

From the Los Angeles Times

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Backdoor Bill Would Seal Data on Divorce

Michael Hiltzik
Golden State

March 2, 2006

Reasonable people may differ about the merits of an obscure bill filed last year in Sacramento to shore up the state Office of Homeland Security.

But one question about it legitimately interests all of us: How and why did it become transformed, as though by the touch of a magic wand, into a bill that helps out one of California's wealthiest citizens in his exceedingly ugly divorce?

The apparent beneficiary of this legislative legerdemain is Ronald W. Burkle, a prominent investor and former supermarket magnate who has been trying for more than year to keep the lid on scads of financial details piled up in his divorce case.

A member of the Forbes 400 (at No. 112, worth an estimated \$2.3 billion), Burkle rose from bag boy at Stater Bros. to the owner of Ralphs, Food4Less and other chains. He later sold the supermarkets, but his regime is fondly remembered by union members as a period of sound and fair labor relations, unlike the thuggery practiced by his successors. He's also a leading donor to UCLA and major contributor to Democrats.

Whatever his laudable personal qualities, they aren't much in evidence in the divorce papers. I hesitate to go into the noisome particulars, but if he and his ex-wife, Janet, left any of the deadly sins out of their descriptions of each other in court, then I can't count to seven.

That brings us to Burkle's penchant for secrecy. In April 2004, he asked a state judge to strike from public court filings his home addresses, Social Security number and financial account numbers on the grounds that publication might expose his young son to the threat of kidnapping. The judge complied but refused to black out such details as the balances in the accounts or to seal the Burkles' revealing post-marital agreement.

Two months later, the Legislature enacted - hastily, unanimously and without a single hearing - a law requiring judges in divorce court to seal in their entirety (upon a party's motion) any documents that mention the party's assets or other financial details even in passing.

Burkle then applied to seal weeks of trial transcripts, 22 exhibits and 28 other documents. In January, responding to motions by his ex-wife and a group of newspapers including

The Times, a state Court of Appeal made short work of the 2004 law. Because it deprived judges of any discretion to weigh a litigant's desire for privacy against the public's right of access to court records, the court ruled, the law was unconstitutional.

Burkle appealed that ruling to the state Supreme Court on Wednesday. But meanwhile, state Sen. Kevin Murray (D-Culver City) has come to his aid. On the heels of the appellate ruling, Murray quietly implemented what is known as a "gut-and-amend" job on the homeland security measure, which had been gathering dust on a committee shelf. He struck out the old language and replaced it with a fresh version of the overturned law, much as one might scoop out a cantaloupe and fill it with crab dip.

The new bill would require judges to shroud only the financial details at issue, not the entire document. But because it still would prohibit them from making the customary balance test between privacy and openness at their own discretion and line by line, Janet Burkle and the newspapers still object.

The bill, which is currently in committee, also would allow privately paid judges to seal documents. This is very intriguing. It just happens that one of the issues in Burkle's case is precisely whether such judges - a corps mostly made up of retired Superior Court judges paid by rich litigants to conduct quasi-private trials - can seal public records. (The Burkles' handpicked judge regretfully concluded that he didn't have that authority.)

Murray and a spokesman for Burkle say the latter had absolutely nothing to do with the former's bill. (There's no public record, such as campaign contributions from Burkle to Murray, linking them.) The bill's actual author, a Los Angeles divorce attorney named Fred Silberberg, told me he never heard Burkle's name until the appeals court ruling came down.

Silberberg and Murray both claim to be motivated by genuine concern for families whose personal financial affairs get aired unnecessarily in the process of breaking up. Yet, everybody knows that exposing dark corners of your life to public view is the price of using the public's civil judicial system to settle your private grievances. Neither Silberberg nor Murray can adequately explain why divorce litigants deserve special rights.

Silberberg cites the kidnap threat, but that's a dodge. No sleazeball with child abduction in his heart needs to read a court filing to know that Ron Burkle is a billionaire; he can learn it from Forbes. And Silberberg's measure applies to all divorce cases, not only those involving children. In any event, Family Court judges have the right to redact identifying information like home addresses and Social Security numbers from court papers; indeed, after the Court of Appeal ruling, Burkle asked Superior Court Judge Marjorie S. Steinberg to use her preexisting authority to do exactly that.

As for the assumption that no one could have anything but a prurient interest in a divorce party's financial affairs ("I don't think there's a great public desire or need to disclose everything," Murray told me), who says so?

The public has a right to know how its judges are performing, and the only way to determine that is to know what they're ruling on. Parties in future divorce cases need to know what to expect, based on the facts underlying earlier rulings. Moreover, numerous entities have a legitimate interest in financial disclosures made in divorce court - government agencies may scour files for evidence of tax cheating, for instance, and creditors for hints of fraud. Nor should we forget that the party trying to keep financial data confidential is almost always the one who controls those assets - in other words, the party (usually the husband) with the upper hand in divorce cases from the outset. Murray's bill tilts the playing field more in the stronger party's favor, by taking away a strategic weapon (i.e., disclosure) from the weaker side.

The divorce bill is merely another way of giving the wealthy and powerful a justice system all their own. Here's a question for Sen. Murray: Just who does he think he works for?

Golden State appears every Monday and Thursday. You can reach Michael Hiltzik at golden.state@latimes.com and view his weblog at latimes.com/goldenstateblog.