

Legislative Intent Businesses Find An Open Market

Legal Demand High for Policy Behind Statutes

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WOODLAND — If what students learned in law school about legislative intent and state law were true, Thomas Stallard and William Keller would have been doomed to failure when they set out in 1974 to set up a firm dedicated to researching legislative history.

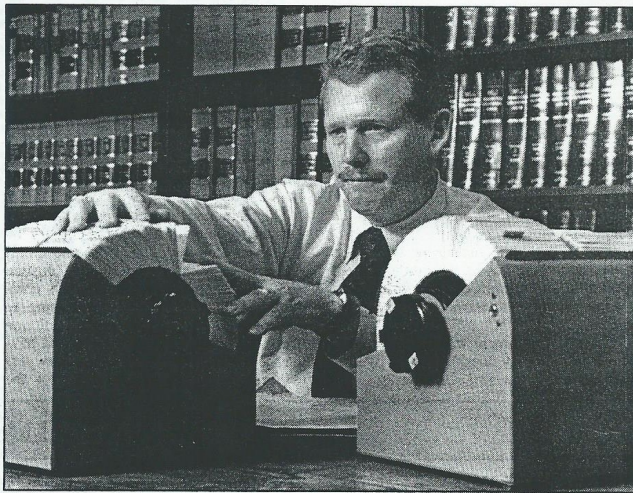
Conventional wisdom is that legislative intent is an almost worthless tool in construing ambiguous state statutes because the history is so sparse and the record-keeping so haphazard.

But from humble beginnings as a sideline to a law practice on Dead Cat Alley in Woodland in Yolo County, Stallard's and Keller's Legislative Intent Service has thrived by creating a supply of information that sparked a demand among attorneys and judges seeking guidance in interpreting legislative acts.

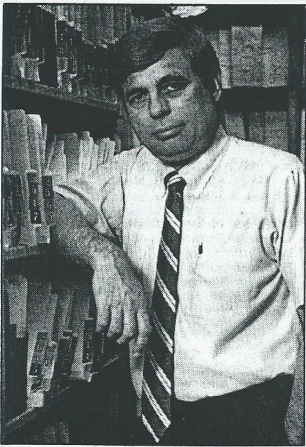
Today, their staff numbers 14, including four attorneys, plus paralegals, law and political science students and support staff. As the service's popularity has expanded, at least two other similar firms have started up recently.

Last year, Legislative Intent researched and analyzed 1,400 cases for most every large and mid sized firm in the state and many around the country. They expect to handle between 1,600 and 1,700 cases this year.

"We grew a lot by word of mouth," says Keller, 44. "For the first 10 years, the major challenge was education. Most attorneys appear to have been taught in law school that legislative intent analysis was suspect. Most professors thought of it in [terms of] socio-psychological analysis. I must have read 1,000 cases — every



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BEATING THE ODDS: Thomas Stallard, top, and William Keller, left, have made a success of legislative intent research despite predictions that the haphazard record-keeping and sparse history of state statutes would doom it to failure.

was chosen for that problem by the author and others involved in the process.

Looking at the problem and the drafting solution, Keller says the courts deem certain public policies to have been adopted by the Legislature and then apply those public policies to the facts of the case before them.

The original idea for the firm was Keller's. On winning a fellowship to work in the Assembly, Keller was assigned to research and write bills for then-Assemblyman William Bagley, R-Marin, and soon became associate consultant to the Assembly Welfare Committee chaired by Bagley, who is now a partner in the San Francisco law-lobbying firm of Nossaman, Guthner, Knox & Elliott.

"One of the questions they used to get asked was the background behind California laws," Keller recalls. "Since they

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were not lawyers and I was in law school, they said, 'Give it to Keller!'"

"Both Bill [Keller] and I would get more than occasional calls from members of the bar asking us why we introduced a particular bill," recalls Stallard, 41, who was a law student at the University of California-Davis when he worked for Bagley, receiving his J.D. in 1975. "They were pursuing litigation, and the statute was not clear. We weren't able to drop our legislative research to do this for our callers, but we would try to send them something."

Stallard says the two men saw a potential market from the material that came across their desks daily in legislative offices. "There was a need for a delivery system," he says, "and more than that, the need for interpretation as well."

To research the foundation of a law, the firm looks to all kinds of legislative, administrative and executive documents, including legislative committee staff analyses, Assembly and Senate Offices of Research materials and partisan caucus analyses. From that information, they develop a legislative history of a statute, as well as an analysis, points and authorities.

The firm's work is often cited in appellate court opinions, and Keller is increasing demand as an expert witness. One of the principal users of the California State Archives, Keller and Stallard also go directly to government and legislative offices in their search for statutory intent. And they have developed their own archives in Woodland, which includes one of the most comprehensive collections of government memorabilia in the state.

"We have a tremendous volume of legislative documents that we have collected over the years," Keller says. "In many cases we collect legislative documents before we get any requests, the reason being that many of these documents disappear as time goes on. They were not and traditionally are not regarded as having value."

The archives in Woodland contain thousands of documents that are no longer in existence or available to the public. One reason for the success of Legislative Intent is the lack of a state document-retention system similar to that at the federal level.

"Unfortunately," says Bagley, Keller's and Stallard's former boss, "there is no institutional legislative intent service comparable to Congress."

On the federal level, there are several resources for legislative intent, including the Congressional Digest and the U.S. Congressional and Administrative News Service [USCANS].

"None of that exists in California, which makes it very difficult," Keller says. "And other states are worse."

Another factor contributing to the growth in intent research is the volume of legislation coming out of the California Legislature since it became a full-time body in the late 1960s.

Of the two other smaller firms in Sacramento, Legislative Research Institute, now in its fifth year, has a staff of four, headed by executive director Carolina Capistrano, who holds a J.D. from Stanford University Law School, was an Assembly Fellow and served as chief of staff to Sen. Nicholas Petris, D-Oakland. The firm's associate director is Walter Pontynen, who holds master's degrees in history and government and has taught secondary school for 27 years.

Pontynen says Legislative Research "has done quite well, serving over 200 law firms" in California, New York and Washington since its inception. He could not provide specific figures on the number of bills that have been researched by the firm, which — like Legislative Intent Service — charges a flat fee based on complexity and turnaround time. Its most expensive fee is for one-day service on one bill, which costs \$350, with an addi-

tional \$100 for each additional bill included in that rush order. Its slowest and least expensive service costs \$175 and takes two weeks.

The firm of Documented Legislative History was formed three years ago by attorneys Jillian Bruce and Scott Wasserman, who worked for Legislative Intent Service when he was in law school. There are five support staff, including students. Bruce says the firm provides bill-tracking and legislative history, including intent research; numbered among its clientele are law firms, state agencies and lobbyists.

She says it's hard to say how many clients have been served by the firm, which charges a flat rate of \$75 an hour for "purely legislative" research. She says a sliding scale, depending on complexity and turnaround time, is used by the firm, but declined to provide specific figures. "I don't want to get into a price battle," Bruce says.

Keller and Stallard charge a flat rate for their services, depending on how quickly the client wants the information. A 30-day rate for the history of a bill involving a specific code section will cost \$325; a 10-day rate is \$375 and a two-day turnaround costs \$450. For each additional bill involving the same code section, the tab goes up by \$75.

They sometimes work for both sides in litigation, unless they are retained as an expert witness in the case.

"We will do the historical research for anyone who calls us," Keller says. "We don't know the fact situation or what they want it for. We just take the code section." If put on retainer, Keller charges \$1,000 for expert testimony and will do no further work for the other side.

Legislative Research and Legislative History dislike working for both sides in litigation and may refer such clients to one of the other firms. In addition, they receive referrals from Legislative Intent.

Attorneys who have sampled Legislative Intent's wares say the service is a valuable one.

Paul Glad, a San Francisco lawyer with the Chicago-based national firm of Sonnenschein Carlin Nath & Rosenthal, says he has used Legislative Intent "regularly" for more than five years, "in a wide variety of cases, always for legislative interpretation."

In *Karlin v. Zalta*, 154 Cal. App. 3d 953 (1984), Glad represented Travelers Insurance, which was sued in a patients' class action after Travelers had settled a dispute regarding its medical malpractice program with the doctors whom Travelers had insured.

Using legislative intent materials developed by Stallard and Keller, Glad says he was "able to demonstrate that the plaintiffs could not proceed with their class action because their rights were preempted by the McBride-Grunsky Regulatory Act and their exclusive remedy was before the state insurance commissioner."

"The materials we filed were very appropriate evidence of legislative intent, such as committee documents and letters to the governor prior to the signature of the bill," Glad says. "However, they were the kinds of materials we would not have been able to locate without access to the services of Legislative Intent."

Glad says the key to determining legislative intent in cases involving disputed statutory construction is to ask Stallard/Keller specific questions for research.

"It is a tremendous advantage to be able to have access to the actual records," Glad says. "We have a very creative plaintiffs bar, and they're always looking to expand potential bases for liability. If there is a statute enacted saying that the sky is blue, they will utilize that statute to assert that there is a basis for a private cause of action if we are unfortunate enough to experience smoggy days."