

Rooker Report

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Wrinkles In The Walls

Introduction to a series

The Davidson County Courthouse, a towering monument to legendary architectural genius, refuses to flinch as daily barrages of verbal indictment are hurled at her tired but proud anatomy.

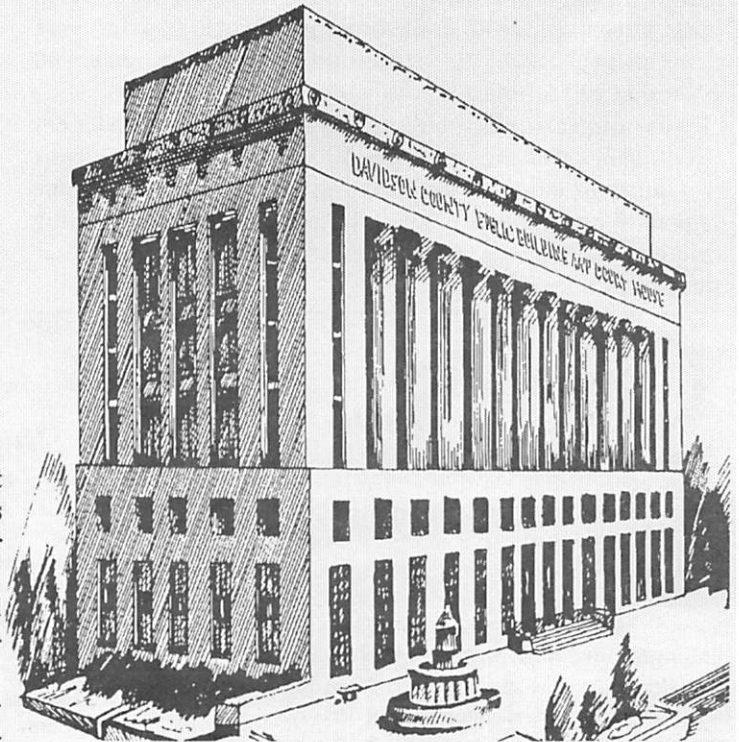
Her resiliency has withstood the demands of time and embraced generations of legal arbiters as the temple of both civil and criminal litigation.

As a younger lady, her hallowed halls were impressed by footprints of those regal forefathers who now occupy bronze remembrance on her inner walls. The booming, articulate voices of the most reputable of barristers have tested her acoustical qualities and etched milestones in her ledger of legal preservation.

She has maintained decorum through turbulent times of administrative transition; digested the distasteful fodder of criminal slime, and proudly birthed social and economic reforms.

She truly is the Mother structure of a metropolitan complex that defies restraint and beckons a progressive, better world for the future offspring of Father Time.

It is most unfortunate, yes, even shameful, that her modern day



critics lack the historical knowledge to bestow the proper respect she so richly deserves. Instead of glorifying in her heritage and undeniable charm, far too many tread her marbled floors in spirit of indignation and impatience for her antiquated pace and often-impaired functions.

Although inanimate, an influx of daily activity provides her a living pulse, pumping lifeblood through symbolic arteries--erratic shafts of accessibility to her every internal organ.

(See ANATOMY, Page 2)

Coupling A Toxic Caseload

CSX

Beleaguered by a growing list of employee health claims, rail transportation giant CSX, Inc., could soon be scheduling stops in all of Nashville's circuit courtrooms.

Since mid-1993, local workers have linked a train of lawsuits accusing the company of negligently exposing them to toxic chemicals that caused irreversible health impairments.

At last count, a total of 55 individual complaints had been filed on behalf of workers by Birmingham attorney James H. Wettermark, who is asking for a jury trial in each case. Nashville attorney Gareth Aden has filed straight answers of denial on behalf of CSX.

Despite similarities of the cases and the fact that all plaintiffs are represented by the same attorney, there has been no effort to incorporate the claims into a single class action. However, a request by both sides that the cases be consolidated for the purpose of motions and case management has been granted to ward off a possible logjam of the courts.

Ironically, the pretrial phase has been assigned to Second Circuit Court Judge Marietta Shipley, who already has similar jurisdiction in the controversial breast implant litigation currently in nationwide settlement negotiations.

(See CSX, Page 4)

Wrinkles In The Walls

Anatomy of a Vintage Lady of Substance

(From Page 1)

The character of her wrinkled walls has taken six complete decades to acquire, providing a thick outer skin for worn internal parts. Experiments with would-be remedial medication fail more times than not, leaving her at the mercy of budget shortfalls and general apathy for the aged.

During recent months, however, the grande dame of justice has felt the pangs of change—not from the alterations of old age, but a metamorphic omen of rejuvenation. A rearrangement of some regions of her anatomical space will return circulation to dying cells and breathe new life into others that have become either stagnant or over-utilized.

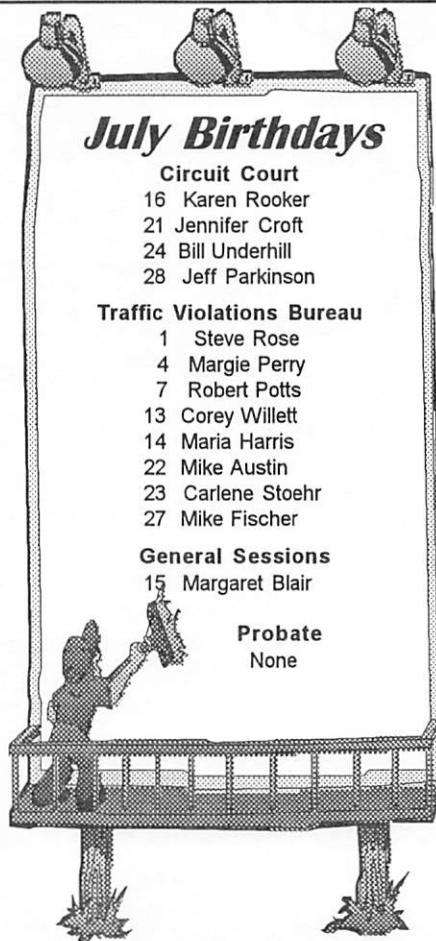
Perhaps the internal surgery will provide temporary solace to her natural feminine vanity, fractured by cosmetic neglect that magnifies the contrast of younger siblings in her midst.

In years ahead, as in years past, that drastic contrast will gradually become less evident and the classic lines of this architectural lady of substance will continue to be the center of attention for an admiring public that are her children.

In the months ahead, the Rooker Report will attempt to generate through historical reflection a renewed respect for this majestic judicial tabernacle. The series will be offered in no predetermined sequence or time frame—only with sincere dedication to doing justice to a lady who bears its name.

Cheers...

Somewhere in the skies over Nashville there is a mighty pooped stork...Within a three-day period this month, the big bird delivered bundles of happiness to three of our courthouse families. We applaud each one in order of their arrivals (as close as we can get)...On June 4, our **Danny Lamb** became a grandfather when daughter **Tonia** gave birth to 6-pound-4-ounce **James Cody Lamb**, who struck the tape at 17 inches...Three days later, trial court administrator **George Prentice** was pacing the floor at Baptist Hospital when wife **Erin** presented him with their third daughter, **Meredith Jayne**, making her debut at 7 pounds, 8 ounces in weight and 19 1/2 inches in length, thank you...Finally, within a matter of hours, Probate court officer **David Smith** was wearing out the same floor at Baptist awaiting the arrival of new son **Matthew McDonald**. David and wife **Julianne's** first son tilted the scales at 7 pounds, 14 3/4 ounces...And **Mr. Stork**, having hauled an aggregate 21 pounds, 10 3/4 ounces in such a short period of time, came to roost with the knowledge that he will soon be called into government service again...While we're on the subject of babies, our apologies to Traffic Violations Bureau employee **Susie Mosley** and husband **Richard Mosley** for the wrong spelling of their new son's name in our last report. The correct spelling is **Ehreele Orion Mosley**. We were, wellll, close but not exact...And a final word on babies: General Sessions court officer **Marvin Thompson** is sure proud of his new one. But the word is, it eats like a pig! Truth is, Marvin's new baby *is* a pig. It came to him as a gift from an Alabama relative. It would be impolite to turn down a gift. So, the piggie sleeps on a towel next to Marvin's bed and wife **Betty** has opted for another bedroom. Meantime, **Arnold Ziffell**, assistant commissioner of state wildlife resources, wants Thompson to pay \$439.50 in excise taxes for owning a "pot bellied pig." (And we hope Thompson doesn't mind a little ribbing.)



July Birthdays

Circuit Court
 16 Karen Rooker
 21 Jennifer Croft
 24 Bill Underhill
 28 Jeff Parkinson

Traffic Violations Bureau

1 Steve Rose
 4 Margie Pery
 7 Robert Potts
 13 Corey Willett
 14 Maria Harris
 22 Mike Austin
 23 Carlene Stoehr
 27 Mike Fischer

General Sessions

15 Margaret Blair

Probate
 None

...Tears

Robert Potts, a familiar figure to persons needing information in our Traffic Violations Bureau, retired this month because of pressing health problems. Mr. Potts, known affectionately to working pals as "Potsy", manned the rotunda information booth in the Ben West Building for the better part of two years, despite physical handicaps derived from serving his country in the military. He is a good soldier whose presence in the bureau will be missed. We wish him a happy retirement.

Probate Guidelines Undergo Changes

A fiduciary's responsibility to a disabled person does not stop at the time of death, but continues until funeral arrangements have been completed.

That is one of several new provisions in the state's probate statutes, which underwent general overhaul during the recent state legislative session.

Other changes included adoption of the following guidelines:

>Terminating and closing a guardianship will include the filing of a preliminary final accounting within 60 days after the termination date.

The preliminary accounting must detail the proposed final distribution. If no objection is filed within 30 days, the final distribution must be made.

Receipts and cancelled checks from the distribution are to be filed with the court by the guardian.

>Original checks must be presented with an accounting, unless the fiduciary is a bank.

>The court clerk must administer oath to the fiduciary of a guardianship or conservatorship before delivering letters of authority.

The oath must include a promise to timely file each required inventory and accounting, and to spend the assets of a minor or disabled person only as approved by the court.

Previously, a fiduciary's responsibility ended at the death of the ward, leaving burial expenses to be handled by additional probate process. The amendment relieves that process, and allows the fiduciary of estates with less than \$5,000 in assets to use the entire amount for funeral expenses.

If a fiduciary is cited for failure to file an inventory or accounting, he may be held responsible for court costs. VA cases are not governed by this section.

After a year's trial, lawmakers separate wheat from chaff in the lower court's

private... **Paper Chase**



When state lawmakers agreed a year ago to enhance access to the lower court systems by extending *cart blanc* service of process to the private sector, they apparently had a memory lapse as to why the practice was so closely governed in the first place.

After twelve months of having their memories refreshed, they resealed the can of worms and returned the opener to its rightful owner--local autonomy.

As of this moment, the authority that allows virtually any person of legal age to serve civil papers for courts of record is no longer recognized by the lower court systems, i.e., General Sessions.

Letters have been mailed to all attorneys known to have used private process servers in General Sessions during the previous year, advising them of the statutory changes that went into effect on May 10.

Those changes, reportedly precipitated by dissatisfaction from the courts in West Tennessee, return exclusive service of process in the General Sessions courts to the sheriff's office.

In reverting to the previous guidelines, lawmakers gave individual county governments the right to adopt procedures allowing the appointment of private servers. But the procedures are predetermined by statute and require certification by the Secretary of State.

In Davidson County, adoption of the enabling legislation would rest with the Metro Council and would require a two-thirds majority vote.

Should the council adopt such a system, the procedure for selecting private servers is clearly set out in the new law. General Sessions judges would have authority to appoint private process servers, provided the issue was before the court on petition by five practicing attorneys who were unable to obtain reasonably prompt service through the sheriff's office.

The law requires such petitions to be filed with the clerk, who also would be charged with certifying individuals applying for appointment as process servers. Among other requirements, persons seeking certification would be required to post a \$5,000 performance bond and submit to a background investigation.

But, again, that judicial procedure could only come into play upon council adoption of enabling legislation.

Courts of record -- Circuit, Chancery and Probate -- are not affected by the change. Those court systems still allow private service by any person of legal age who is not a party to the lawsuit being represented.

Domestic Violence

COMMUNITIES TO TAKE FROM HAND THAT DOES THE BEATING

The state wants perpetrators of domestic violence to foot the bill for curing their own illness and has passed clearly defined legislation to make it happen.

Starting next month, fines collected under the state's revised order of protection laws will be used to establish a domestic violence community education fund that cannot be touched for any other purpose.

The new law, a companion to the bill that extends order of protection jurisdiction to the lower courts, authorizes the imposition of a \$50 civil penalty against violators of protection orders and court-approved consent agreements.

The penalty funds will be channeled to the Department of Human Services and used exclusively to provide grants to the Tennessee Task Force Against Domestic Violence, which will administer the community education program. The grants will be used "for the purpose of providing education, training and technical assistance to communities on domestic violence."

Details of what the program will entail have not been announced.

"Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund on any June 30, but shall remain available for appropriation in subsequent fiscal years," the law states.

There was no immediate estimates of the amount of revenue expected to be generated by the new penalty provision, although the incidence of domestic violence continues to be a major social ailment. The clerks of courts maintaining jurisdiction over protection orders will collect the civil penalties and surrender the funds to the state at the end of each month.

General Sessions courts here assume jurisdiction July 1 over cases involving orders of protection not relating to child custody, visitation or support. Those remain under the umbrella of Circuit Court from the filing of a petition to adjudication.

Petitions for all other orders of protection will be filed in night court with ex parte orders being signed by night commissioners. The General Sessions Civil Division clerk takes it from there, issuing notices of hearings, posting returns of service, generating and recording dockets and providing copies of the orders to the police department.

Hearings on protection orders in the General Sessions courts will be held each Monday at 1:30 p.m. in Courtroom II in the Ben West Building. When Monday falls on a holiday, the hearings will be held on Tuesday. That is the case for the first hearing under the restructured procedure. Since July 4 falls on Monday, the first hearing will be on Tuesday at 1:30 p.m.

Because the effective date of the new law creates an overlap of jurisdiction, ex parte protection orders scheduled for July hearings in Circuit Court will be included on the General Sessions docket instead.

CSX:

DATA BANK

Statistics compiled for the month of May

Case Information

Circuit Court

New Civil Cases Filed.....	297
Civil Cases Concluded.....	326
New Divorce Cases Filed.....	325
Divorce Cases Closed.....	334

General Sessions Civil

New Cases Filed.....	3,137
Executions Issued.....	2,486
Judgments Collected.....	\$514,867

Probate Court

New Cases Filed.....	158
Cases Closed.....	95

Traffic Violations

Moving Violations.....	17,734
Parking Citations.....	12,109
Total Fines Collected.....	\$331,721
Nullifications.....	1,588
Nullification Fees Collected.....	\$14,292

Circuit Court Jury Trial Verdicts

Week of May 16

Case	Type	Court	Verdict
90C-412	Personal Injury	6th	(P) \$1,200,000
92C-3228	Personal Injury	1st	(P) 10,000
92C-2252	Auto Accident	2nd	Def. Verdict
92C-686	Wrongful Discharge	3rd	Def. Verdict
93C-139	Auto Accident	5th	(P) 7,000
92C-3106	Slip/Fall	(Ch)	Def. Verdict

Week of May 23

Case	Type	Court	Verdict
90C-4076	Med. Malpractice	1st	Def. Verdict
88C-3838	Legal Malpractice	6th	(P) \$140,000
91C-2734	Auto Accident	2nd	(P) 173,700

Goliath Faces Army of Davids As Workers Plead Toxic Claims

(From Page 1)

While the implant cases produced only a nominal number of pretrial pleadings, the majority of suits against CSX undoubtedly will find their way to Judge Shipley's courtroom--for trial assignment if nothing else.

As a proverbial Goliath in the rail transportation industry, CSX is under attack from an army of Davids. Their slingshots are loaded with medical documentation of injuries such as interstitial fibrotic lung disease, toxic encephalopathy, memory loss and brain damage--all allegedly acquired during years of exposure to toxic chemicals in the workplace.

The workers, representing a variety of job positions, accuse CSX of failing to provide a "reasonably safe" work environment while neglecting to properly label a variety of toxic solvents such as carbon tetrachloride and trichloroethane.

Dollar values of the lawsuits vary, depending upon the extent of alleged debilitation and -- in some cases -- anticipated risk of secondary cancer development.

Not only did CSX fail to provide adequate protective equipment, the suits charge, the company "failed to train its employees in the proper use of toxic chemicals and failed to inform or train (them) as to the various methods by which these toxic chemicals could be absorbed into the human body."

Additionally, the suits claim, CSX failed to provide adequate medical monitoring or other monitoring of its employees to ascertain whether or not they were suffering the effects of toxic exposure. In fact, the complainants charge, the company "negligently monitored the toxic chemical exposure levels to which its employees were being subjected in its shops."

Such blatant negligence, according to the claims, constitute violations of the federal Occupation, Health and Safety Act and fall within the Federal Employers Liability Act.

In denying the claims, CSX challenged the timeliness of some complaint filings and alluded to possible negligence--both sole and contributory--on the part of the employees.

CSX, formerly L&N Railroad, is a Virginia corporation doing business in Davidson County. The company is primarily headquartered at Radnor Yard, where most of the chemical exposure allegedly occurred.

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Established by George L. Rooker (1929-1993),
(Circuit Court Clerk, 1968-1993)

Richard R. Rooker Circuit Court Clerk
Gene Baker Editor

Casual Day: Spunky, Not Funky

Men, would you like to come to work without a necktie for a change?
Would you girls enjoy swapping those high heels for some sandals?
What would you give for the opportunity?
Would you give five bucks?

If so, the boss says you've got a deal. But only for one day -- June 17.
That's the day America's work forces will donate money to the United Cerebral Palsy fund drive for the privilege of dressing down. Employees of our offices--Circuit Court Clerk, General Sessions Civil Division, Probate Court Clerk and Traffic Violations Bureau--are eligible to participate.

For a \$5 donation, employees can dress for comfort, but not sloppily.
Dress slacks, sport shirts and blouses are okay; blue jeans, tee-shirts and shorts are not. But then, a tuxedo would probably look a bit out of place, too.