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## Trademarks of Privilege: Naming Rights and the Physical Public Domain

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# Trademarks of Privilege: Naming Rights and the Physical Public Domain

Ann Bartow\*

*This Article critiques the branding and labeling of the physical public domain with the names of corporations, commercial products, and individuals. It suggests that under-recognized public policy conflicts exist between the naming policies and practices of political subdivisions, trademark law, and right of publicity doctrines. It further argues that naming acts are often undemocratic and unfair, illegitimately appropriate public assets for private use, and constitute a limited form of compelled speech. It concludes by considering alternative mechanisms by which the names of public facilities could be chosen.*

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## INTRODUCTION

Few people are likely to want to live on a thoroughfare named 198,457th Street because such an address lacks personality and interest. When public amenities are accorded more colorful denominations, however, complications can ensue. A corporation may pay tens of thousands of dollars to “brand” a public building with one of its trademarks, while local politicians are likely to invest only political capital in arranging to have public facilities named for themselves.<sup>1</sup> The legal issues related to naming rights and the physical public domain are often difficult to discern, and the political processes through which naming decisions are made are frequently invisible to the public.<sup>2</sup>

The Lanham Act conceptualizes the names of goods and services as forms of intangible commercial property and allows these names to be bought, sold, and leased in acknowledgement of the fact that the names possess monetary value both derived from and independent of their associations with commercial enterprises.<sup>3</sup> A mark’s value is related to how recognizable it is and how many positive associations it carries.<sup>4</sup> A strong, widely recognized trademark like Coca-Cola began life as a designation for a particular carbonated beverage, but now graces a wide range of products, including sportswear and cookie jars.<sup>5</sup> Licensees purchase the right to affix the Coca-Cola mark to their products because the mark adds value that consumers are willing to pay for.

When public assets are named, these dynamics are almost completely reversed. Public parks, schools, roads, buildings, and related amenities are valuable because they are visible and useful. When names or trademarks are appended to these public assets, the honoree or mark holder reaps some measure of this value, and thus this value is “privatized.”<sup>6</sup> Commercial entities generally compensate

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<sup>1</sup> See discussion *infra* Part I.

<sup>2</sup> See discussion *infra* Part II.

<sup>3</sup> Lanham Act, 15 U.S.C. §§ 1051-1141 (2006), available at <http://www.bitlaw.com/source/15usc/index.html>.

<sup>4</sup> See Helen Lom, Director-Advisor Brand Development, World Intellectual Property Organization, *Branding: How to Use Intellectual Property to Create Value for Your Business?*, <http://www.wipo.int/sme/en/documents/branding.htm> (last visited Feb. 22, 2007).

<sup>5</sup> See NuNet, Online Shopping Mall, Coca-Cola Merchandise, <http://shopsite.nni.com/cocacola.html> (last visited Dec. 28, 2006).

<sup>6</sup> See discussion *infra* Part III.

the public for this usurpation of public goodwill by proffering payment for “naming rights.”<sup>7</sup> Private individuals, however, often claim public domain naming privileges for themselves, wielding power and exercising privileges that are available only to a small cohort of the population, and doing so outside the margins of democratic processes.<sup>8</sup> The men who control this nation embed their names and marks into the public domain at every opportunity. This Article suggests that such actions should be interrogated and challenged.

### I. TRADEMARKS, RIGHTS OF PUBLICITY, AND NAMING RIGHTS

Trademarks are words, short phrases, symbols, pictures, designs, or other features used in conjunction with specific goods or services to indicate the source of the goods or services and distinguish them from commercial offerings of competitors.<sup>9</sup> The right of publicity is concerned with the goodwill and market value associated with the names, visages, or unique, identifiable qualities of individual — generally people who may be characterized as “celebrities.”<sup>10</sup> The right of publicity and trademark are independent legal constructs; trademark protections and proscriptions are largely the provenance of federal law, while rights of publicity are somewhat more amorphously demarcated by various state laws and common law doctrines.<sup>11</sup>

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<sup>7</sup> Naming rights are defined as the right to name a piece of property, either tangible property or an event, usually granted in exchange for financial considerations. Institutions like schools, places of worship, and hospitals have a tradition of granting donors the right to name facilities in exchange for contributions, with the general rule being that the larger the contribution, the larger the facility named. See Wikipedia, Naming Rights, [http://en.wikipedia.org/wiki/Naming\\_rights](http://en.wikipedia.org/wiki/Naming_rights) (last visited Dec. 28, 2006).

<sup>8</sup> See discussion *infra* Parts I, III.

<sup>9</sup> See Lanham Act § 45, 15 U.S.C. § 1127 (2006).

<sup>10</sup> The *Restatement (Third) of Unfair Competition* addresses the right of publicity as follows: “One who appropriates the commercial value of a person’s identity by using without consent the person’s name, likeness, or other indicia of identity for purposes of trade is subject to liability for [monetary and injunctive relief].” RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 (1995). For more information on the right of publicity, see generally Sheldon W. Halpern, *The Right of Publicity: Maturation of an Independent Right Protecting the Associative Value of Personality*, 46 HASTINGS L.J. 853 (1995); Sheldon W. Halpern, *The Right of Publicity: Commercial Exploitation of the Associative Value of Personality*, 39 VAND. L. REV. 1199, 1203-15 (1986); Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 CAL. L. REV. 125 (1993).

<sup>11</sup> An overview of the right of publicity doctrine is as follows:

The Right of Publicity prevents the unauthorized commercial use of an individual’s name, likeness, or other recognizable aspects of one’s persona.

These doctrines intersect, however, in the context of claims brought under a provision of the Lanham Act, which prohibits the use in commerce of a name or symbol that is “likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.”<sup>12</sup> Celebrities obtain federal trademark registration for the names under which they perform.<sup>13</sup> Under Section 43(a) of the Lanham Act, celebrity names that qualify as unregistered trademarks are protected from acts that constitute “false designation of origin.”<sup>14</sup> Under common law or state law “right of publicity” precepts, a celebrity might have an exclusive right to commercially

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It gives an individual the exclusive right to license the use of their identity for commercial promotion.

In the United States, the Right of Publicity is largely protected by state common or statutory law. Only about half the states have distinctly recognized a Right of Publicity. Of these, many do not recognize a right by that name but protect it as part of the Right of Privacy. The *Restatement (Second) of Torts* recognizes four types of invasions of privacy: intrusion, appropriation of name or likeness, unreasonable publicity and false light. Under the Restatement’s formulation, the invasion of the Right of Publicity is most similar to the unauthorized appropriation of one’s name or likeness.

In other states the Right of Publicity is protected through the law of unfair competition. Actions for the tort of misappropriation or for a wrongful attempt to “pass off” the product as endorsed or produced by the individual help to protect the right of publicity.

Cornell Law School Legal Information Institute, Wex, Publicity, <http://www.law.cornell.edu/wex/index.php/Publicity> (last visited Jan. 11, 2006) (citations omitted); see RESTATEMENT (SECOND) OF TORTS §§ 652A-652I (1977), available at [http://cyber.law.harvard.edu/privacy/Privacy\\_R2d\\_Torts\\_Sections.htm](http://cyber.law.harvard.edu/privacy/Privacy_R2d_Torts_Sections.htm); Cornell Law School Legal Information Institute, Wex, Unfair Competition, [http://straylight.law.cornell.edu/wex/index.php/unfair\\_competition](http://straylight.law.cornell.edu/wex/index.php/unfair_competition) (last visited Dec. 28, 2006).

<sup>12</sup> Lanham Act § 43, 15 U.S.C. § 1125 (2006).

<sup>13</sup> See, e.g., Mary Blume, *Hemingway Furnishings for a Moveable Feast*, INT’L HERALD TRIB., Jan. 2, 1999, at 20, available at <http://www.ihl.com/articles/1999/01/02/papa.t.php>; Own It: Creative London Intellectual Property Advice Service, *Brando Becomes Brand*, Oct. 20, 2004, <http://www.own-it.org/news/article/?p=15&a=210&t=&v=a>; John Fulwider, *Nebraska Hospital Caught in Madonna Trademark Spat*, NEB. STATEPAPER.COM, Aug. 23, 2000, [http://nebraska.statepaper.com/vnews/display.v/ART/2000/08/23/39a423f07?in\\_archive=1](http://nebraska.statepaper.com/vnews/display.v/ART/2000/08/23/39a423f07?in_archive=1). See generally Stephanie Dotson Zimdahl, Comment, *A Celebrity Balancing Act: An Analysis of Trademark Protection Under the Lanham Act and the First Amendment Artistic Expression Defense*, 99 NW. U. L. REV. 1817 (2005).

<sup>14</sup> Lanham Act § 43(a), 15 U.S.C. § 1125(a). See generally Zimdahl, *supra* note 13, at 1817.

exploit her name and image.<sup>15</sup> If someone named a business or product after a famous person without obtaining permission from either the individual or the individual's heirs, she could expect legal objections on both trademark-related and right of publicity grounds.<sup>16</sup>

Trademark and right of publicity laws do not, however, address situations in which an individual or her heirs approves of the use of the name, but members of the public object to it. Neither body of law provides legal remedies to an individual who does not wish to see a road, park, or school named after a particular local celebrity, businessperson, or politician. Trademark law offers members of the public an opportunity to object to the federal registration of a trademark on the grounds that it "[c]onsists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute."<sup>17</sup> Applying an individual's name to a public facility, however, does not typically turn the name into a trademark at all, no less one suitable for federal registration. Trademark rights are acquired through the use of a mark in commerce,<sup>18</sup> which would not typically occur when a public facility is named.

Trademark law provides a cause of action against "any person" who confuses consumers about whether there is an "affiliation, connection or association" between a trademark holder and an independent source of goods and services.<sup>19</sup> Thus, there is an uneasy intersection between naming (or "branding") practices and trademark law.<sup>20</sup> For

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<sup>15</sup> See Lloyd L. Rich, Publishing Law Center, *Right of Publicity*, <http://www.publaw.com/rightpriv.html> (last visited Feb. 18, 2007). See generally Zimdahl, *supra* note 13, at 1817.

<sup>16</sup> Examples include the suit brought by Elvis Presley's heirs against the Velvet Elvis nightclub, and Johnny Carson's suit against Here's Johnny Portable Toilets, Inc. See *Elvis Presley Enters. v. Capece*, 141 F.3d 188 (5th Cir. 1998); *Carson v. Here's Johnny Portable Toilets, Inc.*, 698 F.2d 831 (6th Cir. 1983).

<sup>17</sup> 15 U.S.C. § 1052(a) (2006); see, e.g., *Ritchie v. Simpson*, 170 F.3d 1092 (Fed. Cir. 1999); *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96 (D.D.C. 2003); *Order Sons of Italy in Am. v. Memphis Mafia, Inc.*, 52 U.S.P.Q.2d (BNA) 1364 (T.T.A.B. July 9, 1999).

<sup>18</sup> See Lanham Act § 1, 15 U.S.C. § 1051 (2006).

<sup>19</sup> Lanham Act § 43(a), 15 U.S.C. § 1125(a) (2006).

<sup>20</sup> See Rob Walker, *The Brand Underground*, N.Y. TIMES, Aug. 30, 2006, § 6 (Magazine), at 29 ("But branding is more complicated than that. It is really a process of attaching an idea to a product. Decades ago that idea might have been strictly utilitarian: trustworthy, effective, a bargain. Over time, the ideas attached to products have become more elaborate, ambitious and even emotional. This is why, for example, current branding campaigns for beer or fast food often seem to be making

example, the University of South Carolina's main sports coliseum is named the Colonial Center, in reference to the Colonial Life Insurance Company, which publicly proclaims itself a "naming partner" of the University of South Carolina, a public university.<sup>21</sup> In addition to being a company name, the word "Colonial" serves as a trademark for the company, and is a federally registered mark.<sup>22</sup> However, the Colonial Life Insurance Company does not own the coliseum that bears its name, nor does it operate the facility in any way. Rather, the Colonial Center is managed by an independent vendor, Global Spectrum, Inc.<sup>23</sup> The Colonial Center itself is owned by the University of South Carolina. Therefore, in a more generalized way, the Colonial Center is owned by the state, and by the very citizens of South Carolina, many of whom contributed and continue to contribute tax dollars toward its construction and maintenance.<sup>24</sup> The building's front entrance, directly beneath the Colonial Center's marquee, declares itself "The Home of the Carolina Gamecocks." It is doubtlessly this public association with the University and with the

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some sort of statement about the nature of contemporary manhood. If a product is successfully tied to an idea, branding persuades people — consciously or not — to consume the idea by consuming the product. Even companies like Apple and Nike, while celebrated for the tangible attributes of their products, work hard to associate themselves with abstract notions of nonconformity or achievement. A potent brand becomes a form of identity in shorthand."); Wikipedia, Brand, <http://en.wikipedia.org/wiki/Brand> (last visited Feb. 18, 2007).

<sup>21</sup> Colonial Supplemental Insurance, <http://www.coloniallife.com/> (last visited Feb. 18, 2007) ("Colonial Supplemental Insurance, in partnership with the University of South Carolina Athletics Department, is the proud naming rights sponsor of The Colonial Center in Columbia, SC.").

<sup>22</sup> See U.S. Trademark Serial No. 78,571,670 (filed Feb. 21, 2005); U.S. Trademark Serial No. 76,309,199 (filed Sept. 5, 2001).

<sup>23</sup> Colonial Center, About the Center: General Information, [http://www.thecolonialcenter.com/aboutthecenter\\_index.html](http://www.thecolonialcenter.com/aboutthecenter_index.html) (last visited Feb. 18, 2007) ("The University of South Carolina's Athletic Department is the primary owner and operator of the Colonial Center, ranked 22nd in the world for total tickets sold in 2003 by Pollstar Magazine. Global Spectrum, the fastest growing public assembly management firm with over 40 facilities, manages the Colonial Center for the University of South Carolina Athletic Department. Global Spectrum is a subsidiary of Comcast-Spectacor, of Philadelphia, PA, which owns the Philadelphia Flyers, the Philadelphia 76ers, the Wachovia Center, the Wachovia Spectrum and several other entities.").

<sup>24</sup> Cf. University of South Carolina, Men's Basketball: Colonial Center Information, <http://uscsports.cstv.com/sports/m-baskbl/spec-rel/041802aaa.html> (last visited Feb. 18, 2007) ("[U]nlike most sports/entertainment centers, [the Colonial Center] does not put taxpayers on the hook for any annual losses. The athletics department is responsible for any annual shortfall with those funds coming out of the athletics operating budget.").



Carolina Gamecocks that made the naming rights so attractive to Colonial Life.

How much money Colonial contributed toward the venture to acquire naming rights is not publicly known, nor is it clear exactly where these funds went.<sup>25</sup> Some possibilities include the operating vendor Global Spectrum, Inc., the University of South Carolina's Athletics Department, the University's general coffers, or the five enigmatic University of South Carolina Foundations, private foundations that collectively operate in conjunction with the University and its endowment and investment portfolio.<sup>26</sup> How the University of South Carolina selected Colonial to be the coliseum's naming rights partner is also a mystery. Perhaps the University auctioned off the naming rights to the highest bidder. Possibly Colonial had a preexisting relationship with the University administration, or with Global Spectrum, Inc., that led to the company's selection. Perhaps another set of criteria enabled Colonial to prevail. The rationale behind the selection has never been publicly disclosed.

Although naming rights are creatures of contract, in some aspects naming rights function more like property rights than trademarks. Branding names occupy rental space on billboards and marquees, and in advertisements and labels related to whatever resource the naming rights are associated with. Often these names are trademarks, but they are featured in non-trademark roles. Branding names promote the idea that a substantial commercial relationship exists between the

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<sup>25</sup> *But see* Colonial Center, USC enters 12-year naming rights agreement with Colonial Life & Accident Insurance Company, <http://uscports.cstv.com/genrel/100703aaa.html> (last visited Feb. 18, 2007) ("The University of South Carolina and Colonial Life & Accident Insurance Company of Columbia have agreed to a naming rights sponsorship for USC's 18,000-seat basketball arena. USC's arena, which opened in November, 2002, will now bear the name The Colonial Center. The announcement came during an October, 2003, press conference at Colonial's headquarters in Columbia. The naming rights agreement is a 12-year, \$5.5 million pact. The agreement also includes exterior and interior signage at the arena, in addition to promotional packages with the Gamecock athletics program that will be available for Colonial.").

<sup>26</sup> *See* University of South Carolina, Office of University Foundations, <http://www.sc.edu/foundations/index.shtml> (last visited Feb. 18, 2007). Although these Foundations operate in conjunction with the University of South Carolina, they are somehow exempt from the open records requirements that apply to public entities like the University of South Carolina. *See* South Carolina Public Records Act, S.C. CODE ANN. §§ 30-1-10 to -180 (1976), available at <http://www.state.sc.us/scdah/praf.htm>; Freedom of Information Act, S.C. CODE ANN. §§ 30-4-10 to -165 (1976), available at <http://www.scstatehouse.net/code/t30c004.htm>.

name and the named premise that is beyond simple naming rights. For example, as a “naming partner,” Colonial obtains a particular kind of visibility that includes and is intertwined with the University of South Carolina’s reputation and goodwill. This is far more than mere advertising space.

In some contexts, the Colonial trademark commandeers the mental association that otherwise would adhere to the University of South Carolina. When the public sees or hears a commercial for an upcoming Monster Truck Show at the Colonial Center, the name “Colonial” usurps the nominative position of source identifier. Thus, any association with the University is muted or obscured, even though “Colonial” is not the source or the sponsor of the event. Arguably, this comes close to intentional deception. This sort of interference with a consumer’s ability to distill accurate source-identifying information from a trademark usage conflicts with trademark law’s stated goal of conveying accurate information to consumers.<sup>27</sup> Mark holders, however, are likely to embrace rather than challenge good will that can be harvested from the physical public domain.

In other, non-trademark respects, the commodification of naming rights may seem economically rational, and auctioning these rights to the highest bidder would seem like the fairest and most logical revenue-maximizing approach to this process. However, basing the selection of a naming partner strictly on the highest monetary bid might be problematic from a branding standpoint if the highest bidder’s name carried an association that a university or municipality considered unattractive or unseemly. One might imagine the University’s reluctance to have the “Home of the South Carolina Gamecocks” denominated after a foot fungicide or rectal itching remedy, regardless of how much cash the companies marketing these products were willing to spend. Any product or company with a strong connection to “sins,” such as alcohol, tobacco, or gambling, might have been considered risky or inappropriate, and associations with feminine or ethnic connotations could have been rejected as undesirable as well.<sup>28</sup> Similarly, the name of a funeral home or

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<sup>27</sup> “A trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others.” United States Patent and Trademark Office, *What Are Patents, Trademarks, Servicemarks, and Copyrights?*, <http://www.uspto.gov/web/offices/pac/doc/general/whatis.htm> (last visited Feb. 18, 2007).

<sup>28</sup> The University of South Carolina changed the name of its business school from the Darla Moore School of Business, adopted in honor of a generous benefactor, to the more gender-neutral Moore School of Business, in all likelihood to escape the taint of

mortuary service would have been thought to set too somber a tone for an entertainment complex. In the absence of publicly accessible written rules or policies, the public has no way of ascertaining what considerations went into the “naming partner” selection process. It is also unclear under what circumstances the Colonial “co-branding” name would or could — without violating contractual provisions — be removed.<sup>29</sup>

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“Darla”-associated girlishness.

No one has ever accused South Carolina of being home to progressive thought. The Confederate battle flag flies over its capitol. Its military school, The Citadel, fought to exclude women. And it has Strom Thurmond.

The image of the Palmetto State, though, may be changing, thanks to one of its illustrious — and wealthy — native daughters. On Mar. 27, the University of South Carolina, in Columbia, will become home to the first major U.S. business school named after a woman when it is christened the Darla Moore School of Business. Moore, a native of Lake City, S.C., and member of the undergrad class of ‘75, is donating a record \$25 million to the B-school. The former banker is president of Rainwater Inc., an investment firm run by husband Richard Rainwater.

University President John Palms says naming the school for Moore is a step in the state’s effort to be more progressive: “This university has always been the index to the ambition of this state. To name a major business school for a woman is a big deal.”

Moore, who got her MBA from George Washington University, agrees. “They didn’t have to name the school after me. There were other alternatives,” she says. “But I think they wanted to make a quantum leap in the image they want to portray.”

Stephanie Anderson Forest, *Darla Moore: The Lady Is a B-School*, BUS. WK., Mar. 30, 1998, at 6, available at <http://www.businessweek.com/1998/13/b3571022.htm>

Elaborating on this idea:

Ms. Moore, a 50-year-old investment guru who runs a \$2-billion investment company with her husband, has steadily been making multimillion-dollar charitable gifts, and decided over the course of a single lunch with fund raisers from the University of South Carolina, her alma mater, that she would make the \$25-million gift and accept their offer to rename the business school after her.

“The very idea that a bastion of capitalism would be named for a woman appealed to me,” she recalls, “and the fact that this is Strom Thurmond country, well, it was just a home run.”

Holly Hall, *Power of the Purse*, CHRON. PHILANTHROPY, Feb. 17, 2005, at 7, available at <http://philanthropy.com/free/articles/v17/i09/09000701.htm>; see Wikipedia, Moore School of Business, [http://en.wikipedia.org/wiki/Moore\\_School\\_of\\_Business](http://en.wikipedia.org/wiki/Moore_School_of_Business) (last visited Feb. 18, 2007).

<sup>29</sup> The “Enron” name was removed from a stadium in Houston when the troubled company failed to make good on its pledged “donations.” Bad behavior alone might

Naming practices are important because the names of public amenities communicate information about a community and its heritage. Legal scholar Sanford Levinson has written that when monuments in the former Soviet Union were being toppled and carted off as the communist regime fell, even strong anti-communists were disconcerted by the destruction of cultural objects.<sup>30</sup> When a public facility is renamed, it has the effect of literally removing the offending trademark from the public consciousness, altering the cultural meaning and perhaps even the very nature of a portion of the physical community. The social connection between the coliseum and the University of South Carolina is arguably weakened by the presence of an appended corporate name, despite its on-campus location.

#### A. *Trademarks as Names*

The divergence between trademark law and naming practices is clearest when the name involved is a corporation, as with the Colonial Center, or to provide a few additional examples, Anheuser-Busch Hall, which houses the Washington University School of Law in St. Louis,<sup>31</sup> and Minute Maid Park, a municipal facility in Texas where the Houston Astros play baseball (formerly known as Enron Field).<sup>32</sup> These are trademarks, but they are being put to non-trademark, almost ornamental uses because they are not acting as source identifiers with respect to the venues with which they are identified. Holders of these trademarks seem perfectly content to allow consumers to be confused

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have resulted in the same penalty if Houston, or the teams or vendors associated with the venture, feared that negative associations would harm the stadium monetarily, or sully its reputation in some way. Cf. Minute Maid Park, <http://www.ballparks.com/baseball/national/bpkaus.htm> (last visited Dec. 29, 2006) (“On April 7, 1999, Houston-based Enron Corporation agreed to pay more than \$100 million over 30 years to name the stadium Enron Field. However, on December 2, 2001 Enron became the largest corporation in history to declare bankruptcy. On February 27, 2002, the Astros made an agreement with Enron to buy back the naming rights. After two full seasons of being called Enron Field, the home of the Houston Astros then became temporarily know as Astros Field. On June 5, 2002, the Astros announced that the Minute Maid Company, a locally-based subsidiary of the Coca-Cola Company since 1960, will pay an estimated \$170 million for a 28-year naming rights deal.”).

<sup>30</sup> SANFORD LEVINSON, WRITTEN IN STONE 13-14 (1998).

<sup>31</sup> See Washington University in St. Louis School of Law, State-of-the-Art Facilities, <http://law.wustl.edu/Admissions/index.asp?id=99> (last visited Feb. 18, 2007).

<sup>32</sup> See Houston Astros, Minute Maid Park, <http://houston.astros.mlb.com/NASApp/mlb/hou/ballpark/index.jsp> (last visited Feb. 18, 2007).

about associations between the marks and the identities of the actual goods and services providers.

Attempts to saturate the culture with a trademark may render it famous, by integrating the mark into the social fabric. However, as Sarah Stadler Nelson has persuasively argued, intentionally fostered mark ubiquity constitutes a powerful form of self-inflicted mark dilution.<sup>33</sup> When trademarks appear in a wide variety of contexts, disconnected from the goods or services they were originally associated with in commerce, they lose their power as distinctive source identifiers.<sup>34</sup> Other incongruities emerge as well. Tax law scholar Nancy Knauer has pointed out that if one views the *raison d'être* of corporations to be strict profit-maximization, purely altruistic charitable contributions by a corporation would violate its fiduciary duties to its shareholders.<sup>35</sup> When "charitable" giving results in naming rights, however, corporate giving more neatly fits into an overall profit-maximizing strategy.<sup>36</sup> In fact, purchased naming rights may promote the perception of charitable behavior on the part of the entity that places its name on a building, but actually function as an advertising or promotional effort. The corporation receives valuable visibility and the simultaneous deceptive illusion of having been a generous benefactor.

Trademark law assumes that a corporate entity's reputational attributes can be imputed to any amenity or institution that bears its name. Trademark law purports to protect consumers from confusion,<sup>37</sup> but offers no clarification to the person who buys a ticket to a rock concert at the Colonial Center, passes Anheuser-Busch Hall, or enters Minute Maid Park. The relationship between the corporation name that graces the venue and the service provided within would be a mystery to the average consumer. It is possible that the public can realistically ascertain who is each venue's actual owner or proprietor and comprehend the commercially disconnected nature of the relationship between the venue and its name. However, such an

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<sup>33</sup> Sara Stadler Nelson, *The Wages of Ubiquity in Trademark Law*, 88 IOWA L. REV. 731, 784-91 (2003).

<sup>34</sup> *Id.*

<sup>35</sup> Nancy J. Knauer, *The Paradox of Corporate Giving: Tax Expenditure, the Nature of the Corporation, and the Social Construction of Charity*, 44 DEPAUL L. REV. 1, 22-23, 94 (1994).

<sup>36</sup> *Id.*

<sup>37</sup> See Greg Lastowka, *The Trademark Function of Authorship*, 85 B.U. L. REV. 1171, 1189 (2005). See generally William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 J.L. & ECON. 265 (1987).

assumption would tend to support a belief in a level of cognitive acumen on the part of the public that is not often evidenced in mainline trademark jurisprudence.<sup>38</sup>

Public entities increasingly treat their nominative designations as proprietary.<sup>39</sup> While public universities used to allow the public to use their names freely, they now privatize their names so that they can compel licenses and extract revenues from institutional affinities and boosterism.<sup>40</sup> Municipal organizations such as the NYPD and FDNY have followed suit in order to profit from novelty consumer items marked with these designations.<sup>41</sup> Ironically, when universities or other public entities claim trademark rights in their names, mascots, or other symbols, they protect their marks by claiming that unauthorized uses of their marks, or of similar marks, will confuse consumers and lead them to make incorrect assumptions about the source and quality of their marks.<sup>42</sup> These legal claims and factual assertions reject the possibility that consumers are reasonably intelligent and discriminating.<sup>43</sup> Thus, consumers are instrumentally

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<sup>38</sup> See generally Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721 (2004) (contending that for instrumental reasons, trademark holders assert, and courts sometimes accept, premise that consumers are very easily confused by similarities in trademarks and trade dress).

<sup>39</sup> See *infra* notes 40-44 and accompanying text.

<sup>40</sup> E.g., *Univ. of Ga. Athletic Ass'n v. Laite*, 756 F.2d 1535, 1536-37 (11th Cir. 1985); *Bd. of Governors v. Helpingstine*, 714 F. Supp. 167, 169 (M.D.N.C. 1989); *Univ. of Pittsburgh v. Champion Prods., Inc.*, 566 F. Supp. 711, 722 (W.D. Pa. 1983); *Univ. Book Store v. Bd. of Regents*, 33 U.S.P.Q.2d (BNA) 1385, 1387 (T.T.A.B. June 22, 1994); see also Adam Liptak, *Sports Artist Sued for Mixing Crimson and Tide*, N.Y. TIMES, Nov. 12, 2006, at A1.

<sup>41</sup> E.g., Barry Popik, *The Big Apple, NYPD & FDNY*, Nov. 14, 2004, [http://www.barrypopik.com/index.php/new\\_york\\_city/entry/nypd\\_fdny](http://www.barrypopik.com/index.php/new_york_city/entry/nypd_fdny); cf. Press Release, Fitzpatrick, Cella, Harper & Scinto, *City Files Suit Against Illegal Seller of Merchandise Bearing Police and Fire Department Logos* (Apr. 13, 2004), <http://www.fitzpatrickcella.com/news/pressReleaseItem.cfm?pubID=246>.

<sup>42</sup> See Lanham Act § 32, 15 U.S.C. § 1114 (2006).

<sup>43</sup> See, e.g., *Car-Freshner Corp. v. S.C. Johnson & Son, Inc.*, 70 F.3d 267 (2d Cir. 1995); *Network Network v. CBS, Inc.*, 54 U.S.P.Q.2d (BNA) 1150 (C.D. Cal. Jan. 18, 2000); *Claiming Trademark Infringement, Harvard University Sues Another Business for Using Its Name*, MATRIX, Feb. 2001, at 17, available at [http://www.findarticles.com/p/articles/mi\\_m0HJE/is\\_1\\_2/ai\\_79961249](http://www.findarticles.com/p/articles/mi_m0HJE/is_1_2/ai_79961249); cf. Bromberg & Sunstein, *Representative Trademark Cases: Harvard Pilgrim Health Care, Inc. v. President and Fellows of Harvard College*, <http://www.bromsun.com/cases/trademark-litigation.html> (last visited Dec. 30, 2006) (case settled prior to adjudication); *Be Spacific, UNC Wins Trademark Infringement Case* (Sept. 16, 2002), <http://www.bespacific.com/mt/archives/000140.html#000140>; University of Hawai'i System, *Collegiate Licensing Overview and FAQ*, [http://www.hawaii.edu/offices/eaurlicensing\\_info.html](http://www.hawaii.edu/offices/eaurlicensing_info.html) (last visited Feb. 21, 2007).

asserted to be easily confused about the sources of unauthorized sweatshirts, beer holders, or other paraphernalia bearing a university's name, while simultaneously presumed sophisticated enough to understand that the corporation whose logo graces a public stadium is merely a "naming rights partner."<sup>44</sup>

### B. Individuals Who "Mark" Public Facilities

Trademark laws are rooted in deeply held societal beliefs about the power of names and symbols.<sup>45</sup> These laws enable commercial entities to append source identifiers to goods and services that can be kept relatively unique in the marketplace.<sup>46</sup> Competitors who attempt to use the same or similar marks on the same or similar products can be enjoined so that they do not confuse consumers.<sup>47</sup> Consumers can use trademarks to facilitate repurchasing products with which they have had positive experiences and to avoid goods and services that have previously disappointed them.<sup>48</sup> These are not social functions that naming gestures would be expected to perform.

As a general matter, the source of governmental authority to name public places and facilities after individuals, precisely how this power gets exercised, and the nature and effectiveness of any checks and balances upon the naming process are all relatively opaque. It is often unclear whether community members' viewpoints are taken into account in any democratic, discursive way when making naming decisions.

Because a naming gesture imputes social meaning to the physical public domain, acts of visible branding can infuse a public facility with strong associative values that affect public perceptions and permeate the collective public conscience. For example, both residents and outsiders are likely to view a community in which a public school is

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<sup>44</sup> See generally Stacey Dogan & Mark Lemley, *The Merchandising Right: Fragile Theory or Fait Accompli?*, 54 EMORY L.J. 461 (2005).

<sup>45</sup> See generally ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* (1998).

<sup>46</sup> See Landes & Posner, *supra* note 37, at 268-69; Lastowka, *supra* note 37, at 1179.

<sup>47</sup> See Lanham Act § 32, 15 U.S.C. § 1114 (2006).

<sup>48</sup> Because trademarks can be bought, sold, or changed without notice to the consumer, there are limitations upon how useful to consumers trademarks actually are in this regard. See generally Bartow, *supra* note 38, at 721; Note, *Badwill*, 116 HARV. L. REV. 1845 (2003).

named for Robert E. Lee<sup>49</sup> very differently from a community in which a public school is named for Martin Luther King, Jr.<sup>50</sup>

When something is named for an individual, but that individual is visibly connected with a commercial entity, the link between the business organization and the thing named (and therefore the conflict with trademark law) is arguably somewhat attenuated, but not without importance. For example, when the University of Florida's law school was named the Frederic G. Levin College of Law, this forged a connection between the law school and Levin's law firm and practice, as well as with Levin himself, within the public perception.<sup>51</sup> This association is at least a trademark-related linkage, and its formation did not please everyone in the relevant community, either due to a dislike for Levin or antipathy toward the act of constructive privatization itself, and therefore engendered a fair amount of conflict.<sup>52</sup>

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<sup>49</sup> For examples of schools named after Robert E. Lee, see Lee High School, <http://www.fcps.k12.va.us/LeeHS/index1024.html> (last visited Nov. 19, 2006) (Springfield, Virginia); Robert E. Lee High School, <http://www.neisd.net/lee/> (last visited Nov. 19, 2006) (San Antonio, Texas); Robert E. Lee High School, <http://www.educationcentral.org/lee/> (last visited Oct. 30, 2006) (Jacksonville, Florida); Robert E. Lee High School, <http://www.gccisd.net/lee/> (last visited Nov. 19, 2006) (Baytown, Texas); Robert E. Lee High School, <http://www.tylerisd.org/Schools/REL/home.htm> (last visited Oct. 30, 2006) (Tyler, Texas).

<sup>50</sup> For examples of schools named after Martin Luther King, Jr., see Martin Luther King High School, <http://www.rusd.k12.ca.us/ourschools/mlk/> (last visited Oct. 30, 2006) (Riverside, California); Martin Luther King Academic Magnet, <http://www.mlkmagnet.mnps.org/site15.aspx> (last visited Oct. 30, 2006) (Nashville, Tennessee); Martin Luther King, Jr. High School, <http://www.dekalb.k12.ga.us/schools/high/mlking/> (last visited Oct. 30, 2006) (Lithonia, Georgia); Martin Luther King High School, <http://www.djusd.k12.ca.us/KingHigh/> (last visited Oct. 30, 2006) (Davis, California); Martin Luther King High School, <http://www.phila.k12.pa.us/schools/mlking/> (last visited Oct. 30, 2006) (Philadelphia, Pennsylvania); Martin Luther King Jr. Junior High School, <http://www.grant.k12.ca.us/schools/schools/MLK.asp> (last visited Oct. 30, 2006) (Sacramento, California).

<sup>51</sup> See Denise Stobbie, *UF College of Law Named for Prominent Lawyer Fredric G. Levin*, U. FLA. NEWS, Jan. 6, 1999, <http://www.napa.ufl.edu/99news/levin.htm>.

<sup>52</sup> One observer of resistance to naming gestures reported:

The most notable example in recent years was UF's decision in 1999 to name its law school after Fred Levin, a Pensacola lawyer who donated \$10-million to the school. The decision attracted considerable criticism from law school alumni. Levin is a personal injury lawyer, a specialty some lawyers view with contempt. He once was publicly reprimanded by the state Supreme Court for admitting — on his own television show — that he had placed an occasional illegal bet with bookmakers. Many think the uproar led to the resignation of UF's law school dean a few months later. It clearly led to a change in state policy.



Current naming practices advantage the wealthy, male, and white. This seems consistently apparent in both the naming practices of private institutions that receive some degree of public funding, as well as the unequivocally public entities and services that are the primary focus of this Article. When wealthy white men receive naming honors, one could argue that these individuals “free ride” upon the goodwill associated with the named public facility. In some cases, it appears that private monetary donations lead to the integration of an individual’s name with physical public domain assets, and the naming gesture is at least in some sense a “paid placement.” In other situations, however, it seems as if individuals simply leverage their power and status to get their names prominently placed upon public facilities.

### C. *The “Thurmondization” of South Carolina*

Sanford Levinson has written that the American South is unique in the extent to which memorials to lost causes occupy its places of public honor.<sup>53</sup> Streets, parks, and even federal military installations are named for Confederate leaders.<sup>54</sup> It is difficult to discern whether this reflects the desires of the public will writ large, or is simply a manifestation of the wish of a select few to impose a particular sort of cultural ordering upon the masses. Certain individuals can exert powerful influence upon the processes through which the physical public domain is named.<sup>55</sup>

One cannot spend even small amounts of time in South Carolina without encountering the name J. Strom Thurmond.<sup>56</sup> A statue of the

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Barry Klein, *Your Name Here, for a Price*, ST. PETERSBURG TIMES, May 29, 2001, at 1A; see Martin Dyckman, *Name a School for the Right Price*, ST. PETERSBURG TIMES, Feb. 18, 1999, at 17A, available at <http://www.afn.org/~afn54735/deans-levin2.html>.

<sup>53</sup> LEVINSON, *supra* note 30, at 44.

<sup>54</sup> See generally Joseph G. Dawson III, Book Review, 47 CIVIL WAR HIST. 167 (2001) (reviewing CONFEDERATE SYMBOLS IN THE CONTEMPORARY SOUTH (J. Michael Martinez et al. eds., 2000)), available at [http://muse.jhu.edu/journals/civil\\_war\\_history/v047/47.2dawson.html](http://muse.jhu.edu/journals/civil_war_history/v047/47.2dawson.html).

<sup>55</sup> See Con. Res. H-3368, 116th Sess. (S.C. 2005-2006), available at [http://www.scstatehouse.net/cgi-bin/web\\_bh10.exe?bill1=3368&session=116](http://www.scstatehouse.net/cgi-bin/web_bh10.exe?bill1=3368&session=116).

<sup>56</sup> In fairness it should be noted that the naming phenomenon is bipartisan in a political sense. Thurmond spent most of his time in the U.S. Senate as a Republican. See Answers.com, Strom Thurmond, <http://www.answers.com/topic/strom-thurmond> (last visited Dec. 30, 2006) (“[James Strom Thurmond] 1902–2003, U.S. senator from South Carolina (1954–2003), b. Edgefield, S.C. He read law while teaching (1923–29) in South Carolina schools and was admitted to the bar in 1930. Thurmond was elected (1933) a state senator and became (1938) a circuit-court judge. After serving

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in World War II, he was elected (1946) governor of South Carolina. In 1948, Thurmond was nominated for president by the States' Rights Democrats ('Dixiecrats'), southerners who bolted the Democratic party in opposition to President Truman's civil-rights program; he won 39 electoral votes. In 1954 he was a successful write-in candidate for U.S. Senate. In 1957 he staged the longest filibuster in Senate history, speaking for over 24 hours against a civil-rights bill. Thurmond switched from the Democratic to the Republican party in 1964, and later chaired the Senate judiciary (1981–87) and armed services (1995–99) committees. In 1996 he became the oldest sitting, in 1997 the longest serving, U.S. senator in history."). However, if one lived in West Virginia, one might make similar observations about a Democrat, U.S. Senator Robert C. Byrd. See Biographical Directory of the United States Congress, Robert Carlyle Byrd, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B001210> (last visited Dec. 30, 2006). West Virginia has a Robert C. Byrd High School, and a host of other public facilities and institutions that are named after Byrd. See Robert C. Byrd High School, <http://www.rcbhs.org/Index.html> (last visited Dec. 30, 2006); Wikipedia, Robert Byrd, [http://en.wikipedia.org/wiki/Robert\\_Byrd](http://en.wikipedia.org/wiki/Robert_Byrd) (last visited Dec. 30, 2006).

Robert C. Byrd Drive, from Beckley to Sophia (Byrd's hometown)

Robert C. Byrd Health Sciences Center of West Virginia University, Morgantown

Robert C. Byrd Cancer Research Laboratory of West Virginia University, Morgantown

Robert C. Byrd Technology Center at Alderson-Broaddus College, Philippi

Robert C. Byrd Hardwood Technologies Center, Princeton

Robert C. Byrd Bridge, between Huntington and Chesapeake, Ohio

Robert C. Byrd Addition to the Lodge at Oglebay Park, Wheeling

Robert C. Byrd Community Center, Pine Grove

Robert C. Byrd Expressway, U.S. Highway 22, near Weirton

Robert C. Byrd Institute for Advanced Flexible Manufacturing; Huntington, Charleston, Bridgeport & Rocket Center

Robert C. Byrd Visitor Center at Harpers Ferry National Historic Park, Harpers Ferry

Robert C. Byrd Federal Building & Courthouse, Charleston

Robert C. Byrd Federal Building & Courthouse, Beckley

Robert C. Byrd Academic and Technology Center at Marshall University, Huntington

Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, Wheeling

Robert C. Byrd United Technical Center

Robert C. Byrd Hilltop Office Complex, Rocket Center

Robert C. Byrd Library & Robert C. Byrd Learning Resource Center at Mountain State University, Beckley

Robert C. Byrd Rural Health Center at Marshall University, Huntington

Robert C. Byrd Clinical Addition to Veteran's Hospital, Huntington

Robert C. Byrd Industrial Park, Moorefield

Robert C. Byrd Locks & Dam, Gallipolis Ferry

Robert C. Byrd Green Bank Telescope, Green Bank

Robert C. Byrd Science and Technology Center at Shepherd University, Shepherdstown

Robert C. Byrd High School, Clarksburg

Robert C. Byrd Biotechnology Science Center at Marshall University, Huntington

Robert C. Byrd Conference Center at Davis & Elkins College, Elkins

late U.S. Senator and former governor of the state is prominently placed on the grounds of the South Carolina State House. Larger than life, and situated squarely in the center of the main walkway on the south side of the State House premises, the statue touts him as a "Statesman-Soldier-Educator" and lists the names and birth years of his five children, one of whom, a son, is also named J. Strom Thurmond.<sup>57</sup>

Throughout South Carolina, federal buildings,<sup>58</sup> state buildings,<sup>59</sup> roads,<sup>60</sup> schools,<sup>61</sup> educational institutions,<sup>62</sup> auditoriums,<sup>63</sup> and even a

Robert C. Byrd Health and Wellness Center of Bethany College, Bethany

Robert C. Byrd National Aerospace Education Center, Bridgeport

Robert C. Byrd Appalachian Highway System part of the Appalachian Development Highway System

<sup>57</sup> Thurmond's namesake recently served from 2001 to 2005 as South Carolina's U.S. Attorney, nominated by his father and appointed at age 28 by President George W. Bush after a brief time in practice, and with significantly less experience than previous U.S. Attorneys for South Carolina, and those from other states. See Editorial, *All in the Family*, ST. PETERSBURG TIMES, Aug. 5, 2001, at 2D, available at [http://www.sptimes.com/News/080501/Perspective/All\\_in\\_the\\_family.shtml](http://www.sptimes.com/News/080501/Perspective/All_in_the_family.shtml); David Firestone, *One Strom Thurmond Helps Out Another*, N.Y. TIMES, Jan. 5, 2001, at A1; National Briefing South, *South Carolina: Senate Confirms Thurmond's Son*, N.Y. TIMES, Nov. 7, 2001, at A18; Press Release, Department of Justice, Attorney General Appoints Six New Members to Attorney General's 2004 Advisory Committee (Jan. 8, 2004), available at [http://www.usdoj.gov/opa/pr/2004/January/04\\_usao\\_003.htm](http://www.usdoj.gov/opa/pr/2004/January/04_usao_003.htm); Quest for the Presidency, *Thurmond's Son Seeks Federal Job* (Jan. 6, 2001), [http://quest.cjonline.com/stories/010601/gen\\_0106017633.shtml](http://quest.cjonline.com/stories/010601/gen_0106017633.shtml).

<sup>58</sup> See General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: 1927 Strom Thurmond Mall, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC2049> (last visited Dec. 31, 2006); General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: Thurmond Building, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=KY1690> (last visited Dec. 31, 2006); General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: Strom Thurmond CTHS, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC0069> (last visited Dec. 31, 2006); General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: Strom Thurmond FB, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC0068> (last visited Dec. 31, 2006); SCIWay, S.C. Governors: James Strom Thurmond, <http://www.sciway.net/hist/governors/thurmond.html> (last visited Dec. 31, 2006) (Strom Thurmond federal building in Columbia, South Carolina). But see Press Release, Congressman James E. Clyburn, Congressman Clyburn Realizes Dream of Honoring Matthew Perry (Apr. 21, 2004), [http://www.house.gov/apps/list/press/sc06\\_clyburn/040421perrycourthouse.html](http://www.house.gov/apps/list/press/sc06_clyburn/040421perrycourthouse.html).

<sup>59</sup> Strom Thurmond Institute of Government & Public Affairs, Clemson University, <http://www.strom.clemson.edu> (last visited Dec. 31, 2006); Strom Thurmond Wellness and Fitness Center, University of South Carolina, <http://stc.sc.edu> (last visited Dec. 31, 2006).

<sup>60</sup> See *The Namesake*, WYFF4.COM, <http://www.wyff4.com/news/869918/>

dam and lake<sup>64</sup> bear the name of Senator Thurmond.<sup>65</sup> Observers may assume that the relevant populace spontaneously made these naming gestures because it wished to honor the late Senator Thurmond. However, the people of South Carolina as a whole do not have much actual input in naming of public places or facilities. The state's naming process is diffuse, opaque, and rarely subject to public

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detail.html (last visited Feb. 21, 2007) ("Interstate 20, from Georgia to Florence, S.C., is the Strom Thurmond Highway.").

<sup>61</sup> See SCIWay, S.C. Governors: James Strom Thurmond, 1947-1951, <http://www.sciway.net/hist/governors/thurmond.html> (last visited Feb. 21, 2007) (Strom Thurmond High School); see also Public School Review, Strom Thurmond High School, [http://www.publicschoolreview.com/school\\_ov/school\\_id/72165](http://www.publicschoolreview.com/school_ov/school_id/72165) (last visited Dec. 31, 2006); Strom Thurmond High School, <http://www.edgefield.k12.sc.us/STHS/> (last visited Dec. 31, 2006).

<sup>62</sup> See Greenville Technical College, Facility Details, [http://www.greenvilletech.com/alumni\\_and\\_friends/details\\_of\\_facilities.html](http://www.greenvilletech.com/alumni_and_friends/details_of_facilities.html) (last visited Dec. 30, 2006) (Strom Thurmond Criminal Justice Building); Strom Thurmond Institute of Government & Public Affairs, Clemson University, <http://www.strom.clemson.edu> (last visited Dec. 31, 2006).

<sup>63</sup> See *infra* note 65.

<sup>64</sup> See U.S. Army Corps of Engineers, Savannah District, J. Strom Thurmond Dam & Lake, <http://www.sas.usace.army.mil/lakes/thurmond/> (last visited Dec. 31, 2006).

<sup>65</sup> One commentator noted:

As a legislator, Thurmond has been a zero. He doesn't have a significant bill to his name. He does, however, have other things to his name, such as the Strom Thurmond High School, Strom Thurmond Student Center, Strom Thurmond Federal Building, Strom Thurmond Auditorium, Strom Thurmond Educational Center, Strom Thurmond Dam, Strom Thurmond Lake, Strom Thurmond Highway, Strom Thurmond Soldier Service Center, etc.

David Plotz, *The Old Carolinians: Strom Thurmond and Jesse Helms*, SLATE, June 22, 1997, <http://www.slate.com/id/1824>. See generally Shriners of British Columbia and Yukon, Strom Thurmond, <http://www.shriners.bc.ca/shriners/thurmond.shtml> (last visited Dec. 31, 2006) (facilities named for Senator Thurmond: Strom Thurmond Hall, Winthrop College, Rock Hill, S.C., 1989; Strom Thurmond High School, Edgefield County, S.C., 1961; Strom Thurmond Student Center, Baptist College, Charleston, S.C., 1972; Strom Thurmond Federal Building, Columbia, S.C., 1975; Strom Thurmond Center for Excellence in Government and Public Service, Clemson University, 1981; Strom Thurmond Auditorium at the University of South Carolina School of Law, Columbia, S.C., 1982; Strom Thurmond life-sized statue on the Town Square, the people of Edgefield County, 1984; Strom Thurmond Vocational Rehabilitation Center, Aiken, S.C., 1987; Strom Thurmond Educational Center, Union, S.C., 1987; Strom Thurmond Lake, Dam and Highway, Clarks Hill, S.C., 1987; Strom Thurmond Mall, Columbia, S.C., 1988; Strom Thurmond Soldier Service Center, Ft. Jackson, S.C., 1991; Strom Thurmond Room, United States Capitol, Washington, D.C., 1991; streets in several South Carolina towns and cities.).

scrutiny or direct oversight. It seems to be driven primarily by raw political power rather than broad-based public sentiment.

Getting a public facility named after oneself requires targeted action, rather than humbly waiting to be recognized and honored. Public officials are perfectly placed to engage in and exercise influence upon naming decisions. Public officials are visible, they appear to have been endorsed by the majority of the public (by virtue of having prevailed in an election or other machination of the political process), and they can often exert control over the allocation of public funds. The ability to earmark money creates powerful naming leverage.

In part through the instrumental distribution of discretionary public funds, Thurmond was very successful in accreting myriad naming honors throughout his life.<sup>66</sup> While it is certainly possible that some Thurmond-related naming gestures resulted from spontaneous expressions of public affection and appreciation, there is also evidence that he had a hand in engineering them. This became apparent when Thurmond failed in his efforts to have a second federal courthouse in Columbia, South Carolina named for himself, because one of South Carolina's congressional representatives favored naming it after Judge Matthew J. Perry instead.<sup>67</sup> Three federal buildings in Columbia already bore, and continue to bear, Thurmond's name, including one that had formerly housed the preexisting federal courthouse.<sup>68</sup> Thurmond argued that this second courthouse was simply an annex of the Thurmond complex, and so should be denominated as such.<sup>69</sup> He

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<sup>66</sup> See *supra* notes 58-65 and accompanying text.

<sup>67</sup> Press Release, Congressman James E. Clyburn, *supra* note 58; see SCIWay, *supra* note 61 (noting federal building in Columbia, S.C. named for Thurmond).

<sup>68</sup> See General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: 1927 Strom Thurmond Mall, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC2049> (last visited Dec. 31, 2006); General Service Administration Inventory of Owned and Leased Properties, GSA Building Stats: Strom Thurmond CTHS, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC0069> (last visited Dec. 31, 2006); General Services Administration Inventory of Owned and Leased Properties, GSA Building Stats: Strom Thurmond FB, <http://www.iolp.gsa.gov/iolp/BuildingInfo.asp?bID=SC0068> (last visited Dec. 31, 2006).

<sup>69</sup> The then-junior senator from South Carolina was an advocate for honoring Judge Perry:

Using humor, Sen. Fritz Hollings fired barbs Thursday at Republican Sen. Strom Thurmond over the naming of the new federal courthouse in Columbia for a judge who made his name as a civil rights lawyer. "They wanted to name this an annex," the state's 77-year-old junior U.S. senator said during a groundbreaking ceremony for the Matthew J. Perry United States Courthouse. "But we finally overcame," Hollings added. Thurmond had pushed to have the courthouse named for himself by designating it an

let it be known publicly that he was “hurt” that the new building would be named for someone else, but in this instance competing public sentiments prevailed.<sup>70</sup>

Thurmond had previously succeeded in having an Army Corps of Engineers project renamed for himself, though not everyone would agree with that characterization of how this particular name change came to pass. One federal government actor officially described the process as follows:

The 1966 Flood Control Act authorized the building of Trotters Shoals Lake and Dam on the Savannah River between Clarks Hill Lake and Hartwell Lake. This lake was later renamed to commemorate a late senator from Georgia, Richard B. Russell who was very important in supporting the building of dams on the river. This created a movement to rename Clarks Hill Lake after J. Strom Thurmond, the longest serving senator in US history who was from Edgefield on the South Carolina side of the lake. This movement gained support due to the senators’ [sic] great popularity in the area, and in 1988 the project was congressionally renamed “J. Strom Thurmond Dam and Lake at Clarks Hill.”<sup>71</sup>

The account is rather vague about the genesis of the movement to rename the lake, and exactly how “the senators’ [sic] great popularity in the area” gave “support” to this “movement.”<sup>72</sup> Government records disclose a more complicated and far less wholesome or populist story.

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annex to the nearby Thurmond federal office complex. Hollings preceded his remarks with an explanation that he was going to be “blunt” about the seven-year fight to name the courthouse for Perry, now a senior federal judge. Perry did not address the crowd of dignitaries during the ceremony. Thurmond said in 1995 that he was hurt the new building would not bear his name, and the senator did not attend Wednesday’s groundbreaking. “Your courthouse is going to be prettier than Strom’s,” Hollings continued about the \$30.1 million building that is scheduled for completion in mid 2002. “Now that’s real justice.”

Clif LeBlanc, *Hollings Zings Thurmond on Perry Courthouse Flap*, THE STATE (Columbia, S.C.), Sept. 1, 2000, at B1.

<sup>70</sup> *Id.*

<sup>71</sup> U.S. Army Corps of Engineers, Savannah District, J. Strom Thurmond Dam & Lake: Introduction, <http://www.sas.usace.army.mil/lakes/thurmond/intro.htm> (last visited Feb. 21, 2007).

<sup>72</sup> *See id.*

Perusal of the Congressional Record for the 100th U.S. Congress reveals that on December 3, 1987, a Democratic Congressional Representative from South Carolina, Butler Derrick, introduced H.R. 3693: "A bill to designate Clarks Hill Lake, Clarks Hill Dam, and the highway traversing Clarks Hill Dam as the 'J. Strom Thurmond Lake,' the 'J. Strom Thurmond Dam,' and the 'J. Strom Thurmond Highway,' to the House Committee on Public Works and Transportation."<sup>73</sup> The following day, December 4, 1987 was the date of Thurmond's birthday celebration, his actual eighty-fifth birthday being the very next day.<sup>74</sup> In the context of debating a Joint Resolution of Congress (H.J. Res. 376) entitled, "Calling Upon the Soviet Union to Immediately Grant Permission to Emigrate to All Who Wish to Join Spouses in the United States," Senators Bob Dole (R-Kansas), John Warner (R-Virginia), Alan Simpson (R-Wyoming), Robert Byrd (D-West Virginia), Sam Nunn (D-Georgia), and Alphonse D'Amato (R-New York) proposed on the Senate floor the identical name changes advocated in Representative Derrick's bill, and articulated a long list of reasons why they believed that Thurmond deserved this honor.<sup>75</sup>

On December 18, 1987 the U.S. House of Representatives approved the Joint Resolution Calling Upon the Soviet Union to Immediately Grant Permission to Emigrate to All Who Wish to Join Spouses in the United States, and appended the following amendment:

In honor of J. Strom Thurmond, and in recognition of his long and outstanding service as a United States Senator, Governor of South Carolina, and South Carolina State Senator, to promote flood control, soil conservation, and rural electrification, the Clarks Hill Dam, Reservoir, and Highway transversing the Dam on the Savannah River, Georgia and South Carolina, shall hereafter be known and designated as the J. Strom Thurmond Dam, Reservoir, and Highway, and shall be dedicated as a monument to his distinguished public service. Any law, regulation, map, document, or record of the United States in which such project is referred to shall be held

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<sup>73</sup> H. Res. 3693, 100th Cong., 133 CONG. REC. H10988-01 (1987).

<sup>74</sup> Not coincidentally, Thurmond's birthday was noted by South Carolina Senator Fritz Hollings. H.J. Res. 376, 100th Cong., 133 CONG. REC. S17292-01 (1987); see *Strom Thurmond Dead at 100*, CNN.COM, Dec. 17, 2003, <http://www.cnn.com/2003/ALLPOLITICS/06/26/thurmond.obit/>.

<sup>75</sup> H.J. Res. 376, 100th Cong., 133 CONG. REC. H11709-02 (1987).

and considered to refer to such project by the name of the J. Strom Thurmond Dam, Reservoir, and Highway.<sup>76</sup>

In a stunning display of speed and efficiency, Congress had managed to effect the described name alterations in about two weeks. This, however, did not completely end the matter, as some of the people living near the lake — to put it mildly — disfavored the name changes.<sup>77</sup> On March 2, 1988, Doug Barnard, Jr., a Democratic

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<sup>76</sup> H.J. Res. 376, 100th Cong., 133 CONG. REC. H11709-02 (1987).

<sup>77</sup> The opposition to the name change was described as follows:

It's been compared to the Revolutionary War. It's the little guy against the Establishment, the underdog fighting for a principle. It's all about how Congress changed the name of Clarks Hill Lake to Strom Thurmond Lake, after the veteran Republican senator from South Carolina, without asking residents of the area what they thought of the idea. "I think we should change the Constitution from 'We the people' to 'You the Congress.' They could tell us what we need and what to call everything down here," said Dan Elswick, owner of Ridge Road Bait and Tackle in Appling, Ga. Some said they felt emotional attachment to the name, which was taken from this nearby town when the Army Corps of Engineers first filled the 70,000-acre lake 44 years ago. Others said they had built business reputations around the name, which was given to fishing tournaments and speedboat races and emblazoned on souvenirs. Others are just upset about the way the name of the lake, on the Georgia-South Carolina border, was changed.

Rep. Butler Derrick (D-S.C.) introduced a bill suggesting the change on Dec. 3, two days before Thurmond's 85th birthday. The Senate passed a similar measure on Dec. 4, and by Dec. 23, President Reagan had signed it into law. Derrick said the chairman of the Clarks Hill-Russell Authority of South Carolina had approached him about changing the lake's name. The authority, a committee of eight, was set up in 1946 to "assist, promote and cooperate" in the development of the Clarks Hill and Russell lakes on the Savannah River. Its chairman, John McAllister, said the board members, who are appointed by the governor, decided among themselves that naming the lake after Thurmond would be a good idea because of all he has done to support the area. McAllister said they didn't ask for public comment because "we were not making the final decision. We had no control over Congress." Yet when Senate Minority Leader Bob Dole (R-Kan.) introduced the name change proposal in the Senate, the authority's unanimous support was entered into the Congressional Record. "It was our impression that the local folks in the area were supportive of the change," said Dole aide Jim Whittinghill.

A number of businessmen around the lake have submitted petitions asking for a compromise — change the name of the lake back to Clarks Hill and leave the dam and the road across it named for Thurmond, whose name is already on schools, federal buildings and streets around the state. The petitions are being distributed by a group called "Keep Our Lake Clarks Hill," led by Roy Giles of Lincolnton, Ga., and Phillip White of Clarks Hill. The two men said they have collected more than 20,000 signatures and have



congressional representative from Georgia, introduced a bill designated H.R. 4053 into the Committee on Public Works and Transportation.<sup>78</sup> This bill called on Congress “to redesignate the J. Strom Thurmond Reservoir as the ‘Clarks Hill Lake,’” thereby restoring the lake’s original denomination.<sup>79</sup> Barnard represented regions of Georgia that were contiguous to the lake, and his anti-Thurmondization actions were in response to substantial community opposition to the name change.<sup>80</sup> In fairness, it is not clear how much

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taken out newspaper ads, gone on television and radio and sought status as a nonprofit agency so they can accept donations to the cause. They realize that a compromise also will take an act of Congress, and they think it will require support from Thurmond. Thurmond has said he was deeply honored by the lake’s new name, and he would not comment on the proposed compromise. He said he doesn’t consider it a serious problem. “I do hope the controversy will subside,” he said. It’s not the first time the lake’s name has been changed. When it was first built, a typographical error made it “Clark Hill Lake” instead of “Clarks Hill Lake.” It took 26 years for Congress to restore the missing “s.” The sponsor of that legislation was Thurmond.

G.G. Rigsby, *Wave of Ire over Lake’s New Name*, L.A. TIMES, Apr. 24, 1988, at 23; see *Tribute to Senator Thurmond Goes Awry in South Carolina*, N.Y. TIMES, Feb. 29, 1988, at A17.

<sup>78</sup> H.R. 4053, 100th Cong. 134 CONG. REC. H630-02 (2d Sess. 1988).

<sup>79</sup> *Id.*

<sup>80</sup> Resistance to the name change lingers:

Strom Thurmond Lake or Clarks Hill? The answer to the oft-asked question depends on whom you ask — and where you are. The official state highway map of Georgia calls the lake Clarks Hill, conforming to a Georgia law adopted in the wake of Congress’ 1987 renaming of the lake after Republican U.S. Sen. Strom Thurmond, of South Carolina. Official highway maps in South Carolina, however, call the reservoir J. Strom Thurmond Dam & Lake, as do the Army Corps of Engineers and other federal agencies. The still-simmering fuss erupted when then-U.S. Rep. Butler Derrick, of South Carolina, and other politicians thought it would be a nice birthday present for Mr. Thurmond to rename the lake in his honor.

Although the change quietly cleared Congress, it wasn’t so quiet closer to home, where groups working to restore the Clarks Hill name collected petitions with more than 72,000 signatures — all to no avail. “It still comes up, and people are still plenty mad about it,” said Roy Giles, a co-chairman of the 1988 “Keep Our Lake Clarks Hill” movement. “Everybody I know calls it Clarks Hill, and to be honest with you, most people over in Carolina call it that, too.” The outcry over the renaming was widespread. Newspaper editorials across the region — and national newspapers including *The Wall Street Journal* — urged Mr. Thurmond to decline the honor, which he refused to do.

A Georgia congressman, Democrat Doug Barnard, even introduced legislation to change the name back, but it stalled in committee and was

opposition was related to distaste for Thurmond, as opposed to simple resistance to change. In any event, Barnard's efforts to have the lake's original name restored by Congress failed, but many Georgia maps and publications obstinately continue to refer to the disputed body of water by its original name.<sup>81</sup>

Thanks to myriad naming gestures, Thurmond's name is highly visible in the context of many public facilities throughout South Carolina. The impact of all this naming on the people who encounter it deserves consideration. Trademark jurisprudence suggests that the ordinary observer is likely to ascribe their opinions of Thurmond to the named amenity, and correspondingly, that the quality of the experience that the observer has with the facility will be imputed to Thurmond.<sup>82</sup> This means that individuals who regard his legacy unfavorably are likely to have, at least on a *prima facie* basis, a negative view of the roads, schools, lakes, and buildings named for Thurmond, and perhaps upon the communities that house them.

Conversely, people who admire the way in which Thurmond conducted his personal or professional life are likely to accredit positive characteristics initially to the public facilities that bear

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never considered. Mr. Giles still has hope — albeit slim — that someday the original name could be restored. “The more time that goes by, the harder it is to get something done in Congress,” he said.

Almost forgotten in the controversy was the lake's true namesake — an Augustan named John Mulford Clark, who owned land where the community of Clarks Hill, S.C., now sits. When Congress authorized the reservoir in 1944, the government's policy was to name projects after towns or geographic areas. Thus, the dam was named after the community of Clarks Hill and not Mr. Clark. Because of a typographical error, the original legislation calling for construction of the project named the lake Clark Hill, dropping the “s” that appears in the town of Clarks Hill. In 1980, legislation restoring the “s” to the reservoir's name was introduced and approved. The 1987 change wasn't the first suggested for the lake. On Feb. 15, 1954, U.S. Rep. Paul Brown, of Georgia, proposed renaming the lake Hamilton-Moody Reservoir. Thomas Hamilton was an editor of *The Augusta Chronicle*, and Lester Moody was the secretary of the Augusta Chamber of Commerce. Both men supported the creation of the lake. The proposal was never adopted.

Robert Pavey, *Debate on Lake's Name Continues*, AUGUSTA CHRON., Apr. 12, 2004, at A1.

<sup>81</sup> See, e.g., Answers.com, Lake Strom Thurmond, <http://www.answers.com/topic/lake-strom-thurmond> (last visited Dec. 31, 2006); United States Lake Information, Clarks Hill Lake Georgia, <http://clarkshill.uslakes.info/> (last visited Dec. 31, 2006); Wikipedia, Lake Strom Thurmond, [http://en.wikipedia.org/wiki/Clarks\\_Hill\\_Reservoir](http://en.wikipedia.org/wiki/Clarks_Hill_Reservoir) (last visited Dec. 31, 2006).

<sup>82</sup> See generally Landes & Posner, *supra* note 37, at 265.

Thurmond's name, and in many cases, visage. In turn, both groups may attribute the perceived qualities and characteristics of the facilities that use his name to Thurmond personally. If a school named for Thurmond is spacious, attractive, well-appointed, and meticulously maintained, this would tend to enhance the perceived Thurmond reputation or legacy, while a cramped, dated, poorly maintained facility would tarnish it.

One public high school in Johnson, South Carolina that bears Thurmond's name has the "Fighting Rebel" as its mascot, and its official motto is "Preserving the Past, Shaping the Future."<sup>83</sup> It is through naming gestures like this that particular elements of the past are indeed preserved, and the future is in some aspects molded. Generations of parents and school children will retain important memories associated with the name "Strom Thurmond," far beyond anything the simple study of history is likely to impart. Many will unquestioningly assume that because the school was named after him, he earned and deserved the honor. The majority of students who attend the school are African American, and one wonders how they feel about having a mascot that honors the slavery-favoring soldiers in the Civil War, and attending a high school named for a man who sought to retain race-based segregation in the South for a substantial portion of his career.<sup>84</sup> Whether a majority of members of the affected community would favor changing the name of the school is unclear. How they might effectuate a "de-Thurmondization" through the political process is also uncertain.

While it is beyond dispute that Thurmond served the citizens of the Palmetto State for many years, to characterize his many terms in the U.S. Senate as some sort of selfless act of generosity for which he should be repeatedly rewarded through naming gestures is contestable. If one views earning and holding a U.S. Senate seat as an act of personal sacrifice, then perhaps compensation through aggrandizing naming acts is appropriate. If, however, one characterizes being a U.S. senator as an honor and a privilege, it is

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<sup>83</sup> See Strom Thurmond High School, <http://www.edgefield.k12.sc.us/STHS/> (last visited Dec. 31, 2006); see also Public School Review, Strom Thurmond High School, [http://www.publicschoolreview.com/school\\_ov/school\\_id/72165](http://www.publicschoolreview.com/school_ov/school_id/72165) (last visited Dec. 31, 2006).

<sup>84</sup> See generally Kari Frederickson, *Strom Thurmond's Mixed Record*, GEO. MASON U. HIST. NEWS NETWORK, Dec. 17, 2002, <http://hnn.us/articles/1166.html>; Kevin Alexander Gray, "Segregation (and Hypocrisy) Forever": *The Legacy of Strom Thurmond*, COUNTERPUNCH, Mar. 8, 2004, <http://www.counterpunch.org/gray03082004.html>.

hard to see how any entitlement to having one's name attached to public facilities should necessarily follow. A Senate seat presents an individual with the means to shoehorn his name onto public facilities, but it does not require that he take advantage of this power at all, no less repeatedly and to great excess.

It is certainly possible that after careful reflection and deliberation, every affected South Carolina community would have freely chosen to name public facilities after Thurmond of their own volition. There is, however, no evidence that any sort of direct democratic process resulted, or would have resulted, in the substantial array of acts of "Thurmondization" that occurred during Thurmond's lifetime.

## II. NAMING NAMES

Naming gestures are exercises of political power. Unlike with legislation or court opinions, however, the public record may be devoid of information about who suggested a naming gesture, whether there was any opposition, and what the process was by which it was approved. If certain precepts and rationalizations lurking in trademark law and the right of publicity were applied to the naming of public facilities, it might be hard to justify allowing them to be named after controversial figures, at least not without a more transparent and democratic process for choosing the names that are bestowed on them. Every naming opportunity is a public resource of value, but there is little indication that such resources are properly stewarded to ensure that they are used in a way that optimally maximizes, or even considers, their utility to a community.

Beyond explicitly trademark-related concerns such as consumer confusion and trademark dilution, it is important to contemplate the ethics, and societal impact, of naming constructs and traditions. Even the choice to name a public facility after a relatively unknown, seemingly innocuous person has important social ramifications. In the absence of strong evidence or widespread feelings to the contrary, naming gestures may promote the impression that the companies and individuals whose names ornament public places are generous, praiseworthy, and fairly universally well-regarded. Less commendable aspects of the person or entity are unlikely to receive an enshrined public airing. Seldom seen are public plaques or markers that extol the virtues of a statesman or benefactor with caveats, such as warning that it would be unwise to leave the honored individual alone with the family silver, or an aside lamenting the person's lackadaisical approach to matters of personal hygiene.

It can be difficult to ascertain precisely when and where naming decisions are made. State or municipal legislatures are likely to make naming decisions for public amenities such as highways, bridges, state buildings, parks, streets, and schools. However, these bodies debate few naming decisions, and most seem to be *fait accompli* at the moment their enabling legislation is introduced. Often, individual government officials seem to have Star Chamber-like<sup>85</sup> power to engineer naming these public facilities for themselves, and their family members and friends, through processes unseen and unavailable to the public. With the exception of naming opportunities at public colleges and universities, one cannot typically make outright purchases of the naming rights to public amenities. In consequence, affecting naming acts and name changes would appear to require political connections rather than cash, though of course money is always useful to the process of obtaining and strengthening political connections that might indirectly facilitate naming power.

Some naming activities are obviously motivated by political concerns. After the United States Supreme Court denied certiorari in *Yarnell v. Cuffley* and the Ku Klux Klan prevailed in its efforts to participate in Missouri's "Adopt-A-Highway" program, the state was required to erect signs announcing the Klan's sponsorship of a portion of I-55.<sup>86</sup> The Missouri Legislature responded by voting to name the stretch of highway adopted by the Klan the "Rosa Parks' Highway."<sup>87</sup> Certainly Parks, a hero of the civil rights movement, was more than worthy of this honor, but the intention behind the naming was almost retaliatory in nature, rather than being motivated by spontaneous appreciation for Parks' courage and leadership.<sup>88</sup> Once again, Parks

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<sup>85</sup> "In modern usage, legal or administrative bodies with strict, arbitrary rulings and secretive proceedings are sometimes called, metaphorically or poetically, *star chambers*." Wikipedia, Star Chamber, [http://en.wikipedia.org/wiki/Star\\_Chamber](http://en.wikipedia.org/wiki/Star_Chamber) (last visited Jan. 22, 2007).

<sup>86</sup> *Cuffley v. Mickes*, 208 F.3d 702 (8th Cir. 2000), *cert. denied*, *Yarnell v. Cuffley*, 532 U.S. 903 (2001); see About.com: U.S. Gov. Info/Resources, Supreme Court Rules KKK Can 'Adopt a Highway,' <http://usgovinfo.about.com/library/weekly/aa030501a.htm> (last visited Dec. 31, 2006).

<sup>87</sup> See Snopes.com, The Name Game, <http://www.snopes.com/inboxer/outrage/rosapark.htm> (last visited Dec. 31, 2006).

<sup>88</sup> See Answers.com, Rosa Parks Highway, <http://www.answers.com/topic/rosa-parks-highway> (last visited Dec. 31, 2006); Ilana Rosenthal, *Happy Birthday, Rosa Parks!*, WOMEN'S ENEWS, Feb. 4, 2003, <http://www.womensenews.org/article.cfm/dyn/aid/1210/context/ourdailylives> ("When learning of the honor, Parks only comment was: 'It is always nice to be thought of.'").

became a racist-defying symbol, only this time her role was promulgated by a state government rather than opposed by one.

Lack of political capital may preclude particular naming gestures. Republicans in Congress blocked an effort by a Democratic congressional representative to have a post office in Berkeley, California named after a woman the Republicans claimed was a socialist.<sup>89</sup> A number of Berkeley residents had hoped to use the naming gesture to honor her community spirit. This gesture was thwarted by government actors who opposed the social and political meaning that appending her name to a federal building could facilitate.

Conversely, a wealth of political power makes orchestrating naming gestures almost effortless. After Senator Mitch McConnell steered \$14.2 million in federal funding toward the University of Louisville to build a new library wing, the university magnanimously named the new auditorium after U.S. Labor Secretary Elaine Chao, McConnell's wife.<sup>90</sup> That this was anything less than a quid pro quo defies credulity. The American taxpayers purchased this honorific for Chao without input or consultation. History may well remember Chao as

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<sup>89</sup> Lest anyone think 1950s style red-baiting no longer occurs, consider the following:

Opposition from Republican lawmakers has apparently halted a bid to name Berkeley's main post office after the 93-year-old local civil rights icon Maudelle Shirek.

Earlier this month, GOP leaders abruptly withdrew the bill introduced by Rep. Barbara Lee (D-Oakland) from a vote on the floor of the House.

Ceremonial matters like the naming of a post office typically sail through the Congress, but according to published report in *The Hill*, a weekly congressional newspaper, "Certain members in the California delegation believe that Shirek is a socialist or a communist."

Shirek, who reportedly once dined with Fidel Castro, served on the Berkeley City Council for 20 years before losing her bid for re-election last year. She was a seminal figure in the local civil rights movement and played a major role in combating housing discrimination in Berkeley. Shirek did not return phone calls for this story.

Matthew Artz, *G.O.P. Blocks Effort to Name Post Office for Maudelle Shirek*, BERKELEY DAILY PLANET, Mar. 25, 2005, available at <http://www.berkeleydaily.org/article.cfm?issue=03-25-05&storyID=21016>.

<sup>90</sup> See Al Kamen, *The Valentine Earmark*, WASH. POST, Feb. 3, 2006, at A17, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/02/AR2006020202605.html>; *University of Louisville to Name Auditorium for Chao*, WHAS11.COM, Feb. 3, 2006, [http://www.whas11.com/education/stories/WHAS11\\_TOP\\_LibraryChao.690e78fb.html](http://www.whas11.com/education/stories/WHAS11_TOP_LibraryChao.690e78fb.html).

an outstanding citizen, but that is not why an auditorium was named after her.

Higher education is one context in which naming opportunities come closest to functioning in some sort of cognizable market, but even then prices and variables are largely obscured from public view. At private universities particularly, the process by which buildings, auditoriums, or institutes are named is fairly secretive. Public universities are more likely to have express guidelines for naming, but both public and private educational institutions often go to great lengths to avoid the appearance of a direct quid pro quo between a large donation and the naming or renaming of something on campus.<sup>91</sup>

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<sup>91</sup> For samples of university naming policies, see, for example, Arch Foundation for the University of Georgia, Policies and Procedures: Establishing Names for Buildings, Facilities, and Streets, [http://www.uga.edu/archfoundation/policies\\_VF.html](http://www.uga.edu/archfoundation/policies_VF.html) (last visited Dec. 31, 2006); Binghamton University Foundation, Naming Opportunities, <http://giveto.binghamton.edu/namingopps.html> (last visited Dec. 31, 2006); Campaign for the University of Vermont, Naming Opportunities, [http://www.uvm.edu/campaign/naming\\_opportunities.php](http://www.uvm.edu/campaign/naming_opportunities.php) (last visited Dec. 31, 2006); Chicago State University, Foundation: Naming and Commemorative Opportunities, <http://www.csu.edu/foundation/namingnadcommemorativeop.htm> (last visited Dec. 31, 2006); Cleveland State University, Division of University Advancement: Types of Naming Opportunities, <http://www.csuohio.edu/giving/naming> (last visited Dec. 31, 2006); Columbus State University, Office of Real Estate and Facilities: Columbus State University Naming Guidelines, <http://www.usg.edu/ref/compliance/naming/csu.phtml> (last visited Dec. 31, 2006); Duke University, Pratt School of Engineering, Opportunities to Contribute, [http://www.pratt.duke.edu/development/naming\\_opportunities.php](http://www.pratt.duke.edu/development/naming_opportunities.php) (last visited Dec. 31, 2006); Howard University School of Law, Naming Gifts, <http://www.law.howard.edu/152> (last visited Dec. 31, 2006); Miami University Campaign, Naming Opportunities: Campaign Naming Opportunities and Endowed Funds Guidelines, <http://www.forloveandhonor.org/naming.htm> (last visited Dec. 31, 2006); Mississippi State University, Ways to Give: Naming Opportunities, <http://www.msufoundation.com/giving/naming> (last visited Dec. 31, 2006); Nova Southeastern University, University Center: Naming Opportunities, [http://www.nova.edu/ucenter/naming\\_opportunities.html](http://www.nova.edu/ucenter/naming_opportunities.html) (last visited Dec. 31, 2006); Oregon State University, University Property Naming Policy, <http://oregonstate.edu/dept/budgets/genupol/gupname.htm> (last visited Dec. 31, 2006); Purdue University, Dick and Sandy Dauch Alumni Center Naming Opportunities, <http://www.purduealum.org/dauch/pages/naming/> (last visited Dec. 31, 2006); Purdue University, University Policies: Guidelines for Naming Opportunities and Endowed Funds for the West Lafayette Campus (IX.4.1), [http://www.purdue.edu/policies/pages/advancement/ix\\_4\\_1.html](http://www.purdue.edu/policies/pages/advancement/ix_4_1.html) (last visited Dec. 31, 2006); Rockefeller University, Naming and Endowed Gift Opportunities, <http://www.rockefeller.edu/giving/namingandendowed.php> (last visited Dec. 31, 2006); Sewanee: The University of the South, Gifts and Naming Opportunities, <http://ur.sewanee.edu/sewaneeall/opportunities> (last visited Dec. 31, 2006); Stanford University Medical Center, Office of Medical Development: Naming Opportunities, <http://med.stanford.edu/development/opportunities/naming.html> (last visited Dec. 31, 2006); Stephen F.

The naming gesture is spun for public relations purposes as a spontaneous, possibly unexpected (or most improbably, unwanted) mechanism with which to honor a benefactor. Yet all universities likely have general giving categories, and at least roughly consistent criteria about the size of gifts that render a donor eligible for a particular naming honor. An entire multimillion dollar building is unlikely to be named after someone who has merely contributed \$500 to an annual giving campaign without extremely special circumstances involving unique attributes of the donor, such as a distinguished and high profile career in politics, or a family relationship to far more generous benefactors. Naming gestures are likely to be commensurate with the associated level of perceived generosity.

Public amenities unrelated to education, such as museums and libraries, may also receive names that reflect the benefactor's monetary support. Other public naming gestures do not seem to be tied to financial support at all. For example, there are many public parks, streets, schools, and other amenities named after people like Martin Luther King, Jr. and Cesar Chavez in recognition of their stature and accomplishments.<sup>92</sup> Many comedians have made (purportedly)

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Austin State University, Naming Opportunities, <http://www.givetosfa.sfasu.edu/naming.html> (last visited Dec. 31, 2006); Syracuse University, Giving: Naming Opportunities, <http://giving.syr.edu/naming.html> (last visited Dec. 31, 2006); Tuskegee University, Tuskegee University Naming Opportunities, <http://www.tuskegee.edu/Global/story.asp?S=1568337> (last visited Dec. 31, 2006); University of California, Policy on Naming University Properties, Academic and Non-Academic Programs, and Facilities (Dec. 19, 2002), <http://www.ucop.edu/ucophome/coordrev/policy/12-19-02att.pdf>; University of California, San Diego, Policy Procedure Manual Online: 410-4 Policy and Guidelines for Minimum Gift Levels and Naming Opportunities, <http://adminrecords.ucsd.edu/ppm/docs/410-4.HTML> (last visited Dec. 31, 2006); University of Montana Foundation, Endowment Naming Opportunities, <http://www.umt.edu/umf/campaign/endowment.htm> (last visited Dec. 31, 2006); University of South Carolina, Office of Development: University Libraries Naming Opportunities, <http://www.sc.edu/library/develop/no.html> (last visited Dec. 31, 2006); Wilfrid Laurier University, Development Office: Naming Opportunities [http://www.wlu.ca/page.php?grp\\_id=64&rs\\_id=428&sb\\_id=620](http://www.wlu.ca/page.php?grp_id=64&rs_id=428&sb_id=620) (last visited Dec. 31, 2006); Wilkes University, John Wilkes Society: Naming Opportunities, <http://www.wilkes.edu/pages/285.asp> (last visited Dec. 31, 2006).

<sup>92</sup> Derek Alderman has written extensively about the history and politics of naming and renaming streets after Dr. Martin Luther King, Jr., in the United States. See, e.g., Derek Alderman, *A Street Fit for a King: Naming Places and Commemoration in the American South*, 52 PROF. GEOGRAPHER 672 (2000); Derek Alderman, *Street Names as Memorial Arenas: The Reputational Politics of Commemorating Martin Luther King, Jr. in a Georgia County*, 30 HIST. GEOGRAPHY 99 (2002); Derek Alderman, *Street Names and the Scaling of Memory: The Politics of Commemorating Martin Luther King, Jr. Within the African-American Community*, 35 AREA 163 (2003) [hereinafter Alderman, *Scaling of Memory*].



humorous observations thematically referencing the fact that it is commonly known that venues named after heroes of the poor and oppressed are best avoided, since they are likely to be located in economically distressed, high crime neighborhoods. Chris Rock once quipped, "If a friend calls you on the phone and says they're lost on Martin Luther King Boulevard and they want to know what they should do, the best response is 'Run!'"<sup>93</sup> If this is true to any significant degree, one has to thoroughly consider the motivations, effects, and meanings of this type of naming action, because at first blush naming a blighted street after an individual would not appear to be desirable, or much of an honor to that person.

One plausible and legitimate reason for this practice might be a conviction that invoking the names of heroic achievers in depressed regions could imbue the residents with a sense of optimism about the future.<sup>94</sup> Certainly, Martin Luther King, Jr., and Cesar Chavez championed the rights of the downtrodden and articulated beliefs in the inherent worth and dignity of poor people. While affixing one of these names to an economically challenged street might communicate mixed messages, to intentionally name a street after King or Chavez in a fancy, upscale residential or retail shopping district with a predominantly white racial composition would in many respects seem incongruous and disconcerting.<sup>95</sup>

One might argue that the trademark value of the Martin Luther King, Jr. or Cesar Chavez name would be enhanced by association with an attractive, prosperous street or neighborhood, but tarnished and depreciated by high profile usage and presence in contexts of blight and visible poverty. If a name was being used as an actual trademark in other contexts, the views of the mark holder might be taken into account, but there is nothing in trademark law that requires such consideration, and the naming of a public facility would probably be construed as a non-trademark use or as a nominative use over which a mark holder has no statutory control.<sup>96</sup>

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<sup>93</sup> This statement is quoted in JONATHAN TILOVE, *ALONG MARTIN LUTHER KING: TRAVELS ON BLACK AMERICA'S MAIN STREETS* 5 (2003).

<sup>94</sup> See University of Southern California College of Letters, Arts, & Sciences, Website for Writing 340: Martin Luther King, Jr. Boulevard, <http://www.usc.edu/dept/LAS/writing/340/research.html> (last visited Dec. 31, 2006).

<sup>95</sup> See New Georgia Encyclopedia, History and Archaeology: Martin Luther King, Jr. Streets in Georgia, <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-802> (last updated Apr. 6, 2004).

<sup>96</sup> See, e.g., *New Kids on the Block v. News Am. Publ'g, Inc.*, 971 F.2d 302 (9th Cir. 1992) ("[The court] may generalize a class of cases where the use of the trademark does not attempt to capitalize on consumer confusion or to appropriate the

Trademark holders are not the only entities that could oppose a purely honorific naming gesture. Residents of an upscale, principally white area might not welcome having public resources or amenities named after King or Chavez because the residents might fear that perceived associations with poorer, nonwhite neighborhoods would negatively impact property values.<sup>97</sup> To some extent at least, community opposition toward any naming gesture ought to be taken into account. Imposing a name on a particular geographic community forces people to honor and remember an individual that a majority of the affected political subdivision may not view favorably. One might counter, however, that this is exactly the segment of the public that could significantly benefit from exposure to certain kinds of values and diversity through the selective naming of mainstream public facilities. Naming gestures could have a normalizing effect on names that were previously controversial or polarizing, paving the way for enhanced consideration, if not acceptance, of the views or values that these names represent, after opposition subsided.<sup>98</sup> Whether naming

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cachet of one product for a different one. Such nominative use of a mark — where the only word reasonably available to describe a particular thing is pressed into service — lies outside the strictures of trademark law: Because it does not implicate the source-identification function that is the purpose of trademark, it does not constitute unfair competition; such use is fair because it does not imply sponsorship or endorsement by the trademark holder.”).

<sup>97</sup> Cf. Ferdinand M. de Leon, *Seattle: Martin Luther King Way Is Growing into Its Name*, SEATTLE TIMES, Jan. 18, 1998, at L1, available at <http://seattletimes.nwsource.com/mlk/perspectives/roadways/seattle.html>. See generally TILOVE, *supra* note 93; Derek H. Alderman, *Naming Streets for Martin Luther King, Jr.: No Easy Road*, in *LANDSCAPE AND RACE IN THE UNITED STATES* 215 (Richard Schein ed., 2005).

<sup>98</sup> Conflicts about the naming of streets arise when there are conflicting municipal views about the person to be so honored. Streets that groups or individuals attempt to have named for Martin Luther King, Jr. are often sites of social struggle. One observer noted:

Naming a street in Americus [Georgia] proved particularly controversial. City officials did not rename a portion of U.S. 19 until black community leaders planned a boycott of city businesses. Part of the controversy stemmed from the comments of a white fire official who said he would support naming half of the street for King if authorities named the other half for James Earl Ray, the man convicted of assassinating the civil rights leader.

New Georgia Encyclopedia, *supra* note 95.

Additionally:

[In October of 2003], Irene Dobson, a black woman, asked the [Zephyrhills, Florida] City Council to rename [a] street for Dr. King, as hundreds of places have done since his death in 1968. The Council voted 4 to 1 . . . to

opportunities should be consciously used for social engineering is likely to be contested, but the fact that they can be seems clear.

### III. THE POLITICAL ECONOMY OF NAMING THE PHYSICAL PUBLIC DOMAIN

What the social goals of a naming gesture are, and whether these goals are likely to be accomplished, are questions that one hopes are considered by every person or entity vested with the power to name. Overt goals of naming may be to reward individuals and groups for generosity, good citizenship, and career or civic accomplishments. Unstated goals are likely to include enhancement of the reputation, visibility, and stature of individuals, couples, families, businesses, or other organizations. A large majority of the names at issue are likely to be those of wealthy white males, reflecting closely the image and composition of most governmental institutions. Men who dominate

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honor her request and ordered new signs for the street that had been Sixth Avenue.

The protests quickly began. A petition to recall the council members arose, along with another to overturn the decision. Sixth Avenue residents said that the Council had railroaded the plan without consulting them and that they did not want the bother of changing their addresses. A business owner told local newspapers that property values would fall, saying streets named after Dr. King were a guarantee of economic blight.

....  
 "We're just kind of sick about the thing and wish it would go away," said Cullen E. Smith Jr., whose family has been here for six generations and whose son, Lance, was one of the City Council members who voted for the renaming. Cullen Smith said he would have preferred to name the street after Abraham Lincoln, who he said had done "more for the black people than just about anybody."

....  
 San Diego's decision to rename a major thoroughfare, Market Street, for Dr. King in 1986 was so unpopular that residents got an initiative on the ballot a year later to change the name back, and won. And in 1979, the Alabama Legislature repealed a 1976 resolution naming a section of an Interstate highway after Dr. King.

Abby Goodnough, *Honor for Dr. King Splits Florida City, and Faces Reversal*, N.Y. TIMES, May 10, 2004, at A1, available at <http://www.news.ecu.edu/releases/nyt041004.html>; see also Town of Chapel Hill, Airport Road Will Be Renamed Martin Luther King Jr. Blvd., <http://townhall.townofchapelhill.org/news/events/mlk/> (last visited Jan. 1, 2007).

It is also common for a city to abandon contentious plans to rename a street before new street signs are even in place, as happened fairly recently in Muncie, Indiana, and also in Portsmouth, New Hampshire, which ultimately named a park for King instead of a street. See Goodnough, *supra*.

the political landscape will arrange to dominate the physical landscape as well, naming public facilities for themselves and their relatives and cronies at every opportunity.

#### A. *Purchased Honorific Naming*

Naming gestures can be divided into two categories: those that are directly linked to an ostensibly charitable donation, and those that are not. Two interesting and related questions concerning the effectuation of naming in exchange for monetary or in-kind gifts are: how transparent the terms and conditions (or in some cases very existence) of the exchange are, and how explicit they should be. Transparency seems to vary greatly from institution to institution.<sup>99</sup> Some societal goals seem best achieved when there is a high degree of disclosure, others when there is markedly less specificity.

Disclosing the gift levels associated with particular naming gestures reduces uncertainty and allows the formation of something vaguely resembling a market in naming rights. This information could lead to increased competition, enhanced efficiency, and the other positive effects commonly associated with functioning markets. Transparency would help insure fairness in the sense that all equally generous contributors would be rewarded in the same way, regardless of their political power and influence, or lack thereof.

The primary argument against overt, codified, quid pro quo naming programs is that gifts donated in this context risk their eligibility for associative tax deductions. A schedule that sets a monetary value on naming opportunities commodifies them in a way that makes the donor susceptible to claims she has received something of value in exchange for her cash, so the transaction is no longer strictly charitable.<sup>100</sup> This approach may also commodify naming gestures in a way that seems crass and unappealing to people otherwise predisposed to generous donations.

#### B. *Sua Sponte Honorific Naming*

When public amenities are named after people on a strictly sua sponte honorific basis, it signals that some cohort of “the community” views these individuals as important and worthy of honoring and

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<sup>99</sup> See *supra* note 91 (providing links to sample university naming policies).

<sup>100</sup> See John D. Colombo, *The Marketing of Philanthropy and the Charitable Contributions Deduction: Integrating Theories for the Deduction and Tax Exemption*, 36 WAKE FOREST L. REV. 657, 661-67 (2001).

remembering.<sup>101</sup> Why certain honorees are chosen for particular naming acts can be relatively easy to discern, such as naming gestures rooted in social narratives that are familiar to community members. For example, consider this heartwarming explanation for the name of Duling School in Jackson, Mississippi:

Schools in Jackson, like in many places, are often named to honor educators. Duling School, now home to Jackson Public Schools' Career Academic Placement Program, is on Duling Avenue in Fondren. Both are named in honor of Lorena Duling, who taught in the Jackson Public School System for 53 years, until 1942. She was also the first principal in Jackson to provide free lunches to underprivileged children, using her own money for years until the school board decided to finance school-lunch programs.<sup>102</sup>

The reasons other honorees are chosen, and the exact messages that are transmitted by other naming gestures, however, can be subject to a variety of interpretations. Honorific naming acts can also simultaneously be seen as exercises in racial and cultural domination and subordination. Providing an illustrative example is the city of Jackson, Mississippi itself. One observer noted:

Andrew Jackson [was] a hero to many and a shameless robber and killer to others. [Jackson, Mississippi] is named after the seventh president of the United States. Andrew Jackson was first in many respects: the first president to marry a divorced woman, the first to appoint a "Cabinet," the first to be nominated at a national convention, and the first populist president — meaning he wasn't a member of the aristocracy; he was a man of the people. Or, at least many of the people.

Jackson was an enemy to Native Americans, however. He led the "Indian Wars" — the Creek War and the First Seminole War — and signed the Indian Removal Act in 1830, leading to tribes' forced evacuation from 100 million acres of their land along the Trail of Tears. In addition to having the capitol city of Mississippi named after him, Jackson is

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<sup>101</sup> See, e.g., *Avenues Building to be Named After Donors*, Journal and Topics Newspapers, June 15, 2005, available at <http://www.journal-topics.com/business/05/biz050615.4.html>; cf. Tamar Lewin, *A Marriage of Unequals*, N.Y. TIMES, May 19, 2005 at A1 (describing wealthy people as those "with their names on the buildings").

<sup>102</sup> See Daniel Townsend, *What's in a Name?*, JACKSON FREE PRESS, Mar. 9, 2005, available at [http://www.jacksonfreepress.com/comments.php?id=5417\\_0\\_9\\_0\\_C](http://www.jacksonfreepress.com/comments.php?id=5417_0_9_0_C).

immortalized in a large bust statue tucked behind the Mississippi Museum of Art.<sup>103</sup>

Naming acts can also be seemingly serendipitous, and linked to what has been called “the scaling of memory.”<sup>104</sup> When, important public facilities are named after a person it enlarges the visibility and seeming importance of the honoree. When minor public facilities are bestowed with a name, it may inaccurately signal that the honoree’s contributions were insignificant. One commentator in Austin, Texas, noted that the historical importance of two local politicians had been “reversed in the modern Austin landscape,” based on naming choices that were made. A successful and well-regarded mayor who had served for 22 years seemed like a minor character, because a mere lake dam had been named for him, while a man who died young after serving only a few months on the Austin City Council appears deceptively prominent because his name graces the Austin Airport.<sup>105</sup> The observer concluded:

That’s the funny thing about how Austin’s streets and landmarks got their names. Geography rewrites history. Spontaneous gestures and whims have become, generations later, the bones of the Austin canon. And the historically minded have to explain that, for example, no, Stephen F. Austin did not *found*, or even visit, the capital city.<sup>106</sup>

As this example illustrates, politicians can be both over- and under-rewarded for their service through disproportionate naming gestures, and historical memory can be deceptively shaped and distorted by people with power and a penchant for self-aggrandizement. Humble public servants can fade into obscurity after retirement or death, while aggressive self-promoters manage to immortalize themselves on public resources at the public expense.<sup>107</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> See Alderman, *Scaling of Memory*, *supra* note 92, at 166.

<sup>105</sup> See Mike Clark-Madison, *By Any Other Name: The Names of Austin’s Cherished Landmarks Are Half History, Half Serendipity*, AUSTIN CHRON., Jan. 26, 2001, available at [http://www.austinchronicle.com/issues/dispatch/2001-01-26/xtra\\_feature2.html](http://www.austinchronicle.com/issues/dispatch/2001-01-26/xtra_feature2.html).

<sup>106</sup> *Id.*

<sup>107</sup> For example, the Michigan Memorial Highway Act states in pertinent part: “The state transportation department shall only provide for the erection and maintenance of suitable markers at the approach of any of the highways described in this act when sufficient private contributions are received to pay the cost of erecting and maintaining those markers.” MICH. COMP. LAWS § 250.1002 (2006), available at <http://www.legislature.mi.gov/> (search “Michigan Compiled Laws Search: MCL

Sometimes, it should be noted, the beneficiaries of naming gestures receive what might be characterized as “negative immortality.” For example, the name “Edmund Pettus” lives in infamy rather than glory because it graces a bridge in Selma, Alabama that was the site of an event known as “Bloody Sunday” during the civil rights movement of the 1960s.<sup>108</sup> A group of 600 civil rights marchers headed out of Selma on U.S. Route 80 were attacked with clubs and tear gas by state and local police officers when they reached the Edmund Pettus Bridge, a mere six blocks into a march that was intended to go all the way to Montgomery, Alabama.<sup>109</sup> That the bridge was named for Pettus to honor and memorialize his service as both a U.S. senator and a Confederate brigadier general during the Civil War adds an almost surreal irony to the negative associations that many people attach to the bridge.<sup>110</sup> An odd related attribute of Selma is that it has streets named after both Martin Luther King, Jr. and Jefferson Davis, and that these streets intersect.<sup>111</sup>

#### IV. ROADS, STREETS, BOULEVARDS, AVENUES, AND LANES

The naming gestures with which most people have the most intimate and ongoing contact are those related to streets. Additionally, municipal thoroughfares are probably the type of public facilities that produce the most numerous resources subject to honorific naming gestures. Streets named after individuals are typically abundant in populated areas. Street labels have powerful and lasting visibility for municipalities, neighborhoods, and individuals, as they are critical locative components of real space addresses.<sup>112</sup> A

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Section” for “250.1002”).

<sup>108</sup> See Nat’l Park Service, U.S. Dep’t of the Interior, *We Shall Overcome: Historic Places of the Civil Rights Movement: Selma-to-Montgomery March*, <http://www.cr.nps.gov/nr/travel/civilrights/al4.htm> (last visited Jan. 1, 2007).

<sup>109</sup> *Id.*

<sup>110</sup> See Answers.com, *Edmond Pettus*, <http://www.answers.com/topic/edmund-pettus> (last visited Jan. 1, 2007).

<sup>111</sup> See TILove, *supra* note 93, at 5, 79.

<sup>112</sup> Some street name choices have unintended consequences, as an excerpt from one work of fiction illustrates:

When it was built in the sixties, on an open space that would now be called a “green field area,” between the top of York Street and the western side of Glebe Road, the three streets and block of flats on a green in the midst of them, it had been called the York Estates. The then chairman of the housing committee, who had done *A Midsummer Night’s Dream* for his school certificate and was proud of the knowledge thus gained, named the streets after characters in that comedy, Oberon, Titania, and Puck. This last had

street name often becomes a critical portion of a person's address, and an adjunct portion of her identity. Though possible street names are theoretically infinite, in practice communities tend to adopt very traditional street labels, just as the pool of possible first names is limitless, but we nevertheless live in a world of plentiful Williams, Johns, Matthews, Elizabeths, Susans, and Jennifers.<sup>113</sup> Streets named for well-known trees or birds, or geographical features such as lakes or hills are common, while streets named after bodily functions or infectious diseases are not.<sup>114</sup> One commentator has written:

Street names give character and life to the space they occupy, often serving as historical markers for a city. Street names are the ultimate manifestation of a cities [sic] politics, culture and ideologies. Street names provide a common language for a city and its inhabitants; they are meters of change often reflecting dynamic struggles of power within the city limits.<sup>115</sup>

Throughout history, politicians have exhibited an astute awareness about the power and societal impact of naming gestures. Around 1791, after the French Revolution, renaming the streets of Paris "became the revolutionaries' way of starting over from the ground up."<sup>116</sup> During World War I, many streets in the United States with German names were changed, ostensibly to express patriotism.<sup>117</sup> In

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always been a problem to tenants, the police, and the local authority because of the opportunity it gave the local youth of transforming, with a can of spray paint and the minimum effort, an innocent name into an obscenity.

RUTH RENDELL, *HARM DONE: A NEW INSPECTOR WEXFORD MYSTERY 5* (1999).

<sup>113</sup> See *Behind the Name*, Most Popular Names for Births in the United States 2005, <http://www.behindthename.com/top/lists/100us2005.php> (last visited Jan. 1, 2007); New Parents Guide, Most Popular Baby Names for Boys and Girls in the 1980's, <http://www.thenewparentsguide.com/most-popular-baby-names-1980.htm> (last visited Jan. 1, 2007); New Parents Guide, Most Popular Baby Names for Boys and Girls in the 1990's, <http://www.thenewparentsguide.com/most-popular-baby-names-1990.htm> (last visited Jan. 1, 2007).

<sup>114</sup> Street monikers that might be unappealing to residents could include: Drinkand Drive, Pothole Place, Curdsand Way, Angry Disenfranchised Loners with NRA Memberships Blvd., Coronary Bypass, Superfund Lane, Lost Kitty Mews, Vicious Circle, Peoples Court, and West 196,841st Street.

<sup>115</sup> The France of Victor Hugo: Sights and Sounds of Revolutionary Paris: Main Street: Re-Naming the Streets, [http://www.mtholyoke.edu/courses/rschwart/hist255/kat\\_anna/streetnames.html](http://www.mtholyoke.edu/courses/rschwart/hist255/kat_anna/streetnames.html) (last visited Jan. 1, 2007).

<sup>116</sup> *Id.*

<sup>117</sup> Consider the actions of President Woodrow Wilson:

Wilson hired a publicist, George Creel, to head the "Committee on Public Information" (CPI) — a propaganda ministry with the sole purpose of



one New York town, Hanover Hill became Revonah Hill, which sounds as though it may have Native American linguistic origins, but in actuality, Revonah is simply Hanover spelled backwards.<sup>118</sup>

Some political subdivisions consciously recognize the importance of naming gestures by adopting written policies governing them, with varying degrees of specificity. Toronto's detailed statute spells out explicit goals and considerations,<sup>119</sup> while Pickering, another city in

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"selling the war." CPI produced films, pamphlets, curriculum guides — all designed to "paint Germany in a bad light." Wilson's propaganda ministry encouraged businesses to spy on their employees, parents to spy on their children, and neighbors to spy on neighbors. Most importantly, the CPI urged Americans to report "disloyal" pro-German sentiments. Creel himself stated that he demanded, "100% Americanism." The teaching of German was banned in schools; German folksongs, such as "Oh Tannenbaum" were torn from children's songbooks; German street names were changed; and sauerkraut was renamed "victory cabbage." Posters were produced urging Americans to report anyone "who spreads pessimistic stories, divulges — or seeks — confidential military information, cries for peace, or belittles our effort to win the war."

Chicora Foundation, Inc., Wilson and the Repression of Free Speech, [http://www.chicora.org/woodrow\\_wilson.htm](http://www.chicora.org/woodrow_wilson.htm) (last visited Feb. 21, 2007); see Univ. of Tampere (Fin.), German-Americans and World War I, <http://www.uta.fi/FAST/US1/REF/germ-ww1.html> (last visited Jan. 11, 2007).

<sup>118</sup> But see Between the Lakes Group L.L.C., Sullivan County, N.Y.: Place Names Through the Years, [http://www.betweenthelakes.com/sullivan/sullivan\\_placenames.htm](http://www.betweenthelakes.com/sullivan/sullivan_placenames.htm) (last visited Jan. 1, 2007) ("A.J.D. Wedemeyer has an elegant house on this street in Liberty village (in addition to owning much of the top of Revonah mountain . . .). Wedemeyer, a German national by birth, is said to have pro-German sympathies, and at the time of World War I the local populace got up a petition to have name of Wedemeyer Place changed. Among the names suggested were Victory Street, Pershing Place, and Lincoln Place. Lincoln Place won out. Interestingly, the residents did not notice — or remember — that Revonah had been named by Wedemeyer around thirty years earlier in honor of Hanover, Germany. Sullivan County Historian John Conway corroborates this account, and notes that among other local accomplishments, Wedemeyer was the builder of the Music Hall, the structure that preceded the Green Building (until the fire of 1913) at the corner of Main and Chestnut Streets in Liberty.").

<sup>119</sup> Toronto, Canada's stated "Criteria for name selection" are as follows:

1. Streets should generally be named after people, places, events and things related to the City and citizens of Toronto. Proposed names should meet one of the following criteria:
  - a. to honour and commemorate noteworthy persons associated with the City of Toronto
  - b. to commemorate local history, places, events or culture
  - c. to strengthen neighbourhood identity
  - d. to recognize native wildlife, flora, fauna or natural features related to the community and the City of Toronto

Canada, simply instituted a general policy of naming streets after war veterans and firefighters killed in the line of duty.<sup>120</sup> These foreign examples can be contrasted with the codified policies of St. Louis, Missouri, which specifically sets out a “Criteria for street names” as follows:

A street may be named for any person, place, creation, or number provided that:

A. It is conducive to good city planning, contributes to the conservation of property values and to the protection of the equity invested by residents and owners of property fronting on said street, as well as the general interests of the other citizens of the City; and

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e. to recognize communities which contribute to the ethno-racial diversity of Toronto

2. Consideration should be given to names of local area or historic significance.

3. Names of living persons should be used only in exceptional circumstances.

4. Only a person's last name should be used as a street name unless additional identification is necessary to prevent a duplication with an existing street name in Toronto and surrounding municipalities.

Names to be avoided

1. Street names being a duplicate of an existing street in the City of Toronto or in the municipalities surrounding Toronto shall be avoided.

2. Similar sounding names such as Beach Avenue and Peach Avenue, or Apple Hill Road and Apple Road should be avoided.

3. Cumbersome, corrupted or modified names, discriminatory or derogatory names, from the point of view of race, sex, colour, creed political affiliation or other social factors shall be avoided.

4. Names for public streets that could be construed as advertising a particular business shall be avoided.

5. The re-use of former street names should be discouraged because of the confusion this causes in property records management.

City of Toronto, Street naming/re-naming, [http://www.city.toronto.on.ca/mapping/street\\_naming/index.htm#names](http://www.city.toronto.on.ca/mapping/street_naming/index.htm#names) (last visited Jan. 1, 2007).

<sup>120</sup> See Danielle Milley, Markham Prof'l Firefighters Ass'n, *City of Pickering to Name Streets After Firefighters Killed on the Job*, <http://www.mpffa.com/politics/30.htm> (last visited Feb. 21, 2007).

B. It has significance or value as part of the development, heritage, or cultural characteristics of the city, state, or nation and contributes to civic pride and wider public knowledge and appreciation of the heritage and history of St. Louis; and

C. It does not detract from our historical heritage by renaming a street which name has greater significance than the proposed name; and

D. It names or renames all segments of the same street within the boundaries of the City of St. Louis as to avoid the previous confusion that has resulted when just a portion of a street was renamed; provided, however, that a “street,” “avenue,” or “boulevard” designation may be changed to “place,” “terrace” or other suitable designation if a segment of said street has been permanently closed by ordinance; and

E. When a street is to be named or renamed for a person:

1. The petition shall not be filed until after the first anniversary of such person’s death, and
2. Only such person’s last name shall be used as a street name unless additional identification is necessary to prevent a duplication of street names in the metropolitan area.<sup>121</sup>

Two of the criteria are particularly noteworthy. First is the requirement that the name “has significance or value as part of the development, heritage, or cultural characteristics of the city, state, or nation and contributes to civic pride and wider public knowledge and appreciation of the heritage and history of St. Louis.”<sup>122</sup> This would seem to afford the city’s Community Development Agency a lot of flexibility with respect to the acceptance or denial of a naming or renaming petition, which must explain the significance of the

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<sup>121</sup> ST. LOUIS, MO., REV. CODE ANN. ch. 20.12.040, § 3 (1988), *available at* <http://www.slpl.lib.mo.us/cco/code/data/t2012.htm> (citing city’s criteria for street names); *see also* Municipal Research and Services Center of Washington, Policies Naming Public Facilities and Streets, and Street Numbering Systems, <http://www.mrsc.org/Subjects/PubWorks/NamingPolicies.aspx#Streets> (last visited Jan. 1, 2007) (referencing city ordinances in Washington governing naming of streets and public facilities).

<sup>122</sup> ST. LOUIS, MO., REV. CODE ANN. ch. 20.12.040, § 3.

proposed name, and contrast that with the preexisting name's significance, if any.<sup>123</sup>

The other notable limitation is the requirement that a proposed honoree have been dead for at least a year.<sup>124</sup> This seems like a fairly effective mechanism for minimizing the self-dealing machinations of local politicians with respect to street names. It prevents them from engineering immediate naming gestures for themselves, and precludes them from awarding street names to political cronies who are still in a position to perform reciprocal favors in exchange for naming gestures.

While some political subdivisions codify their naming practices, the naming policies of other communities can only be distilled from their actual naming practices. For instance, one former Kentucky governor named "nearly every bridge on U.S. 23 in Pike County for local businessmen, including coal operators, a car dealer, a radio station operator and a mini-storage building owner."<sup>125</sup> Following suit, the mayor of Prestonsburg, Kentucky renamed "a state-maintained road leading to Kentucky Attorney General Greg Stumbo's home at the city's mountaintop golf course for Stumbo's 5-year-old daughter."<sup>126</sup> This replaced the name he originally gave the route when it opened in 2001, "Maggie Mountain," which was named after his now ex-wife.<sup>127</sup> He had previously named the street of his residence after his son Mikeal, and was attempting to rename another street after his second wife, Charity.<sup>128</sup> His constituents' interests or desires, who would have to bear the disruption and expense of the name changes, did not appear to be a consideration. People who were living or working on the streets subject to these multiple name changes are no doubt acutely aware of their powerlessness over this process. Perhaps their only recourse is to vote the name changers out of office, but if naming remains the sole prerogative of elected officials, they will remain vulnerable to additional street name changes in the future.

## V. NAMING AS COMPELLED SPEECH

Public facilities often serve as physical reference points within a community, and the names of these facilities may serve as intangible

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See Lee Mueller, *Renaming Road Snares Mayor in Legal Issue*, LEXINGTON HERALD-LEADER, Jan. 2, 2005, at B1.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

cultural reference points that help bind the social fiber of a community. For this reason, government actors may feel justified in imposing certain names on a community without letting them through an open democratic process. In 1940, in *Minersville School District v. Gobitis*, the Supreme Court upheld a Pennsylvania flag-salute law, based on the conclusion that it was within the province of individual states' legislatures and school authorities to implement policies intended to evoke and foster a sentiment of national unity among the children in the public schools.<sup>129</sup> The Court concluded: "The ultimate foundation of a free society is the binding tie of cohesive sentiment."<sup>130</sup> However, three years later, in *West Virginia Board of Education v. Barnette*, the Supreme Court held that public school children could not be compelled to recite the Pledge of Allegiance, stating:

To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds . . . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."<sup>131</sup>

The same basic state interests and First Amendment conflicts are inherently intertwined with the naming of public facilities. Particular naming gestures form "a binding tie of cohesive sentiment,"<sup>132</sup> but they can also be viewed as a particularized form of compelled speech, similar in some ways to having to bear the legend "Live Free or Die" on the license plate of a car against one's will.<sup>133</sup>

There are many reasons that the names of streets, parks, schools, public buildings, and bridges are important. They give residents common reference points that are cultural as well as geographic. Individuals cannot opt out of a street name, at least not if they want to receive mail or explain to a 911 operator where to send the ambulance or fire truck. Changing a street name is likely to be a fairly onerous undertaking, if it is possible at all. In many cases it would be more

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<sup>129</sup> *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 597-600 (1940).

<sup>130</sup> *Id.* at 596 (1940), *overruled by* *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

<sup>131</sup> *W. Va. Bd. of Educ.*, 319 U.S. at 641.

<sup>132</sup> *Minersville Sch. Dist.*, 310 U.S. at 596.

<sup>133</sup> *Wooley v. Maynard*, 430 U.S. 705, 713 (1977).

difficult than changing one's own name, as the latter requires only a unilateral change in usage and perhaps some paperwork, while the former might require substantive engagement in the political process and the cooperation of neighbors. The only feasible alternative is moving one's business or residence to another location to escape an objectionable street moniker, but there are no guarantees that any street will remain static over time in name or with respect to the desirability of a name.

Because individuals have little choice but to use the names and trademarks that are officially appended to the physical public domain, it is important that as citizens they have at least some opportunity to participate in the processes by which these names and trademarks are chosen. Ideally, the names that individuals are compelled to hear and speak because they are attached to public premises would reflect broad-based public sentiments, without alienating members of minority subgroups. Where names communicate offensive messages, there should be accessible mechanisms through which people can attempt to change them.

## VI. "DE-NAMING"

*Years ago, Jacksonville named a waterfront fountain for a local politician and chiseled his name into the stone. It had to be chiseled out after he went to prison for graft. The edifice was renamed "Friendship Fountain." Many Jacksonvillians knew it as "Felony Fountain."*<sup>134</sup>

The social meanings of names change over time. The surname "Hitler" probably carried few, if any, negative connotations in the United States before Adolf Hitler ascended to power in Germany, but any streets named "Hitler" were likely divested of the name during World War II, and today few mainstream Americans would view proposals to name anything after Hitler favorably. Yet efforts to remove or change the longstanding name of a facility will often meet resistance. Vanderbilt University, a private entity, has in recent years attempted to officially rename a dormitory on its campus currently denominated Confederate Memorial Hall. However, the University's attempts have been met with legal opposition from the United Daughters of the Confederacy, which donated money for the building's construction many decades earlier.<sup>135</sup> At the time that

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<sup>134</sup> Dyckman, *supra* note 52.

<sup>135</sup> See Tenn. Div. of the United Daughters of the Confederacy v. Vanderbilt Univ., 174 S.W.3d 98, 103-04 (Tenn. Ct. App. 2005); see also Devin Varsalona, *Vanderbilt U. Drops Fight over Name*, CHRON. HIGHER EDUC. (Wash. D.C.), July 29, 2005, at 30

Confederate Memorial Hall was built, it was owned by another private educational institution, the George Peabody College for Teachers, which later merged with Vanderbilt in 1979.<sup>136</sup> The dispute was characterized as a matter of contract law,<sup>137</sup> without much exploration of related trademark law doctrines. The social meaning of "Confederate" was clearly the underlying issue.

Other de-naming acts are effectuated fairly straightforwardly, particularly if the change suits community sentiments and advances political goals. The South Carolina Legislature imposed a de-naming sanction upon corporate executive (and former South Carolina Lieutenant Governor and Comptroller General) Earle Morris after the company he chaired declared bankruptcy, and he was convicted of multiple counts of securities fraud.<sup>138</sup> The legislature stripped a major thoroughfare of his name, passing a resolution directing that: "The Earle E. Morris, Jr., Highway, which was that portion of South

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("Vanderbilt dropped 'Confederate' from the dormitory's official name in 2002, after more than 20 years of debate and efforts to create a more 'welcoming environment' on the campus, said Michael J. Schoenfeld, a university spokesman. The United Daughters of the Confederacy, which partly financed the building, sued Vanderbilt for breach of contract when it decided to permanently remove the name from the dormitory's pediment. The case was dismissed in a Tennessee county court in 2002, but the United Daughters brought it to the Tennessee Court of Appeals. In May, the court ruled that Vanderbilt could not remove the chiseled name unless it reimbursed the UDC with today's equivalent of the \$50,000 the organization raised during the Great Depression for the dormitory, which was built in 1935."); Vanderbilt University, News from Vanderbilt University: Appeals Court Rules on Memorial Hall Dispute (May 4, 2005), <http://www.vanderbilt.edu/news/releases?id=19537>; Vanderbilt University, Memorial Hall Information, <http://www.vanderbilt.edu/news/memorialhall> (last visited Jan. 1, 2007).

<sup>136</sup> See *Vanderbilt Univ.*, 174 S.W.3d at 105-06; *Permission Granted to Change the Name of Vanderbilt's Confederate Hall*, HOUSTONIAN ONLINE, Oct. 2, 2003, <http://www.houstonianonline.com/media/paper229/news/2003/10/02/CollegeNews/Permission.Granted.To.Change.Name.Of.Vanderbilts.Confederate.Hall-511109.shtml>.

<sup>137</sup> See *Vanderbilt Univ.*, 174 S.W.3d at 112-19; see also *supra* notes 135-36.

<sup>138</sup> H. Con. Res. 3247, 116th Sess. (S.C. 2005), available at [http://www.scstatehouse.net/sess116\\_2005-2006/bills/3247.htm](http://www.scstatehouse.net/sess116_2005-2006/bills/3247.htm); see M. Karen Brewer, *Removing Morris' Name from Highway Called Unfair*, PICKENS SENTINEL, available at <http://www.pickenssentinel.com/remove.html>; David Dykes, *Morris Sentenced to 44 Months*, GREENVILLE NEWS, Nov. 19, 2004, at 1A, available at <http://greenvilleonline.com/news/specialreport/2004/11/19/2004111953399.htm>; Ben Werner, *Two Years After Conviction, out of Jail Earle Morris Counts on Appeal*, THE STATE (Columbia, S.C.), Oct. 29, 2006, at F1, available at [http://www.findarticles.com/p/articles/mi\\_km4472/is\\_200610/ai\\_n17032017](http://www.findarticles.com/p/articles/mi_km4472/is_200610/ai_n17032017); Andy Brack, *Commentary, Find Other Ways to Honor Public Servants*, S.C. STATEHOUSE REP., Jan. 2, 2005, available at <http://www.statehousereport.com/columns/05.0102.morris.htm>.

Carolina Highway 153 that connects Secondary Highway 190 in Anderson County with South Carolina Highway 123 in Pickens County, is changed to South Carolina Highway 153.”<sup>139</sup> Community anger at Morris was adequate to support the change, but it did not hurt matters that Morris had been a Democratic career politician, while Republicans controlled the South Carolina State Legislature.

A group of Native Americans protested against the name “Sutter Place” for a street in Davis, California, asserting that it was named after John Sutter, a German-Swiss immigrant to California in the 1830s-40s who robbed, raped, and murdered his way through the lives of thousands of American Indian people.<sup>140</sup> Most of the objections to removing the Sutter name seemed to be for pragmatic rather than political reasons, such as the costs and uncertainties associated with the mechanics of an address change. A compromise was eventually reached.<sup>141</sup>

In one upstate New York community, “Infirmity Road” was changed without opposition to “Sunset Lake Road” “as a courtesy to the residents of the County adult home located on the road,” because

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<sup>139</sup> H.J. Res. 3334, 116th Sess. (S.C. 2005) (recalled), available at [http://www.scstatehouse.net/sess116\\_2005-2006/bills/3334.htm](http://www.scstatehouse.net/sess116_2005-2006/bills/3334.htm).

<sup>140</sup> See Donald Cohen-Cutler, Op-Ed, *Sutter Place, the Davis City Council and the Will of People*, CAL. AGGIE, May 11, 2004, available at <http://www.californiaaggie.com/> (search “Search” for “Sutter Place, the Davis City Council and the Will of People”; then follow “Sutter Place, the Davis City Council and the Will of People” hyperlink); Morgan Kanninen, *Native American Hunger Strike Against Sutter Place*, CAL. AGGIE, Apr. 1, 2004, available at <http://www.californiaaggie.com/> (search “Search” for “Kanninen, Native American Hunger Strike”; then follow “Native American Hunger Strike Against Sutter Place” hyperlink); Jason Probst, *Sutter Uber Alles: A New Davis City Council Reluctantly Revisits the Legacy of California’s Controversial Settler*, SACRAMENTO NEWS & REV., May 6, 2004, <http://www.newsreview.com/sacramento/Content?oid=oid%3A28938>. For more information on Sutter’s controversial place in history, see generally ALBERT L. HURTADO, *JOHN SUTTER: A LIFE ON THE NORTH AMERICAN FRONTIER* (2006); Nat’l Park Service, U.S. Dep’t of the Interior, *Five Views: An Ethic Historic Site Survey for California: A History of American Indians in California: 1769-1848* (1988), available at [http://www.cr.nps.gov/history/online\\_books/5views/5views1b.htm](http://www.cr.nps.gov/history/online_books/5views/5views1b.htm); KENNETH N. OWENS, *JOHN SUTTER AND A WIDER WEST* (1994); PBS, *New Perspectives on The West: John Augustus Sutter*, [http://www.pbs.org/weta/thewest/people/s\\_z/sutter.htm](http://www.pbs.org/weta/thewest/people/s_z/sutter.htm) (last visited Jan. 1, 2007); Richard H. Peterson, *John Sutter and California’s Indians*, HISTORYNET.COM, [http://www.historynet.com/magazines/wild\\_west/3026371.html](http://www.historynet.com/magazines/wild_west/3026371.html) (last visited Jan. 1, 2007); Virtual Museum of the City of San Francisco, *Discovery of Gold by John Augustus Sutter 1803-1880*, <http://www.sfmuseum.org/bio/sutter.html> (last visited Jan. 1, 2007); Douglas S. Watson, *Virtual Museum of the City of San Francisco, The Diary of John A. Sutter*, <http://www.sfmuseum.org/hist2/sutdiary1.html> (last visited Jan. 1, 2007).

<sup>141</sup> See Kanninen, *supra* note 140.



"the new name was perceived to sound more cheerful."<sup>142</sup> As a general matter, however, de-naming is likely to be contentious, even when the change is proposed for nonpolitical reasons. When government officials in Concord, New Hampshire proposed eliminating duplicative or confusing street names (it had "two Washington streets, two Pleasant streets and two Walnut streets, a Lyndon and a Linden, a Center and a Centre, a Tremont and a Fremont," among others<sup>143</sup>) residents expressed substantial opposition to proposed changes. One observer noted:

The real issue, . . . wasn't the numbers. It was the dissidents' unyielding belief that in revising the names of Concord's streets, the task force was stripping the 272-year-old community of its history, even of its soul. "When you change the familiar feeling of comfort a resident has for his own street," one of the protesters warned, "you also change the way he feels about his city." Another one pleaded with the city council to stop the treachery for the sake of future generations. "Do this for the children," he said. "Don't sacrifice their heritage." Another swore that, faced with a choice between safety and tradition, she would stick with tradition every time.<sup>144</sup>

Because changes can be disruptive, many municipalities are deferential to the desires of the majority of property owners on a street.<sup>145</sup> This leaves renters and people in a community who use a street but do not own property along it effectively without a voice, just

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<sup>142</sup> Between the Lakes Group L.L.C., *supra* note 118.

<sup>143</sup> Alan Ehrenhalt, *Nightmare on Nuthatch Lane*, GOVERNING MAG., Sept. 1999, at 7, available at <http://www.governing.com/archive/1999/sep/assess.txt>.

<sup>144</sup> *Id.*

<sup>145</sup> See, e.g., WOODINVILLE, WASH., MUNICIPAL CODE tit. 12, ch. 15, § .060 (2006), available at <http://www.mrsc.org/mc/woodinville/woodin12.html#12.15.060> (citing council redesignations of streets); SEATAC, WASH., SEATAC MUNICIPAL CODE tit. 11, ch. 20, § 060 (2006), available at <http://www.ci.seatac.wa.us/mcode/smc114006000.htm> (citing street redesignations); see also MO. REV. STAT. § 77.220 (2006), available at <http://www.moga.mo.gov/statutes/C000-099/0770000220.HTM>; County of Riverside, Transportation and Land Management Agency, Street Name Change Policy, [http://www.tlma.co.riverside.ca.us/trans/cus\\_pam\\_road\\_rename\\_policy.html](http://www.tlma.co.riverside.ca.us/trans/cus_pam_road_rename_policy.html) (last visited Jan. 2, 2007); Knoxville Metro. Planning Comm'n, A Step-By-Step Guide to the Process: How to Change a Street Name, <http://www.knoxmpc.org/zoning/quickfct/namechng.htm> (last visited Jan. 2, 2007); Municipality of Anchorage, Alaska, Street Names, <http://www.muni.org/addressing/StreetNames.cfm> (last visited Jan. 2, 2007); Stephen P. Morse et al., Obtaining Street Name Changes in One Step, <http://stevemorse.org/census/changes.html> (last visited Jan. 2, 2007).

as they are unlikely to have had any input into the original name selection. It also insures that majority property owners will not have names like Martin Luther King, Jr. or Rosa Parks thrust upon them against their will, even though in the long run such naming acts might foster enhanced cultural understanding.

It would arguably be impossible to adopt a policy of impartial naming for public facilities. Chosen names will have a variety of meanings and interpretations even if they do not explicitly reference particular people or entities. Simply naming a street in Columbia, South Carolina, "Columbia Street" may at first blush seem like a quintessentially neutral choice, until one recognizes that "Columbia" is a tacit reference to Christopher Columbus, whose place in history is somewhat controversial.<sup>146</sup>

Many streets and municipalities themselves have been named after people and places in the Bible, and so impart religious significance to those for whom the portion of the Bible from which the name is derived is a sacred text. Other names are chosen as a reflection of some distillation of community values. Naming public facilities after George Washington may be seen as a patriotic gesture. Refusing to name public facilities after Abraham Lincoln may be seen by some (South Carolinians in particular) as an act of continued resistance against the North.<sup>147</sup> Naming a street after Albert Einstein may reflect an effort to be mildly unconventional, while honoring Calvin Coolidge may be assumed to convey very button-down, conservative sensibilities.

A Republican controlled Congress decided in 1998 to rename the major airport serving Washington, D.C. "Reagan National."<sup>148</sup> Republicans claimed that renaming the Washington National Airport

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<sup>146</sup> *Ibiblio*, 1492: An Ongoing Voyage: Christopher Columbus: Man and Myth, <http://www.ibiblio.org/expo/1492.exhibit/c-Columbus/columbus.html> (last visited Jan. 1, 2007).

<sup>147</sup> For Senator Lindsey Graham's quote about fact that Republicans in South Carolina do not hold Lincoln dinners, see e.g., Posting of Ken Campbell to Palmetto Demblog, [http://www.scdp.org/blog.php?blog\\_id=227](http://www.scdp.org/blog.php?blog_id=227) (Mar. 7, 2005) (posting and commenting on Bryan Mitchell, *GOP Senator Has Unifying Message: Graham Encourages Republicans Support Social Security Plans*, KNOXVILLE NEWS-SENTINEL, Mar. 6, 2005, at B3; Posting of Doug McDaniel to American Street, <http://www.reachm.com/amstreet/archives/2005/03/08/knoxville-calling-lindsey-graham-apparently-doesnt-think-much-of-lincoln/>, Knoxville Calling: Lindsey Graham Apparently Doesn't Think Much of Lincoln (Mar. 8, 2005).

<sup>148</sup> Ronald Reagan Washington National Airport is located in Arlington County, Virginia. Metropolitan Washington Airports Authority, Reagan National Airport, <http://www.metwashairports.com/national/> (last visited Jan. 1, 2007).

for President Ronald Reagan was a perfect gift for his 87th birthday.<sup>149</sup> Many observers believe the gesture was both to honor former President Ronald Reagan, and to harass Democrats<sup>150</sup> and airport union members,<sup>151</sup> since Reagan had crushed PATCO, the Air Traffic Controllers Union, during his reign.<sup>152</sup> The naming gesture was imposed by the federal government on the area's inhabitants,<sup>153</sup> though it was not congruent with the wishes of the vast majority of the District of Columbia's residents, making it appear very much an act of dominion over a population that is not permitted direct representation in the U.S. Congress.<sup>154</sup>

In an overt and unusual attempt to shift the cultural meaning of the name of a public political subdivision, King County, Washington kept its name, but revised the basis for it. Originally named for William Rufus King, Vice President under President Franklin Pierce, the King County Council changed the "basis" for the name in 1986, passing a motion that eventually was effected into law that repurposed "King" as an honorific on behalf of Martin Luther King, Jr.<sup>155</sup>

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<sup>149</sup> *Talks on Renaming Airport for Reagan Continue*, CQ NEWS, Jan. 31, 1998, available at <http://www2.cnn.com/ALLPOLITICS/1998/02/02/cq/reagan.html>.

<sup>150</sup> See James P. Lucier & Timothy W. Maier, *Dissing Reagan* *Washington National Airport Name Change to Honor Ronald Reagan*, INSIGHT ON THE NEWS, Apr. 23, 2001, at 6, available at [http://www.findarticles.com/p/articles/mi\\_m1571/is\\_15\\_17/ai\\_74011902](http://www.findarticles.com/p/articles/mi_m1571/is_15_17/ai_74011902); Richard Tapscott, *Congress Votes for Reagan Airport*, WASH. POST, Feb. 5, 1998, at A01, available at <http://www.washingtonpost.com/wp-srv/local/longterm/library/airport/overview5.htm>; Letter from James L. Oberstar, Ranking Democratic Member, House Committee on Transportation and Infrastructure: Democratic Caucus, Dear Colleague on Reagan Airport Proposal, [http://www.house.gov/transportation\\_democrats/revdcol2.htm](http://www.house.gov/transportation_democrats/revdcol2.htm) (last visited Jan. 2, 2007); Grover Norquist, *Call It: Reagan National Airport*, HUM. EVENTS, Feb. 6, 1998, available at [http://findarticles.com/p/articles/mi\\_qa3827/is\\_199802/ai\\_n8784804](http://findarticles.com/p/articles/mi_qa3827/is_199802/ai_n8784804); The NewsHour with Jim Lehrer, *Name Game* (PBS television broadcast Feb. 4, 1998), transcript available at [http://www.pbs.org/newshour/bb/transportation/jan-june98/reagan\\_2-4.html](http://www.pbs.org/newshour/bb/transportation/jan-june98/reagan_2-4.html); Wikipedia, *Ronald Reagan Washington National Airport*, [http://en.wikipedia.org/wiki/Ronald\\_Reagan\\_Washington\\_National\\_Airport](http://en.wikipedia.org/wiki/Ronald_Reagan_Washington_National_Airport) (last visited Jan. 2, 2007).

<sup>151</sup> See Molly Charboneau, *Ronald Reagan Airport: Slap in the Face to Air Controllers*, WORKERS WORLD, available at <http://www.workers.org/ww/1998/reagan0226.php>.

<sup>152</sup> See generally Rebecca Pels, *The Pressures of PATCO: Strikes and Stress in the 1980s*, 37 ESSAYS IN HIST. (Corcoran Dep't of History, Univ. of Va. 1995), <http://etext.virginia.edu/journals/EH/EH37/Pels.html>.

<sup>153</sup> See Tapscott, *supra* note 150.

<sup>154</sup> House Committee on Transportation and Infrastructure: Democratic Caucus, *Reagan Airport Bill: Dissenting Views*, [http://www.house.gov/transportation\\_democrats/views/rrairviews.htm](http://www.house.gov/transportation_democrats/views/rrairviews.htm) (last visited Jan. 2, 2007).

<sup>155</sup> See Wikipedia, *King County, Washington*, <http://en.wikipedia.org/wiki/>

## CONCLUSION

In the quid pro quo naming context, articulating standards and publicizing information that permits markets in naming rights to function commodifies the process in ways that many might find unappealing, and could lead to tax consequences that would lessen incentives to make large charitable donations. This approach would be more democratic than most current practices, however, in the sense that the public would understand the naming process, and could predict with reasonable certainty the outcome of any competition over naming rights.

Fairness in strictly honorific naming practices, where no monetary donations are involved, would seem to require a fairly clear set of principles that direct the procedure. All people and organizations should have a fairly equal ability to have public amenities named in their honor. The communicative message made by any particular naming should also be explicitly considered. Naming choices embrace certain social values and eschew others. The terms and conditions of the naming should also be reasonably unambiguous, and the individuals or entities with the power to name or rename public facilities should be spelled out.

Every government entity vested with naming power should, at a minimum, codify some naming principles, and make the entire process reasonably transparent, accessible to all community members, and accountable for the values and messages embedded in their naming choices. A government entity or municipality could consider a system of public auctions, under which all purchased naming rights could simply be auctioned off to the highest bidder. This would be beneficial to the public coffers, and compensate the public for the branding or advertising function served by a naming gesture. However, auctioning naming rights would probably mean that wealthy people would garner an even larger share of the quasi-trademarked public domain than they do now. The process would open naming rights up to people from underrepresented groups, but only wealthy ones.

Alternatively, a lottery approach could be used, through which names are randomly chosen from slates of nominees proposed by community members and screened or vetted by government actors. This would unhinge naming choices from wealth and class, but would also undermine efforts to use naming acts to laud heroic actors and preserve targeted aspects of community culture and history.

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King\_County%2C\_Washington (last visited Jan. 1, 2007).

Another approach might be to utilize ballot referenda, which could diversify non-purchased, honorific naming using a directly democratic approach, by which voters choose honorific names from a slate of nominees. Yet another option might be to delegate this power to specifically elected or appointed committees of interested citizens, with the explicit requirements of transparency and accountability often associated with financial transactions.

Regardless of the specific approach chosen, communities need to be more deliberative about naming practices, and recognize the conflict between naming, trademark precepts, and the social meanings of naming choices. While private entities are largely free to do as they choose, citizens should question the proclivity of government actors to honor and generate positive publicity for individuals using public funds and public resources, especially when monetary gifts are not tendered in exchange. Otherwise, the people in control of naming the physical public domain will continue to favor themselves and their own interests, using trademark privileges to appropriate public goodwill from the physical public domain. To remain passive about naming practices is to allow the men who dominate the political environment to continue to name physical assets for themselves, usurping assets and privileges that rightfully belong to all of us, and to shape and re-shape our cultural geography for their own ends.