

# Small-Town Boys

Is Judicial Corruption Just Business as Usual in San Diego?

By John Plotz

**N**ow that former San Diego judges James A. Malkus and G. Dennis Adams stand convicted of mail fraud and conspiracy to racketeer, and former judge Michael Greer has pleaded guilty on a bribery charge, local myth-makers are describing them as "a few rotten apples." The rest of the bench is fine. "All this happened seven or eight years ago," said Presiding Judge William Howatt, "and we've moved far beyond that. ... There's just this image of misbehavior."

The local bar is just as clean. As the president of the San Diego County Bar Association said after the verdicts, "I don't think there was ever the problem to the extent that the public perceived it because there was one — and only one — lawyer involved in it." That was attorney Patrick R. Frega, who, according to the local myth, single-handedly corrupted the bench.

A different view is possible.

I used to work as an investigator for the Commission on Judicial Performance. Back in 1991 and 1992, the commission sent me to San Diego for a series of visits. It was new territory to me. I was pleasantly struck, as so many visitors are, by the balminess of the climate and the coziness of the city. The streets were really clean. Litter and poor people were mainly out of sight. Rich palm trees flourished. An air of good order and quiet municipal pride prevailed. Could this really be the city of C. Arnholt Smith and Roger Hedgecock?

To work. I was sent to investigate allegations that a number of San Diego judges had received generous gifts from lawyers. Were the allegations true? Sure. It was a matter of public record. On their annual disclosure statements, judges reported expensive golf dates, health club memberships, dinners and banquets without number, even a trip to Europe. The prestigious law firm of Ault, Midlam and Deuprey had given hundreds of dollars in free legal services to Judge Adams. (Later we discovered more — but so much was known to everyone.)

No harm in that, I was told. The local bench and bar had always enjoyed close relations. Over and over again I was told that San Diego is a small town. Everyone knows each other. The people are friendly and hospitable. What could be more natural than lawyers inviting their former colleagues, now elevated to the bench, to friendly harbor cruises, the Super Bowl or weekends in their condominiums?

**N**ext question: Did the gift-givers appear in court before the gift-takers? Answer: You bet. And not only did they appear, but they did very nicely, thank you. But — so I was told — the success of the gift-givers was mere coincidence. Or maybe it showed the high caliber of the lawyers involved: Some lawyers are really outstanding advocates, so they win their cases, make

more money and can afford to share their good fortune in the form of football tickets and free legal services. No harm. Right? As one San Diego judge wrote, it is "insulting and demeaning" to suggest that judges could be bought for gifts like these.

(One wonders what the value of the gifts must be before it is no longer "insulting and demeaning" to suggest improper influence. Would a Mercedes do it? A Jeep? In my six years at the commission I was asked more than once, "Do I look like the kind of guy who could be bought for a lunch?")

**W**as there a relationship between the gifts and the rulings — a quid pro quo? Granted, there was lots of quids and lots of quos — but was there a connection between them?

The question is naive. When a judge accepts gifts from a lawyer, there is no need for a payoff in any particular case. The parties

their colleagues. Others were loud in their exclamations of support for their comrades. But most judges simply kept silent. (The motto of the San Diego bench should have been *Omeria*.)

But understand this: Pat Frega was not different from other lawyers I encountered in San Diego. Other successful lawyers also were generous to their judges. Frega was esteemed by his colleagues, being named Trial Lawyer of the Year for the *Security Pacific* case.

**A**nd Mickey Greer was not different from other judges. He also was esteemed by his colleagues, who elected him presiding judge. I do not say there is evidence against other judges of the same sort that implicated Greer, Adams and Malkus. Such evidence might or might not be found some day. I do say that the corruption of Greer, Adams and Malkus flourished in the soil of San Diego. Their corruption was not a strange anomaly — a rare bad apple — but the natural outgrowth of the San Diego judicial ethic.

And what was that ethic? Many San Diego judges treated the courthouse as their private domain. They believed their own PR: Members of the bench were entirely worthy of their high position; their lawyer friends were fine fellows; their critics were villains or fools. Their way of life — gifts and all —

was the way things are supposed to be. As Frega's lawyer said, "Many of the things that look bad here in federal court are simply routine in state civil court."

There was a smugness among the San Diego judicial elite, an oozing complacency, that encouraged corruption. The judges defined a moral order by their own small measure, mistaking their private wishes and interests for the interests of the citizens they were supposed to serve. Lawyers flattered them and gave them gifts. All was right in the world.

This self-satisfaction was so preposterous it might have seemed merely comical to an outsider like me. But I did not find it comical. It created an atmosphere where self-deceit and lies grew in profusion.

And something more: When I interviewed clerks and junior lawyers, the little people who had to breathe that atmosphere every day, they told me of their fear — fear of retribution if they told what they knew. Indeed, I heard the same from some judges who were not of the inner circle. Greer and others were not merely liars and crooks — they were bullies. And they had the weight of the legal establishment behind them, both bench and bar.

**M**aybe judges should be crooks if they want, but they should spare us the cant and the sanctimony. When a union official gives a judge \$300 in an envelope, they call it graft. When a silver-haired senior partner gives a judge \$300 in free legal services, they call it "professional courtesy."

But, friends, remember these are *our* courts and *our* judges. So let us not fool ourselves or allow others to fool us: Graft is graft. And San Diego — that small town, that small clean town — has enough to go around.

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have established a climate of mutual esteem and mutual help that rises above mere payoffs. When Pat Frega paid for Judge Adams' car, he wrote the name of the case on the check — *Williams v. Security Pacific* — but that was unusual. Frega was a relative newcomer and outsider to San Diego. Gentlemen and ladies — true members of the club — are not so crude.

What does it mean that San Diego is a "small town"? The population of San Diego County is nearer 3 million than 2 million. It is the second most populous county in the most populous state in the nation. It sits on an international border and has a diverse economy and a diverse population. Being a "small town" means only that the people with money — and the lawyers and judges who serve them — form a self-serving, self-protecting clique.

When the commission investigation got under way, the Superior Court bench — much of it — reacted with howls of outraged piety. They circled the wagons. They formed a committee to protect themselves against the witch hunt. They denounced the commission and called for its director's resignation.

And when Mickey Greer resigned from the bench under pressure of the investigation, he was hired by the city's leading firm of private judges, the Judicial Arbitration and Mediation Service. JAMS announced to the world that it had examined the charges and given Greer a clean bill of health.

**J**udge Greer has been treated unfairly," wrote JAMS chairman John Trotter, himself a retired judge. "I am personally offended by what has happened and fearful that it can be easily repeated."

Some members of the San Diego bench — a very few — spoke against the corruption of

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