

Rooker Report

June 15, 1993



Published by the Davidson County Circuit Court Clerk's Office



Vol. 1, No. 5

Courts Prepared For Gel Implant Pretrial Activity

Judge Shipley in Key Role

Across America, lawsuits are being filed in growing numbers by women who claim to be victims of faulty breast implants.

With many of the cases being openly examined before national television audiences, the situation has developed into one of the most controversial health issues in modern times, especially for product liability litigation by a single gender.

At the core of the controversy—factory produced silicone gel bags designed to enlarge or replace female mammary glands. Thousands of users claim to have suffered physical pain and debilitations after the prostheses ruptured and leaked without warning.



JUDGE SHIPLEY

Monetary damages are being sought from not only the manufacturers, but also from suppliers and affiliated companies, described by the plaintiffs as "alter egos" of each other. The language of the complaints is generally stern and boldly charges the suppliers of conspiring to mislead the medical community and the general public about the inherent dangers of the implants.

The magnitude of the complaints has prompted judicial systems to formulate methods of organizing pretrial pleadings to avoid massive clerical complications and to reduce the prospect of protracted trials.

In Tennessee, three geographical areas have been assigned for disposal of preliminary pleadings—Memphis in the west, Chattanooga in the east, and Nashville in the central section.

Second Circuit Court Judge Marietta Shipley will preside over the pretrial proceedings in the central district where the ground rules

(See Gel Implant, Page 4)

JURY DUTY: *Calling in the Professionals*

Most professional people who have relied on occupational hardship as an excuse for avoiding jury duty will lose their exemption status on July 1.

With the exception of sole proprietors, a "serve now, or serve later" amendment was passed by the state legislature, which also addressed laws regarding notaries public and unclaimed property as parts of a court-related legislative package.

The juror exemption amendment packed the most significant punch in terms of the number of people affected. Heretofore, professional workers such as attorneys, accountants, physicians and clergymen could rely on occupation as an excuse for not pulling jury duty. The state law had exempted them from liability.

History of the Courts



A historical marker identifies the first settlement in Nashville. How the pioneers chose Nashville as their home and formed a government to protect it is explored in a series of articles starting on Page 4 of this edition.

Early Response Overwhelmingly Favors Dial-A-Case Program

Our suspicions have been confirmed. Most people doing regular business with our General Sessions civil division would welcome a more convenient method of conducting that business.

Early returns on survey questionnaires mailed to attorneys, collection agencies and other firms reveal that a proposed subscriber service providing computer modem access to court files would attract a high number of customers.

Almost 80 percent of those responding thus far said they have the necessary equipment to access the service, which they felt would be helpful in their businesses.

"Like carbon paper, Xerox, faxes and word processors, the day will come when we will wonder how we got along without modem access to data," commented Brentwood attorney C. Raymond Myers, Jr.

"Cheaper than a runner," another attorney wrote.

(See Dial-A-Case, Page 2)

But the legislature concluded that professionals have a civic responsibility equal to other citizens who lack liability protection under existing legal guidelines. The lawmakers equivocated somewhat, however, and permitted a degree of flexibility for professionals—some of whom provide services that cannot be disrupted without prior arrangement.

Such persons summoned for service can select a seven-day period within the following 12 months if they prefer delaying their tour of duty. That provision should set well with school teachers and public office holders—all of whom will now be required to serve.

The legislature took into account the obvious hardships of sole

(See Jury Duty, Page 3)

Cheers.....

Congratulations to General Sessions cashier **Janice Johnson** and husband **Todd** upon becoming parents for the first time. Son **Ryan Todd** announced his arrival at 7:26 p.m. on June 3, weighing in at 6-pounds, 14 1/4 ounces and measuring 19 1/2 inches at full stretch. Mom and baby are doing fine. We're not sure about dad...Another happy occasion was celebrated in the General Sessions civil division on May 20 when deputy clerk **Denise Bailey** became **Mrs. Ed Dill**...And rumor has it that yet another similar announcement could be forthcoming from the lower east level of the Ben West Building. Who? Stay tuned...Finally, we are happy to report that a number of employees who have recently undergone surgery are all doing fine. They include: Traffic Violations Bureau computer room supervisor **Leslie Allumbaugh**, recuperating at home; the bureau's **Jo Ann Lewis** and **Earl Reed**, still absent but gradually improving; and **Susan (Katinka) Gore** of the traffic warrant office who is back on the job. **Robert Potts** has returned to the bureau's information desk after undergoing tests at Donelson Hospital...Also recuperating at home is chief Probate clerk **Ruth Lester**, who underwent surgery for a broken ankle... And **Mike Croft** has left the Probate department to accept a job as sales representative for a food distributor.

.....And Tears

The legal community is saddened by the May 24 death of former **Wilson County Judge Robert H. Bradshaw**, who died in a Lebanon hospital where he was admitted with a broken hip following a bad fall two weeks earlier. Our sympathy goes out to Judge Bradshaw's family, which includes our own **Bob Bradshaw, Jr.**, master of probate court...We also extend our sympathy to the family of traffic warrant clerk **Robert Coleman**, whose brother **Otha Raymond Coleman** passed away on June 2 after suffering a heart attack. Services were held June 4 at Woodlawn Funeral Home.



Kennedy Accepted at UT Law School

David Kennedy, a deputy clerk in our probate court clerk's office, has been accepted to the University of Tennessee-Knoxville School of Law and will start classes in August.

Kennedy, who celebrates his 24th birthday today, has been on staff for one year following graduation from Kentucky Wesleyan College in Owensboro. The Father Ryan graduate attended Rhodes College in Memphis before entering Kentucky Wesleyan.

METRO TRAFFIC COURT DOCKET JUDGE ASSIGNMENTS TO JULY 16

COURTROOM 1

(8:30, 9:30, 10:30, 12:30, 1:30, 2:30 daily)

<u>Week of</u>	<u>Judge</u>
June 14	John Brown
June 21	Gale Robinson
June 28	William Faimon
July 5	Penny Harrington
July 12	Philip Sadler

COURTROOM II

(1:00, 2:00, 3:00 daily)

<u>Week of</u>	<u>Judge</u>
June 14	Don Washburn
June 21	Leon Ruben
June 28	William Higgins
July 5	Michael Mondelli
July 12	John Brown

Child Support Collections Could Hit \$12 Million

Child support collections will hit a record \$12 million this year, if the first five calendar months are any indication.

Through the month of May, the clerk's office had received \$4,583,425 in support payments, a 6.9 percent increase over the same period a year ago. In dollar figures, the increase was \$315,304.

Last year's support collections of \$11,468,501 was the highest in history and was representative of a steady annual increase that began when the courts intensified enforcement efforts against non-custodial parents.

New cases and court-ordered wage assignments in arrearage cases also were major factors in the overall collection increase. March was a million-dollar month—the first this calendar year. Payments totalling \$1,106,794.35 accrued from the average 8,498 individual receipts, which came in at a \$48,121.49 daily clip.

June, October and December were the only months in 1992 to produce seven-figure support payments through our office.

Meantime, recipients of those support payments continue to keep the electronic phone lines humming. As last reported, our Voice Interactive Phone System (VIPS) continues to be of constant service to custodial parents desiring status updates. The service never shuts down and averages about 45 calls each hour, or 344 inquiries each working day.

The electronic phone has been in service since October 1991 and—via coded input by the caller—automatically provides such basic information as the date of last payment, arrearage amounts and such wage assignment data as the date payment was received by our office and when it will be disbursed to the recipient.



Dial-A-Case

(From Page 1)

Those receiving the questionnaire were asked to weigh the value of the forthcoming service against their current costs for such incidentals as parking, travel time and labor expense.

The service, for which subscriber rates have not yet been determined, will be offered to parties who have computer equipment capable of accessing data by modem—a device that allows two computers to talk via telephone lines.

Demand time was among the chief areas of inquiry. Almost 60 percent of the early responders felt they would need to access the data from one to four hours per month.

We continue to receive a daily influx and a final tabulation will be compiled and reported as soon as possible.



Jury Trial Verdicts

The following verdicts were rendered in the most recent circuit court jury trial cases. A new three-week term began on June 14.

<u>Case Number</u>	<u>Type of Case</u>	<u>Verdict</u>
90C-2488	Medical Malpractice	Defendant
90C-2942	Auto Accident	Defendant
93C-108-109	Auto Accident	(P) \$23,500
93C-428	Negligence-Fire	Defendant

WEEK OF MAY 17-19

<u>Case Number</u>	<u>Type of Case</u>	<u>Verdict</u>
91C-3144	Auto Accident	(P) \$195,620
91C-1835	Auto Accident	(P) \$ 13,097
91C-2604	Unpaid Ins. Claim	(P) \$ 7,300

Profile

Judge Zicarelli: The court scene is his 'beat'

Some four decades ago, Mitchell Van Zicarelli maintained a constant presence on the courthouse scene. He still does.

Upon seeing his slight figure moving quietly through the hallways of the Courthouse or crossing the street to the Ben West Building, many people probably are curiously stirred. Their absence of familiarity, perhaps, leads them to a false conclusion that he is just another courthouse character.

Little do they know that this elderly gentleman, clad in uncoordinated plaids and stripes beneath an ever-present gray felt lid, once sat on the bench of General Sessions Court. Little do they know that much of the city's modern day judiciary keeps the welcome mat out and entertains his presence almost daily.

Yes, Mitchell Van Zicarelli is a courthouse character, with emphasis on character, which he possesses in abundance.

Prominent Nashville attorney David Rutherford thought it was time that "Judge Z" received proper recognition for his contributions to the legal community. He approached his elderly friend in the courthouse hallway one day recently and asked him to join him for a cup of coffee.

"I don't drink coffee," Zicarelli replied.

"Then let's go have a coke," Rutherford said.

"I don't drink cokes," he retorted.

"Then, let's just go somewhere and talk," Rutherford persisted.

"Okay," the judge answered.

What followed was a conversation in which Rutherford, a historian, extracted background information for a story he hoped to publish in the interest of preserving a bit of history.

Rutherford had met Zicarelli more than 40 years earlier and the two men established a friendship that has endured all these years. So, getting the information for his story wasn't

difficult. This is what he wrote afterwards:

"Mitchell was born Feb. 16, 1915 in Ensley, Ala., a suburb of Birmingham. He was educated at the Ensley Elementary School and the Fairfield Junior High School. He was graduated from the Fairfield High School where he was an outstanding student.

"He attended the University of Alabama and was graduated from the Cumberland Law School in Lebanon, Tennessee, and began the practice of law in 1940.

"Mitchell comes from a large family. His brothers and sisters are, for the most part, professional people, including physicians, as well as attorneys.

"He practiced law in Nashville as a sole practitioner and, other than a brief association with the late Hershell Hagey and later with W.B. Hogan, he has been a sole practitioner, and is still in the active practice of law.

"Mitchell is a member of the West End Methodist Church and is a member of the Laymen's Club there at the church. He belongs to the Elks Lodge, Eagle Club, Clairborn Lodge 292, Eastern Star 194, White Shrine of Jesus No. 2, and Scottish Rite, Shrine Club.

"He served as a General Sessions judge...beginning on Sept. 27, 1956, succeeding the late Owen W. Hughes, and served until Aug. 1, 1958 when the late Daniel Boone assumed the responsibilities...of the court.

"Judge Zicarelli has been, and is, extremely popular with all of his associates and acquaintances, and was highly regarded during his tenure on the bench. He still enjoys that same high regard as a practicing lawyer as he makes his daily rounds in the practice of law in all the courts..."

Verification enough that Mitchell Van Zicarelli was a prominent figure in times past.

He still is.



M. VAN ZICARELLI
1956

Jury Duty

(From Page 1)

proprietorships and removed liability against individuals who operate businesses without partners or replacements.

Persons over 65 years of age and those with infirmities presumably will remain exempt from serving, although no specific exclusion was noted in the amendment.

These were the outcomes of other court-related amendments:

—Notaries will be required to post larger bonds when renewing certificates after July 1. Lawmakers, while consolidating all notaries into a single classification and giving them authority to function in all counties of the state, doubled the surety bond to \$10,000.

—Court clerks were authorized to make quicker turnover of unclaimed funds to the state. Effective July 1, clerks can escheat funds to the state if they have gone unclaimed for more than one year. Lawmakers said a year was long enough to hold abandoned property. A seven-year delay was required under the old law.

Case, Deadline Reports Available

The clerk's office is now making available to circuit judges a "pending" and "at-issue" case report on all jury and non-jury cases according to their court assignment. The computer-generated report is offered upon request only.

Judge Barbara Haynes assisted in the development of the report, which provides a caseload overview and enhances advance planning. In addition, a report listing all scheduling order deadlines is now being made available upon request by the courts.



HELLO?

**Clerk: "There's a ringing sound in my left ear."
Supervisor: "Well, answer it."**

Pioneers Feast on Beauty En Route to Building 'Nashboro'

Editor's Note: This is the first installment in a series of articles on the development of Davidson County and its court system. The historical facts and data were assembled with the counsel and assistance of past and present judges of the circuit and criminal courts. The information was first published in booklet form and distributed to jurors for educational purposes. We now offer this updated version for the same reason while acknowledging the contributions of the late Honorable Arthur Crownover, Jr., the late Honorable John M. Cate and the late Alf Rutherford. We are also grateful for the assistance of attorney Harlan Dodson, III, and other members of the Nashville Bar Association who helped make this presentation possible.

It must have been a beautiful trip through the Great Smoky Mountains as a hardy band of pioneers from North Carolina girded their way west during the fall of 1779 in search of a settlement.

The glorious foliage of unmolested forests most assuredly was breathtaking, even more so than today in climates drastically modified by modern advancement.

One can imagine the spine-tingling sensation that the pioneers surely felt as they stood along the foothills, staring in amazement at the awesome vastness of autumn radiance

coating the mountains surrounding them.

The panoramic beauty, while putting God's creations in their proper perspective, also served to soften the hardships of the ant-like human creatures as they inched along the countryside in quest of the ultimate place to call home.

As days turned into weeks, the brilliant hues of the landscaping would transform to drab, brown sameness and tumble listlessly to the earth to become a blanket of noisy carpeting, alerting wild game that hungry intruders were approaching. But the art of hunting was the code of survival to the pioneers and the virginlike wilderness would help hone their expertise and provide an ample reserve of fodder for the cold days ahead.



History of the Courts - Part I

With Col. James Robertson at the helm, the pioneers slowly distanced themselves from their starting point of Watauga, N.C. until finally ending their voyage on Christmas eve at a location that would someday become Nashville. At that particular point in time, their new-found homeland had no name and was still considered a part of North Carolina.

But what a Christmas gift the pioneers had received. To them, the paradise that surrounded them must have represented the pot of gold at the end of the rainbow. They discovered a spring on the banks of the Cumberland River and near there built a small fort that would serve both as living quarters and protection against Indians.

Today, a replica of the original Fort Nashboro reminds us of that early settlement.

Through primitive communication methods, word of the pioneers' discovery reverberated throughout the hills and by springtime the first settlers were joined by more than 200 others equally as intent on making a new home.

It was a man by the name of John Donelson who successfully commanded a flotilla of 30 boats that brought the newcomers to this mid-southern haven. And when they arrived on April 24, 1779, they hit the ground running. For within a month's time the settlers created a crude governmental organization under the style of the "Cumberland Compact."

During the next four years, the group survived the hardships of the wilderness and the hostilities of the Indians. Finally, in 1783, they petitioned the legislature of North Carolina (of which they were a part) to provide a county governmental organization for them.

Their request was formally granted on May 17 of that year. Their new civil municipality would be named Davidson County in honor of Gen. William Davidson, a North Carolina revolutionary war hero from Mecklenberg.

Next: Davidson County gets its first court.

Gel Implant

(From Page 1)

were essentially established in May during a meeting with case attorneys and others, including representatives of the circuit court clerk's office.

There has been no accounting for the total number of implant cases that have been filed throughout the central district. But in Nashville alone, at least 15 complaints have been recorded and are awaiting answers by the defendants.

Cases filed here will be assigned to the five circuit courts under a normal rotational system, which means that Judge Shipley will participate in formal trials in addition to her exclusive motion dockets. Hearings for the pretrial motions will be conducted on the second Monday of each month, provided they are filed by the close of business on the Wednesday preceding the docket date.

A master docket number has been created and will be attached to all common pleadings for the purpose of organization. The motions will be filed under docket number 93MDI and will be correlated with original complaint files following disposition.

Other guidelines include:

- > The clerk's office also will maintain a master attorney index for all parties involved in the litigation. Attorneys entering into the litigation must file a notice of appearance.
- > To help defray expenses, a \$100 charge will be added to the cost bill of each case as it is concluded or settled.
- > Fax copies will not be accepted as original pleadings, but faxed response motions will be permitted, so long as the original is filed as soon as possible. The clerk's office will not transmit fax copies.
- > A report will be made available to all judges of cases involved in the litigation. The report will consist of the docket number, complete style, names of attorneys and the last three pleadings.

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Published by the Davidson County Circuit Court Clerk's Office
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