In the Court of Common Pleas
Mahoning County, Ohio

STATE OF OHIO,	Case No. 2010 CR 00800D Case No. 2010 CR 00800F
Plaintiff	
	Judge William Wolff, Jr. (By Assignment)
vs.	
ANTHONY M. CAFARO, *et al.*,	Courtroom 9
Defendants	

FILED UNDER SEAL

JOINT MOTION OF DEFENDANTS
MICHAEL V. SCIORTINO AND JOHN A. MCNALLY, IV
TO INSURE PUBLIC ACCESS TO FILINGS AFTER
INSURING THAT FILINGS ARE IN ACCORDANCE WITH THE
ESTABLISHED RULES OF PLEADING

COME NOW THE DEFENDANTS, MICHAEL V. SCIORTINO and JOHN A. MCNALLY, IV, through their respective counsel, and move for an order, after they have been afforded the opportunity to present evidence, to insure public access to filings after insuring that filings are in accordance with the established rules of pleading. As demonstrated in the attached motion, a continuation of the procedure presently employed by the Court serves both the salutary purpose of reasonable public access as well as being a measured effort to secure the trial liberties of these Defendants. The Defendants do not request a hearing as one already has been scheduled.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was: [__] sent by regular United States Mail, postage prepaid; [__] hand delivered to counsel or counsel's office; [__] sent by telecopier [X] sent electronically per stipulation this 29th day of November, 2010 to:

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AUTHORITIES CITED IN MEMORANDUM

Cases:

Constitutional Provisions:

Statutes:

Rules:

Other Authorities:

MEMORANDUM

I

The *Vindicator* and WFMJ-TV have collectively, and somewhat fancifully, styled themselves as "the Public" in moving for an Order vacating this Court's entries of September 9, 2010 and September 14, 2010, to the extent that those orders temporarily delay from public inspection substantive pleadings filed by all parties. The moving media organizations also seek access to the Bill of Particulars filed on November 5, 2010 by the State of Ohio as part of Case No. 2010 CR 800(G), and access to the Joint Motion to Dismiss filed on November 16, 2010 by what shall be referred to herein as the Cafaro Defendants. The media outlets claim that what they have styled the "Seal Order" is "inconsistent with settled Ohio law" and with "the applicable First Amendment and common law presumptions of public access." Defendants McNally and Sciortino, though they originally objected to any restrictions on disclosure during the September 9, 2010 pretrial, now assert that the Court's order, as events have played out, is *not* inconsistent with Ohio law, and the evidence that they will present will confirm that position.

This is an exceptional case. It involves a nationally-known real estate developer, his sister, three family corporations, and local elected officials, all of whom are life-long Mahoning Valley residents. Exceptional cases such as this one, which have so aroused public interest and emotion, demand that special measures must be taken to assure a fair

and orderly trial.[1] The Due Process Clause of U.S. CONST., amend. XIV, just as applicable to exceptional cases as to others, demands that "the conclusions to be reached in [this] case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *See, Patterson v. Colorado* (1907), 205 U.S. 454, 462, 27 S.Ct. 556, 51 L.Ed. 879. The *Vindicator* apparently would disregard that due process command by suggesting that it may publish whatever it wishes to sell newspapers, then it offers up the panacea of a change of venue. But like a reversal, a change of venue is a hollow remedy. This has been the law at least since *Sheppard v. Maxwell* (1966), 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600, 35 Ohio Op.2d 431, 6 Ohio Misc. 231. There, Dr. Sam Sheppard's conviction was overturned because extensive prejudicial pretrial publicity had denied him a fair trial. The United States Supreme Court held that a new trial was a remedy for such publicity, but also said that:

> we must remember that reversals are but palliatives; *the cure lies in those remedial measures that will prevent the prejudice at its inception*. The courts must take such steps by rule and regulation that will *protect their processes from prejudicial outside interferences*. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.

384 U.S., at 363. (Emphasis added).

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[1] In fact, even the Office of the Clerk of Court is treating this case differently, making the indictment and the unseal filings of the parties available over the Internet through the Clerk's Courtview® system.

II

Change of Venue. These Defendants originally objected to any restriction on public access to this case when the matter was first discussed by the Court and counsel at the September 9 pretrial. However, experience has demonstrated that the Court's method of dealing with filings in this case is a balanced approach that vindicates the rights of these Defendants to a fair trial in this County. Lest it be forgotten, there is more than one presumption at play here. While the media outlets have championed the first amendment rights attendant to the public, the Ohio Constitution promises that: "[i]n any trial, in any court, the party accused shall be allowed ... a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed ... ." *See,* OHIO CONST., art. I, §10. Though the cases call venue a personal privilege,[2] it is in fact a personal constitutional *right,* protected against by encroachment by the government. However, there are times when "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *See, Waller v. Georgia* (1984), 467 U.S. 39, 44, 104 S.Ct. 2210, 81 L.Ed.2d 31. The remedy of change of venue is an exception to the constitutional rule, not a quick fix so that the news media may control the conduct of this case.

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[2] *See, e.g., State v. Otto,* Belmont App. No. 97-BA-57, 2001 Ohio 3193, 2001 Ohio App. LEXIS 1098; *State v. McCartney* (1988), 55 Ohio App.3d 170, 563 N.E.2d 350.

Indeed, to safeguard the due process rights of the accused, "a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity." *See, Gannett v. DePasquale* (1979), 443 U.S. 368, 378, 99 S.Ct. 2898, 61 L.Ed.2d 608, citing *Sheppard v. Maxwell, supra*. "And because of the Constitution's pervasive concern for these due process rights, a trial judge may surely take protective measures *even when they are not strictly and inescapably necessary.*" (Emphasis added.) *Gannett*, 443 U.S., at 378. A request for change of venue operates as a waiver of the constitutionally protected right, but the right is sacrosanct, and the Court should endeavor, as it has done here, to enforce and protect that right. So that there is no mistake here, these Defendants are entitled to a trial in this County by an impartial jury, a personal constitutional right that they intend to enforce.[3] They are entitled to the assistance of the Court in securing that right. *See, State v. Lane* (1979), 60 Ohio St.2d 112, 397 N.E.2d 1338, 14 Ohio Op.3d 342.

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[3] The media outlets that have filed a motion to vacate this Court's prior orders suggest that they should be granted unlimited access to information, and that venue should be changed. There are two parenthetical things to be said about that.

First, to the extent that these outlets claim to represent the public, it must be noted that The *Vindicator* openly recommended in an editorial that Mr. Sciortino not be re-elected. Mr. Sciortino garnered nearly 60% of the vote in a three person race. The *Vindicator*'s claim that it represents the "public" here may be wishful thinking on its part at best.

Second, lest they forget, the media's rights of access are no greater than those of the public. "The rights of newspapers do not occupy a special position; rather, their right to be present in the courtroom derives from their status as members of the public." *See, State, ex rel. The Repository, v. Unger* (1986), 28 Ohio St.3d 418, 504 N.E.2d 37, 28 O.B.R. 472, citing *E. W. Scripps Co. v. Fulton* (1955), 100 Ohio App. 157, 168, 60 Ohio Op. 147; *Williams v. Stafford* (Wyo. 1979), 589 P.2d 322, 325; and, *Lexington Herald Leader Co. v. Tackett* (Ky. 1980), 601 S.W.2d 905, 906.

Justice Frank Celebreeze's dissent in *State, ex rel. Dayton Newspapers, Inc. v. Phillips* (1976), 46 Ohio St.2d 457, 480, 351 N.E.2d 127, 75 Ohio Op.2d 511, cogently pointed out that a change of venue is not without costs—to the justice system and otherwise. He noted that it is "the function of the court to protect the constitutional rights of an accused, and not place him in a position where he must waive his right to a jury trial or request a change of venue in order to avoid the risk of being tried by jurors who may have read, viewed or heard testimony taken at a recent pretrial hearing and ultimately determined to be inadmissible at trial." *Id.*, at 481. He also discussed the effect of a change of venue upon the community, saying that transfer of the case "amounts to a virtual confession that the citizens of Dayton would be unable to afford this defendant a fair trial." And so it is here. The citizens of Mahoning County, if insulated against innuendo that may cause them to pre-judge the matter, can afford these Defendants a fair trial, and can be the type of impartial, "indifferent" jurors that Due Process commands. *See, Morgan v. Illinois* (1992), 504 U.S. 719, 727, 112 S.Ct. 2222, 119 L.Ed.2d 492, citing *Turner v. Louisiana* (1965), 379 U.S. 466, 85 S.Ct. 546, 13 L.Ed.2d 424. Due process alone "has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment." *Morgan*, 504 U.S., at 727.

Additionally, the "community would be virtually denied the opportunity to observe its legal system in action during the actual trial"

of the case. *See, Dayton Newspapers*, 46 Ohio St.2d at 528. This is an interest of considerable import, because, the citizens of the community "are vitally concerned with the effectiveness of its criminal justice system in ferreting out and convicting persons found guilty of criminal conduct, as well as in protecting the constitutional rights of each defendant as he or she is processed through the system of justice." *Id.*, at 528. After all, the elected County Prosecutor has staked his reputation on the fact that these Defendants are crooks, trying himself to investigate and indict them for their public policy dissent. Some of the Defendants, including these Defendants, likewise have staked their reputation on the fact that the Oakhill project was a bad idea and a waste of public tax dollars. While it may be too strong to say that they have been indicted for sedition, clearly the public is entitled to see the workings of its justice system and which of its political leaders are telling the truth. How ironic it is that, having attempted, almost single-handedly, to whip the community into a frenzy over the Oakhill project—where The *Vindicator* staked its reputation that the acquisition of the project was a good idea, despite the objections of these Defendants and others—The *Vindicator* now cavalierly suggests that the trial be held elsewhere.

Finally, as noted by Justice Celebreeze, a change of venue presents numerous costly practical problems such as transportation of witnesses to and from the trial, *id.*, at 529, not to mention the expense to the litigants and their counsel.

Moreover, the remedy of change of venue is illusory at best. One can read appellate opinion after appellate opinion and see that trial judges are upheld when a change of venue motion is denied. *See, e.g., State v. Yarbrough*, 95 Ohio St.3d 227, 2002 Ohio 2126, 767 N.E.2d 216, ¶¶86 *et seq.*; *State v. Treesh* (2001), 90 Ohio St.3d 460, 464, 739 N.E.2d 749; and, *State v. Swiger* (1966), 5 Ohio St.2d 151, 34 Ohio Op.2d 270, 214 N.E.2d 417, syl. 1. For the media to create the havoc that engenders a remedy and then suggest a remedy that is virtually illusory borders on the disingenuous.[4]

III

Illicit Conduct by the Government. The history of illicit releases of information by the government necessitates continuation of this Court's prior orders. That is the reason why this Court's orders, once objected to by these Defendants, appear to be a proper and balanced approach to combining public access to information about the case with an effort to insure that these Defendants receive a fair trial right where the Constitution commands that the trial be held: here in Mahoning

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[4] The law favors publicity in legal proceedings, "so far as that object can be attained *without injustice to the persons immediately concerned*," *i.e.*, the accused. *See*, 2 *Cooley's Constitutional Limitations*, 931-932 (Carrington ed. 1927). (Emphasis added.) Cooley urged that the public be permitted to attend nearly all judicial proceedings, and suggested that "there appears to be no sufficient reason why they should not also be allowed to see in print the reports of trials, if they can thus have them presented as fully as they are exhibited in court, or at least all the material portion of the proceedings impartially stated, *so that one shall not, by means of them, derive erroneous impressions, which he would not have been likely to receive from hearing the trial itself*." (Emphasis added.) *See*, 2 *Cooley's Constitutional Limitations*, 932 (Carrington ed. 1927). It is not the release of *accurate* reports about the proceedings that we should apprehend, but the release of prejudicial and inadmissible innuendo. No doubt this Court had the same concerns when crafting its orders.

County. The illicit suggestion in the Yavorcik bill of particulars that Anthony Cafaro and his family had caused payments to be made to politicians in other instances, which would be later revealed by the government, known in the news industry as a teaser, is not an isolated incident, simply the latest in a string of improper moves by the government.

It is of little avail for the special prosecutors to say that they had no part in the earlier improper actions. As this Court knows, and as the *Brady* line of cases teach us, it is the *government* that is prosecuting these gentlemen, not the individual prosecutors nor their predecessors in action. *See, e.g.*, *Brady* v. *Maryland* (1963), 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215; *Giglio* v. *United States* (1972), 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104; *United States* v. *Bagley* (1985), 473 U.S. 667, 675, 105 S.Ct. 3375, 87 L.Ed.2d 481; *Barbee* v. *Warden* (4th Cir. 1964), 331 F.2d 842; *Moldowan v. City of Warren* (6th Cir. 2009), 578 F.3d 351; *United States v. Stifel* (N.D. Ohio 1984), 594 F. Supp. 1525; *State v. Tomblin* (1981), 3 Ohio App.3d 17, 443 N.E.2d 529, 3 O.B.R. 18; *State v. Russell*, Cuyahoga App. No. 94345, 2010 Ohio 5778, 2010 Ohio App. LEXIS 4865.

These Defendants believe that their evidence will show the following: It begins with the meeting that was held between Mahoning County Prosecutor Paul Gains, with Assistant Mahoning County Prosecutors Linette Stratford and Gina Bricker, and Mahoning County Administrator George Tablack in tow, and employees of The *Vindicator*. These County officials, three fourths of whom were the lawyers for

these Defendants in their respective public capacities, met with The *Vindicator* editors and the political columnist in a Boardman Holiday Inn conference room and attempted to lay out a case for an ethics complaint against their own clients. (See, Exhibit A, attached.) Mr. Gains filed the ethics complaint—again, against his own clients.[5] Thereafter, copies of Gains' complaint letter were distributed by one of the investigators, Deputy Gary Snyder, to others not involved in the investigation.[6] Later, Mr. Gains and his assistants caused grand jury subpœnæ to be issued to compel the production of information geared toward prosecuting his own clients. It was only after boisterous and repeated complaining that lawyers cannot ethically act this way, and the issuance of Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline Opinion 2009-3, 2009 Ohio Griev. Discip. LEXIS 3 (June 12, 2009), that Mr. Gains asked for a special prosecutor.

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[5] As has been emphasized repeatedly, all of these actions were politically motivated, lest this be a series of incredible coincidences. The meeting between Mr. Gains et al and The *Vindicator* editorial board was immediately before Defendant McNally stood for re-election in the 2008 primary. And of course the indictment was issued just in time for Defendant Sciortino's political opponents to emphasize, unsuccessfully, that he was the only candidate for Auditor in Mahoning County who was under indictment.

[6] This was despite the fact that the investigation is to remain private until completed. *See*, OHIO REV. CODE ANN. §102.06(F): "All papers, records, affidavits, and documents upon any complaint, inquiry, or investigation relating to the proceedings of the appropriate ethics commission shall be sealed and are private and confidential, except as otherwise provided in this section and section 102.07 of the Revised Code." *See, also*, OHIO ADMIN. CODE §102-7-01: "(A) Any complaint, charge, inquiry, or investigation relating to the proceedings of the commission will be private and confidential, and all papers, records, affidavits and documents relating to such matters will be kept confidential except as otherwise provided in Chapter 102. of the Revised Code. The retention of all papers, records, affidavits, and documents relating to these matters will be in accordance with section 149.34 of the Revised Code."

That opinion, simply re-iterated what every lawyer should know: a lawyer may not choose one client over another in a legal dispute, especially if the client the lawyer chooses provides the funding for the lawyer's public office.

Opinion 2009-3 cited Rule 1.7 of the Ohio Rules of Professional Conduct, a rule for all lawyers governing conflicts of interest of current clients. That rule clearly provides: that "(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: (1) the representation of that client will be directly adverse to another current client; (2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests." The thrust of the opinion is that a county prosecuting attorney is prohibited by Rule 1.7(c)(2) from representing multiple statutory clients, such as two different public entities, in the filing of a lawsuit by one of the clients asserting a claim against the other, even through different assistant county prosecuting attorneys.[7] When a controversy evolves into a legal

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[7] OHIO PROF. COND. RULE 1.11, effective February 1, 2007, provides in pertinent part:

> (d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall comply with both of the following:
>
> (1) Rules 1.7 and 1.9;
>
> (2) shall not do either of the following:
>
> (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government

(continued...)

dispute that must be resolved through the filing of a lawsuit by one county official or entity against the other, the county prosecutor should withdraw in that matter from the representation of either client and special counsel should be appointed.

But that did not occur—not at least, for quite some time. The government, through the actions of the Mahoning County Prosecutor, first sued its client (and now one of the Defendants, Michael Sciortino),[8] while representing another statutory client; then represented one client (the Mahoning County Board of Commissioners) to the exclusion of other clients (McNally, Sciortino, Reardon, and Antonini) in the Bankruptcy Court proceedings and in the 2007 Oakhill litigation; filed a declaratory judgment action through outside counsel in the Mary Taylor litigation, and then conducted depositions of his own clients,

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[7] (...continued)

agency gives its informed consent, confirmed in writing;

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this rule, the term "matter" includes both of the following:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties;

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

The Official Comments notes that a lawyer who is currently serving as a public officer or employee "is personally subject to the Ohio Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7 and provisions regarding former client conflicts contained in Rule 1.9(c)."

[8] See, *State of Ohio ex rel. David Ludt et al. v. Michael V. Sciortino, Mahoning County Auditor*, Ohio Supreme Court Case No. 2006-1557 (Exhibit B).

which were in agreement with the County's legal position in that litigation, for the purpose of trying to gather more information against the prosecutor's own clients about the Oakhill purchase; shopped an ethics investigation to The *Vindicator* and then commenced an ethics investigation and then a grand jury investigation against the prosecutor's own clients, and then released confidential information about the investigation to the news media and to others. And so the release of the prejudicial Yavorcik bill of particulars was simply the culmination in a long trail of illicit and improperly prejudicial government activity. The fact that no filings have been objected to since the Court entered its orders is evidence enough of the efficacy of the orders.

Writing for the Court, Justice Tom C. Clark observed that "nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." *See, Mapp v. Ohio*, (1961), 367 U.S. 643, 659, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 86 Ohio L. Abs. 513, 16 Ohio Op.2d 384. Prosecutors are entitled to prosecute. But the blows they attempt to strike for justice, while they may be "hard" blows, may not be "foul" ones. *See, Berger v. United States* (1935), 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314. In *Nebraska Press Ass'n. v. Stuart* (1976) 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683, Justice John Paul Stevens wrote in a concurrence:

> For the reasons eloquently stated by MR. JUSTICE BRENNAN, I agree that the judiciary is capable of protecting the defendant's right to a fair trial without enjoining the press from publishing information in the public domain, and that it may not do so. *Whether the same absolute protection would apply no matter how shabby or illegal the means by which the information is obtained, no matter how serious an*

> *intrusion on privacy might be involved, no matter how demonstrably false the information might be, no matter how prejudicial it might be to the interests of innocent persons, and no matter how perverse the motivation for publishing it, is a question I would not answer without further argument.* See, *Ashwander v. TVA*, 297 U.S. 288, 346-347 (BRANDEIS, J., concurring). I do, however, subscribe to most of what MR. JUSTICE BRENNAN says and, if ever required to face the issue squarely, may well accept his ultimate conclusion.

(Emphasis added.) Id., at 617. In that same case, Justice William J. Brennan, Jr., had written in part:

> I unreservedly agree with Mr. Justice Black that "free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them." *Bridges v. California*, 314 U.S., at 260. But I would reject the notion that a choice is necessary, that there is an inherent conflict that cannot be resolved without essentially abrogating one right or the other. To hold that courts cannot impose any prior restraints on the reporting of or commentary upon information revealed in open court proceedings, disclosed in public documents, or divulged by other sources with respect to the criminal justice system is not, I must emphasize, to countenance the sacrifice of precious Sixth Amendment rights on the altar of the First Amendment. For although there may in some instances be tension between uninhibited and robust reporting by the press and fair trials for criminal defendants, *judges possess adequate tools short of injunctions against reporting for relieving that tension. To be sure, these alternatives may require greater sensitivity and effort on the part of judges conducting criminal trials than would the stifling of publicity through the simple expedient of issuing a restrictive order on the press; but that sensitivity and effort is required in order to ensure the full enjoyment and proper accommodation of both First and Sixth Amendment rights.*

(Emphasis added.) *Id*, at 611-612.

Taking these principles into account, and based upon the evidence to be adduced, a continuation of this Court's prior orders, or the imposition of a similarly crafted order, is proper. It insures that the government will play by the rules in its filings. Indeed, it insures that

all parties play by the rules so that the filings are not a continuation of the illicit activities of the government that have marred these entire proceedings and the "investigation" that preceded the indictment. The procedure crafted by the Court insures that the public is informed. Documents filed under seal are released weeks after filing and well in advance of the trial. This satisfies the public's right to know and the desire of these Defendants to have the public know, while at the same time guarding against the "active participation by the [Prosecuting] Attorney (as well as the police officers)" that "far exceeded the responsibilities of that office, the duties of which require not only the prosecution of crime but also the obligation to safeguard and insure the constitutional rights of defendants to a fair and impartial trial" and thereby avoid actions that are designed "effectively to poison the fountain of justice before it begins to flow." *See, People v. Luedecke* (1965), 258 N.Y.S.2d 115, 117, 22 A.D.2d 636, citing and quoting *Rex v. Parke* (1903), 2 K.B. 432, 438.

The danger of publicity concerning pretrial proceedings is:

> particularly acute, because it may be difficult to measure with any degree of certainty the effects of such publicity on the fairness of the trial. After the commencement of the trial itself, inadmissible prejudicial information about a defendant can be kept from a jury by a variety of means. When such information is publicized during a pretrial proceeding, however, it may never be altogether kept from potential jurors. Closure of pretrial proceedings is often one of the most effective methods that a trial judge can employ to attempt to insure that the fairness of a trial will not be jeopardized by the dissemination of such information throughout the community before the trial itself has even begun. Cf. *Rideau v. Louisiana*, 373 U.S. 723.

Gannett, 443 U.S., at 378. Here, the Defendants want a public trial, in this County, with public participation and observation. "Recognition of an independent public interest in the enforcement of Sixth Amendment guarantees is a far cry, however, from the creation of a constitutional right on the part of the public. In an adversary system of criminal justice, the public interest in the administration of justice is protected by the participants in the litigation." *Gannett, supra,* 443 U.S., at 378. Given the evidence to be produced, the limited and measured way in which the Court is handling the filings of all parties, the current method employed by the Court balances these rights because all parties may participate in the process, and the procedure thus recognizes that "our adversary system of criminal justice is premised upon the proposition that the public interest is fully protected by the participants in the litigation."

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The **Vindicator**
THE PEOPLE'S PAPER

Founded June 1869
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Past Publishers
William F. Maag Sr.
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William F. Maag Jr.
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William J. Brown
June 14, 1913-August 24, 1997

President & Publisher | Betty D. Jackson
General Manager | Mark A. Brown

TUESDAY, APRIL 1, 2008

HOW WE SEE IT

Ethics probe of JFS move should answer questions

It has already been established that Mahoning County officeholders were in regular contact with officials of the Cafaro Co. while the real estate developer was fighting to retain the county's Job and Family Services agency as a tenant.

The JFS had been located in the Cafaro-owned Garland Plaza on Youngstown's East Side for more than 20 years, but commissioners Anthony Traficanti and David Ludt decided to relocate the agency to Oakhill Renaissance Place.

Traficanti and Ludt were responding to pleas from JFS employees to be moved out of Garland because they believed the building was a health hazard.

The commissioners also were unable to negotiate a new lease with the Cafaro Co. that they felt gave the taxpayers the advantage — rather than the other way around.

The developer's original lease held it responsible for only the structure of the building. The county had to take care of everything else, including roof repairs.

Traficanti and Ludt, therefore, decided to buy Oakhill Renaissance Place, the former South Side Medical Center complex in Youngstown's central business district, and relocate the JFS agency.

However, their colleague, James McNally, objected on the grounds that county government had not done its due diligence with regard to the costs involved in purchasing Oakhill.

McNally was joined by Auditor Michael Sciortino and then Treasurer John Reardon. All three admitted in depositions and during a trial that they had numerous conversations about the JFS move with Cafaro Co. officials during the battle over Oakhill.

Reardon's successor, Lisa Antonini, also admitted to talking on numerous occasions with Anthony Cafaro, chief executive officer of one of the nation's leading shopping center development companies, but denied that JFS or Oakhill were broached.

Conflicts of interest?

Commissioners Traficanti and Ludt, along with county Prosecutor Paul Gains, believed that the McNally, Sciortino, Reardon, Antonini and other county officials were guilty of conflicts of interest and the Ohio Ethics Commission and the county sheriff's department were brought in to investigate.

Last week, the ethics commission issued more than 20 subpoenas in its effort to determine whether the actions of McNally and the others amounted to criminal violations of state statutes.

Seeing as how all the targets have admitted to being in regular contact with Cafaro Co. officials, the question that must be answered is this: Did these individuals sell out the county?

In the months leading up to the March primary, *The Vindicator* met with Prosecutor Gains, two members of his staff and county Administrator George Tablack, who laid out their allegations.

They provided the newspaper with copies of depositions and trial testimony. That information was the foundation for an interview with McNally, questioning of others and subsequently a front page story.

The story amounted to McNally et al denying there was any quid pro quo in their relationship with the Cafaro officials.

Indeed, voters in the Democratic primary gave McNally and Antonini the nomination, ignoring their opponents' contention that they were acting at the behest of the Cafaro Co.

Now, there's a formal investigation by an outside entity and we trust the truth will come out.

DEFENDANT'S EXHIBIT
A

The Supreme Court of Ohio & The Ohio Judicial System

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Kristina D. Frost
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Search Results: Case Number 2006-1557

The Supreme Court of Ohio

CASE INFORMATION

GENERAL INFORMATION

Case: **2006-1557** Original Action in Mandamus
Filed: 08/16/06
Status: Case Is Disposed

State of Ohio ex rel. David Ludt et al. v. Michael V. Sciortino, Mahoning County Auditor

PARTIES and ATTORNEYS

Ohio Valley Mall Co. (Intervening Respondent)
Represented by:
Castrodale, Joseph (18494), Counsel of Record
Anastos, Thomas (43545)
Eddington, Isaac (72966)

Ludt, David (Relator)
Represented by:
Gains, Paul (20323), Counsel of Record
Stratford, Linette (47223)

McNally, John (Relator)
Represented by:
Gains, Paul (20323), Counsel of Record
Stratford, Linette (47223)

Traficanti, Anthony (Relator)
Represented by:

Gains, Paul (20323) , Counsel of Record Stratford, Linette (47223)
Sciortino, Michael V. (Respondent) Represented by: Juhasz, John (23777) , Counsel of Record

DOCKET ITEMS

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Orders scanned prior to April 6, 2009, may not bear the signature of the Chief Justice. These online orders are identical to the original orders in all other respects.
- A symbol in an online docket denotes a scanned filing or an electronic version of a Supreme Court order. Clicking the icon opens an image of the filing or order.

Date Filed	Description
08/16/06	**Complaint in mandamus of David Ludt, John McNally and Anthony Traficanti, in their official capacities as the Board of Mahoning County Commissioners** *Filed by:* Ludt, David *Filed by:* McNally, John *Filed by:* Traficanti, Anthony
08/16/06	**Motion for an expedited alternative writ and expedited briefing schedule** *Filed by:* Ludt, David *Filed by:* McNally, John *Filed by:* Traficanti, Anthony
	09/05/06: Denied
08/16/06	**$100 security deposit for costs by Paul J. Gains, Mahoning County Prosecuting Attorney, receipt # 888** *Filed by:* Ludt, David *Filed by:* McNally, John *Filed by:* Traficanti, Anthony
08/16/06	**Summons & complaint issued to respondent(s)**
08/21/06	**Return receipt/service of summons & complaint; Michael V. Sciortino served 8/18/06: postage $8.45**
08/28/06	**Notice of appearance of John B. Juhasz** *Filed by:* Sciortino, Michael
09/05/06	**Motion for leave to intervene of Ohio Valley Mall Co.** *Filed by:* Ohio Valley Mall Co.
	11/01/06: Granted
09/05/06	**Answer of intervening respondent Ohio Valley Mall Co.** *Filed by:* Ohio Valley Mall Co.

09/05/06	**Motion of Ohio Valley Mall Co. for judgment on pleadings** *Filed by:* Ohio Valley Mall Co.
	11/01/06: Granted
09/07/06	**Answer of respondent** *Filed by:* Sciortino, Michael
09/07/06	**And motion to dismiss** *Filed by:* Sciortino, Michael
	11/01/06: Granted; cause dismissed
09/15/06	**Memo opposing motions to dismiss and for judgment on the pleadings** *Filed by:* Ludt, David *Filed by:* McNally, John *Filed by:* Traficanti, Anthony
12/04/06	**Refund of security deposit in the amount of $91.55; check no. 2125**
12/04/06	**Payment to Postage by Phone Reserve in the amount of $8.45; check no. 2124**

Question or Comments?

ECMS Online 1.2.9

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