

Lawyer-lobbyists become big fish in the Capital pond

By Sigrid Bathen

For Vigo Gilbert "Chip" Nielsen Jr., the road to managing partner of the prominent political and government law firm of Nielsen, Merksamer, Hodgson, Parrinello & Mueller began more than two decades ago when he was an administrative assistant in the state Assembly. That was 1966, and Nielsen moved quickly up the ladder, becoming an assistant deputy state controller in 1967, chief administrative officer for the Assembly in 1969 and chief of staff to then-Lieutenant Governor Ed Reinecke in 1970.

Two years later, Nielsen founded a law firm which was to become a powerful force in state and national politics. It

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is safe to say that very little of any consequence occurs in state political and governmental circles — particularly Republican circles — without the knowledge or active involvement of the firm, which since 1987 has included among its senior partners Steve Merksamer — former chief of staff to and longtime friend of Governor George Deukmejian — and, since 1986, former Assembly Minority Leader Robert Naylor.

And, although Nielsen has always emphasized a concentration on the law, not on lobbying, his firm — like so many other prominent California law firms — has become an active player in the profitable capital lobbying trade. For Nielsen, Merksamer, lobbying primarily means the state's plethora of administrative agencies rather than the Legislature, which increasingly turns over the essential functions of running the state to the bureaucracy.

"To be able to do what we do well, I like my lawyers showing up in the office every morning," Nielsen says, "and I like them to look in the library and let others look toward the big white dome."

"They do not practice law," Nielsen says of many legislative lobbyists. "They lobby. They get up in the morning and say, 'I have bills I have to kill, bills I have to amend, relationships I need to create, clients who want accountability on how I spend my time.'"

Nonetheless, according to the recently released 1988 Report on Lobbying by the Fair Political Practices Commission, the 1988 income of Nielsen, Merksamer's 24-lawyer firm (about a fifth of whom are registered lobbyists) included more than \$1 million in lobbying fees paid by such major corporate and business interests as the Food Industry Safety Council (\$125,305), R. J.

Reynolds Tobacco Company (\$106,058), Merck Sharp & Dohme (\$94,795), the California Unitary Tax Council (\$93,871), and \$87,364 each from Lorillard, American Tobacco Company, Brown & Williamson Tobacco Corporation, and Philip Morris — to name just a few.

Those figures do not include fees paid for pure lawyering — the political and government law component which remains the central function of the firm. Consultations for legal advice are generally not reportable on state disclosure forms and — at least on paper — are kept totally separate from lobbying fees.

The entry of major political and government law firms into Capital lobbying has been explosive in recent years, and the reasons for the trend are as complex as government itself. Much of the lobbying reported by law firms involves administrative agencies, and lawyers who traditionally have handled government-law issues for administrative agencies find themselves naturally drawn into lobbying as a critical aspect of their trade.

"Government is getting increasingly complex," says Merksamer, who is not a registered lobbyist. "Private-



Knox

sector individuals and companies are having a more difficult time with government, and they need help. They are looking for specialists."

Whether they practice political and government law, lobby agencies or the Legislature, a key element of such firms is the hard governmental expertise of its members, which in some firms now includes non-lawyer lobbyists with experience in government.

Merksamer started his law career as a deputy in the state attorney general's office, climbing to become then-Attorney General Deukmejian's special assistant, then his chief of staff when

Deukmejian became governor in 1983. He says a "special expertise," often not learned in law school, is required to succeed in governmental law and lobbying.

"I don't think the average honors graduate from Harvard Law School can



Franchetti

effectively practice government law," Merksamer says. "That's not to say you have to have been in it to be good at it, but I think it helps tremendously. It is a very technical, very complex arena."

Lobbying itself can be extremely lucrative — a fact certainly not lost on the law firms which have entered the field.

Of the seven lobbying firms making more than \$1 million, according to the 1988 FPPC report, the top money-maker, Clay Jackson — who made \$1.76 million — is a lawyer, and three others are law firms: Nossaman, Guthner, Knox and Elliott, which includes several former legislators among its partners and was the third-largest in fees, with more than \$1.2 million earned in 1988; Heron, Burchette, Ruckert and Rothwell, a major Washington, D.C.-based international law firm which in recent years has become a heavy hitter in the law-lobbying business around the state Capitol, bringing in more than \$1.1 million in lobbying fees in 1988, putting it in sixth place; and Nielsen, Merksamer, which was seventh in the spending report, with \$1.08 million.

The highest paid lobbyist in California for several years running and a pioneer in the law-lobbying combination, Jackson operates a lobbying firm, Jackson/Barish, and is a partner in the old-line San Francisco law firm of Sullivan, Roche and Johnson, which also reported earning \$68,783 in lobbying fees in 1988 (see story, page 113).

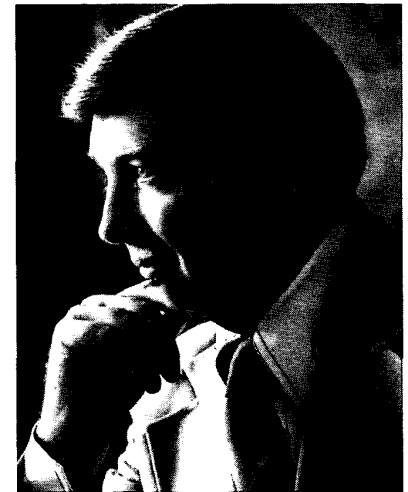
Jackson, like many lawyers who end up as lobbyists, entered lobbying purely by accident when in 1970 he joined the San Francisco law firm of a prominent California lobbyist, John "Packey" McFarland.

"Back in those days before specialization, counsel for certain types of businesses — banks, utilities, insurance companies — did everything, as a full-service law firm," says Jackson, who inherited McFarland's lobbying clientele when the latter died in 1971.

Jackson also profited from his connection to another prominent Sacramento lobbyist, the late David "Davey" Oliver. Oliver represented the Association of California Insurance Companies, which Jackson served as general counsel and, when Oliver died, as its lobbyist until a falling out over strategy in the 1988 insurance-initiative wars.

Jackson, who has played the law-lobbying game for perhaps more years than anyone, says the explosive growth in the field simply means that other lawyers are learning how to play the game.

"Years and years ago you had lawyers who practiced law and lobbied, starting as I did, sort of by accident," Jackson says. "They were the kind of real lawyer-lobbyists, real lawyers who are also real lobbyists and have been around for years. That's what we do, and Franchetti and Swoap [the lobbying



Foran

firm of former Deukmejian administration officials Michael Franchetti, a lawyer, and David Swoap] strike me as in that mold as well.

"They are not trying to peddle influence," Jackson says of such firms. "They aren't trying to con the client. They just do the work. They're unobtrusive. You don't hear a lot about them, but you see them where it counts."

Knowing "where it counts" is the key to success in the law-lobbying trade. "You take a typical lobbying firm, and you find a guy inside who's a lawyer," says Jackson. "They got their [law] education but perhaps never practiced, although a few were real lawyers. They bring their legal education to the political table. They bring those mental and other skills and add value to the firm."

Jackson and others say the law-lobbying combination is relatively new to Sacramento, modeled in part on the success of such firms in Washington D.C. "It actually started about 10 years ago," Jackson says. "A lot of firms came to Sacramento from Los Angeles and San Francisco, but they didn't know what they were doing. All you have to do is walk into the Legislature to know it's not the same as a courthouse. If you come in cold as a stranger and try to do that work, you're going to make a lot of mistakes. And they did."

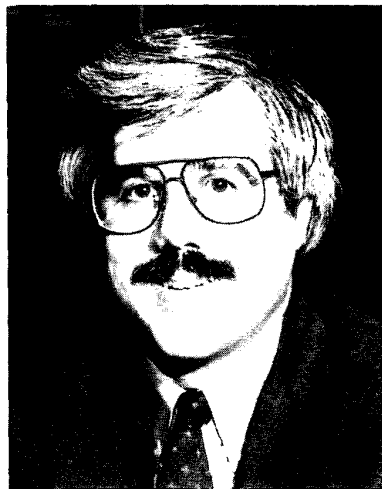
Like Jackson/Barish, Franchetti and Swoap operate a lobbying firm which is technically separate from a law firm — in Franchetti's case, the San Francisco firm of Franchetti and Franchetti in which he is a partner with his wife, Tiffany. The lobbying firm nearly passed the \$1 million mark in 1988, reporting \$912,517 in fees from a variety of business, pharmaceutical and governmental entities, including more than \$100,000 each from Eli Lilly and Smith Kline and French Laboratories, and \$94,927 from Mobil Oil.

Franchetti makes a clear distinction between legal representation and lobbying — a distinction compelled in part by lobbying reporting requirements of the 1974 Political Reform Act administered by the FPPC, which requires individuals to register as lobbyists when a certain amount of time is spent attempting to "influence" state laws or regulations.

For example Franchetti the lobbyist may represent a client in attempting to change a law or regulation in the Legislature or in an administrative agency. If that attempt is unsuccessful, Franchetti the lawyer may represent the same client in filing suit against the agency. He concedes the distinction is sometimes a fine one. "It gets closer and closer in some cases," he says.

A pioneer in the law-lobbying field is the San Francisco-based firm of Nossaman, Guthner, Knox and Elliott, which includes three former legislators — Assembly Speaker pro Tempore John Knox, state Senator John Foran and Assemblyman William Bagley — among its partners. The bipartisan firm (Knox and Foran are Democrats, Bagley

a Republican) also employs many other staff with government experience, including Richard Spohn, a lawyer who ran the state Department of Consumer



Merksamer

Affairs under former Democratic Governor Jerry Brown.

Historically, says Knox, "There always have been efforts by lawyers to influence agencies." He describes his firm, which employs 70 lawyers and has offices in Sacramento, San Francisco and Washington, D.C., as "basically a full-service law firm, with the added service of lobbying."

The firm counts among its wide range of clients Aetna Life and Casualty (which paid the firm \$70,998 for lobbying in 1988), the Association for Califor-

nia Tort Reform (\$63,217), General Electric (\$54,397), the National Association of Securities Dealers (\$32,250), and Southern California Edison (\$43,443).

"We are not a lobbying firm per se," says Bagley, who is not a registered lobbyist (Knox and Foran are). "We have major governmental knowledge and access, but we treat our clients who come into the lobbying arena exactly the same, as if someone came in with a corporate problem or a zoning problem."

Bagley, Franchetti and others say lawyers often become involved in the legislative or agency process without registering as lobbyists when they probably, technically, should.

"There are a helluva lot of lawyers who probably should be registered, in a technical sense," says Bagley, not a great fan of the intricacies of the Political Reform Act. "A lawyer practicing law in Milpitas who has to come to Sacramento probably isn't aware of the ramifications of the FPPC. The act encompasses not just lawyers, but employees of corporations who try to change something for their industry, whether it's the wool growers or the asparagus industry. They're always under the onus of the FPPC and frankly it's absurd."

Franchetti says he probably "over-registers" rather than risk offending a nuance of the complex Political Reform Act. "I think there are a lot of people up here who are doing lobbying who are lawyers," he says. "It's my observation

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that if they were not lawyers, they would have to register as lobbyists."

A growing national giant in the law-lobbying business is the firm of Heron, Burchette, Ruckert and Rothwell, which represents a wide range of insurance, agricultural and business interests in the Capitol. Nationally, the firm employs more than 200 lawyers in offices as far-flung as Washington D.C., Phoenix, Denver, and even Moscow.

"Basically, we took our Washington model and developed it here," says Jack Gualco, who was a special assistant to Assembly Speaker Willie Brown from 1981 to 1985. A non-lawyer ("We don't have that hangup," Gualco quips), he is one of 10 non-lawyer lobbyists in the Sacramento office, which also employs an equal number of lawyers. In 1988 the firm reported more than \$1.1 million in lobbying fees from clients which included the Insurance Agents and Brokers Legislative Council (\$217,656), Norcal Mutual Insurance (\$85,164), the California Tomato Growers Association (\$70,827) and the Imperial Irrigation District (\$62,606).

Like Clay Jackson, who is a lawyer, Gualco says legal training does not easily translate into lobbying skill: "People have to recognize that the Legislature is a whole different set of government, an entirely different field of play. So much is done on an informal basis. It's how to work within the system, and some people who are very structured probably won't do well."

The firm provides bipartisan representation, and many staff are former bureaucrats and/or political advisers. In a growing trend for larger, media-conscious law firms, the firm even employs

a prominent Sacramento public relations firm — Stoorza, Ziegau and Metzger (partner Bobbie Metzger was press secretary to former Governor Jerry Brown and, later, to Assembly Speaker Willie Brown) to help with media issues.

While some large firms are opening branches in Sacramento for better access to the Capitol, others have created or expanded a government-law/lobbying component within existing local firms. Kronick, Moskovitz, Tiedemann and Girard, a Sacramento firm which employs 60 lawyers and represents a wide variety of local governmental and business clients, six years ago merged with the lobbying firm of veteran Capital lobbyist Robert G. Walters, who is a lawyer. The firm in 1988 reported \$193,224 in lobbying fees.

"The Sacramento firms are realizing that they have the contacts and the knowledge," says Judith Harper, a former lobbyist for the State Bar of California and immediate past president of the Sacramento County Bar Association who was with Kronick, Moskovitz from 1987 to 1989. "Part of being a full-service law firm is offering your clients a full range of services, whether it be advocacy in the Legislature or the courts."

Gene Livingston, a Sacramento lawyer who once headed the state Office of Administrative Law and now runs his own law-lobbying firm — Livingston and Mattesich, with former OAL general counsel Jim Mattesich — says clients and their lawyers are becoming "more sophisticated" about their law-lobbying needs. Livingston, whose firm reported \$416,419 in lobbying fees in 1988, says expertise in the intricacies of state administrative agencies is critical

for a successful law-lobbying operation.

Often, Livingston adds, the distinction between law and lobbying is unclear. "Sometimes the question is what is lobbying versus what is practicing law? Sometimes it's a little blurred."

Legislators who are lawyers (a once-predominant occupational group in the Legislature) view the trend with mixed feelings. Assembly Judiciary Committee Chairman Phil Isenberg, a Sacramento Democrat, sees a steady growth in "those law firms that service political clients and their political issues," but does not see the growth as explosive, nor alarming. "This is not the equivalent of the Manhattanization of Sacramento," he says.

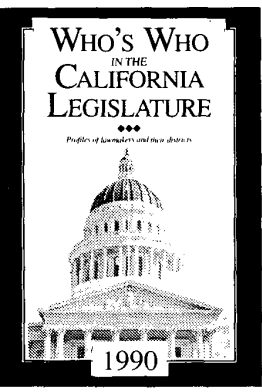
Assemblyman Lloyd Connelly, also a Sacramento Democrat, is less sanguine and believes the growth of law-lobbying in Sacramento raises serious ethical questions for lawyers. His own firm — Olsen, Connelly, Hagel and Fong — is a major political law firm for Democratic office holders and does no lobbying, in part because of Connelly's association (although he is not an active member of the firm).

"I think it's better that they [lawyer-lobbyists] not do campaign law and legislative advocacy," he said. "It raises the risk that the firm is doing legislative advocacy directed at one of their clients. There is something about that that makes me very uncomfortable."

For example, Connelly said, "a law firm provides legal advice to a member of the Legislature on Monday on a point of campaign law and then a member of that firm on Tuesday urges the member to vote for a particular bill.

"Some of this gets very gray." ☹

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