

ROOKER REPORT

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Kurtz: WINDING DOWN CRIMINAL SERVICE

During his 17 years on the bench, Circuit Judge Walter Kurtz has devoted more than half of his time to criminal cases.

Since last October, he has been out of the civil case assignment loop to help the burdened criminal courts meet federal mandates on jail overcrowding.

It has been a period reminiscent of his early days as a judge when he spent eight straight years presiding over criminal cases exclusively during an era when there were too many crimes and too few courts to accommodate them.

Now, with his one-year commitment to the latest crisis nearing an end, Kurtz is ready to return to the less dramatic role of deciding issues of a civil nature. He will make that switch, he says, in early October.

"I've done my time," he reckoned. "It's someone else's turn."

It is a quiet Friday afternoon at the courthouse when Kurtz welcomes a reporter into his office. He has spent most of the week there, opting to get caught up on his case studies and paperwork rather than joining fellow trial judges at a conference in East Tennessee.

Casually dressed in a navy blue sport shirt, khaki pants and athletic shoes of corresponding



colors, the personable jurist puts aside the law book he is studying and prepares to field questions.

The first one diverts his attention to a giant schedule board mounted on tripods a few feet beyond his desk. It chronicles the criminal cases he has tried since assuming his present assignment, and the ones remaining to be tried.

"As you can see," he tells his guest, "the last criminal case on the board is Oct. 4. After that, I'll be sticking to civil cases."

Not that he minds working criminal cases. After all, much of his legal background is in criminal law, having served as the county's public defender just prior to becoming a judge. Besides, state trial courts have concurrent jurisdiction, which means that "we all need to help each other out."

Between 1984-92, Kurtz not only helped out the criminal courts, he presided over seven death penalty cases--more than any other judge in the county. Of those cases, four defendants were actually sentenced to death row.

Among the more notorious trials was that of John David Terry, a Nashville minister, who received the death penalty for beheading a handyman at his church. Kurtz later set aside

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Circuit Judges Embrace ADR Program

Parties filing new lawsuits in circuit court this month began receiving questionnaires designed to determine possible alternative methods for settling their disputes without going to trial.

The circuit court clerk's office started providing the query forms on June 8 after judges unanimously embraced a seven-month pilot program showing that a large majority of litigants prefer some type of alternative dispute resolution over traditional courtroom confrontation.

During the trial program conducted by First Circuit Judge Hamilton Gayden, 82 of 89 plaintiffs responding to questionnaires indicated a preference for alternative methods while 34 of 68 defendants favored either mediation or settlement conference resolution, according to statistics compiled by Candy Rucker, chief administrator of the pilot project.

Gayden initiated the pilot program pursuant to a rule established in 1995 by the Tennessee Supreme Court advocating Alternative Dispute Resolution (ADR) in civil cases--either by order of the court or by mutual agreement of the litigating parties.

While the rule provides for a variety of ADR methods, the ultimate benefit is a savings of both time and money to litigants.

The questionnaire asks litigants whether they will be voluntarily agree-

able to one or more of the following forms of ADR:

Judicial Settlement Conference--Mediation conducted by a judge other than a judge before whom the case is tried;

Non-Binding Arbitration--A process in which a neutral person or panel (called an arbitrator or an arbitration panel) considers the facts and arguments presented by the parties and renders a decision which is non-binding;

Mediation--An informal process which a neutral person called a mediator conducts discussions among the disputing parties designed to enable them to reach a mutually acceptable agreement among themselves on all or any part of the issues in dispute;

Case Evaluation--A process in which a neutral person (called an evaluator or evaluation panel) receives brief presentations summarizing the positions of the parties, identifies the central issues in dispute as well as areas of agreement, provides the parties with an assessment of the relative strengths and weaknesses of their case, and may offer a valuation of the case.

Summary Jury Trial--An abbreviated trial with a jury in which liti

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Cheers...

For those who were beginning to wonder if **Candace Benbow** would "ever" have her baby, the suspense has finally ended. **Jacob Alexander Benbow** arrived on June 15 at Hendersonville Hospital, weighing 7 pounds, 13 ounces and measuring 21 inches in length. Daddy **John Benbow** was ecstatic, as were all of Candace's co-workers at the Traffic Violations Bureau.

◆ The Nashville Bar Association's board of directors voted this month to ask the Metro Law Department to move out of its space on the second floor of the courthouse to make room for Circuit Judge **Carol Soloman**, who hasn't had her own courtroom since taking office on Sept. 1. The legal department space would accommodate not only a courtroom for Soloman but also a second courtroom that could be utilized by an anticipated expansion of the trial courts, the board members claimed. Law department officials weren't impressed by the request in light of recent renovations to the space. They also claimed the legal department needs to be in the same building as the mayor's office... And so it goes.



SOLOMAN

◆ Meanwhile, General Sessions judges have converted their old conference room in the Ben West Building to two offices to accommodate "visiting" judges who do not already have offices in the building. Similar facilities are available at the other court venues. The street level space was no longer needed for its original purpose after a new, larger conference room was constructed on the building's ground floor when the court was expanded to 11 judgeships.

◆ When Metro Postal Department supervisor **Terry Adkins** got married last month, the minister performing the ceremony was co-worker **James Robert Fitzgerald**, who not only delivers mail to government offices but serves as a minister as well. Well, Fitzgerald himself made a trip to the altar on June 12 and Adkins and his new bride, the former **Donna Mitchell**, were in attendance. The wedding took place at the Pleasant Valley Primitive Baptist Church between Fitzgerald and the former **Mary Ann Robertson**. Fitzgerald says he will retire from his postal job in August, giving him more time to devote to preaching and being a husband.

◆ Two employees who have been on the infirmity list for quite some time have now returned to work.

Fellow workers in the General Sessions Civil Division office welcomed the June 16 return of **Denise Dill**, who had been absent since taking a nasty fall several weeks earlier. Complications precipitated by a fractured ankle kept Denise on the inactive list, but she was finally allowed to return to work after doctors equipped her with a cast and crutches.

Auditor **Jan Yearwood** also has returned after recovering from a heart valve replacement in April.

Welcome back, ladies.

◆ Persons who ask for continuances of their driving school class schedules are now required to pay a \$20 fee to help pay for the additional clerical headaches. General Sessions judges agreed to impose the fee in response to a high percentage of continuance requests. The new charge should deter abuse of the postponement privilege. Previously, motorists assigned to driving classes in lieu of fines could delay their obligations for long periods of time simply by asking for continuances. No doubt, the new fee will encourage better management of priorities.

◆ Congratulations to **Michael** and **Gale Robinson Jr.**, sons of General Sessions Judge **Gale Robinson**, for their third place finish in the recent Al Menah Shrine Temple Bass Tournament on Percy Priest Lake. The brother team took home a trophy in the children's fun division. **Rodney Johnson** and **Ronnie Adcock** were the \$1,000 grand prize winners, easily beating out 22 other entrants in both overall weight (18.33 pounds) and individual big fish catch (5.82 pounds).

July Birthdays

Circuit Court Clerk
 10 Daren Phillips
 16 Karen Rooker
 27 Linda Jackson
 28 Jeff Parkinson

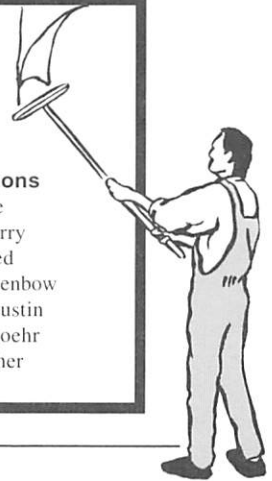
Probate
 None

General Sessions

1 Melissa McKee
 14 Margaret Blair
 18 Jason Kane
 20 Molly Travis
 30 Derek Young

Traffic Violations

1 Steve Rose
 4 Margie Perry
 6 Penny Reed
 12 Candace Benbow
 22 Michael Austin
 23 Carlene Stoehr
 27 Mike Fischer



...Tears

◆ Deepest sympathy to **Dana McGregor**, a data entry clerk in the Traffic Violations Bureau, in the untimely death of her mother **Deborah Ruth Adams**. Mrs. Adams, who died at her home on June 5 at the age of 46, was the wife of **Clarence Eugene Adams**, an employee of the Department of General Services.

◆ Condolences to **Connie Murff** of the traffic warrant office in the passing of her sister **Judy Hall**, 54, who succumbed on May 28 at Summit Medical Center following a stroke and diabetes complications.

Parenting Plan Delayed on Hill

An article in our May issue reported on the probable passage of a state-wide Parenting Plan for divorcing parents.

By the time of publication, the legislation had passed on the floor of the House and Senate, but with different versions of how the program would be funded.

The House version funded coordinators and education by adding \$55 to the divorce filing fee. The Senate passage was based on adding \$30 to the marriage license fee. A meeting of the minds was not reached before the lawmakers adjourned for the session. However, a conference committee was appointed to meet this Summer and in the Fall to iron out the funding differences.

The legislation will be presented again during the January term and is expected to be in place statewide by July, 2000.

Circuit Judge Marietta Shipley, who currently is applying the program under a pilot project, said "the additional time to ready judicial districts for this new endeavor is welcomed."

Circuit Judges Adopt ADR

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gants present their evidence in an expedited fashion. The litigants and the jury are guided by a presiding neutral person. After an advisory verdict from the jury, the presiding neutral person may assist the litigants in a negotiated settlement of their controversy.

Mini-Trial--A settlement process in which each side presents an abbreviated summary of its case to the parties or representatives of the parties who are authorized to settle the case. A neutral person may preside over the proceeding. Following the presentation, the parties or their representatives seek a negotiated settlement of the dispute.

Litigants are asked to complete and return the questionnaires to the clerk's office, which will forward them to the court to which the cases are assigned.

JURY TRIAL VERDICTS

APPEALS

Week of May 10

CIRCUIT COURT

GENERAL SESSIONS

CASE	TYPE	COURT	VERDICT	JUDGMENT	APPELLANT
98C-429	AUTO ACCIDENT/ST	3RD (P)	\$4,000		
96C-3049	AUTO ACCIDENT/DEATH	8TH (P)	\$65,000		
96C-3472	EMPLOYMENT CONTRACT	1ST (P)	\$98,133		
98C-29	SLIP/FALL	6TH	DEFENDANT		
97C-2063	AUTO ACCIDENT/ST	2ND (P)	\$20,661		
98C-113	AUTO ACCIDENT	3RD (P)	\$2,800		
98A-196	FORGERY/CRIMINAL	5TH	GUILTY		

Week of May 17

CASE	TYPE	COURT	VERDICT	JUDGMENT	APPELLANT
97C-3419	SLIP/FALL	2ND	DEFENDANT		
96C-3215/98C-3022	AUTO ACCIDENT	1ST	DISMISSED		
97C-2782	AUTO ACCIDENT/ST	5TH* (P)	\$5,500		
97C-1035	AUTO ACCIDENT/ST	8TH (P)	\$198,000		
97C-3553	GSA/AUTO ACCIDENT/ST	1ST	DEFENDANT		
94C-3837	AUTO ACCIDENT	6TH	DEFENDANT		
98C-1475	CONTRACT	2ND (CP)	\$7,738		
94C-2468	SLIP/FALL	5TH (P)	\$240,417		
96C-4362	SLIP/FALL	1ST (P)	\$1,600		
98C-502	EMPLOYMENT CONTRACT	6TH (P)	\$5,450		

*--WAIVED JURY.

NON-JURY TRIAL RESULTS

Week of May 3

CASE	TYPE	COURT	VERDICT	JUDGMENT	APPELLANT
98C-920	AUTO ACCIDENT	1ST	DISMISSED		
98C-3361	GSA/AUTO ACCIDENT	1ST (P)	\$6,385	P-\$6,385	(D)
98C-3549	GSA/CONTRACT	1ST	DISMISSED	P-\$326	(D)
98C-2276	WORKERS COMP	1ST (P)	\$119,628		
98C-1035	WORKERS COMP	5TH	UNDER ADVISEMENT		
98C-376	WORKERS COMP	8TH	UNDER ADVISEMENT		
98C-3366	GSA/CONTRACT	6TH (P)	\$1,100	P-\$2,243	(D)
98C-312	GSA/CONTRACT	7TH (P)	\$926	DISMISSED	(P)
96C-2565	CONTRACT	CH II (P)	\$18,759		
98C-2490	GSA/CONTRACT	1ST	DEFENDANT	P-\$525	(D)
97C-717	AUTO ACCIDENT	5TH (P)	\$18,000		
98C-3445	GSA/CONTRACT	8TH	UNDER ADVISEMENT	DISMISSED	(P)
98C-3444	GSA/CONTRACT	1ST (P)	\$4,065	P-\$4,975	(D)
98C-3553	GSA/AUTO ACCIDENT	SM* (P)	\$3,634	DISMISSED	(P)
98C-3443	GSA/CONTRACT	8TH (P)	\$270	DISMISSED	(P)
97C-2684	AUTO ACCIDENT	5TH	UNDER ADVISEMENT		
97C-3499	DAMAGES	1ST (P)	\$3,000,000		

*HEARD BY SPECIAL MASTER MARSH NICHOLS

ABBREVIATIONS:

- P-PLAINTIFF
- D-DEFENDANT
- CP-COUNTER PLAINTIFF
- CD-COUNTER DEFENDANT
- ST-SOFT TISSUE
- GSA-GENERAL SESSIONS APPEAL
- REC-RECOVERY
- CH-CHANCERY COURT
- SM-SPECIAL MASTER



APRIL

TOTAL CASES CONSIDERED	14
Auto Accidents	8
Personal Injury	1
Wrongful Death	1
Slip/Fall	2
Breach of Contract	1
Battery/Negligence	1

DISPOSITIONS

Settled	10
Did Not Settle	1
Continued	3

(Source: Megan Gregory, case coordinator)

Clerk's Offices Will Be Closed Monday, July 5

All government offices, including the Circuit Court clerk, General Sessions civil division, Probate clerk and Traffic Violations Bureau, will be closed on Monday, July 5 in observance of Independence Day.

Normal business hours will resume on Tuesday, July 6.

Kurtz Winding Down Criminal Service

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the verdict, but it was reinstated when the case was tried a second time. Then there was the trial of William Dugger, the man convicted of kidnapping Andrea Conte, the mayor's wife. And the retrials of axe murderer James Thomas Jefferson and three so-called Black Panthers who shot and killed two Metro police officers in the 1960s.

Kurtz is quick to acknowledge that civil cases do not offer the same human drama or public interest. "Given the stakes," Kurtz says, "there is more tension in a criminal trial because you're dealing with lives rather than money."

He noted that there are other differences between the two types of cases. For example, there are no lock-up juries in civil trials and the jury selection process is much quicker because of fewer peremptory challenges. Criminal law provides for eight peremptory challenges per defendant for both the prosecution and the defense while civil law permits only four challenges per side, or a maximum of eight, Kurtz explained.

With Kurtz soon returning to the civil cycle, the criminal courts may call on other circuit or chancery judges for interim relief while awaiting the possible creation of another criminal judgeship during the next session of the state legislature.

TRENDS

CASE ANALYSES



AUTO ACCIDENTS

PLAINTIFFS 43
DEFENDANTS 10

RATIO: PLAINTIFFS 4.3-1

MONTH-BY-MONTH

MONTH	TOTALS	JURY	NON-JURY	PLAINTIFF	DEFENDANT	NONE
JANUARY	7	6	1	4	3	0
FEBRUARY	10	9	1	7	2	1
MARCH	17	9	8	15	1	1
APRIL	10	10	0	8	2	0
MAY	14	9	5	9	2	3
YEAR-TO-DATE	58	43	15	43	10	5

JURY AWARDS

MONTH	\$TOTALS	DOLLAR RANGE	\$MEAN
JANUARY	31,763	681-18,000	13,082
FEBRUARY	48,554	1,000-15,000	8,126
MARCH	66,130	0-44,000	5,532
APRIL	41,266	180-15,000	5,217
MAY	295,961	2,800-198,000	23,990

NON-JURY AWARDS

MONTH	\$TOTALS	DOLLAR RANGE	\$MEAN
JANUARY	3,724	N/A	N/A
FEBRUARY	830	N/A	N/A
MARCH	120,286	500-85,000	5,797
APRIL	N/A	N/A	N/A
MAY	28,019	3,634-18,000	6,385

SOFT TISSUE CASES

MONTH	\$TOTALS	DOLLAR RANGE	\$MEAN
JANUARY	31,763	681-18,000	13,082
FEBRUARY	31,404	1,000-15,000	7,707
MARCH	47,952	452-44,000	3,500
APRIL	25,133	0-8,000	5,711
MAY	228,161	4,000-198,000	13,080

*GENERAL SESSIONS APPEALS

MONTH	TOTALS	PLAINTIFF	DEFENDANT	NONE
JANUARY	1	0	1	0
FEBRUARY	3	3	0	0
MARCH	9	8	0	1
APRIL	2	2	0	0
MAY	2	2	0	0
YEAR-TO-DATE	17	15	1	1

*INCLUDED IN ABOVE TRIAL TOTALS

THE OTHERS:



CONTRACTS YTD PLAINTIFFS DEFENDANTS NO VERDICT
35 28 4 3
RATIO: PLAINTIFFS 7-1 TOTAL AWARDS TO DATE: \$343,344
MAY AWARDS: \$136,171



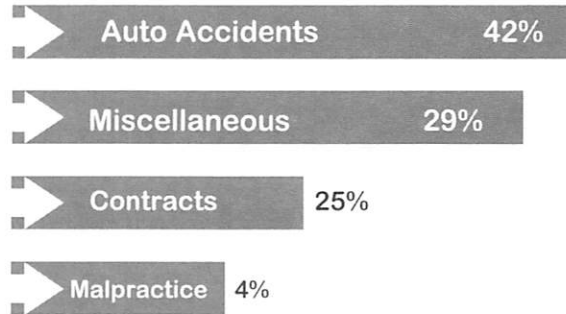
MISCELLANEOUS
40
PLAINTIFFS 26
DEFENDANTS 8
NO VERDICT 6



MALPRACTICE
6
PLAINTIFFS 2
DEFENDANTS 3
NO VERDICT 1



Jury Trials By Classification



DATA BANK

Statistics compiled for the month of May

CASE INFORMATION

Circuit Court

NEW CIVIL CASES FILED	230
CIVIL CASES CONCLUDED	297
NEW DIVORCE CASES FILED	258
DIVORCE CASES CONCLUDED	304

General Sessions Civil

NEW CASES FILED	2,445
EXECUTIONS ISSUED	3,072
GARNISHMENT PAYMENTS	3,430
JUDGMENTS COLLECTED	\$516,430
ORDER OF PROTECTION PETITIONS	182

Probate Court

NEW CASES FILED	174
CASES CLOSED	112

Traffic Violations

MOVING CITATIONS	18,070
PARKING VIOLATIONS	9,302
TOTAL FINES COLLECTED	\$332,413
NULLIFICATIONS	2,419
NULLIFICATION FEES COLLECTED	\$21,771

Rooker Report

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