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IN COOPERATION WITH COMMISSION ON CRIME

ADMINISTRATIVE OFFICE DEVELOPING VICTIM/WITNESS HANDBOOK

The Commission On Crime, appointed by Gov. Fob James last fall to study and make recommendations for the improvement of the state's criminal justice system, has asked the Administrative Office of Courts to assist in the development of a Victim/Witness Handbook which is nearing completion.

"In meeting with citizens all over the state--from Mobile to Florence--we found that the victims of crimes are the people who are left out of the system," explained Montgomery Circuit Judge Joseph Phelps, chairman of the

Commission. "Persons who are victims of crimes feel like the defendant gets all the rights and protection. We wanted to develop a handbook to put in their hands which explains justice procedures and the rights and protection afforded victims," he explained.

According to the Commission's recommendation, the handbook will be available in the offices of judges, district attorneys and law enforcement officials across the state for distribution to the victims of crime and

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AT U.S. SENATE HEARING

TORBERT SUPPORTS LIMITS ON FEDERAL HABEAS CORPUS REVIEW

Chief Justice C.C. Torbert Jr. testified before the U.S. Senate Judiciary Committee's Subcommittee on Courts recently in support of a Senate bill which places some limits on federal court review of habeas corpus petitions. The subcommittee was chaired by Sen. Howell Heflin who agreed with the chief justice. "Our criminal justice system cannot be effective unless one who violates the law knows that he will be punished swiftly and certainly," Heflin said in his opening remarks at the hearing. Following are Chief Justice Torbert's remarks.

"I appreciate this opportunity to appear before you in my capacity as chief justice of Alabama's Supreme Court. I appear in support of Senate Bill 653 which addresses an issue which has concerned me in recent years--the present overly-broad scope and application of federal habeas corpus. While the writ of habeas corpus is one of the great legal remedies of the English

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CHIEF JUSTICE TORBERT

VICTIM/WITNESS HANDBOOK DEVELOPED

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witnesses in criminal cases. The handbook will give a basic explanation of the various individuals involved in the criminal justice system, along with information as to the expected time frame in which events might occur, and a brief examination of the role of the victims of crime in the entire process.

A number of recommendations were made by the commission, many requiring legislative action, intended to improve the state's criminal justice system. The recommendations were made following public hearings during which representatives of law enforcement, the court system, business and industry as well as citizens and experts in the study of criminal justice addressed the commission on various aspects of public concern.

The Commission on Crime is an 18-member panel composed of representatives of law enforcement, the court system, private enterprise and related agencies. Gov. James will present the Commission's recommendations to the state Legislature when it convenes later this month. Other recommendations made by the Commission to improve the state's criminal justice system are outlined on Page 4 of this issue of *Court News*.

TORBERT ADDRESSES SENATE ON FEDERAL HABEAS CORPUS BILL

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system of justice, I believe that the originators of the writ would scarcely recognize it in its present application.

"This bill is an important piece of legislation to be considered by this Congress. It is important because federal habeas corpus reform is necessary to ensure the integrity of the criminal justice system in this country. Our criminal justice system is founded on federalism; one of its chief goals is finality of judgments; and the system is dependent on public respect and support. All three of those essential pillars of our system have been seriously impaired and are in danger of being destroyed by overextension of the

federal writ of habeas corpus. Senate Bill 653, or legislation like it, is necessary to save the fundamental values of our criminal justice system and to safeguard the integrity of our judicial process.

"Federalism is embodied in our organic law and is no less important than any other concept that the founding fathers wrote into the United States Constitution. Our government in general and our criminal justice system in particular are based on federalism. Yet encroachment of federal courts onto the state court system through an overly-broad application of the federal writ of habeas corpus threatens to make federalism a museum piece as far as our criminal justice system is concerned.

"It is clear that state governments have the principal responsibility for criminal justice in this country. States perform the vast majority of the work in this field, and time and time again the United States Supreme Court has recognized the primacy of state jurisdiction over criminal law. Yet in recent years the federal writ of habeas corpus has been so egregiously overextended that state court judgments have been denigrated and state court judges have become frustrated members of the judiciary.

"The present state of federal habeas corpus law is such that federal district court judges and federal magistrates routinely sit in judgment of state court decisions and determinations. Although a defendant is tried in state court and his federal constitutional claims have been considered by state court judges, that defendant is free to collaterally attack the state court judgment in federal district court. If a state convict can convince a federal district court to second guess the state courts on any of the myriad of constitutional issues that routinely arise in a typical criminal case, his conviction can be overturned.

"Indeed, the situation can be so extreme that even after having his claim thoroughly considered and rejected at three levels of state courts by more than a dozen state court judges, a convicted criminal can still have his conviction overturned simply because a single federal district court judge disagrees with all

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TORBERT ADDRESSES SENATE ON FEDERAL HABEAS CORPUS BILL

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of the state court judges who have previously ruled on the claim. Furthermore, when factual matters are dependent on the resolution of conflicting testimony, state courts can be and often are overruled by a federal magistrate whose decisions concerning the credibility of witnesses usually are not redetermined by the federal district court judge. On constitutional issues, the highest court of a state can be reduced to little more than a lower court subservient to federal district judges and federal magistrates. The present broad view of federal habeas corpus has as its basis a mistrust of state courts as fair and competent forums for adjudication of federal rights. While historically there have been differences in procedure between state and federal courts, and it could be claimed that state courts were not sympathetic to federal constitutional claims, there is at the present time no reason to presume a lack of appropriate sensitivity toward constitutional rights in state trial and appellate courts. Moreover, since Mapp v. Ohio and the general imposition of federal constitutional guarantees on state court procedure, judges at all levels of state judicial systems deal with constitutional issues daily. There is no intrinsic reason to think that one judge is fairer or more competent than another.

"In my short tenure as chief justice of the Alabama Supreme Court, I have observed first hand and on a daily basis the functioning of a state appellate system, and I know the caliber of the judges who serve in it. Let me tell you about the background and experience of the judges who decide criminal appeals in our state. We have a five-member intermediate criminal appellate court whose judges have a total of 42 years experience on the bench and more than 125 years of combined legal experience. Our state Supreme Court, which reviews decisions of the criminal appellate court, is a nine-member court whose judges have a total of 89 years experience on the bench and more than 250 years of combined legal experience. Our state ap-

pellate judges are as learned in the law as our federal judges.

"Clothing a lawyer in federal court robes does not magically infuse him with more legal and judicial ability. There is nothing about the process of selecting federal court judges that makes a man who is selected any more qualified to decide constitutional issues arising in a state criminal case than the state appellate judges who have decided those issues before him. Our state appellate court judges, like those in other states, are qualified to properly decide constitutional issues, and they are as sensitive to federal constitutional concerns as any of their counterparts of the federal courts. Our state court judges take an oath to support and defend the United States Constitution just as federal judges do, and they are as dedicated to that great document as their brothers and sisters on the federal bench.

"In sum, the destruction of federalism through the gross overextension of habeas powers in recent years is neither justified nor wise. It should be remedied.

"The second essential concept or goal of our system of criminal justice is finality of judgment, and it too is being seriously impaired by overextension of the federal writ of habeas corpus. What has been created over a period of years is a dual system of appeal. It is a daily occurrence for a defendant to exhaust his state appellate remedies up to and through certiorari to the United States Supreme Court, and then years after his conviction to file a petition in federal court for a writ of habeas corpus, thereby beginning a long and circuitous climb through the federal court system. Presently, federal habeas corpus is almost unique in the law in that there is no specific period of time within which a petition for habeas corpus must be presented. As a result, petitions are filed and often granted years and even decades after the original conviction has been upheld in the state appellate courts.

"It has become a common tactic for convicted criminals to delay a number of years after the final state court decision affirming their conviction before launching an attack on that conviction in

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FOLLOWING PUBLIC HEARINGS

COMMISSION ON CRIME MAKES RECOMMENDATIONS TO IMPROVE CRIMINAL JUSTICE SYSTEM

The Commission on Crime, a panel appointed by Gov. Fob James last fall to study and make recommendations for improvements to the state's criminal justice system, has prepared a package of recommendations with commentary which the governor plans to present to the state Legislature during its upcoming session.

The Commission's recommendations include:

*Section 15-19-1, Code of Alabama 1975, known as the Youthful Offender Statute, should be amended to eliminate the crimes of murder, manslaughter, robbery, kidnapping, assault in the 1st degree, assault in the 2nd degree, burglary in the 1st degree, burglary in the 2nd degree, rape, sodomy, and trafficking in drugs from the operation of the statute. Also, the Commission recommends that the victim, or the victim's immediate family, if the victim is deceased, should have the right to be present and heard in all stages of the youthful offender proceeding.

*A statute should be enacted that would require public officials, upon conviction of a felony, to vacate their elected or appointed office.

*Alabama should enact some type of a Racketeer Influenced and Corrupt Organization Act.

*Intentional bid-rigging should be a class C felony and violations of the state competitive bid laws should be a class C felony. (Both violations are presently class C misdemeanors.)

*Section 12-22-170, Code of Alabama 1975, should be amended to reduce from 20 to 10 the maximum sentence allowed for a convicted defendant to be able to obtain a bond and be released pending an appeal.

*Section 12-16-100, Code of Alabama 1975, should be amended to provide that in the selection of juries in criminal cases, the defendant is entitled to one strike for each strike accorded the state.

*A statute should be enacted which would make it a class C felony to possess

a "sawed-off" shotgun or "sawed-off" rifle.

*Development of a Victim/Witness Handbook through cooperation with the Administrative Office of Courts.

*Section 12-15-34, Code of Alabama 1975, providing for the circuit court to transfer the case of a juvenile 14 years of age or older for prosecution in the adult circuit court, should be amended to provide that once a juvenile is certified to be tried as an adult any subsequent violations or charges against that juvenile would automatically be treated as adult also. Provided, however, that upon a finding of not guilty, the permanent certification would be set aside.

*The Commission recommends that a new verdict be established in insanity cases to say that "the defendant committed the offense while insane" to replace the present verdict of "not guilty by reason of insanity." In addition, when a defendant has been tried on an offense and found that he committed the offense while insane and is subsequently housed in a facility of the Alabama State Department of Mental Health for treatment, there should be a statute requiring judicial review to determine whether the defendant is dangerous to himself or society before that defendant could be released from the Department of Mental Health facility.

*Section 13A-5-9, Code of Alabama 1975, should be amended to provide some judicial discretion in the application of the Habitual Offender statute.

*The Commission strongly recommends that the Alabama Judicial College offer courses to judges as to a uniform approach to sentencing.

*Section 22-50-22, Code of Alabama 1975, should be amended to permit the state, after due notice to the defendant and his or her attorney, to take the depositions of the superintendent and physicians of the state mental health facilities in criminal cases in which defendants have been committed for a pretrial mental evaluation.

*The Commission recommends legislation granting an appeal to the state in criminal cases from the circuit court to the Court of Criminal Appeals from a pre-trial decision, order or judgment of the trial court suppressing evidence prior to trial,

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COMMISSION ON CRIME RECOMMENDATIONS

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allowing motion to dismiss an indictment or complaint, quashing an arrest or search warrant, suppressing a confession or admission, or dismissing a complaint or indictment on constitutional grounds or grounds of double jeopardy, if the district attorney certifies to the trial court that the appeal is not taken for purpose of delay, and either that the evidence is substantial proof of a fact material in the proceeding or that the order or decision is fatal to presentation of the state's case.

*Section 15-5-5, Code of Alabama 1975, should be amended to provide that search warrants may be executed by any sheriff, any Alabama state trooper, or any municipal police officer within that officer's jurisdiction.

*The Commission recommends legislation mandating that the State Department of Corrections and any county or city maintaining a penal facility develop and adopt an administrative grievance procedure for prisoner complaints that will meet the standards established by the Civil Rights Act of 1980 that can be certified by the United States attorney general as adequate to require a prisoner to exhaust that administrative remedy prior to filing a complaint in either state or federal court.

*The penalty for violating Section 13A-11-120, commercial bribery, should be a class C felony rather than a class A misdemeanor.

*Section 15-5-8, Code of Alabama 1975, should be amended to allow the execution of a uniform search warrant at anytime of the day or night.

*Section 12-16-9, Code of Alabama 1975, should be amended to allow a separation of the jury during a felony noncapital case in the discretion of the trial judge.

*Section 13A-10-106, Code of Alabama 1975, which provides that an individual may not be tried for perjury if the substance of that individual's false statement was a denial of guilt in a previous criminal proceeding, should be repealed.

*The Commission recommends legislation that would require the State Department of Mental Health to accept and begin evaluation of any criminal defendant within

30 days from request by a circuit court that defendant be examined to determine sanity, pursuant to Section 15-16-20 and Section 13A-3-1, Code of Alabama 1975.

*The Commission recommends that serious consideration be given to enactment of a statute which would make it a class C felony to intentionally trespass, while armed with a firearm of any type, onto the real property of another which is fenced or enclosed in a manner designed to exclude intruders.

*Section 13A-11-72(a), Code of Alabama 1975, which prohibits anyone who has been convicted of a crime of violence from being in possession of a pistol should be amended to also prohibit such individuals from having possession of a shotgun or rifle.

*There should be enactment of a statute making it a class C felony to intentionally discharge a firearm, explosive, or other weapon into any dwelling or building as defined in Section 13A-7-1, Code.

*The Statute of Limitations for violations of the Ethics Act should be extended from three to six years.

*Section 15-18-8, Code, which grants a circuit judge the authority to suspend the sentence of any defendant convicted of an offense and sentenced to 10 years or less by ordering that the defendant serve a maximum of one year in actual confinement with the remainder of his or her sentence to be served on probation, should be amended to provide for actual confinement of up to five years instead of the present one year limitation.

*Chapter Two, or Sections 20-2-1 through 20-2-93, Code, otherwise known as the "Alabama Uniform Controlled Substances Act" should be incorporated into the state's criminal code found in Title 13A of the Code.

*The provisions of Section 36-25-27(d), Code, establishing venue in ethics violation cases should be altered so that the venue of any prosecution under the Alabama Ethics Law involving the filing or failure to file any statement or disclosure form required by the act shall remain in the county where the defendant resides, but venue in all other prosecutions for violations of the Alabama Ethics Law shall be in the county where the offense occurs.

*Section 15-22-36(d), Code, should be

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PEOPLE * PEOPLE



JUDGE MICHAEL NIX

Lee County Attorney *Michael Nix* was appointed by Gov. Fob James to fill a newly-created district judgeship in Lee County effective Jan. 1.

The new judgeship was created during a recent legislative session. Nix, a native of Greenville, practiced law in Auburn. He graduated from Auburn University and the University of Alabama Law School. While at Auburn, Nix participated on both the basketball and baseball teams. In addition to his private practice, he served as public defender for the Auburn Municipal Court since 1975.

He is married to the former Leigh Ward who is a teacher in the Lee County school system and they have a two-year old daughter.

Irondale Municipal Judge and Birmingham Attorney *Wayne Thorn* has been named district judge in Jefferson County.

Thorn will succeed the late Judge James C. Manning in the civil section of district court.

He assumed office the first week of January.

A native of Limestone County, Thorn attended Florence State University and received his law degree from Cumberland School of Law. He began his law practice in 1973 and was named municipal judge for Irondale in 1980.

Judge Manning died in November.



JUDGE WAYNE THORN

The first baby born in 1982 in Franklin County was Tiffany Lea Scott, born to *Anita Scott*, an employee in the office of Circuit Clerk Joe Newton. Tiffany was born at North Alabama Hospital in Russellville.

Circuit Judge *Sam Monk* of the 7th Judicial Circuit and his wife, Mary, are proud parents of a new baby boy, William Gibbins Monk, born Dec. 14.

Brewton Attorney *Broox G. Garrett* is now president of the Alabama State Bar Association following the death of President Harold Hughston in November. Garrett was elected vice president at the Bar's annual meeting last July.

Alabama Supreme Court Justice *Oscar Adams Jr.* recently returned from a 10-day trip to Japan and Korea to meet with industrial prospects and government leaders.

Adams, the highest ranking black in Alabama state government, accompanied Gov. Fob James and Alabama Development Office officials on the industry-seeking trip in December.

Adams said the image of the state of Alabama was projected in a very positive manner during the approximately 20 conferences the entourage held with over 1,200 high-ranking industrial and governmental leaders.

"Our meetings were very positive. The industrialists in Japan and Korea are interested in expanding their businesses to America in view of our unemployment situation and Alabama is attractive since our climate is similar to that of Tokyo," Adams explained.

Adams helped answer legal questions dealing with tax and right to work laws and served to clarify concerns on the part of the industrialists as to race relations in Alabama.

This was Adams' second trip to Japan. "I went there six years ago, although I had never been to Korea. It was nice to return as a celebrity." The Japanese and Koreans are to visit Alabama in March.

PEOPLE * PEOPLE

Court of Criminal Appeals Judge *John G. Bookout* has announced his intentions to retire from his appellate judgeship effective Feb. 1 to take a position in private enterprise.



JUDGE BOOKOUT

Judge Bookout has spent 22 years in state service, including positions in the Attorney General's Office, the executive branch and the Court of Criminal Appeals.

He and his family will move to Omaha, Neb. following his retirement from the state where he will assume a position as vice president, general counsel and member of the board of directors of Woodmen of the World Life Insurance Society.

"I have been privileged to have served Alabama in several capacities during the past 22 years--as deputy attorney general, insurance commissioner, appellate judge and as a colonel in the national guard. Few people have been blessed with the friends and associates I have had during those years of service. Alabama has the finest national guard and court system in the country, and it has been a high honor to have been a part of both of these great organizations.

"I have spent my entire professional career in state government and I will miss it, but I am looking forward to an exciting new career in private enterprise," he said.

As of this writing, Gov. Fob James has yet to name a replacement to the five-member court.

southern states on the board along with Archie L. Henson, court administrator for the 175th District Court, San Antonio, Tex. The council will meet this spring in Washington.



TOM GLOOR

Jefferson County Commission President *Tom Gloor* will resign his position Jan. 15 after 15 years in government.

Gloor was elected to the commission nine

years ago after serving six years in the state Legislature. During his legislative days, he served as speaker pro tem of the House and chairman of the Jefferson County delegation.

Gloor served as president of the state Association of County Commissions 1977-78 and presently serves on its board of managers.

"Both through his position with the Jefferson County Commission and his work on the Law Enforcement Planning Association, Tom Gloor has been most supportive of the state's judicial system and I am very appreciative for his support," said Administrative Director of Courts Allen L. Tapley.



EDNA DURDEN

Edna Durden, "Miss Edna" to her friends and co-workers, retired at the end of December after 27 years in the Dallas County Circuit Clerk's Office. She has handled the books in the Circuit Clerk's Office since 1954. The office honored her with a reception New Year's Eve.

Les Lewis, budget analyst for the Administrative Office of Courts, has been elected to serve on the board of directors of the National Council for Judicial Planning. Lewis, who has worked with the Administrative Office of Courts since April 1976, will represent



NEWS FROM THE JUDICIAL COLLEGE

JUDICIAL COLLEGE OFFERS FEBRUARY ORIENTATION FOR NEW TRIAL JUDGES

The extended orientation programs for new trial court judges will be offered by the Alabama Judicial College for a second year on Feb. 15-19 at Farrah Hall on the University of Alabama campus in Tuscaloosa. The agenda was planned by committees of circuit and district judges.

The initial session on Feb. 15 is a joint meeting to discuss Judicial Ethics, Problems of the New Judge, and the Administrative Office of Courts. During the remainder of the week, the new judges will deal with procedural aspects of the respective jurisdictions. Experienced judges will serve as faculty.

The topics generally fall under criminal, civil, domestic relations, juvenile, case management and office management. During the week there will be lectures, panels, discussion groups and simulations.

To date, there are six new circuit judges and seven new district judges in the state.

EDUCATION CONFERENCE SCHEDULED FOR MUNICIPAL JUDGES AT COLLEGE

The Alabama Judicial College has scheduled a one-day Education Conference for municipal judges on Saturday, Feb. 20. The conference will be conducted at Farrah Hall on the University of Alabama campus in Tuscaloosa. The planning committee designed the conference to answer some of the day-to-day questions arising in municipal courts. These include questions of ethics, courtroom demeanor and court administration.

Judge Robert P. Bradley, Alabama Court of Civil Appeals and former chairman of the Judicial Inquiry Commission, will discuss recent opinions from the Commission and some of the most frequently asked questions. Judge Gordon Rosen of the Tuscaloosa Municipal Court will make a presentation about Courtroom Demeanor. Angelo Trimble, director of the Municipal Court Division of the Administrative Office of Courts, will suggest

ways and means of managing municipal courts.

Sentencing will be the topic for the afternoon session. Former Municipal Judge and now Presiding Circuit Judge of the 31st Judicial Circuit Inge Johnson will discuss Criminal Procedures in Municipal Court Dealing with Sentencing. This presentation will be followed by a panel and group discussion of practical situations relating to sentencing in municipal courts. Judge Jerry Batts of the Athens Municipal Court will moderate the discussions. Making the presentations of the situations are Judge Phillip Smith of Talladega and Judge Richard Cater of Anniston dealing with Money; Judge Eugenia Loggins of Opp dealing with Incarceration; former Municipal Judge and now Public Defender for the 35th Judicial Circuit George Elbrecht talking about Probation and Suspended Sentences; and Judge Eason Mitchell of Calera talking about other options available to municipal judges.

While final rules have not been published by the Alabama State Bar regarding credit for Continuing Legal Education, it is the understanding of the Alabama Judicial College that this conference will qualify for CLE credit.

NATIONAL COLLEGE OF PROBATE JUDGES ELECTS OFFICERS AT MEETING

The National College of Probate Judges held its annual conference in November in Scottsdale, Ariz., and elected officers and executive committee members for 1981-82. The new president is Alfred L. Podolski of Dedham, Mass.; Floyd E. Propst of Atlanta, Ga., is vice president; and Evelyn W. Shelley of Beaufort, S.C., is secretary/treasurer. Kenneth Pat Gregory of Houston, Tex., is the group's immediate past president.

Over 100 conferees attended seminars on topics such as wills, estates and trust problems; trends in guardianship legislation; and the rights of minors in custody and adoption proceedings.

The National College of Probate Judges was founded in 1968 at Harvard Law School.

SHIPMENT OF TRAFFIC TICKETS ORDERED FOR 1982 COMPLETED

Shipment of traffic tickets to all law enforcement agencies which placed orders for 1982 has been completed.

Each agency is urged to complete the UTC Invoice and Receipt form included with its order and mail it to the Administrative Office of Courts to verify the order has been received. Any agency which has not received its tickets should contact Ann Henn, supervisor, UTC Control, at the Administrative Office.

All tickets currently on hand should be used prior to beginning use of this new shipment, with the exception of Series A tickets which are outdated and should be returned to the Administrative Office.

ADMINISTRATIVE OFFICE OF COURTS SUPPORTS RESOLUTIONS OF NATIONAL CONFERENCE OF METROPOLITAN COURTS

The National Conference of Metropolitan Courts is an association of the chief judges and others in the general jurisdiction trial court systems of the large cities of this nation.

At its recently concluded 18th Annual Meeting in Miami, Fla., the conference adopted four resolutions dealing with the subject of trial court delay reduction, national jury standards to improve the jury process at less cost, continuing judicial education and state judicial compensation plans.

The resolution to expand the trial delay reduction program gives special emphasis to the development and implementation of programs and techniques to reduce excessive delay and costs in the processing of criminal and civil litigation. The timeliness of the resolution is reflected by the fact that the American Bar Association has designated 1982 as a special year of interest and renewed dedication for prompt justice in our nation's courts and has encouraged all jurisdictions to set improved time standards for processing cases.

Since 1977, case management has been a major area of interest for the Admini-

strative Office of Courts. In fiscal year 1980-81, the Administrative Office obtained a Law Enforcement Assistance Administration 24-month grant to structure a more comprehensive program of court delay reduction. The grant allows the study of various case management techniques and the development of management systems for individual courts.

The resolution to develop national standards for jury administration was adopted because the fair and efficient administration of the jury system is fundamental to the concept of justice. In this regard, the conference joined a host of national judicial organizations to establish a task force to draft standards and commentaries for jury administration to be reviewed by the organizations.

In Alabama, the jury management program is designed to improve the jury management system in the circuit court, to result in decreased jury costs and improved relations between the court and citizens called for jury service. This program has centered around a Law Enforcement Assistance Administration discretionary grant awarded to the Administrative Office in 1979 and continued in 1980-81. The program has resulted in activities such as a computerized Jury Qualification Questionnaire, an audiovisual Jury Orientation Program, the Alabama Juror's Handbook and telephone call-in systems.

The National Conference supports the growth and development of national, regional, state and local programs for the continued training and education of the judicial branch of government including judicial officers, court administrators and staff; that continuing education be on a regular basis, with time devoted to such programs being regarded as regular court assignment; and that there be joint participation by legislative and judicial branches of government at all levels.

In Alabama, the judicial branch of state and local governments works closely with both the executive and legislative branches to achieve continuing education of members of the criminal justice community. In 1978, the Alabama Judicial College was established for the specific purpose of providing continuing education to judges, court clerks and other court officers. The College coordinates both in- and out-of-state training for judges.

RETIREMENT STATEMENTS MAILED TO JUDICIAL SYSTEM ADMINISTRATORS

Annual statements containing information on the status of individual retirement accounts as of Sept. 30, 1981, were mailed to judicial system administrators early in December for distribution to employees.

Any employee who did not receive a statement may request a duplicate statement from the Personnel Division of the Administrative Office of Courts. However, if the member had contributions reported by more than one agency, the statement was mailed to the agency which reported the last contribution for September 1981. In such cases, the employee should contact all agencies through which contributions were reported for September 1981.

The annual statement includes information regarding service credit, beneficiary, vesting, purchased service and benefits in addition to the account balance. Some information on possible questions and/or corrections follows:

1. Date of Birth: A correction to a member's date of birth must be made by birth certificate, census report, Bible record, or other official document dated prior to the person's entry into the Employees' Retirement System. A photostatic copy of a certified document is not acceptable unless the photostatic copy is certified as a true and correct copy by a notary public or other certifying official. Drivers' licenses are not accepted as proof of birthdate.

2. Beneficiary: To change or correct a beneficiary designation, an individual should complete a Form 100, Member Information Record, have it notarized, and return it to the Personnel Division of the Administrative Office of Courts. If a beneficiary change has been submitted since Sept. 30, 1981, the change may not be reflected on the statement.

3. Creditable Service: A change in creditable service generally requires certification of the service in question by the former employer. A member should contact the Personnel Division for information on certifying former service.

Questions regarding the annual statements should be directed to Barbara Erickson

or Linda Price at the Administrative Office Personnel Division.

CENTER FOR JURY STUDIES MERGES WITH NATIONAL CENTER/STATE COURTS

Two national court improvement organizations merged effective Jan. 1.

The merger between the National Center for State Courts, a group aimed at improving court management at the state and local level, and the Center for Jury Studies, a group specializing in improved jury system operation, was announced by Edward B. McConnell, executive director of the National Center, and G. Thomas Munsterman, executive director of the Center for Jury Studies.

Formed in 1978, the five-member group will continue to develop jury system technology and provide technical assistance to state and local courts. The group will be known as the Center for Jury Studies of the National Center for State Courts, and will remain in its McLean, Va. offices. It will serve as the National Center's Washington, D.C. project office.

"The purpose of the merger," McConnell said, "is to allow the continuation of important services that the Center for Jury Studies provides to state courts." He added that improved jury management means a substantial cost savings for courts, especially important in a time of tight budgets and unstable funding support for courts.

Munsterman welcomes the opportunity that the merger provides. "It's a natural combination, because the developing program of the Center for Jury Studies is so clearly compatible with the goals of the National Center. We hope the merger will help us provide a more permanent basis for continuing jury system innovation in the courts."

In the three years since its formation, the Center for Jury Studies has supported statewide jury reform programs in eight states, including Alabama, under the Law Enforcement Assistance Administration incentive program.

Munsterman and other members of the Center for Jury Studies' staff will continue their work with jury processes through the National Center.

COMMISSION ON CRIME RECOMMENDATIONS

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be amended to require that before the Board of Pardons and Paroles may hold a hearing to consider granting a parole to a prisoner, the Board would be required to use all reasonable diligence to give 45 days written notice to the victim of that prisoner's crime or members of the victim's family if deceased, along with the sheriff and the chief of police in the jurisdiction where the prisoner was tried and convicted, in addition to the circuit judge and district attorney in that jurisdiction who are already entitled to a 30-day notice under the statute. In addition, if the Board is unable to locate the victim, then it shall provide notice of that fact to the sheriff and chief of police at least 15 days prior to the Board's consideration of parole. The victim, or victim's family if deceased, should be given the right to appear before any parole hearing conducted by the Board.

*Section 12-15-1(3), Code, should be amended to change the definition of "adult," within the meaning of the law on juvenile proceedings, to any individual 18 years of age, or any individual 16 years of age charged with a felony. Provided, however, the circuit court after indictment, or district court prior to indictment, on the motion of the defendant, the district attorney or on the court's own motion, may certify any individual below the age of 18 years back to the juvenile court for treatment as a juvenile.

*The Commission recommends that the Alabama Legislature enact a statute allowing defendants who participate in the same criminal act or transaction to be charged in the same indictment and tried in the same proceeding, and providing that multiple offenses may be joined in the same indictment if the offenses are of the same or similar character or based on the same conduct or part of a common scheme or plan.

The Commission's recommendations were drafted following public hearings across the state with citizens and government officials. The 18-member panel held hearings in four major cities of the state during December and January.

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a federal habeas corpus proceeding. This delay tactic serves a dual purpose for the criminal. First, the passage of time makes it more difficult for the state to rebut any factual allegations of the habeas petitioner, thereby enhancing the chances that the federal court will overturn his state court conviction. Secondly, delay also makes it more difficult for the state to successfully retry the criminal if his conviction is overturned, because witnesses die, memory fades, and evidence deteriorates or becomes lost. That is why so many convicted criminals play the waiting game, and that is why some statute of limitations is needed to prevent such an abusive tactic which serves to free the guilty and destroy any notion of finality. Until some effective statute of limitations is enacted for federal habeas corpus proceedings, there will be no finality of judgment in state criminal cases.

"The third essential component or goal of our system of criminal justice is public respect and support, and it has two aspects. The first is the public's respect and support of the state court system, and the second aspect is the public's respect and support of the criminal justice system as a whole. Over-broad applications of the federal writ of habeas corpus have undermined both.

"We cannot expect the public to give any state court system the maximum respect and support it needs when the decisions of the highest court of the state are routinely subject to being reviewed and overturned by a single federal court judge or magistrate of the more than a thousand federal district court judges and magistrates in the country. Nor can the public be expected to respect state court judgments so long as those judgments do not command respect in federal court.

"The current status of the law involving collateral attacks on state court judgments also engenders disrespect for the criminal justice system as a whole. The public has reason to question the basic premises of the system when a state

(Continued On Page 12)

TORBERT ADDRESSES SENATE ON FEDERAL HABEAS CORPUS BILL

(Continued From Page 11)

court judgment reflecting the considered views of jurists with a combined total of more than 100 years of judicial experience can be cast aside whenever a single federal judge or magistrate simply disagrees with the state court judges. The public also has reason to question the basic integrity of a system that on one hand espouses that swift and certain punishment is essential to protect society, but on the other hand condones a dual system of appeal in which facts and legal issues are interminably litigated and never finally decided.

"If we care anything about federalism, about finality of judgment, and about public respect and support for our system of criminal justice, then steps must be taken to correct the damage which has been done to those three components or goals of our system by the overextension of the writ of habeas corpus in recent years. The concept of Senate Bill 653 is a major step in the right direction.

"Section 1 of Senate Bill 653 effectively bars magistrates from making the kind of factfindings in habeas corpus cases that will lead to state court judgments being overturned. This change in the law is important, because it will mean that if a state conviction is overturned because of findings of fact made in federal court the crucial factfindings will at least have been made by the federal district judge himself rather than by a magistrate. Federalism demands that no state court judgment should be overturned in federal court as a result of findings made by a non-Article III judge such as a magistrate, and Section 1 of the bill will guarantee that that does not happen.

"Section 2 of the Senate Bill 653 is important for three reasons. First, by codifying the "cause and prejudice" requirement of Wainwright v. Sykes, 433 U.S. 72 (1977), and by defining "cause" in terms not easily evaded, this section of the bill will require that state courts have been given an opportunity to rule on an issue before a federal habeas

court considers overturning the state judgment because of that issue. Such a requirement promotes federalism. This codification and a statutory definition of "cause" is necessary as at least one federal court of appeals has ruled that "cause" can exist where a defendant failed to raise an issue because of incompetence of counsel even where the failure to do so does not amount to constitutional error.

"Secondly, Section 2 of the bill will change the statute so that it expressly specifies as a threshold requirement for federal habeas relief that the petitioner prove that the alleged violation of his federal rights "was prejudicial to the petitioner as to his guilt or punishment." This addition to the statute will increase the finality of judgments and bolster the public's respect for the system. The finality of judgments and public respect for the system will also be increased by the third aspect of Section 2 of the bill --the addition of what amounts to a statute of limitations for federal habeas claims. Such a limitation is absolutely necessary if there is to be any finality of state court judgments. In addition, this would eliminate the aforementioned technique often utilized by prisoners of waiting to file for habeas petition until the state's witnesses have died or the convicting evidence is unavailable, thus preventing the state from showing why a validly convicted prisoner should remain in custody. This section provides an exception to the three-year period running from conviction where the federal right of which the prisoner is availing himself is newly created by the courts in such cases allowing the three-year period to run from the date of creation of the right. Surely, in this day of court appointed attorneys for all felonies, this period is long enough to protect all rights that a defendant intends to raise.

"Section 3 of Senate Bill 653 is perhaps the most important section of all. Under present law, the findings of fact of a state court are to be "presumed to be correct," and thus the federal court is not to make its own findings of fact, unless it is shown otherwise or the state admits otherwise. However, federal courts have repeatedly treated this language as

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TORBERT ADDRESSES SENATE ON FEDERAL HABEAS CORPUS BILL

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permitting them to hold evidentiary hearings regardless of what the state court record shows. This amendment, changing the language to prohibit the federal court from redetermining the facts of a case unless certain circumstances exist, is necessary in order to prevent federal courts from disregarding state court decisions without just cause.

"Other language of Section 3 goes further in requiring federal courts to honor state court decisions. In sum, they prohibit the federal court from setting aside the state court factfinding unless the state procedure was not adequate to afford a full and fair hearing. Present Section 2254(d) allows a federal court to make its own factfinding if either the state court procedure is inadequate to afford a full and fair hearing or the defendant did not in fact receive such a hearing. This second aspect of Section 2254(d) allows a defendant to fail to present certain facts to a state court, whether through negligent or deliberate omission, and then get a second factual hearing in federal court. This flies in the face of the intent of Wainright v. Sykes of requiring a defendant to bring any issues before a state court for decision rather than hold back in hopes of a reversal in federal courts.

"There are those that argue that limiting federal habeas corpus is impairing a great concept of our law. This is not so. In fact, we will be returning to a legal remedy much closer to the original limits of the writ which has been greatly distorted in its extension. Only then will habeas corpus be what it was intended, an extraordinary writ to be utilized on occasion to correct the occasional abuses of our system of justice rather than a second mode of appeal. To illustrate the extent to which federal habeas corpus is abused, let me point out some statistics. In 1979, a study of federal habeas corpus was completed on behalf of the Federal Justice Research Program, at the request of the U.S. Department of Justice. This study involves a cross

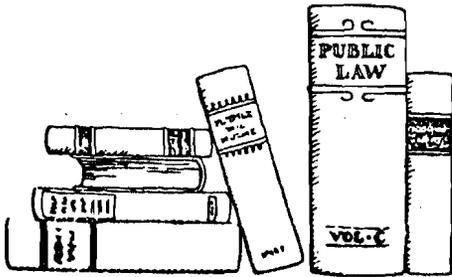
section of courts of various federal districts. It was found that only 3.2 percent of all petitions filed were successful in obtaining for the petitioner any type of relief. Within the heading of "any type of relief" would be included the granting of a new trial in state court at which the petitioner was convicted of the same crime. It also includes many cases in which the petitioner was granted relief because the length of time since the original conviction precluded the state from producing even enough evidence to rebut the bare allegations of the petition.

"In conclusion, I would like to emphasize that those of us who seek federal habeas corpus reform do not in any way deprecate the historical significance of the writ or the importance of the legitimate purpose the writ can and should serve. But overextension of the writ beyond any reasonable scope in recent years and the use of it in circumstances for which it was never intended will ultimately weaken both the writ itself and the criminal justice system of this country. Let us remember that the same founding fathers who expressly referred to the writ of habeas corpus in the Constitution also deliberately chose federalism as the basic governmental structure of this country, and they enshrined that choice in the great document no less than any other principle. The founding fathers knew, as we must realize, that no governmental system can function properly without the respect and support of the people. For that reason, if our criminal justice system is to operate effectively, indeed if it is to endure, we must restore some semblance of institutional sanity to the system. Senate Bill 653 is a major step in this direction."

PUBLIC FORUMS ON COUNTY JAILS SET

The Alabama Sheriff's Association and the University of Alabama School of Law are sponsors of three public forums on "The Crisis in Alabama County Jails" during the week of January 11 in Mobile, Tuscaloosa and Huntsville. The purpose of the forums is to allow interested citizens, civic leaders and court officials an opportunity to review recently-developed uniform jail standards.

LEGAL NOTES



ATTORNEY GENERAL OPINIONS

State Exempt From Payment
Of Law Library Taxes

In an opinion dated Nov. 18, 1981, the attorney general held that the State of Alabama is not liable for library taxes or trial taxes. This opinion provides as follows:

"This is in response to your request for an opinion of this office dated Oct. 20, 1981, in which you asked whether the Department of Industrial Relations is liable for the payment of a cost bill which includes law library tax and trial taxes, all of which is to be refunded to a successful plaintiff.

"In answer to your inquiry, this office has held that the State of Alabama is not liable for trial taxes or library taxes. See Rep. Atty. Gen. 1934-36, p. 164; Rep. Atty. Gen. 1936-38, p. 335; Attorney General Opinion, June 13, 1972; and Attorney General Opinion, January 17, 1974.

"In light of the above, it is the opinion of this office that the Department of Industrial Relations is liable for that portion of the cost bill which does not represent library taxes or trial taxes."

Fees In Judicial Sales Discussed

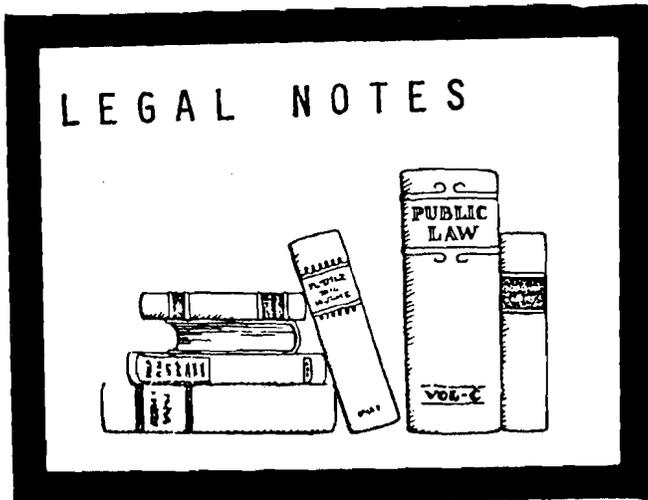
In an opinion dated Nov. 18, 1981, the attorney general issued an opinion wherein it was determined that the fees

required by Act 80-635 are to be collected where the court orders property sold, regardless of whether the person handling the details of the sale is an officer of the court for other purposes. The opinion reads as follows:

"In your request for an opinion dated Sept. 30, 1981, you ask whether the fee authorized by Act No. 80-635 (now codified at Section 12-19-23, Code of Alabama 1975) should be collected in situations where someone other than a court official is appointed by court order to see property. As an example you give the instance of where the court appoints an individual to see real property of parties to a suit. This might entail the obtaining an offer to purchase, the reporting the offer to the court for approval; and having the approval of the court, the execution of the necessary instruments to complete the sale, pay the expenses of sale, etc. The individual handling the sale would be entitled to a fee as commissioner for handling and disbursing proceeds as provided in the judgment of divorce or other order of the court. You also cite as examples instances in which a real estate broker is employed to obtain a better price for the sale of real property and where the court approves a sale for division of an estate.

"The fee required by Act 80-635 should be collected in each of the above instances inasmuch as the situations described above each constitute a judicial sale for purposes of Act 80-635. 'Judicial sales' are sales made by order of court, and, as a sale of succession property can be made only by order of court, and, as a sale of succession property can be made only by order of court, all sales of succession property are judicial sales. Succession of Blumberg, 148 La. 1030, 88 So. 297. A 'judicial sale' is one made under the process of a court having competent authority to order it by an officer legally appointed and commissioned to sell. Williamson v. Berry, 49 U.S. 495, 8 How. 495, 12 L.Ed. 1170. It is the decree of confirmation that gives a sale the character of a 'judicial sale.' Staples v. Somers, 196 Va. 581, 84 S.E. 2d 523. Sales made by order or decree under direction of the court, and requiring confirmation by the court are

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ATTORNEY GENERAL OPINIONS

(Continued From Page 14)

judicial sales. Maul v. Hellmann, 39 Neb. 322, 58 N.W. 112. It can be seen from a reading of the foregoing authorities that any sale which is ordered by a court and which is subject to confirmation by the court is a judicial sale regardless of whether the person handling the details of the sale happens to be an officer of the court for other purposes. If the sale is subject to the court's approval it is a judicial sale. However, where the court merely orders a party to execute a deed conveying his interest in a certain property to another party within a specified period of time no judicial sale takes place because no sale takes place. This would be true even if the person ordered to convey his interest refused to do so and the register executed said conveyance."

NCIC Reports May Supply

Sufficient Probable Cause

To Make Warrantless Arrest

In an opinion dated Nov. 25, 1981, the attorney general noted that the Alabama Supreme Court in Daniels v. State, 290 Ala. 316, 276 So. 441 (1973) had resolved the question of whether Section 15-10-3, Code of Alabama 1975, authorizes police officers to make warrantless arrests for extradition purposes on the basis of a National Crime Information Center

(NCIC) teletype which matches the general description of the person to be arrested.

In answering this question in the affirmative, the attorney general also determined that while Section 15-9-41, Code of Alabama 1975, authorizes warrantless arrests for felonies committed in another state carrying a sentence of death or life imprisonment, it does not prohibit arrests for felonies carrying a lesser sentence.

Probate Judges - Detention

Of Persons Pending Outcome

Of Competency Hearings

On Nov. 25, 1981, the attorney general issued an opinion stating that a probate judge is not authorized to order city police to detain or confine a person prior to the final outcome of commitment proceedings. In support of his opinion, the attorney general cited Section 22-52-7 of the Code which specifically designates the sheriff as the law enforcement officer entitled to receive such orders. Because of the express wording on this Code section and repeated reference to county officials throughout the statute governing the commitment of the mentally ill, the attorney general concluded that the county sheriff was the only official legally authorized to carry out a probate judge's order to hold or confine a person who is the subject of commitment proceedings.

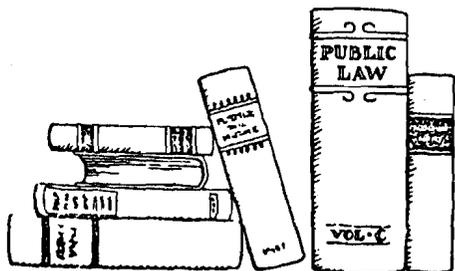
Verification Of Signatures

On Petition for Wet-Dry Election

In an opinion issued Nov. 25, 1981, the attorney general stated that in verifying signatures on a petition calling for a wet-dry election, the probate judge can include the names of people who were not registered to vote at the time the petition was filed if they become registered voters prior to the final date of certification. Accordingly, this opinion sets the date for determining whether a person who has signed such a petition is a qualified voter at the time the petition is actually verified rather than at time of filing or earlier.

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LEGAL NOTES



ATTORNEY GENERAL OPINIONS

(Continued From Page 15)

Court Order Directing Destruction

Of Excess Evidence Valid

The attorney general was recently asked whether it was proper for a court to order the destruction before trial of excess evidence seized under the Uniform Controlled Substance Act. In an opinion dated Nov. 18, 1981, the attorney general held that such an order was valid under Section 20-2-93 of the Code, which indicates that the disposition of evidence falls within the court's discretion. The attorney general went on to state that even though not statutorily mandated, it might be advisable to hold a pre-trial hearing with the defendant present prior to disposition in order to avoid later claims that the destroyed evidence could have benefited the defense in some manner.

Admitting Or Readmitting

Defendant to Bail

In answer to questions concerning Section 15-13-64 of the Code, the attorney general issued an opinion on Nov. 25, 1981, interpreting the provision of this section as follows:

1. Upon surrender of the defendant to the sheriff in the county where court is held, the sureties are exonerated on the bail.

2. Where the defendant, charged with a misdemeanor, has been surrendered and sureties released from bail, the sheriff may

discharge the defendant on new bail.

3. If the defendant is charged with a felony, upon surrender the county sheriff "must keep him in jail until discharged by law." "Discharge by law" means the granting of new bond by the proper court, acting on the defendant's motion requesting that he be readmitted to bail.

Based on Section 12-11-30 and Section 12-12-32 of the Code, the attorney general stated that either the district court or circuit court has jurisdiction of a felony case prior to return of an indictment to determine if the defendant is admitted or readmitted to bail. Thus, a defendant who has been bound over to the grand jury by a district judge or has waived to the grand jury may properly apply to either court to be admitted or readmitted to bail.

Fair Trial Tax - Municipalities

In an opinion released recently to the mayor of Gulf Shores and dated Nov. 18, 1981, the attorney general stated that under the language of Section 12-19-251.1, Code of Alabama 1975, a municipality may not use its fair trial tax receipts to defray administrative costs incurred in providing counsel to indigent defendants. The opinion states that the Attorney General's Office believes that;

". . . the sole purpose of the fair trial tax act in this regard is to pay the fees and expenses of attorneys who represent indigent criminal defendants."

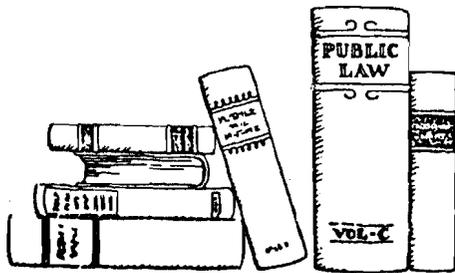
Probate Judge's Retirement -

Employment After Retirement

In an opinion dated Nov. 9, 1981, and released to a probate court judge, the attorney general has opined that a probate judge with sufficient years of creditable service earned toward retirement, but who is not yet 60 years of age, as required by the retirement laws, may resign prior to attaining age 60 and then draw benefits upon reaching age 60. (Please note: although not cited by the opinion, Section 12-18-83 specifically sets forth that the probate judge may leave his or her contributions in the retirement fund and

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LEGAL NOTES



ATTORNEY GENERAL OPINIONS

(Continued From Page 16)

receive a certificate of creditable service which may later be filed upon reaching a retirement age.)

The opinion further holds that such judge could accept a position with a post-secondary institution of higher learning and be paid for that work while, after reaching age 60, drawing retirement benefits as well. The attorney general specifically ruled that this would not violate Section 280 of the Constitution (prohibiting the holding of two offices of profit) nor would it conflict with any other constitutional or statutory provision.

Elections -

Corrupt Practices Act

A state legislator recently requested an opinion of the attorney general regarding certain actions in seeking reelection. Due to the important nature of these inquiries and the responses, the opinion is reprinted here in its entirety.

"QUESTION: Can an incumbent legislator (either a Representative or a Senator) use his legislative stationery, paid for with his own private funds, to announce his plans for reelection (or to announce that he will seek another office) and to solicit the support of the voters in his current or potential district?

"QUESTION: If the answer to the first question is in the affirmative (that an incumbent legislator can use legislative stationery for campaign purposes), is it necessary to have printed on the stationery that

the mailing is not paid for at state expense or to indicate that the letter constitutes a paid political advertisement?

"QUESTION: Under the provisions of the Alabama Corrupt Practices Act, is a letter mailed by a candidate campaigning for a state office required to contain on the face of the stationery that the letter constitutes a paid political advertisement? Would the answer to this question be any different if the letter itself did not indicate that it was a paid political advertisement but there was some piece of campaign literature containing that disclaimer that was enclosed in the mailing?'

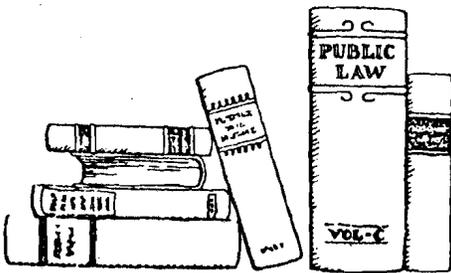
"Question one can be answered in the affirmative. Neither the Corrupt Practices Act, Section 17-22-1 through Section 17-22-15, Code of Alabama, 1975, nor the Ethics Law, Section 36-25-1 through Section 36-25-30, Code of Alabama, 1975 prohibits a legislator from using his stationery, paid for with his own private funds, to solicit electoral support.

"In response to your second question, there is no legal requirement that you print on the stationery that it is not printed at state expense. This is a political decision left to your own discretion. Also, the letter need not be marked as a 'paid advertisement' since pursuant to Section 17-22-14, Code of Alabama, 1975 only paid political advertisements appearing in the newspaper need be marked as such. However, pursuant to Section 17-22-13, 'printed matter having reference to an election or to any candidate, shall bear on the face thereof, the name and the address of the person causing the same to be published.' Thus, the stationery or the contents of the letter should contain enough information to meet this requirement.

"In response to your third question, I refer you again to Section 17-22-13 and Section 17-22-14, Code of Alabama, 1975. A letter need not say 'paid political advertisement' per se, but must indicate on the face thereof who caused it to be published if it makes reference to an election, or any candidate. If the letter makes no such reference, that disclosure need not be made."

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LEGAL NOTES



ALABAMA JUDICIAL INQUIRY COMMISSION SYNOPSIS OF ADVISORY OPINIONS

Below are synopses CXXIII and CXXIV issued by the Alabama Judicial Inquiry Commission this month:

SYNOPSIS CXXIII--Must a judge, who teaches part-time at a major state university, recuse himself on all litigation involving that institution? In the facts presented, the judge receives a \$500 for teaching a course at the institution. The institution is an intervenor in the lawsuit in question, and the plaintiff has asked that the judge be recused.

OPINION--It is the opinion of the Commission that under Canon 3C of the Alabama Canons of Judicial Ethics the judge should disqualify himself from hearing any proceeding in which the educational institution by which he is employed is a party. Canon 3C provides that a judge should disqualify himself from hearing any proceeding in which his impartiality might reasonably be questioned. In this instance, the Commission finds that other litigants as well as the general public might reasonably question a judge's impartiality in any proceeding where the institution by which the judge is employed is involved.

SYNOPSIS CXXIV--May a municipal court judge serve as such and be a candidate for membership in the State House of Representatives, and if elected, may the judge hold both positions?

OPINION--This Commission is authorized to give opinions only on the Alabama Canons of Judicial Ethics. Questions pertaining to the constitutional prohibition against

holding two offices of profit are more properly addressed to the attorney general. Municipal judges are bound by certain of the Canons. A municipal judge in most instances holds a part-time position. Compliance with the Canons section provides that: "A part-time judge is a judge who serves on a continuing basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge." A part-time judge is not required to comply with Canons 5D, E, F, G and 6C. Such part-time judges are not excused from compliance with the provisions of Canon 7. Canon 7A (2) requires that a judge should resign his office when he becomes a candidate either in a political primary or in a general election for a non-judicial office. The legislative office to which the judge, in this instance, seeks election is a non-judicial office. It is, therefore, the opinion of the Commission that a municipal judge, who becomes a candidate for election to the state legislature, is required by Canon 7A (2) to resign his judicial office prior to becoming a candidate. The Commission would also point out the provisions of Section 6.08 (b) of Amendment 328 of the Constitution of Alabama (1901). "(No) judge except a judge of probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust. . ."

NOTES FROM THE APPELLATE BENCH

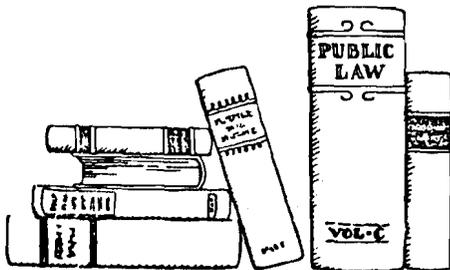
Cases argued before the Supreme Court of Alabama during the past month include:

STATES-PRIVATE ENTERPRISE--Can UAB's Speech and Hearing Center sell hearing aids? (80-601 - Churchill)

MANDATORY RETIREMENT OF STATE EMPLOYEES--Whether governor's action in ordering state department heads not to recommend employment of state employees over age 70 violated legislative intent which allowed State Personnel Board discretion to approve employment past 70 on a case-by-case basis. (80-498 - Hawkins)

(Continued On Page 19)

LEGAL NOTES



NOTES FROM THE APPELLATE BENCH

(Continued From Page 18)

OIL AND GAS POOLING -- NOTICE TO OWNER --
Whether owner of mineral interests received proper notice of a hearing before the Oil and Gas Board on a "pooling" arrangement. (80-592 - Walker)

ELECTRONIC SURVEILLANCE - ATTORNEY-CLIENT PRIVILEGE --State wires an investigator for sound and that investigator takes part in a three-way conversation with the accused and his attorney and the conversation is heard directly by the prosecutor. Is this electronic surveillance a violation of the accused's Sixth Amendment right to counsel? (80-806 - Ex parte State: Graddick)

EMPLOYEE BENEFITS - CAPTIVE COUNTIES --Whether sick leave benefits payable to employees of "captive counties" were obligations of the state when the legislature transferred county road work back to the respective "captive counties." (80-623 - Kemp v. Britt)

MEDICAL MALPRACTICE - NATIONAL OR COMMUNITY STANDARD OF CARE --Whether the trial court erred in failing to charge the jury that defendants are held to a national medical neighborhood standard unless there is evidence that demonstrates that such a national medical neighborhood standard could not, because of justifiable circumstances, be adhered to. (80-518 - Doctors Lane, Bryant, Eubanks and Dulaney, etc.)

LOCAL LEGISLATION - UNCONSTITUTIONALITY --

Whether an act which created the Birmingham-Jefferson County Civic Center Authority is violative of the Constitution of the State of Alabama. (Birmingham-Jefferson County Civic Authority - 80-697)

WHETHER THE COURT OF CIVIL APPEALS --correctly held that evidence in a slip and fall case was insufficient to support the verdict of the jury.

WHETHER AN ACCUSED, WHO --was in freezing water near a shrimp boat on which illicit drugs were allegedly illegally seized, can claim that the search was unreasonable as to him.

WHETHER A HOMEOWNERS' POLICY --would cover the acts of the voluntary fire chief who allegedly was guilty of negligent supervision of voluntary firemen during the course of a fire. (80-653 - Mannes)

WHETHER THE MAJORITY STOCKHOLDER --of a corporation gave reasonable notice to the corporation's insurer of an incident involving an alleged assault by the majority stockholder on a patron. (80-224 - McDonald)

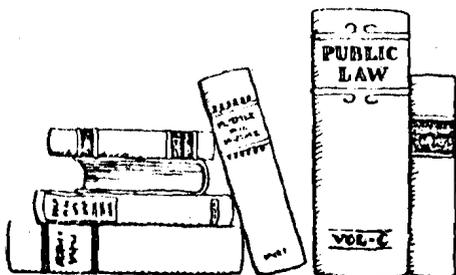
COUNTY BOARDS OF EDUCATION - DAY CARE CENTERS --Whether a county board of education is authorized to operate a day care center. (80-579 - Clark v. Jefferson County Board of Education)

COUNTIES - FAILURE TO FILE A CLAIM --Whether the plaintiff's failure to file a claim with the county commission barred an action for damages caused by water which backed up in a drainage system. (80-665 - Burge)

INSPECTIONS OF - LIABILITY BETWEEN INSUROR AND INSURED FOR NEGLIGENT INSPECTION --Whether an insurer who conducts an inspection in connection with its issuance of a policy on a motel and who has written disclaimer with regard to the inspection, can be held liable for a negligent inspection by the owner of the motel. (80-479 - Ranger Insurance Co.)

DISCOVERY - NON RESIDENT CORPORATE EXECUTIVE AT PLACE OF TRIAL --Whether an executive of a limited partnership defendant
(Continued On Page 20)

LEGAL NOTES



NOTES FROM THE APPELLATE BENCH

(Continued From Page 19)

who lives in Jacksonville, Fla. where the principal place of the partnership business is located, can be compelled to attend a deposition hearing in Birmingham, the site of the trial, whether mandamus can revise the trial judge's refusal to give the non-resident executive a protective order. (80-919 - Old Mountain Properties, Ltd.)

JOINT TENANTS WITH RIGHT OF SURVIVORSHIP -- Whether property owned by the husband and wife as joint tenants with right of survivorship was changed into a tenancy in common when the husband and wife, during a divorce proceeding, agreed as follows: "The property . . . shall be sold upon the agreement of both parties," and the husband died before the property was sold." The case requires a revisiting of Bernhard v. Bernhard, and Nunn v. Keith. (80-718 Myrtle Henley Watford)

NATIONAL CENTER FOR STATE COURTS ANNOUNCES 1982 PAPER COMPETITION

Entries are being accepted for the second nationwide competition for reports on innovative ways to make courts more efficient, sponsored by the National Center for State Courts.

The competition is open to judges, court administrators, and others employed full time in the court systems of the states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands or an American Indian tribal

court.

First prize will be \$1,000; second prize \$500; and third prize \$300. Two honorable mention awards of \$150 will also be made.

Winners of the 1981 competition were Anthony Vollack, a judge in the First Judicial District Court in Golden, Colo., who won first place for a report on judicial control management; Joseph F. Gagliardi, administrative judge of the Ninth Judicial District in White Plains, N.Y., who received the second-place prize for a report on jury management; and Rose C. Nugent, chief court administrator of the Milwaukee Municipal Court, who earned the third-place prize with a report on the use of computers to speed municipal court business.

Honorable mention awards were given to G.A. Surles, Office of Court Administration, Columbia, S.C.; Joseph L. Longobardi, judge, Superior Court, Wilmington, Del.; and Harvey Halberstadter, presiding judge, District Court, Elizabeth, N.J.

Awards are for papers describing the most effective, efficient, and innovative methods currently in use by a court or courts to speed the disposition of cases, to reduce costs to the public or to litigants, to increase effectiveness, or to improve the quality of judicial system performance.

All admissions are to be addressed to the Executive Director, National Center for State Courts, 300 Newport Avenue, Williamsburg, Va. 23185, and received no later than April 30, 1982. Awards will be announced and presented on or before Aug. 15, 1982.

Submissions will be judged on the innovative nature of the methods described, cost effectiveness, their impact on the judicial system, their transferability to other courts, and on the clarity of the presentation and the documentation provided to substantiate the benefits of the methods reported.

The awards, called the National Center for State Courts Paul C. Reardon Awards in Judicial Administration for 1982, are named in honor of the National Center's first president. Reardon served as a justice of the Supreme Judicial Court of Massachusetts from 1962 to 1976 and as chief justice of its Superior Court from 1955 to 1962.

The Cincinnati Post

and Times-Star

WILLIAM R. BURLEIGH, Editor

JOHN L. FELDMANN, Business Manager

Saturday, October 17, 1981



William R. Burleigh

editor's notebook

Judging the judges

Japan spent millions last year educating the judges who sit on that nation's courts. Before they can even hear their first cases, Japanese judges-to-be must, after law school, undergo two additional years of training. Once seated, they then must spend at least two weeks out of every year getting refresher schooling.

Elsewhere in the free world, the countries of West Germany, France, Italy and others set similar standards. In various ways, they require judges to go to school to learn how to serve as judges.

Only in the United States, in fact, is the process of educating judges so hit or miss. As a nation, we set extensive educational requirements for doctors and make comparable legal demands on teachers and other professionals. We extend standards even to such licensed crafts as barbering and plumbing. Yet for the most part, if someone in America wishes to be a judge and meets shockingly minimal requirements, he or she can run for the job and, if successful, can begin dispensing justice regardless of background, training or know-how.

The results are too often predictable. We harvest our share of the bitter fruit right here in Hamilton County.

Fortunately, a new era appears dawning and at the forefront of the movement is The National Judicial College in Reno, Nev. There, since 1964, a total of 12,721 judges from state, county and municipal jurisdictions have undergone rigorous classroom training. (Of these, 482 have come from Ohio, 18 from Cincinnati.)

Despite the college's record, its dean, Ernst John Watts, himself a former judge, is far from satisfied. He thinks the nation's standards for judicial performance are still almost non-existent. He believes too many judges are reluctant to respond to the increasingly complicated roles thrust on them by modern society. He worries that the public too often perceives judges as high-handed and out of touch.

I was privileged this week to visit the college and to see first-hand the process the judges go through. They come voluntarily, pay tuition, put in full academic days and are forced to re-think many of the things they do on the bench. They are exposed to new ideas and new ways.

Many of them come on their own vacation time. Only it's no vacation. There's little time for the more famous diversions of Reno.

They get ample chance for shop talk with their colleagues and to vent pent-up feelings about their jobs.

It was in this latter connection that I encountered several hundred of the student-judges. I was invited to discuss press-bar matters with them and in the course of our sometimes heated dialogue discovered just how nerve-racking and frustrating the business of judging can be.

Their Honors had plenty to say about the news media and what a poor job we've done in explaining the courts to the public.

More than that, however, I learned how unfairly the judges feel society deals with them. Especially are they upset about the public's reaction to their role in combatting crime.

"We are locking up more people than ever before," complained one veteran judge from South Florida. "They can't build prisons fast enough to house the criminals we're sending up. Yet the public sees us as being soft on crime because some federal judge or some parole board turns them loose to prey again on the innocent. It's a thankless job with lousy pay and I sometimes wonder what I'm doing there."

If the assembled judges sounded at times a little paranoid, I concluded they had plenty of reason for it. In this respect, they differ little from editors I know.

Both of us are viewed by the public as frequently arrogant power brokers, remote, lacking accountability and living in an ivory tower.

The National Judicial College is trying to change that. Dean Watts worries about the courts being perceived as places where justice is sometimes not done, where the privileged are still favored and where the verdict almost always takes too long.

He notes that this is the first year in which all 50 states now have judicial disciplinary commissions for handling wayward judges. Isn't it ironic, he asks, that the same emphasis is not placed on the education of judges as a measure of preventive medicine.

It's interesting to note that when the Ohio Supreme Court ruled early this year that all state judges must start taking 20 hours of classroom instruction annually, Ohio became only the sixth state to require mandatory judicial education.

There's obviously a long road ahead but the folks in Reno are blazing an impressive trail.



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