



# Five tips for determining intentional misconduct involving financial fraud

by Albert A. Vondra, CPA, JD, CFE



One of the most difficult aspects of conducting an internal corporate investigation is determining whether intentional misconduct has occurred in the area of financial statement misstatements. In recent years, many senior financial reporting executives have been terminated from their jobs due to misconduct. Careers have been lost and others have been badly damaged. The recent trial in the Enron case of Jeffrey Skilling and Ken Lay demonstrates the challenges of proving misconduct.

Having spent the last several years performing investigations, I have often been confronted with determining whether one of the financial officers or employees intentionally committed a misstatement in the financial statements or books and records of a company. Analyzing e-mails and conducting interviews is an important aspect of performing the work necessary to get at this information. But how do you determine whether a company employee or executive has engaged in intentional misconduct and deserves disciplinary action?

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**Tip 1:** The first step is to find out what happened, then to find out who knew or should have known. It is important to fully understand the questionable transaction before conducting in-depth interviews. It is often the case that there are varying levels of involvement by employees and officers. Sometimes it is best to start at the bottom of the organization in the interview process. Preparing chronologies of events, and knowing who reports to who is often critical in understanding the transaction and identifying possible motives of why people recall events differently. You should look for inconsistency in what a witness has said as compared to written documents and explanations from other witnesses. Is the inconsistency over a minor or major point? Are explanations given with little or no evidentiary support? Do others corroborate the information? In reviewing all the evidence (i.e., documents, statements of others, motivation, etc.) does the explanation make sense?

**Tip 2:** It is rare that a perpetrator will admit to wrongdoing. Determining intent becomes a task that is very difficult for lawyers and forensic accountants charged with conducting the in-

(continued on page 8)

# The President's Corner

by *Lori White Laisure*



To understand where we are going as a chapter, we need to understand where we have been. I was sworn in as president in October 2005 and my term expires on Sept. 30, 2006. I am more than halfway through my tenure and I have been reflecting on how much historically this chapter has contributed not only to its local membership but also to the national organization. I would like to share with you why I believe our chapter membership is at an all time high of 400 members and why our members are committed not only to this chapter but also to the national organization.

The national FBA, located in Washington, D.C., issued a local chapter to Cleveland in 1955. In 1956, this chapter had 45 members, which consisted primarily of lawyers from various federal agencies (e.g. FTC, IRS, SBA, Antitrust Div.). One of this chapter's early programs honored 6th Circuit Court of Appeals Judge Florence E. Allen, who at the time was the highest ranking woman judge in the United States. In the early 1960s, this chapter held legal seminars for its membership, (before CLEs were required), on labor management and reporting requirements, antitrust and trade regulation developments, and a tax practice clinic, which included speakers from the local area and from Washington, D.C.

The chapter expanded its role in the 1970s by scheduling an event every month from October 1971 through June 1972, which included a holiday party in December, legal seminars, luncheons, and a tour and picnic at NASA. Stan Fisher was the chapter president who later became national president and established the national Boots Fisher award. In the 1980s, the chapter's membership grew to 224. In 1982, this chapter sponsored its first seminar on immigration and naturalization law chaired by Margaret Wong, who later became chapter president in 1995 and has contributed to the national organization's magazine. In 1984, Robert McNew became chapter president, later served as the 1992 convention chairman, and currently serves as a director for the FBA Foundation. In the 1980s the chapter structure evolved by forming committees: program, membership and admissions, nominations and elections, judicial selection, communications, constitution and bylaws, president's newsletter, historical, event admissions and younger lawyers. The chapter membership continued to rise and by 1986 had grown to 353. The chapter president was Donald Scherzer who, 10 years later, is still active on our board.

The new organization structure paid off because in 1992, this chapter hosted its first national convention, which opened with an admissions ceremony for the 6th Circuit Court of Appeals and continued with speakers that included four 6th Circuit judges and Kenneth Starr, then the solicitor general of the United States. In 1995, this chapter now accustomed to hosting large events, held a luncheon where 500 people attended honoring retiring Chief Judge Lambros. Then one week later, held a diner where more than 700 people attended honoring Ret. Judge George W. White on his becoming Chief Judge.

This chapter kicked off 2000 by hosting its second national convention. In 2002, the chapter held its first Supreme Court of the United States swearing-in ceremony and luncheon with William K. Suter, clerk of the Supreme Court of the United States.

*(continued on page 3)*

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(The President's Corner, continued from page 2)

We have come a long way since 1955 yet we have remained true to what makes the chapter strong: quality CLEs, our community involvement, and networking opportunities with federal judiciary and other practitioners. The national FBA is still the foremost voice on behalf of federal practitioners. National works with oversight agencies on new regulations that may impact federal practice and acts as an advocate on certain issues. Several of our chapter members are involved on a national level where they advance issues relevant in NDOH.

Congratulations NDOH for 56 wonderful years!

## Upward Bound

The Federal Bar Association Northern District of Ohio Chapter will be participating in a number of exciting programs this summer in conjunction with the Upward Bound Program at Cuyahoga Community College. Eligibility into the Upward Bound program is limited to junior and senior high school students who are U.S. citizens from low income families who represent the first generation in their family to attend an educational institution beyond the high school graduation.



On June 21, 2006, our chapter sponsored and organized a CARE workshop, designed exclusively for the Upward Bound seniors and their families. CARE stands for the Credit Abuse Resistance Education Program, which began in November 2002 in Rochester, N.Y. Since then, it has been incredibly successful, reaching tens of thousands of students in high schools and colleges across the

country. Volunteers organizing and presenting this workshop include Don Frankel, Blake Brewer and Diana Thimmig.

On Friday, July 7, 2006, our FBA chapter participated in a Career Fair, an event intended to expose students to different types of careers. A panel of FBA members kicked off the career fair at Tri-C with a discussion concerning opportunities students might want to consider in the field of law. Steve Paffilas, John Gerak, Jessica Price and Geri Smith served on this panel. This event provided a wonderful opportunity for us to meet some very talented students in the Cleveland community.

Later in July, our FBA Chapter, through the efforts of various members, will provide opportunities for Upward Bound students to participate in a "Shadow Day". This program will include hosting individual students for a half day, while they essentially shadow a judge, lawyer or other legal professional through their morning activities. If you, or your employer, are interested in volunteering to host a student, please contact Diana Thimmig at (216) 696-7078 or dthimmig@ralaw.com.

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**Diana Thimmig**

# Inside This Issue

- Five tips for determining intentional misconduct involving financial fraud ..... 1
- The President's Corner ..... 2
- Upward Bound ..... 3
- Judicial profile: Hon. Karen Nelson Moore ..... 4
- Clerk's office accepts complaints and filing fees over the Internet 24/7 ..... 5
- Sixth Circuit Judicial Conference report ..... 6
- The Wolstein Challenge ..... 7
- Interim Order No. 2006-10: Cell phones in U.S. Courthouse ..... 10
- Upcoming events ..... 11
- Suter swears in local lawyers ..... 12
- Judge Manos passes away ..... 12

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# Judicial profile

## Hon. Karen Nelson Moore U.S. Court of Appeals for the Sixth Circuit

Judge Karen Nelson Moore recently completed her 11th year as a judge on the U.S. Court of Appeals for the 6th Circuit. While reflecting on her time on the bench, Judge Moore said, "I really appreciate the opportunity to serve as a federal judge. I like being part of the litigation process, working with law clerks, and at least once per sitting, I see former students at oral argument. It's a very challenging and rewarding job."

Judge Moore's parents were both economists, and her father worked for the U.S. Department of State and the Agency for International Development. Although Judge Moore grew up primarily in Bethesda, Md., her family lived in Sweden for two years when she was a young child, and lived in Turkey for two and a half years when she was in middle school due to her father's work. She returned to Bethesda, graduated from Walt Whitman High School, and went on to earn her A.B., magna cum laude, in economics from Radcliffe College in 1970. Judge Moore earned her J.D., magna cum laude, from Harvard Law School in 1973.

Judge Moore considered attending a Ph.D. program in economics, but decided to attend law school because law offered so many different career opportunities. She not only obtained her law degree while at Harvard, but also met her future husband, Ken Moore, when she bumped into him in the office of the Harvard Law Review. Ken, who is a partner at Squire Sanders and Dempsey in Cleveland, grew up in Youngstown. Ken now practices in the areas of ethics, general litigation, and environmental litigation at Squire Sanders.

After graduating from law school in 1973, Judge Moore became a law clerk for the Hon. Malcolm Wilkey, a judge on the U.S. Court of Appeals for the District of Columbia Circuit. In 1974, she became a law clerk to Supreme Court Justice Harry A. Blackmun. She was Justice Blackmun's first woman law clerk. Justice Blackmun met with his clerks every weekday for breakfast in the Supreme Court cafeteria, where they would discuss cases and anything else of interest. Judge Moore treasured her year with Justice Blackmun, who remained her mentor until his death in 1999. Judge Moore also fondly recalls the "unparalleled opportunity" to discuss the cases of the day with the other law clerks, both from Justice Blackmun's

chambers and the chambers of the other justices. "It was a great time to be in Washington—you really felt like you were in the heart of things," said Judge Moore. When Judge Moore clerked for Judge Wilkey on the D.C. Circuit, the first oral argument she saw was the oral argument in the Watergate tapes case, between Archibald Cox and Charles Allen Wright. "It was the best oral argument I have ever seen," Judge Moore recalled. When she became a Supreme Court clerk, the justices had heard arguments on another Watergate case and were in the process of coming to their decision.

In 1975, the Moores moved to Cleveland. When Judge Moore came to Cleveland, she worked as an associate, primarily in litigation, at Jones Day. In 1977,

Judge Moore decided to apply for an opening on the faculty at Case Western Reserve University School of Law. She had enjoyed teaching a tax class in Harvard's International Tax Program, which is an LLM program for international tax practitioners, during her third year of law school, and enjoyed the intellectual challenge of law, so she thought that being a law professor would be

interesting. She was hired at Case, and continued teaching there until she was appointed to the bench in 1995. She taught civil procedure, conflict of laws, and complex litigation, as well as a seminar on the Supreme Court. Judge Moore also taught tax courses for many years, including courses on individual income tax and on international aspects of U.S. income tax. In addition, Judge Moore ran Case's federal judicial externship program. During the 1990-91 school year, she was a Visiting Professor at Harvard Law School.

In 1994, President Clinton nominated Judge Moore for a seat on the 6th Circuit. She was confirmed by the Senate on March 24, 1995. On March 29, 1995, Judge Moore was very honored and moved to be sworn in as a judge by Justice Blackmun at the Supreme Court. She was his first former law clerk to become a federal judge.

Judge Moore believes that her years as a law professor were excellent preparation for the appellate court, noting that both judges and law professors must ask many questions in trying to arrive at correct answers in difficult areas of the law. She said that



oral arguments are very similar to Socratic law school classes, and that both positions involve substantial writing. The primary difference, she said, are that law professors are able to specialize and choose topics in which they would like to research and write. "Judges, however, are generalists," she said, noting that she must now decide cases in nearly every area of the law except patent and family law. Judge Moore, however, said that learning about so many areas of the law and about the various factual subjects of her cases has been one of the highlights of her time on the bench. Judge Moore stated that the diversity of the Sixth Circuit, which extends from the Canadian border to the Mississippi River, is a microcosm of the country as a whole. The cases she decides involve everything from the horse industry in Kentucky to the automotive industry in all four states.

Judge Moore continues to educate new lawyers by working with and teaching her law clerks. Last summer, Judge Moore celebrated her 10th year on the bench with a reunion of nearly all of her 40 current and former law clerks. Judge Moore remains a mentor to her former clerks, as Justice Blackmun was to her, and wants to hear about their lives after their clerkships. She enjoys "working with people right out of law school who are developing their own talents in the law."

Judge Moore said that the most important thing that appellate advocates can do is to prepare their case thoroughly and carefully, both at the briefing stage and

at oral argument. She said that the biggest mistakes advocates make in their briefs is to fail to cite to the record to support factual statements, and to misrepresent what a precedent stands for. "We are going to look at the cases cited," she said. "If counsel misrepresents the law, that counsel's credibility falls and he or she does a grave disservice to the client." When preparing for oral argument, Judge Moore urges counsel to hone in on the critical points necessary to win the case. "We have read the briefs and are familiar with the case, so no elaborate factual presentation is necessary," she said.

Judge Moore said that the 6th Circuit's enormous caseload makes deciding cases in a timely fashion a challenge, but says that she appreciates her job enormously. "I have no time for boredom, with our constant inflow of cases, but each case has its fascinating legal or factual aspects, which I really value."

When she is not working, Judge Moore spends time with her family, which includes three children. She also reads mysteries, walks and travels. She especially enjoys traveling in her new blue Mustang coupe, which she bought after many years of driving minivans.

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*Lisa Hammond Johnson is an Assistant U.S. Attorney in Cleveland, and was one of Judge Moore's first set of law clerks.*

## Clerk's office accepts complaints and filing fees over the Internet 24/7



We are proud to announce that effective June 1, 2006, the Clerk's Office of the United States District Court for the Northern District of Ohio will support the filing of complaints and associated documents and the payment of filing fees over the Internet. Cases that do not require a filing fee (in forma pauperis and fee waiver) may also be filed electronically.

These enhancements expand the electronic filing capability that has been available in the Northern District of Ohio since 1996 when we became the first court to accept electronic filings over the Internet. Our Case Management/Electronic Case Files (CM/ECF) system provides instant, 24/7 access to the clerk's office. Upon the filing of the complaint, supporting documents and payment of fees by credit card, the clerk's office will assign a judicial officer with instant notification to the attorney. If the case is filed after 4:45 p.m.

Monday through Friday or on a weekend or holiday the judicial officer will be assigned the next business day.

Step-by-step instructions and additional information on the procedure for filing complaints may be found at: [www.ohnd.uscourts.gov](http://www.ohnd.uscourts.gov). A training database is available for attorneys and their staff at: <https://ecf-train.ohnd.uscourts.gov/cgi-bin/login.pl>. To receive a login and password please call (216) 357-7009.

The clerk's office should be notified immediately by phone if an emergency filing, such as a TRO, accompanies a complaint. For after hours filings please refer to Local Rule 77.1.



# Sixth Circuit Judicial Conference report

by James W. Satola

From May 17 to May 20, Detroit, Mich., was host to the 66th Conference of the 6th Judicial Circuit of the United States, more commonly known as the 6th Circuit Judicial Conference. For those unfamiliar with the conference, the 6th Circuit Judicial Conference brings together the various circuit judges, district judges, bankruptcy judges, magistrate judges, and federal practitioners from throughout the 6th Circuit (covering Michigan, Ohio, Kentucky and Tennessee)—and many from elsewhere around the country— plus the 6th Circuit’s “Circuit Justice,” Associate Justice John Paul Stevens, to conduct the business of the circuit, to participate in CLE programs focused on the federal courts and federal practice, and to partake in various social events highlighting the best the host city has to offer its many guests. This year’s conference was held at The Marriott Renaissance Center, in downtown Detroit.

In years past, conferences were open only to the federal judicial officers within the 6th Circuit, various circuit and district court officers, and a small number of delegates selected by the judges within the circuit (two for each circuit judge and one for each district judge). In 1998, the 6th Circuit adopted 6th Circuit Rule 205, whereby, beginning with the year 2000, and each even-numbered year thereafter, the circuit holds an open Conference attended by not only the federal judges and their delegates, but also attorneys admitted to practice in one or more of the federal districts of the circuit. In odd-numbered years, beginning with 2001, and every two years thereafter, the conferences are judges only. Being an even year, this year’s conference was an open conference. In attendance were all of the 6th Circuit judges resident in the Northern District of Ohio, and many of the district court, bankruptcy court, and magistrate judges of our district, as well as numerous Northern District of Ohio federal practitioners.

The conference opened on Wednesday, May 17, with administrative and circuit business meetings among the judges and various court personnel held throughout the day. Following the business meetings, the circuit hosted an opening reception for the guests of the conference at the Marriott Renaissance Center’s Wintergarden . . . followed closely thereafter by most of the Northern District of Ohio and Eastern District of Michigan guests quickly repairing to their hotel rooms

or Detroit’s finest imbibing establishments to watch Game 5 of the Cavaliers/Pistons playoff series (which the Cavaliers won 86-84 in the final seconds).

Thursday’s events began with the formal opening of the conference by Chief Circuit Judge Danny J. Boggs and a plenary session—meaning, open to all attendees of the conference—titled “The Law, the Courts, and the Future of the American Automobile Industry” (a natural subject of interest to the hometown crowd), presented by representatives of the automotive industry, union and research fields. This opening plenary session was followed by smaller-group individual breakout sessions, titled, respectively “Reasonable Sentencing After Booker” (focusing on the effect of recent Supreme Court decisions on criminal sentencing), “Professional Presence” (focusing on effective communication skills and presentation), “Employee and Retirement Benefit Plans in Bankruptcy” (focusing on, you guessed it, employee and retirement benefit plans in bankruptcy proceedings), and “First Impressions—The Newest Members of the Circuit Bench Discuss Effective Advocacy in the Sixth Circuit” (featuring the 6th Circuit’s newest members David W. McKeague and Richard Allen Griffin). Thursday’s educational offerings ended with another plenary session titled “Class Action and Related Jurisdictional Issues.” In the afternoon, many of the conference attendees took advantage of the social events offered by the conference planning committee (primarily comprised of members of the Eastern Michigan Chapter of the Federal Bar Association), including a visit to the Ford Motor Company’s Rouge Factory to see firsthand the assembly of a Ford 150 truck, or a visit to the Henry Ford Museum and adjacent Greenfield Village, or an outing to Comerica Park to watch an afternoon game between the Detroit Tigers and Minnesota Twins. Thursday evening concluded with a Reception at the Renaissance Club on the 36th Floor of the Renaissance Center, hosted by the Life Members of the 6th Circuit Judicial Conference.

Friday’s morning events were all plenary sessions, beginning with what has become a tradition, seen by many as the highlight presentation of the conference, a “Supreme Court Update” given by Prof. Erwin Chemerinsky of the Duke University School of Law,



which is always a concise, engaging, and entertaining overview of the most significant cases decided by the Supreme Court in the past year. The morning's events continued with historical and present-day perspectives on the origins and importance of an independent judiciary, with programs titled "Independent Judiciary, An Historical Overview," presented by Professors John P. Kaminsky and Richard L. Leffler of the University of Wisconsin, and "Independent Judiciary, Present Status and Future Prospects," hosted by 6th Circuit Judge Julia Smith Gibbons and presented by Theodore B. Olsen (former solicitor general of the United States), Michael S. Greco (president of the American Bar Association), and Prof. Stephen B. Burbank of the University of Pennsylvania Law School. After these sessions, the conference attendees were then free in the afternoon to partake in the various social activities offered by the conference planning committee or adventures of their own choosing.

Friday evening concluded with the conference's reception and banquet, which included remarks by Supreme Court Associate Justice John Paul Stevens, who spoke on the cases from the 6th Circuit reviewed by the Supreme Court this past term—and who began his presentation with information that many in the audience were eager to hear, the halftime score of Game 6 of the Cavaliers/Pistons playoff series. The banquet concluded with a presentation by Michael Barone, senior writer from U.S. News & World Report (or, for

many attendees from Cleveland and Detroit, with a quiet yet tasteful exit to the hotel bar to watch the last quarter of the playoff game).

The conference ended on Saturday morning, as always, with many guests staying for individual district breakout sessions. The Northern District of Ohio session was presided over by District Judge Solomon Oliver (Chief Judge James Carr, a Conference attendee and an organizer of many of the events, was engaged to be elsewhere at the time . . . at his daughter's wedding).

To those who have interest in learning about the workings of our 6th Circuit court and federal district courts within it, and to those who simply enjoy an opportunity to meet with the Judges and fellow federal practitioners within our district, the 6th Circuit's open conferences provide a great opportunity to do both, as well as offering guests the opportunity to explore the unique features of the host city. Keep your calendars open for 2008. The next conference will take place from May 7-10, 2008, in Chattanooga, Tenn.



*James W. Satola is a senior attorney with Squire, Sanders & Dempsey L.L.P., as well as a past president and current board member of the FBA Northern District of Ohio Chapter.*

## The Wolstein Challenge

Geoffrey Mearns, dean of Cleveland Marshall Law School and Jeanne Madison, senior advancement officer for Cleveland State University attended this FBA Chapter's May 9, 2006, board retreat held at the Union Club, and described an opportunity for lawyers, legal organizations and interested community people to participate in the advancement of the law school through financial contributions to the Wolstein challenge.

Dean Mearns explained that Cleveland-Marshall recently received the largest gift from an individual donor in the history of both the Law School and Cleveland State University—the Bert and Iris Wolstein gift of \$6.25 million. Iris Wolstein made this outstanding contribution in loving memory of her husband Bert—an alumnus of Cleveland-Marshall—who passed away in 2004.

Iris Wolstein generously designated \$5 million to be used to renovate and upgrade the law building. And, because she feels strongly that it is very important to maintain Cleveland-Marshall as the accessible and

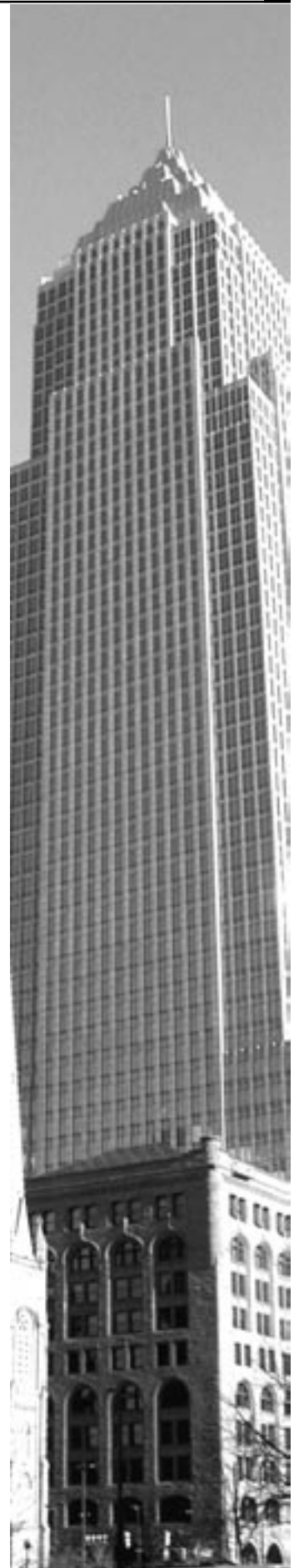
affordable law school of opportunity, particularly for students contemplating careers in the public sector, the remaining \$1.25 million has been set aside as a scholarship challenge.


Iris Wolstein has pledged to match every contribution up to a maximum of \$1.25 million. The matches will be made on a dollar for dollar basis and all gifts will endow the scholarship fund.

In addition to the scholarship challenge, individuals and groups have a once in a lifetime opportunity to contribute to the law school and acquire naming rights to various spaces in the law school in connection with the renovation and upgrading project.

For additional information about this once in a lifetime opportunity to become a permanent part of the Cleveland-Marshall Law School structure, contact Jeanne Madison at (216) 875-9837 or by e-mail at [j.madison74@csuohio.edu](mailto:j.madison74@csuohio.edu).

*Annette Butler Garner*





*(Five tips, continued from page 1)*

investigation and providing advice to the company. The company will generally employ something less than the criminal standard of “beyond a reasonable doubt” in determining whether personnel action is warranted against those involved in the matter under review. It is often difficult to determine what a person was thinking when the transaction occurred. In addition, intent is blurred because of judgments and estimates made in the preparation of financial statements. Sometimes additional information is obtained during interviews conducted by government representatives (e.g., the SEC or Department of Justice) or settlement discussions. In some cases, employees being interviewed may feel a disincentive to be forthcoming due to the prospect of civil or criminal penalties. This is because of the practice on the part of companies undergoing a parallel SEC investigation to demonstrate cooperation with the SEC by waiving attorney-client privilege. In these cases, it presents a situation where executives and employees may be less willing to be forthcoming since copies of interview notes with employees may be turned over to SEC staff.

**Tip 3:** The higher you go up in the chain of command, the higher the standard should be for accountability. One of the key criteria applied by the SEC Division of Enforcement when conducting an investigation is whether remediation has occurred, especially in the company’s response to removing people involved in the misdeeds under review (especially professionals, such as CPAs and attorneys). Those involved in the financial reporting chain are given more scrutiny. The SEC has publicly stated it views individuals in these roles at gatekeepers. Companies undergoing an internal investigation are often required to communicate with the SEC about their ongoing efforts to remediate a problem. Often the audit committee of a company assumes responsibility for the internal review, and the decision of whether or not to terminate an employee usually falls to the chairman of the audit committee based on recommendations from the investigative team. While not all investigations lead to criminal actions, they often do require some form of disciplinary action of employees or officers. In large organizations, there is usually concern over depleting an accounting and reporting function, which needs to be considered in deciding whether to terminate someone’s employment. Decisions must be based on the on-going financial reporting and accounting needs and what is in the overall best interest of the company.

**Tip 4:** Beware: the critical issue for independent auditors is whether management representations can still be relied on. The SEC staff has stated that under Section 10A of the Exchange Act of 1934, auditing professionals are required to take affirmative action on the discovery of any intentional misstatement contained in a registrant’s financial statements if this misstatement is illegal, even if not “material.” Such affirmative action, the staff noted, would include disclosing the intentional misstatement to the appropriate level of management including the audit committee. Auditing firms carefully monitor the results of any investigation, particularly when persons involved are in the financial reporting chain. This becomes a critical issue for auditing professionals since obtaining management representations is a required step in any independent audit and certifications of SEC filings. If it cannot be determined that an individual is clear of any wrongdoing, alternative measures or additional representations may be required.

**Tip 5:** In the end, it all comes down to credibility. An important factor is how forthcoming the witness is during an interview. Even when it cannot be proved with direct evidence, a decision to take disciplinary action may be needed due to the loss of confidence in the person’s ability to continue to do the job. Turning a blind eye to financial misconduct must also be considered. Some useful questions to guide the decision-making process of determining the level of intent are presented below. Showing personal gain can be difficult and sometimes the misconduct is just about the person being a team player and being recognized. In the end, it all comes down to credibility.

The task of determining whether an officer or an employee has committed intentional misconduct or financial fraud has become more critical. On a fairly regular basis, the Wall Street Journal contains articles of officers and executives that have resigned as a result of an internal corporate investigation. The decision to terminate an employee over financial misconduct requires careful judgment and takes great care. However, in the end, it is an important task in order to preserve the integrity of financial reporting and our capital markets. And these tips should help to determine whether persons in the financial reporting process, motivated by pressure to achieve earnings, may have intentionally misstated financial statements and disclosures.

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# Questions to consider in determining intentional misconduct

## Responsibility

What is the person's level of knowledge of accounting and financial reporting and disclosure standards?  
What is the experience and duration with the company?  
Does person have a duty to act, correct, disclose, and inquire?

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## Incentive and opportunity to engage in transaction

Did the person have authority, influence, or motivation for the transaction?  
Was the person motivated or personally benefited by the transaction?  
Was the nature of the transaction this person was involved with an inadvertent error or improper conduct?

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## Level of involvement in the transaction directed

Did the person have involvement in directing the transaction?  
Did the person have involvement in making key decisions and judgments to enter into the transaction?  
Did the person have any responsibility to approve the transaction?

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## Executed/participated

Did the person have involvement in executing or participating in the transaction?  
Was there active behavior?  
Was the period of the person's involvement in the transaction isolated or continuous?  
Was the person pressured to engage in the transaction and conceal or make vague?  
Did the person issue false representations or encourage others to do so?

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## Knowledge

Was the person aware of the transaction?  
Was the awareness before, during or after the transaction?  
Did the person turn a blind eye to the indicia of misconduct?  
Was the person silent in the face of a duty to speak?  
Were there other witness interviews that implicate the person in the transactions?

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## Mitigating actions

Did the person take action upon learning of the transaction?  
Did the person fully and transparently inform the Audit Committee and/or the Board of Directors?

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## Cooperation

Did the person cooperate with the investigation? During interviews?  
Did the person volunteer information with candor and was the person forthcoming in interviews?  
Was there a lack of credible answers or unresponsiveness in the face of contemporaneous documentation?



CLERK  
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**GENERAL INTERIM ORDER NO. 2006-10**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

IN RE: CELL PHONES  
IN U.S. COURTHOUSES

)  
) INTERIM ORDER NO. 2006-10  
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The United States Marshal having requested issuance of an Order restricting the introduction into the Courthouses of this District of cell phones or other devices capable of audio or video recording, photographing, and transmission of such recordings or photographs, and the undersigned believing that use of such devices for such purposes not to be permissible under Local Civ. R. 83.1 of this Court and policies of this Court and the United States Judicial Conference, it is hereby, pending further consideration by the Judges of this District,

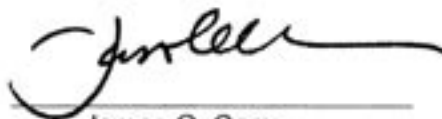
**ORDERED THAT:**

1. With the exception of court personnel, persons summoned for or performing jury duty, persons attending naturalization or similar ceremonial functions, and lawyers on display of a bar admission card or similar proof of professional status, no persons shall be permitted to bring or retain a cell phone or other device into the Courthouses of this District where such cell phone or device is capable of audio- or video-recording or photographing;
2. Attorneys without a bar admission card or similar proof of professional status who desire to retain such device while in a courthouse shall be permitted to do so after acquiring a certificate confirming their professional status from the Office of the Clerk;
3. Devices not permitted to be possessed under this Order shall be retained in the custody of the United States Marshal Service, and returned to their owners on exiting the courthouse.

The Clerk shall cause copies of this interim Order to be served on all Counsel licensed to practice in this District.

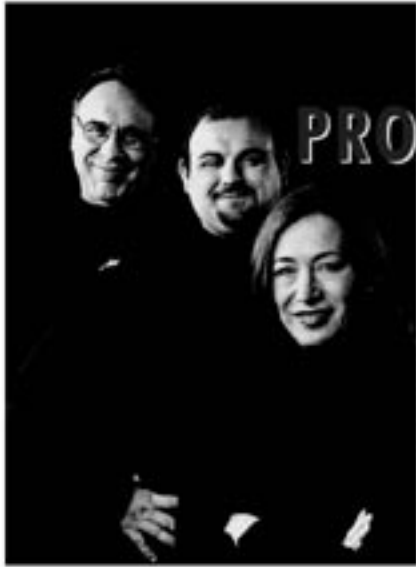
**IT IS SO ORDERED.**

For the Court



James G. Carr  
Chief Judge  
United States District Court





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**IRENE RENNILLO, ESQ.** is a 1983 alumnus of the Cleveland-Marshall College of Law and was admitted to the practice of law in 1983. Experienced in complex litigation, she has appeared before numerous courts in the State of Ohio, argued before the Ohio and Federal Courts of Appeals, and appeared before the Senate Subcommittee on Investigations. She has litigated in the areas of aviation, business transactions and valuation, constitutional law, domestic relations, personal injury, real estate, RICO, and Rule 11. She is responsible for the development of the firm's realtime capabilities and continues in the research and implementation of technological advancements in litigation support.

**NICHOLAS RENNILLO** is a founding member of Rennillo Reporting Services, joining the firm during his studies at the Cleveland-Marshall College of Law. Upon the completion of his education, he undertook the management and development of the firm's internal technology, videography and video-conferencing divisions.

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## Upcoming events

### Thursday, July 27, 2006

Brown Bag Luncheon  
Judge Christopher A. Boyko's Courtroom  
Noon – 1:30 p.m.

### Aug. 24-26, 2006

FBA Annual Meeting and Convention  
JW Marriott Las Vegas, Las Vegas, NV



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# Suter swears in local lawyers

On Friday, April 21, 2006, General William K. Suter, the clerk of court for the U.S. Supreme Court, was in Cleveland for a luncheon and swearing-in ceremony for admission to the bar of the U.S. Supreme Court. The swearing in ceremony was sponsored by the local chapter of the Federal Bar Association and the U.S. District Court for the Northern District of Ohio. 112 attorneys gained admission to the Supreme Court bar. General Suter also spoke about his role as clerk of court and provided a current report on the Supreme Court's activities.

This is the second time General Suter has conducted a swearing-in ceremony in Cleveland at the invitation of the FBA. The first time was in 2002.

Only attorneys admitted to the Supreme Court of the United States can appear, file, and argue cases. In addition, bar members are entitled to use the Supreme Court's library. Finally, members are entitled to seats reserved for the bar when viewing oral arguments.

General Suter received his BA from Trinity University and his law degree from Tulane School of Law, where he was on the Tulane Law Review. He practiced from 1962 to 1991 in the Judge Advocate General's Corps of the U.S. Army, rising to the rank of major general in the position of Assistant Judge Advocate General. He has been the clerk of the U.S. Supreme Court since 1991.

# Judge Manos passes away

As this edition of the newsletter was going to print, U.S. District Judge John M. Manos passed away at the age of 83. Although he had been on senior status since 2002, Judge Manos maintained an active caseload. Judge Manos served as a judge for 42 years and was on the federal bench since 1976. He was appointed to the federal bench by President Gerald Ford.

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