

M

ICHAEL V. FRANCHETTI, former state finance director and a longtime top aide to Governor George Deukmejian, practices law with his wife, Tiffany, in the San Francisco firm of Franchetti & Franchetti. He is also a partner in Franchetti & Swoap, a lobbying firm in Sacramento and Washington, D.C., which he runs with former state health and welfare agency chief David B. Swoap. The two firms share office space in San Francisco but otherwise are completely separate.

Recently Franchetti & Swoap represented the California Standard Bred Sires Stakes Committee, which promotes the breeding of horses for harness racing, before the California Horse Racing Board. When the board decided adversely on a matter affecting harness racing, the breeders decided to sue—calling on Franchetti & Franchetti to handle the case.

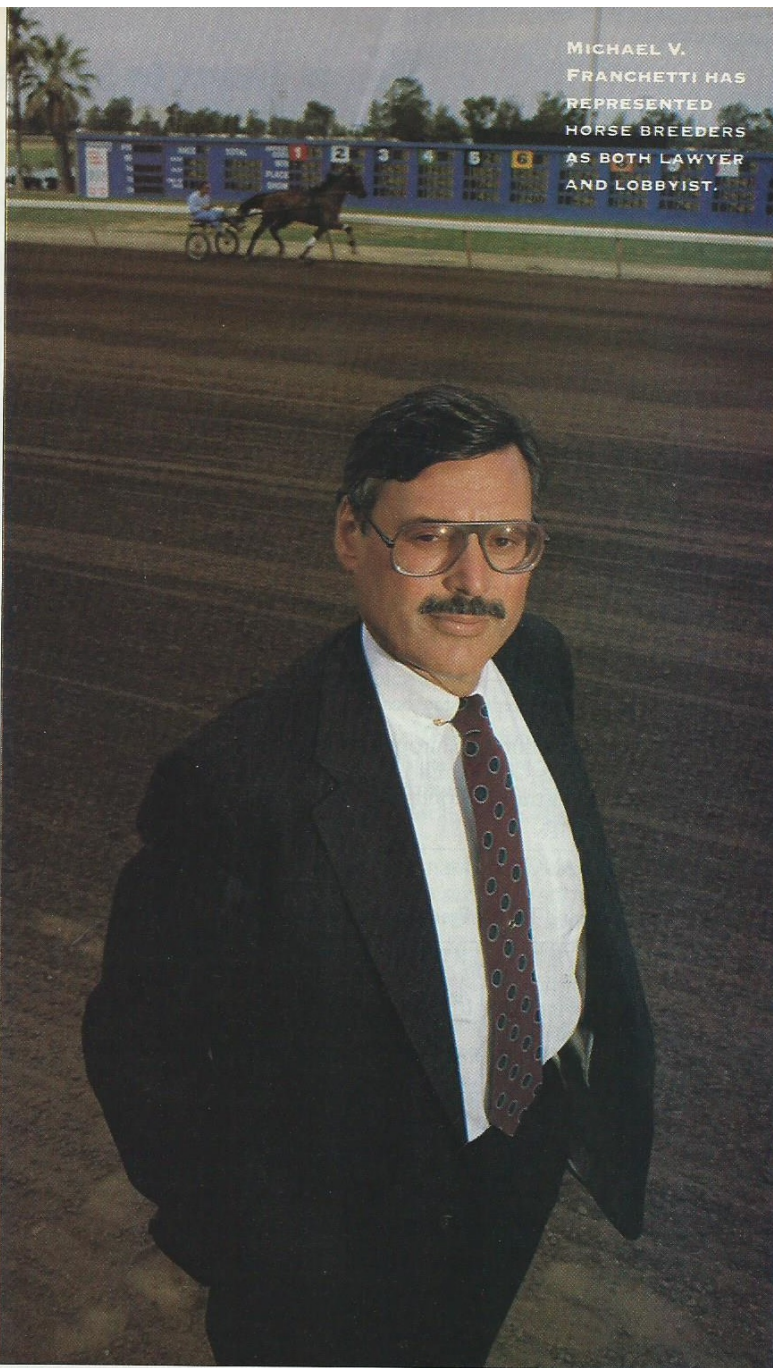
"It was an instance when one type of representation concluded and another type began," says Franchetti. Emphasizing "the differences between a government-relations operation and a legal operation," Franchetti concedes that the distinction is sometimes a fine one. "It gets closer and closer in some cases," he says.

Closer indeed.

The explosive demand for lobbyists in Sacramento is a trend that has not been lost on the state's legal profession. Following the example of successful lawyer-lobbyist firms in Washington, D.C., several California firms have embraced diversified practice. Some longtime Sacramento firms are setting up lobbying subsidiaries, while out-of-town or out-of-state firms are opening branch offices, primarily for political or lobbying work. Other firms have merged with existing lobbying operations or, like Franchetti & Franchetti, created a lobbying group that is technically separate from the law firm. (See "Power Firms in Sacramento," next page.)

Lawyer-lobbyist Clayton R. Jackson, who has practiced both professions for two decades, says the rapid growth of hybrid firms simply means that lawyers are beginning to learn how to play the lobbying game—and to realize its importance to clients. Like Franchetti, Jackson is a partner in two firms: SRJ/Jackson, Barish & Associates, his Sacramento lobbying operation, and the San Francisco law firm of Sullivan, Roche & Johnson, which recently merged with Jackson's law firm, Jackson & Abrams. Ac-

MICHAEL V. FRANCHETTI HAS REPRESENTED HORSE BREEDERS AS BOTH LAWYER AND LOBBYIST.



Lawyers Learn To Play

The Lobbying Game

By Sigrid Bathen

Power Firms In Sacramento

LAW - LOBBYING FIRMS

Duties: Government law plus lobbying before the Legislature and state agencies

SRJ/JACKSON, BARISH & ASSOCIATES

Sacramento and San Francisco

Lobbying firm

Clayton R. Jackson and Joseph Barish, partners

Partial list of clients: American Insurance Association, Anheuser-Busch, California Association of Thrift & Loan Companies, California Hotel and Motel Association, GTECH Corp., Intel Corp., Southern California Association of Governments

SULLIVAN, ROCHE & JOHNSON

San Francisco law firm

Clayton R. Jackson, partner, through merger with Jackson & Abrams, San Francisco

FRANCHETTI & SWOAP

Sacramento, San Francisco, Washington, D.C.

Lobbying firm

Partners: Michael V. Franchetti—former state finance director

David B. Swoap—former secretary, state health and welfare agency

Partial list of clients: California Chiropractic Association, Canadair, Ltd., Los Angeles County, Eli Lilly & Co., Los Angeles County Sanitation Districts, Mobil Oil Corp., PepsiCo Inc., Western Hospital Corp.

FRANCHETTI & FRANCHETTI

San Francisco law firm

Michael V. Franchetti and Tiffany Franchetti, partners

HERON, BURCHETTE, RUCKERT & ROTHWELL

Lobbying and government law

174 lawyers nationally, including 10 in Sacramento (plus 7 nonlawyer Sacramento lobbyists)

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

Sacramento

Lobbying and government law

60 lawyers

Robert E. Murphy, president

Lobbyists: William E. Hvidsten, Robert G. Walters

Partial list of clients: California Association of Joint Powers Authorities, California Association of Life Underwriters, California Podiatric Medical Association, Monsanto Co.

DIVERSIFIED FIRMS

Duties: Same as above, but these tend to be traditional law firms that evolved into a government law and lobbying mix

NOSSAMAN, GUTHNER, KNOX & ELLIOTT

San Francisco, Sacramento, Washington, D.C.

Full-service law plus lobbying

70 lawyers

John T. Knox, partner—former state Assembly Speaker Pro Tem

John F. Foran, partner, heads Sacramento lobbying office—former state Senator

William T. Bagley, partner—former state Assemblyman

Richard Spohn, partner—former state consumer affairs director

Partial list of clients: Aetna Life & Casualty, Association for California Tort Reform, Avis Rent-A-Car, California Public Defenders Association, General Electric Co., Recording Industry Association of America, Southern California Edison

GREVE, CLIFFORD, DIEPENBROCK & PARAS

Sacramento

Traditional law plus lobbying

50 lawyers

Joseph S. Gray, Scott R. Keene, Thomas S. Knox, Paula Treat, lobbyists

Partial list of clients: State of Hawaii, Government of Japan

LIVINGSTON & MATTESICH

Sacramento

Traditional and government law plus lobbying

Six lawyers (including one of counsel) and one nonlawyer lobbyist

Gene G. Livingston, president—former director, state Office of

Administrative Law

James M. Mattesich, partner—former general counsel, state Office of Administrative Law

Partial list of clients: California Pyrotechnics Association, Educational Testing Service, Miller Brewing Co., National Association of Social Workers, State Farm Insurance Co.

POLITICAL LAW FIRMS

Duties: Advise political clients and candidates on campaign law, disclosure and reporting requirements. Little or no lobbying.

NIELSEN, MERKSAMER, HODGSON, PARRINELLO & MUELLER

Sacramento and San Francisco

Very limited legislative and substantial agency lobbying

23 lawyers

"Chip" Nielsen, managing partner—former California Assembly

chief administrative officer, former assistant deputy state controller

Steven A. Merksamer, senior partner—former chief of staff to Governor George Deukmejian

Robert W. Naylor, partner—former California state Republican

Party chairman, former Assembly Minority Leader

Timothy H. Flanagan, partner—former chief deputy appointments secretary to Governor Deukmejian

Partial list of clients: Amway Corp., General Mills, Howard Hughes Properties Ltd., The Irvine Co., Lorillard Inc., Merck, Sharp & Dohme, Pfizer Pharmaceuticals, Philip Morris Companies, RJR/Nabisco, Southland Corp., The Tobacco Institute

OLSON, CONNELLY, HAGEL & FONG

Sacramento

No lobbying

Five lawyers, six paralegals to do political reporting work

Lance H. Olson, senior partner

Assemblyman Lloyd G. Connelly (D-Sacramento), of counsel

Clients: Democratic Party officeholders, for whom the firm prepares campaign disclosure reports and handles other reporting requirements and financial records

REMCHO, JOHANSEN & PURCELL

San Francisco

No lobbying

Eight lawyers

Joseph Remcho, Robin Johansen, Kathleen Purcell, partners

Clients include the Democratic leadership in the state Legislature

—SIGRID BATHEN

SOURCE: 1989-90 DIRECTORY OF LOBBYISTS, LOBBYING FIRMS AND LOBBYIST EMPLOYERS; CALIFORNIA SECRETARY OF STATE; FIRM RECORDS

According to state financial disclosure records, Jackson's lobbying fees have exceeded \$1 million annually for several years, making him the state's highest-paid lobbyist.

"Years ago you had lawyers who practiced law and lobbied, starting as I did, sort of by accident," Jackson recalls. "[Now] there is a new phenomenon in Sacramento, with traditional law firms becoming much more attuned to legislation and policymaking. It actually started about 10 years ago. A lot of firms came to Sacramento from Los Angeles and San Francisco, but—in a nutshell—they didn't know what they were doing. Now they're beginning to figure it out."

Gene F. Erbin, counsel to the Assembly Judiciary Subcommittee on the Administration of Justice, agrees that law-lobbying firms are "growing in presence" in Sacramento. "It's a better service to their clients, full service to their clients," he says. "For a long time there was a sort of law school mentality—you study case law and you get this fixation on judicial resolution of problems. But there is growing recognition of a legislative resolution, which may be more effective—perhaps less expensive, less adversarial."

"If they don't lobby in the Legislature, they lobby the agencies," he continues. "You can accomplish a lot in the regulatory environment. You can get a waste disposal site, power plant production, all sorts of weird little things. Everything out there is regulated."

The combination of law and lobbying, however, raises a host of ethical questions for lawyers, who must register as lobbyists if their activities before the Legislature or state agencies fall within the complex guidelines of the state's Political Reform Act of 1974. And there are concerns about State Bar rules that prohibit nonlawyers from becoming law firm partners (rule 1-310), entering business transactions adverse to a client (rule 3-300) and representing parties with interests adverse to a client (rule 3-310).

Assemblyman Lloyd G. Connelly (D-Sacramento), chairman of the Assembly Judiciary Subcommittee on the Administration of Justice, is one lawyer-legislator who is uncomfortable with the new style of advocacy. "Some of this gets very gray," says

Connelly, of counsel to the Sacramento law firm of Olson, Connelly, Hagel & Fong. "Are you acting as a lawyer in an administrative hearing or as an advocate? I think it's better that [lawyer-lobbyists] not do campaign law and legislative advocacy. It raises the risk that the firm is doing legislative advocacy directed at one of their clients."

Yet Connelly's views represent something of a minority opinion. Lawyers interviewed for this article generally expressed no great concern about diversified practice, and felt confident they could walk the ethical minefield successfully so long as they used caution and common sense.

A KEY PLAYER in the booming lawyer-lobbyist market in Sacramento—and the fastest-growing small law firm in the country—is Heron, Burchette, Ruckert & Rothwell. According to the monthly publication *Of Counsel*, the Washington, D.C.-based firm doubled in size this year, growing from 88 to 174 lawyers nationwide. In Sacramento, Heron Burchette represents a wide range of insurance, agricultural and business interests, as well as the committees and sections of the State Bar of California.

"Basically, we took our Washington model and developed it here," says Jackson R. Gualco, who was a special assistant to Assembly Speaker Willie Brown from 1981 to 1985. Gualco is one of seven nonlawyer lobbyists in the Sacramento office, which includes 10 lawyers.

"The nonlawyer element has been a part of this firm's fabric from the beginning," Gualco says. "To solve our clients' problems, we will assemble whatever talents are needed." The firm includes lobbyists and lawyers from both political parties; many are former state employees and political advisers.

Heron Burchette lobbies both in the Legislature and before state agencies. Gualco echoes the views of many other lobbyists when he says the regulatory process is increasingly important. "If the Legislature is going to get a bill out, it will leave it up to the regulatory agency to put the meat on it," he comments. "The

agencies have been granted additional powers—departments have sweeping general authority."

Gualco agrees with Clay Jackson that legal training does not easily translate into lobbying skill. "People have to recognize that the Legislature is an entirely different field of play," he says. "So much is done on an informal basis. Those who are very structured probably won't do well."

Heron Burchette partner William J. Thomas says the firm is also expanding its "more traditional legal practice" in Sacramento. But he adds, "Many of the folks who are 'just lawyers' are get-



WILLIAM J. THOMAS OF HERON, BURCHETTE, RUCKERT & ROTHWELL:
"MANY OF THE FOLKS WHO ARE 'JUST LAWYERS' ARE GETTING INTO THE ADMINISTRATIVE AGENCIES."

ting into the administrative agencies. There is movement from both sides—lobbyists to agency work, agency to lobbying. I suppose I spend most of my time in the middle zone.”

Longtime California firms are competing with the newcomers for the same territory. Kronick, Moskovitz, Tiedemann & Girard, which employs approximately 60 lawyers and represents a wide variety of local government and business clients in Sacramento, merged several years ago with Walters & Shelburne, a law firm headed by lawyer-lobbyist Robert G. Walters. Judith A. Harper, a former State Bar lobbyist and Sacramento County Bar Association president now with Kronick Moskovitz, says, “Sacramento firms have come to realize that [lobbying] is part of being a full-service law firm, offering your clients a full range of services.”

Greve, Clifford, Diepenbrock & Paras, a 50-lawyer Sacramento firm with a successful civil practice, moved into lobbying a little bit at a time. “We started out as general practitioners,” explains Thomas S. Knox, a partner and registered lobbyist. “But in the last four or five years we have increasingly developed a public affairs practice.”

Knox says the firm’s insurance defense work led naturally to regulatory law and lobbying. “The practice develops into regulatory hearings and representation before quasi-judicial licensing agencies such as the state Board of Medical Quality Assurance. Then it’s only a half step into quasi-legislative rulemaking. From there it’s only another half step into what you might call full-bore lobbying, not only in the Legislature or with the agencies, but organizing political approaches to solving problems.”

“There are a lot of shadings on this,” Knox says, “and our sort of side-stepping into it indicates how you get there.”

Not surprisingly, many effective government law and lobby-

Bagley says the 70-lawyer firm, which also maintains an office in Washington, D.C., is unique among government law and lobbying firms because “probably 75 or 80 percent of our people have real governmental experience. We are not a lobbying firm per se,” he contends, but in an increasingly common practice, the firm includes several nonlawyer lobbyists on its staff.

Gene G. Livingston, a Sacramento lawyer who once headed the state Office of Administrative Law, now runs his own diversified firm, Livingston & Mattesich. The firm offers a blend of legal advice and lobbying on governmental affairs for such clients as Miller Brewing Co. and the National Association of Social Workers. About a third of the firm’s time is spent lobbying regulatory agencies. “We’re in a position to figure out if a lawsuit, a regulation or legislation may be the best remedy for a client,” Livingston says. “At times we can use combinations of those.”

The rapid growth of lawyer-lobbyist firms is paralleled by the burgeoning field of so-called political law practice. (See “Campaign Counsel,” May 1988.) Lobbying is generally not a function of these firms, which primarily provide political advice to candidates and officeholders.

“It was a decision of mine when I set up this firm that I didn’t want to do lobbying, especially since we represent and work with many lobbyists,” says “Chip” Nielsen, managing partner of the premier Republican political firm Nielsen, Merksamer, Hodgson, Parrinello & Mueller. Although the firm is registered for a substantial complement of agency lobbying, Nielsen says the role of the legislative lobbyist is radically different from that of traditional lawyers—even political ones. “They lobby,” he says. “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.’ I like my lawyers showing up in the office every morning.”

Steven A. Merksamer, Nielsen’s partner and Governor Deukmejian’s former chief of staff, adds that the firm’s separation of law and lobbying is solely for practical reasons. “We just prefer to operate that way,” he says. “It’s not to say we will always do it that way.”

THE LURE OF law firm diversification is not without hazards. Lawyer-lobbyists Bagley, Franchetti and others concede that attorneys often become involved in the legislative or agency process without registering as lobbyists with the Fair Political Practices Commission.

“There are a helluva lot of lawyers who probably should be registered, in a technical sense,” Bagley says. “A lawyer practicing law in Milpitas who has to come to

Sacramento [to lobby] 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.”

Sandra Michioku, spokesperson for the FPPC, says the law requires that anyone who receives at least \$2,000 in a calendar month “for the purpose of influencing legislative or administrative action, and who has

(Continued on p. 110)



JUDITH A. HARPER OF KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD:
“SACRAMENTO FIRMS HAVE COME TO REALIZE THAT [LOBBYING] IS PART OF
BEING A FULL-SERVICE LAW FIRM.”

ing operations employ former state officials and, increasingly, former legislators. The San Francisco-based firm of Nossaman, Guthner, Knox & Elliott includes among its partners three veteran legislators: former state Assembly Speaker Pro Tem John T. Knox, former state Senator John F. Foran and former Assemblyman William T. Bagley. Knox and Foran are registered lobbyists; Bagley provides legal advice on political and governmental matters.

Lobbyists

(Continued from p. 38)

direct contact with officials" must register with the commission. The act also applies to any person who receives "any amount of compensation and makes at least 25 separate direct contacts with officials seeking to influence [action] in two consecutive calendar months." The regulations exclude testimony before regulatory agencies at the request of the agency or on the witness's initiative, or written comments on the public record—so long as no other contacts or attempts to influence action are made.

"The laws don't need to be tightened, they need to be repealed," says Bagley. "It's absurd what clients and attorneys have to go through to comply with the law."

Franchetti says he probably "over-registers" rather than risk an offense under the complex Political Reform Act, although he acknowledges that many others don't. "There are a lot of people up here lobbying who are lawyers. It's my observation that if they were not lawyers they would have to register as lobbyists. I can see where some individuals might find it convenient not to register and claim that they're doing legal work to avoid the restrictions. My policy has been to always register if I'm appearing before a regulatory agency, unless I check with the FPPC."

Some lawyer-lobbyists, legislators and legislative staff express concern that lawyers representing clients in Sacramento may be unaware of registration requirements. One top legislative lawyer who asked not to be identified cited a prominent Southern California adoption lawyer who closely monitors legislation in his field. "When those bills are heard, he spends a lot of time on the phone, in committee," says the lawyer. "I don't know whether he registers—or whether he should. My guess is that there aren't very many who come here and lobby on a regular basis [who are not properly registered]."

Another troubling issue for firms that hire nonlawyer lobbyists is the matter of pay and status. Influential and well-connected nonlawyer lobbyists command high fees, yet State Bar rules of professional conduct prohibit their being made partners in firms. In addition, legal fees must be kept separate from lobbying fees. Some firms, like Jackson's and Franchetti's, have solved the problem by forming two organizations—one for lob-

bying, one for law. Sometimes, however, the distinctions blur.

The District of Columbia Bar is considering whether to modify the American Bar Association's rule barring nonlawyer partnerships. "There have been a number of professional rules that prohibit a nonlawyer from having a proprietary interest in a law firm," says Owen Malone, an ethics counsel to the D.C. bar. Under the proposed modification, "a person who is integral to the operation of the law firm" could become a partner, although "there are a number of conditions attached to it," Malone says.

In a fall 1988 article in the *Georgetown Journal of Legal Ethics*, Malone's associate, ethics counsel Susan Gilbert, concludes that "allowing meaningful participation in law firms by nonlawyers, at least in limited ways, has the potential for significantly improving the delivery of legal services. By choosing to cling to traditional rules banning lawyers and nonlawyers from joining forces, the ABA and jurisdictions following its lead have ignored important changes in the legal profession and in the needs of those who use legal services."

Although not aimed specifically at nonlawyer lobbyists, the D.C. bar's rule modification would have a substantial effect on their standing in local law firms; it could affect how they are regarded by other state bars as well.

For all the growth of diversified law-lobbying firms in Sacramento, Assembly Judiciary Committee Chairman Phillip Isenberg (D-Sacramento), a family law specialist and former mayor of the city, says he does not think the phenomenon is particularly significant. "I do not detect a vast entry into conventional lobbying," Isenberg says. "There will be people who dabble and those who have a significant interest, but this is not the equivalent of the Manhattanization of Sacramento."

But Lance H. Olson, a founding partner of Olson, Connelly, Hagel & Fong, says the lawyer-lobbyist trend "may well be the wave of the future. Many if not most of the law firms have registered lobbyists and have people who do governmental relations work. Many of the large firms are well connected politically, and it's natural that they get involved in this area.

"I think they're waking up to the fact that they have to have a presence in the Legislature."

Sigrid Bathen, a Sacramento-based senior writer for CALIFORNIA LAWYER, writes the monthly Capitol Insider column.