UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Kathleen McDonald O'Malley ("Kate O'Malley")
   (Formerly: Kathleen Patricia McDonald)

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Federal Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Carl B. Stokes United States Courthouse
   801 West Superior Ave., Suite 16A
   Cleveland, Ohio 44113

   Residence: Chagrin Falls, Ohio

4. **Birthplace**: State the date and place of birth.

   1956; Drexel Hill, Pennsylvania

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1979-1982, Case Western Reserve Univ. School of Law; J.D. (Order of the Coif), 1982

   1975-1979, Kenyon College; A.B. (dual degree magna cum laude), 1979

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1994-Present
United States District Court for the Northern District of Ohio
Carl B. Stokes United States Courthouse
801 West Superior Ave., Suite 16A
Cleveland, Ohio 44113
United States District Judge

2006 & 2002-2004
Case Western Reserve University School of Law
11075 East Blvd.
Cleveland, Ohio 44106
Faculty (Distinguished Visiting Jurist)

1991-1994
Office of the Ohio Attorney General
30 East Broad St., 17th Floor
Columbus, Ohio 43266-0410
First Assistant Attorney General and Chief of Staff (1992-1994)
Chief Counsel (1991-1992)

1985-1991
Porter, Wright, Morris & Arthur, LLP
Huntington Building
925 Euclid Ave., 17th Floor
Cleveland, Ohio 44115
Partner (1991)
Associate (1985-1991)

1983-1984
Jones Day (Formerly Jones, Day, Reavis & Pogue)
901 Lakeside Ave.
Cleveland, Ohio 44114
Associate

1982-1983
United States Court of Appeals for the Sixth Circuit
100 East Fifth St.
Cincinnati, Ohio 45202
Law Clerk to the Honorable Nathaniel R. Jones

1982
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Summer Associate

1981-1982
Case Western Reserve University School of Law
11075 East Boulevard
Cleveland, Ohio 44106
Instructor: Research, Advocacy, and Writing

1981
Shearman & Sterling
599 Lexington Ave.
New York, New York 10022
Summer Associate

1980
Kelley, McCann & Livingstone
200 Public Square, 35th Floor
Cleveland, Ohio 44114-2302
Summer Associate

1979
Hollingsworth & Hollingsworth
1440 Rockside Rd.
Independence, Ohio 44131
Summer Docket Clerk (Part-time)

1976-1978
Systems Sales, Inc.
Cleveland, Ohio 44143
Clerical Assistant (Part-time, Summers Only)

Other Affiliation (uncompensated)

1991-1994
Opera Columbus
177 E. Naghten St.
Columbus, Ohio 43215
Member, Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I have not registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Commencement Speaker, Kenyon College (1995)
   Honorary Degree from Kenyon College, Doctor of Laws (1995)
   Case Western Reserve University School of Law Distinguished Recent Graduate Award (1992)
   International Trial Lawyers Award (1982)
   Edwin G. Halter Memorial Scholarship (1980)
   Order of the Coif (1982)
   Phi Beta Kappa (1979)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   Administrative Office of the United States Courts
      Ad Hoc Committee on Technology (approximately 2005)
   American Bar Association
      Delegate, Task Force on Funding of the Civil Justice System. (1993)
      Member, Special Committee on Youth Education for Citizenship (1993-1994)
   Cleveland Bar Association
   Columbus Bar Association
      Civil Justice Reform Task Force (1994)
   Federal Bar Association
      Convention Committee (1990-1991)
   Federal Circuit Bar Association
      Chair, Judges Committee (2002-Present)
   Federal Judges Association
   Federal Judicial Center / National Academies of Science
      Member, Joint Committee on Development of the Third Edition of the Reference Manual on Scientific Evidence (2007-Present)
   John M. Manos Inn of Court
      President (1999-2001)
   Judicial Conference of the United States
      Committee on Space & Facilities (2005-Present)
   Ohio Center for Law Related Education
      Case Committee (1992-1994)
   Ohio Legal Assistance Implementation Committee (1992-1993)
   Ohio Legal Assistance Foundation (1994)
   Ohio State Bar Association
   Sedona Conference
      Advisory Board (2003-Present)

Sixth Circuit Judicial Conference
    Planning Committee Member (1999-2004)
    District Judges Committee (1994-Present)
United States District Court for the Northern District of Ohio
    Judicial Advisor, Local Patent Rules Committee (2009)
    Committee on Alternative Dispute Resolution (1990-1991)

In addition, I have served on many committees relating to the administration of the United States District Court for the Northern District of Ohio.

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York (Third Department), 1983
Ohio, 1983

I never practiced in New York and became an inactive member of its Bar shortly after admission. I became an inactive member of the Bar of Ohio when I became a judge in 1994. There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Sixth Circuit, 1983
United States Court of Appeals for the Eleventh Circuit, 1984
United States District Court for the Northern District of Ohio, 1985
United States District Court for the Southern District of Ohio, 1983
New York Appellate Division (Third Department), 1983
Supreme Court of Ohio, 1983

There has been no lapse in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Capital Club, Columbus, Ohio (Athletic and Dinner Club) (1992-1994)

Case Western Reserve University School of Law, Dean's Advisory Board (2002-Present)
Cleveland Museum of Art (2007-Present)
Cleveland Skating Club (1995-approximately 2005)
Opera Columbus
Member, Board of Directors (1991-1994)
Shakespeare Society, Great Lakes Theatre Festival (approximately 2006-Present)
Society of the Benchers, Case Western Reserve University School of Law (approximately 1995-Present)
University of Maryland, Intellectual Property Advisory Board (2002-Present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

PATENT CASE MANAGEMENT GUIDE, Berkeley Center for Law & Technology (Judicial Advisory Board, 2009)

ANATOMY OF A PATENT CASE, Complex Litigation Committee, American College of Trial Lawyers (Advisory Board, 2009)

The Honorable Kathleen M. O'Malley, The Honorable Patti Saris, and The Honorable Ronald H. Whyte, *A Panel Discussion: Claim Construction from the Perspective of the District Judge*, 54 CASE W. RES. L. REV. 671 (2004)

Symposium, *A Novel Approach to Mass Tort Class Actions: The Billion Dollar Settlement in the Sulzer Artificial Hip and Knee Litigation*, 16 J.L. & HEALTH 169 (2001/2002)

Law Review Editor: I was a member of the Case Western Reserve Law Review from 1980-1982 and edited articles written by others in that capacity. I do not recall the names of the specific articles I edited.

Newspaper Articles: During college, I wrote for the *Kenyon Collegian*, the school newspaper. I do not have copies of any of the articles that I wrote, nor do I specifically recall the titles of the articles.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In my capacity as First Assistant Attorney General I often spoke publicly as a surrogate for the Attorney General. These statements and/or legislative testimony generally related to the operations and initiatives of the office and/or to the status of legal matters of interest to the office. None addressed or expressed legal policy views that were personal to me, as opposed to the Office of the Attorney General. I do not have notes of any of them.

The Sedona Conference Journal, *Cooperation Proclamation*, Vol. 10 Suppl. (Fall 2009) – As a member of the Advisory Board of The Sedona Conference, I have formally endorsed the recent publication encouraging cooperation in civil discovery. The Sedona Conference regularly issues "white papers" on topics relating to complex litigation, on which I have occasionally offered informal comment to committees and drafters.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I testified before the United States Senate Committee on the Judiciary on October 6, 1994, in connection with my nomination to be United States District Judge for the Northern District of Ohio.

In my capacity as First Assistant Attorney General of Ohio from 1993-1994, I often spoke publicly as a surrogate for the Attorney General, including before state legislative bodies. These speeches generally related to the budget, operations and initiatives of the office and/or to the status of legal matters of interest to the office. None of these speeches addressed or expressed legal policy views that were personal to me, as opposed to the Office of the Attorney General. I do not have notes of any of them.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I frequently present or serve as a panelist at bar association events, continuing legal education seminars, and bar and academic conferences. I have not maintained a comprehensive, running listing of such appearances. I have, however, attempted to list below as many of my speaking engagements as possible by searching my archives, reviewing available calendars from past years, and searching my own memory of these events.

I do not always prepare written versions of my remarks or notes, and I have done so less frequently in recent years. I also have not made it a practice to keep copies of my remarks or notes.

Remarks to Participants in Take Our Daughters to Work Day, Office of Ohio Attorney General (Apr. 28, 1993)
Remarks as a New Judge, Federal Bar Association Luncheon, Cleveland, OH (Jan. 23, 1995)
Lecture on Alternative Dispute Resolution Options, Case Western Reserve University ("CWRU") Law School, Cleveland, OH (Apr. 11, 1995)
Lecturer, Practice and Procedure Clinic, Cleveland Bar Assoc. (Apr. 24, 1995)
Remarks at Dinner Honoring United States Circuit Judge Nathaniel R. Jones, Cincinnati, OH (May 20, 1995)
Commencement Address, Kenyon College, Gambier, OH (May 21, 1995)
Orientation Speaker for New Students, CWRU Law School (Aug. 25, 1995)
Speaker, People's Law School Program, Cleveland Bar Assoc. (Sept. 9, 1995)
Alternative Dispute Resolution Seminar, CWRU Law School (Apr. 12, 1996)
Dinner Speaker, Intellectual Property Law Assoc., Cleveland, OH (Oct. 16, 1996)
Perspectives on Communicating Complex Damage Testimony (Judges Panel), Price Waterhouse, LLP, Cleveland, OH (Apr. 18, 1996)
Career Day Speaker, Regina High School, Cleveland, OH (Feb. 25, 1997)
TROs & Preliminary Injunctions, Ohio CLE Inst., Columbus, OH (Apr. 24, 1997)
Women in the Law (Panel), Cleveland Bar Assoc. (May 21, 1997)
Speaker, All Ohio Annual Inst. on Intellectual Property, Cleveland, OH (Sept. 11, 1997)
"How to Try a Patent Jury Case under *Markman* and *Hilton-Davis*," Cincinnati, OH (Sept. 12, 1997)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 22-24, 1997)

"Resolving the Dispute in Federal Court," Lorman CLE Ed. Servs., Columbus, OH (Dec. 12, 1997)
"Evidence for the Trial Lawyer," Nat'l Practice Inst., Cleveland, OH (May 8, 1998)
Topics in Patent Litigation, Am. Intellectual Prop. Law Assoc., Washington, DC (Oct. 16, 1998)
Judicial Perspective on Federal Litigation, Cleveland Bar Assoc., Cleveland, OH (Dec. 16, 1998)
Hi-Tech Courtroom of the Future, Federal Courts & Practice Seminar, Cleveland, OH (May 13, 1999)
Hi-Tech Practice in the Courtroom and the Office, Cleveland Bar Assoc. Labor and Employment Law Seminar, Cleveland, OH (May 27, 1999)
Memorial Day Speech, Chagrin Falls Blossom Weekend, Chagrin Falls, OH (May 31, 1999)
Intellectual Property (Panel), Sixth Circuit Judicial Conference, Traverse City, MI (June 25, 1999)
Remarks at the Federal Criminal Practice Seminar, Federal Public Defender for the Northern District of Ohio, Cleveland, OH (Aug. 20, 1999)
Expert Witnesses, Tactics Lecture, CWRU (Sept. 20, 1999)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 23-24, 1999)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (May 5, 2000)
Presiding Judge for Mock Trial regarding Sexual Harassment, Cleveland Bar Association Labor and Employment Law Seminar (May 25, 2000)
The State of Patent Claim Construction (Panel), ABA Intellectual Prop. Seminar (June 21-24, 2000)
The Federalization of State Causes of Action (Panel Moderator), Federal Bar Annual Convention, Cleveland, OH (Sept. 22, 2000)
The High-Tech Courtroom and Use of Technology in Litigation, Ohio Academy of Trial Lawyers, Cleveland, OH (Sept. 29, 2000)
Claim Construction Post-*Markman* (Panelist and Speaker), Nat'l Inventors Hall of Fame, Akron, OH (Sept. 5, 2001)
Objections at Trial and How to Deal with the Difficult Lawyer (Panelist and Speaker), Cleveland Bar Assoc. and Nat'l Practice Inst. (Nov. 16, 2001)
Federal Court Practices (CLE Panelist and Speaker), Federal Court Training Program (Dec. 6, 2001)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Dec. 21, 2001)
Memorial Service for Deceased Lawyers, Cleveland Bar Assoc. (Feb. 27, 2002)
Tips for Taking and Defending Depositions in a Patent Case, ABA Intellectual Prop. Seminar, Washington, DC (Apr. 12, 2002)
"Clarence Darrow—Crimes, Causes, and the Courtroom" (Panelist on theatrical presentation), Cleveland Bar Assoc. (June 26, 2002)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 26-27, 2002)

"Attorneys' Fees and Costs Considerations in Multi-District Litigation (Panel Moderator), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 21-23, 2002)

Class Actions and Mass Torts, Louisiana Bar Assoc., New Orleans, LA (Oct. 25, 2002)

Markman Hearings, Cleveland Intellectual Prop. Law. Assoc. (Nov. 12, 2002)

Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Dec. 6, 2002)

Intellectual Property Cases as Viewed from the Bench, ABA Law Ed. Inst., Snowmass, CO (Jan. 5, 2003)

Memorial Service for Deceased Lawyers, Cleveland Bar Assoc. (Feb. 26, 2003)

Mass Torts Litigation: Where We Have Been and Where We Are Going (Mar. 7, 2003)

"White Collar Crime Prosecutions" (Speaker and Panelist), Sixth Circuit Judicial Conference, Memphis, TN (Apr. 10-12, 2003)

Symposium, "A Novel Approach to Mass Tort Class Actions: The Billion Dollar Settlement in the Sulzer Artificial Hip and Knee Litigation," (Panelist) (April 30, 2003) available at 16 J.L. & HEALTH 169 (2001/2002)

Speaker, Law Day, Cleveland, OH (May 2, 2003)

Class Actions (Panelist), Federal Bar Seminar, Cleveland, OH (May 8, 2003)

Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 28, 2003)

"Efficient Disposition of Cases or, At Least, How to Narrow the Issues," Fed. Cir. Bar. Assoc., Amelia Island, FL (May 22-24, 2003)

Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Aug. 1, 2003)

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 18-19, 2003)

"*Daubert* in Our Districts" (Panelist), Ohio Bench and Bar Conference, Columbus, OH (Oct. 3, 2003)

"Settlement Dynamics" (Keynote), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 27-29, 2003)

Advanced Jury Issues and Case Management Issues (Faculty Panelist), Sedona Conference, Sedona, AZ (Nov. 6-7, 2003)

"The Past, the Present and the Future of the Federal Circuit" (Keynote Panelist, with The Honorable Patti Saris and The Honorable Ronald H. Whyte), CWRU (Nov. 14, 2003), available at 54 CASE W. RES. L. REV. 671 (2004)

Settlement Dynamics (Speaker and Panelist), ABA Litigation Section, Philadelphia, PA (Nov. 20, 2003)

IP Litigation and Case Management (Panelist), Assoc. of Corp. Patent Counsel, Las Croabas, PR (Feb. 1-4, 2004)

"Interlocutory Appeals from *Markman* Hearings" & "Are District Judges Equipped to Resolve Patent Cases?" (Panelist), Fed. Cir. Bar Assoc. Bench and Bar Conference, Colorado Springs, CO (June 25-28, 2004)

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 30-Oct. 1, 2004)
Maximizing Legal Education through Technology, Rutgers Univ., Newark, NJ (Oct. 15, 2004)
Complex Litigation: Litigating Mass Torts (Faculty Presenter), Sedona Conference, Sedona, AZ (Apr. 7-8, 2005)
"A Judge's Perspective on Electronic Discovery," Am. Intellectual Prop. Law Assoc., Philadelphia, PA (May 12-13, 2005)
Faculty Presenter, Intellectual Property Law Seminar, Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 25-27, 2005)
"Matters of Interest in IP Law" & "Perspectives From the Bench," Fed. Cir. Bar Assoc. Bench and Bar Conf., Kiawah, SC (June 23-25, 2005)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 29-30, 2005)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Oct. 21, 2005)
"Damages and Remedies in IP Cases," Int'l Judges Conference on Intellectual Prop. Law, Washington, DC (Oct. 24-26, 2005)
Guest Lecturer in Professor Paul Giannelli's Criminal Procedure class, CWRU Law School, Cleveland, OH (Approximately February, 2006)
"*Markman* Mark Ten Years; Assessing Its Impact," Intellectual Prop. Law Conference, Arlington, VA (Apr. 7, 2006)
"Litigating, Settling and Insuring Mass Tort Claims," Harris Pub. Co., Las Vegas, NV (Apr. 27-28, 2006)
"Role of the Court and Counsel in the Administration of Justice in the Federal Courts of Appeal," Fed. Cir. Bench and Bar Conf., Albuquerque, NM (June 28-July 1, 2006)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (Aug. 4, 2006)
"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Chicago, IL (Sept. 28-29, 2006)
"Evidence Issues and Jury Instructions in ADA and FMLA Litigation" (Speaker and Panelist), ALI-ABA Course of Study, Georgetown Univ. Sch. of Law (Feb. 8-9, 2007)
"Patent Injunctions," Intellectual Prop. Owners Inc., Washington, DC (Mar. 27, 2007)
Naturalization Ceremony, United States District Court for the Northern District of Ohio, Cleveland, OH (May 18, 2007)
Faculty Presenter, "Intellectual Property in the New Technological Age," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 30-June 1, 2007)
"Practical Tips for Litigating Patent Cases," Patent Law Symposium, George Mason Univ., Arlington, VA (July 17, 2007)
"Drug and Medical Device On Trial" (Speaker and Panelist), Am. Conference Inst., New York, NY (July 18-19, 2007)

"Trial of a Patent Case," (CLE Faculty Member), Am. Law Inst. – Am. Bar Assoc., Scottsdale, AZ (Feb. 28-29, 2008)
"Technology in the Courtroom and Electronic Evidence," Assoc. of Defense Trial Attorneys, Charleston, SC (Apr. 9-13, 2008)
"'Hot' Topics in Intellectual Property Law," ABA Intellectual Prop. Law Seminar, Washington, DC (Apr. 12, 2008)
"A View from the Trial Court" (Panelist), Fed. Cir. Judicial Conference (May 14-15, 2008)
Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 21-23, 2008)
Guest Speaker, "Brown Bag Lunch," Federal Bar Association, Cleveland, OH (July 2, 2008)
"Streamlining Techniques for Complex Litigation" (Keynote), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 27-29, 2008)
"Intellectual Property Crimes," Fed. Bar Assoc., Cleveland, OH (Feb. 5, 2009)
"Constitutional Rights in the Realm of Spousal or Child Abuse Cases," Am. Coll. of Trial Lawyers, Puerto Rico (Feb. 26-Mar. 1, 2009)
"Transnational Enforcement of IP Rights" (Panelist), Int'l Judges' Conference, Washington, DC (Apr. 21, 2009)
Faculty Presenter, "Intellectual Property in the New Technological Age" & "Patent Case Management," Federal Judicial Center & the Berkeley Center for Law & Technology, Berkeley, CA (May 27-29, 2009)
"Circuit and Trial Court Dialogue Regarding IP Cases," Fed. Cir. Bench and Bar Conference, White Sulphur Springs, WV (June 18-21, 2009)
"Judicial Perspectives on How to Present Technical Information to the Judge and Jury," Am. Coll. of Trial Lawyers Annual Meeting, Boston, MA (Oct. 8, 2009)
"The Supreme Court & Federal Circuit Court: What Lies Ahead and What is the Effect on Practitioners," Am. Intellectual Prop. Law Assoc., Washington, DC (Oct. 15-16, 2009)
"Management of IP Cases" (Panelist), Ohio Bench and Bar Conference, Columbus, OH (Oct. 22-23, 2009)
"Managing Large MDLs Greater than 75 Cases" (Panel Moderator), MDL Transferee Judges' Conference, Palm Beach, FL (Oct. 26-28, 2009)

In addition to these listed presentations, I frequently have participated in programs at monthly meetings of the John M. Manos Inn of Court. I have not retained records of the specific dates or topics of these programs.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Since my appointment to the federal bench, it has been my policy not to grant interviews to the press. On a handful of occasions, I have been profiled in publications, e.g., an alumni newsletter, local bar journal, or Federal Bar Association magazine, and have provided biographical information to that end. I specifically recall two published articles based on interviews I provided since being nominated to become a federal judge in 1994:

Spring 2002/Summer 2002 issue of *In Brief: The Magazine of Case Western Reserve University School of Law*

Mark Rollenhagen, "A Courtroom Revolution; U.S. District Judge Kathleen M. O'Malley Gives Her Space to the Future: Beaming Witnesses before a Jury and Launching Materials from Laptops," *Cleveland Plain Dealer*, Sept. 21, 1998

Cindi Leive, "A New Wave of Women Judges," *Glamour*, May 1995

Keith C. Epstein, "More Minorities, Women Named Federal Judges," *Cleveland Plain Dealer*, Sept. 25, 1994

T.C. Brown, "Just a Matter of Time: Federal Judge Appointee Awaits Robes," *Cleveland Plain Dealer*, Sept. 22, 1994

Steve Luttner, "Fisher Aid Top Choice for Federal Judgeship," *Cleveland Plain Dealer*, Aug. 17, 1994

Alan Johnson, "Attorney General's Chief Counsel 'Always Wanted to Be A Lawyer'; Job With Fisher is Very Demanding, Says Woman, 34," *Columbus Dispatch*, Aug. 19, 1991

In my capacity as First Assistant Attorney General of Ohio from 1993-1994, I often spoke publicly as a surrogate for the Attorney General. Comments I gave to the media generally related to the operations and initiatives of the office and/or to the status of legal matters of interest to the office. I made such comments to address or express the legal policy of the Office of the Attorney General, rather than my own personal views. I do not have copies of articles from those days, but they most likely would have appeared in the *Columbus Dispatch*, the *Cleveland Plain Dealer*, the *Akron-Beacon Journal*, the *Dayton Daily News*, the *Cincinnati Post*, or the *Youngstown Vindicator*.

I do not recall any other interviews and have not identified any by searching publicly-available databases.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 1994, I was appointed by President William Jefferson Clinton to be United States District Judge for the Northern District of Ohio.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

   In my fifteen years on the bench, I have handled approximately 4,000 civil cases and 800 criminal cases. In addition, I have presided over three major multi-district litigations: one with more than 20,000 claimants, a second with more than 12,000 cases, and a third with dozens of cases.

   In addition to the multi-district litigation, I have presided over at least 60 criminal trials and 45 civil trials.

   i. Of these, approximately what percent were:

jury trials:	85%
bench trials:	15%
civil proceedings:	80%
criminal proceedings:	20%

b. Provide citations for all opinions you have written, including concurrences and dissents.

   See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Liability*, Master Case No. 1:01cv9000, MDL Docket No. 1401.

   By order of the Judicial Panel on Multidistrict Litigation ("MDL"), several personal injury cases were transferred to me for coordinated pretrial proceedings in 2001. Thereafter, more than 400 additional cases, including 34 putative class actions, also were made a part of the MDL. Plaintiffs alleged injuries caused by manufacturing defects in the defendant's hip and knee implants.

   Ultimately, the parties reached a class action settlement and agreed to a claims administration process that put more than $1 billion into the hands of injured claimants. Further, the vast majority of these funds were delivered within three years of the inception of the MDL. In addition to issuing several substantive legal opinions, I worked with the parties to structure an appropriate and workable settlement, conducted preliminary and final fairness hearings, determined appropriate attorneys' fee awards, and presided over the opt-out cases remaining post-settlement. A recapitulation of the entire litigation appears at *In re Sulzer Hip Prosthesis and Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003).

Liaison Counsel: R. Eric Kennedy, Weisman Kennedy & Berris, 1600 Midland Building, 101 Prospect Avenue, W., Cleveland, OH 44115, (216) 781-1111. Claims Administrator: James J. McMonagle, Vorys Sater Seymour & Pease, 2100 One Cleveland Center, 1375 East Ninth Street, Cleveland, OH 44114-1739, (216) 479-6158. Counsel for Plaintiffs: Stanley M. Chesley, Waite, Schneider, Bayless & Chesley, 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, OH 45202, (513) 621-0267. Defense Counsel: Harvey L. Kaplan & David W. Brooks, Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, MO 64105-2118, (816) 474-6550; Bradley D. Honnold (formerly with Shook, Hardy & Bacon), Goza & Honnold, LLC, 11150 Overbrook Road, Ste. 250, Leawood, KS 66211, (866) 767-1486.

2. *In re Telxon Corp. Sec. Litig.*, 5:98cv2876.

The *Telxon* litigation began as a class action securities fraud complaint filed under the then newly-enacted Private Securities Litigation Reform Act ("PSLRA") asserting securities fraud claims against Telxon Corporation, certain of its officers and directors, and its auditing firm, PricewaterhouseCoopers ("PwC"). In addition to the twenty-seven securities fraud class actions consolidated under the case caption above, the litigation also included related cases *Hayman v. PricewaterhouseCoopers LLP*, Case No. 1:01cv1078 and *Wyser Pratte Mgmt. Co., Inc. v. Telxon Corp.*, 5:02cv1105. The shareholder claims arose out of a series of audit restatements. Given the passage of the PSLRA in 1995, this action required me to address a number of complicated and novel issues under that Act.

I ultimately approved a number of settlements in the case, and class distributions relating thereto. I also conducted numerous hearings and issued a number of substantive decisions during the course of the proceedings, including: *In re Telxon Corp. Sec. Litig.*, 67 F. Supp. 2d 803 (N.D. Ohio 1999) (consolidating twenty-seven putative securities fraud class actions and identifying lead plaintiffs); *In re Telxon Corp. Secs. Litig.*, 133 F. Supp. 2d 1010 (N.D. Ohio 2000) (denying motion to dismiss securities fraud class action under the PSLRA); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip op. 120 (N.D. Ohio Sept. 19, 2001) (granting motion for class certification); *Hayman v. PricewaterhouseCoopers LLP*, Case No. 1:01cv1078, slip. op. 38 (N.D. Ohio Aug. 26, 2002) (granting motion for class certification); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip ops. 386-93 (N.D. Ohio Dec. 2004-Jan. 2005) (evidentiary hearings regarding discovery and sanctions); *Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, Case No. 5:02cv1105, 2003 U.S. Dist. LEXIS 27882 (N.D.

Ohio June 4, 2003) (resolving multiple motions to dismiss and certifying questions to the Ohio Supreme Court); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip ops. 236-40 (N.D. Ohio Feb. 13, 2004) (approving class action settlement as to certain aspects of cases, attorneys' fees, and allocation of settlement proceeds); *In re Telxon Corp. Sec. Litig.*, Case No. 5:98cv2876, slip op. 409 (N.D. Ohio Dec. 21, 2005) (final fairness hearing).

Plaintiffs' Counsel: Jeffrey C. Zwerling, Susan Salvetti & Richard A. Speirs, Zwerling, Schachter & Zwerling, 41 Madison Avenue, New York, NY 10010, (212) 223-3900; Brett S. Krantz, Kohrman, Jackson & Krantz, One Cleveland Center, 20th Floor, 1375 East Ninth Street, Cleveland OH 44114, (216) 696-8700. Defendants' Counsel: David C. Weiner, Squire, Sanders & Dempsey, 4900 Key Tower, 127 Public Square, Cleveland, OH 44115, (216) 479-8344; Arthur Kaufman, Hahn, Loeser & Parks, 2800 BP Tower, 200 Public Square, Cleveland, OH 44114, (216) 274-2263; Eric Lobenfeld, Hogan & Hartson, 875 Third Avenue, New York, NY 10022, (212) 918-8202; Jay Kelley Wright, Jeffrey L. Handwerker, and Stephen M. Sacks, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004, (202) 942-5000.

3. *United States v. Johnson*, Case No. 98cr98.

The defendant, a former Cleveland City Councilman and Ohio State Senator, was charged in a six-count indictment with Hobbs Act violations and wire fraud. The indictment was issued roughly one month after the defendant announced his intention to run for Congress. The defendant was alleged to have demanded $17,000 in campaign contributions and personal loans in exchange for using his position and influence to obtain liquor permits, lottery licenses, food-stamp permits, and licenses to accept food stamps for grocers between 1994 and 1996. Prior to trial, I granted defendant's motion to dismiss the wire fraud counts.

After a roughly two-week trial, a jury convicted the defendant on three of the four extortion charges. Shortly thereafter, the defendant resigned his Senate seat. I sentenced him to 15 months imprisonment with one year supervised release. The Court of Appeals affirmed. *See United States v. Johnson*, Case No. 98cr98, slip op. 98 (N.D. Ohio Feb. 19, 1999), *aff'd*, *United States v. Johnson*, Case No. 99-3259, 2000 U.S. App. LEXIS 22723 (6th Cir. Sept. 5, 2000) (affirming conviction in unpublished opinion).

This case is also significant because it was one of the first times a case was tried in a federal courthouse using high-tech equipment to facilitate the presentation of materials to the jury.

Counsel for the Government: Daniel P. Butler, Department of Justice, Public Integrity Section, P.O. Box 27518, Central Station, Washington, DC 20038, (202) 514-1412; Stephen P. Anthony (formerly with DOJ), Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004, (202) 662-5105. Counsel for Defendant: Gerald Arthur Messerman, Messerman & Messerman Co., L.P.A., 56 River Marsh Lane, Kiawah Island, SC 29455, (843) 768-8900; Michael R. Hamed & Philip S. Kushner, Kushner & Hamed, 3740 BP Bldg., 200 Public Square, Cleveland, OH 44114, (216) 696-6700.

4. *Weatherchem Corp. v. J.L. Clark, Inc.*, Case No. 91cv35.

In this case, Weatherchem claimed that J.L. Clark, Inc., willfully infringed two patents owned by Weatherchem: Patent No. 4,693,399 (the "'399 patent") and Patent No. 4,936,494 (the "'494 patent"). The two patents are directed toward plastic "two-flap closures," which are commonly used as caps to seal cylindrical spice containers; the caps allow the contents to be sprinkled or spooned out. The defendant asserted counterclaims for invalidity, unenforceability, and noninfringement.

The parties tried this matter to the bench and I found that both patents were invalid. With respect to the '399 patent, in a decision later echoed by the Federal Circuit in *Pfaff v. Wells Electronics, Inc.*, 124 F.3d 1429 (Fed. Cir. 1997), *aff'd* 525 U.S. 55 (1998), regarding the concept of reduction to practice in application of the "on-sale bar," I found the patent invalid due to that statutory bar. I found the '494 patent invalid because it was obvious given the prior art, which included the enclosure embodying the claims of the '399 patent. In the alternative, I found that, as to the '494 patent, if it was valid, its claims were not infringed by the defendant's closures.

Plaintiff appealed, and the Federal Circuit affirmed my holdings as to invalidity and vacated as unnecessary the alternative findings I had made. *See Weatherchem Corp. v. J.L. Clark, Inc.*, 937 F.Supp. 1262 (N.D. Ohio 1996) (bench trial opinion ruling in favor of defendants), *aff'd in part, modified in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998).

Counsel for Plaintiff: Robert V. Vickers, Fay, Sharpe, Beall, Fagan, Minnich & McKee, 1100 Superior Avenue, Ste. 700, Cleveland, OH 44114, (216) 861-5582; Dennis G. Terez (formerly with Squire, Sanders & Dempsey), Office of the Federal Public Defender, Northern District of Ohio, 750 Skylight Office Tower, 1660 West Second Street, Cleveland, OH 44113, (216) 522-4856. Counsel for Defendants: John W. Kozak, H. Michael Hartmann & Christopher T. Griffith, Leydig, Voit & Mayer, Ltd., Two Prudential Plaza, 180 N. Stetson Avenue, Suite 4900, Chicago, IL 60601-6731, (312) 616-5600.

5. *United States v. Waller*, Case No. 04cr13.

In this case, the two defendants carjacked at gunpoint and held for ransom a cooperating witness of the FBI's New York office. While being held captive, the witness called his FBI contact in New York via cell phone. Eventually a meeting to exchange the witness for ransom was arranged between the FBI and the captors. When the FBI swat team arrived at the scene, a shoot-out occurred, during which the witness was shot and killed.

The defendants were charged in a nine-count indictment that included charges of carjacking and attempted murder of FBI agents engaged in official duties. I presided over a multi-week jury trial of both defendants in August 2004. The jury convicted each defendant on several counts.

I sentenced the defendants to 684 months and 552 months imprisonment, respectively. The Court of Appeals affirmed. *See United States v. Ervin, et al.*, 209 Fed. Appx. 519 (6th Cir. 2006). The Supreme Court denied certiorari. *See Waller v. United States*, 552 U.S. 907 (2007); *Ervin v. United States*, 550 U.S. 927 (2007).

Counsel for the Government: Blas E. Serrano & Kelly L. Galvin, Office of the U.S. Attorney – Cleveland, Northern District of Ohio, 801 W. Superior Avenue, Ste. 400, Cleveland, Ohio 44113, (216) 622-3873; Nancy L. Kelley, Office of the U.S. Attorney – Akron, Northern District of Ohio, 208 Federal Building, 2 South Main Street, Akron, Ohio 44308, (330) 761-0515. Counsel for Defendant Waller: Michael G. Dane (former Federal Public Defender for the Northern District of Ohio), Retired. Counsel for Defendant Ervin: Laurence A. Turbow, Laurence A. Turbow, LPA, Inc., 4403 St. Clair Avenue, Ste. 300, Cleveland, Ohio 44103, (216) 881-7939

6. *United States v. City of Euclid ("Euclid I")*, Case No. 06cv1652; *United States v. Euclid City Sch. Dist. ("Euclid II")*, Case No. 08cv2832.

In *Euclid I*, the government filed a complaint alleging that the City of Euclid's method of electing its City Council violated Section 2 of the Voting Rights Act. In particular, the government alleged that the City of Euclid used a combination of single-member districts and slotted, at-large positions, resulting in the dilution of African-American voting strength. I conducted a bench trial and found a Section 2 violation. I ordered the City to redistrict, which resulted in the election of the first African American ever elected to the Euclid City Council. *See United States v. City of Euclid ("Euclid I")*, 580 F. Supp. 2d 584 (N.D. Ohio 2008).

In *Euclid II*, the government filed suit against the Euclid City School District Board of Education ("the Board") and the Cuyahoga County Board of Elections alleging that the at-large method of electing members of the Board, utilizing staggered terms, violates Section 2 of the Voting Rights Act. The parties noted that *Euclid I* considered the same population at issue and agreed that the findings in *Euclid I* were probative of and meaningful to the Court's assessment of liability in this case. Accordingly, the parties stipulated that the Board violated Section 2 of the Voting Rights Act. The parties disagreed, however, as to the remedy for this past discrimination. I considered the Board's proposed remedies – limited voting or cumulative voting – and concluded that the Board's limited voting proposal remedied the Section 2 violation and was not itself violative of Section 2. *United States v. Euclid City Sch. Bd.* ("*Euclid II*"), 632 F. Supp. 2d 740 (N.D. Ohio 2009). No appeal was taken in *Euclid I.* While the government initially filed a notice of appeal in *Euclid II*, it dismissed that appeal prior to briefing.

Euclid I: Counsel for Plaintiff: Abel Gomez, Sean W. O'Donnell & Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW,Washington, DC 20530, (202) 305-1582. Counsel for Defendant City of Euclid: Hilary S. Taylor, Brian P Riley & John S. Kluznik, Sr., Weston Hurd, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, OH 44114, (216) 241-6602; L. Christopher Frey, City of Euclid, Department of Law, 585 East 222 Street, Ste. 200, Euclid, OH 44123, (216) 289-2746. Counsel for Defendant Cuyahoga County Board of Elections: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869.

Euclid II: Counsel for Plaintiff Counsel: Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 305-7781; Steven H. Wright, Jr., U.S. Department of Justice – Voting Section, Ste. 7123, 1800 G Street, NW, Washington, DC 20006, (202) 305-1050. Counsel for Defendant Euclid School District Board of Education: David Kane Smith & Krista K. Keim, Britton, Smith, Peters & Kalail, 3 Summit Park Drive, Ste. 400, Independence, OH 44131, (216) 503-5055. Counsel for Defendant Cuyahoga County Board of Elections Counsel: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County, Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869.

7. *Mid-Michigan Computer Sys., Inc. v. Marc Glassman, Inc.*, Case No. 00cv3117.

Plaintiff, a computer service provider to pharmacies, brought this suit against a pharmacy client and its technology partner. The services contract had included a "Source Code Agreement" to protect plaintiff's copyrighted software. Plaintiff brought a variety of claims in this case including breach of contract, fraud, copyright infringement, and misappropriation of trade secrets.

Plaintiff settled with the technology partner. I granted parts of several summary judgment motions filed by the pharmacy, leaving four remaining claims for trial: (1) breach of the software license agreements; (2) breach of technical support services agreements; (3) misappropriation of trade secrets; and (4) fraud.

A jury trial resulted in judgment in favor of the plaintiff, awarding compensatory and punitive damages in the amount of $7,347,795.78. Defendant filed a motion for judgment as a matter of law, new trial, or remittitur. I granted the motion for remittitur in part, finding that the jury's award of $280,000 in compensatory damages flowing from MGI's breach of the software license agreements was excessive. I denied the remainder of the motion for remittitur and the motion for new trial.

The Sixth Circuit affirmed my decisions and the jury's verdict, including all aspects of the damages award, as revised by my remittitur order. *See Mid-Michigan Computer Sys. v. Marc Glassman, Inc.*, 416 F.3d 505 (6th Cir. 2005).

Counsel for Plaintiff: Michael K. Grace, Grace & Grace, 444 South Flower Street, Ste. 1650, Los Angeles, CA 90071, (213) 452-1224. Counsel for Defendant Marc Glassman, Inc.: Christopher B. Fagan (now deceased); Joseph D. Dreher, Fay Sharpe LLP, 1228 Euclid Avenue, 5th Floor, Cleveland, OH 44115, (216) 363-9130. Counsel for Defendant Two Point Conversions, Inc.: Joel I. Newman (formerly with Newman & Newman), 3645 Warrensville Center Road, Ste. 219, Shaker Heights, OH 44122, (216) 621-1541

8. Youngstown Mob Cases, including *United States v. Altshuler*, Case No. 4:97cr385.

Over a several-year period in the mid-to-late 1990s, I presided over a series of cases arising out of a decades-long investigation of organized crime in Youngstown, Ohio. These cases involved the prosecution of more than 60 defendants, and related to wide-scale government corruption, including of state judges, the County Prosecutor, several assistant prosecutors, the County Sheriff, the local Chief of Police, as well as numerous other law enforcement officials, local businessmen, and practicing lawyers. In total, I presided over trials in *Altshuler* and related cases nearly-continuously for an 18-month period.

In *Altshuler*, 30 co-defendants, including alleged Youngstown mob boss Lenine "Lenny" Strollo, were indicted for various charges including racketeering, illegal gambling, conspiracy, and, as to a few defendants, murder for hire. Most of the *Altshuler* defendants pled guilty (Strollo himself entered a last-minute plea while I was empanelling an anonymous jury). Because Strollo's plea agreement required extensive government cooperation, I waited until 2004, after he had satisfied these requirements, before sentencing him to 12 years and 8 months imprisonment. The information provided by Strollo to the Government was critical to several other successful mob-related corruption prosecutions of public officials. Where these defendants appealed, the Sixth Circuit affirmed.

Of the 30 co-defendants in the *Altshuler* case, only three went to jury trial (all were convicted and sentenced to life imprisonment). *United States v. Altshuler*, Case No. 4:97cr385, slip ops. 669-673 (N.D. Ohio Mar. 12, 1999). The Court of Appeals affirmed all trial proceedings, judgments, and sentences as to these three defendants. *See United States v. Riddle*, 249 F.3d 529 (6th Cir. 2001); *United States v. Riddle*, No. 99-3405, 2001 U.S. App. LEXIS 8893 (6th Cir. May 4, 2001). The Supreme Court denied certiorari. *See Turnage v. United States*, 534

U.S. 930 (2001); *Riddle v. United States*, 534 U.S. 930 (2001); *Altshuler v. United States*, 534 U.S. 930 (2001).

Counsel for the Government: Craig S. Morford (Former Assistant U.S. Attorney), Cardinal Health, Chief Compliance Officer, 7000 Cardinal Place, Dublin, OH 43017, (614) 757-5000; James Wooley (Former Assistant U.S. Attorney), Jones Day, Partner, North Point, 901 Lakeside Ave., Cleveland OH 44114, (216) 586-7345. Counsel for Lenine Strollo: Herbert L. Greenman & Paul J. Cambria , Jr., Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, 42 Delaware Avenue, Suite 300, Buffalo, NY 14202, (716) 849-1333; Orville E. Stifel, II, 5310 Franklin Boulevard, P.O. Box 602780, Cleveland, OH 44102, (216) 225-9855.

9. *In re Scrap Metal Antitrust Litig.*, Case No. 02cv844.

This was a class action suit brought against a number of defendants who operated businesses that buy residual scrap metal and resell it in Ohio and other states. The plaintiffs alleged that the defendants conspired to restrain trade, suppress and eliminate competition, and fix the price of scrap metal in Northeastern Ohio.

After years of litigation, including certain delays occasioned by deference to on-going criminal proceedings, all but three of the original defendants in this case were either dismissed by or settled with the plaintiffs. I presided over the fairness hearings on these settlements.

As to the remaining three defendants, the jury returned a split verdict after a three-week trial, finding only one of the three liable. The jury awarded an $11.5 million verdict against the liable defendant. Pursuant to 15 U.S.C. § 15(a), I trebled the jury's award to $34.5 million and then subtracted the amount received from the from other defendants' settlements. The losing defendants appealed the jury verdict and damages award and the Court of Appeals affirmed. *In re Scrap Metal Antitrust Litig*, 527 F.3d 517 (6th Cir. 2008), *cert. denied*, 129 S. Ct. 1673 (2009)

Lead Counsel for Plaintiffs: William A. Isaacson, Boies, Schiller & Flexner, 5301 Wisconsin Avenue, NW, Washington, DC 20015, (202) 237-2727; Edmund W. Searby, McDonald Hopkins, 600 Superior Avenue, East, Suite 2100, Cleveland, OH 44114, (216) 348-5400. Primary Counsel for Trial Defendants: William D. Beyer, Wuliger, Fadel & Beyer, The Brownell Building, 1340 Sumner Court, Cleveland, OH 44115, (216) 781-7777; Leslie W. Jacobs, Thompson Hine, 3900 Key Center, 127 Public Square, Cleveland, OH 44114, (216) 566-5675.

10. *United States v. City of Parma*, Case No. 73cv439.

In 1973, the Department of Justice sued the City of Parma alleging violations of the Fair Housing Act. More specifically, the government alleged that Parma had a policy of excluding African Americans from residing within its limits and that the City engaged in various acts and practices which operated to deny equal housing opportunity to African Americans on the basis of race.

At the time I inherited this case as part of my new docket in 1994, it had been pending for more than 20 years and the differences between the parties were great. The case had been transferred among many judicial officers prior to being assigned to me. I conducted multiple settlement conferences over several months, including a single conference that itself spanned several days. Through this process, the parties settled. In the agreement, the City of Parma agreed to establish a public-housing board, pledged to spend $1 million on marketing the City to African Americans, enacted a fair-housing ordinance, and created a panel to handle complaints about housing discrimination. *See United States v. City of Parma*, Case No. 73cv439, slip op. issued Nov. 15, 1996 (N.D. Ohio Nov. 15, 1996) (regarding settlement agreement and dismissal).

Counsel for the Government: Diane L. Houk (formerly with the Department of Justice, Civil Rights Division Housing & Civil, Enforcement Section), Fair Housing Justice Center, 5 Hanover Square, 17th Floor, New York, NY 10004, (212) 400-8280. Counsel for Defendant: The Honorable Christopher A. Boyko (formerly with the Office of the Law Director – City of Parma) District Court Judge, N.D. of Ohio, 801 West Superior Avenue, Cleveland, OH 44113, (216) 357-7151; Gregory V. Mersol, Baker & Hostetler, 3200 National City Center, 1900 East Ninth Street, Cleveland, OH 44114, (216) 621-0200.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *United States v. City of Euclid*, 580 F. Supp. 2d 584 (N.D. Ohio 2008). Counsel for Plaintiff: Abel Gomez, Sean W. O'Donnell & Sonya L. Sacks, U.S. Department of Justice – Voting Section/Civil Rights Division, Ste. 7254, 950 Pennsylvania Avenue, NW,Washington, DC 20530, (202) 305-1582. Counsel for Defendant City of Euclid: Hilary S. Taylor, Brian P Riley & John S. Kluznik, Sr., Weston Hurd, 1900 Tower at Erieview, 1301 East Ninth Street, Cleveland, OH 44114, (216) 241-6602; L. Christopher Frey, City of Euclid, Department of Law, 585 East 222 Street, Ste. 200, Euclid, OH 44123, (216) 289-2746. Counsel for Defendant Cuyahoga County Board of Elections: David G. Lambert, Office of the Prosecuting Attorney – Cuyahoga County Courts Tower, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, OH 44113, (216) 443-5869

2. *D'Ambrosio v. Bagley*, Case No. 00cv2521, 2006 U.S. Dist. LEXIS 12794 (N.D. Ohio Mar. 24, 2006) *aff'd* 527 F.3d 489 (6th Cir. 2008). Counsel for Petitioner: John Q. Lewis & Edward J. Sebold, Jones Day – Cleveland, 901 Lakeside Avenue, Cleveland, OH 44114, (216) 586-1005; Jeffry F. Kelleher, 1540 Leader Bldg., 526 Superior Avenue, Cleveland, OH 44114, (216) 241-0520. Counsel for

Respondent: Michael L. Collyer, Office of the U.S. Attorney, Northern District of Ohio, Ste. 400, 801 Superior Avenue, W., Cleveland, OH 44113, (216) 622-3744; Stephen E. Maher, Office of the Attorney General State of Ohio, Capital Crimes Section, 30 East Broad Street, 23rd Floor, Columbus, OH, 43215-3428, (614) 728-7055.

3. *In re Commercial Money Ctr., Inc.*, Case No. 1:02cv16000, 2005 U.S. Dist. LEXIS 45490 (N.D. Ohio Aug. 19, 2005), *aff'd in part, rev'd in part, Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327 (6th Cir. 2007); *In re Commercial Money Ctr., Inc.*, Case No. 1:02cv16000, 2005 U.S. Dist. LEXIS 45488 (N.D. Ohio Aug. 19, 2005). Liaison Counsel for Bank Group: Martha Sullivan, Squire, Sanders & Dempsey, 4900 Key Tower, 127 Public Square, Cleveland, OH 44114, Phone: 216-479-8425. Liaison Counsel for Surety Group: Alan N. Hirth, Meyers Roman Friedberg & Lewis, 28601 Chagrin Blvd., Suite 500, Cleveland, OH 44122, Phone: 216-831-0542. Liaison Counsel for Third Parties: Alfred M. DeLaCruz, Manning & Marder Kass Ellrod Ramirez, 401 West A Street, Suite 1900, San Diego, CA 92101, Phone: 619-515-0269.

4. *Weatherchem Corp. v. J.L. Clark, Inc.*, 937 F.Supp. 1262 (N.D. Ohio 1996), *aff'd in part, modified in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998). Counsel for Plaintiff: Robert V. Vickers, Fay, Sharpe, Beall, Fagan, Minnich & McKee, 1100 Superior Avenue, Ste. 700, Cleveland, OH 44114, (216) 861-5582; Dennis G. Terez (formerly with Squire, Sanders & Dempsey), Office of the Federal Public Defender, Northern District of Ohio, 750 Skylight Office Tower, 1660 West Second Street, Cleveland, OH 44113, (216) 522-4856. Counsel for Defendants: John W. Kozak, H. Michael Hartmann & Christopher T. Griffith, Leydig, Voit & Mayer, Ltd., Two Prudential Plaza, 180 N. Stetson Avenue, Suite 4900, Chicago, IL 60601-6731, (312) 616-5600.

5. *King v. Ambs*, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting). Counsel for Plaintiff-Appellant: Mark Granzotto, 225 S. Troy Street, Ste. 120, Royal Oak, MI 48067, (248) 546-4649. Counsel for Defendant-Appellee: G. Gus Morris & D. Randall Gilmer, McGraw Morris P.C., 2075 West Big Beaver Road, Ste. 750, Troy, MI 48084, (248) 502-4000.

6. *In re Welding Fume Prods. Liab. Litig.*, Case No. 1:03cv17000, 2005 U.S. Dist. LEXIS 46164 (N.D. Ohio Aug. 8, 2005). Plaintiffs' Liaison Counsel: John R. Climaco & Lisa A. Gorshe, Climaco Lefkowitz Peca Wilcox & Garofoli, Suite 1950, 55 Public Square, Cleveland, OH 44116, (216) 621-8484. Plaintiffs' Lead Counsel: John W. (Don) Barrett & Richard R. Barrett, Barrett Law Office, PA, 404 Court Square North, P.O. Box 987, Lexington, MS 39095, (800) 889-9622. Defendants' Liaison Counsel: John H. Beisner & Stephen J. Harburg, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. 20005, (202) 371-7470.

7. *Avery Dennison Corp. v. Alien Tech. Corp.*, 626 F. Supp. 2d 693 (N.D. Ohio 2009). Counsel for Plaintiff: Jay R. Campbell, Joshua M. Ryland & Todd R. Tucker, Renner, Otto, Boisselle & Sklar, 19th Floor, 1621 Euclid Avenue, Cleveland, OH 44115, (216) 621-1113. Counsel for Defendant: Michael J. Garvin & Deborah A. Coleman, Hahn, Loeser & Parks – Cleveland, 2800 BP Tower, 200 Public Square, Cleveland, OH 44114, (216) 621-0150.

8. *Baran v. Med. Device Tech., Inc.*, 519 F. Supp. 2d 698 (N.D. Ohio 2007) (*Markman* opinion). Counsel for Plaintiff: Steven M. Auvil, Benesch, Friedlander, Coplan & Aronoff, 2300 BP Tower, 200 Public Square, Cleveland, OH 44114-2378, (216) 363-4686. Counsel for Defendant Medical Device Technologies, Inc.: Jude A. Fry, Fay Sharpe 5th Floor, 1228 Euclid Avenue, Cleveland, OH 44115, (216) 861-5582; R. Blake Johnston & Monica L. Thompson, DLA Piper – Chicago, 203 North LaSalle Street, Ste. 1900, Chicago, IL 60601, (312) 368-4000. Counsel for Defendants AMT Sverige, AB (*formerly known as* AMEDIC) and Ascendia AB: Douglas Q. Hahn (formerly with Ostrolenk Faber LLP), Stradling Yocca Carlson & Rauth, 660 Newport Center Drive Suite 1600, Newport Beach, CA 92660, (949) 725-4000.

9. *Biomedical Patent Mgmt. Corp. v. California Dept. of Health Servs.*, 505 F.3d 1328 (Fed. Cir. 2007). Counsel for Plaintiff/Appellant: Andrew J. Dhuey, 456 Boynton Ave., Berkeley, CA 94707, (510) 528-8200; Richard Kirk Cannon, Woods Phillips, 500 West Madison Street, Chicago, IL 6066, (312) 876-1800. Counsel for Defendant/Appellee: Susan J. King, Office of the Attorney General, Department of Justice, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, (415) 453-7642.

10. *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003). Liaison Counsel: R. Eric Kennedy, Weisman Kennedy & Berris, 1600 Midland Building, 101 Prospect Avenue, W., Cleveland, OH 44115, (216) 781-1111. Claims Administrator: James J. McMonagle, Vorys Sater Seymour & Pease, 2100 One Cleveland Center, 1375 East Ninth Street, Cleveland, OH 44114-1739, (216) 479-6158. Counsel for Plaintiffs: Stanley M. Chesley, Waite, Schneider, Bayless & Chesley, 1513 Fourth & Vine Tower, One West Fourth Street, Cincinnati, OH 45202, (513) 621-0267. Defense Counsel: Harvey L. Kaplan & David W. Brooks, Shook, Hardy & Bacon, One Kansas City Place, 1200 Main Street, Kansas City, MO 64105-2118, (816) 474-6550; Bradley D. Honnold (formerly with Shook, Hardy & Bacon), Goza & Honnold, LLC, 11150 Overbrook Road, Ste. 250, Leawood, KS 66211, (866) 767-1486.

e. Provide a list of all cases in which certiorari was requested or granted.

The Supreme Court of the United States has granted certiorari in two cases over which I presided:

Cleveland Indians Baseball Co. v. United States, Case No. 1:96cv2240, 1999 U.S. Dist. LEXIS 1043 (N.D. Ohio Jan. 25, 1999), *aff'd,* 215 F.3d 1325 (6th Cir. 2000), *rev'd,* 532 U.S. 200 (2001)

Esparza v. Mitchell, Case No. 3:96cv7434, slip op. 133 (N.D. Ohio Oct. 13, 2000), *aff'd,* 310 F.3d 414 (6th Cir. 2002), *rev'd,* 540 U.S. 12 (2003)

See attached list of cases in which certiorari was denied.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Chappell v. City of Cleveland, 584 F. Supp. 2d 974 (N.D. Ohio 2008), *rev'd*, 585 F.3d 901 (6th Cir. 2009). The Court of Appeals ordered summary judgment in a case where I had found a genuine issue of material fact.

RFF Family P'ship, LP v. Wasserman, Case No. 1:07cv1617, 2008 U.S. Dist. LEXIS 16603 (N.D. Ohio March 4, 2008), *rev'd*, 316 Fed. Appx. 410 (6th Cir. 2009). The Court of Appeals reversed my order remanding a case to state court, finding that plaintiff had waived its objection to removal.

Lentz v. City of Cleveland, Case No. 04cv0669, slip op. 195 (N.D. Ohio Sept. 21, 2007), *aff'd in part, rev'd in part*, 333 Fed. Appx. 42 (6th Cir. 2009). The Court of Appeals affirmed most aspects of a jury verdict but remanded for reconsideration of the propriety of remittitur of the damages award.

Gordon v. Dadante, Case No. 1:05cv2726, 2007 U.S. Dist. LEXIS 22926 (N.D. Ohio March 29, 2007), *rev'd*, 294 Fed. Appx. 235 (6th Cir. 2008). My order concluded that a financial brokerage had waived its right to enforce an arbitration clause. The Court of Appeals reversed, holding that the brokerage's conduct was not "completely inconsistent" with asserting its right to arbitration.

Erico Int'l Corp. v. Doc's Mktg., Case No. 1:05cv2924, 2006 U.S. Dist. LEXIS 98234 (N.D. Ohio May 3, 2006), *vacated*, 516 F.3d 1350 (Fed. Cir. 2008). I preliminarily enjoined the defendant in this patent case from selling any of its products until the resolution of this action. Applying all four of the traditional preliminary injunction factors, I found that, on balance, an injunction should issue. A divided panel vacated my injunction, employing the "substantial question" test rather than the traditional four factor test. Judge Pauline Newman dissented, disagreeing with the test employed by the majority. The Federal Circuit has since adopted the four-factor approach. *See Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372 (Fed. Cir. 2009).

In re Commercial Money Center, Inc. Equip. Lease Litig., Case No. 1:02cv16000, 2006 U.S. Dist. LEXIS 21392 (N.D. Ohio Apr. 20, 2006), *aff'd in part, rev'd in part*, 508 F.3d 327 (6th Cir. 2007). The Court of Appeals reversed a portion of my damages calculation, but otherwise affirmed.

Oatey Co. v. IPS Corp., Case No. 1:03cv1231, 2006 U.S. Dist. LEXIS 9060 (N.D. Ohio Mar. 8, 2006), *vacated*, 514 F.3d 1271 (Fed. Cir. 2008). The Federal Circuit affirmed my claim construction but held that I erred in excluding a single embodiment disclosed in the specifications.

Girts v. Yanai, No. 1:02cv0264, 2005 U.S. Dist. LEXIS 45611 (N.D. Ohio July 12, 2005), *rev'd*, 501 F.3d 743 (6th Cir. 2007), *cert. denied*, 129 S. Ct. 92 (U.S. 2008). A divided panel of the Court of Appeals held that I had given an inappropriate degree of deference to the state court in finding that a habeas petitioner had not been denied the effective assistance of counsel.

Lott v. Bagley, Case No. 1:04cv822, 2005 U.S. Dist. LEXIS 21227 (N.D. Ohio March 29, 2005), *rev'd*, 424 F.3d 446 (6th Cir. 2005), *cert. denied*, 547 U.S. 1092 (2006). I concluded that the petitioner implicitly waived his attorney-client and work product privileges to the extent necessary for the respondent to defend against petitioner's claim of actual innocence. A divided panel disagreed. Chief Judge Danny J. Boggs dissented, recommending that my decision be affirmed.

United States v. Montanez, Case No. 1:04cr138, slip op. 59 (N.D. Ohio Nov. 17, 2004), *vacated*, 442 F.3d 485 (6th Cir. 2006). The Court of Appeals overruled its prior binding precedent on which I relied to conclude that a particular Ohio Code violation qualified as a controlled substance offense for purposes of career offender classification under the United States Sentencing Guidelines.

Davis v. United Auto., Aerospace & Agric. Implement Workers of Am., Case No. 1:03cv1311, slip op. Doc. 19 (N.D. Ohio Dec. 31, 2003), *rev'd*, 392 F.3d 834 (6th Cir. 2004), *cert. denied*, 549 U.S. 1204 (2007). The Court of Appeals reversed my decision to remand a state-law age discrimination case, holding that the plaintiff's claims were preempted by the Labor Management Reporting and Disclosure Act ("LMRDA").

CSX Transp., Inc. v. United Transp. Union, Case No. 1:02cv2394 (N.D. Ohio Aug. 28, 2003), *rev'd*, 395 F.3d 365 (6th Cir. 2005). A divided panel of the Court of Appeals found that the dispute at issue was a "minor" dispute under the Railway Labor Act where I had found it to be a "major" dispute.

Hodge v. Hurley, Case No. 01cv1773, slip op. 25 (N.D. Ohio Jan. 14, 2003), *rev'd*, 426 F.3d 368 (6th Cir. 2005). A divided panel of the Court of Appeals held that I had given an inappropriate degree of deference to the state court in finding that a habeas petitioner had not been denied the effective assistance of counsel. Judge Eugene Siler dissented, recommending that my decision be affirmed.

United States v. Saadey, Case No. 4:00cr488, slip op. 166 (N.D. Ohio May 9, 2002), *aff'd in part, rev'd in part*, 393 F.3d 669 (6th Cir. 2005). Addressing an issue of first impression, the Court of Appeals reversed the defendant's conviction under the Hobbs Act, finding that "a private citizen who is not in the process of becoming a public official may be convicted of Hobbs Act extortion under the 'color of official right' theory only if that private citizen either conspires with, or aids and abets, a public official in the act of extortion." The Court affirmed all other convictions and the defendant's sentence was unaffected.

United Church of Christ v. Gateway Econ. Dev. Corp. of Greater Cleveland, Case No. 00cv661, slip op. 40 (N.D. Ohio Mar. 22, 2001), *aff'd in part, rev'd in part, and remanded*, 383 F.3d 839 (6th Cir. 2004). The Court of Appeals affirmed most of my opinion in this First Amendment case, but reversed and remanded for further findings on the reasonableness of speech restrictions on a portion of the sidewalk ringing a sports stadium near downtown Cleveland.

Esparza v. Anderson, Case No. 3:96cv7434, slip op. 132 (N.D. Ohio Oct. 13, 2000), *aff'd sub nom. Esparza v. Mitchell*, 310 F.3d 414 (6th Cir. 2002), *rev'd*, 540 U.S. 12 (2003). I granted the petition for a writ of habeas corpus on the sentencing phase of this state death penalty case. I found that the state court had failed to adhere to state statutory law regarding how and when the death penalty can be imposed, and that this failure rendered the sentence unconstitutional. I concluded that the state court's error was a "structural" error not susceptible to "harmless error" review. In so holding, I acknowledged that my analysis depended on reconciling two arguably inconsistent Supreme Court decisions – *Neder v. United States*, 527 U.S. 1 (1999) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Court of Appeals affirmed in all respects. In a per curiam opinion, the Supreme Court reversed, holding that the sentencing error at issue was susceptible to harmless error review.

Keller v. Cent. Bank of Nig., Case No. 1:98cv1270, 2000 U.S. Dist. LEXIS 21879 (N.D. Ohio Feb. 28, 2000), *aff'd in part, vacated in part*, 277 F.3d 811 (6th Cir. 2002). The Court of Appeals held that the Foreign Sovereign Immunities Act precluded civil RICO claims because the foreign sovereigns would not be indictable for the criminal acts that are necessary predicates to those claims. The Sixth Circuit's opinion created a circuit split, *see United States v. Campa*, 529 F.3d 980, 1000–01 (11th Cir. 2008) (noting this split).

United States v. Chance, Case No. 4:99cr22, slip op. 94 (N.D. Ohio Nov. 24, 1999), *aff'd in part and rev'd in part*, 306 F.3d 356 (6th Cir. 2002). The Court of Appeals reversed for additional justification of my upward departure from the sentencing range recommended by the United States Sentencing Guidelines. On remand, I imposed the same sentence with further justification and that sentence was not appealed.

Ross v. Campbell Soup Co., Case No. 98cv196, 1999 U.S. Dist. LEXIS 23288 (N.D. Ohio Aug. 26, 1999), *rev'd*, 237 F.3d 701 (6th Cir. 2001). The Court of Appeals reversed my grant of summary judgment for the defendant in an ADA case, finding a genuine issue of material fact as to whether the company "regarded" the Plaintiff as having a disability. Two other circuits later disagreed, *see Nese v. Julian Nordic Constr. Co.*, 405 F.3d 638, 642 (7th Cir. 2005) (citing *Rakity v. Dillon Companies, Inc.*, 302 F.3d 1152, 1165 (10th Cir. 2002)).

Cleveland Indians Baseball Co. v. United States, Case No. 1:96cv2240, 1999 U.S. Dist. LEXIS 1043 (N.D. Ohio Jan. 25, 1999), *aff'd*, 215 F.3d 1325 (6th Cir. 2000), *rev'd*, 532 U.S. 200 (2001). In this tax case, I granted summary judgment in favor of the plaintiff based on binding Sixth Circuit precedent, which required that "a settlement for back wages should not be allocated to the period when the employer finally pays but should be allocated to the periods when the regular wages were not paid as usual." I noted that, had I not been bound by Sixth Circuit precedent, my decision may well have been different. The Court of Appeals affirmed my application of its precedent, but the Supreme Court reversed that precedent.

NAACP v. City of Parma, Case No. 1:90cv1404, slip op. 176 (N.D. Ohio Mar. 30, 1998), *rev'd*, 263 F.3d 513 (6th Cir. 2001), *cert. denied*, 535 U.S. 971 (2002). A divided Court of Appeals reversed my standing-based dismissal of this municipal employment discrimination action, finding that one of seven individual plaintiffs had standing.

Scott v. Anderson, 58 F. Supp. 2d 767 (N.D. Ohio 1998), *aff'd in part, rev'd in part*, 209 F.3d 854 (6th Cir. 2000), *cert. denied*, 531 U.S. 1021 (2000). In *Scott*, I granted the petition for writ of habeas corpus on the basis that the state trial court's imposition of the death penalty was unconstitutional given the trial judge's improper instruction that the jurors had to unanimously recommend a life sentence. I denied the petition on all other grounds. The Court of Appeals affirmed my treatment of all but the unanimity issue, which it found to have been procedurally defaulted.

LSJ Inv. Co. v. O.L.D., Inc., Case No. 96cv1527, slip op. 45 (N.D. Ohio Aug. 11, 1997), *aff'd in part, rev'd in part*, 167 F.3d 320 (6th Cir. 1999). The Court of Appeals affirmed my entry of default judgment in this civil RICO case on all grounds except as to one individual defendant, finding that a lack of proper service prohibited judgment by default as to that defendant.

Ohio Hosp. Ass'n v. Shalala, 978 F. Supp. 735 (N.D. Ohio 1997), *aff'd in part, rev'd in part*, 201 F.3d 418 (6th Cir. 1999), *cert. denied*, 531 U.S. 1071 (2001). The Court of Appeals reversed in part my dismissal for lack of federal question jurisdiction, finding that a different interpretation of the Medicare Act gave rise to jurisdiction on some of the claims asserted.

Cehrs v. Ne. Ohio Alzheimer Research Ctr., 959 F. Supp. 441 (N.D. Ohio 1997), *aff'd in part, rev'd in part*, 155 F.3d 775 (6th Cir. 1998). The Court of Appeals reversed in part my grant of summary judgment to the defendant in this employment case, agreeing that summary judgment was appropriate on certain of plaintiff's claims, but finding that there was a genuine issue of fact as to whether the plaintiff's requested accommodation was reasonable under the ADA.

Blake v. Wright, Case No. 1:96cv2337, slip op. 19 (N.D. Ohio July 16, 1997), *aff'd in part, rev'd in part*, 179 F.3d 1003 (6th Cir. 1999), *cert. denied,* 528 U.S. 1136 (2000). The Court of Appeals affirmed in part and reversed in part my denial of qualified immunity to an ex-police chief who had used concealed equipment to eavesdrop on and had wiretapped his employees' conversations.

Weatherchem Corp. v. J.L. Clark, 937 F. Supp. 1262 (N.D. Ohio 1996), *aff'd in part, vacated in part*, 163 F.3d 1326 (Fed. Cir. 1998). The Federal Circuit affirmed my disposition of this patent infringement case in full but found that alternative findings I had made were unnecessary and should be vacated.

Ferro Corp. v. Garrison Indus., 927 F. Supp. 234 (N.D. Ohio 1996), *rev'd*, 142 F.3d 926 (6th Cir. 1998). The Court of Appeals reversed my order vacating an arbitrator's award, finding that a general choice of law clause was insufficient to establish that the parties intended to employ Ohio law with respect to the scope of an arbitrator's authority.

Douglas v. Argo-Tech Corp., Case No. 91cv1481, slip op. 55 (N.D. Ohio June 15, 1995), *rev'd*, 113 F.3d 67 (6th Cir. 1997). The Court of Appeals reversed my determination of whether plaintiff was an employee entitled to overtime wages under the Fair Labor Standards Act.

Avenue Grille v. Rootstown Twp., Case No. 5:94cv67, 1995 U.S. Dist. LEXIS 22132 (N.D. Ohio April 19, 1995), *vacated*, Case No. 95-3936, 1997 U.S. App. LEXIS 9689 (6th Cir. Apr. 30, 1997). The Court of Appeals ordered my post-judgment award of attorneys' fees reduced.

It has not been my practice to keep a list of opinions in which I was reversed. I generated my response to this question by reviewing the appellate history of my decisions included in the Lexis database. In addition to shepherdizing the subsequent history of my reported opinions, I searched for opinions from the Court of Appeals for the Sixth Circuit that mentioned my name as the district judge, thereby capturing reversals of certain unpublished slip opinions. Beyond this list, I do not recall any other reversals.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

I resolve most significant and/or dispositive motions via written opinion and order. Occasionally, in the interest of judicial efficiency in time-sensitive matters, I resolve such motions by oral rulings from the bench. I use non-document orders or short unpublished orders to address procedural issues, scheduling, discovery disputes and other administrative issues and motions. All orders are docketed when issued. Since approximately 2002, individual case dockets are available through the Court's Electronic Case Filing system. For cases that predate 2002, the dockets and copies of all orders entered in those cases are located in an off-site storage facility located in Chicago, Illinois.

It is my understanding that, in recent years, the Westlaw and Lexis databases identify and make available most substantive decisions from most federal courts. Before that, I sent opinions to be published only where I felt a significant legal issue had been addressed and decided, or where a party or interested organization requested publication.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

D'Ambrosio v. Bagley, Case No. 00cv2521, 2009 U.S. Dist. LEXIS 125483 (N.D. Ohio March 3, 2010)
Waller v. United States, Case No. 1:08cv936 2010 U.S. Dist. LEXIS 17269 (N.D. Ohio Feb. 26, 2010)
Balaban v. City of Cleveland, Case No. 1:07cv1366, 2010 U.S. Dist. LEXIS 10227 (N.D. Ohio Feb. 5, 2010)
Martinez v. Cuyahoga County Recorder's Office, Case No. 1:08cv2904, slip op. 36 (N.D. Ohio Sept. 16, 2009)
United States v. Euclid City Sch. Bd., 632 F. Supp. 2d 740 (N.D. Ohio 2009)
D'Ambrosio v. Bagley, 619 F. Supp. 2d 428 (N.D. Ohio 2009)
United States v. City of Euclid, 580 F. Supp. 2d 584 (N.D. Ohio 2008)
Project Vote v. Blackwell, 455 F. Supp. 2d 694 (N.D. Ohio 2008)
King v. Ambs, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting)
ACLU v. Brunner, Case No. 1:08cv145, slip op. 30 (N.D. Ohio Feb. 5, 2008)
Biomedical Patent Mgmt. Corp. v. State of California, Dept. of Health Servs., 505 F.3d 1328 (Fed. Cir. 2007)
United States v. Spry, 238 Fed. Appx. 142 (6th Cir. 2007)
United States v. Davis, Case No. 4:06cr386, slip op. 19 (N.D. Ohio Feb. 8, 2007)
D'Ambrosio v. Bagley, Case No. 1:00cv2521, 2006 U.S. Dist. LEXIS 12794 (N.D. Ohio Mar. 24, 2006)
Zerman v. City of Strongsville, Case No. 1:04cv2493, 2006 U.S. Dist. LEXIS 70503 (N.D. Ohio Sept. 28, 2006)
Girts v. Yanai, Case No. 1:02cv264, 2005 U.S. Dist. LEXIS 45611 (N.D. Ohio July 12, 2005), *rev'd*, 501 F.3d 743 (6th Cir. 2007), *cert. denied,* 129 S. Ct. 92 (U.S. 2008)
Parkwood Place Inc., Ltd. v. City of Brecksville, Case No. 1:03cv1744, ECF Doc. 25 (N.D. Ohio Apr. 28, 2004)

Am. Family Life Ins. Co. v. Hagan, 266 F. Supp. 2d 682 (N.D. Ohio 2002)
ACLU v. Ashbrook, 211 F. Supp. 2d 873 (N.D. Ohio 2002)
Williams v. City of Cleveland, Case No. 1:01cv1999, slip op. 16 (N.D. Ohio May 15, 2002)
United Church of Christ v. Gateway Economic Dev. Corp. of Greater Cleveland, Case No. 1:00cv661, slip op. 40 (N.D. Ohio Mar. 22, 2001)
Esparza v. Anderson, Case No. 3:96cv7434, slip op. 132 (N.D. Ohio Oct. 13, 2000), *aff'd sub nom. Esparza v. Mitchell*, 310 F.3d 414 (6th Cir. 2002), *rev'd*, 540 U.S. 12 (2003)
Threesome Entertainment v. Strittmather, 4 F. Supp. 2d 710 (N.D. Ohio 1998)
United States v. Allen, 106 F.3d 695 (6th Cir. 1997)
Rose v. Village of Peninsula, 875 F. Supp. 442 (N.D. Ohio 1995)
Schwitzgebel v. City of Strongsville, 898 F. Supp. 1208 (N.D. Ohio 1995)
Valot v. Southeast Local Sch. Dist., 957 F. Supp. 991 (N.D. Ohio 1995)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

<u>Opinions Authored, U.S. Court of Appeals for the Federal Circuit</u>

Biomedical Patent Mgmt. Corp. v. California Dept. of Health Servs., 505 F.3d 1328 (Fed. Cir. 2007) (dismissing lawsuit on sovereign immunity grounds and analyzing novel issue of Eleventh Amendment interpretation)
Ormco Corp. v. Align Tech., Inc., 498 F.3d 1307 (Fed. Cir. 2007) (O'Malley, J. dissenting) (emphasizing the importance of construing claim language in the patents at issue)

<u>Opinions Authored, U.S. Court of Appeals for the Sixth Circuit</u>

King v. Ambs, 519 F.3d 607 (6th Cir. 2008) (O'Malley, J., dissenting) (disagreeing with the majority on First Amendment grounds and emphasizing the appropriate standard of review)
Air Prods. & Controls, Inc. v. Safetech Int'l, Inc., 503 F.3d 544 (6th Cir. 2007) (reversing dismissal for lack of personal jurisdiction by finding that jurisdiction was authorized by state law and consistent with due process)
Jones v. Johanns, 264 Fed. Appx. 463 (6th Cir. 2007) (affirming summary judgment against Title VII retaliation plaintiff based on Supreme Court's *Burlington Northern* standard)
United States v. Spry, 238 Fed. Appx. 142 (6th Cir. 2007) (affirming criminal conviction and analyzing standard for delayed disclosure of *Brady* materials)
Renfro v. Ind. Mich. Power Co., 497 F.3d 573 (6th Cir. 2007) (dissenting, deferring to the District Court's careful determination that the plaintiff technical writers were not exempt from FLSA overtime regulations)
United States v. Leprich, 169 Fed. Appx. 926 (6th Cir. 2005) (affirming denial of defendant's motion to vacate order revoking his citizenship, denial of petition

for writ of habeas corpus, and BIA decision that he was removable from the U.S.)

Gale v. City of Tecumseh, 156 Fed. Appx. 801 (6th Cir. 2005) (affirming judgment on the verdict and denial of new trial against whistleblower retaliation plaintiff – finding no abuse of discretion and no judicial bias)

Stilley v. Bell, 155 Fed. Appx. 217 (6th Cir. 2005) (affirming denial of attorney's admission to Western District of Michigan Bar based on past violations of Arkansas Rules of Professional Conduct)

Diallo v. Gonzales, 140 Fed. Appx. 612 (6th Cir. 2005) (O'Malley, J., dissenting) (finding that review of final order should be granted because the State Department Country Report did not contain sufficient evidence of changed country conditions to overcome statutory presumption of future persecution)

Calvert v. Firstar Fin., Inc., 409 F.3d 286 (6th Cir. 2005) (reversing judgment against plaintiff, finding that the defendant acted arbitrarily in denying disability benefits in violation of ERISA)

Wheaton v. N. Oakland Med. Ctr., 130 Fed. Appx. 773 (6th Cir. 2005) (affirming in part, reversing in part, and remanding for new trial in an employment discrimination case)

Westfield Ins. Co. v. Appleton, 132 Fed. Appx. 567 (6th Cir. 2005) (affirming summary judgment that plaintiff insurance company was not liable under defendant's homeowners insurance policy)

Wausau Underwriters Ins. Co. v. Vulcan Dev., Inc., 323 F.3d 396 (6th Cir. 2003) (affirming summary judgment for plaintiff on breach of contract claim and dismissal of defendant's tortious interference claim)

Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Michigan Gaming Control Bd., 276 F.3d 876 (6th Cir. 2002) (O'Malley, J., dissenting) (assessing the constitutionality of a Detroit ordinance governing casino gambling licenses)

Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001) (O'Malley, J., dissenting) (finding a lack of jurisdiction and that the District Court correctly concluded that material facts relevant to qualified immunity were in dispute)

United States v. Crozier, 259 F.3d 503 (6th Cir. 2001) (O'Malley, J., concurring) (disagreeing with the majority's assessment that the defendant's request for continuance did not waive his speedy trial rights)

Ceckitti v. City of Columbus, 14 Fed. Appx. 512 (6th Cir. 2001) (affirming summary judgment that plaintiff failed to establish *prima facie* case of retaliation harassment)

Miller v. Alldata Corp., 14 Fed. Appx. 457 (6th Cir. 2001) (affirming District Court's resolution in favor of gender discrimination plaintiff)

United States v. Pettygrue, 11 Fed. Appx. 493 (6th Cir. 2001) (affirming denial of defendant's motion to withdraw plea based on lack of jurisdiction)

Curry v. Scott, 249 F.3d 493 (6th Cir. 2001)

United States v. Hicks, Case No. 99-1212, 2000 U.S. App. LEXIS 27627 (6th Cir. Oct. 26, 2000) (affirming denial of defendant's motion to withdraw plea)

Stupak-Thrall v. Glickman, 226 F.3d 467 (6th Cir. 2000) (narrowing the circumstances in the Sixth Circuit where intervention as of right will be allowed)

Atchley v. RK Co., 224 F.3d 537 (6th Cir. 2000) (examining the contours of a claim of procurement of breach of contract)

United States v. Rich, Case No. 98-1032 2000 U.S. App. LEXIS 15807 (6th Cir. June 29, 2000) (affirming defendant's jury trial conviction)

UPS v. NLRB, 228 F.3d 772 (6th Cir. 2000) (affirming NLRB's decision that defendant's conduct constituted unfair labor practices)

Hughes v. Vanderbilt Univ., 215 F.3d 543 (6th Cir. 2000) (concurring, that under the narrow circumstances presented, publicity gave plaintiff constructive knowledge of cause of action to trigger statute of limitations)

United States v. Waldon, 206 F.3d 597 (6th Cir. 2000) (delineating when a mistrial must be declared if a juror views the criminal defendant wearing shackles)

United States v. Arnett, Case No. 97-6092, 1999 U.S. App. LEXIS 27415 (6th Cir. Oct. 22, 1999) (affirming conviction, but vacating sentence based on Supreme Court's *Jones v. United States* opinion)

United States v. Gantley, 172 F.3d 422 (6th Cir. 1999) (discussing, in the context of double jeopardy, when a criminal defendant's consent to a mistrial may be implied)

United States v. Sanchez-Mendoza, Case No. 97-6084, 1999 U.S. App. LEXIS 5267 (6th Cir. 1999)

United States v. Allen, 106 F.3d 695 (6th Cir. 1997) (upholding the warrantless search of a hotel room under specific circumstances)

<u>Opinions Joined, U.S. Court of Appeals for the Federal Circuit</u>

Monsanto Co. v. Syngenta Seeds, Inc., 503 F.3d 1352 (Fed. Cir. 2007)
Byrne v. Black & Decker Corp., 235 Fed. Appx. 741 (Fed. Cir. 2007)
Pods, Inc. v. Porta Stor, Inc., 484 F.3d 1359 (Fed. Cir. 2007)
Simmons v. SBA, 475 F.3d 1372 (Fed. Cir. 2007)
Patterson v. United States, 218 Fed. Appx. 987 (Fed. Cir. 2007)
In re Levine, 217 Fed. Appx. 957 (Fed. Cir. 2007)

<u>Opinions Joined, U.S. Court of Appeals for the Sixth Circuit</u>

United States v. Choate, Case No. 06-5213, 2007 U.S. App. LEXIS 22935 (6th Cir. Sept. 25, 2007)
United States v. Burns, 498 F.3d 578 (6th Cir. 2007)
Speedy Mulch LLC v. Gadd, 243 Fed. Appx. 81 (6th Cir. 2007)
Beard v. Whitmore Lake Sch. Dist., 244 Fed. Appx. 607 (6th Cir. 2007)
Ka v. Gonzales, 236 Fed. Appx. 189 (6th Cir. 2007)
Potter v. Comm'r of Soc. Sec., 223 Fed. Appx. 458 (6th Cir. 2007)
Craig v. White, 227 Fed. Appx. 480 (6th Cir. 2007)
Extendicare Health Servs. v. NLRB, 182 Fed. Appx. 412 (6th Cir. 2006)

Cain v. Wells Fargo Bank, N.A., 423 F.3d 617 (6th Cir. 2005)
United States v. Namer, 149 Fed. Appx. 385 (6th Cir. 2005)
Atria v. Vanderbilt Univ., 142 Fed. Appx. 246 (6th Cir. 2005)
Lane v. Metro. Police Dep't, 134 Fed. Appx. 919 (6th Cir. 2005)
United States v. Henderson, 135 Fed. Appx. 858 (6th Cir. 2005)
United States v. Canon, 141 Fed. Appx. 398 (6th Cir. 2005)
Frazier Indus., LLC v. General Fasteners Co., 137 Fed. Appx. 723 (6th Cir. 2005)
Carroll v. United Compucred Collections, Inc., 399 F.3d 620 (6th Cir. 2005)
United States v. Holz, 118 Fed. Appx. 928 (6th Cir. 2004)
Walker v. Carlton, 114 Fed. Appx. 687 (6th Cir. 2004)
Johnson v. UPS, Case No. 03-5620, 2004 U.S. App. LEXIS 23795 (6th Cir. 2004)
Hernandez v. Ashcroft, 114 Fed. Appx. 183 (6th Cir. 2004)
United States v. Foley, 111 Fed. Appx. 840 (6th Cir. 2004)
Valentine-Johnson v. Roche, 386 F.3d 800 (6th Cir. 2004)
Ormanci v. Ashcroft, 110 Fed. Appx. 486 (6th Cir. 2004)
Amaral v. Am. Sch. of Correspondence, 107 Fed. Appx. 497 (6th Cir. 2004)
United States v. Coomes, 106 Fed. Appx. 967 (6th Cir. 2004)
Pasho v. Ashcroft, 104 Fed. Appx. 560 (6th Cir. 2004)
Okoro v. Hemingway, 104 Fed. Appx. 558 (6th Cir. 2004)
United States v. Tribble, 106 Fed. Appx. 392 (6th Cir. 2004)
Jones v. Douglas, 108 Fed. Appx. 254 (6th Cir. 2004)
United States v. Patterson, Case No. 03-6051, 2004 U.S. App. LEXIS 16343 (6th Cir. Aug. 5, 2004), *vacated*, 107 Fed. Appx. 600 (6th Cir. 2004)
Jones v. Bock, 107 Fed. Appx. 480 (6th Cir. 2004)
Banner v. City of Flint, 99 Fed. Appx. 29 (6th Cir. 2004)
United States v. Westenfelder, 70 Fed. Appx. 302 (6th Cir. 2003)
United States v. Foster, 65 Fed. Appx. 41 (6th Cir. 2003)
United States v. Lockhart, Case No. 01-6445, 2003 U.S. App. LEXIS 7424 (6th Cir. April 16, 2003)
In re Smothers, 322 F.3d 438 (6th Cir. 2003)
United States v. Willis, 59 Fed. Appx. 40 (6th Cir. 2003)
Ziemba v. Consol. Coal Co., 56 Fed. Appx. 232 (6th Cir. 2003)
United States v. Christian, 59 Fed. Appx. 44 (6th Cir. 2003)
Americorp Fin., Inc. v. Zelch, 61 Fed. Appx. 925 (6th Cir. 2003)
Sec'y of Labor v. 3RE.com, 317 F.3d 534 (6th Cir. 2003)
United States v. Gregory, 315 F.3d 637 (6th Cir. 2003)
Wash. v. McGinnis, 53 Fed. Appx. 355 (6th Cir. 2002)
Hoffman v. Jones, 53 Fed. Appx. 342 (6th Cir. 2002)
United States v. Booth, 53 Fed. Appx. 756 (6th Cir. 2002)
Rodgers v. Johnson, 56 Fed. Appx. 633 (6th Cir. 2002)
Smith v. Caruso, 53 Fed. Appx. 335 (6th Cir. 2002)
United States v. McCoy, 53 Fed. Appx. 753 (6th Cir. 2002)
United States v. Raines, 54 Fed. Appx. 598 (6th Cir. 2002)
Stephens v. DaimlerChrysler Corp., 52 Fed. Appx. 817 (6th Cir. 2002)
Denham v. McQuillan, 52 Fed. Appx. 815 (6th Cir. 2002)

Turner v. United States, 53 Fed. Appx. 327 (6th Cir. 2002)
McMahon v. Rebound Care, 54 Fed. Appx. 187 (6th Cir. 2002)
Clemons v. Cook, 52 Fed. Appx. 762 (6th Cir. 2002)
Lamb v. Bumpus, 52 Fed. Appx. 740 (6th Cir. 2002)
United States v. Affini, 52 Fed. Appx. 754 (6th Cir. 2002)
Bulls v. Jones, 274 F.3d 329 (6th Cir. 2001)
Magana v. Hofbauer, 263 F.3d 542 (6th Cir. 2001)
Ken-N.K., Inc. v. Vernon Twp., 18 Fed. Appx. 319 (6th Cir. 2001)
Hampshire v. Henderson, 14 Fed. Appx. 397 (6th Cir. 2001)
United States v. Hagen, 11 Fed. Appx. 578 (6th Cir. 2001)
United States v. Underwood, 11 Fed. Appx. 581 (6th Cir. 2001)
Coal Creek Mining & Mfg. Co. v. James River Coal Serv. Co., 11 Fed. Appx. 548 (6th Cir. 2001)
Merritt v. Beth Energy Mines, Inc., 16 Fed. Appx. 300 (6th Cir. 2001)
United States v. Rankin, 11 Fed. Appx. 496 (6th Cir. 2001)
United States v. Jewell, 16 Fed. Appx. 295 (6th Cir. 2001)
Jones v. Seabold, 11 Fed. Appx. 486 (6th Cir. 2001)
Anthony v. United Methodist Publ. House, 8 Fed. Appx. 480 (6th Cir. 2001)
United States v. Buchanan, 8 Fed. Appx. 468 (6th Cir. 2001)
Turner v. Dewitt, 16 Fed. Appx. 291 (6th Cir. 2001)
Ousley v. Dir., OWCP, 8 Fed. Appx. 447 (6th Cir. 2001)
Partee v. Stegall, 8 Fed. Appx. 466 (6th Cir. 2001)
Bass v. Runyon, Case No. 98-5785, 2000 U.S. App. LEXIS 26773 (6th Cir. Oct. 17, 2000)
Thompson v. Williamson County, 219 F.3d 555 (6th Cir. 2000)
Rockwell v. Yukins, 217 F.3d 421 (6th Cir. 2000)
Duffy v. Ford Motor Co., 218 F.3d 623 (6th Cir. 2000)
Burress v. Michigan Dep't of Corr., Case No. 99-1422, 2000 U.S. App. LEXIS 14082 (6th Cir. June 6, 2000)
United States v. Adams, 214 F.3d 724 (6th Cir. 2000)
Fair v. Franklin County, Case No. 98-4237, 2000 U.S. App. LEXIS 11627 (6th Cir. May 11, 2000)
United States v. Trobaugh, Case No. 98-6277, 2000 U.S. App. LEXIS 11695 (6th Cir. May 11, 2000)
Crown Serv. Plaza Partners v. City of Rochester Hills, Case No. 98-1581, 2000 U.S. App. LEXIS 9935 (6th Cir. May 8, 2000)
United States v. Real Prop. 35555 Little Mack, Case No. 98-1069, 2000 U.S. App. LEXIS 9930 (6th Cir. May 5, 2000)
United States v. Whitman, 209 F.3d 619 (6th Cir. 2000)
Valentine v. Roff, Case No. 99-5287, 2000 U.S. App. LEXIS 4964 (6th Cir. March 20, 2000)
United States v. Anderson, Case No. 99-5241, 2000 U.S. App. LEXIS 4898 (6th Cir. March 17, 2000)
Sanders v. Numberger, No. 98-4427, 2000 U.S. App. LEXIS 4897 (6th Cir. March 17, 2000)

Erdman v. Michigan, Case No. 98-2366, 2000 U.S. App. LEXIS 4894 (6th Cir. March 17, 2000)
Avery v. Nicol, Case No. 99-3423, 2000 U.S. App. LEXIS 4127 (6th Cir. March 10, 2000)
Jacobs v. Wilkinson, Case No. 99-3520, 2000 U.S. App. LEXIS 4028 (6th Cir. March 9, 2000)
Williamson v. Beeler, Case No. 98-5466, 2000 U.S. App. LEXIS 4026 (6th Cir. March 9, 2000)
Covington v. Knox County Sch. Sys., 205 F.3d 912 (6th Cir. 2000)
United States v. Miller, Case No. 98-6559, 2000 U.S. App. LEXIS 3561 (6th Cir. March 3, 2000)
United States v. Johnson, Case No. 98-2212, 2000 U.S. App. LEXIS 2475 (6th Cir. Feb 16, 2000)
Shepherd v. Dana Corp., Case No. 98-1770, 2000 U.S. App. LEXIS 2269 (6th Cir. Feb. 10, 2000)
Nowicki v. Bruff, Case No. 98-2127, 1999 U.S. App. LEXIS 34009 (6th Cir. Dec. 17, 1999)
Hale v. Schaefer, Case No. 99-1100, 1999 U.S. App. LEXIS 34065 (6th Cir. Dec. 19, 1999)
Abdullah v. Kennedy, Case No. 98-6699, 1999 U.S. App. LEXIS 34029 (6th Cir. Dec. 16, 1999)
Helfrich v. Metal Container Corp., Case No. 99-3315, 1999 U.S. App. LEXIS 34023 (6th Cir. Dec. 16, 1999)
Jones v. Schmaker, Case No. 99-1187, 1999 U.S. App. LEXIS 34454 (6th Cir. Dec. 15, 1999)
Collins v. G/H Contr. Co., Case No. 99-1260, 1999 U.S. App. LEXIS 32810 (6th Cir. Dec. 14, 1999)
Aldridge v. Cont'l Gen. Tire, Inc., Case No. 98-6658, 1999 U.S. App. LEXIS 32756 (6th Cir. Dec. 14, 1999)
Crutchfield v. Aerospace Ctr. Support, Case No. 98-6105, 1999 U.S. App. LEXIS 32765 (6th Cir. Dec. 14, 1999)
United States v. Self, Case No. 99-5333, 1999 U.S. App. LEXIS 32808 (6th Cir. Dec. 14, 1999)
Thomasville Furniture Indus. v. Elder-Beerman Stores Corp., Case No. 99-4126, 1999 U.S. App. LEXIS 32812 (6th Cir. Dec. 14, 1999)
Wright v. United States, 182 F.3d 458 (6th Cir. 1999)
Roeder v. Am. Postal Workers Union, 180 F.3d 733 (6th Cir. 1999)
Sparton Engineered Prods., Inc. v. Cable Control Techs., Inc., Case No. 97-1995, 1999 U.S. App. LEXIS 2283 (6th Cir. Feb. 10, 1999)
United States v. Thomas, 167 F.3d 299 (6th Cir. 1999)
United States v. McClellan, 164 F.3d 308 (6th Cir. 1999)
Quigley v. United States, Case No. 97-1364, 1998 U.S. App. LEXIS 33149 (6th Cir. Dec. 29, 1998)
Lombardo v. Airelect, Inc., Case No. 97-1586, 1998 U.S. App. LEXIS 33132 (6th Cir. Dec. 29, 1998)

United States v. Riggins, Case No. 95-5552, 1997 U.S. App. LEXIS 2752 (6th Cir. Feb. 13, 1997)
Hunt v. Applegate, Case No. 95-1062, 1996 U.S. App. LEXIS 34348 (6th Cir. Dec. 31, 1996)
United States v. Thompson, Case No. 95-5881, 1996 U.S. App. LEXIS 22287 (6th Cir. July 30, 1996)
USACO Coal Co. v. Carbomin Energy, Case No. 95-5390, 1996 U.S. App. LEXIS 14467 (6th Cir. May 8, 1996)
Grasso Prod. v. BMO Fin., 83 F.3d 140 (6th Cir. 1996)
Leaphart v. Peterson, Case No. 95-1925, 1996 U.S. App. LEXIS 12434 (6th Cir. April 17, 1996)
United States v. Little, Case No. 95-5753, 1996 U.S. App. LEXIS 11625 (6th Cir. April 17, 1996)
Mason v. United States, Case No. 95-6122, 1996 U.S. App. LEXIS 12436 (6th Cir. April 11, 1996)
Anderson v. United States, Case No. 95-3905, 1996 U.S. App. LEXIS 12441 (6th Cir. 1996)
White v. Arch on the N. Fork, Inc., Case No. 95-4062, 1996 U.S. App. LEXIS 12440 (6th Cir. April 11, 1996)
McCown v. Harmon, Case No. 95-6081, 1996 U.S. App. LEXIS 12437 (6th Cir. April 11, 1996)
Lacey v. Michigan Dep't of Corr., Case No. 95-1625, 1996 U.S. App. LEXIS 12178 (6th Cir. April 11, 1996)
United States v. Brigance, Case No: 95-6067, 1996 U.S. App. LEXIS 12180 (6th Cir. April 10, 1996)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

    a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

    b. a brief description of the asserted conflict of interest or other ground for recusal;

    c. the procedure you followed in determining whether or not to recuse yourself;

    d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I assess the propriety of recusal in all cases by reference to governing statutory and ethical rules or canons, including advisory opinions relating thereto. Where I have been unclear as to the obligations imposed by the governing criteria, I have sought guidance from the General Counsel of the Administrative Office of the United States Courts and/or the United States Judicial Conference Committee on Codes of Conduct for United States Judges.

Our Court's automatic recusal system assists judges in their effort to comply with these governing standards. Under that system, the Clerk's Office and my individual courtroom deputy maintain lists of persons and entities whose involvement in a case triggers my recusal without action on my part. The lists, which I update regularly, include entities in which my spouse and I have a financial interest and attorneys with whom I have a familial or other disqualifying personal relationship. Earlier in my service as a judge, it also included my former law firm.

Criminal defendants occasionally have requested via a letter addressed directly to the Court that I recuse myself. I read these letters and consider the asserted bases for recusal. I have never, however, recused myself from a case based on this sort of request from a criminal defendant. I have not retained any list of such cases.

In addition, based on my recollection and search of my files, I have identified the following cases in which I recused or ruled on a motion or request to recuse:

Hines v. Chandra, 06cv2233 (2009): Plaintiff *pro se* questioned my fairness and asserted that I was biased against him after I issued an order granting summary judgment against him in which I noted that he had been disbarred. I denied his recusal motion based on the applicable legal standard.

United States v. Zaidi, 5:08cr187 (N.D. Ohio 2009): The *pro se* Defendant questioned my fairness and accused me of conspiring against him with the Government. Although I ultimately transferred the case to another Judge for trial for administrative reasons, I found the Defendant's allegations to be baseless and did not recuse myself.

ACLU v. Ashbrook, 211 F. Supp. 2d 873 (N.D. Ohio 2008): A Defendant serving as a state court judge filed a motion to disqualify based on the contention that, in the process of inquiring about scheduling issues, my then-law clerk had an *ex parte* conversation with a party. I denied the motion and retained the case, finding that the communications at issue related to purely procedural matters. Later, the defendant judge sent me a letter discussing his motives. Thereafter, when a renewed action was filed against the same parties, I recused myself *sua sponte* because of the out-of-court communication initiated by the state court judge. *See ACLU v. DeWeese*, Case No. 08cv2372 (N.D. Ohio 2008).

Miller v. Simone, 03cv2357, slip op. 129 (Oct. 30, 2006): In a written opinion, I granted defendant's motion to recuse on the grounds that she had retained counsel from Jones Day, where my brother is a partner.

United States v. Goist, 4:03cv1048 (2005): I recused myself *sua sponte* in a civil suit when the plaintiff had been a criminal defendant who had appeared before me, and his civil suit attempted to place a lien on my property and asserted claims against the prosecutor in his criminal case.

DirectTV, Inc. v. Katakos, 03cv2403 (2003): I recused myself *sua sponte* because a relative of one of my staff members was a named defendant in a related case.

United States v. Millhouse, 96cr294 (1998): I recused myself post-verdict after receiving a credible threat to my physical well-being from the Defendant. Another judicial officer handled the sentencing proceeding.

15. **Public Office, Political Activities and Affiliations**:

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

    I have not held public office other than judicial office. I have not had unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

    I provided a limited amount of volunteer policy support to Lee Fisher's reelection campaign for Attorney General of Ohio in 1994.

16. **Legal Career:** Answer each part separately.

    a. Describe chronologically your law practice and legal experience after graduation from law school including:

        i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

        From 1982 to 1983 I served as a law clerk to the Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit.

ii. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1982
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Summer Associate

1983-1984
Jones Day (Formerly Jones, Day, Reavis & Pogue)
901 Lakeside Ave.
Cleveland, Ohio 44114
Associate

1985-1991
Porter, Wright, Morris & Arthur, LLP
Huntington Building
925 Euclid Ave., 17th Floor
Cleveland, Ohio 44115
Partner (1991)
Associate (1985-1991)

1991-1994
Office of the Ohio Attorney General
30 East Broad St., 17th Floor
Columbus, Ohio 43266-0410
First Assistant Attorney General and Chief of Staff (1992-1994)
Chief Counsel (1991-1992)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Other than my role in facilitating alternative paths toward resolution of matters that come before me as a district court judge, I cannot recall serving as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1982 to 1983, I was a judicial law clerk, during which time I conducted legal research and drafted materials for Judge Jones.

From 1983 to 1991, I was a civil litigator in private practice.

From 1991 to 1993, I was Chief Counsel to the Ohio Attorney General. I personally litigated major cases on federal and state constitutional questions in both federal and state court, at the trial and appellate levels. I supervised all matters litigated by the 350 lawyers in the Office, including on questions relating to sovereign immunity, reapportionment, election law, environmental law, administrative law, criminal law, eminent domain, the state's constitutional spending and taxing authority, and state court jurisdictional issues, among others.

From 1993 to 1994, I was First Assistant and Chief of Staff to the Ohio Attorney General. I was responsible for oversight of all aspects of the office, including the legal, law enforcement, legislative, communications, and collections operations and the human resources and administrative aspects of the office, which employed in excess of 1,100 persons. I spent a significant amount of time in this role spearheading law enforcement-related initiatives and concentrating on improving the management and professionalism of the office.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While in private practice (1983-1991), my typical clients were large corporations (including several Fortune 500 companies) as well as medium and small businesses. My early work was primarily in complex corporate litigation and particularly intellectual property litigation. For several years, I spent a substantial amount of my time as special counsel to the State of Ohio in connection with the Savings and Loans (S&L) Collapse. After resolution of the S&L cases, in addition to my work for large corporations, I also began representing small and mid-sized businesses, specifically in connection with shareholder disputes and cases involving trade secrets, trademarks, restrictive covenants, and covenants not to compete. I also did some First Amendment and products liability litigation. Beginning in 1990, I spent most of my time on a complex securities fraud case. My last major case in private practice was as co-counsel representing Lee Fisher in an election contest filed in connection with his 1990 election to Attorney General of the State of Ohio.

While serving in the Office of the Ohio Attorney General, my clients were the State of Ohio and its agencies and officers, including the Governor and other elected public officials.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

   During my time as a practicing attorney, I tried a number of cases and otherwise appeared in court occasionally.

   i. Indicate the percentage of your practice in:
      1. federal courts: 65%
      2. state courts of record: 35%
      3. other courts:
      4. administrative agencies:

   ii. Indicate the percentage of your practice in:
      1. civil proceedings: 95%
      2. criminal proceedings: 5%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I estimate that I was counsel in 15-20 cases tried to verdict or judgment. In approximately six to eight of those cases I functioned as either sole or lead counsel, and in the others I participated either as co-counsel or associate counsel.

   i. What percentage of these trials were:
      1. jury: 15%
      2. non-jury: 85%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

   During my tenure at the Ohio Attorney General's Office, I participated in and supervised the petition for certiorari filed in the Supreme Court of the United States in connection with Ohio's Ethnic Intimidation/Penalty Enhancement Law. I also helped to draft the amicus brief filed on behalf of all states in support of the State of Wisconsin's successful effort to have its ethnic intimidation statute declared constitutional. While in private practice, I participated in drafting oppositions to petitions for certiorari in a handful of cases.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;

   b. the name of the court and the name of the judge or judges before whom the case was litigated; and

   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re Election of November 6, 1990 for the Office of Attorney General of Ohio*, 62 Ohio St. 3d 1 (1991).

Paul E. Pfeiffer, Attorney General Lee Fisher's opponent in the 1990 election for the office of the Attorney General in the State of Ohio, challenged the election of Attorney General Fisher, claiming that alleged irregularities existed in the election process that rendered the election defective.

Because election contests in Ohio are direct actions before the Supreme Court of Ohio, the matter was litigated in a unique fashion. The parties submitted all factual evidence to the court through trial depositions, affidavits, exhibits and/or stipulations of fact. The depositions of more than forty witnesses were taken and submitted to the court and those depositions generated more than 150 exhibits for the court's consideration. A lengthy brief synthesized and summarized this evidence for the court, and delineated how those facts, as applied to controlling law, supported Lee Fisher's election. The election contest commenced during the last week of December 1990 and the Supreme Court heard oral argument on all of the parties' submissions on February 20, 1990. This compressed schedule necessitated expedited and sometimes around the clock trial preparation.

In this matter, I sat second chair to Richard M. Markus, representing Attorney General Lee Fisher. I conducted all of the research and drafted the briefs. I also assembled the factual record for submission to the court and played a significant role in devising and implementing litigation strategy decisions. I participated in outlining and preparing the argument to the Ohio Supreme Court, which Richard Markus made. The Court ruled in favor of Attorney General Fisher.

Co-counsel: Judge Richard M. Markus, 3903 North Valley Drive, Fairview Park, OH 44126, (440) 356-2728; Steven Kaufman, Thompson Hine LLP, 3900 Key Center, 127 Public Square, Cleveland OH 44114, (216) 566-5528. Opposing counsel: William C. Wilkinson, Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus OH 43215, (614) 469-3266

2. *Gordon Square Restaurant & Lounge, Inc. v. Sergeant Roger Dennerll, et al.*, Case No. C86-1883, N.D. Ohio, August, 1990 (Judge Alvin I. Krenzler)

I represented plaintiffs *pro bono* in their action against two police officers and the City of Cleveland, under 42 U.S.C. § 1983. A jury heard the evidence for approximately ten days in the Honorable Alvin I. Krenzler's courtroom.

The trial involved allegations that two City of Cleveland vice officers who arrested the two plaintiffs for prostitution and testified against them in a criminal trial on those charges, had (1) arrested plaintiffs without probable cause to do so; (2) engaged in excessive use of force; (3) failed to provide sufficient medical attention to the plaintiffs when needed; and (4) intentionally inflicted emotional distress upon the plaintiffs by perjuring themselves in the course of the plaintiffs' criminal trial. The jury returned a verdict on all counts against the two police officers, crediting my clients' claims and finding the defendants liable under all theories of liability. Prior to subsequent trial phases on municipal liability and on damages, the case settled on terms favorable to the plaintiffs. I served as the lead lawyer for plaintiffs. An associate from my former law firm assisted.

Co-counsel: Robert Mann, Last known phone number: (216) 766-5081. Opposing counsel: Kathleen Martin, Last known phone number: (216) 664-2800

3. *Newman v. Voinovich*, Case No. C2-92-248, S.D. Ohio (Judge George Smith); Appeal Case No. CA92-3345, United States Court of Appeals for the Sixth Circuit.

As primary counsel, I represented then-Governor George V. Voinovich in connection with plaintiff's challenge to the constitutionality of Governor Voinovich's system for appointing persons to fill in-term judicial vacancies in the State of Ohio. The plaintiff claimed that the trilogy of cases issued by the Supreme Court of the United States addressing the propriety of patronage hiring and discharges (*Elrod, Branti, and Rutan*) mandated the conclusion that the Governor's appointment practices violated the plaintiff's and other would-be candidates' First Amendment rights of expression and association. Plaintiff also asserted violations of the Voting Rights Act.

The court ordered expedited discovery, followed by a hearing, on plaintiff's request for a preliminary injunction. The plaintiff sought to prohibit the Governor from making further judicial appointments in the State of Ohio unless and until the Governor instituted a bipartisan screening process for purposes of choosing judicial candidates.

Following the hearing, which included testimony of numerous fact and expert witnesses, the court entered judgment in favor of Governor Voinovich and dismissed plaintiff's complaint on the merits *sua sponte*. Plaintiff appealed. I argued the appeal in the Sixth Circuit, again representing Governor Voinovich as the appellee. The Court of Appeals ruled in the Governor's favor and the Supreme Court of the United States denied certiorari.

Co-counsel: Patrick A. Devine, Schottenstein, Zox & Dunn, 250 West Street, Columbus, OH 43215, (614) 462-2238. Opposing counsel: Bruce Inglis Petrie, 2787 Walsh Rd., Cincinnati, OH 45208-3428.

4. *Preterm Cleveland v. Voinovich,* Common Pleas Case No. 92CV-01-528 (Judge Guy Reese); Ohio Tenth District Court of Appeals Case No. 92-AP 791

In this matter, I represented defendants then-Governor George V. Voinovich, the Ohio Department of Health, and then-Attorney General Lee Fisher. Plaintiffs challenged the constitutionality of House Bill 108, the Ohio Law requiring physician-driven informed consent and a 24-hour waiting period prior to the performance of an abortion in the State of Ohio. The trial court conducted a hearing on plaintiffs' request for a preliminary injunction and received evidence regarding plaintiffs' claim that House Bill 108 violated the plaintiff's privacy and First Amendment rights under the United States Constitution. In response, the State argued that the statutes were constitutional under the standard adopted by the Third Circuit in *Planned Parenthood v. Casey,* 947 F.2d 682 (3d Cir. 1991). The court consolidated plaintiffs' federal claims with the trial on the merits of plaintiffs' state law claims. After trial, the trial court declared House Bill 108 unconstitutional under both the United States and Ohio Constitutions.

The state appealed the matter to the Tenth District Court of Appeals and in October 1992, I argued the appeal on behalf of the State. The Tenth District reversed the trial court and ruled in the State's favor, relying on the undue burden standard, which had then been adopted by the Supreme Court of the United States in *Planned Parenthood v. Casey,* 505 U.S. 833 (1992). The Supreme Court of Ohio thereafter refused to hear the matter.

Co-counsel: Andrew I. Sutter, Assistant General Counsel, JP Morgan Chase & Co., 1111 Polaris Parkway, Columbus, OH 43240, (614) 248-6478; Andrew Steven Bergman, Deputy Dir. for Legal Affairs, State of Ohio, Ohio EPA, Lazarus Government Center, 50 W Town St., Columbus, OH 43215, (614) 644-2782. Opposing Counsel: Kevin F. O'Neill, Associate Professor of Law, Cleveland - Marshall College of Law, Cleveland State University, 1801 Euclid Avenue, Cleveland, OH 44115-2223, (216) 687-5282.

5. *State ex rel, Cincinnati Post v. the Second & Sixth District Courts of Appeal,* Case No. 91-2552, decided December 14, 1992, 65 Ohio St. 3d 378 (before the Ohio Supreme Court)

This was a direct action in the Supreme Court of Ohio seeking a writ of mandamus against the Second and Sixth District Courts of Appeals. The *Cincinnati Post* sought the production of records relating to the Courts' consideration of minors' requests to bypass the statutory obligation to inform their parents or guardians prior to obtaining an abortion in the State of Ohio. I was lead counsel representing the Courts of Appeals. I argued to the Supreme Court that the importance of protecting the anonymity of minors involved in the judicial bypass proceedings outweighed petitioner's claimed right to the documents.

The Supreme Court of Ohio ruled in favor of the newspaper, concluding that the State's interest in protecting the anonymity of the minor was not sufficient to override the First Amendment interest in free access to the Courts. The Supreme Court further found that the State should attempt to protect the anonymity of the minor through more narrowly drawn means.

Co-counsel: Andrew I. Sutter, Assistant General Counsel, JP Morgan Chase & Co., 1111 Polaris Parkway, Columbus, OH 43240, (614) 248-6478. Opposing counsel: David L. Marburger, Partner, Baker & Hostetler LLP, 3200 National City Center, Cleveland, OH 44114, (216) 621-0200.

6. *Diamond Co. v. Gentry Acquistion Corp.,* Case No. 137875, Cuy. Cty. Common Pleas, 48 Ohio Misc. 2d 1, 531 N.E.2d 777 (1988) (Judge James J. McMonagle)

In this case, I was the lead lawyer defending Gentry Clothiers. Diamonds Men's Stores claimed that Gentry engaged in false advertising by asserting that it sold top quality clothing at "about half" the price of regular-priced men's retailers. The court conducted a several day trial on plaintiff's request for a preliminary injunction.

After the preliminary injunction hearing, the court found that the plaintiff: (1) was not entitled to a preliminary injunction; and (2) had very little likelihood of ever succeeding on the merits of its underlying claims against Gentry. Judge James J. McMonagle issued a written opinion delineating his findings. Sometime following the court's ruling on the preliminary injunction, the parties settled their dispute.

Co-counsel: Hugh E. McKay, Partner, Porter, Wright, Morris & Arthur, LLP, 925 Euclid Ave., Suite 1700, Cleveland, OH 44115, (216) 443-2580. Opposing counsel: Jeffrey H. Friedman, Partner, Friedman, Domiano & Smith Co., L.P.A., 55 Public Square, Suite 1055, Cleveland, OH 44113, (216) 586-5520.

7. *Pumper v. Kawasaki,* Case No. 75730, Cuy. Cty. Common Pleas (Judge George McMonagle)

In this products liability case, I sat second chair in the defense of a manufacturer. Plaintiff claimed that a three-wheeled all-terrain vehicle produced by Kawasaki was defectively and/or negligently designed, that it was negligently manufactured, and that Kawasaki had failed properly to warn plaintiff regarding the use of the vehicle. In April 1988, following approximately eight days of trial, the jury returned a verdict in favor of the defendant Kawasaki.

Co-Counsel: Terrance M. Miller, Huntington Center, 41 South High Street, Columbus, OH 43215-6194, (614) 227-2142. Opposing Counsel: Andrew P. Krembs, Owner, Andrew P. Krembs & Associates Co. LPA, 55 Public Square, Suite 1700, Cleveland, OH 44113, (216) 875-7500.

8. *Harris v. Arthur Andersen & Co.*, Ohio Ct. of Claims

This action against Arthur Andersen & Co. was one of the most substantial aspects of the *Home State* litigation in which my firm, Porter, Wright, Morris & Arthur, acted as special counsel to the Superintendent of Savings & Loans and the State of Ohio. The State alleged, in the name of the Superintendent of Banks and on behalf of the depositors and creditors of Home State Savings Bank, that Arthur Andersen negligently discharged its professional functions as the auditors of Home State Savings Bank, thus contributing to its collapse. Specifically, the State alleged that Arthur Andersen failed to address the dangers inherent in the extensive reverse repurchase transactions in which Home State had engaged with ESM Securities, and had given Home State the equivalent of an auditing clean bill of health, despite its precarious financial position and its failure to maintain a sufficient net worth to cover its potential losses.

The matter went to trial in the Ohio Court of Claims before a visiting judge. Since the matter presented some questions triable to a jury and some that were not, the court began jury trial in February 1988. Following six full weeks of trial, the plaintiff completed the submission of its case in chief to the jury. Before the defendant began its case, the parties settled, and the trial ended without deliberation by the jury. Under the settlement, Arthur Andersen's insurers paid a significant sum of money to the State.

I was one of six lawyers who participated in the trial in the Court of Claims.

Lead co-counsel: Robert W. Trafford, Huntington Center, 41 South High Street, Columbus, OH 43215-6194, (614) 227-2149. Opposing counsel: James R. Adams, Frost Brown Todd LLC, 2500 PNC Center, 201 East 5th Street, Cincinnati, OH 45202, (513) 651-6947.

9. *Celebrezze v. Dayton Daily News*, Case No. 88-127, Cuy. Cty. Common Pleas; on appeal, 41 Ohio App. 3d 343 (Judge Terrence O'Donnell)

In this matter, I was one of three counsel of record representing the *Dayton Daily News* in a defamation action filed by former Supreme Court of Ohio Justice James J. Celebrezze against the newspaper and its editorial cartoonist. On the opening day of trial, the court entered judgment in favor of the newspaper and cartoonist. Plaintiff appealed the matter to the Eighth District Court of Appeals in Cuyahoga County and, again, the newspaper prevailed. This was the first case in Ohio in which a court declared that an editorial cartoon, as a matter of law, constitutes an expression of opinion protected by the First Amendment and the Ohio Constitution.

Lead co-counsel: James Pohlman (Deceased). Opposing counsel: Don C. Iler, Iler & Iler Co., LPA, 101 W. Prospect Ave., 1650 Midland Building, Cleveland, OH 44115, (216) 696-5700.

10. *The Ivy Med. Group, Inc. v. Hummer, M.D.*, Case No. 141572, Cuy. Cty. Common Pleas (Judge James J. McMonagle)

In this matter, I served as lead counsel to entrepreneurs who pioneered the provision of emergency care services through urgent care centers in the State of Ohio. Their business initially was successful and highly profitable. The entrepreneurs sold shares to a large out-of-state interest that, in partnership with a number of other investors, gained majority control of the shares in the corporation. I successfully defended against a claim brought by the corporation that sought a temporary restraining order and preliminary and permanent injunctions against one of the entrepreneurs who was also head of the medical staff for the urgent care centers. After the court refused to enter injunctive relief against my client, I instituted an action on his behalf (and that of the second entrepreneur) in which we asserted that the majority shareholders of the corporation had engaged in an effort to "squeeze out" my clients, and had violated the securities laws and the corporation's own shareholder agreements. After extensive discovery and on the eve of the scheduled hearing on my clients' request for the appointment of a receiver and the dissolution of the corporation, the matter settled, resulting in a buy out of the entrepreneurs' shares.

Co-counsel: William R. Weir, 925 Euclid Ave., Suite 1700, Cleveland, OH 44115-1483, (216) 443-2540. Opposing counsel: Ira Kaplan, Benesch Friedland Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, OH 44114-2378, (216) 363-4567.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During my time in private practice, I was a full-time litigator. In addition to my courtroom work, I was involved in several substantial representations that did not proceed to trial during my involvement with them. For example, during my first several years in practice, I worked on a number of patent and intellectual property disputes relating to oil additives. From 1985 to 1988, most of my practice related to the Savings and Loan collapse, in which I was part of a team representing the State of Ohio and was engaged in constant motion practice and other pre-trial proceedings on the State's behalf in various courts of Ohio and of other states. In 1990, I spent a substantial portion of my year representing a rental car company in a civil Racketeer Influenced and Corrupt Organizations Act (RICO) case in which I was one of two lead attorneys and won a substantial victory freezing defendants' assets.

While Chief Counsel and later First Assistant Attorney of Ohio, I supervised all litigation in the Office and counseled senior government officers on legal questions. I coordinated state-wide law enforcement initiatives, such as boarding up of drug houses, I helped coordinate legislative efforts to strengthen the authority of the Attorney General's Office in areas such as Medicaid fraud and environmental enforcement, and had supervisory authority over the Ohio Bureau of Criminal Identification and Investigation and the Ohio Police Officers Training Academy. I directly managed special legal situations, such as representations for the reapportionment and congressional redistricting in the State of Ohio in 1991-92. In that matter, special counsel represented the majority and minority members of the Reapportionment Board, but both groups of special counsel reported to me (necessitating a unique and delicate conflicts treatment). In addition, I personally represented the interests of the State of Ohio in the reapportionment litigation filed in the United States District Court for the Southern District of Ohio and the Supreme Court of Ohio, and I argued on behalf of the State in the United States Court of Appeals for the Sixth Circuit.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

"Handling Patent, Copyright, and Trademark Cases" (2003, 2005 & 2007-Present)—Berkeley Center for Law and Technology. I am a faculty member at an annual three-day intensive program to educate Federal Judges regarding the handling of patent, copyright, and trademark matters including as to substantive, procedural, and case management issues in all three fields.

Patent Litigation (2002, 2003, 2004 & 2006)—Case Western Reserve University School of Law ("CWRU"). Three credit hour course addressing matters relating to case management, jurisdiction, procedure, claim construction, trial tactics, client management, counsel's role in the litigation process, the use of technology in patent cases, and key substantive areas of patent law such as obviousness, infringement, damages, and *Daubert*.

From 1998 to 2006, I have been a periodic *pro bono* visiting lecturer at CWRU, conducting presentations in advanced criminal procedure (including one for Prof. Paul Giannelli's class in roughly February of 2006), trial tactics, and the use of technology in the courtroom.

ALI-ABA Course of Study: In 1999, 2002 to 2006, and 2008, I served as a faculty member for "Trial of a Patent Case," an annual, multi-day program to train lawyers on best practices for the handling of patent matters. Judicial officers, practitioners, in-house counsel, and experts present, preside over, and critique a mock patent trial, and give presentations on substance, procedure and tactics.

Research, Advocacy, and Writing (1981-1982)—CWRU.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    While I may consider teaching again at some point in the future, I would not do so soon after taking the appellate bench. I would hope, however, to continue participating in the development of the law through lectures, law-related advisory boards and panels, and similar activities undertaken without compensation. I would ensure strict adherence to all ethical rules in any such activity. I have no other plans, nor any commitments or agreements, to pursue outside employment.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       My spouse is a partner at Covington & Burling and my brother is a partner at Jones Day. Both firms have practices that may cause them to appear before the Federal Circuit. I always have recused myself from all matters involving either firm and will continue to do so, if confirmed to a new court. I also will recuse myself with respect to the clients of either of these firms to the extent appropriate under all governing statutes, canons, and rules of ethics or with respect to entities in which I or my spouse have a financial interest that would require recusal (though I do not anticipate this would occur on other than rare occasions). I know of no other potential conflicts of interest.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In my present position and if confirmed as a Circuit Judge, I will continue to adhere to all statutory and ethical obligations regarding recusal and will disclose any circumstances where any conflict or potential appearance of conflict arises, even where recusal is not mandated. I will follow all guidelines provided for the judiciary in all relevant statutes, canons, or advisory opinions. When necessary, I will also seek guidance from the General Counsel of the Administrative Office of United States Courts and the Committee on Codes of Conduct for United States Judges.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Prior to taking the bench in 1994, I was actively engaged in *pro bono* representations:

Gordon Square Restaurant & Lounge, Inc. v. Sergeant Roger Dennerll, Case No. C86-1883, N.D. Ohio, August, 1990 (Judge Alvin I. Krenzler): I devoted significant amounts of time over a two-year period to the representation of the plaintiffs in this action. The action involved two women falsely accused of prostitution and solicitation, who had been physically abused by certain police officers in the process. These women had no money to sue the City and no access to lawyers. My firm allowed me, with the help of another associate in the firm, to conduct extensive discovery in this case and spend a full two weeks trying the matter in Federal District Court on a *pro bono* basis.

I was appointed both by the Southern District of New York (as an intern during law school) and by the Court of Appeals for the Sixth Circuit (soon after completing my clerkship) to act as counsel for indigent defendants and appellants, respectively. In connection with the Sixth Circuit matter, I received compensation at the statutory rate and, in fact, was given a compensation enhancement based on the amount of work performed in the matter, but was paid at a rate far below my normal private practice rates. Again, these efforts were made possible by the willingness of the law firms with which I was affiliated to allow me to participate in these court-sponsored programs.

Assistant Attorney General Patrick Devine and I drafted an amicus brief for the State of Ohio to file in support of the State of Massachusetts' defense of its IOLTA Program (the program by which lawyers are required to place certain funds into a pooled trust so that the interest generated may be used to help provided civil legal services to the indigent). We were successful in getting 22 other states to join our effort in support of Massachusetts, even though we filed the amicus brief at the Court of Appeals level, which is unusual for a state to do.

In addition, prior to taking the bench I was involved in a number of charitable activities in the legal community:

I was a founding Board Member of the Ohio Legal Assistance Foundation, whose mission is to help provide funding for and determine the appropriate distribution of funds to Ohio's Legal Aid community. I was on the Committee appointed by Ohio Chief Justice Thomas Moyer to create (via legislation and otherwise), fund and staff this Foundation.

I conceived and spearheaded "Project A.G.", or "Project Above Ground," in which employees of the Attorney General's Office worked on their own time to raise money for victims of the Mid-West floods in 1993. We challenged all other State Attorney General offices to follow our lead and donated all funds to the Red Cross.

I supervised and participated yearly in another Attorney General Office project – "Project Wish List" – which provides goods and funds to domestic violence shelters across the State of Ohio.

Since taking the bench, my ability to continue in *pro bono* and charitable activities has been limited by the ethical restrictions placed upon judicial officers. As a judicial officer, I have attempted to encourage *pro bono* legal activity in a number of ways. I am a member of the court committee that proposed use of court admission fees to repay volunteer lawyers for the costs of expenses incurred when accepting *pro bono* assignments in civil cases. The system proposed by the Committee has since been adopted by the full court and is used regularly. I also have spoken to law firms and bar association gatherings about this new program and the importance of accepting *pro bono* civil appointments generally.

I have committed a substantial amount of time to educating students and lawyers on best practices in the litigation process. Among other things, I have been an active member of the John M. Manos Inn of Court and was its president for over three years. The Inn's purpose, in addition to fostering professionalism and ethics in the profession, is to encourage established lawyers to mentor young lawyers who have less access to older practitioners (i.e., who do not have the luxury of a large law firm practice).

I regularly teach and lecture at law schools for little or no salary, preside over moot court competitions, welcome new students, sponsor externships and often welcome students of all ages and from all communities to my courtroom in an effort to foster an understanding of the legal system. I regularly agree to speak at functions and programs designed to foster a better understanding of the law and the various players in the judicial system, always with no remuneration.

I was among the first judges in the country to spearhead the addition of technology to federal courtrooms, in large measure to level the playing field with respect to the use of persuasive technology between the government and indigent defendants and between the well-heeled and the less financially fortunate. I organized a free on-going CLE program to familiarize the bar with the new technology.

Finally, I have volunteered many hours to my local community and schools. Among other things, I have served as a coach in the Chagrin Falls Community Soccer League and as a coach for the Chagrin Falls Middle School girl's lacrosse team.

26. **<u>Selection Process</u>**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

   There is no selection commission for the Federal Circuit.

   Early in 2009, I spoke with Senator Sherrod Brown and with staff members of Senator George Voinovich about my interest in a court appointment in the Washington, D.C., area, where my husband resides and works. I contacted the White House Counsel's Office in writing in February 2009 to request consideration for any future vacancy on the United States Court of Appeals for the Federal Circuit. In May 2009, I met with attorneys from the White House Counsel's office to reiterate my interest in the Federal Circuit. In September 2009, the Honorable Alvin Schall took senior status, creating an opening on the Court of Appeals for the Federal Circuit. I interviewed with White House Counsel Gregory Craig on October 12, 2009. Since January 2010, I have been in contact with pre-nomination officials at the Department of Justice. I interviewed again with attorneys from the White House Counsel's Office and the Department of Justice on February 12, 2010. On March 10, 2010, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

   No.

AO-10 (WP) Rev. 1/2004	**FINANCIAL DISCLOSURE REPORT** **Nomination Report**	*Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)*

1. Person Reporting *(Last name, first, middle initial)*	**2. Court or Organization**	**3. Date of Report**
O'Malley, Kathleen M	Federal Circuit	3/9/2010
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* Circuit Judge - Nominee	**5. Report Type (check appropriate type)** _x__ Nomination, Date ____3/10/10__ ___ Initial ___ Annual ___ Final	**6. Reporting Period** Jan 1, 2009 - Feb. 25, 2010
7. Chambers or Office Address 801 W. Superior Avenue, Rm 16A Cleveland, OH 44113	**8.** **On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** **Reviewing Officer** ______________ **Date** ________	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
[ ]	**NONE** (No reportable positions.)	
1	Chair	Judges' Committee, Federal Circuit Bar Association
2	Member	U.S. Judicial Conference Committee on Space & Facilities
3	Member	Sixth Circuit Judicial Conference Space & Facilities Committee

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
[x]	**NONE** (No reportable agreements.)	
1		
2		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
[x]	**NONE** (No reportable non-investment income.)		
1			$
2			$
3			$

B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)

	DATE	SOURCE AND TYPE
[ ]	**NONE** (No reportable non-investment income.)	
1	2009	Covington & Burling
2		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting O'Malley, Kathleen	Date of Report 3/9/2010

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
x	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			

*Value Codes: J=$15,000 or less	K=$15,001-$50,000	L=$50,001-$100,000	M=$100,001-$250,000
N=$250,001-$500,000	O=$500,001-$1,000,000		P1=$1,000,001-$5,000,000
P2=$5,000,001-$25,000,000	P3=25,000,001-50,000,000		P4=50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Malley, Kathleen	3/9/2010

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income,									
1	CITIBANK	D	Int.	O	T					
2	CASTLE HARLAN AFFILIATES IV-A, LLP LLP II	A	Int. & Div.	K	W					
3	MID-ATLANTIC FUND OF FUNDS II LP	A	Div. & Int.	K	W					
4	THE DINER CLUB I, LLC	A	Int.	K	W					
5	**BROKERAGE ACCOUNT 1**									
6	US GOV'T MONEY MARKET FUND	A	Int.	J	T					
7	**BROKERAGE ACCOUNT 2**									
8	US GOV'T MONEY MARKET FUNDRBC RESERVE CLASS	A	Int.	J	T					
9	VANGUARD TAX EXEMPT MM	A	Int.	K	T					
10	STRIPS - TINT 5/15/10	A	Int.	J	T					
11	STRIPS - TIND 8/15/10	A	Int.	J	T					
12	**BROKERAGE ACCOUNT 3**									
13	VANGUARD PRIME MM	A	Int.	J	T					
14	STRIPS - TINT 8/15/10	A	Int.	J	T					

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
O'Malley, Kathleen	3/9/2010

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	**NONE** (No reportable income, assets, or transactions)									
15	**IRA #1**									
16	US GOV'T MONEY MARKET FUND	B	Int.	M	T					
17	**CHARLES SCHWAB 401(K) # 1**									
18	VANGUARD INSTITUTIONAL INDEX	D	Div.	M	T					
19	RANIER SMALL/MID CAP EQUITY	B	Div.	K	T					
20	SCHWAB MNG RET TRUST 2010 CL II	D	Div.	M	T					
21	SCHWAB MNG RET TRUST 2020 CL II	B	Div.	K	T					
22	SCHWAB MNG RET TRUST 2030 CL II	B	Div.	K	T					
23	VANGUARD WELLINGTON ADM	C	Div.	L	T					
24	COVINGTON PENSION PLAN CASH BALANCE ACCOUNT	E	Int.	O	T					
25	COVINGTON & BURLING LLP	D	Int.	N	W					
26										
27										
28										
29										

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Malley, Kathleen	3/9/2010

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

I. Positions

4. Chair U.S. District Court, Northern District of Ohio, Space & Facilities Committee

5. Member National Academies, Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence

6. Member Advisory Board, University of Maryland, Intellectual Property Advisory Board

7. Member Dean's Advisory Committee, Case Law School

8. Member Master Bencher, John M. Manos Inn of Court (formerly Anthony J. Celebrezze Inn of Court)

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Kathleen M. O'Malley Date 3/9/10

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		151	948	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	302	444	Notes payable to relatives			
Unlisted securities--add schedule		128	319	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	730	443
Real estate owned-add schedule	2	849	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		198	000	Loan from Thrift Savings Plan		1	797
Cash value-life insurance				Estimated Income Taxes on the			
Other assets itemize:				Differences between the estimated			
Covington & Burling Capital Account	1	390	288	Current values of assets and their tax bases		676	694
Covington & Burling Cash Balance Plan		761	174	Total liabilities	2	408	934
Thrift Savings Plan		107	528	Net Worth	4	479	767
Investments in Limited Partnership		128	319	Total liabilities and net worth	6	888	701
Total Assets	6	888	701				
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
RBC Advisor Services, Account 1	$ 9,998
RBC Advisor Services, Account 2	20,419
RBC Advisor Services, Account 3	224,784
RBC Advisor Services, Account 4	224,209
RBC Advisor Services, (IRA) Account 5	245,556
Covington & Burling Retirement	577,478
Total Listed Securities	$ 1,302,444

<u>Unlisted Securities</u>	
Castle Harlan Affiliates IV - AI, L.P.	$ 45,988
Castle Harlan Affiliates V - AI, L.P.	7,774
The Diner Club I, L.P.	26,125
Mid-Atlantic Fund of Funds II, L.P.	48,432
Total Unlisted Securities	$ 128,319

<u>Real Estate Owned</u>	
Residence - Washington, DC	$ 2,500,000
Residence - Chagrin Falls, Ohio	349,000
Total Real Estate Owned	$ 2,849,000

<u>Real Estate Mortgages Payable</u>	
Residence - Washington, D.C.	$ 1,375,984
Residence - Chagrin Falls, Ohio	294,759
Residence - Chagrin Falls, Ohio	59,700
Total Real Estate Mortgages Payable	$ 1,730,443

AFFIDAVIT

I, **KATHLEEN McDONALD O'MALLEY**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 9, 2010
(DATE)

Kathleen M. O'Malley
(NAME)

Madeline M Bitz Powell
(NOTARY)

NOTARIAL SEAL
STATE OF OHIO

MADELINE M BITZAN-POWELL
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 07, 2012
Recorded in
Cuyahoga County