

# COURT NEWS

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

Volume 4/Number 10

October, 1980

## BIRMINGHAM ATTORNEY

### OSCAR W. ADAMS JR. TAKES OFFICE ON SUPREME COURT

Oscar William Adams Jr. of Birmingham took office Friday, Oct. 17, 1980, as an associate justice on the Alabama Supreme Court. Gov. Fob James appointed Adams to the post after Associate Justice James N. Bloodworth retired from the court for health reasons.

Adams, 55, was senior member of the prominent Birmingham law firm of Adams, Baker and Clemon. James K. Baker of that firm is now city judge for Birmingham and Senator U.W. Clemon of the firm was recently confirmed as United States district judge for the northern district of Alabama. The law firm was given the highest rating possible by the Martindale-Hubbell Law Directory in its 1980 edition.

Since 1974, Adams has been a member of the Alabama Supreme Court's Advisory Committee on Criminal Procedure. He is also a member of the council of the Alabama Law Institute.

He received his A.B. Degree from Talladega College in 1944, and his LL.B. Degree from Howard School of Law in Washington, D.C. in 1947.

"His record is outstanding in every respect," James said upon making the appointment. "He has had a distinguished general practice for 33 years."

At his investiture in the state Judicial Building, Adams reminisced to the day when he was taking the bar examination in the basement of that building. He said his frustra-



ASSOCIATE JUSTICE ADAMS, WIFE WILLA

tion was so great, that mid-way through the exam, he hurled his pen across the room in the direction of the Dexter Avenue Baptist Church.

"Then, my wildest dream would not have let me imagine that 33 years later, my pen would be returned to me to write on the Supreme Court of the state of Alabama."

Adams is married to the former Willa Ingersoll of Fairfield, and has three children: Oscar W. Adams III, Gail I. Harden and Frank T. Adams.

## ACCOMMODATING CITIZENS GOAL OF JUMI PROJECT IN HOUSTON COUNTY

Court officials of the 20th Judicial Circuit are finding new ways to accommodate citizens called for jury duty since becoming involved with the Jury Utilization Management Incentive Project.

According to Presiding Circuit Judge Jerry M. White, participation in the project has brought to light a lot of things

(Continued On Page 2)

## ACCOMMODATING CITIZENS GOAL OF JUMI PROJECT IN HOUSTON COUNTY

*(Continued From Page 1)*

that needed changing.

"We had perhaps suspected some of the areas that needed improvements, but with the juror questionnaires, we are getting input from jurors on areas such as orientation, how they are treated and how their time is used. It's not that we were doing anything wrong, it's just that some of the things could be done differently to better accommodate the citizens.

"For example, we found that jurors did not mind serving, as long as they were being used. What they did not like was wasting their time sitting around the courthouse. We have since changed court scheduling in criminal court and instead of taking guilty pleas while jurors waited, we start court an hour earlier and take pleas before the jurors arrive.

"We are now using multiple voir dire in civil jury selection. This has saved us money and the jurors like it because they only have to come back to court when they're going to be used."

Judge White was appointed circuit judge by Gov. George Wallace in November of 1973 after the death of Judge Keener Baxley, father of former attorney general Bill Baxley. At the time of his appointment, he was serving Dothan as district attorney.

White attended Dothan public schools before entering the University of Alabama School of Commerce and Business Administration. He received his law degree from the University's School of Law and entered private practice in Dothan. During this time, he served as assistant district attorney under Bill Baxley before seeking a term as district attorney.

He is married to the former Carol Sugg of Birmingham and they have three children.

"The jury project is a super program. It has made us (court officials) more conscious of the jury system--both from cost and citizen convenience standpoints. It is making us more sensitive to the needs of citizens serving on juries and more aware of the amount of tax money spent on jury trials."

Houston County is one of 14 counties

included in the pilot JUMI project funded through the Law Enforcement Assistance Administration and administered through the Administrative Office of Courts.

## COMPUTERIZED JUROR QUALIFICATION QUESTIONNAIRES MAILED THIS MONTH

This month citizens of Alabama will begin receiving the computerized qualification questionnaires prepared by the Administrative Office of Courts. The computerized process was developed by the Jury Management and Information Systems Division as part of the JUMI Program in Alabama. This process was designed to reduce the administrative expense of refilling the master jury box. In 1978, the expense of temporary clerical assistance and computer support in refilling the master jury box was approximately \$300,000.00. The use of the computerized questionnaires will substantially reduce this expense in the 1980 qualification cycle, and it will provide a more manageable system for the local jury commission. Thirty-six counties in Alabama will participate in the computerized process utilizing approximately 100,000 questionnaires.

These questionnaires have been prepared on the computer within the AOC at the rate of 50 per minute. The printing of these questionnaires will take approximately 30 hours. In addition to the questionnaire, a master jury box list and jury cards will be supplied to each commission. Furthermore, to assist the sheriff in the summoning process, an additional set of mailing labels will be provided for use where summoning is carried out by mail.

Allen L. Tapley, Administrative Director of Courts, said "The computerized qualification questionnaire is one of the most significant advancements the court system has undertaken. Through the appropriate application of computers, a more manageable and economical system has been devised for use in the court system. This is just one of many improvements which have been implemented in the jury area under the JUMI Program. Hunter Slaton, the Jury Management staff and the Information Systems Division have done a fine job in designing this system."



## COURT OBSERVANCE WEEK

### LEE COUNTY ACTIVITIES PROMOTE

### 'BETTER UNDERSTANDING' OF COURTS

The second full week of October was observed by Lee Countians as "Court Observance Week."

The week's activities, sponsored by the Lee County Legal Secretaries Association, were planned to promote a better understanding of courts and the legal process.

Each day, the Opelika-Auburn News featured interviews with court officials and personality profiles on the court officials of Lee County. Radio Station WJHO in Opelika featured an interview with Bob Martin of the Administrative Office of Courts.

Chief Justice C.C. "Bo" Torbert addressed the banquet of the Business and Professional Women and Legal Secretaries during the week. Citizens were encouraged to attend sessions of circuit court and Ruth Henry, Lee County court administrator and secretary of the Legal Secretaries Association, arranged for groups to tour the courthouse facilities.

Lee County court officials featured in the local news include Presiding Circuit Judge G.H. Wright Jr., Circuit Judge James T. Gullage, District Judge James Noel Baker, Circuit Clerk Annette Hardy, Ms. Henry, District Attorney Ron Myers and Municipal Judges Thomas D. Samford (Opelika) and Richard Lane (Auburn).



*COURT ADMINISTRATOR RUTH HENRY WATCHES... as Lee County Probate Judge Hal Smith signs proclamation declaring Oct. 13-17 "Court Observance Week" in Lee County. The week-long activities were sponsored by the Lee County Legal Secretaries Association in conjunction with the national observance sponsored by the group's national affiliate.*

### IT'S NO WONDER THEY'RE TESTY...

Ginny Anderson, Debi Perkins and Amanda Rieves of the Administrative Office of Court's Recruitment, Examination and Employee Placement Division have had their share of calamities with regard to the newly-implemented written testing program.

Take for instance the time half a dozen applicants showed up at the appointed time and place, but the test administrator "forgot" that a test was to be given.

Or the time Dorothy White of the Personnel Operations Division ran into nine inches of rain and had to zig-zag through Mobile avoiding flooded streets to get to the test center.

Then there was the time Ginny was to give a test in Bessemer and got to Fulndale before realizing she had missed the Bessemer exit. (She contends they've only RECENTLY put up an exit sign.)

The most recent disasters involved the U.S. Mail. A box of tests sent to the Gadsden test center on Oct. 3 did not arrive until Oct. 20--nine days after the test date of Oct. 11.

Just recently, a box of tests destined for Florence was aboard a mail truck that plummeted off the road, down an embankment and into a creek along with some 60,000 other pieces of mail.

Even though these mishaps have occurred, all the applicants involved have been tested. In fact, there are now 930 applicants on the registers. "Neither rain, nor sleet, nor snow..."

## MORGAN, MADISON TO EXPAND COMPUTER CAPABILITIES IN CIRCUIT COURTS

The Court Delay Reduction Program, funded through a discretionary grant awarded by the Law Enforcement Assistance Administration, was initiated June 1, 1980. The primary goal of the program is to address the problems of both civil and criminal court delay in the circuit courts. In addressing these problems, several proposed solutions will be reviewed. One of these areas of review is the assessment of the applications of advanced technology in the Alabama courts. The AOC has been interested in this area for the past several years, undertaking such projects as micro-filming, electronic cash registers and, recently, the computerization of the juror qualification questionnaire. Under the Court Delay Reduction Program, the staff of the AOC will make a comprehensive evaluation of these and other applications. As part of this assessment, the 8th and 23rd Judicial Circuits will implement a computerized case management system. These courts were chosen due to their interest, prior experience and representativeness of small urban and large urban courts.

The 8th Judicial Circuit has experimented, on a limited basis, with an automated case tracking system established by Judge Tom B. Coggin in 1979 on a micro-computer. Judge Coggin, who has previous computer programming experience, adapted the small computer for use in his court and worked with the system for several months. After the experiment proved such a system to be feasible, the AOC was contacted regarding expansion of the system to the entire circuit court.

In discussions with the officials of the circuit court, Presiding Circuit Judge Newton B. Powell, Circuit Judge Richard Hundley and Circuit Clerk Cleo Teague also anticipate many uses for the system in the court. In the development of the system all court officials and court personnel will be surveyed to determine their needs and the best method of meeting them, either automated or manual. Design of the system will begin after an initial assessment of the present system has been completed by the Case Management and Information Systems Division.

The 23rd Judicial Circuit has also utilized computers in their court operations, such as the recently implemented jury selection and summoning process. This computer process has been particularly beneficial to the operation of the jury system in Madison County and has been used as a basis for a statewide model. The successful implementation of this system and the interest of Presiding Circuit Judge John D. Snodgrass, Circuit Clerk Billy Harbin and Court Administrator Glenn Singleton led to investigating the use of computers in the case management area. Additionally, Harbin anticipates the use of a computer bookkeeping system in the circuit clerk's office. As in Morgan County, the Madison County system will be developed after input from all circuit judges, clerks, and other court personnel.

Allen L. Tapley, administrative director of courts, noted, "The application of advanced technology is an area of strong interest for me. The courts should make use of all methods which can improve the efficiency in serving the people of Alabama. However, careful investigation must be undertaken to ensure that the most feasible and economical methods are the ones to be implemented. Through the Court Delay Reduction Program, court officials and the AOC staff will take a comprehensive look at these technologies and decide their appropriate use."

## SEVERAL COUNTIES NOW USING JURY ORIENTATION SLIDE PRESENTATIONS

The Administrative Office of Courts Jury Orientation slide presentations have been implemented in several counties with several more underway.

These shows, designed for each participating circuit, are used to make jurors more aware of their roles in the judicial process and to acquaint them with their various court officials.

Counties where slide shows are now being used are DeKalb and Cherokee, Lauderdale, Lee, Limestone and Montgomery. Shows near completion are Barbour and Bullock, Colbert, Conecuh and Monroe, Mobile and Morgan.

Court officials interested in producing a juror orientation slide show for their circuits may contact Frank Gregory of the AOC Research, Planning and Development Division.

## PROFILE

"He's a great guy and he's pure class."

That's what John Wilkerson, clerk of the Alabama Court of Civil Appeals says about Judge Robert P. Bradley of that court. Judge Bradley, who wears two judicial robes--one as a judge of the Court of Civil Appeals and the other as chairman of the Alabama Judicial Inquiry Commission--is a charter member of the Court of Civil Appeals having been appointed at its inception in 1969 by Gov. Albert Brewer.

He has also served on the Judicial Inquiry Commission since its origination in 1973.

Soon after receiving his law degree from the University of Alabama Law School in 1951, Judge Bradley went to work in the attorney general's office where he served as an assistant attorney general until 1959 when he became legal advisor to Gov. John Patterson. When Patterson's administration left office, Bradley went back to the attorney general's office and served until early 1969 when he was appointed interim prison commissioner. In December of that year, he was appointed judge.

The 50s saw many changes in the nation and particularly in the South and Bradley watched many of these changes from the legal hub--the attorney general's office.

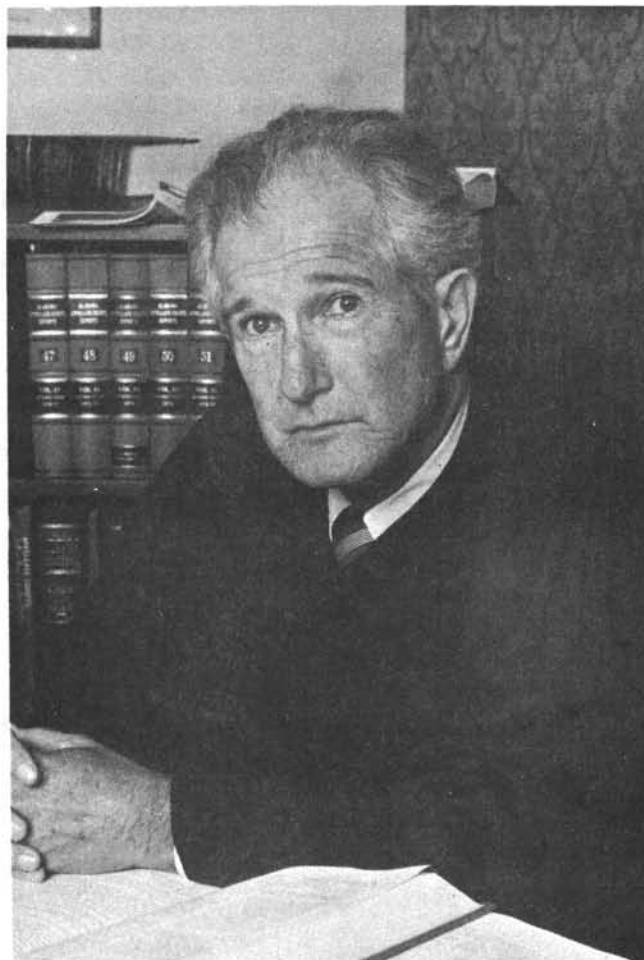
"Soon after I came on in the early 50s, the Phenix City episode came up, and shortly after that came the civil right's actions," Bradley recalled.

Occupying the attorney general's office while Bradley was involved in the executive branch of government were Silas Garrett, John Patterson, McDonald Gallion, Richmond Flowers and Gallion again. Governors during this time were Gordon Persons, "Big Jim" Folsom, John Patterson, George Wallace, Lurleen Wallace and Brewer.

Through almost 12 years on the appeals court, Bradley says there has been an "explosion" of litigation. Statistics show that 449 cases were docketed this year--six percent over last year and 33 percent over five years ago.

Though the jurisdiction of the court has not changed (up to \$10,000 in civil matters; appeals from administrative agencies other than the Public Service Commis-

## Judge Robert P. Bradley



JUDGE ROBERT P. BRADLEY

sion and workmen's compensation and domestic relations cases prior to review by the Supreme Court) Bradley says at times, the court seems to get more of certain kinds of cases.

"For instance, now we are getting fewer automobile damage and domestic relations cases and more workmen's compensation, uniform commercial code, teacher tenure and tax cases.

"And we still get a lot of cases of first impression. You would think that after all the years and all the books that have been written, there could be no new areas," he said.

The Judicial Inquiry Commission, which consists of representatives from the appellate courts, circuit judges association, bar association and a citizen member ap-

*(Continued On Page 6)*



**PROFILE: JUDGE ROBERT P. BRADLEY***(Continued From Page 5)*

pointed by the governor, meets once each month.

"We take up one to two dozen new matters each month, plus discussions of old business carried over from the previous month. The bulk of the complaints we get against judges deal with the outcome of lawsuits. Most of these are dismissed, but we do investigate all complaints about judges' conduct both on and off the bench.

"The Inquiry Commission is an excellent way of protecting the public's interest in its judiciary. We are learning more about what's going on since citizens have this forum to air complaints.

"And the Commission has had a healthy effect on the judiciary since there is now a means to discipline those who err. The members of the judiciary have more of an idea of what the public expects of them, and the public has a right to expect a certain conduct from its judges," Bradley explained.

A native of Belleville, Bradley is the oldest son of J. Proctor Bradley and Hulit Ellis Bradley. He is married to the former Peggy Oliver who serves as secretary to Supreme Court Justice Sam Beatty, and they have one son, Robert Keith Bradley.

Judge Bradley served as an enlisted man in the U.S. Navy during World War II. Outside his official role, he enjoys gardening and reading. He is a Lay Reader in the Episcopal Church and is active in religious and professional organizations.

**NEW ACCOUNTING PROCEDURE APPROVED  
FOR DISTRICT COURT FEE COLLECTION**

The Department of Public Examiners has approved a new accounting procedure for the collection of fees paid by corporations filing multiple claims in district court.

Normally, each case filed in district court is receipted separately in the cash book with the case number included on the face of the receipt.

The new method eliminates separate receipting to corporations filing multiple claims. To save time, clerks may issue one receipt to a corporation when filing multiple claims, rather than issuing separate

receipts for each case. The clerk should note the inclusive case numbers on the receipt, such as #560 thru #575.

Wayne Hall, of the Department of Public Examiners, has stated he anticipates no problems with this new method. Although the new method has been approved, please remember that either method of receipting is acceptable.

**STATE SUPREME COURT APPROVES  
RECORDS RETENTION SCHEDULE**

On Oct. 15, 1980, the Supreme Court approved a records retention schedule for the state's trial courts. The approval was the culmination of three years' work undertaken by the Administrative Office of Courts and a records retention committee appointed by Chief Justice C.C. "Bo" Torbert Jr. The schedule was presented to the State Records Commission on July 22 at which time it was approved (with the exception of the section on juvenile records) then forwarded to the Supreme Court for final approval. A copy of the approved schedule will be forwarded to all court clerks within the next two weeks.

All permanent records will now be microfilmed on a county by county basis. Books will be filmed first because they pose the most serious storage problem in most counties. An in-house operation will soon begin in Jefferson County with a similar program planned for Mobile County in the near future.

Records in other counties will be brought up to Montgomery for filming as a means of keeping costs down and to protect the delicate equipment from damage that could occur from movement.

Chilton County dockets that had been in an off-site storage facility have been picked up for disposal and/or microfilming. Greene and Bibb Counties are also scheduled for filming this year.

The filming/disposal program is expected to free approximately one-third of the space in county courthouses now used for storing the records.

# Justice Bloodworth reflects

BY STAN BAILEY  
News staff writer

MONTGOMERY — Not many reporters these days can bend steel in their bare hands or leap tall buildings at a single bound, but occasionally you find someone whose hero is a newsman.

Retiring Senior Associate Justice James N. Bloodworth of the Alabama Supreme Court is one of those persons.

He doesn't talk much about Walter Cronkite or David Brinkley, but if you ask him to reflect on the important people in his life, he'll top the list with a former state editor of *The Birmingham News*.

"My father, Ben Bloodworth, at age 19, was state editor of *The Birmingham News*," says Justice Bloodworth.

"He was the first North Alabama newspaperman to answer the call for volunteers to enter the service (during World War I)," he said.

"He served in the Navy as a chief petty officer, then, when he got out of the service, as associate editor, then editor, of *The Decatur Daily*."

With his father as editor and his mother as society editor, the younger Bloodworth delivered newspapers and took orders for job printing.

But he decided against a career in journalism. The salaries were too low at that time, he said.

He also toyed with the idea of becoming an archeologist, but finally settled on law — a career he has found fulfilling to the point that he has reached the pinnacle of the legal profession — serving on the Supreme Court.

WHEN HE RETIRED recently at age 59, primarily for health reasons, he had served more years than any other justice now on the high court.

He offered himself as a candidate for the post three times, and three times he was elected without an opponent — a fact he considers a measure of the public's rating of his service.

"That's the thing I'm proudest of in my judicial career," he says.

"I am grateful to the people of Alabama for having elected me three times."

Bloodworth views the people's approval as an indicator of a judge's achievement.

"I have felt that the most people could expect from a judge is to call

them (cases) like he sees them," says Bloodworth.

"If an honest judge does the best he can to reach a right decision, the Lord will lead him to the right decision and the people will approve it," he says.

Bloodworth says his recent battles with cancer, which he appears to be winning, has brought him to "a closer relationship with the Lord, so that I know my dependence is solely on Him."

Bloodworth, after successful surgery, is receiving chemotherapy according to the most modern techniques available, but he says he has "no confidence that drugs and treatment will take me any farther than it is the Lord's will for me to go."

HE SAID HE OFFERED his fellow justices a little brotherly advice based on his own experience with cancer.

"I told them they could take it (the advice) or leave it. It was free. But I told them three things:

"Keep your personal affairs always in order, have your family amply provided for, and, if you're not now, get right with the Lord.

"I said we came in with nothing and we're going out the same way."

Bloodworth's religious experience isn't just a recent thing. He has been active in the Presbyterian church since his youth, a deacon and elder for 20 years, and a Sunday School teacher for 34 years.

He is a member of Trinity Presbyterian Church in Montgomery.

But during his recent illness he has leaned more heavily on his faith in God and says three Scripture verses, all from the fourth chapter of Philipians, have given him the most strength:

*I have learned, in whatsoever state I am, therewith to be content — Verse 11.*

*I can do all things through Christ which strengtheneth me. — Verse 13.*

*But my God shall supply all your need according to his riches in glory by Christ Jesus. — Verse 19.*

BLOODWORTH, an avid bicycle rider, has turned now to walking for exercise: "I walk a mile or two each morning at 6 a.m.," he says.

During his 12 years on the high court, Bloodworth says he has missed the personal contacts he had during 10 years as a circuit judge in Lawrence, Limestone and Morgan counties.

"A trial judge also was free to call a case like he sees it, without giving reasons," he says.

"An appellate judge has to give reasons, which form the mosaic of the law.

"I have always envisioned that an appellate judge's job is threefold — to decide what is the issue, to give an answer to the issue, and then to write the answer with authority."

Occasionally, he has had to change his mind on a principle of case and to write an opinion reversing what he had written in earlier years.

How does a judge deal with the pressure of having to decide disputes between his fellow human beings?

"When he gets home, he just tries to forget it," he says.

"You've just got to try to divorce your feelings from the position of the parties.

"If you have a true love of the law, and are trying to do the will of the Lord in this profession, you can deal with it. It's just something you learn to live with."



JUDGE JAMES N. BLOODWORTH

## TRAINING COMPLETED ON TRAFFIC CASE ADJUDICATION AND RULES OF THE ROAD

The Municipal Court Division has completed the FY 80 training program for traffic court personnel. The main focus of training during the past few months was on the recently passed Rules of the Road Act, number 80-434, which became effective on August 17, 1980. Most of the training was funded through a grant for judicial education provided by the Alabama Office of Highway and Traffic Safety. Training began in June through local meetings with law enforcement, court and DUI school personnel. Briefings were held in this manner in Sheffield (June 20), Sylacauga (July 14), Mobile (July 25), Greensboro (July 23), Montgomery (July 12), Ozark (August 13), Roanoke (August 25) and Clanton (September 16). These meetings were well attended by judges, clerks, local police officers and state troopers, and were extremely effective in explaining the major changes in the Act as well as changes in promulgated rules by the Department of Public Safety.

Two regional seminars were successfully conducted for municipal judges in Birmingham, August 9-10 and in Montgomery, August 16-17. A two-day seminar for district judges was also conducted at the Alabama Judicial College in Tuscaloosa on August 11-12.

In recognition of the tremendous problem facing the judiciary in cases involving DUI, the National Judicial College conducted a special class on Alcohol and Drug Abuse in September, 1980, at which nineteen Alabama judges attended. Many of these judges have already been invited to serve on a committee to make recommendations on evaluation and referral procedures for DUI offenders. These judges will also participate with other judges on a committee to develop a comprehensive in-state educational curriculum for traffic court judges.

Four regional one-day Records Management and Traffic Case Adjudication Seminars were also conducted by the staff of the Municipal Court Division for municipal court clerks and magistrates. These meet-

ings were held in Huntsville on September 17, in Birmingham on September 18, in Mobile on September 23, and in Montgomery on September 25. During these meetings the Municipal Court Division staff, assisted by representatives of the DPS and prosecuting attorneys discussed important issues concerning the new Rules of the Road Act that was passed by the legislature. Some of the issues that were discussed included:

1. Reduction of DUI Cases-The legislature specified in the new Rules of the Road Act that neither reckless driving nor any other traffic offense is a lesser included offense under a charge of DUI.

2. Dismissal of Cases upon Payment of Court Costs-The attorney general has determined that this is improper; taxing a defendant with court costs should only be done upon a finding of guilty.

3. First Offense DUI-The DPS will go back into a motorists record for five years in determining whether a conviction of DUI is a first offense.

## MUNICIPAL POLICE OFFICERS SHOULD CITE CITY ORDINANCES

Many municipal law enforcement officers are making traffic arrests and citing sections of the state code instead of the municipal ordinance which has been violated. Most municipalities have an ordinance which makes violations of state misdemeanors also municipal ordinance violations. It is advisable that law enforcement officers always cite the municipal ordinance violated in making an arrest, since municipal courts have jurisdiction only over municipal ordinance violations. This also applies to magistrates in the warrant issuance process, whether the magistrate is a municipal court magistrate or a district court warrant clerk assigned to a municipality which has opted into the District Court.

Some Municipal Court cases have been dismissed upon appeal to Circuit Court because the policeman in filing the complaint did not allege violation of a municipal ordinance. Because questions exist as to whether a case which fails to allege a violation of a municipal ordinance is, in fact, a municipal case,

*(Continued On Page 11)*



# PEOPLE \* PEOPLE

**J**udge James C. Brotherton of the 14th Judicial Circuit, has been elected presiding judge of that circuit. The presiding circuit judge position was left vacant when Judge T. Leon Beard retired in early October.

**J**an H. Shultz, information systems officer with the Administrative Office of Courts, was a program participant last month at the Seminar on Court Statistics and Information Systems. The seminar was part of the State Judicial Information Systems Project sponsored by the National Center for State Courts in conjunction with the Conference of State Court Administrators. Shultz is chairman of a project subcommittee studying Transfer Guidelines.

**O**fficial results of the election for two new members of the Employees Retirement System Board of Control have been released by the state comptroller.

Richard M. Kennamer was elected to the two-year term with 7,242 votes to beat out



**JUDGE SULLIVAN HONORED ON HIS BIRTHDAY...** About 100 people including courthouse employees, lawyers and county officials "surprised" 29th Judicial Circuit Presiding Judge William C. Sullivan on his birthday. Judge Sullivan said it was the first birthday party he'd had in over 50 years. Court Reporter Ann McKinney, Secretary Lynda McDonough and Bailiff Willis Whatley planned the "surprise."



**JOHNSON HIGH SCHOOL WELCOMES OFFICIALS...** participating in Huntsville/Madison forums during early October. Pictured, from left, Madison County Sheriff Joe Patterson, Huntsville Superintendent of Education Dr. Shelby Counce, Presiding Circuit Judge John David Snodgrass, Chief Justice C.C. "Bo" Torbert Jr., Presiding District Judge Dan McCoy and Circuit Clerk Billy Harbin.

Ernest Mitchell Owens with 5,149 votes.

John Ben Swindle was elected to the three-year term to beat out Fred W. Sims with 5,515.

**F**ive Jefferson County law clerk/bailiffs recently passed the bar examination and were admitted to the bar in ceremonies at the Montgomery Civic Center Monday, Oct. 27.

They are Cheryl Wilkinson, law clerk/bailiff for Circuit Judge Charles Crowder; Robert Adams, law clerk for Circuit Judge Marvin Cherner; Ronda Lacey, law clerk/bailiff for Circuit Judge Charles Nice; Michael Fields, law clerk/bailiff for District Judges Robert Gwin, Jack Montgomery and William W. Stewart; and Mike Wright, law clerk for Circuit Judge Josh Mullins.

All are graduates of the Birmingham School of Law.

**J**eff Bailey Key of Talladega died in late September after a lengthy illness. He was the father of Sue Patterson, secretary to Circuit Judge William Powers, also of Talladega. Sue's father was 63 and she has three brothers.

## Notes From The Appellate Bench

The Supreme Court of Alabama opened a new term on October 6, 1980, and heard oral arguments on the constitutionality of Alabama's Death Penalty statute in view of the decision of the United States Supreme Court in Beck v. Alabama.

The Court heard oral arguments during the week of October 13, 1980, and also during the week of October 20, 1980. The following are some of the major issues which were argued before the Court in October.

**FRAUD IN THE SALE OF USED HOUSE-TERMITE BOND-THIRD PARTY BENEFICIARY**--Whether a seller of realty must disclose termite damage to purchaser and whether a purchaser is a third-party beneficiary under a contract between pest control company and original owner. (79-434-10/16/80)

**ASBESTOS EXPOSURE-ACCURAL OF CAUSE OF ACTION-CONSTITUTIONALITY STATUTE OF LIMITATIONS**--Whether asbestos exposure statute of limitations passed at 1980 legislative session applies to 16 cases pending when Act passed the legislature. (Tyson, et al, 79-144, 10/13/80).

**TEACHER TENURE--RECUSAL OF BOARD MEMBER-DUE PROCESS**--Did School Board err in using transcript of prior hearing, and should Board member who heard teacher appeal have recused himself because his son was a material witness? (79-693, 10/13/80)

**RACCOONS CLOSED SEASON--W.E.C. purchased 243 live raccoons from a licensed Florida dealer, but when he brought them into Alabama, he was charged with possession of raccoons during closed season without a permit. The case was nolle prossed, but only after the defendant had released the raccoons at the instigation of state officials. W.E.C. sued for condemnation of private property. Can state be sued? Did act constitute condemnation?** (79-604, 10/13/80)

**CONFLICTS OF LAWS-WRONGFUL DEATH-WHERE DEATH OCCURS IN GEORGIA AND ACTION IS BROUGHT IN ALABAMA-WHICH STATUTE OF LIMITATION APPLIES**-(79-542, 10/17/80)

**CONTROLLED SUBSTANCE-ADDITION TO LIST**--Was drug properly added to list of controlled substances and in accordance with principles stated in Ex parte McCurley? (Ex parte Isbell, 79-447, 10/13/80)

**MEDICAL MALPRACTICE-STANDARD OF CARE**--Trial judge directed a verdict for a doctor.--Whether plaintiff presented a scintilla of evidence that doctor breached standard of care. (Baker, 79-468, 10/16/80)

**ARREST-PROBABLE CAUSE**--Defendant arrested for robbery based upon information received from a suspect in the same robbery. Was there probable cause? (Ex parte Taylor, 79-732, 10/13/80)

**CERTIFIED PUBLIC ACCOUNTANTS-COVENANT NOT TO COMPETE**--Are covenants not to compete entered into by professionals legal? (Thompson, 79-540, 10/16/80)

**MEDICAL MALPRACTICE-MINOR**--Is statute of limitations in suits by minors for medical malpractice unconstitutional under Section 45 of Alabama Constitution and Equal Protection and Due Process clauses of Federal Constitution? (Reese, 79-129, 10/20/80)

**ESCAPE FROM PENITENTIARY**--Can a prisoner who has been sentenced to the penitentiary, but who escapes from the county jail where he is being held, be sentenced for "escaping from the penitentiary"? (Behel, 79-340, 10/20/80).

**CHILD CUSTODY-"TENDER YEARS" RULE**--Is "tender years" rule (custody of child of tender years awarded to mother) constitutional? (Devine, 79-546, 10/14/80)

**VULGAR SPEECH**--Is vulgar language used in front of a female constitutionally protected speech? (Clenney, 79-679, 10/14/80)

**JOINT TENANTS WITH RIGHT OF SURVIVORSHIP-FELONIOUS KILLING**--What is the effect on the right of survivorship when one joint tenant kills the other? (Kempaner, 79-451, 10/16/80)

(Continued On Page 11)

## NOTES FROM THE APPELLATE BENCH

(Continued From Page 10)

**CONTRACTS-INTENT OF PARTIES--**A contract for a county reappraisal project provided that the contractor was to receive "an estimated fee not to exceed One Million Dollars (\$1,000,000) without prior approval of the Department." Does this language provide for a guaranteed maximum fee of not more than \$1,000,000? (Johnston-Clark Appraisal Co., 79-318, 10/17/80)

**FRAUD-SALE OF USED HOUSE-DIRECTED VERDICT--**Did court err in granting directed verdict for realty company and agent for the purchaser in purchaser's suit for fraud? (Harrell, 79-277, 10/22/80)

**PRODUCTS LIABILITY-EVIDENCE NECESSARY TO PROVE DEFECTIVE PRODUCT--**What evidence is required to prove defective condition under Alabama's Extended Manufacturer's Liability Doctrine? (Sears, 79-438, 10/23/80)

**DIRECTED VERDICT-TRESPASS TO DOG-NEGLIGENCE--**Defendant Alabama Power Company granted directed verdict in action by plaintiff claiming dog owner had heart attack and died when he determined meter reader allegedly sprayed his dog with repellant in violation of particular instructions by dog owner. (Peevy, 79-508, 10/22/80)

**UNBORN FETUS-STATUS AS AN "INSURED"--**Whether a fetus of a gestational age of between 28 to 30 weeks, at the time of the accident, was, at that time, within the meaning of an insurance policy, a relative of the named insured or his spouse and a resident of the named insured's household. (Ala. Farm Bureau, 79-543, 10/22/80)

## JURY SERVICE FILM BEING DEVELOPED FOR USE AS AN EDUCATIONAL TOOL

"Lady and Gentleman of the Jury" is the title of a film now being developed by the Administrative Office of Courts to inform the public on the procedures involved in jury service. When completed, the film will be made available for schools and civic organizations for educational purposes.

Some 170,000 men and women are summoned each year for jury service in Alabama's

circuit courts. In many instances, these citizens are fearful or reluctant to enter the unfamiliar, imposing and complicated environment of the courts.

The film is designed to alleviate many of the fears and uncertainties associated with a summons to jury duty. It will trace, chronologically, the process of jury service from the initial summons to appear in court through the trial process.

"It is awesome," Chief Justice C. C. Torbert, Jr. said, "when we stop to realize that among the most important people in the whole judicial process are the jurors--strangers to the court and to each other. They and they alone have the power to render a verdict involving facts, issues and people that they are seeing and hearing for the first time."

"The goal of the jury service film," Torbert continued, "is to let prospective jurors know what will be expected of them and why their participation is so important to the administration of justice."

Administrative Director of Courts Allen Tapley explained that the film will be used as an educational tool for public information. "What may be simple routine to the court can be revelation to jurors," Tapley said. "The more the citizens of Alabama know about the workings of the courts, the greater will be their support and confidence in the services our court system delivers."

Because juror procedures vary from county to county, two different sites, rural and urban, were chosen for the filming. Therefore, the difference between what a citizen will see on the film and what he or she will experience as a juror should be slight.

Judge Jack C. Riley, Cullman County, and Judges Marvin Cherner and Claude B. Hughes, Jefferson County, will appear in the film which should be completed by January, 1981.

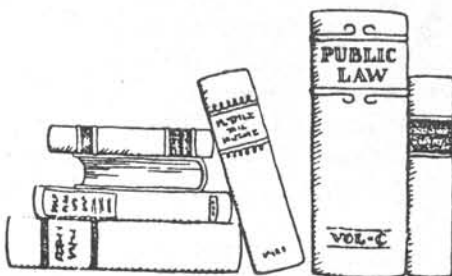
## "CITY ORDINANCES"

(Continued From Page 8)

an additional question is raised regarding the distribution of funds by district clerks in courts where municipalities have opted into the district court. Be sure also to check "Municipal Ordinance," not "State Code," on the UTC.



## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

Traffic Cases Made By ThePublic Service Commission Must Be Reported

In an opinion dated Sept. 18, 1980, the attorney general determined that convictions for violations of Title 37, Code of Alabama 1975, should be reported to the Department of Public Safety for inclusion in the offending driver's record. The text of this opinion is included below.

"Dear Sirs:

"I have received your request for an attorney general's opinion as to whether or not convictions for violation of Code of Alabama 1975, title 37 can be applied to the permanent record of a driver's license since records of arrests for violation of title 37 are made on other than uniform traffic citation (UTC) forms.

"Code of Alabama 1975, Section 32-6-16(e) provides in pertinent part as follows:

'Every court having jurisdiction over offenses committed under this article or any other law of this state or municipal ordinance of any municipality in this state regulating the operation of motor vehicles on highways shall cause to be forwarded to the director of public safety a record of the conviction of any person in said court for a violation of any said laws other than regulations governing standing or parking...' (Emphasis added.)'

"It is clear from this Section that not only violations of the Rules of the Road, but all convictions for violations involving the use of a motor vehicle should be reported to the Department of Public Safe-

ty to become a part of the driver's record. Convictions for title 37 offenses involving the operation of motor vehicles should be reported to the Public Safety Department for inclusion in the offending driver's record. The fact that PSC enforcement officers use other than UTC forms to report violations makes no difference."

Adjudication of Juvenile Traffic Offenses

The attorney general, in an opinion dated Sept. 2, 1980, has opined that whenever a juvenile is arrested on a traffic offense and it is necessary to detain that juvenile in a jail, the proceedings would then come within the jurisdiction of the juvenile court and the juvenile would have to be taken to a detention facility as opposed to an adult jail facility. Additionally, this opinion states that if the prosecutor seeks a jail sentence for a juvenile traffic offender or the judge is likely to order such confinement, then the proceeding is under the jurisdiction of the juvenile court. The text of this opinion is reprinted below.

"Dear Sir:

"This office is in receipt of your request for an opinion dated May 21, 1980, which reads as follows:

'The problem is this: As you know, most juvenile offenses are tried in Family Court and the offenders are incarcerated in the juvenile detention facility. However, there is an exception in regard to traffic offenses. These are tried in District Court. When an arrest of a juvenile is made for a traffic offense, is it necessary to take the juvenile to the juvenile detention facility as per Section 12-15-61 Code of Alabama 1975? If, after trial, the juvenile is given a jail term, highly unlikely, but it is possible, is it necessary that this be served in a juvenile detention facility?'

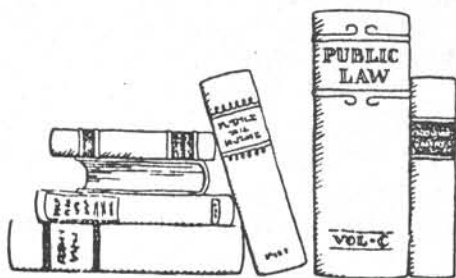
"The Code of Alabama 1975, Section 12-15-30(c)(1)(a) specifically provides that the Juvenile Court shall have original jurisdiction in any proceeding:

'(1) Concerning any child:

'a. Who is in a situation subjecting him to physical, mental or emotional abuse or is in clear and present danger of suffering lasting or permanent damage;'

(Continued On Page 13)

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 12)*

"Due to the nature of a county or city jail the detention of a juvenile in such a facility would subject such juvenile to a clear danger of suffering lasting or permanent damage.

"Thus, whenever a juvenile is arrested on a traffic offense and it is necessary to detain that juvenile in the jail, the proceedings involving that juvenile would come under the jurisdiction of the Juvenile Court and the juvenile would have to be taken to a juvenile detention facility as per Section 12-15-61. The Juvenile Court would also have original jurisdiction in any prosecution for a traffic offense in which a juvenile is to receive a jail sentence if convicted.

"The fact, however, that a statute under which a juvenile is charged provides for the possibility of a jail sentence is not sufficient to bring the proceedings under the jurisdiction of the Juvenile Court, if the juvenile is not going to receive a jail sentence. Only in cases in which the prosecutor intends to ask for a jail sentence or the judge knows that he may give one will there be any need for trial to be in juvenile court to ensure access to a juvenile detention facility. All other cases should be tried in traffic court."

Please note that this opinion appears to contradict an opinion issued on April 16 of this year in which the attorney general stated that municipalities may retain jurisdiction of any traffic offenses in-

volving juveniles 16 years of age and older and that the municipal court judge may punish a juvenile by confinement in the municipal jail upon conviction of the offense of contempt of court for failure to appear (See Court News, May, 1980). This opinion is also reprinted below.

"Dear Sir:

"This office has received the following opinion request:

'The facts upon which said question of law is based are: Juveniles 16 years of age and older may presently be arrested and physically placed in the jail of the city of Anniston for committing traffic offenses. In the event such juveniles make appearance bonds but fail to appear in the municipal court at the scheduled time to answer the traffic charges, contempt of court warrants against them for failure to appear are issued by the municipal court.'

"Your question is whether such juveniles, 16 years of age and older, may be arrested for failing to appear in court at the scheduled time and physically placed in jail a second time for the non-traffic offense of contempt of court?

"Code of Alabama 1975, Sections 12-15-33 and 12-14-1 define the municipal court's jurisdiction over juveniles (children), 16 years of age and older, who are charged with the commission of a traffic offense as a violation of a municipal ordinance. Any case involving a child 16 years of age or older may, at the discretion of the municipal judge, be transferred to the juvenile court for adjudication as an act of delinquency. However, the municipal judge may retain jurisdiction.

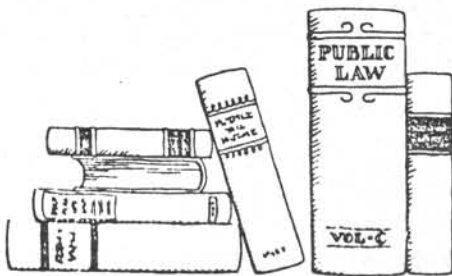
"Under Code of Alabama 1975, Section 12-14-31, a municipal judge may punish by fine not exceeding \$50 and/or imprisonment not exceeding five days any person found and adjudged to be in contempt of court.

"The second offense of contempt of court for failure to appear is, under the facts presented in your request, an offense arising directly out of the traffic offense. The municipal judge must, in order to maintain the integrity of the court, have the authority to enforce its jurisdiction.

"Therefore, it is the opinion of this office that juveniles, who are 16 years of age and older, may be arrested for failing to appear in court at the scheduled time

*(Continued On Page 14)*

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 13)*

to answer a charge of a traffic offense which is a violation of a municipal ordinance and physically placed in jail on a charge of contempt of court."

### Absentee Elections

The attorney general, in two recently released opinions, has answered several questions concerning absentee election managers and their responsibilities.

In the first opinion dated Sept. 12, 1980, the attorney general stated that the federal postcard application for an absentee ballot is not invalid because it does not contain a statement setting forth the penalties for violations of the provisions of the absentee election chapter. Alabama's new absentee ballot law provides only that those forms which are printed and made available to any applicant by the absentee election manager must have the penalties printed thereon (emphasis added). Therefore, since the federal postcard application is not printed by the absentee election manager, this requirement is not applicable to that form.

In a second opinion of this same date, the attorney general opined that an absentee election manager may not accept an absentee ballot from a second party. The absentee voter must either mail the ballot to the absentee election manager or deliver it in person. This, of course, prohibits any individual from delivering any ballot, other than his or her own, to the manager. In the second part of this opin-

ion, the attorney general stated that, pursuant to Section 17-10-10, Code of Alabama 1975, election officials as provided in Section 17-10-11, supra, are responsible for reviewing the affidavits to certify that the voter is entitled to vote. The pertinent part of this opinion is reprinted below.

"Your last question is to ask what steps you should take if an affidavit is not correctly or fully made. Section 6 of Act 80-732, which amends Section 17-10-10, Code of Alabama 1975, provides, in part:

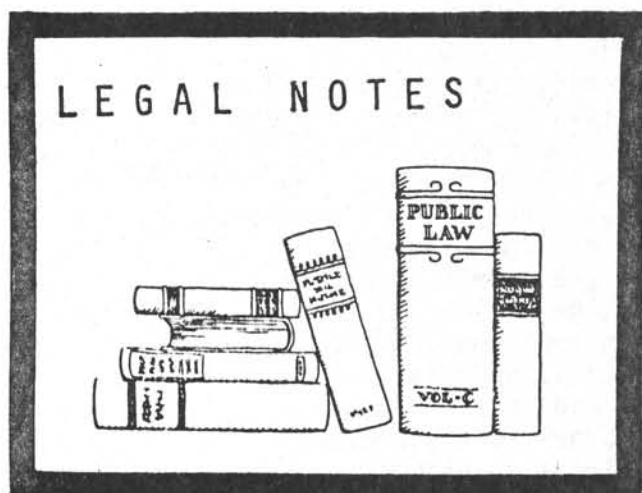
"Upon receipt of the absentee ballot, the absentee election manager shall record its receipt thereof on the absentee list as provided in 17-10-5 and shall safely keep the ballot without breaking the seal of the affidavit envelope. On the day of the election, beginning at 12 noon, the absentee election manager shall deliver the sealed affidavit envelopes containing absentee ballots to the election officials provided for in Section 17-10-11, and such election officials shall call the name of each voter casting an absentee ballot with poll watchers present as may be provided under the laws of Alabama and shall open each affidavit envelope, review the affidavit to certify that such voter is entitled to vote and deposit the plain envelope containing the absentee ballot into a sealed ballot box."

"This section indicates that the election officials are charged with the duty of reviewing the affidavits to certify that the voter is entitled to vote. If, upon examination, the affidavit obviously does not comply with Alabama law; that is, if it is not properly witnessed or notarized, is not signed by the voter, or does not otherwise contain sufficient information to determine that the person is a qualified elector and is entitled to vote absentee, the ballot should not be counted. Otherwise, the ballot should be deposited into a sealed ballot box. If the absentee ballot is challenged but does not appear to be invalid on the face of the affidavit, the ballot should be counted; the affidavit, however, should be marked challenged with the basis of the challenge listed and turned over to the district attorney for investigation.

"All applications and affidavits for an absentee ballot should be preserved in

*(Continued On Page 15)*





## ATTORNEY GENERAL OPINIONS

*(Continued From Page 14)*

case of a contest or in the event that an investigation by the district attorney reveals evidence which would warrant some prosecutorial action."

### Appeals From District Court To

#### Circuit Court Should Not Be Dismissed

In the following opinion dated Sept. 12, 1980, the attorney general determined that appeals from district court for trial de novo in the circuit court should not be dismissed but should proceed to judgment.

"Dear Sir:

"Your inquiry under date of July 15, 1980 is as follows:

"Please advise me if I am correct in my belief that the Judgment entry in circuit court in a case on appeal de novo from district court must be absolute?

"If affirmative, then am I also correct in my further belief that a circuit court entry of Dismissal of Appeal on defendant's motion, or by agreement, would be an improper circuit court entry in an appeal de novo from district court (civil or criminal case), in that such an entry would not be absolute?

"If my understanding is correct, please give me legal authority to support my belief.

"I had such an appeal de novo (criminal division) from district court recently and

the circuit court, on motion of appellant-defendant, PRO SE, requested 'dismissal of appeal' and the court granted such request and defendant paid accrued costs (circuit and district) in circuit court. When I transmitted report to separate district court clerk, the clerk there was at sea as to status of same now in that court. The defendant is of opinion he has settled the case, paid costs, and is discharged. The original assessed fine in the TR case in district court was never paid, and no fine was assessed in circuit court.

"I further believe that under certain circumstances, such as failure of defendant-appellant to appear in circuit court, or by agreement between appellant (PRO SE, or with counsel) and prosecuting attorney for the city in an appeal de novo from a municipal court (criminal case), the appeal may be dismissed (back to the originating municipality). However, this is a city appeal case and not an appeal from district court."

"Your inquiry is whether or not an appeal from a district court to the circuit court for a trial de novo, the circuit court may dismiss the appeal on motion of defendant.

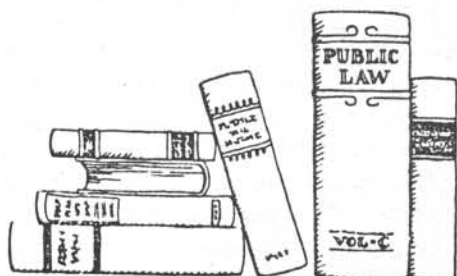
"Such appeals from district courts are now taken under the provisions of Section 12-12-71, Code of Alabama 1975. Appeals from municipal courts to the circuit court for a de novo trial are taken under the provisions of Section 12-14-70.

"Formerly appeals to the circuit court from the county or inferior court were governed by Title 13, Section 349; and Title 15, Section 358-364 Code of Alabama recompiled 1958. These were appeals for a trial de novo in the circuit court from courts having no juries. In such appeals neither the defendant nor the state could dismiss the appeal for a trial de novo. The appeal for a trial de novo had to proceed to a judgment in the circuit court. ex parte Harper 22 Ala. App. 60, 112 So. 96; Biennial Report of Attorney General 1926-28 page 288, Biennial Report of Attorney General 1930-32 page 316, 319 and Rowell v. State 27 Ala. App. 158, 167 So. 605.

"In my opinion, the recodification of these statutes does not change the law and after an appeal for a trial de novo from

*(Continued On Page 16)*

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 15)*

a district court to a circuit court the judgment in the circuit court should not be one of dismissal but should be final, or absolute, as stated in your request.

"In the case of appeals from a municipal court for a trial de novo in the circuit court statutory provision is made to provide that in the case of a dismissal in the circuit court, or failure of defendant to appear in the circuit court, a dismissal may be entered and defendant may be punished in accord with the judgment of the municipal court Section 12-14-70, Code of Alabama 1975. The former statute authorized a similar procedure, see Title 37 Section 588, Code of Alabama recompiled 1958."

### Worthless Check Act

On Sept. 12, 1980, the attorney general held that a person sending a worthless check by mail may be prosecuted under the new worthless check act (Act 80-200). However, unlike the situation when the defendant signs the check in the presence of the party receiving the check, the presumption that the signature on the check is that of the defendant and that he was authorized to draw on the account is not created when the check is sent by mail and identity and authorization must be established by other evidence.

### Conflict of Interest

The attorney general released an op-

inion on Sept. 12, 1980, dealing with the subject of law partners of an assistant district attorney defending criminal cases in the same court. The attorney general held that Section 12-17-196, Code of Alabama 1975, prohibits the law partners of an assistant district attorney from defending criminal cases in the circuit in which the assistant district attorney is a prosecuting officer. However, the opinion held that the law partners can represent criminal defendants in circuits other than the one in which the assistant district attorney is the prosecuting officer and in municipal courts.

### 1980 Judicial Compensation Report

#### Supersedes Act 79-724

In the following opinion dated Sept. 2, 1980, the attorney general determined that the 1980 Judicial Compensation Commission Report pay increase to district and appellate judges supersedes the seven percent cost-of-living increase authorized by Act 79-724.

"Dear Sir:

"I am responding to your opinion request regarding the effect of the pay increase given to district and appellate judges in the Judicial Compensation Commission Report which became effective upon the adjournment of the legislature on May 19, 1980. You ask the following questions:

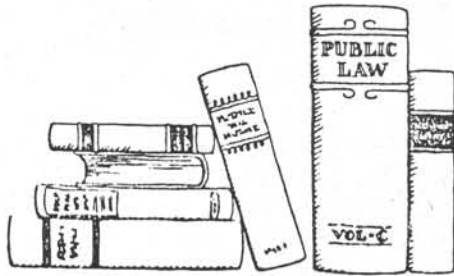
'(1) Does the Judicial Compensation Commission Report pay increase given to district and appellate judges supersede Act 79-724 providing for the conditional seven percent quarterly cost-of-living as it applies to appellate and district judges? and

'(2) Did the legislature intend for district and appellate judges to receive both a salary increase and a cost-of-living increase during the 1979-1980 fiscal year?'

"In answer to your first question, it is my opinion that the Judicial Compensation Commission Report pay increase does supersede the seven percent quarterly cost-of-living increase authorized by Act 79-724. The 1980 Judicial Compensation Commission Report recommended a salary increase for judges in a sum certain. It was passed after the 1979 cost-of-living increase and

*(Continued On Page 17)*

## LEGAL NOTES



## ATTORNEY GENERAL OPINIONS

*(Continued From Page 16)*

therefore must supersede the 1979 act, because it establishes a fixed salary and makes no mention of a cost-of-living increase.

"The 1979 act was conditional upon the recipients of the cost-of-living increase not receiving a raise. The same condition was imposed in Act 80-571, the act authorizing a cost-of-living increase for the 1980-81 fiscal year. Because the district and appellate judges did receive a raise which became effective before all the 1979 cost-of-living payments were paid, the remaining payments should have been discontinued. Further, the judges should not receive the cost-of-living payments established in the 1980 act, since they have received a raise during the 1980 fiscal year. Both the 1979 and 1980 acts expressed the clear intent that judges should not receive a cost-of-living increase and a pay raise. This clearly expressed intent should not be circumvented by the fact that the Judicial Compensation Commission Report became effective after the passage of Act 79-724 and prior to the passage of Act 80-571.

"Thus, in answer to your second question, it is my opinion that the legislature did not intend for district and appellate judges to receive both a salary increase and a cost-of-living increase during the 1979-80 fiscal year. Therefore, the conditional quarterly lump-sum payments authorized by Act 79-724 as they apply to district and appellate judges ended on May 20, 1980, the day after the

Judicial Compensation Commission Report became effective. Judges who received salary increases under the 1980 report should not receive the seven percent cost-of-living increase after May 19, 1980."

Automobile Passengers May Not Be

Arrested For Public Intoxication

In an opinion dated Sept. 12, 1980, the attorney general determined that a passenger in an automobile may not be arrested for public intoxication so long as he remains inside the automobile.

"Dear Sheriff:

"I have your letter of Aug. 12, 1980 in which you request an opinion as follows:

"Under Title 13A, Section 11-10, do we, as law enforcement officers, have the authority to remove all intoxicated persons from a vehicle and place them under arrest in order to prevent other intoxicated persons from either driving the vehicle away or getting out and walking away?"

"The Code of Alabama 1975, Section 13A-11-10 provides that:

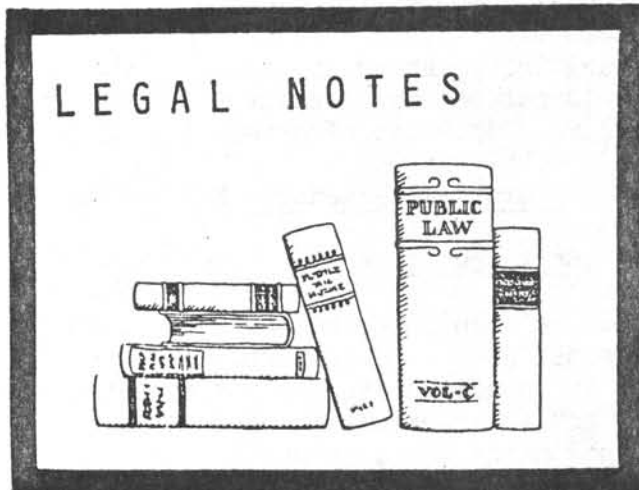
"(a) A person commits the crime of public intoxication if he appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he endangers himself or another person or property, or by boisterous and offensive conduct annoys another person in his vicinity."

"A passenger in an automobile may not be arrested for public intoxication as long as he remains inside the automobile.

Atkins v. City of Tarrant City, 369 So. 2d 322 (1979). Neither can a passenger ordered out of an automobile by a law enforcement officer be arrested for public intoxication. Brown v. State, 38 Ala. App. 312, 82 So. 2d 806 (1955). A law enforcement officer thus would not have the authority under the Code of Alabama 1975, Section 13A-11-10 to remove an intoxicated person from an automobile and place him under arrest.

*(Continued On Page 18)*





## MISCELLANEOUS LEGAL NOTES

*(Continued From Page 18)*

### Amendment To Rule A - Small Claims Rules

The Supreme Court of Alabama, on Sept. 9, 1980, entered the following order amending Rule A, Alabama Small Claims Rules. This amendment which is embodied in a new paragraph added to the original rule, provides that unlawful detainer actions should be filed on the regular district court docket and be governed by the Alabama Rules of Civil Procedure with district court modifications. This amendment shall become effective on Oct. 9, 1980.

**RULE A - SCOPE OF RULES** -- These rules govern procedure in small claims cases in the district courts. They are to be known and cited as the "Alabama Small Claims Rules." They shall be construed to secure the just, speedy and inexpensive determination of every case. All small claims court cases shall be conducted in such manner as to do substantial justice between the parties according to the rules of substantive law and, in the administration of these rules, and particularly Rule "N" hereof, the court shall make such accommodation to parties not represented by an attorney as is necessary to serve the ends of justice and the court, in its discretion, may explore claims and/or defenses not raised by the parties.

These rules shall not be applicable to actions of unlawful detainer pursuant to Title 6, Chapter 6 or Title 35, Chapter 9, Code of Alabama 1975. Actions of unlawful detainer shall be filed on the regular dis-

trict court docket and shall be governed by the Alabama Rules of Civil Procedure with district court modifications.

### 1980 Legislative Changes To

#### Alabama's Criminal Code, Title 13A

The following changes were made to Volume 13A during the 1980 Legislative Session and they are reflected in the 1980 Cumulative Supplement to Title 13A. This compilation of changes was made and supplied to Court News by Bob McCurley, director of the Alabama Law Institute.

**Section 13A-5-12.** The punctuation in subdivision (a) has been changed from a period to a semi-colon to make Sections 13A-5-12 and 13A-5-11 parallel.

**Section 13A-6-2.** Subsection (c) "punishable by imprisonment in the penitentiary for not less than ten years to life" has changed to "a Class A felony."

**Section 13A-8-10.** Subsection (e) has been omitted.

**Section 13A-8-18.** (a)(2) first line "subdivision (b)(2)" is changed to "subdivision (b)(3)."

**Section 13A-9-13.** Negotiating a worthless negotiable instrument has been completely revised by Act No. 80-200. The new law being found in 13A-9-13.1, 13.2, 13.3.

**Section 13A-10-31.** (a)(3) has been omitted.

**Section 13A-12-131.** Has been omitted.

Table I sections repealed 13-2-1 through 13-2-1 has been changed to 13-2-1 through 13-2-10. Sections not repealed and deleted from the Table I: 15-18-60, 17-1-5, 33-7-11, 34-6-12 through 34-6-14.

**Section 13A-7-23.1.** Injuring to tomb, grave stone, etc. has been added.

Remaining sections previously found in Title 13 have been transferred to 13A. This is noted in Table 2 of the 1980 Cumulative Supplement to the 1977 Blue Paper-back Supplement. This is found on page 61. These were the only substantive criminal code changes to Title 13A of the Criminal Code.

1980                      ALABAMA JUDICIAL COLLEGE                      1981  
CONTINUING EDUCATION PROGRAMS

GROUP MONTH	CIRCUIT COURT JUDGES	DISTRICT COURT JUDGES	JUVENILE COURT JUDGES	MUNICIPAL COURT JUDGES	CLERKS AND REGISTERS	CLERK/REGISTER EMPLOYEES	COURT REPORTERS	JUDICIAL SECRETARIES	OTHER GROUPS
1980 OCTOBER					MANAGEMENT SEMINAR I Oct 15-17, Bham Oct 22-24, M'g'y				
NOVEMBER	PRESIDING JUDGES GUNTERSVILLE Nov 6-7								
DECEMBER					MANAGEMENT SEMINAR II Dec 3-5, Bham Dec 10-12, M'g'y				PERMANENT STUDY COM TUSCALOOSA Dec 4-5
1981 JANUARY	MID-WINTER CONFERENCE BIRMINGHAM Jan 22-23						ANNUAL CONFERENCE MOBILE Jan 22-23		
FEBRUARY				ORIENTATION TUSCALOOSA Feb 21-22	MID-WINTER CONFERENCE TUSCALOOSA Feb 5-6				
MARCH					MANAGEMENT SEMINAR III Mar 18-20, Bham Mar 25-27, M'g'y				
APRIL	SPRING JUDICIAL SEMINARS TUSCALOOSA Apr 14-17		JUDICIAL SEMINARS TUSCALOOSA Apr 14						
MAY				ANNUAL CONFERENCE MONTGOMERY May 16-17					
JUNE			ANNUAL CONFERENCE BIRMINGHAM Jun 4-5		ANNUAL CONFERENCE EUFALA Jun 11-13				
JULY	SUMMER CONFERENCE MOBILE Jul 22-23							ANNUAL CONFERENCE GUNTERSVILLE Jul 16-17	
AUGUST					MANAGEMENT SEMINAR IV Aug 5-7, Bham Aug 12-14, M'g'y				DWI INSTRUCTORS TUSCALOOSA Aug 13-14
SEPTEMBER	FALL JUDICIAL SEMINARS TUSCALOOSA Sep 8-11		JUDICIAL SEMINARS TUSCALOOSA Sep 8						APPELLATE JUDGES GULF SHORES Sep 17-18

**COURT NEWS**

NEWSLETTER OF THE ALABAMA JUDICIAL SYSTEM

COURT NEWS, Volume 4, Number 10, newsletter of the Alabama Judicial System, is published monthly as an informational and educational service to state judicial officials and personnel. Inquiries should be addressed to Administrative Office of Courts, 817 South Court Street, Montgomery, AL 36130. Telephone: (205) 834-7990 or 1-800-392-8077.

Robert Martin  
Director of Administrative Services  
and Editor

Karan Sexton Sims  
Assistant Editor

C.C. TORBERT, JR.  
Alabama Chief Justice  
ALLEN L. TAPLEY  
Administrative Director of Courts  
JOHN DAVID SNODGRASS, President  
Association of Circuit Judges  
JOHN KARRH, President  
Association of District Judges  
JERRY BATTS, President  
Association of Municipal Judges  
DAVID ENSLEN, President  
Association of Juvenile Court Judges  
JOYCE MARTIN, President  
Association of Clerks and Registers  
DAVID MILLER, President  
Shorthand Reporters Association  
CHRISTI PATTON, President  
Circuit Judges' Secretaries Association  
JACKIE HEARTSILL, President  
District Judges' Secretaries Association



**STATE OF ALABAMA**  
**ADMINISTRATIVE OFFICE OF COURTS**  
817 South Court Street  
Montgomery, Alabama 36130

BULK RATE  
U.S. POSTAGE  
— PAID —  
MONTGOMERY, AL  
PERMIT 109