Advance sheets:

Pender v. Lee. Lee hired Pender's company to drill a well. Pnder's employees placed fiberglass mats around the drilling site. Jonathan McGinty, a Pender employee, began to back a pipe truck, causing one of the fiberglass mats to fly out from under the truck's rear tire. It struck Lee. Lee was injured.

Lee sued Pender. At trial, McGinty basically testified he did nothint wrong. Lee testified he heard a sound like an engine racing up and then all of a sudden a mat flew out and hit him.

After trial McGinty approached Lee and apologized. There was a letter, and there was a dispute as to exactly what was said. Lee said McGinty confessed to having gunned the truck engine. McGinty denied having admitted that, but did admit that his testimony was inaccurate.

Lee moved for a new trial on the ground of newly discovered evidence.

Pender contended it was merely impeachment evidence.

To get a new trial on newly discovered evidence isn't easy. You have to show you cold not have with reasonable diligence discovered and produced it at trial. You als have to show it's not merely impeaching and cumulative and that it probably would have changed the result.

The trial judge said it was a close one, but that McGinty now has an independent recollection that is significantly different, so it was new evidence, not merely impeachment evidence.

The Court of Appeals reversed the trial judge. The Supreme Court affirmd

Lee cross-appealed. McGinty made a statement in his deposition that the accident was "our fault." That legal conclusion wasn't evidence. The trial court correctly excluded it.

Loveless v. Agee. A trial judge has to give a party a chance to respond to a motion to dismiss or hold a hearing on the motion before summarily granting it.

Hagen v. State. On oral motion to withdraw a guilty plea made after the trial judge orally accepts the motin but before the order is entered is sufficient for the trial judge to have jurisdiction to consider allowing the withdrawal of the motion. The trial judge mistakenly thought he had lost jurisdiction. Reversed and remanded.

Barnett versus Gomance and Stafford

Adverse possession and boundary by acquiescence.

In 1963 Stafford bought property next to Bethurum. Bethurum sold to Barnett. Before that sale, in 1997, there had been a wire fence between the property. Over the years the wire fence fell down, burned down, was washed away by floods, had to be tacked to to trees, and otherwise was in poor condition. According to Stafford's son, who was the only one who testified about that period of time, there was an understanding that the fence was not the boundary line.

Apparently the new owners did not get along very well with the Stafford family. They all ended up handling matters the way we lawyers would have them handle matters, suing each other. Stafford sued for trespass. Barnett contended that the fence was the boundary both by adverse possession and a boundary by acquiescence. The trial judge found no boundaries by acquiescence and no adverse possession.
There was no evidence of an attempt to turn a permissive use into a claim of ownership. Besides, the legislature has added a "paid the taxes." Requirement. To get around that you would have to show adverse possession before the 1995 amendment. There was nothing at all about the relationship before 1995 that was adverse.

As to whether the fence has become a boundary by acquiescence, the rules are so confusing as to do little but invite lawsuits. A fence may become the boundary line even though contrary to the survey lines. The boundaries by acquiescence is inferred by conduct over many years. The intention of the parties is what is to be considered.
The court does not bother to mention what you are supposed to do when one party has one intention and another party has another which seems to be almost always the case. Not surprisingly, the party is getting more land out of the deal is always the party who intends for the fence to become the new boundary line.
To prove the common law elements of adverse possession, the claimant must show that he has been in possession of the property continuously for more than seven years into his possession has been visible, notorious, distinct, exclusive, hostile, and with the intent to hold it against the true owner. Here there was positive testimony that the old fence was not considered the boundary line. It was placed there as a matter of convenience and everyone knew it.

Beliew v. Lennox. A couple of years ago the Court of Appeals reversed the workers compensation commission on this case and remanded it. It looks like the workers compensation commission did the same damn thing, but this time they explained it, so this time their decision was affirmed.

Blakes v. DHS. The no merits brief fails to cover several no meritd grounds so it was sent back for rebriefing. Counsel should turn square corners in these cases.

Caldwell v. DHS. The termination of parental rights was actually reversed in this case. It was not so much because the termination of parental rights was unjust as it was because it pointless. The child was not a candidate for adoption. The child was going to stay with his mother and the judge had tried to craft a relationship with the the paternal grandmother. There wasn't any way to cut the worthless father out of the picture and leave the paternal grandmother in. Besides, the worthless daddy had gone to Missouri and wasn't likely to bother them anymore anyway.

Frederick v. DHS No law. Momma dumped her kids with neighbors, ran off to Chicago, got busted, extradited to Louisiana, didn't really rehabilitate, state took kids.

Hawkins v. Hawkins. Not a final order since the judge said "either you guys figure out how to divide your credit card debt or I'll do it." That isn't a final order.

Nollingsworth. Attempted grandparent visitation. Presumption surviving parent is being reasonable. Surviving parent didn't cut off visitation, just restricted it. If she'd cut it off completely, that'd be a problem, but just restriting it wasn't bad enough to rebuquire court intervention.

*Moss v. State*ı Theft of property more tha n $500. The inventory control guy scanned the items on a bar code reader at a cash register. Defendant objected on the ground of hearsay. Overruled. Dissent says why isn't this like *Lee v. State* where the security guard testified as to value based solely on reading price tags? Good question.

Nichols v. State . Permitting abuse of a minor. Court is too delicate to tell us what really happened, but apparently this guy's roommate buggered his kids and may have also whipped and beat them. The kids told him about it, but he said he didn't believe it. The roommate ultimately pleaded guilty to two counts of rape. "The fact-finder was the sole determiner of credibility, and here, the jury believed the testimony of the boys that the deviate sexual activity occurred, although their father did not." Just a damn minute! If the jury actually thought he didn't believe the allegations, how did he recklessly fail to take action to prevent abuse of a minor? I suspect the jury thought he knew damn good and well what was going on.

P. Rye Trucking v. Pet Solutions. Here again, the Court of Appeals would have done us all a favor if they'd told us what the hell they're talking about. P. Rye Trucking sued for breach of contract. There was apparently some kind of property damage claim, and a relaease was signed in regard to that claim. Then the defendant argued it also released them on the breach of contract claim. The Cour to fappeals said the language of the release didn't stretch that far. It would help if we knew what the claims were actually about.

Price v. State. Everyone is being way too polite about kid –fucking here to know what's going on. Defendant and victim's mother lived together. Defendant babysat while victim's mother worked. Defendant was disabled. When she found out about it, mother kicked defendant out of the house. It looks like after a lot of coaxing the victim described actual intercourse. There was no physical evidence, but there usually isn't. In fact, 90% of the time there isn't. Physical evidence is rare. They say that it is not uncommon (ninety percent of the time) to not find any physicial injury to a child who says they have had penis penetration or otherwise. How you would know how many of htem actually had penis penetration is anoyone's guess, but that would be for cross-examination, I guess. Apparently there was a line of other girls and women ready to say this guy was willing ot have sex with them when they were minors., although one who apparently was going to say he didn't, but the trial court sustained an objection to the testimony. There wasn't a proffer, so we can't be sure she was going to say he didn't have sex with her. That would be my guess.

It probably didn't matter anyway, but the problem I see in this case is the worthless motion for directed verdict which seems to have been inspired in prt by squeamishness. Following Tiffany's testimony, the State rested its case. Appellant's counsel moved for a directed verdict, arguing that "we'd move for a directed verdict of acquittal based upon the sufficiency of the evidence that the State has presented in its case in chief after having rested. We feel that there is insufficient evidence for the jury to reach—absence any physical evidence of any abuse, that the, er, he be acquitted based upon that basis."

There was also a double hearsay problem. This all came to light when the victim told a playmate who told their teacher But it wasn't a big problem . Similar other evidence was admitted without objection.