.

A recent Jurors' Workshop, sponsored by the Montgomery County Bar Association, allowed eight former jurors to tell judges, lawyers and members of the public what it's like to serve on a jury in Montgomery County.

The panel, each of whom had served on at least one jury, was composed of doctors, lawyers, a law enforcement agent and other laymen. They fielded questions from an audience of about 100 people including judges, lawyers, students and other members of the public.

Among the judges attending the meeting were Judge John C. Godbold of the U.S. Fifth Circuit Court of Appeals who served as moderator for the session; U.S. District Judge Robert E. Varner; and Montgomery Circuit Judges Randall Thomas, Joseph D. Phelps and William C. Gordon.

The audience heard quite a bit of feedback from the jurors.

---They were favorably impressed with the overall process and performance of the judges and lawyers.

---They said they felt somewhat nervous during the orientation and selection process and said a somewhat lengthier orientation process would have been helpful.

---Some said they were nervous not knowing each other and found it uncomfortable when first entering the deliberation room.

---Some of the jurors said they felt apprehensive about the terminology used during the orientation period and during the judges' instructions to the jury.

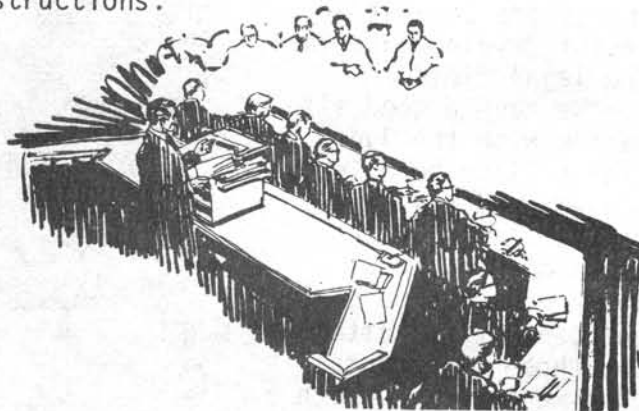
The Young Lawyers' Section of the Montgomery Bar publishes a handbook that explains in somewhat laymen's terms the jury process. Other circuits in the state have a similar document available to prospective jurors. The jurors felt that receiving this guide in advance would help offset some of the tension felt initially.

---Some of the jurors said they were apprehensive about standing to state their names and occupations before the criminal

defendant.

---All the jurors said they were not influenced by pretrial publicity nor by comments from friends and peers. They also said there was an honest attempt to exclude from the deliberative process any statements made during the trial which were struck from the record.

---All the jurors said there was an honest effort made to forget all biased information and follow the judges' instructions.



PROFILE: JUSTICE JAMES FAULKNER

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for their work."

Faulkner is a former Recorder's Court judge and city attorney for Montevallo. He was an instructor for the American Institute of Banking and presently serves as adjunct professor at Troy State University at Maxwell AFB teaching court procedures and administration. He has attended numerous legal seminars across the nation.

He is a member of the Episcopal Church, the Masonic Order, Phi Alpha Delta law fraternity and the Bar Associations of Alabama, Birmingham and Shelby County. When not in his office at the Supreme Court building, Faulkner enjoys gardening and playing golf.

On the wall of his office hang only two pictures--one of his wife and the other of one of his mentors, the fourth chief justice of the United States, John Marshall.

Faulkner says that oftentimes when he is deliberating, he glances over to the picture of Marshall and asks himself, "How would he have thought and what would he have done?"

TRIMBLE, MUNICIPAL JUDGES

COMPLETE AAJE COURSE

Angelo V. Trimble, coordinator of the municipal court division of the Administrative Office of Courts and three municipal court judges recently attended the Traffic Court Conference sponsored by the American Academy of Judicial Education at the Olde Colony Conference Center in Alexandria, Virginia October 1 through 5.

Alabama municipal judges who attended the workshop were Jerry L. Batts, Ardmore; James S. Garrett, Vestavia; and Douglas Ghee, president of the Alabama Municipal Judges Association from Ohatchee.

Designed for the judge with traffic court jurisdiction, this five-day intensive workshop covered the complete traffic trial from citation to sentencing and included a mock traffic trial. Discussion topics included judicial demeanor and public support for the judiciary; fact-finding; constitutional rights and traffic courts; decision-making; scientific evidence; sentencing; alternatives to incarceration; and traffic courts and the alcohol offender.

Trimble stated that he and the judges are very impressed with the range and depth of the program and especially with the superior faculty, including such notable speakers as Circuit Judge Joe C. Barnard of the 10th Judicial Circuit; Francis W. Jamison, professor of law, University of Denver College of Law; Retired Judge Nathan Kirsh, municipal court, Hackensack, N. J.; and Professor Thomas B. Russell, former director, Oregon Judicial College. Douglas Langford, executive director, AAJE, was the conference coordinator.

Trimble said he and the judges also met separately with Barnard to discuss ways to involve traffic court judges in Alabama in an on-going program of education.

"Judge Barnard is quite a capable and inspiring educator and judge. He offered many ideas for educational planning for our traffic courts," said

1980 HOLIDAY SCHEDULE SET

Chief Justice C.C. Torbert Jr. has set the following 1980 holiday schedule for judicial employees. It coincides with state employees' holidays as set by Gov. Fob James.

January 1	New Year's Day
January 21	Robert E. Lee's Birthday
February 18	George Washington's Birthday
February 19	Mardi Gras Day
April 14	Thomas Jefferson's Birthday
April 28	Confederate Memorial Day
June 2	Jefferson Davis' Birthday
July 4	Independence Day
September 1	Labor Day
October 13	Columbus Day
November 11	Veterans Day
November 27	Thanksgiving Day
December 25	Christmas Day

Trimble.

The group also visited the U.S. Capitol and met with Alabama Senators Howell T. Heflin and Donald Stewart, both of whom took time from their busy schedules to talk about court improvement in Alabama.

Funds for the attendance of the judges at the Traffic Court Conference were provided by the Alabama Office of Highway and Traffic Safety.



ATTENDING AAJE MEETING IN ALEXANDRIA, VA.From left, Judge Ghee of Ohatchee, Judge Garrett of Vestavia, Judge Batts of Ardmore and Trimble of the AOC.

NEWS FROM THE JUDICIAL COLLEGE



DWI SCHOOL INSTRUCTORS'

SEMINAR SET IN NOVEMBER

The Alabama Judicial College in cooperation with the Municipal Court Division of the Administrative Office of Courts will host the annual Seminar of DWI Court Referral School Instructors in Tuscaloosa. The program will begin on Nov. 1 at 1 p.m. and conclude Nov. 2 at 1:30 p.m. Approximately 100 participants are expected.

Topics to be covered during the Thursday session include: instructional techniques taught by Captain Cynthia Harrell of the USAF, Academic Instructors' School, Maxwell AFB; physical and psychological effects (of alcohol) taught by Vann V. Pruitt, assistant director, Department of Forensic Sciences, Auburn University; intoximeter (PEI) operation taught by Sgt. Lans Wilkinstadt, Implied Consent Unit, Department of Public Safety; and youth education taught by Walter S. West, director, American Council on Alcoholism, Tuscaloosa.

Friday's meeting will be divided into separate sessions for new and experienced instructors. New instructors will receive instruction on teaching each session of the course as follows.

SESSION ONE taught by Larry Wayne, DWI instructor, Jefferson, St. Clair and Blount Regional Alcoholism Council; SESSION THREE taught by Roy Forman, DWI instructor, Birmingham DWI Action Program; and SESSION FOUR taught by Jim Hawkins, director, Alcoholism Services, Marshall/Jackson Mental Health Center.

Experienced instructors will attend a panel discussion with Robert T. Simpson, coordinator, Court Referral Programs of Alabama, AOC, presiding. Panel members include John Haislip, Jackson County district judge; Major Harold Hammond, director, Driver License Division, Department of Public Safety; David Brown, professor, School of Engineering, Auburn University; and Angelo Trimble, coordinator, Municipal Court Division, AOC.

Each attendee will be awarded a certificate upon successful completion of the seminar. This is a necessary step for

many instructors who will be seeking to attain or maintain full certification status.

The DWI Court Referral Program is a statewide effort to deal with the drinking driver and is coordinated by the AOC. It is designed as a supplement to, not as a substitute for, standard judicial sanctions. Every traffic court in Alabama has a DWI Court Referral Program assigned to provide the service to that court.

Court personnel interested in attending this seminar should contact Bob Simpson at the AOC.

CONTINUING EDUCATION SCHEDULE

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JUDICIAL COLLEGE

LAUNCHES NEW PROGRAM

The Alabama Judicial College, with the assistance of clerks, registers and their employees, has launched a program to provide technical assistance through shared staffing. This program is designed to provide assistance with technical procedures in a clerk's and register's office by on-site assignments for personnel from another office who are proficient in that procedure.

Clerks and registers are asked to recommend persons from their offices who they consider to be knowledgeable in a particular area, who could explain the procedure to another and who is willing to travel. An orientation session was held for these people in Montgomery.

Requests for assistance can be submitted to the Judicial College.

CRIMINAL CODE SEMINAR FOR DA'S SET

The Judicial College will assist the Office of Prosecution Services in presenting a series of seminars for district attorneys and their staffs on the new Criminal Code at Farrah Hall in Tuscaloosa Nov. 7-8. Seminars will be conducted on each of the ten sections of the Code.

MORE NEWS FROM THE JUDICIAL COLLEGE

LAW INSTITUTE AIDS STATE OFFICIALS CONCERNING NEW CRIMINAL CODE

The Alabama Law Institute, according to its president, State Senator Finis St. John, III, is "the official law revision and reform agency for the state."

One of the purposes of the Institute is to aid the legislature in drafting clear, simple and up-to-date legislation.

The new state Criminal Code, which was enacted by the legislature and becomes effective on January 1, 1980, was a major project of the Institute.

The Institute's director, Robert L. McCurley Jr. is currently engaged in an effort to educate judges, district attor-

uously studies Alabama law in light of broad national trends, scholarly writings, uniform laws, model acts and state and federal court decisions to discover defects and inequities in the Alabama law and to recommend change.

The Alabama Law Institute is dedicated not only to the improvement of the substantive law, but also toward improving and simplifying the organization of the Code of Alabama. In this regard, the Institute is a part of the Legislature's Code Commission.

As an ongoing function, the Institute provides a legal reference service for members of the legislature. The Institute complements the bill-drafting operation of the Legislative Reference Service with objective analysis of legal inquiries by legislators. The Institute and the reference service work together to provide research and drafting for the legislature. The reference service handles the routine and mass of the bill drafting, leaving to the Institute major revisions and those requiring intensive, detailed study of a technical nature.

In addition to the services and functions mentioned above, the Institute provides legislative law clerks to a number of legislators and major legislative committees.



*LAW INSTITUTE'S ROBERT L. McCURLEY
...Judicial College's Thelma Braswell
at recent clerk's conference on new
Criminal Code.*

neys, court officials, law enforcement agents and attorneys concerning provisions of the new Code. McCurley is working with the Administrative Office of Courts, Continuing Legal Education and other groups and agencies to provide those who need it, a working knowledge of the new Code prior to its effective date.

While the Institute is funded and directly responsible to the legislature, the Institute Council functions to make policy decisions and the director of the Institute supervises and coordinates its projects. The Institute is charged by statute with consideration of needed improvements in both substantive and procedural law. In addition, the Institute contin-



*GROUP OF ALABAMA CLERKS AND REGISTERS
...At recent Birmingham meeting on new
Criminal Code.*

Notes From The Appellate Bench

CASES ARGUED IN OCTOBER

Municipalities

Whether a city council, by ordinance, can take from the mayor the power to sign checks to pay for city goods and services. Edwards v. First National Bank of Brewton, (78-64) October 23, 1979.

Insurance--Summary Judgment

An insured was struck and killed while repairing a flat tire on his car. The trial court granted summary judgment, holding that the deceased was not covered under a policy provision "while you are riding in an automobile on a public street or highway." Batchelor v. Liberty National Life Insurance Company, (78-361) October 18, 1979.

Attorney's Fees

Workmen's Compensation Cases

Client signed a contingency contract with lawyer to file negligence suit. Suit was filed but summary judgment for defendant granted by federal district court was affirmed on appeal. Lawyer filed a claim for workmen's compensation benefit, recovered an award and distributed the award after deducting expenses, 50 percent to the client, 50 percent as attorney's fees, as provided in the original contract. Client claimed 15 percent statutory maximum attorney fee was applicable. Question presented: May an attorney recover his costs of litigation in addition to the 15 percent statutory maximum attorney fee in workmen's compensation cases? Sokoll v. Humphrey, Lutz & Smith, (78-554) (78-555) October 15, 1979.

Water Pollution--Intent To Discharge

Ship collision with shore terminal in Mobile Bay causes oil spill. State claims Alabama Water Improvement Act imposes liability for discharge of pollutants, whether discharge was intended or not. Question presented: Does Water Pollution

Act require an intent to discharge pollution? State, ex rel. Graddick v. Jebesen's (U.K. Limited), (78-364) October 16, 1979.

Insurance--"Theft" Provision

Insured takes his tractor to a mechanic who changes out the running gear and, in a trade, installs another complete running gear which the insured later determines was stolen. Question: Was the loss by the insured of the original running gear (through the trade) a "theft" within the coverage of the policy? St. Paul Insurance v. Veal (78-588), October 17, 1979.

Death Case

Defendant urges several errors. (1) Several jurors were erroneously excluded because of beliefs about the death penalty. (2) The trial court should have adopted the American Law Institute Rule on "Insanity" instead of "Parson's" rule. (3) Fellow prisoner who was wired for sound should not have been allowed to testify. (4) Statements made by accused to psychologist who examined him were privileged and should not have been admitted. Crawford (78-749) October 9, 1979.

Liquor License Revocation

Lewd and Indecent Conduct

ABC Board revoked liquor license for violation of an ABC regulation which prohibited "topless or bottomless" dancing on the premises. Court of Civil Appeals found regulation unconstitutionally vague. Supreme Court granted certiorari to review that holding. ABC Board v. Blood Brothers (78-544) October 9, 1979.

Speedy Trial

Defendant, indicted 3/28/74. Detainer lodged against him in Florida. Defendant claims Alabama made no effort to bring him back for trial. Slaughter (78-556) October 9, 1979.

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NOTES FROM THE APPELLATE BENCH

(Continued From Page 10)

Privileged Communications--Psychiatrist

Is testimony by a psychiatrist who is consulted by the defense in preparation for trial "privileged"? Day (78-452) October 9, 1979.

Ethics Commission

Constitutionality of Disclosure Provisions

Birmingham policewoman, because of her salary, required to file report with Ethics Commission. Her spouse, an attorney, also required to file. Both claim unconstitutional invasion of right of privacy and that Ethics Act is unconstitutional. Gideon (78-527) October 16, 1979.

Garnishment--State of Alabama

Are wages and salaries paid by the state of Alabama subject to garnishment? Druid City Hospital v. Epperson (78-482) October 16, 1979.

Municipalities--Alcoholic Beverages

City adopts ordinance prohibiting sale of alcoholic beverages between hours of midnight and 6 a.m. ABC licensee claims ordinance invalid because the ABC Board regulations would permit it to sell alcoholic beverages after midnight. Question involves police power of city to deal with sale of alcoholic beverages. Gadsden Motel Co. v. City of Attalla (78-339) October 11, 1979.

Municipalities--Water Systems

City of Loxley was permanently enjoined from extending its water system so as to serve residents in an area located outside its city limits. Question presented: May a city extend its water system, without the permission of the county commission, outside its corporate limits into the service area of a water, sewer and fire protection authority incorporated pursuant to law? Alabama League of Municipalities files amicus curiae brief. Loxley v. The Rositon Water, Sewer and

Fire Protection Authority (78-860) October 11, 1979.

Medical Malpractice

Standard of Care in Community

Plaintiff, in a malpractice action, contends that medical specialists, such as urologists, should be held to a national standard of care, not to a standard of care used in the local community. Question presented is whether a national standard of care should apply to medical specialists. Zillis v. Brown (78-322) October 30, 1979.

Municipalities--Off Premises Beer License

Town of Wilmer refused to issue off premises beer licenses to two establishments which had obtained licenses from ABC Board. The two businesses claim that town ordinance which defined "church" was vague; that requiring licensees to be located more than ¼ mile from a church was arbitrary and that ordinance violated their federal constitutional rights. Davis v. Town of Wilmer (78-398) October 30, 1979.

Workmen's Compensation--Self-Insurer

Workmen sued employer, who was self-insured, claiming that employer undertook to perform a safety program and negligently performed it. Trial court granted summary judgment to employer. Adair v. Moretti--Harrah (78-405) October 29, 1979.

Civil Rights--State Employee

Right to Bring Federal Civil Rights Suit

In State Court

A state employee claimed he was wilfully and maliciously harassed by his supervisors. He claimed his dismissal was improper and that it was in retaliation for his exercising his right of free speech. Question presented is whether a state court has jurisdiction to enforce a remedy granted by federal civil rights statutes? Ingram v. Moody (78-308) October 29, 1979.

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NOTES FROM THE APPELLATE BENCH

*(Continued From Page 11)*Jury ServiceEmployment Terminable At Will

Workman claims he was fired because he was called and served on a grand jury. Question presented: Can an employer fire an employee, who can be terminated at will, because the employee is called for jury service? Bender Ship Repair v. Stevens (78-359) October 12, 1979.

NOTICE: ERRORS ON COURT FORMS

Please note the following errors on some of the revised court forms. The printers have been notified to make corrections on the next order.

JU-19, Notification of Detention Rights, line three, the word "way" is misspelled.

SM-3, Defendant's Answer, in the lower left corner, instructions to defendant advise him to keep the yellow copy. The defendant's copy, however, should be GREEN.

C-5, Civil Case Action Summary, on the card, the word "filed" is misspelled. Also, the cards indicate that the plaintiff's index is yellow and defendant's index is green. The correct color code should be GREEN for the plaintiff and YELLOW for the defendant. The color of the index card was not intended to change.

QUARTERLY REPORT

TO BE MAILED IN NOVEMBER

The caseload report for the third quarter of 1979 will be mailed to circuit judges, district judges, clerks and registers by Nov. 1. Upon receiving the report, please review it for accuracy. If any questions arise concerning the caseload report, contact Camille Ashley or Lyn Holman at the Administrative Office of Courts.

To insure prompt and accurate processing monthly, the AOC requests receipt of the Case Disposition Report (blue card) no later than the fifth day of the month.

HEALTH INSURANCE
CHANGES

Beginning October 1, 1979, state of Alabama employees will be participating in a "self insurance" program. Though the State Health Insurance plan will still be administered by Blue Cross, premiums paid by the state for employee coverage will be able to be invested as State Retirement funds are. Return on investments will be used either to provide greater benefits or to reduce premiums.

There will be no increase in premiums in 1979-80; rates will remain \$32.43 per month for employees (paid by the state) and \$51.77 for family coverage (payroll deduction).

A major improvement for state employees in the health care program will take place about January 1, 1980. For the first time in history, state employees will no longer have to file two sets of claims (one for regular coverage and one for major medical). After Jan. 1, Blue Cross will automatically "bump" all unpaid claims to major medical.

Employees who have questions on claims already filed can call a toll free Blue Cross number in Birmingham to check on the status of their claims. The toll free number is: 1-800-292-8854. Administrators are requested to keep this number handy in their offices so that employees may have access to it when necessary.

DRIVER LICENSE DATA AVAILABLE

FOR DEVELOPMENT OF JURY LISTS

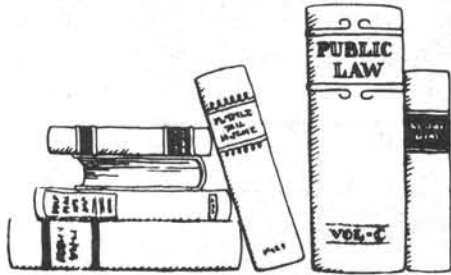
Current picture driver licenses information is now available from the Administrative Office of Courts upon request.

This information includes the name, address, sex, race and date of birth of all persons who have renewed their drivers' licenses within a specified county. The data can be requested in either of two forms: a magnetic tape or printed list. For further information, contact Jan Shultz, information systems division, AOC.

ALABAMA JUDICIAL COLLEGE CONTINUING EDUCATION PROGRAMS										
GROUP		1979					1980			
MONTH		CIRCUIT COURT JUDGES	DISTRICT COURT JUDGES	JUVENILE COURT JUDGES	MUNICIPAL COURT JUDGES	CLERKS AND REGISTERS	CLERK/REGISTRAR EMPLOYEES	COURT REPORTERS	JUDICIAL SECRETARIES	OTHER GROUPS
1979										
OCTOBER						REGIONAL SPECIALTY SEMINARS BIRMINGHAM, OCT 4-5 MONTGOMERY, OCT 11-12				
NOVEMBER		PRESIDING JUDGES TUSCALOOSA NOV 15-16								DWI INSTRUCTORS TUSCALOOSA NOV 1-2
DECEMBER				ANNUAL CONFERENCE JOE WHEELER DEC 6-7						
1980										
JANUARY		MID-WINTER CONFERENCE MONTGOMERY JAN 17-18						ANNUAL CONFERENCE MONTGOMERY JAN 18-19		
FEBRUARY						MID-WINTER CONFERENCE BIRMINGHAM FEB 7-8				
MARCH				JUDICIAL SEMINARS TUSCALOOSA MAR 20-21						
APRIL		SPRING JUDICIAL SEMINARS TUSCALOOSA APR 24-25				SPECIALTY SEMINARS TUSCALOOSA APR 3-4				
MAY					ANNUAL CONFERENCE BIRMINGHAM MAY 10-11					
JUNE						SUMMER CONFERENCE GUNTHERVILLE JUN 19-21				
JULY		SUMMER CONFERENCE BIRMINGHAM JUL 16-17							ANNUAL CONFERENCE BIRMINGHAM JUL 10-11	
AUGUST							NEW EMPLOYEE ORIENTATION TUSCALOOSA AUG 7-8			
SEPTEMBER		FALL JUDICIAL SEMINARS TUSCALOOSA SEP 23-26								

NOTE: This updated court calendar shows the rescheduling of the court reporter's annual conference.

LEGAL NOTES



ATTORNEY GENERAL OPINIONS

Attorney Fees--Indigent Juvenile Cases

In an opinion released Sept. 27, the attorney general determined that the amount of attorney fees to be paid by counties in indigent juvenile cases must be set by the district judge handling the juvenile court.

Board Of RegistrarsRegarding A Person "Convicted"

The attorney general found that a board of registrars should not regard a person as "convicted" of a crime within the meaning of the voter qualification statutes if such a person pleads not guilty to a disqualifying crime and then fails to appear for trial and forfeits bond. Section 182 of the 1901 Constitution of Alabama, which lists offenses that will disqualify a person from voting, applies only to a person or persons who are actually convicted of these offenses. Failure to appear at trial and bond forfeiture do not constitute a conviction of a disqualifying crime. Consequently, a board of registrars should not remove these persons from the list of qualified registered voters.

Defendant Service Fees/Non-Residents Discussed

Pursuant to 12-19-73, Code of Alabama 1975, where there is more than one defen-

dant upon which personal service is required, a \$5 service fee shall be collected.

In an opinion dated Jan. 22, 1979, the attorney general determined that a clerk may not charge a \$5 service fee for a second or subsequent attempt to serve a single defendant.

Thus, a service fee will be collected on a single resident defendant when the plaintiff files a written request with the clerk by certified mail for service or, where service is by publication, the actual cost shall be collected as a service fee, pursuant to Rule 4.3, Alabama Rules of Civil Procedure.

For all defendants in excess of one and for each non-resident defendant (non-resident of the state), there shall be collected a service fee of \$5 except where service is by publication or registered mail in which event the actual cost shall be collected as a service fee.

Disposition Of Arrest Fee FollowingConviction For Revenue Violation

It has been brought to the attention of the Administrative Office of Courts that arrest fees collected on convictions for revenue violations are presently being distributed in two different ways.

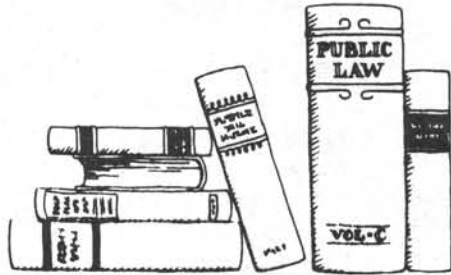
A small number of clerks are distributing the arrest fees directly to the Commissioner of Revenue who in turn remits the fee to the state general fund pursuant to Section 40-2-10 (b), Code of Alabama 1975.

The vast majority of clerks remit the arrest fee directly to the general fund by virtue of Section 12-19-178, Code of Alabama 1975, which deals with the distribution of docket fees for misdemeanor cases in district courts.

Because Section 12-19-178, supra, states in pertinent part, "the following distribution shall be made in district court.... an arrest fee of five and no/100 dollars (\$5) to the state general fund or to the state funds prescribed by law," it is the opinion of the AOC that this will be an appropriate procedure to follow. Further,

(Continued On Page 15)

LEGAL NOTES



Disposition Of Arrest Fee Following
Conviction For Revenue Violation

(Continued From Page 14)

contact with W.J. Bullards of the Office of Investigations and Inspections, state Department of Revenue, has disclosed that this is the procedure that office would prefer be followed.

Of course, the revenue arrest tickets are still to be completed on disposition and mailed back to the Department of Revenue.

Further, the Department of Revenue still requests that the "revenue report" form summarizing the dispositions of revenue cases handled in a particular court be completed and forwarded to the Department of Revenue. However, computer printouts which are submitted from certain counties are sufficient for this purpose and the revenue report form in these cases will not be necessary. These forms can be obtained by writing or calling:

Bill Bullard
Office of Investigations and Inspections
State Revenue Department
Room 202
Administrative Building
Montgomery, AL 36130
Phone: 832-5770

OPINION OF THE SUPREME COURT CLERK

Contempt Orders Discussed

A proceeding for indirect or constructive contempt may be begun by issuing a citation or rule nisi to an alleged contemnor to appear and show cause why he should not be held in contempt.

In an opinion dated Sept. 27, Alabama Supreme Court Clerk J.O. Sentell determined that when an attorney seeking a contempt order or rule nisi submits a petition and order to a judge and obtains a rule nisi or order to show cause against the alleged contemnor, the filing fee should be paid at the time of the filing of the signed order in the office of the clerk or register.

RECORDS RETENTION COMMITTEE

MEETS TO DISCUSS SCHEDULING

The Records Retention Committee, established to develop retention schedules specifying how long each type of record must be retained and how they may be disposed, met recently in Montgomery.

Twenty-eight records were scheduled and two others were tabled for further discussion. Members of the committee decided to place the schedule in the Clerks' and Registers' Manual rather than publishing a separate manual.

Approval of the schedule will come after reviews by Chief Justice C.C. Torbert Jr. and the state Records Commission chaired by Milo R. Howard, director, Department of Archives and History.

Committee members are: Clerks Annette Hardy (chairman), Fred Posey, Libby Hamner; Circuit Judges Leslie Johnson and Randall Cole; District Judges Jerry Fielding and Wesley Smith (retired); Register Jack Thompson; Winston Walker, Department of Archives and History; Court Reporters Mary Frances Price and Gail Ferrin; DAs Wayne Williams and Nathan Watkins; and Peggy Goodwin and Barbara Montoya.

NEWS CLIPS FROM ACROSS THE STATE

Brighter picture

The public's right to know hasn't fared very well in several recent decisions of the U.S. Supreme Court. One has even resulted in some judges' excluding the public, the press or both from trials in what previously had been open court. But the picture is brighter in the state of Alabama's appellate courts.

In one recent decision, the Alabama Supreme Court showed that it takes the state's open-meetings law seriously and narrowly construed that law's single exception. In another case, the Alabama Court of Criminal Appeals reversed the contempt conviction of a Birmingham newspaper and reporter for violating a trial judge's gag order.

Some public officials are fond of saying that the many attorney generals' opinions upholding the open-meetings law are only opinions—as if the law didn't clearly require that practically all meetings of most public bodies be held openly. But the Supreme Court held that The Birmingham News has a right to attend Birmingham City Council meetings where “the character or good name of a woman or man” (the statutory exception) is not involved. This is not just an opinion. It's the kind of law attorneys revere most—case law, and from the highest court in the state.

In the Birmingham meeting that led to the Supreme Court case, the City Council privately interviewed potential appointees to the city board of education. This was the sort of personnel matter for which many public bodies in Monroe County routinely call closed sessions. But the Supreme Court said discussing an appointment does not necessarily qualify the council to invoke the “character or good name” exception.

“Our statute says nothing about appointments,” the court said. “Thus, although we hold that ‘character or

good name’ as used in (the statute), does not per se include a session considering an appointment or personnel matters ‘character or good name’ may often be an issue in such discussions. On the other hand, discussion of ‘character’ or ‘good name’ may occur at other times unrelated to appointments or personnel matters.” The court said a character or good name discussion might include “a discussion of one's general reputation, i.e., the estimate the public places on a person, his reputation, good or bad, and the personal attributes of an individual. It might also include such personal traits as honesty, loyalty, integrity, reliability, and other such characteristics, good or bad, which make up one's individual personality.”

The gag-order case arose from the Birmingham Post-Herald's coverage of a murder trial in Oneonta. A judge there wanted to avoid prejudicing the jury in a companion case, so he barred publication of news stories about the first trial until the second one's jury was sequestered. The Post-Herald thought the order was unconstitutional and, after trying unsuccessfully to reach the judge and change his mind, went ahead with the story. He held the newspaper and reporter in contempt, and they appealed.

The appeals court's reversal is a victory for the First Amendment to the U.S. Constitution and a warning to Alabama judges that they should look for ways other than gagging the press when trying to insure defendants fair trials.

This is National Newspaper Week, and it almost coincides with the beginning of a new term of the U.S. Supreme Court—a term from which the nation's press is expecting more bad news. But in Alabama, the news media—and the people they serve—can take encouragement from these two recent decisions of state courts.

The news clips below appeared in state newspapers during the month of October.

The article at left, entitled “Brighter Picture,” appeared in *The Monroe Journal*. The article below, “No Backlog of Cases,” appeared in *The Demopolis Times*.

On the following page (17), the article entitled “We're No. 1,” appeared in the *Alabama Journal*, and the article, “Supreme Court Planned at UNA,” appeared in *The Florence Herald/Picture*.

No backlog of cases in appellate courts

State Chief Justice C.C. “Bo” Torbert, Jr., says the number of cases handled by Alabama's three appellate courts has increased by 13 percent over last year. But in spite of this caseload increase, Torbert says the three courts enter their 1979-80 court year this week with current dockets.

It will be the seventh consecutive year all three courts—the Supreme Court, Court of Criminal Appeals and Court of Civil Appeals—have entered a new term year with no backlog of cases. Torbert complimented the justices and judges for their “diligent work and attention to their duties which provide the people of Alabama undelayed justice in the state's appellate courts.” The chief justice said that Alabama's appellate courts are probably the only such courts in the nation with this kind of record. “We all feel a great deal of pride in this accomplishment,” he added.

The Supreme Court handled 828 cases, an increase of 15 percent over the 1978-79 term year. Of this number, the court rendered 428 full written opinions, heard 298 writs of certiorari, handled 95 miscellaneous and extraordinary writs and issued seven advisory opinions.

The Court of Criminal Appeals handled and disposed of 950 cases, an increase of 13 percent over the previous year. That court's presiding judge, John O. Harris, said 400 cases were decided where full written opinions were issued, 358 cases were decided without full writ-

ten opinions and 192 cases were decided by the court en banc. These figures do not reflect the many petitions handled by the clerk under authority granted by the court. Harris noted that Retired Judges Bowen Simmons of Andalusia, Leigh M. Clark of Birmingham and Joseph J. Mullins of Clanton assisted the court throughout the year. “Their help was immeasurable in helping our court maintain a current status,” Harris said. The court disposed of 29 capital cases during the year.

The Court of Civil Appeals handled 252 cases and heard oral arguments in half of those, according to Presiding Judge L. Charles Wright. This amounted to a 10 percent increase in the caseload of that court over the previous year. In addition, the court handled some 20 extraordinary writs.

The Supreme Court members are: Chief Justice Torbert, Associate Justices James N. Bloodworth, Hugh Maddox, James H. Faulkner, Richard L. Jones, Reneau P. Almon, Janie L. Shores, T. Eric Embry and Samuel A. Beatty. J.O. Sentell is clerk.

Members of the Court of Criminal Appeals are: Presiding Judge Harris, John C. Tyson III, John P. DeCarlo, John G. Bookout and William M. Bowen Jr. Mollie Jordan is clerk.

Members of the Court of Civil Appeals are: Presiding Judge Wright, Robert P. Bradley and Richard L. Holmes. John Wilkerson is clerk.

Supreme Court Planned At UNA

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Supreme Court of Alabama will convene in special session at the University of North Alabama on November 9th, according to Dr. William L. Crocker, Dean of Faculty and Instruction.

Crocker said the court will review two cases in Norton Auditorium. The session will begin at 9:30 a.m. and conclude at 12 noon.

The Supreme Court, the highest court in Alabama's unified Judicial System, is composed of the Chief Justice and eight Associate Justices.

As the highest judicial tribunal, the Supreme Court has the power to superintend and review any case tried, heard or appealed in any other court in the state.

Many cases can be appealed directly to the Supreme Court, but all criminal and many

civil appeals must go first to one of the Courts of Appeal.

Under the Judicial Article approved by the people, the Supreme Court has rule-making power and has authority to promulgate administrative regulations to insure the efficient and speedy administration of justice.

The Court may answer questions of state law certified by a Court of the United States.

The Justices of the Supreme Court are elected and must run for office every six years.

In addition to Chief Justice C. C. Torbert, Jr., of Opelika, other members of the court are justices James N. Bloodworth, Decatur; Hugh Maddox, Montgomery; James H. Faulkner, Montevallo; Richard L. Jones, Birmingham; Reneau Almon,

Moulton; Janie Shores, Birmingham; Eric Embry, Pell City; and Sam Beatty, Tuscaloosa.

We're No. 1

Alabama, frequently dismally low when compared to the rest of the states, is riding high in handling a rascally situation. It leads the nation in tracking down men who skip out on their children, leaving them dependent upon welfare.

The announcement came from State Department of Pensions and Securities Commissioner Gary Cooper. He said that he was passing on findings from Washington.

He cited word from the Department of Health, Education and Welfare that Alabama is tops in collecting child support from fathers whose offspring were receiving support under the Aid to Dependent Children program.

According to Cooper, collections in this state were up about 43 percent from 1978 to

1979. Nationally, he said, the rise was only nine percent.

By nailing those delinquent fathers, there is, of course, the benefit to the children. But, as Cooper pointed out, it also means taking youngsters out of the Aid to Dependent Children program, thus cutting back on the outlay of funds.

Alabama is a poor state with many poor people. The demands on the welfare system and its limited resources are back-breaking.

Putting the touch on those deadbeats who abandon their children is a credit to Cooper and his department and to the courts. They are helping to stretch our meager means to care for those among us who are so desperately in need.

people people people people

AOC ATTORNEYS ADDRESS

BIRMINGHAM CHAMBER GROUP

Melinda Mitchell, Administrative Office of Courts legal counsel, and Lane Mann, AOC staff attorney, addressed a group of merchants in Birmingham recently on the new Criminal Code.

The talk was coordinated by the Birmingham Area Chamber of Commerce for the Retail Merchants Association.

Ms. Mitchell's talk outlined the background, reasoning and history of the new Criminal Code (effective January 1980). Emphasis was placed on business crimes such as forgery, theft, credit card fraud, robbery, shoplifting and shopping cart vandalism.

Following the talk, Ms. Mitchell and Mann answered questions from the merchants and their employees.

JUDGE CECIL CURTIS RETIRES

Russell County District Judge V. Cecil Curtis, judge for over 10 years, retired effective October 16 to return to private practice. A successor has not been named.

RICHARD MARTIN NAMED

RECORDS MANAGER OF YEAR

Richard T. Martin, staff associate of the National Center for State Courts, has been named Records Manager of the Year by the Association of Records Managers and Administrators.

The award was made at the 24th annual ARMA conference held Oct. 7-10 in Phoenix, Arizona.

Martin is deputy director of the National Center's Court Improvement Through Applied Technology project, a national effort to improve courts through the use of technology and innovative manual systems. He was formerly with the Alabama Administrative Office of Courts.

BACA NAMED ACTING DIRECTOR

OF NEW MEXICO OFFICE OF COURTS

Edward J. Baca has been appointed by the Supreme Court of New Mexico to serve as acting director of the Administrative Office of Courts for a six-month period. Baca has been deputy director for the past six years.

**COURT NEWS**

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

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