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The San Diego County Bar Association (SDCBA) is pleased to announce that it has expanded its endorsement of Ahern Insurance Brokerage (AIB). AIB and the SDCBA have enjoyed a working relationship that began in 2004, when the agency became the Endorsed Insurance Broker for Professional Liability Insurance coverage. In an effort to continue providing SDCBA members with quality insurance products that are competitively priced, AIB is now offering additional lines of insurance coverage. SDCBA members have exclusive rights to purchase many of these products at discounted rates, enhanced benefit levels, and with simplified underwriting requirements.

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The Advantages of the Metric System

Any Monday in September. It’s a little before 7 a.m., and the sun is rising above the eastern hillside overlooking La Jolla Shores. I have been in the water since before daylight. Like the day and the surf, life—for the moment, anyway—is perfect. But now is not the time for inner musings. I have to go! Wet, surfboard strapped to my car, I am off and headed due east.

The first hundred miles are always easy and pass in an agreeable blur. It is with 20 miles to go that my other life begins. The mountains give way, and I drop down the grade from Jacumba to the valley floor. As I descend, the digits on my car’s thermometer ascend: 105 degrees Fahrenheit, hot but average for this time of year. I switch the computer to metric—ah, 41 degrees Celsius—and immediately feel cooler.

El Centro, California, is located 120 miles east of San Diego, 58 miles west of Yuma, and 14 miles north of Mexico. I have arrived. This is where I spend my weekdays. My wife and I have owned a condo here since 1984. She chooses her visits to El Centro based on the weather report. She doesn’t understand the advantages of the metric system the way I do. I pull up to the courthouse. I am on time, but when has a judge ever been late? Like a seasoned Clark Kent, I change into something more appropriate and get down to work.

Now I have a confession. I say this without boast: I have the best job in the world.

Our courthouse is a significant architectural addition to the valley. Construction was completed just two years ago. The courthouse and its landscaping reflect the valley’s agricultural and desert environments. Aside from the U.S. Marshal, Probation and Pretrial Services, the courthouse contains one courtroom and hosts just a single judge: me. The courtroom is paneled in dark cherry, but with large overhead windows is light and airy. Flat screen monitors and computers abound; the technology is amazing. As for my chambers, it will suffice to say, they do justice to the handsome courtroom.

Our facilities are put to good use. While the valley generates a decent civil caseload, our bread and butter is the criminal calendar. Statistics show that Imperial County produces approximately 38% of the criminal caseload for the entire district. Every day, defendants are brought here for arraignment—smugglers mostly, of both humans and drugs. On the civil side, we conduct trials, negotiate settlements, monitor discovery and handle all manner of motions. Perhaps it is the novelty of dealing with a civil caseload after a career as a prosecutor, but I enjoy it.

Imperial Valley is a wonderful place to practice law. Although there isn’t much surf in the valley, I still have weekends. I’ve enjoyed a wonderful career and have found my calling as “the” federal judge. Not a day goes by that I don’t appreciate my good fortune. Maybe it all comes down to learning the metric system.

Peter Lewis was appointed a U.S. magistrate judge on June 28, 2004. His assignment is the El Centro branch courthouse. His primary residence remains San Diego.
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This month’s column was jointly written by Jill Burkhardt, SDCBA president, and Lisa Weinreb, Lawyers Club president.

You hear about it all the time: balance. Can we achieve it all, or is that a myth? How do those who appear to be doing it do it? Can anyone really succeed at balancing the demands of career, family, community service . . . and personal sanity? Here’s a little secret: You may have already succeeded, and you don’t even know it.

Oh, no, you may be saying, not me—for me it’s a constant struggle. You may be thinking about last week, when you went to your son’s classroom party and he was disappointed that you came in 15 minutes late and with store-bought cupcakes. You may be remembering the look your colleague gave you as you left the office at 5:15 to make a board meeting. (Little did she know that later you worked at home on your laptop until almost midnight.) You may still be bothered by the fact that you had to say no to chairing that committee because you’re acutely aware they haven’t yet found anyone else to do it.

Oh, no, you may be saying, not me—I’m constantly feeling out of balance. And I’m perpetually feeling guilty.

Of course, that doesn’t mean the decisions aren’t sometimes agonizing. And it doesn’t mean the decisions aren’t sometimes without costs and consequences. Most significantly, it doesn’t mean that everyone in your life will be happy with all of your choices. Pleasing others cannot be the sole measure of whether you have succeeded in striking the right balance.

And when you make those hard calls—whether to go to the noon committee meeting or your daughter’s poetry recital; whether to spend one more hour at work preparing for tomorrow’s argument or to meet your spouse for his mother’s birthday like you promised—do you make those choices carefully? Do you measure your decisions against your deeply held priorities? If the answer is yes, then you have struck the right balance.

Of course, that doesn’t mean the decisions aren’t sometimes agonizing. And it doesn’t mean the decisions aren’t sometimes without costs and consequences. Most significantly, it doesn’t mean that everyone in your life will be happy with all of your choices.

Of course, that doesn’t mean the decisions aren’t sometimes agonizing. And it doesn’t mean the decisions aren’t sometimes without costs and consequences.

Appraise your “balance success” with a long measuring stick. Balance cannot be accurately measured in a snapshot. On any given week, you may find that work is under control but your family may be craving more of your attention or vice versa. Even though you might feel unbalanced, maybe you’re just out of balance at this moment. Take a longer view. As you look back over the past number of months, were you spending your time and energies in a way that was consistent with your priorities over all? If your answer is yes, then you are succeeding.

Give yourself permission to redefine your notion of balance. Recognize that things might not be perfect, but you are making decisions that make your life work. So let go of the guilt and instead congratulate yourself on your success.
When you support the Foundation of the State Bar of California, you help build a better justice system for all Californians through law-related community projects, law school scholarships, and education programs for seniors, young adults, kids, and parents. Please stay involved. For information on how you can support the Foundation of the State Bar of California, visit www.fsbcal.org.

A message from West, a corporate sponsor of the Foundation of the State Bar of California, providing legal publishing and related services to California lawyers.
I want to share with you that Lawyers Club received a number of calls and emails regarding Candace Carroll’s article in San Diego Lawyer, entitled “Standards of Decency.” The feedback ranged from anger, disappointment to some praise on the other hand for her frankness. A number of Lawyers Club’s members found it offensive and distasteful. They were also concerned that there was not an article about how men should dress in order to gain credibility in the courtroom.

We wonder why the emphasis on women. Are women still challenged in this profession to look the part and prove that they are competent despite their appearance? Was the problem as serious as described? Probably not. The comments on conservative hemlines, makeup, and wavy-ness of hair also trigger some cultural issues that may not have been foreseen by the author. With more and more women entering the profession and becoming partners, supervisors, and judges, women should be viewed as just lawyers, not as women dressed up as lawyers.

Thank you for considering this input.
Lisa Weinreb, President
Lawyers Club of San Diego

[Ed. Note]: The members of the Lawyers Club of San Diego were not alone in their mixed reaction to Carroll’s article. Some readers praised it; others condemned the apparent bias. Andrea Contreras Dixon was moved to write a letter to us, attaching her version regarding deficiencies in both dress and grooming in male attorneys. In the interest of balance, we ran Dixon’s rebuttal in the January/February issue.
CAREER: Licensed in 1947 as a California bail bondsman; no one's been at it longer.

NICKNAME: His nickname was given him by himself via an Oceanside police officer who noticed his license plate was BBK, and the cop said; "Hey does that stand for Bail Bond King?"

EARLY DAYS: Born on June 26, 1923, in Glendale, California. Served in the Navy during World War II and received the Purple Heart when his ship sank at Guadalcanal.

FAMILY: Beverly, his wife of 40 years, died in 2003; two grown kids. His father was a Los Angeles, Hollywood and Fallbrook (where he owned an avocado ranch) lawyer whose clients included Shirley Temple, Errol Flynn, Walter Pidgeon, 'Bugsy' Siegal and Mickey Cohen.

PASSION: Golf. Once had a 9 handicap; supports countless golf tournaments in the legal community. His other passion is work, where at age 82 he still works six days a week, and loves every minute of it. Never takes a vacation

PETS: Ace, a Golden Retriever, and two cats, Heidi and Tiger.

ADMires: Former President Ronald Reagan, whom he met at the Hotel del Coronado.

ASPIRATIONS: Ran for Mayor of San Diego in 1967 against Frank Curran.

THE PROFESSION: "It's fascinating. You meet some characters. I'm one myself. I relate to them."

http://www.kingstahlmanbail.com/
Scenes from the Wayback Machine

The question: If you could go back in time, to which era and which time would you go?

The U.S. in the 1920s, when what we now take as necessities became widely available for the first time. Regular people were starting to drive around in these things called automobiles. A few people could actually afford to fly in the air in these contraptions called airplanes. People could routinely talk to each other from their own homes—across the country and places overseas no less—on devices called telephones. Photographs began to be transmitted nationally for publication. People began to listen to this new form of music known as jazz on a device called a radio. Of course, you couldn't drink legally and the decade ended on a bit of a low note, so I guess there's a downside to every era.

—Alan Mansfield
Rosner and Mansfield, LLP

I would visit the sessions of the drafting of the Constitution in Independence Hall, Philadelphia, PA.

—Gregory T. Babbitt
Rosner & Mansfield, LLP

I would go back to Germany in the first half of the 19th century where I could play the violin in an era of great composers, like Schubert, Strauss, Danzi and Beethoven.

—Wendy Patrick-Mazzarella
Deputy District Attorney

I would go back to Elizabethan England to talk with Shakespeare or Regency England to talk with Jane Austen.

—Alisa A. Shorago
Attorney at Law

I would go back to ancient Egypt to find out just exactly how they built those great pyramids and obelisks.

—Steve Marsh
Luce, Forward, Hamilton & Scripps, LLP

I would go back to Havana in the 1950s to get a sense of the place and time where I was born and what my parents’ world was about. Either that or San Diego in the 1880s so I could buy up beachfront property!

—George L. de la Flor
Law Offices of George L. de la Flor, APC

I would visit 1960s Nappanee, Indiana. This would give me the opportunity to see my grandfather on the bench.

—Shelby L. Stuntz
Stock Stephens, LLP

I would go back to when the Bill of Rights was written in 1791 because … I have some suggestions.

—Norma A. Aguilar
Law Office of Norma A. Aguilar

I have always had a tremendous curiosity regarding the lives of some of my ancestors. I would love to have the opportunity to return to northern Europe at the turn from the 19th to the 20th century to see what life in pre—World War I was like for those relatives. I would hope to gain a more personal understanding of the family circumstances that would drive them to make such an incredible journey to establish a new life a continent away, so far away from the support network of family and friends. The thought of doing so without today’s ability to communicate across the globe is really awe-inspiring.

—Randy Clark
Sempra Energy

I would go back to the time when women ran the government and nobody’s sons were ever killed in battle. Oh wait. That never happened, did it?

—Deborah Wolfe
Wolfe Legal Group

Lilys D. McCoy is a shareholder with McCoy, Turnage & Robertson, APLC. She represents consumers in lemon law, auto fraud, and Fair Debt Collection Practices Act and Fair Credit Reporting Act cases. LDM@MTRLAW.com
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You’ve been invited to attend a cocktail party reception for an organization your firm supports. You don’t know anyone except the others from your firm, and you know that hanging out with them is not why you’re attending. It’s fine to go to an event with a colleague, but it’s better to work the room alone. Very few people look forward to a room full of strangers, and most everyone at the event has similar feelings. How can you turn the dread of making small talk into an opportunity to meet new people and develop your network? By strategically “working the room.”

- Have a plan. Research the event and the likely attendees. Your secretary or library staff should be able to get you some basic information. This will help you find a connection with the people you will meet.
- Dress for the occasion. It’s always better to be in appropriate business attire when others are more casual, rather than the other way around.
- Develop your personal message. Prepare a brief introduction of yourself that conveys who you are, what you do and what your connection is to the event.
- Bring business cards—but don’t hand them out without being asked.
- Walk into the event with energy and a sense of purpose. No one needs to know you’d much rather be home or that you’re really thinking about that brief you need to finish.
- Get a drink first (alcoholic or nonalcoholic). It gives you a chance to scope out the room, and having a drink to sip on gives you something to do as you make your way around the room.
- Don’t wait to be approached. Find someone who looks as ill at ease as you feel, and strike up a conversation. Vow to enjoy yourself, smile and be pleasant and engaged.
- Introduce yourself and then ask some questions, such as “How do you know the host?” or “What’s your affiliation with the event [or organization]?”
- Be prepared for conversation by reading today’s headlines. Know the hot issues—even if they don’t interest you. Have three topics ready that are appropriate to the event or something currently in the news (but not controversial). Spend 5 to 10 minutes in each conversation, then excuse yourself and move on.
- Wear a nametag, when provided. It should be worn high on the right side so that it is in the line of sight when you shake hands with people. And speaking of shaking hands, use a firm handshake (this goes for both men and women). Look people in the eye, and make sincere contact. You’re more likely to remember names if you take a moment to really connect.
- Remember the names of those you meet. If there are no name tags, and you forget, ask them for a card. Remember these tips for recalling names: (1) focus on the person and his or her name, not what you are going to say next; (2) repeat the name in your head; (3) use it again as soon as possible, but don’t overdo it or you’ll sound like you’re trying too hard; (4) when you move on to another group, reflect on the group you’ve just met and try to recall their names; (5) introduce them to others. This reinforces the name and establishes you as someone to know.
- Before you leave, thank the hosts and say goodbye. Resist the temptation to bail early or sneak out a side door.
- As soon as possible after the event, make notes and add any potential clients or referral sources to your contact list. Be sure to follow up with anyone where you might be able to provide an article or other information on a topic you discussed.

Having a plan, enjoying yourself and following up will help build your network of contacts and will take the “work” out of working a room.

Patti Lane is legal administrator for McKenna Long & Aldridge LLP, a certified legal manager, and past president of the international Association of Legal Administrators. plane@mckennalong.com
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Harvard Law Professor and criminal defense attorney Alan Dershowitz thought he had finished speaking to a large audience at Thomas Jefferson School of Law on November 6. But second-year student David Hakimfar, president of the Jewish Student Union, which sponsored the event, had 10 more questions for him. Here are those questions as well as Professor Dershowitz’s responses.

1. What is your favorite word?
Passion.

2. What is your least favorite word?
Can’t. Cannot.

3. What turns you on creatively, spiritually or emotionally?
Teaching. Having access to young minds and hearing what young people are thinking; getting the benefit of their youth and giving them whatever benefit of my age.

4. What turns you off creatively, spiritually or emotionally?
People who think that there are simple answers to complex problems. Life is so incredibly complicated that none of the simple solutions really ever work.

5. What is your favorite curse word?
This is going to be strange. Okay. Hardly any of you know it. It’s a Hebrew word, and it’s from the Bible. And it’s Ha-Liah. It’s the word that Abraham used to curse God, when God said he was going to punish the sinners of Sodom without giving them a trial without, and not thinking that the innocent would be swept away along with the guilty will be and Abraham says to God, Ha-Liah... (says several words in Hebrew.) ... How dare you! How profane of you, God, to judge the world not to himself in justice. So I love that word.

6. What sound or noise do you love?
I guess the sound I love the most is my daughter, who is 16 years old, arguing with me.

7. What sound or noise do you hate?
The sound of my 16-year-old daughter arguing with me ... (drowned out by laughter).

8. What profession other than your own would you like to attempt?
Oh that’s easy. Journalism. I would have loved to be a journalist, an investigative journalist trying to get to the bottom of things. I have tremendous admiration for journalists who really can dig out the facts and really produce a wider truth.

9. What profession would you not like to do?
Judge. I’ve been asked why I didn’t become a judge. I was offered a federal judgeship when I was about 37 years old. This is an easy answer but it’s true. Does anybody ever ask Kobe, boy you’re doing so well playing for the Lakers, why don’t you quit now and become an official? I think that judging is much too passive a job, much too much on the receiving end. I want to be a person out there creatively trying to push the ball, so I wouldn’t be a very good judge.

10. If Heaven exists, what would you like to hear God say when you arrive at the Pearly Gates?
Oh, darn! 😞
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Globalists tell us that the world is flat, with there being ever greater interdependence, integration and interaction among people and countries in disparate locations. That may be true, but when you pick up your family, profession and dog (in that order) and move 5,000 miles from San Diego to Tokyo, Japan, the world does not look, feel, sound, smell or even taste particularly flat—even if there are more than 600 Starbucks in Japan! Now, six months into a several-year assignment with my firm’s Tokyo office, I offer some initial ruminations on life and the law in the land of the rising sun.

What a Trial Lawyer Is Doing in Japan

While notions of the Japanese being non-confrontational remain true at some level, more and more Japanese companies are affirmatively choosing litigation as a part of their business strategy. Japan’s many sophisticated, international companies are regularly involved in high-stakes patent, product liability and trade secret litigation in courts from San Diego to New York. Also, the same wave of internal investigations that has swept through corporate America has reached Japan’s shores in situations ranging from DOJ antitrust inquiries to stock options back-dating examinations. In all of these matters, it is invaluable for Japanese clients to have on-the-ground counsel who can advise them regarding how a jury might react to an argument, how a judge could view a difficult legal issue, or how a federal regulator is likely to approach an investigation.

The Curse of the $200 Melon

Japan is a country obsessed with perfection: trains that leave exactly when scheduled; meetings to which no one is late; individually wrapped fruit, including $200 melons that look more decorative than edible. That same sense of perfection can make it difficult for Japanese clients to understand or accept the vagaries of the U.S. justice system. Some client meetings end with an explanation that yes, the client has the stronger legal position in a dispute with an adversary, but no, that does not mean it will necessarily prevail in court. Of course, that conversation is not unusual with a U.S. client, but in Japan the head scratching is even more pronounced. In some sense it reflects the belief that a stronger product, argument or position is necessarily superior and therefore must prevail.

The Weight of History

Coming from the United States where the news is dominated by the Iraq War and the scandal de jour, one is struck in Japan by the continuing primacy of World War II and other historical events in Japan’s current political, social, economic and legal debates. Whether Japan’s prime minister will visit the Yasukuni Shrine, the memorial for Japan’s WWII deceased soldiers. Whether legal remuneration will be made to persons who were forced into corporate labor camps. Whether North Korea’s nuclear weapon’s test should change Japan’s stance against nuclear arms given the horrors at Hiroshima and Nagasaki. The list goes on. Observing Japan’s regular view through the WWII prism has been a unique and educational opportunity to this outsider.

Out of the Cocoon

As might be expected, moving out of the comfort of the American cocoon brings a fresh personal and professional perspective. As a lawyer in Japan, you are a unique breed and less loathed than in the United States. Japan has fewer than 25,000 licensed attorneys (bengoshi) compared with the more than 1 million in the United States. And with all eyes now fixed on China and the combined Asian economies sharing a starring role on the world stage, living in Asia today brings a sense of being part of an important unfolding story. The biggest personal surprise was seeing that my family’s move from San Diego to Tokyo was easier and less stressful than our move from Berkeley to San Diego seven years ago. Remarkably, my wife and two teenagers are happy and glad to be here, proving that you are never too old, or too young, to turn your life upside down and still come out right side up on a flat world.

Mark Danis is a partner with Morrison & Foerster and was the founder of the firm’s San Diego office. mdanis@mofo.com
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So you want to place an Internet bet on the San Diego Padres to win the World Series or that the Chargers will once more appear in the Super Bowl? Think again.

For years, members of Congress had decided Internet gambling was illegal. Just one problem—even though the Department of Justice believed online gambling was illegal,¹ no law specifically stated that gambling via the Internet was illegal. In the few cases involving prosecutions of Internet gambling operations, Justice Department prosecutors had relied on a law from 1961, the Wire Wager Act (18 USC 1084), to prosecute online gambling web sites.² The act criminalized the use of a “wire communication facility” to place a bet on a “sporting event or contest.” A strict interpretation of this language created the possibility that a communication, either wholly or partially, taking place over a medium that did not involve wires could be legal.

The SAFE Port Act and Online Gambling

BY TODD KNODE
The newly passed “SAFE Port Act” does not prevent Internet gambling based on how the communications are sent, but, instead, intends to shut down Internet companies by preventing them from accessing American financial institutions, as well as denying them access to American Internet users.

The Wire Wager Act was passed well before the advent of satellites or home wireless communications. Since then, technology has gone beyond the communication capabilities that are specifically stated in the statute, passing the strictly construed language of enforcement by. Congressional findings in the SAFE Port Act state that the Wire Wager Act is now “inadequate” and “new mechanisms” are needed to stop Americans from gambling online.3

Now, the law is definitive. The newly passed SAFE Port Act does not prevent Internet gambling based on how the communications are sent but instead intends to shut down Internet companies by preventing them from accessing American financial institutions as well as denying them access to American Internet users. The goal is to prevent people from accessing prohibited web sites based in Antigua, Costa Rica or even Great Britain and thereby prevent them from placing bets on the Super Bowl, World Series or any other sporting event. Why has Congress cut off your ability to place a bet with a company residing in one of those countries? Because Congress has decided that “nothing in Internet gambling … adds to … or makes America more competitive in the world.”4

The kibosh was put on Betonsports.com and all other foreign gambling web sites on October 13, 2006, when the SAFE Port Act became Public Law 109-347 (109 P.L. 347). Tucked in at the end of the law, the purpose of which is to “improve maritime and cargo security,” is the Unlawful Internet Gambling Enforcement Act, sections 801-803. This seemingly unrelated bill, which follows a section titled “Other Matters,” was attached to “ensure passage and Bush’s signature.”5 Members not overly concerned about restricting their constituents’ access to online gambling had a choice: vote to restrict that access, or look weak on homeland security. So to avoid being seen as weak on security, a near-unanimous Congress (98 senators and 421 members of the House) voted to outlaw placing a bet online, something 25 million Americans spent $6 billion on annually.6

Except for the Interstate Horseracing Act of 1978 (15 USC 3001), which allows Internet gambling on horse racing, Congress has never explicitly legalized the ability of Americans to gamble over the Internet. Since the method the Wire Wager Act used to determine legality was now inadequate, congressional intent regarding Internet gambling was considered ambiguous. Rather than risk setting up in the United States, all Internet gambling companies operated from overseas. However, America’s interest in Internet gambling is not ambiguous; Americans are the number one customers of these foreign web sites. Thus, the $6 billion spent by Americans each year online is “sucked…out of the United States,”7 enlarging foreign countries’ tax coffers while shrinking both U.S. taxes and profits from domestic gambling companies. Public interest watchdog Public Citizen found that domestic gambling companies spent $6.4 million lobbying all levels of government in 2000,8 including giving the Republican and Democratic Party committees $3.9 million in soft money for the 2000 election.9 Because of that influence, the addition of the Unlawful Internet Gambling Enforcement Act to the SAFE Port Act can be seen as protectionism for the brick-and-mortar casinos, not an attempt to protect Americans from the evils of online gambling.

continued on page 22
Playing without a Net
continued from page 21

The main enforcer of the newly passed SAFE Port Act will be private businesses. Enforcement efforts are targeted at preventing Americans from getting to gambling websites and then “cutting” the money from gambling sites.10

You can still legally place a bet with BetonSports using your MasterCard; however, MasterCard is no longer allowed to accept that transaction because BetonSports has been identified as a gambling business. The law prohibits credit card and other financial services companies from processing transactions connected with online betting. The new law authorizes up to five years in prison for those who facilitate Internet gambling.

To prevent you from even getting to BetonSports, the attorney general is now empowered to order Internet service providers to block access to offending websites.11 The private non-profit organization OpenNet Initiative (ONI) tracks and lists countries who attempt to control access to information on the Internet. By Congress acting to prevent the viewing of this politically unacceptable material, the United States can now be added to ONI’s list, a list that contains authoritarian regimes like Burma, China and Iran.12

Enforcement against online gambling operations was being stepped up last summer as the congressional debate over the SAFE Port Act was heating up. Executives from BetonSports and SportingBet, previously indicted for accepting Internet bets from Americans, were arrested when they made stopovers in U.S. airports.13 Not only are they being criminally prosecuted, but also their companies may be going broke. The negative economic impact to the industry that surely the congressional sponsors were hoping for occurred even before President Bush signed the SAFE Port Act into law. Online poker site Party Gaming lost $3.8 billion, or 58 percent of its value, the first trading day after Congress passed the law.14 and within a few weeks of its passage, the London Stock Exchange had lost $7.6 billion due to the number of Internet gambling companies it lists.15 Not only does Great Britain allow and regulate Internet gambling, but also the companies can be publicly traded. Investors were fleeing because their companies’ transactions with American consumers were threatened to be blocked soon.

Though the Unlawful Internet Gambling Enforcement law is couched in language concerning the War on Terrorism, the sequence of events leading to Congress’s attempt to prevent online gambling had its genesis before 9/11. In 1998, the Wire Wager Act was the basis for the indictment of the operators of an Antiguan-based online gambling enterprise, World Sports Exchange (WSE). WSE was indicted for accepting bets from residents of New York.16 WSE co-founder Jay Cohen’s decision to appear and fight the charges led to a fight over the government’s ability to regulate Internet communications with a law originally passed to target illegal bookmakers in the 1960s who accepted bets via phone and telegraph.17

Cohen’s eventual conviction in New York led to a protracted legal fight in the international arena. Acting to protect its Internet gambling industry, Antigua sued the United States for violating the Global Agreement on Trade and Services (GATS) treaty of the World Trade Organization (WTO).18 Both the United States and Antigua are signatories to the GATS, and the treaty requires adherence to two principles of international trade: market access and national treatment. Countries are required to treat foreign economic service providers the same as their domestic counterparts. For example, because Ford and GM sell cars built domestically, Americans must have an equal opportunity to buy cars made by Toyota in Japan.

The WTO court ruled that the United States had two options: “either give Antigua market access for the provision of gambling and betting services, or...ban remote gambling altogether”19 because the court found that Internet gambling, most notably on horse racing, is legal in some instances in the United States.20 The court’s rationale was that a single domestic provider of Internet gambling opens the door for all foreign providers.

Congress chose not to accept either of the options presented to it. Instead, foreign corporations are now even further restricted from the U.S. market, while the new law expressly exempts some forms of domestic Internet gambling. The exemptions allowed are for online wagering on horseracing, intrastate lotteries, gaming on Indian reservations (in states where it is legal), and playing fantasy sports.21 These exemptions are the express reasons for the WTO court’s prior ruling.

So what can you do to legally satisfy a gambling itch? You can go to one of the 48 states that allow some type of domestic gambling,22 whether it is a state lottery, horse racing or casino, or to one of the
numerous Indian reservations that has gambling. If you must use the Internet, hop on the trolley to Mexico or a flight to Canada. You can still use your computer at home—but only for horse racing.

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2. The act was originally passed in order to target bookmakers who accepted bets over the phone and telegraph for different sporting events. See Martin v. U.S., 389 F.2nd 895. 5th Cir. (1968). Cert. denied 391 U.S. 919.

3. 109 P.L. 347 Sec 5361.


6. Id.

7. Supra note 1.


10. Supra note 1.


13. Supra note 4.

14. Supra note 3.


16. U.S. v. Cohen, 260 F.3d 68 2nd Cir (2001). Cert. denied 536 U.S. 922. Jay Cohen is a co-founder and the president of WSE, which is domiciled in the Caribbean country of Antigua and Barbuda. Cohen and his three partners were U.S. citizens at the time of indictment; Cohen decided to return to New York to fight the charges and was subsequently convicted.


20. Id.


An analysis of an industry market structure

BY TOM COHELAN

Why are San Diego lawyers, judges and everyone else paying so much more for gasoline today? Gasoline price increases since 1996 result from a market structure operating as a shared monopoly, a cartel-like structure rivaling that of the old Standard Oil. Handsome refining margins today are the norm. How did things get this way?

California’s gasoline refineries’ relationships create this structure. Before Exxon and Mobil could merge, the Federal Trade Commission mandated asset divestiture conditions, including sale by Exxon of its California refinery in Benicia, California. The facility was one of the 12 in California successfully converted to the new fuel specifications for CARB-mandated gasoline after 1996. After the acquisition, purchaser Valero Energy’s president at the time exclaimed, “We bought a gold mine.” The guaranteed profitability of the post-1996 Benicia refinery operation was grounded in gasoline supply agreements with four other Bay Area refiners, helping eliminate area unbranded competition.

After 1996, all small-producing refineries were closed and independent dealers formerly dependent on them could only receive gasoline at prices that did not undermine “market discipline.” This was a term used by a major refiner’s consultant. Benicia worked like a “gold mine,” even though Valero Energy, as an independent refiner, had to purchase crude oil at market prices. The healthy refining profit margins, however, allowed the refiner to charge the consumer a high enough price to fully pass along any crude oil price increases and then some. Economists say that normally an increase in raw material prices in most industries will pressure or lessen profit margins. Gasoline refiners, now with major “market power,” pass along the full crude oil price increases to you and me. When refineries can match carefully production and distribution to stable predictable gasoline demand, prices are set beyond that of a normal market. Such is the market structure today.

The profits of oil companies and refiners, traceable to record gasoline prices, dominate headlines and legislative hearings and cause consumer outrages. California’s refinery-to-street gasoline market structure resembles that of the late 1870s when John D.
Rockefeller completed a business plan seeking market control through direct and indirect ownership of America's refining capacity. As recent biographer Ron Chernow states: “[Rockefeller] saw the refining industry as a gigantic interrelated mechanism,” a giant cartel with reduced overcapacity and stabilized prices. Rockefeller acquired refiners often not to run them but to shut them down to eliminate excess refining capacity.

Fuel specifications in certain U.S. sub-markets provided today’s refiners with “an opportunity, not a calamity,” according to an experienced refinery veteran who completed his fortune by investing in, reorganizing and selling U.S. refinery investments over the past 20 years, helping to consolidate and reduce overall refining capacity with accompanying major marketing changes in the production and distribution of gasoline.

West Coast refineries located in the Pacific Northwest, the San Francisco Bay Area and the Los Angeles area border waterways to allow tanker shipment of crude oil. Refining breaks crude oil, a mixture of chemical compounds called hydrocarbons, into components then reconfigured into products, including gasoline. California's northern and southern gasoline markets are logistically separated, with marine shipment or dealer tank wagon gasoline delivery the only interconnectivity between these markets. While crude oil pipelines connect Northern and Southern California, development of an independent gasoline pipeline over the Tehachapi Mountains has never occurred.

A California refinery’s gasoline distribution system facilitates gasoline transfer between companies and dealers so gasoline can be freely exchanged and sold by one company after refining by a “competitor,” which allows cooperation and coordination, not competition, in meeting the state’s daily gasoline demands.

Why aren’t there more refineries?

California had almost 50 refineries in the 1970s and 1980s, many of which provided gasoline directly to independent dealers. Reasons that included the cost of upgrading continued on page 26
Gas Prices
continued from page 25

the refineries caused many to close when CARB regulations came into effect. Surviving refineries maintained a distribution relationship or became “branded” retailers. In California, three independent refiner marketers survived the change from fuel specification changes and now enjoy abundant profits. Valero, Tesoro, and (earlier, before its sale to Conoco Phillips), Cosco operated refineries and distributed gasoline through dealers and did not explore for or produce crude oil. They would purchase crude oil on the market for their refineries.

California’s refinery-to-street gasoline market structure resembles that of the late 1870s when John D. Rockefeller completed a business plan seeking market control through direct and indirect ownership of America’s refining capacity.

EXTINCTION OF UNBRANDED COMPETITION
Gasoline markets are now dominated by branded refineries because fuel specification changes in California winnowed out smaller refineries incapable of absorbing the cost of upgrades. Capital was required to modify refineries for gasoline reformulation, in California designed to enhance air quality. Now all refineries sell through a network of branded stations. Branded-price gasoline is higher priced, yet gasoline offered to unbranded dealers is often priced even higher.

Studies now show that the lack of competitively priced, unbranded supply results in higher overall wholesale prices. Examples include West Coast major Chevron’s sale of its Port Arthur, Texas, refinery to concentrate its refining and marketing in the West Coast where it held major retail marketing share. The Shell refinery in Carson, California, closed without comment in 1991; however, the market maintained the same market share. Storage tanks formerly used by this refinery are still visible to motorists from the 405 freeway.

The price charged to a refiner’s branded stations is the dealer tank wagon price a dealer must pay for gasoline resold to the public. Refiner profits, or margins, are extended to this figure, which has been on the increase. Years ago, branded gasoline prices were affected by independent gasoline sales, which provided a competitive check on the prices that branded refiners could charge to their dealers. No such competition, however, exists today. Moreover, today, through use of an Internet-based pricing system, each branded refiner can also learn immediately the dealer tank wagon prices of all of its competitors.

In the wired world, prices at all levels in the distribution chain, spot, terminal, and dealer tank wagon price, are established around the United States and reported through a commercial service such as Oil Price Information Service (OPIS). Subscribers identify the prices of their competitors throughout the state with great precision. This allows coordination of street prices. First, something called the “spot market” is the primary wholesale price indicator, but it suffers as an independent economic reality from the fact that only those refiners that will profit from higher wholesale prices are involved in the sales that may establish it. Next, terminal price levels at which gasoline is made available to different branded dealers at the terminals located throughout California are also available, allowing for close coordination by distributors in each portion of California. The terminal price, however, is, of course, established at a rate higher than the “spot price,” the price already within the direct and indirect control of the major distributors.

Approximately 10,000 branded and unbranded dealers sell gasoline in California today. According to California Board of Equalization records, however, they receive their gasoline from a handful of refiner distributors. In today’s marketplace, only a handful of sellers have pricing power, and, to make matters worse, these sellers have relationships including agreements among themselves for supply and distribution.

The competitive significance on gasoline markets of mergers occurring after 1997 was lost on public agencies. Consider our California experience.

When Union Oil sold its three California refineries and dealer network to Tosco in 1997, the resulting operational plan essentially united four of the Bay Area’s important refineries, Rodeo, Avon, and mid-California located Santa Maria. These refineries operated to integrate production; however, Tosco at the time also had a seven-year production arrangement with Chevron, which served to further coordinate with Chevron’s Richmond and
El Segundo, California, refineries. It’s no coincidence that California gasoline price increases can be traced directly from this 1997 transaction.

In 1998, the Shell Martinez refinery was coordinated with the Texaco Bakersfield and Wilmington refineries under an arrangement known as “Equilon.” Further coordination and production between Northern and Southern California refineries resulted.

An Associated Press pricing study published in August 2006 characterized 1999 as the “starting bell for the modern area of pricier gasoline.” No wonder.

Refinery values provide further evidence. Tosco’s old Avon refinery, which in the 1980s was considered an environmental liability, sold for almost $1 billion to new market entrant Tesoro in 2002. Refineries were now like gold mines. Visionary oil executives saw a perfect profit-developing storm of reduced refining capacity due to fuel specification changes, with new Internet pricing technology applied to the newly isolated markets. These markets could not be subject to careful demand analysis. Tax records of California’s Board of Equalization traced the annual and predictable gasoline demand. Production capacity in California could be readily determined utilizing public and private interpretative data. These calculations led to the major investment decisions, as there was obviously a close matching of supply and demand.

Once supply and demand were matched, the next step in California was to distribute gasoline subject to refiner control. Thereafter, California refiners rearranged supply to prevent gasoline from getting to independent marketers at competitive prices. A balanced market resulted through intricate supply agreements that allowed for shared distribution and Internet pricing.

California’s price increases and many in the nation can be traced directly to the purposeful reorganization of markets including production, distribution, and pricing methodology. The Sherman Antitrust Act prohibits contracts, combinations or conspiracies that restrain trade (28 U.S.C. §1). Does it apply to these relationships? Are these relationships “combinations” in restraint of trade? Apparently, not so far.

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California is a national leader in the number of its cities that have passed resolutions calling for the impeachment of President Bush or other members of his administration. Government bodies in Santa Cruz, San Francisco, Berkeley, Sebastopol, Arcata and Fairfax have all done so, with Bush, Cheney and Rumsfeld on the firing line.

Santa Cruz even passed an impeachment resolution twice. The first time, the Santa Cruz City Council sent a letter to the House Judiciary Committee in September 2003, charging the president with deceiving the American public about Iraq’s weapons of mass destruction and accusing him of using the September 11 attacks as an excuse to squelch civil rights. Not having heard a response from the Judiciary Committee, Santa Cruz passed a similar resolution in February 2006.

As the Santa Cruz City Council knows, local governments have no power to impeach a president. Nor do cities have power to bring U.S. soldiers home from Iraq. Yet hundreds of cities across the country have passed resolutions condemning the war or calling for the withdrawal of troops.

The resolutions do not “do” anything without action from Congress. But they are significant for what they say in expressing disapproval of the president or the war. They are also significant for who is doing the talking: the government itself. Local governments are dissenting from the decisions, policies or actions of the federal government. Using one body of government to speak out against another body of government captures legitimacy and publicity, as impeachment activists recognize.

“Dissenting government speech” that comes from an official government body—rather than from an opposition politician or political party—is the exception, not the rule. Most government speech promotes or supports government action. Typically, one government body is speaking to promote its own policies, like the president holding a press conference in the Rose Garden to justify his decisions. Sometimes one government body speaks out in favor of another. Sixteen years ago, the San Diego City...
Council passed a resolution approving the Gulf War, R-91-1191 (January 22, 1991). It was resolved "that the Council commends and supports the efforts and leadership of the President as Commander in Chief in the Persian Gulf crisis" and that the council supports the men and women of the armed forces who are carrying out their mission in the Gulf. The city of San Diego has not weighed in on impeachment or the current war in Iraq.

What, if anything, does the First Amendment say about dissenting government speech? What about the free speech rights of those who find their city's demands for impeachment unpatriotic and repugnant? Does the Constitution restrict a city's dissenting speech or protect it? And is there any social value in speaking through government?

**DOES THE FIRST AMENDMENT RESTRICT DISSenting GOVERNMENT SPEECH?**

Thomas Jefferson wrote that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical" (draft for a bill establishing religious freedom, 1779). Do Santa Cruz residents who support President Bush and abhor the thought of removing him from office have a right to prevent the city from using their tax dollars to clamor for impeachment?

The First Amendment doctrine of "compelled speech" restricts the government's ability to force an individual
to personally express a message he or she disagrees with. For example, a state cannot require every schoolchild, on threat of expulsion, to recite the Pledge of Allegiance while saluting the American flag (West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 634 (1943)). Nor could the state of New Hampshire compel a couple to bear the state motto, “Live Free or Die,” on their license plates (Wooley v. Maynard, 430 U.S. 705, 715 (1977)).

The situation is different where the government does not compel a person to express a message personally but rather to fund the government’s own message. In a recent opinion, the Supreme Court stated that citizens “have no First Amendment right not to fund government speech” (Johanns v. Livestock Marketing Association, 544 U.S. 550, 562 (2005)). The Court rejected a challenge to the Department of Agriculture’s ad campaign for beef (“Beef. It’s what’s for dinner.”) funded by a tax on cattle and beef products. Since the government was speaking, the individuals paying the tax had no valid claim of compelled speech. The Court observed that government speech, while not subject to First Amendment challenges by taxpayers, is subject to “democratic accountability.” Citizens who don’t like government speech can vote to change it.

Santa Cruz residents who object to impeachment have no recourse against their city council under the compelled speech doctrine of the First Amendment. Instead of going to the courthouse, they are stuck with going to the polls.

DOES THE FIRST AMENDMENT PROTECT DISSENTING GOVERNMENT SPEECH?

Berkeley, like Santa Cruz, passed a resolution in September 2003 calling for the president’s impeachment. Rather than balking, White House spokesperson Ken Lisaius said that the president “welcomes the fact that we live in a democracy and that people are free to make their opinions known” (Sacramento Bee, September 10, 2003). Politically, the White House was wise to grin and bear it. But can the federal government, if it wants to, prevent state or local governments from expressing dissenting views? Put another way, does a city itself have a First Amendment right to free speech?

It’s an open question. The Supreme Court expressly declined to rule on this issue in United States v. American Library Association Inc., 539 U.S. 194 (2003). The case involved the Children’s Internet Protection Act, a federal law that required public libraries to accept Internet filters as a condition for receiving federal subsidies for Internet access. Among the plaintiffs were public libraries, who claimed that the act required them, on pain of losing their subsidies, to surrender their First Amendment right to access speech. The federal government responded that government entities such as public libraries are not protected by the First Amendment. The Court sidestepped the issue, holding that even if public libraries have free speech rights, those rights are not violated by conditions attached to a federal grant program.

Some lower courts have remarked that government entities do not have First Amendment rights. Possibly, the federal
government can silence dissenting cities or make silence a condition of participating in certain federal programs.

A distinct question is whether individuals have a First Amendment right to speak through their local or state government to express dissent from actions of the federal government. Individuals can speak indirectly through their elected officials, but also directly by ballot initiative. In the most recent election, Berkeley submitted an impeachment measure to its voters: “Shall the City of Berkeley call upon the United States House of Representatives to initiate proceedings for the impeachment and removal from office of President George W. Bush and Vice President Richard B. Cheney, call upon the California State Legislature to submit a Resolution in support of impeachment to the United States House of Representatives, and establish a Temporary Task Force on Impeachment?” Ballot Measure H, which passed with almost 70 percent of the vote, represents the protected speech of Berkeley voters rather than the potentially unprotected speech of the city of Berkeley. San Francisco voters approved a similar measure by over 58 percent.

Dissenting government speech implicates not only the right to free speech, but also the related right to petition. The First Amendment protects the right of “the people…to petition the government for a redress of grievances.” From colonial America through the 1830s, citizens commonly used “petitions” to bring grievances before colonial or state assemblies or before the U.S. Congress. (See Higginson, A Short History of the Right to Petition Government for the Redress of Grievances, 96 Yale L.J. 142 (1986).) Compared to the partly overlapping right to free speech, the right to petition received scant attention in 20th-century jurisprudence. But the need for a robust right to petition remains as vital as ever. Notably, the right to petition does not create any corresponding right on the part of the government to take heed of, or respond to, the petition (Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271, 285 (1984)).

IS DISSenting GOVERNMENT SPEECH WORTH IT?

There are good reasons for local government not to speak about impeachment or foreign policy. The local government has no power to act. The city council hearings are likely to generate more heat than light, summoning all the extreme elements for a media circus. Pressing city business is put off. It may be an act of stewardship, good governance and political wisdom for city councils never to take up these issues.

Furthermore, with Congress now held by the Democrats, dissent from the president’s conduct of the war will likely adopt forms far more formidable, and perhaps more moderate, than municipal impeachment resolutions. Even so, these resolutions represent a unique and important organ of expression. In a nation of 300 million people, they are successors to the petitions of the colonial era, when individual citizens could be directly heard before colonial assemblies. When the people invoke the legitimacy of government to speak out against government, the message will be heard, even if not heeded.

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For years, Warren Buffett’s detractors have criticized him for not making charitable contributions at a level commensurate with his stature as the second wealthiest man in the world. On June 26, 2006, Buffett silenced his critics by committing to give away 84 percent of his estimated $44 billion fortune. To put this amount into perspective, his pledge has a higher value than the gross domestic products of 116 countries. It is equal to one-third the total GDP of Egypt. Buffett’s pledge exceeds the combined amounts donated by the great American philanthropists of the past two centuries: Andrew Carnegie ($7.2 billion in today’s dollars), John D. Rockefeller ($7.1 billion) and John D. Rockefeller Jr. ($5.5 billion).

It is perhaps even more surprising that the bulk of his gift will not be going to his family’s four foundations or to otherwise perpetuate his family name. Instead, it will go to the Bill & Melinda Gates Foundation (“Gates Foundation”), already the world’s largest charitable foundation. Charitable foundations are an integral part of the non-profit sector in America (and, increasingly, globally), a vital part of society that is neither business nor government. There are records of benevolent trusts going back millennia. When Plato died, he left a gift of his estate to fund his academy, which lasted almost 200 years. However, prior to the 20th century in America, there were only 18 foundations, mostly focused on helping the needy. Carnegie and Rockefeller Sr. invigorated the formation of foundations with the use of their own to attack the root causes of social ills. There are now almost 68,000 grant-making foundations in the United States.

The details of Buffett’s pledge are intriguing. Buffett has pledged Berkshire Hathaway B shares with a combined current value of $37 billion to the five foundations receiving his gifts: 10 million shares for the Gates Foundation; 1 million for the Susan Thompson Buffett Foundation (Buffett’s own foundation), and 350,000 shares each to the three foundations headed by his children.

As of the date of the pledge, the 10 million shares pledged to the Gates Foundation were worth $30.7 billion; they may be worth substantially more by the time all the shares are distributed. Of course, those shares could also be worth less. On the other hand, Buffett is known as the Oracle of Omaha for good reason: Berkshire Hathaway shares have increased in value, on average, more than 20 percent a year for the past 20 years.

In 2006, Buffett gave each foundation 5 percent of its designated shares. Each year thereafter, he will gift another 5 percent of the remaining number of shares until his death or until the foundations fail to meet certain conditions he has set. For the Buffett Foundation, Buffett merely requires that his gift be deductible. In addition to that requirement, for the three foundations run by his children, Buffett also conditions his gift on the continued active involvement of each child.

Warren Buffett’s

$37,000,000

BY JAMES M. COWLEY AND JOY C. CHANG
requires that Bill or Melinda Gates remain active in
the policy-setting and administration of the Gates
Foundation—but he adds a further condition: that
beginning in 2009, its annual giving must be at least
equal to the value of Buffett’s previous year’s gift, in
addition to the required minimum distribution of 5
percent of the Gates Foundation’s net assets. Buffett
stated that his estate will satisfy any balance of his
pledge outstanding at his death.

The Gates Foundation, with its $30 billion
endowment, distributed $1.57 billion in grants in
2005. With the addition of Buffett’s gift, the foun-
dation will have to double its distributions to about
$3 billion annually. The foundation plans to double
its staff to 600 people to handle the additional funds.

Despite its size, Buffett’s annual gift is just a small
percentage of the total charitable activity in the
United States. Americans gave a total of $260 billion
in 2005, with $199 billion from individuals versus
$30 billion from foundations. An additional $17 bil-
lion was by bequest. In 2004, the Gates Foundation
was the top funder of grants at $1.26 billion. The next
highest, the Merck Patient Assistance Program Inc.,
gave $520 million, slightly less than half of the
amount of grants funded by the Gates Foundation.

Buffett’s gift, while significant, only adds about $1.85
billion to the charitable pot this year.

In comparison, the annual aid amount given by
the World Bank and rich governments was $106 bil-
lion last year. In terms of health spending, the
National Institute of Health has an annual budget of
$29 billion.

Nonetheless, Buffett’s gift can accomplish a great
deal. In Buffett’s letter to the Gates Foundation, he
indicates his hope that it will continue to be
continued on page 34.
There are records of benevolent trusts going back millennia.

When Plato died, he left a gift of his estate to fund his academy, which lasted almost two hundred years.

Warren Buffett

committed to “a few extraordinarily important but under funded issues” and that his gift will allow an expansion that “is one of depth, rather than breadth.” This kind of focus has allowed the Gates Foundation to have a significant impact in select areas.

Bill Gates created the William H. Gates Foundation in 1994 to improve global health. In 1997, Bill and Melinda created the Gates Library Foundation (later the Gates Learning Foundation), which focused on bringing computers and Internet access to public libraries in the United States. In 2000, the two foundations merged to become the Bill & Melinda Gates Foundation, classified as a private foundation under IRC section 509(a).

The Gates Foundation works globally but focuses on different issues, depending on geographic location. Outside the United States, it focuses on improving health, reducing extreme poverty and increasing access to technology in public libraries in developing countries. In the United States, the foundation focuses on access to education and technology in public libraries. In the Pacific Northwest, it focuses on improving the lives of at-risk families.

Large and well-run philanthropic foundations can be as sophisticated but at the same time more flexible and responsive than government-run programs. Unpredictable government funding levels make long-term commitments unreliable. In contrast, the Gates Foundation was able to endow a vaccine-purchase fund with $1.5 billion, giving vaccine producers the financial incentive to sustain vaccine production for the developing world. Estimated number of lives saved by the increased inoculation rate: 1 million. Overall, the Gates Foundation has distributed more than $3.6 billion to global health organizations and more than $2 billion to provide computers and Internet access for public libraries and schools in low-income communities in North America.

As an experienced investor, Buffett has chosen to “invest” in a foundation that has already proven it knows how to effectively manage its billions. As Buffett stated to Fortune magazine, “What can be more logical, in whatever you want done, than finding someone better equipped than you are to do it? Who wouldn’t select Tiger Woods to take his place in a high-stakes golf game?” Buffett admits he’s better at making money than giving it away. Famous for a laissez-faire management style, Buffett has indicated that although he will join Bill and Melinda Gates as a trustee of the Gates Foundation, his involvement will remain minimal.

Buffett’s pledge demonstrates his financial acumen: charitable gifts given during a donor’s lifetime have the most impact, allowing the charity to reap the benefits of appreciation beyond the gift amount. Assuming the shares grow at a “conservative” 10 percent per year, the Gates Foundation can expect its assets to increase approximately $2.5 billion within five years, even with the requirement that it must give away the value of the prior year’s gift.

A lifetime donation also gives the donor the maximum tax benefit by giving him an income tax deduction. For Buffett, it could mean savings of more than $640 million for his 2006 gifts and more than $12.8 billion over the life of the pledge, with deductibility limited by Buffett’s adjusted gross income. A little-known Internal Revenue Code provision allows Buffett to increase the annual limit on his charitable deduction from 20 percent (for a gift of appreciated stock to a private foundation) to 30 percent of his adjusted gross income if the recipient foundation redistributes the amount of the gift in the first 2½ months of the following year. Furthermore, Buffett’s stock undoubtedly has a very low basis, and as a result of the
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gifts, the gain avoids the capital gains tax.

Finally, rather than surprising the charitable organization with a large gift at death, a donor can work with the charity to make sure that the gift does not overwhelm the recipient foundation. Here, Buffett gives the Gates Foundation two years to resize its operations to effectively manage his gift, demonstrating his understanding that significant and sudden growth should be planned.

As to why he's giving away so much of his fortune, Buffett paraphrases Andrew Carnegie in stating, “huge fortunes that flow in large part from society should in large part be returned to society,” and he believes that one should leave one’s children with “enough money so that they would feel they could do anything, but not so much that they could do nothing.”21

Many parents share this concern. Carnegie once wrote, “Great sums bequeathed oftener than they could do nothing.”22 Rather than leaving sums injurious to his heirs, Carnegie believed that the best use of wealth was to manage it for the public good while still alive, and he created foundations to do so.

Only time will answer the questions raised by the Buffett gift: Will Buffett begin to influence the activities of the Gates Foundation or remain hands-off? What will happen to perhaps $100 billion of assets in the Gates Foundation when none of the three key players is around to run it? Will it go the way of the Ford Foundation, or do these remarkable individuals have other surprises in store? With the anticipated $41 trillion23 in generational wealth transfer predicted for the next few decades, will other donors be prompted to subordinate ego and join forces with existing foundations to carry out their philanthropic goals, or is the Buffett-Gates relationship unique? 24

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The Tragedy of Human Trafficking In San Diego

BY CHRISTINE PANGAN
Human traffickers take a 15-year-old girl’s baby. They threaten to kill the baby unless she does what they want. She is helpless and without hope in a foreign country; her body is sold to up to 30 farm workers a day.

A 16-year-old girl tries to escape a prostitution ring. Before she reaches the door, she is forced into a back room. The other young girls are taken there as well and told to watch. She is bound by duct tape. The pimp then takes a wire clothes hanger, wraps it around his fist, and beats her for two hours, resulting in severe lacerations, ripped flesh, and bruises all over her body. The other girls are told that this is what will happen to anyone else who tries to escape.

At a youth shelter, a terrified African-American 15-year-old tells her harrowing tale. A local street gang had taken her to a house, laid out assault weapons, and threatened to kill her grandmother and little sister if she did not go with them to Las Vegas to be prostituted.

These three scenarios are not the synopses for made-for-TV movies, nor are they cases happening far from home. These are true stories that have happened here in San Diego.

continued on page 40
SCOPE OF THE PROBLEM

Human trafficking, not to be confused with smuggling, was defined by Attorney General Alberto Gonzales as “the exploitation and enslavement of society’s most vulnerable members” in his introduction to the 2006 U.S. Department of Justice Report on Activities to Combat Human Trafficking. The U.S. State Department estimates that as many as 800,000 people are trafficked across international borders every year. Of these, about 17,500 victims are trafficked into the United States.

According to the U.S. Department of Health and Human Services, after drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world and the fastest growing. In October 2000, the Trafficking in Victims Protection Act of 2000 was signed into law, giving greater resources to non-profits and law enforcement to combat the problem of human trafficking. Yet only about 1,000 victims have been assisted since 2001 by law enforcement in the United States.

San Diego–based assistant U.S. attorney Christopher Tenorio says no one can really give numbers on how many trafficking victims exist. “There are not enough cases to give numbers,” says Tenorio. “There have been two prosecutions [in San Diego], involving a total of three defendants over the last five years. Many other investigations have been conducted but have not resulted in prosecutions.”

Between 2001 and 2005, U.S. attorneys opened matters with 555 human trafficking suspects. Of these, 23 percent were investigated for sex trafficking of children. According to the U.S. Department of Justice, Bureau of Justice Statistics Data Brief on Federal Prosecutions of Human Trafficking from 2001-2005, 48 percent of human trafficking matters opened by U.S. attorneys occurred in the four states of California, Florida, Texas and New York, with California in the lead at 17 percent. California also leads in the percentage of sex trafficking of children matters (57 percent).

Identifying how many trafficking victims are in San Diego, however, is also challenging because of the nature of investigating this crime. San Diego County deputy sheriff Rick Castro says human trafficking investigations can take about three years.

TRAFFICKING TACTICS

Some victims of international trafficking come into the United States under empty promises that they will be working in a factory or taking care of children as nannies. Domestically, they are wooed by the promise of a nice car, the latest clothes or a lot of money. Traffickers can use culture to control victims. “In those cultures, they venture out of their community, go to the United States to get dollars, and then are forced into prostitution or labor,” says Castro. “If their family back home finds out that they worked as a prostitute or were forced to work against their will, this would bring shame and disgrace, so they would rather die than bring shame and disgrace to their family or community.”

Force and mental manipulation are other tactics used by traffickers, according to Castro. “The traffickers gang-rape the girls and videotape it, holding it over their heads that if they go to law enforcement, [the video] will be sent back to their family back home and they’ll say that’s what they’ve been doing,” he says. “It’s very demoralizing and traumatic.”

Castro also says that they are seeing more “gorilla pimps.” These pimps do not know how to manipulate and brainwash, so instead use force, controlling victims through rapes and beatings. “Some of these kids [trafficking victims] still go to school, and no one knows,” he says.

CHALLENGES

Tenorio’s biggest challenges in prosecuting these cases are corroboration for allegations of human trafficking and overcoming the fear of victims to cooperate. “We need good cases, but a lot of times we get possible incidents but can’t do anything unless it’s corroborated and we have evidence,” says Tenorio. “Victims are reluctant to come forward. That’s the holdup we have.”

“It’s pretty difficult because of the coercion and brainwashing,” Castro says. “Victims don’t want to testify due to the threats made against them, their family members, their siblings.”

Despite recent challenges, Tenorio says he hopes this year will bring more cases. “I’m hoping more law enforce-
NOT JUST FOREIGN GIRLS
Though human trafficking can involve people from other countries, one overlooked trafficked population is San Diego’s own at-risk youth.

Though human trafficking can involve people from other countries, one overlooked trafficked population is San Diego’s own at-risk youth. Victims of domestic trafficking include children who are born or raised in San Diego who are prostituted locally or trafficked to other major cities such as Las Vegas.

“We see a lot of domestic trafficking,” says Guillen. “There are gangs in San Diego like ‘Pimping Hoes Daily’ (PHD) that have made teen trafficking and exploitation a lucrative, criminal enterprise.”

SUCCESSFUL CONVICTIONS
On March 13, 2006, Guillermo Romero-Flores and Guadalupe Ventura were sentenced in U.S. district court in San Diego to 27 months and 41 months, respectively. Their convictions were based on information from former juveniles who are now adults. Their juvenile trafficking victims, however, were reluctant to testify, so Tenorio says they were unable to get the trafficking charges they had hoped for. “We still got them on related charges,” says Tenorio.

For 10 years, the Salazar-Juarez brothers operated the largest prostitution ring in the agricultural camps and suburbs of San Diego. Girls serviced clients in “the reed beds,” which were caves made of reeds in the county, there was no money to invest in, they will. This situation only occurs if the information is reliable, meaning someone they know who has given valuable information or corroborated information in the past informs them of what is happening.

When the reliable information involves minors, however, building up a case against the traffickers is no longer the priority. “If a minor is involved, we won’t worry about building up a case,” says Tenorio. “We go in and remove them.”

Without victim testimony, however, prosecuting traffickers is almost impossible. In Guillen’s opinion, the problem is that most victims are terrified of speaking to authorities. “They fear retaliation by the traffickers and the harm that may be inflicted on their loved ones,” says Guillen. “Victims may also distrust law enforcement due to police corruption experiences in their home countries.”

HOPE FOR THE FUTURE
The Trafficking Victims Protection Act of 2000 (TVPA) made human trafficking a federal crime, established the T-visa for victims, created guidelines for human trafficking and gave more tools for law enforcement and non-profits to combat human trafficking. The California Trafficking Protection Act trafficking law (P.C. 236.1) became effective January 1, 2006.

Victims under the age of 18 do not have to cooperate with law enforcement to qualify for the T-visa. Those over 18 must assist law enforcement. The T-visa is good for up to three years; victims of trafficking can then adjust their status to permanent legal status.

To receive services, a victim must be certified by the Office of Refugee Resettlement (part of the U.S. Department of Health and Human Services) as a trafficking victim. A “victim of a severe form of trafficking in persons” is eligible for social benefits given to refugees.

Locally, the U.S. Department of Justice awarded a three-year grant to the San Diego Sheriff’s Department to develop the San Diego Region Anti-Trafficking Task Force in 2005. Deputy sheriff Rick Castro wrote the grant and was selected as the liaison coordinator. One of 42 task forces funded by the United States, Castro says the San Diego task force is unique in that 80 percent of the budget is used to pay officers overtime to investigate cases of prostitution and trafficking rather than create a position.

“Given the budget crunch throughout the county, there was no money to investigate more thoroughly,” says Castro. “What better way than to offer overtime, as well as pay for administrative costs and equipment?”

The multi-agency task force includes two representatives from every police agency in the county, FBI, Immigration and Customs Enforcement, IRS, the Department of Labor, the marine task force, CHP, the San Diego County district attorney’s office, the U.S. attorney general’s office, and the Bilateral Safety Corridor Coalition (a nonprofit that provides all the services to the victims).

Received February 14, 2005, the first year and a half of the grant was spent mainly on training service providers, community-based organizations and law enforcement agencies will recognize cases of trafficking and that non-profits will supply us with viable cases where there are witnesses that are willing to come forward,” he says.

Manolo Guillen, who works for one of these non-profits, sees trafficking victims regularly. Guillen, a director of the San Diego Youth & Community Services (SDYCS) and founder of the ACTION Network (“Against Child Trafficking and Prostitution in Our Neighborhoods”), says he receives reports about international sex trafficking in North County San Diego’s “sex camps.”

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A case,” says Tenorio. “We go in and remove them.”

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Myra Colby Bradwell, America’s first woman lawyer, sat at her wooden desk incredulous as she read by candlelight the appellate court’s opinion. After struggling for years to have an opportunity to practice law and to prove to the world that women were just as adept as men at the practice of law, the opinion she held in her hand could conceivably destroy everything she had worked for.

The court falsely labeled her “distressingly incompetent” in a case she had not even handled; she had represented the defendant in an unrelated matter. The court did not have the facts but instead had a perjurious one-sided declaration.

She read the court’s chastising words again and could not believe the one-sided context: “The defendant’s mother’s declaration spelled out in great detail the substantial efforts taken by her, on the defendant’s behalf, to communicate with his remarkably deficient counsel.” The court added, “After her more than one hundred attempts to contact his attorney were met with false assurances and duplicitous responses, Ms. Cook employed the services of a second appellate lawyer, and then a third; “it’s clear that Mr. Cook suffered from distressingly incompetent counsel.”

This very public judicial flailing referred to Bradwell. It was a burning, stinging public shame. And it was false!

Bradwell had an impeccable reputation in the legal community, a reputation she had struggled over many obstacles to establish. She was furious but not surprised at the all-too-familiar judicial arbitrariness. But what could she do to defend herself? Could she file a declaration on her behalf? Could she go public to defend her good name?

Bradwell was torn by the ethical ramifications that were a code for attorneys of her day—the late 19th century. She would later have the benefit of the 32 Canons of Ethics, adopted by the ABA in 1908. However, even if Bradwell had the benefit of these rules, she still would have been torn on what the right course to pursue would be.

Bradwell wanted to file her own declaration proclaiming her innocence, revealing the fact that Ms. Cook had flagrantly lied to the court and that Mr. Cook’s current attorney allowed this declaration to be filed lacking candor and a good faith basis, in violation of California Rule of Professional Conduct 5-200 and ABA Model Rule 3.3.

But California Business and Professions Code §6068(e) would have told Bradwell that it is the
duty of an attorney "to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Case law would have told her that "[She] may not do anything which will injuriously affect [her] former client … nor may [she] at any time use against [her] former client knowledge or information acquired by virtue of the previous relationship" (Earl Scheib Inc. v. Superior Court of Los Angeles County (1967) 253 Cal. App. 2d 703; and In re Jordan (1972) 7 Cal.3d 930, 940-941).

Bradwell knew that the duty of confidentiality was one of the most sacred and solemn of duties of her profession. And it should be, because it ensures that the legal system will function properly and clients will feel confident that what they trust their lawyers will be kept inviolate (In Re Matter of Johnson (Rev. Dept.) 4 Cal. State Bar Ct. Rptr. 179; and California Rules of Professional Conduct, Rule 3-100).

But then, ABA Rule 1.6 (5) permits disclosure "to respond to allegations in any proceeding concerning the lawyer's representation of the client" [emphasis added]. And California Evidence Code 958 finds no privilege in "a communication relevant to an issue of breach, by the lawyer or by the client" in a dispute.

Bradwell sat back and thought, “My reputation may have to wait. Though I feel confident that I have a right to publicly defend my reputation and that ABA Rule 1.6 (5) gives me that right, I will wait until Mr. Cook’s litigation ends. Then I’ll seek out guidance from those I respect about how I will endeavor to have the truth emerge and ask why no one asked for my side of the story?” This is exactly what was suggested for courts handling cases on direct appeal in People v. Pope (1979) 23 Cal.3d 412, 425 and People v. Russell (1980) 101 Cal. App.3d 665, 671.

Bradwell decided to suffer the humiliation silently. She may be wrong in her thinking and she might be right. The truth is that lawyers must sometimes silently suffer the slings and arrows of outrageous fortune to adhere to the strictest of ethics for the sake of ethics alone.

Ezekiel Cortez is a San Diego criminal defense attorney.
funny thing happened to Carmela Simoncini on her way to pursuing a master’s of fine arts degree. She became a legal assistant for an attorney who represented her and other tenants in a dispute with their landlord while students at Arizona State University. When the lawyer said she ought to consider law school, Simoncini worked for a couple of years after graduation and then entered Western State University College of Law (now Thomas Jefferson School of Law). Simoncini spent the first four years of her legal career practicing with her husband, Roland, before a two-year stint as deputy public defender in Tulare County. Since 1985, she’s been with Appellate Defenders, except for about 15 months with an insurance defense firm.

Most of Simoncini’s writing has been appellate and motion work, except for a chapter she wrote in a CEB juvenile dependency practice book and occasional letters to the editor. “The great American novel is still living in my heart,” she says.

Chapter 2 of “The Chase” took her about two hours, made easier by all the facts Chuck Sevilla presented in Chapter 1, which appeared in the January/February issue. “It was a kick. I love writing.” Simoncini is still an artist, even without the MFA. She quilts, knits and does bead work. She’s also an adjunct professor of legal writing at Thomas Jefferson. Along the way she earned an LL.M. from the University of San Diego School of Law.

Chapter 2 is the latest of a five-chapter short story being written by San Diego appellate lawyers. Enjoy.

CHAPTER 2

Vivian hung up immediately, more angry at herself than with His Honor, on many levels. First of all, why and how did she get into this position? One should avoid anything but purely professional relationships with judges because they always have a long-suffering wife at home, a faithful court clerk, and occasionally they even have a Harsh Critic, ready to open the floodgates of scandal whenever it suits his or her purpose. Second, she had been so distracted by the events of the past few days that she had not heard when the presiding judge sent the Chase case down to Judge Giddle’s department. What was she thinking? It was too late to say anything now that His Honor had heard evidence on an issue of fact. Finally, she had shown questionable judgment calling him in his chambers. He didn’t sound happy to hear from her. Perhaps he had forgotten their earlier encounter. She was pretty sure she could, since she had been so inebriated she recalled almost nothing of the evening. Perhaps there was nothing to forget.

Vivian only had fleeting glimpses, nuggets of recollection of their social encounter. The two of them had gone out for drinks to celebrate achieving the fourth of their 12 steps in their respective rehab programs. They had run into

continued on page 46
make
mole hills
of mountains...

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each other totally by accident, and it seemed like a good idea at the time; how could she know that although he had four steps under his belt, he had six hands under his robes? Nevertheless, she was sure things hadn’t gone very far because her newest Ann Taylor outfit required at least eight hands for removal. “I sure picked a great time to quit sniffing prussic acid,” she thought. “I could use a good mind solvent about now.” She sifted through the items in the night stand which passed for a wet bar, looking for diet tonic water to go with whatever commercial brand of ethanol she had laying around the house.

Nevertheless, there was a problem. A big problem. An ethical dilemma. Her investigator, Hans Down, had acquired some much needed information for the ongoing trial of Chase v. Chase. Somehow, he had managed to get his large, furry hands on a copy of Mr. Chase’s tax returns for the past couple of years and had delivered them to her just a few days ago. “I think you might be able to use this information.” He had a gift for understatement.

“Chase may be underwriting our overhead for next year,” she chuckled in reply. But things had been so hectic, Vivian forgot to lock the documents in her office safe, and she could not recall if she had taken them with her the other night when she ran into Judge Giddle after the meeting. They were dynamite, and they were in a manila envelope, and they may have been laying on the back seat of her super-ultra-low-emission Honda Civic hybrid when Judge Giddle had attempted to play his rendition of “An Octopus’s Garden” the other night. “I’m green, all right,” she thought. But she hadn’t been able to find the envelope the next morning as she was preparing for the hearing. “I’m so green I need Dramamine.”

Vivian couldn’t find the diet tonic water but located some 151 rum in the cupboard under the bathroom sink. “Almost as good as solvent,” she thought. She poured one for herself and went into the kitchen to rattle some pots and pans, pondering her situation further. Who could have known about the envelope and its contents besides herself and Hans? Herb Monroe, Mr. Chase’s expensive lawyer, seemed awfully smug today at the hearing. But his line of questioning, about the ludicrous agreement to permit his client to spend copious amounts of community property on non-community pleasures, seemed ill-conceived if he knew about the tax returns. But someone knew about them, and that someone had left a message on her answering machine.

Herb Monroe, Mr. Chase’s expensive lawyer, seemed awfully smug today at the hearing. But his line of questioning, about the ludicrous agreement to permit his client to spend copious amounts of community property on non-community pleasures seemed ill-conceived if he knew about the tax returns.
Ms. Morales, you don’t know me, but I am learning a lot about you and your friend Judge Giddle. I know the judicial council would be interested to hear that he has fallen off the wagon and into your environment-friendly car. By the way, missing anything?

Vivian considered the message and then drank the rum, which she washed down with something that smelled a little like sauerkraut.

“I need to cut down on carbs,” she thought. A few boiled eggs and a salad later, she retired for the evening. She slept fitfully that night, dreaming of Stacy London and Clint Kelly, making rude comments in a 360-degree mirror about how her clothes drew needless focus to the size of her tush, and throwing away her entire wardrobe.

***

The next morning, Herb Monroe stopped by his office before heading for family law court for resumption of the carnival that should have been a straightforward division of property proceeding. There was a phone message from Vivian Morales, Chase’s wife’s attorney. There was also a phone message from his client, saying it was urgent that they speak before the hearing. There was also a more cryptic message: a person saying he was a critic who had something critical. Herb was unruffled by any of the messages. His client paid him cash in advance, so what did he care? Herb may not have graduated at the top of his law school class, but nothing could beat his unerring ability to smell money, spot weakness in others, and sell himself. “Let’s just see who comes out on top,” he thought. “Cork, like a corpse, will float to the surface.”

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The Counselors of Coronado

When it comes to practicing law, “Some Like It Hot” in Coronado

BY DEAN A. SCHIFFMAN

The city of Coronado (www.coronado.ca.us) is a small “island” town (really a peninsula) of 7.4 square miles (population 26,000), connected to San Diego by the Coronado Bridge (opened in 1969, with current daily traffic exceeding 60,000 vehicles), to the city of Imperial Beach to the south, and to Naval Air Station, North Island.

• Tom Smisek, mayor; city council members: Philip Monroe, Casey Tanaka, Carrie Downey, Al Ovrom Jr.
• Coronado’s landmark Hotel del Coronado—completed in 1888—has hosted numerous U.S. presidents (including Harrison in 1891 and every president since LBJ), as well as countless dignitaries and celebrities. The classic comedy Some Like It Hot (Marilyn Monroe, Jack Lemmon and Tony Curtis) was filmed at the “Hotel Del” in 1958.
• Coronado bristles with specialty shops, art galleries and restaurants, including the Ferry Landing Marketplace (the final destination for San Diego Harbor Excursion ferries from downtown’s Broadway Pier). Coronado’s Farmer’s Market convenes every Tuesday afternoon, from 2:30 to 6 p.m.
• Sites of Interest: Coronado Visitor Center (1100 Orange Avenue, 619-437-8788), Hotel del Coronado, Spreckels Mansion on Glorietta Bay, Ferry Landing Marketplace, Coronado Golf Course, four beaches, 19 public tennis courts, 15 miles of bike paths, Coronado Community Playhouse, and Lamb’s Player Theatre.
• Distances to Courthouses (miles): Downtown (7), El Cajon (18), Vista (47 miles), South Bay (11).

Living and working in Coronado allows me to draft contracts and review leases in the morning and drop them off on my way to a middle school lacrosse game. I work six blocks from my home, city hall for council meetings, and my daughters’ school. I spend my commuting time going to my clients instead of on a daily commute.

—Carrie Downey

In Coronado, time once devoted racing down the highway is now spent with my wife and kids—or surfing. My personal best commuting time is a minute and 20 seconds, door to door. We’ve got lots of great lunch and dinner spots—Brigantine, Tent City, Il Fornaio, Miguel’s, Tomaso’s, Primavera and Rhinoceros are the best. Bridge traffic at 3 o’clock can be a hassle, but otherwise we’re about 15 minutes from downtown.

—Doug Simpson

Coronado is a special place to live and work—God has truly blessed me. I really get to know my clients and treat all of them as if they were my neighbors—and some of them actually are!

—Sandra Locke

After spending 25 years downtown, I moved to the only office building in the Coronado Cays. I enjoy the one-mile walk from my home to my solo practice in patent law.

—Michael H. Jester

All the lawyers here are friendly and helpful. I can walk everywhere. It is the only place where merchants leave water bowls out for dogs. I bring my dog to work most days. The only thing missing is spicy food for lunch! However, this is made up by the friendly and helpful people.

—David Herring
Dumb luck and my wife brought me to Coronado 30 years ago. I’m still astounded to see the place when I come over the bridge. Work is pleasure when confined to paradise. I have traveled much, but there is no other Coronado.

—Del Himelstein

My father and I moved our practice to Coronado from downtown. Not one client left us. Most clients view coming over the bridge as peaceful. If they have to see an attorney, they’d rather come to such a beautiful destination. Where else can a client park for 25 cents an hour?

—Margaret K. Herring

Coronado is a great place to practice law. We have the nicest clients, who sometimes just stop by the office to visit.

—Carrie T. Morton Rose

There is that small-town atmosphere here, just minutes from downtown. Being located between two courts (downtown and South Bay) reduces commute time. Although Coronado is a small town, there is plenty of work in my areas. I am affiliated with a firm in Del Mar, yet I can telecommute from Coronado.

—Pete Fagan

Living in Coronado is wonderful. The residents are friendly, the weather is top-notch, and the evening view of San Diego’s skyline is breathtaking. The golfing isn’t bad either. Coronado has all the appeal of a small town, yet is only a trip across the bridge from the “big city.”

—David C. Hawkes

In 1999, I set up my office on Coronado Island. The move was meant to be temporary. However, I became addicted to the casual atmosphere and stress-free environment. Needless to say, we are not moving anytime soon!

—Matthew A. Becker

Practicing law in Coronado is a luxury, especially for those of us who also live here. Not only do we avoid the hustle and bustle of commuting, but we are only a short distance from the courts and conveniences of downtown.

—Karen M. Beza

My Coronado office overlooks the Coronado Bay Bridge, Petco Park and the Convention Center in the background and cruise ships, yachts, ferries and Naval vessels in the foreground. As the song lyrics go, “Who could ask for anything more?”

—Alvin Kalmanson

Dean Schiffman is a San Diego attorney and expert witness. He can be reached at dean@LawAndNumbers.com.
1. The National Conference of City Council Associations considers it “an act of stewardship, good governance, and political wisdom for city councils never to pass resolutions about bi-partisan political issues.”

True □ False □

2. The right to petition received significant attention in twentieth-century jurisprudence, resulting in substantive legislative action.

True □ False □

3. California leads the nation in the number of cities that have passed resolutions calling for the impeachment of President Bush or other members of his administration.

True □ False □

4. Ballot Measure H, passed by 58% of the voters of Santa Cruz, represents the protected speech of that city’s voters, rather than the potentially unprotected speech of the City of Santa Cruz.

True □ False □

5. Resolutions passed by city councils, or other regional governmental agencies, carry with them no power to enact change without action being taken by Congress.

True □ False □

6. Thomas Jefferson wrote, in his Draft for a Bill Establishing Religious Freedom (1779), “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.”

True □ False □

7. Sixteen years ago, the City Council of Santa Cruz passed a resolution disapproving of the Gulf War (R-94-1194 [Jan. 20, 1991]).

True □ False □

8. In a recent Supreme Court opinion, the Court stated that citizens “have no First Amendment right not to fund government speech.”

True □ False □


True □ False □

10. Eight California cities, including Santa Cruz, San Francisco, Berkeley, Sebastopol, Novato, Arcata, Orinda, and Fairfax have passed resolutions calling for the impeachment of President Bush or other members of his administration.

True □ False □

11. Santa Cruz passed an impeachment resolution twice, sending the first one to the House Judiciary Committee in September 2003, and passing a second one in February 2006 after not having received a response to their original resolution.

True □ False □

12. The Supreme Court rejected a challenge to the Department of Agriculture’s ad campaign for beef, determining that because the government was speaking, the individuals paying taxes had no valid claim of compelled speech.

True □ False □

13. Residents of any city who object to impeachment resolutions passed by their City Council have no recourse against the City Council under the compelled speech doctrine of the First Amendment.

True □ False □

14. “Dissenting government speech” that comes from an opposition politician or political party – rather than from an official government body – is the exception, not the rule.

True □ False □

15. In United States v. American Library Association, Inc., 539 U.S. 194 (2003), the Supreme Court ruled that government entities such as public libraries are not protected by the First Amendment.

True □ False □

16. The First Amendment doctrine of “compelled speech” restricts the government’s ability to force an individual to personally express a message he or she disagrees with.

True □ False □

17. Beginning in the colonial era of America’s history on through the late 1920’s, citizens commonly used “petitions” to bring grievances before colonial or state assemblies, or before the U.S. Congress.

True □ False □

18. The right to petition does not create any corresponding right on the part of the government to take heed of, or respond to, the petition.

True □ False □

19. Using one body of government to speak out against another body of government reduces the legitimacy of the argument being presented.

True □ False □

20. The Supreme Court has observed that government speech, while not subject to First Amendment challenges by taxpayers, is subject to “democratic accountability.”

True □ False □
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enforcement on identifying victims of trafficking. The 21-minute training video on indicators of trafficking even won an Emmy. Now, the focus is on investigations.

“We have a lot of open investigations right now,” Castro says. “They [traffickers] are hiding better from us…constantly changing locations. They’ve moved to areas where we can’t find them. With the Internet, they can post girls online—why walk the street?”

Guillen believes improved coordination would help. “Most federal and state social service agencies have very little coordination with local governments and vice versa. There are many confidentiality policies with both law enforcement and non-governmental agencies that prevent us from sharing vital information.”

For Guillen, one solution to the issue of confidentiality would be to set up multidisciplinary teams. “[These would be] recognized entities, which the task forces are not, that allow agencies to communicate pertinent information in an ethical and legal manner,” says Guillen.

“Working with Children’s Services, Children’s Hospital, the Probation Department and the juvenile court are sometimes overlooked in combating human trafficking. “These should be key stakeholder agencies in every human trafficking task force,” Guillen notes.

Attorneys in San Diego can also assist. Castro says that many of the girls found to be trafficking victims need attorneys for getting services, helping them with immigration paperwork, and applying for aid through the office of the U.S. Department of Health and Human Services.

Guillen believes attorneys in San Diego can help by joining local coalitions. “We are challenged every day by a broken legal system and multiple gaps that require professional assistance from capable attorneys,” says Guillen. “Many vulnerable and exploited children also need legal assistance and professional advocacy in Sacramento and in Washington. Children often lack power and representation because they lack the resources that their abusers have.”

For Castro, a better understanding by attorneys and judges of the dynamic associated with victims of trafficking would also help trafficking victims. “These victims are so scared,” Castro says. “When they’re in court, judges, attorneys, defense attorneys may not be aware of how controlling these traffickers and pimps are on the minds of these young victims.”

Castro also hopes that courts can impose harsher penalties. “When you have these young victims and they’re sitting in court, terrified, told they are going to kill their family back home, who’s going to protect them?”

THREE GIRLS
What happened to the three girls introduced at the beginning of this story? The Mexican girl named Reyna whose baby was taken received a happy ending. She no longer has to service migrant workers in the North County strawberry fields. After a beating, she escaped the Salazar-Juarez sex camps. Through the efforts of non-profit organizations and law enforcement, she was reunited with her baby and is now living safely in the United States. These joint efforts also led to the formation of the ACTION network.

Julia, the Mexican girl almost beaten to death with a wire clothes hanger by Tomas Salazar-Juarez, was saved when neighbors finally called the police. Before Salazar-Juarez could be taken to trial, however, the traffickers were able to convince her not to testify. She disappeared and is now rumored to be back in Mexico, recruiting other young girls for traffickers.

The African-American girl who was threatened in southeast San Diego and asked to prostitute herself in Las Vegas left the shelter and was never heard from again. “The damage done on these children lasts a lifetime,” Castro says. “They are never going to be whole again.”

Christine Pangan is a staff attorney at the San Diego Volunteer Lawyer Program and associate editor of San Diego Lawyer.
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Proposal: Name the new federal courthouse after James Carter and the public plaza between the old and the new federal courthouses after Judy Keep.

After you pass through security at the federal courthouse, you come face to face with a large portrait of Edward J. Schwartz, the namesake of the federal complex. Below, the plaque reads, “He built a courthouse and a court.” You’d think he was the first chief judge of the Southern District, but you’d be wrong.

On September 18, 1966, a ceremony was held in the San Diego chambers of District Court Judge James M. Carter, celebrating the doubling of judicial districts (from two to four) in California. The seat for the Southern District became San Diego, with Judge Carter its first chief judge.

Carter had gone to Pomona College, then Harvard Law School for one year. Running out of money, he came back to California and attended USC Law School, graduating in 1927. He was in private practice until 1940, then director of the DMV before moving over to the U.S. attorney’s office for the Southern District of California. He was the U.S. attorney for the Southern District from 1946 to 1949, when President Harry Truman put him on the bench.

Carter came to San Diego in 1958 and took on the role of chief judge in 1966. He also established the first organized federal defenders service in the county, and, according to Senior Judge Howard Turrentine’s own recollections and exhaustive research, Carter worked hard to make the new Southern District “a model district in all respects.” Carter was appointed to the Ninth Circuit Court of Appeal in 1967. He died in 1979 at the age of 75. Judge Turrentine is a strong advocate for the naming of the new federal courthouse after Judge Carter. And it is fitting: Judge Carter was the first chief judge for this district and was tall, imposing and strong, much like the proposed new building.

The Honorable Judith N. Keep left us on September 14, 2004, at the age of 60. She was the first female federal judge in this district (appointed by President Jimmy Carter in 1980, just 10 years after obtaining her law degree from University of San Diego School of Law); from 1991 to 1998, she served as the first female chief judge of this district. She was appointed to the municipal court in 1976 by then-Governor Jerry Brown and was at that moment the youngest judge in the state of California.

Of historical footnote: it was Chief Judge Judy Keep who pushed for the naming of the current federal courthouse after Schwartz, and she credited Lynn Schenk (her roommate in the last year of law school) with doing much of the work. Keep thought the naming was her greatest accomplishment. It was not an easy task, as Judge Schwartz was still alive at the time. “They usually won’t name a building for a living judge in case he does something embarrassing after they name it,” Schwartz, then 85, remarked.

So things come full circle. Keep, intelligent, warm and fair, with an infectious laugh, brought to the bench the “heart of life” (to quote her favorite writer, Khalil Gibran). The memorial tribute to her emphasized four traits: she was creative, enthusiastic, spontaneous and passionate.

It seems to me the most fitting tribute to Judge Keep would be to name the proposed public plaza—nestled between the old and the new courthouses—after her: Keep Plaza. It would not only be a fitting tribute, but a tribute that fits.

George W. Brewster Jr. is a senior deputy county counsel for the county of San Diego.

Tributes That Fit

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