



# Hon. Thomas M. Rose

## U.S. District Judge for the Southern District of Ohio

by Jade K. Smarda



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“All Rosy for Rose.” It would be easy to assume that a headline like this, featured in a Southwestern Ohio newspaper, would be an article from the glory days of the Cincinnati Reds’ “Big Red Machine.” Back-to-back world champions in 1975 and 1976, stars like Johnny Bench, Joe Morgan, Tony Pérez, and Pete Rose were exceedingly popular in Cincinnati and the surrounding areas. (They still are, although one of them is the subject of just a tad more controversy than the others.)

While the headline, from May 2002, was not about the Big Red Machine, it *was* about one of the Reds’ most enthusiastic season ticketholders, Judge Thomas M. Rose. Rose, while not a baseball star, had been a star in his legal community for years when the front page of his hometown newspaper, the *Xenia Gazette*, reported on the U.S. Senate’s approval (95-0) of his appointment to the U.S. District Court for the Southern District of Ohio. A veteran trial court judge when he was nominated by President George W. Bush, Rose had already served his community from the Greene County Court of Common Pleas for nearly 12 years before joining the federal bench.

Greene County, which is part of the Dayton metropolitan area and only 50 miles from Cincinnati, is a historic area boasting a diverse ideological heritage. In the 1800s, Greene County was home to one of the final stops on the Underground Railroad. In 1856, it hosted one of the first meetings of the newly formed Republican Party. One hundred years later, during the Red Scare of the 1950s, significant populations within Greene County—particularly those affiliated with Antioch College—came under scrutiny for alleged sympathies to the Communist Party due to many local residents’ support of left-wing politics. In the late 1960s and early 1970s, parts of Greene County became a hub for the civil rights and antiwar movements. Now, parts of Greene County are known as liberal strongholds, while others are consistently conservative.

In the bastion of diverse ideology that is Greene County, Rose, who was first appointed to the Greene County bench in 1991 and later elected in 1992 and 1998, never ran opposed at either the primary or gen-



eral election levels. A former assistant Greene County prosecutor who served as chief of the civil division for over 13 years—representing townships, county officers, non-city school districts, and various county boards—Rose developed a reputation for fairness early on. “The commissioners, the township trustees, they loved Tom Rose,” recalls Greg Lockhart, Judge Rose’s former law partner who later went on to serve as U.S. attorney for the Southern District of Ohio and is now of counsel in the Dayton office of Taft Stettinius & Hollister LLP. “He was reliable, competent, smart. He gave great advice. He always had a sense of where things *ought* to end up—what was reasonable and fair—and had a way of getting people there by agreement.” Rose’s track record for fairness and civility has continued throughout his career. To use the words of his friend and colleague on the federal bench, Hon. Walter H. Rice, “Judge Rose is a wise person, with an excellent mixture of legal knowledge, a sense of justice, and common sense.”

Many attribute Rose’s sense of fairness to his small town upbringing in Laurelville, Ohio. His mother, Mary, put herself through college at Ohio University in Athens and became a schoolteacher. Rose’s father, Thomas, was a banker who eventually retired as



Top Left: Rose at bench at Court of Common Pleas, Greene County, Ohio. Top Right: Liz Penski (courtroom deputy), Leslie Foley (court reporter), Judge Rose, Doris Evers (judicial assistant), and Pete Snow (law clerk). Bottom Right: Rose, at his Senate Confirmation hearing.



president of the Salt Creek Valley Bank in Laurelville. His parents and older sister, Laura Rose Hinton, always set a positive example. Rose recalls visiting his sister at Ohio University and instinctively knowing that college and the legal profession was for him. “I don’t know why, but as early as the sixth or seventh grade, I *knew* that a career in law was my ‘destiny,’” explains Rose, placing comedic emphasis on the word “destiny.” “But I’m from a small town. Other than watching Perry Mason, I had no experience with attorneys growing up.”

When it came time to pursue his dream, and to enroll in college himself, the Vietnam War was at its peak. Rose joined the ROTC and made a commitment to military service, pursuing a degree in history/government at Ohio University. After graduating in 1970, Rose went on to obtain his law degree at the University of Cincinnati College of Law, committing to become a JAG officer. Rose went through basic training for the Army Reserve, but was ultimately released from his JAG obligation as the Vietnam War waned. A fan of all things Cincinnati—including his beloved Reds—Rose literally used a compass to draw a 50-mile radius around Cincinnati for purposes of career planning. Eager to get into the courtroom as quickly as possible, Rose made a fateful decision when he accepted a position in 1973 as an assistant prosecutor for the Greene County Prosecutor’s Office.

At the prosecutor’s office, Rose developed many lifelong relationships, including a steadfast friendship with current Ohio Attorney General Mike DeWine. In addition to practicing side-by-side as assistant prosecutors for two years, they survived one of the worst tornados in Ohio history together. “Tom had enough sense to tell us to get downstairs,” DeWine quips when asked about the incident. It was an experience that neither will ever forget:

We looked outside and saw what looked like a black curtain in the distance, so [Mike and I] ran to the basement. The expression is true—it was like a freight train going over the building. The walls were rumbling so much that the clay bricks were shaking, popping out of the walls, and falling to the

ground. We came upstairs [after] and the top floor of our office was gone.

The tornado, which destroyed much of Xenia (the Greene County seat), was part of the “1974 Super Outbreak,” which is widely regarded as the most violent tornado outbreak ever recorded. From April 3 to April 4, 1974, there were 148 tornadoes confirmed in 13 U.S. states, including Ohio. The tornado that struck Xenia stands as the deadliest individual tornado of the 1974 Super Outbreak, killing over 30 people and leveling significant portions of the town.

After literally picking up the pieces—Rose and DeWine did what they could to help people move and otherwise clean up the aftermath—the two went through a figurative tornado a year later that changed the trajectory of their careers forever. In 1975, Nick Carrera, the Greene County prosecutor, became suspicious that DeWine would run against him for Greene County prosecutor in the next general election and bugged the prosecutor’s office. As scandal loomed around Carrera upon discovery of the wiretap, DeWine and Rose confronted Carrera, resigned, and immediately went into private practice together. However, each would soon return to public service. After the wiretap scandal was exposed to the public, DeWine easily won the position of Greene County prosecutor in 1976. The same year, Rose became a referee for the Greene County Juvenile Court, serving in that capacity until 1978, when he became chief of the civil division for the Greene County Prosecutor’s Office.

As chief of the civil division, Rose took on issues of considerable public importance, including land appropriation litigation that shaped the future and long-term economic prosperity of Greene County. In 1990, Greene County Common Pleas Judge Ed Kimmel announced his retirement and Rose was widely regarded as the optimal candidate to succeed him. The landmark year for Judge Rose was not lost on the *Xenia Gazette*: “In



Top Left: Rose's horse, "Perfect M Forever," winner of the 2008 Ohio Breeders Championship. Top Right: Judge Rose enjoying an impromptu visit with his grandchildren. Middle Left: Judge Rose with his wife, Terri Mazur. Bottom Left: Judge Rose with his daughter, Traci, at a Reds game last year.



his 17th year as a Xenia attorney, Rose has had a very enjoyable 1990. Not only did his beloved Cincinnati Reds sweep the Oakland A's for the World Series title, but he is the odds on choice to be appointed to the Greene County Common Pleas Bench."

Rose was appointed to the Greene County bench by the Ohio Governor in 1991, and was reelected twice thereafter. His ability to smoothly transition from one side of the bench to the

other came as a surprise to no one, least of all his former colleagues. "Tom was the one who would sit back when the rest of us were arguing about something," recalls Lockhart, reminiscing about his time in private practice with Rose. "When it would calm down a little bit, he always had a knack for adding a comment that would help resolve the issue or bring some sort of closure." Of course, Rose's time on the Greene County bench was not without its challenges. Rose was the first judge in modern Ohio history to be confronted with a capital case in which a defendant wished to proceed *pro se*. Known locally as the "Valentine's Day Shooting," the defendant publicly confronted his estranged wife at a Valentine's Day dance in 1998. Upon being rebuffed, the defendant shot at her and missed, but killed two others in the aftermath. At trial, when facing the death penalty, the defendant sought to proceed *pro se*. Stephen Wolaver, now a Greene County Common Pleas Court judge, was part of the prosecution team on the case. Now that he sits on the other side of the bench, Judge Wolaver appreciates more than ever the difficulty Judge Rose faced: "The law required that the defendant be permitted to represent himself. However, the dynamic of creating an environment for a fair trial, with super due process, without becoming an advocate, is such a difficult balance. Judge Rose did an outstanding job. He took every precaution, including having two lawyers on standby in the gallery." The death penalty conviction was ultimately affirmed.

When Judge Rose was appointed to the Southern District of Ohio at Dayton, members of the Greene County legal community, like Judge Wolaver, were proud but saddened to lose such an esteemed colleague. Their loss, however, was the federal court's gain. Having manned the federal courthouse in Dayton alone for 22 years, Judge Rice could not have been happier that Rose was selected to join him:

Before I knew it was going to be Tom Rose, I was very concerned because you often spend more time in the courthouse with your associates than you do with your family. But, if I had called Central Casting and asked them to send me the ideal colleague, Tom Rose would have walked through the door. Everything he appears to be, he is. He's a wonderful, collegial, marvelous human being. It is an absolute delight to have him as a colleague. I could not have asked for more.

Indeed, when Judge Rice spoke at Judge Rose's 2002 investiture, he said he felt like a player in a "B" Western he once saw in which a lone soldier awaited a cavalry rescue after a long battle: "What the soldier said, I say to you: 'My God, man, what took you so long?'"

Over the years, Judge Rose and Judge Rice have shared Dayton's varied and complex caseload. By way of example, Judge Rose has presided over multiple patent cases, cases involving U.S. treaties, and sensitive proceedings that touch upon the largest military base operated by the Air Force in United States territory, Wright-Patterson Air Force Base (WPAFB), which is spread over two Dayton-area counties. In 2013, for example, Judge Rose ordered a defendant to pay the U.S. government \$473 million plus interest for fraudulently overbilling on jet engines for F-15 and F-16 fighter jets. This year, Judge Rose presided over a criminal case in which a contractor for WPAFB was accused of stealing intellectual property belonging to the U.S. government. Through all of the complexities, he has remained at heart a trial judge whose chief goal is to ensure that all litigants get their opportunity to present their arguments: "No matter what you first *believe* is the truth, there is always another side to the story," he notes. Rose recognizes that when people leave his courtroom, some are happy, and some are not as happy: "You at least want them to leave the courtroom feeling that they have been able to give their side of the story. That they have been heard."

Rose's acumen as a trial judge is also apparent in the way that jurors feel about how he runs his courtroom. Once, sensing that all were growing anxious as a lengthy jury trial approached Christmas, Rose declared that there would be no proceedings on Christmas Eve. The jurors were so overjoyed that they drafted him a poem in the style of *'Twas the Night Before Christmas*. Rather than wear a red suit and speak in a jolly voice, the hero

of this poem “wore a black robe that was shiny and neat, and with a little Southern Ohio drawl he did speak.” The poem’s famous ending was adapted for the occasion:

On December 23 he made a decree  
No court proceedings for Christmas Eve  
As the courtroom darkened on that afternoon and  
off went the lights  
He said, “Don’t forget the court’s admonition,” and  
Merry Christmas to all and to all a good night.

Judge Rose’s consideration for the people around him is also reflected in the loyalty of his staff. Rose’s judicial assistant, Doris Evers, has been with him for 37 years, since his Greene County days: “I’ve never had another boss. Because Judge Rose is so wonderful to work with, I’ve been able to be a mother and have a career at the same time.” Likewise, Judge Rose’s court reporter, Leslie Foley, has been with Judge Rose for almost 26 years: “There are stressful days, but they’re not as stressful as they could be if it were not for his management style.” According to Liz Penski, Rose’s courtroom deputy, his management style makes for a positive work environment because “Judge Rose is looking at his dockets every day, and talking to all of us about what is going on. There is nothing that just sits on his desk, or in his email box.”

While Judge Rose is organized and efficient, he is not one to impulsively rush justice. His longtime friend and recently retired law clerk, Bob Buerger, explains that “Judge Rose will not sign an order until he fully understands the specific law involved and the full extent of the order’s effect.” Consistent with Judge Rose’s philosophy that there is more than one side to every story, Rose avoids knee-jerk reactions with remarkable discipline. According to law clerk Pete Snow, one of Rose’s best qualities is that he “gives himself a chance to reverse himself.” He looks at every angle before making a decision.

The office dynamic is also enhanced by Rose’s love for his Cincinnati Reds, as well as his lighthearted “rivalry” with Judge Rice, a diehard Pittsburgh Pirates fan. Both have experienced their highs and lows, although Judge Rose jokes that he, “unlike Judge Rice, has at least been able to watch his team win a World Series on a color television.” But the Reds have caused Judge Rose plenty of heartache. “Judge Rose claims to be able to put a curse on your team by cheering for them,” according to Joseph Brossart, who has clerked for Judge Rose since 2002. Given Rose’s love of the game, it is probably no coincidence that baseball references and analogies so often find their way into conversations about him. For example, Judge Michael Barrett (Rose’s Cincinnati colleague) opines that Judge Rose is a respected judge, in part, because “he has good understanding of what cases should settle—why they ought to settle—but he also understands that sometimes you just have to go to trial. And he is really comfortable behind the plate, calling balls and strikes in those situations.”

The characteristics that make Judge Rose a good jurist also make him a good husband, father, and grandfather. “Honesty, integrity, trustworthiness, patience. These are his best qualities as a judge and as a husband,” explains Terri Mazur, Judge Rose’s wife, who also serves as the Greene County clerk of courts. “He is the most thoughtful person that I know, and I mean that in the fullest sense of the word, because he *thinks* everything through.” Judge Rose is also proud of his daughter, Traci Rose Rider, Ph.D., who teaches architectural graduate students in Raleigh, N.C., and is the author of multiple books on sustainable building. When not in court, Judge Rose decompresses with his family on his horse farm. An avid breeder and racer of Standardbred Pacers, you can be certain that before he comes to court, he has taken care of his horses in the morning. “I really think he gets dressed in the morning in the barn,” jokes Evers. “I walk around picking hay off of the carpet. But you don’t always want to pick *everything* up. Just because it looks like dried mud, you can’t assume it’s mud.”

Ultimately, Judge Rose’s ability to decompress has helped him in his judicial career. Having worked in the court system for years, Mazur never ceases to be amazed by her husband’s poise. “It’s his grace under pressure. That’s what makes him remarkable. That, and that he thinks about the consequences of his rulings for the long term,” explains Mazur. “He is not finished with a case, for example, when a defendant is sentenced.” In fact, Rose is frequently approached by former defendants. “People don’t come up to you, after you’ve sent them to prison, and express happiness at seeing you unless they feel that they’ve been fairly dealt with,” explains Judge Rice, praising Judge Rose’s style. A further testament to Judge Rose’s commitment to former defendants in the Southern District of Ohio is his involvement with the local Reentry Court program. Reentry Court aims to minimize barriers to effective reentry, and to promote reduction in recidivism. “Our involvement does not end after we’ve sent them to prison,” explains Judge Rice, describing his and Judge Rose’s involvement with Reentry Court. “Once they’re home, we do everything we can to tell them, these men and women, that we’re happy they’re home and that we’re here to help.” And there is nothing Judge Rose loves more than a success story. One defendant he sentenced years ago in Greene County turned his life around and was able to become a Dayton Police Officer, at one point testifying in Judge Rose’s court at a suppression hearing.

Ultimately, relationships are important to Judge Rose, whether those relationships are with his family, friends, colleagues, clerks, staff, former clients, ex-offenders, or his beloved Reds. Just as he will never give up those season tickets, he will never give up on treating people with fairness and respect, and will never stop loving a good success story. Even for the Pittsburgh Pirates, if only so that Judge Rice can see them win a World Series on a color television. ☺