

## Gunmaker Will Add Safety Lock To Settle Suits

L.A. City, County Win, Litigation to Continue

By Denise Levin  
and Tyler Cunningham  
Daily Journal Staff Writers

Los Angeles City Attorney James K. Hahn said Friday he hopes the historic agreement by one of the country's largest gun manufacturers to make safer firearms is just the first of many by others in the industry who still face litigation.

Settling lawsuits brought by state and local governments, including the city and county of Los Angeles, and ending the threat of a similar suit by the federal government, Smith & Wesson agreed Friday to put safety locks on its guns and make them child-resistant.

Hahn, whose office filed one of the three California lawsuits pending against gun manufacturers, said the settlement derived from a list of demands he and other city officials presented to industry leaders in September.

"We got what we asked for, and I'm very pleased that we had the leadership of the White House" in fashioning the agreement, Hahn told reporters.

### Precedent Established

San Francisco City Attorney Louise Renne, who also sued the gunmakers, said the settlement will set a precedent that other companies likely will follow.

"If I had to predict, I would say in the near future you will see several other gun manufacturers participate," she said. "The precedent has now been established."

White House officials, including Housing and Urban Development Secretary Andrew Cuomo, announced the settlement Friday in Washington, D.C. Cuomo said that, despite the settlement with Smith & Wesson, the federal government still plans a national lawsuit against other gun manufacturers.

President Clinton said he believes Smith & Wesson is setting "a powerful

## Profile



**Jeffrey S. Behar**  
President  
Association of Southern California  
Defense Counsel

## 'Dyed-in-the-Wool' Defense Attorney Is New Bar Head

With Fortune 500 Clients, Behar Enjoys Penchant for Adversarial Challenges

By Denise Levin  
Daily Journal Staff Writer

Jeffrey S. Behar, the Association of Southern California Defense Counsel's new president, was once given the opportunity to join one of the country's most prominent plaintiffs' law firms.

He rejected the offer.

"I felt that I was more comfortable defending people than prosecuting them," Behar said in a recent interview in his top-floor office of the World Trade Center in Long Beach.

"It's an adversarial system. There are many claims that are absolutely justified

## Injunction Lets Clinic Set Up in Neighborhood

Ruling Says Addicts, Alcoholics Disabled By ADA Standards

'NIMBY' cases

By Pamela A. MacLean  
Daily Journal Staff Writer

SAN FRANCISCO — By blocking enforcement of a 1998 Antioch ordinance that would have kept a methadone clinic zoned out of a residential neighborhood, a federal judge has significantly expanded protections for recovering drug abusers.

The injunction issued last week in the closely watched case is one of the first decisions to define drug addicts and alcoholics as "disabled" under the Americans with Disabilities Act since a trio of Supreme Court rulings last June that limited protection under the ADA if individuals are able to mitigate their impairment.

In *Bay Area Addiction Research and Treatment v. City of Antioch*, C98-2651SI, the city unsuccessfully argued that the ADA did not apply because methadone treatment of heroin addiction was a form of correction or "mitigation" in the same way glasses can correct a vision impairment.

The case also has been a key test of the power of cities to impose emergency zoning changes that prohibit placement of an outpatient methadone clinic in an area otherwise zoned for medical clinics but which also abuts the back yards of private homes.

### Running Scared

A growing number of "not-in-my-backyard" or NIMBY cases have sprung up around the country as neighborhoods oppose placement of drug treatment clinics, making this case an important early test of that practice, according to San Francisco attorney Amitai Schwartz, who represents the clinic.

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President Clinton said he believes Smith & Wesson is setting "a powerful example of responsibility."

### Second Amendment Rights

"It has taken courage and vision for Smith & Wesson to be the first manufacturers to negotiate," Clinton said. "I applaud their determination to do right by their company and their country."

Ed Schultz, president and chief executive of Smith & Wesson, said the agreement will ensure the company's "future viability" and allow it "to continue to produce products that can be sold to ordinary citizens without threatening their Second Amendment rights."

The unprecedented agreement with Smith & Wesson, biggest of the eight major gun manufacturers, also ends many suits by many governments: the states of New York and Connecticut; the county of Dade in Florida; and the cities of Atlanta, Berkeley, Bridgeport, Conn., Camden, N.J., Detroit, Gary, Ind., Inglewood, and St. Louis.

About 30 cities and municipalities across the nation have lawsuits pending against 44 other gun manufacturers, according to Hahn's office.

Compton, Inglewood and West Holly-

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defending people than prosecuting them," Behar said in a recent interview in his top-floor office of the World Trade Center in Long Beach.

"It's an adversarial system. There are many claims that are absolutely justified and deserve compensation, and in those instances, I represent [to my clients] my intention to get the case justifiably resolved," he said.

"But there are also other unjust," he added, referring to claims in which there is no responsibility or liability on behalf of the company. "And they deserve the highest quality of representation just as a plaintiff would on the other side of the fence."

Behar, 47, whose client list includes Fortune 500 companies, has an admitted penchant for adversarial challenges. Defending large corporations satisfies that need.

"A jury's natural tendency is to root for the underdog, which is the plaintiff against big corporations," Behar said. "But in the eyes of the law, both are equal."

Larry Feldman, a partner at Fogel, Feldman, Ostrov, Ringler & Klevens, is the attorney who offered Behar that job as a plaintiffs' attorney.

"The first opportunity I had to recruit him, I did," said Feldman. "I told him I thought he'd be a great plaintiffs' lawyer because he had great cred-

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Antioch city attorney Bill Galstan said Friday he has heard from concerned city and state officials all over the country, including Fresno, two towns in Massachusetts, the Hawaii attorney general's office and Albuquerque, N.M., which has asked its state legislature to pass a law similar to Antioch's. Another ordinance challenge is under way in Covington, Ky.

Galstan said Antioch officials will get together with trial and appellate counsel as early as today to "see what options we have." He said they would consider further appellate review.

In 1998, when Antioch officials learned the clinic would move from the Pittsburg courthouse where it operated for 13 years, the city hastily enacted a moratorium on operation of drug treatment clinics within 500 feet of residential areas but later revised that to bar only operation of methadone clinics near homes.

### Mitigating Illness

Neighborhood residents and city officials expressed fear that, although the clinic would be in an area filled with medical clinics and zoned for the business, it would cause an increase in drug dealing

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GERARD BURKHART / For the Daily Journal  
accuracy in its portrayals of the judicial system plays himself in "Erin Brockovich," said.

## Justices Will Eye State Law for Boycott of Burma-Tied Firms

By David F. Pike  
Daily Journal Staff Writer

WASHINGTON — Boycotts by state and local governments of companies that do business with "outlaw" foreign countries became popular in the 1980s, when many places adopted laws against trade with South Africa.

Since then, such boycotts have proliferated, with California cities by far the most active. Current targets across the country range from Switzerland and China to Nigeria and Cuba.

Now, the Supreme Court will consider whether such local laws are pre-empted by the federal government's exclusive authority to regulate foreign affairs, under either the Constitution's Foreign Commerce Clause or federal law. *Natsios v. National Foreign Trade Council*, 99-474.

At issue during oral arguments Wednesday will be a 1996 law passed by the Massachusetts Legislature that limits the procurement of goods and services by state agencies from companies that do business with Myanmar (formerly

Burma), which has been accused of massive human-rights violations, including forced labor.

Before the court is the decision by the Boston-based 1st U.S. Circuit Court of Appeals that the state's law conflicts with federal law, "thus raising the prospect of embarrassment for the country," and that it undermines national uniformity in the regulation of foreign commerce. The circuit also found that the state had "crossed over the line from market participant to market regulator" by imposing on its suppliers "conditions that apply to activities not even remotely connected to such companies' interactions with Massachusetts."

More than 20 other jurisdictions around the country have similar laws, including Los Angeles, San Francisco, Santa Monica, West Hollywood, Berkeley, Oakland, Palo Alto, Santa Cruz and Alameda County.

As might be expected, the high-court case has drawn numerous amicus briefs — more than a dozen.

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# Career Defense Counsel Heads Bar

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ibility and sincerity."

Behar's decision to reject the offer shows that he's a dyed-in-the-wool defense lawyer who really cares about being a defense lawyer and who is really devoted to defending his clients," Feldman said.

**'While I recognize a need for arbitration, mediation and private judges, I do not think there will ever be a substitute for the courtroom with jury trials.'**

**Jeffrey S. Behar,**  
Association of Southern California  
Defense Counsel president

Feldman and Behar met early in Behar's career when Behar (then with the now-defunct Shield & Smith) was defending McDonnell Douglas in wrongful death trials stemming from the 1979 crash of an American Airlines flight outside Chicago in which 274 people died.

Behar said that opportunities like that — trying cases along with senior partner Theodore P. Shield — provided the basis for his skills and talents as a trial lawyer. Behar was one of the youngest admittees to the prestigious American Board of Trial Advocates.

"I started out literally carrying his courtroom bags and watching him," Behar said of Shield, whom he calls his mentor.

"He did an excellent job," Shield recalled. "The cases took a couple of years [to try], but it wasn't too long before I had put him on an actual trial of one of those death cases."

Shield said Behar did so well that American Airlines' chief of claims sought Behar out five years ago and retained him to represent the airline in litigation on the West Coast.

Behar successfully defended a high-profile lawsuit against American Airlines by socialite Marcelle Becker, who was tied to her first-class seat with her dog's leash by the captain of her flight after an argument broke out over her Maltese, Dom Perignon.

Shield, now of counsel to Ford Walker, said Behar's successes in the courtroom are attributable to many factors, but what stands out to him is the jury's reaction to Behar's demeanor.

"He exudes confidence and calm," Shield said.

Behar's job interview with Shield & Smith on Feb. 22, 1977, while a second-year law student at Loyola Law School is the only job interview he has ever had in the law. He chose the firm because it was close to the downtown Los Angeles campus, and he had an unreliable car.

Behar clerked at Shield & Smith during his second and third years of law school, and after passing the bar in 1978, he became an associate. Behar made partner in 1982.

While at the firm, Behar saw it grow from a handful of attorneys to nearly 100. In 1991, Behar joined with three Shield & Smith partners and about 20 associates to form Ford, Walker, Haggerty & Behar. Shield & Smith broke into several different firms. Behar said the attorneys left because the firm had grown so big that there was more focus on administrative duties than on practicing law. "We wanted to get back to what we were trained to do and what we loved," Behar said.

"It was a gut-wrenching experience

## Profile

### Jeffrey S. Behar

President  
Association of Southern  
California Defense Counsel

**Career highlights:** Founding partner, Ford, Walker, Haggerty & Behar, 1991-present; partner, Shield & Smith, 1982-91; associate, Shield & Smith, 1978-82.

**Law School:** Loyola Law School, 1978

**Age:** 47

because Shield & Smith was a very close-knit law firm," Behar said of the mass defection. "But it was in our best interests to go our separate ways."

Behar has many fond memories of the firm, especially playing safety on the firm's football team for 12 years, during which they were champions of their league for 10 years. Behar, who double-lettered in basketball and tennis in high school, said he always has liked competition and thinks that's what fostered his love for trial lawyering.

The son of an award-winning television director and an actress, Behar originally thought he wanted to go into his parents' business. His father directed "The Ernie Kovacks Show", for which he won his first of two Emmys. After a childhood immersed in "the biz," (Behar was once a page for Julie Andrews and appeared as extras on his father's shows) he considered a career in the field. However, his father warned him of the volatility of show business, and Behar chose law school.

Besides his love for the law, Behar said he is happy he decided to go to law

# High Court to Review State Boycott Law

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Among them are submissions by two competing groups of members of Congress. The issue has split California's Democratic senators, with Sen. Barbara Boxer supporting Massachusetts and Sen. Dianne Feinstein backing the challengers of the state's law

## U.S. Supreme Court Arguments

The justices this week will hear the following cases:

### TODAY:

**APPEAL RIGHTS:** When a criminal defendant testifies about a prior conviction, does he waive his right to appeal the trial



ROBERT LEVINS / Daily Journal

**JEFFREY S. BEHAR** — “A jury’s natural tendency is to root for the underdog, which is the plaintiff against big corporations,” Behar said. “But in the eyes of the law, both are equal.”

school because it was there that he met his future wife, Lori, who was the first woman partner at Haight, Brown & Bonesteel and the first woman president of the ASCDC. They married during their second year of law school and have two children, Alex, 14, and Mallory, 11.

The family is only weeks away from moving into the beachfront home they recently built.

“I feel like I’ve hit the Lotto,” Behar quipped, referring to his home, family, firm partnership and ASCDC presidency. “Life doesn’t get any better than this.”

As for the goals he would like to accomplish for the 1,900-member ASCDC during his year-long presidency, Behar said he would like the organization to have a larger lobbying presence in Sacramento so it could have an impact on legislation that affects its members.

Among the issues ASCDC’s board has considered becoming more involved with are laws that would modify the evidence code to abolish the collateral source rule. The rule allows a plaintiff to collect damages from a defendant, even if the plaintiff

has already received compensation from a source independent of the defendant.

The organization also is considering a more active role in filing amicus briefs with the state Supreme Court and clarifying the scope of the relationship between an insured, the insurance carrier and the defense lawyer.

**B**ehar also hopes the ASCDC will expand its Web site and utilize technology so members can better serve their clients by allowing more networking and idea sharing. He also wants to establish committees that focus on specific areas of practice, such as bad faith, product liability, construction defect and professional liability.

At the forefront of his efforts, though, will be the preservation of the jury system, Behar said, adding that it has been threatened in recent years by the widespread use of private judging.

“While I recognize a need for arbitration, mediation and private judges, I do not think there will ever be a substitute for the courtroom with jury trials,” Behar

said.

Behar would like to see the organization’s membership expand, especially to include more defense attorneys who represent corporate interests, compared with the majority of its members who work in traditional insurance defense.

Behar also expressed concern about attacks on the legal profession in recent years. He noted the referendum campaign that was being waged before the March 7 primary election 7 over Propositions 30 and 31. The pair of initiatives, passed by voters, takes away the right of a driver to sue an at-fault driver’s insurance company for bad faith.

“Regardless of what side of the initiative you come down on, what was particularly disheartening to me was the campaign run against the propositions; they were anti-lawyer and lawyer bashing,” Behar said.

“I just think that we are fortunate to have such an esteemed profession,” Behar added. “It’s discouraging that the profession is still the subject of such lawyer bashing publicly.”