



# ENGROSSMENT\*

## WE'LL SEE YOU IN SAN DIEGO AT THE STATE BAR ANNUAL MEETING

We have organized a panel of experienced attorneys and an appellate judge to address legislative history, which is to be presented at the State Bar Annual Meeting in September of 2005 in San Diego. The title of our panel is "**Win Your Next Case Using Legislative History.**" This is our *second year* of presenting this panel. The first panel at last year's Meeting was very well received and we were encouraged to do it again.

Our panel of experts will guide you towards understanding the legislative process and the use of legislative history materials in court. Learn how to use legislative history documents to support your arguments and win! Learn from a respected court of appeal judge what courts consider in deciding whether to accept legislative history materials.

We invite all interested to join us for a lively discussion on *Friday morning, September 9<sup>th</sup>, 10:00 a.m. to 12:00 p.m.*

## TIME TUNNELING

It might be the lazy days of summer, but history still marches forward, always demanding us to look backwards. Because legislative history research never rests around here, it seemed like a good idea to bring up three specific historical events that might be of interest to our clients. This quarter's SUMMER ISSUE focuses, *albeit very briefly*, on the early codification of federal and California laws, and on the Napoleonic Code. Relax, enjoy a glass of lemonade, and read. There's no test at the end . . . .

## FEDERAL CODES

For quite a few years, LEGISLATIVE INTENT SERVICE has been able to efficiently gather and compile surviving documents on federal public laws from Congressional Depository libraries in Northern California, which include House and Senate bills ranging from the late 1700's to this moment being discussed in Washington. We have also learned during these years, that the legislative history of federal laws is not an exact science – it takes creative effort, research collaboration, and years of experience to lead us to a successful compilation and collection of all available relevant materials.

The challenges in federal research draw from a long history of inconsistent and disorderly legislation, acts, and case laws.

Our federal statutes were originally compiled and organized at the request of President Millard Fillmore in 1851, who appointed "a commission to revise the public statutes of the United States, arranging them in order, supplying deficiencies, correcting incongruities, simplifying their language, and reporting them to Congress for its action." (December 2, 1851) As President Fillmore indicated in his Second Annual Message, "The public statutes of the United States have now been accumulating for more than sixty years, and, interspersed with private acts, are scattered through numerous volumes, and, from the cost of the whole, have become almost inaccessible to the great mass of the community. They also exhibit much of the incongruity and imperfection of hasty legislation. As it seems to be generally conceded that there is no 'common law' of the United States to supply the defects of their legislation, . . ." (Id.)

However, organizing the federal acts and statutes did not occur quickly. For example, in 1861, President Abraham Lincoln said that "I respectfully recommend to the consideration of Congress the present condition of the statute laws, with the hope that Congress will be able to find an easy remedy for many of the inconveniences and evils which constantly embarrass those engaged in the practical administration of them. . . . I am informed by some whose opinions I respect that all the acts of Congress now in force and of a permanent and general nature might be revised and rewritten so as to be embraced in one volume (or at most two volumes) of ordinary and convenient size . . ." (December 3, 1861, Washington, First Annual Message)

There were post-Civil War attempts to codify our federal laws and finally in 1926 the United States Codes were created, organized by Titles into fifty areas of federal law. In 1927, West Publishing Co. published the first unofficial, annotated edition of the U.S. Code, entitled *United States Code Annotated*.

For those who have ordered legislative history of public laws from us, you know that successful enactments are usually accompanied by years of failed bills that, like the enacting bill, generated reports, hearings, committee prints, debates, and secondary sources providing background articles and summaries, all of which becomes important to your search for answers to your issues regarding the federal statute.

\* *The process of comparing the printed bill to ensure it looks like the original and to verify that amendments have been correctly inserted.*

## CALIFORNIA'S FIELDS OF VISION

Much of California's current laws can be traced to the 1872 original adoption of the California Civil Code, Code of Civil Procedure, Political Code, and Penal Code. When we research of these first four Codes, we look **prior to 1872** for early New York or Louisiana laws, our 1850's California Practice Acts, Fields Drafts of New York laws, and even the Napoleonic Code for their genesis. The 1872 effort followed the appointment of a Code Commission in the late 1860's by the State Legislature. Stephen J. Field was an important contributor and, importantly, was one of the brothers of David Dudley Field, who drafted the New York codes and promoted the establishment of federal procedural rules. In 1849, Stephen brought Dudley's drafts to California as he followed the glint of the gold rush.

The Fields brothers came from a family whose ancestors were pilgrims and whose other siblings were quite successful: Dudley was a leader in the New York legislature; Stephen, a leader in California, became a California Supreme Court Justice and later a U.S. Supreme Court Justice; Henry edited a Presbyterian newspaper; Jonathan led the Massachusetts legislature and revised its state's statutes; Matthew built the longest suspension bridge at that time; and Cyrus laid the first transatlantic cable. Their sister, Emelia, married a missionary who was the first to introduce European education into the Turkish empire, and her son also became a U.S. Supreme Court Justice.

Dudley Field was an extremely intelligent and intense individual, who seemed unable to endear himself to his professional peers but he persevered in his vision for reform of the judicial system and codification of all laws, both procedural and substantive. For all of this effort by Dudley, much of what he worked on was never adopted in New York. As observed in the 1895 ALBANY LAW JOURNAL, while Dudley served as chair of the New York Code Commission, he worked "substantially alone" and he was "only measurably successful" in New York. (ALB. L.J., Vol. LI, pp. 40 and 41) One of the reasons for his "measurable" success was discussed by Floyd Clarke, author of the 1898 "Science of Law and Lawmaking," who explained that "For many years a discussion went on between two factions of New York lawyers. The point at issue concerned the proposed adoption by that State of a codification of Common Law known as the Field Civil Code. Year after year, the venerable author of that Code presented it to the Legislature for passage. Year and year, with equal untiring energy, the Champions of the Common Law system met him in public and private debate. The result has been that the Field Civil Code remains neither a

text-book nor a Statute." (p. 33) While not adopted in New York, Dudley's Civil Code was adopted in the Dakotas, California, Idaho and Montana.

When Stephen Field brought his brother's civil and criminal codes of procedure, he took the drafts as his guide, modifying and adding to these codes to conform to California. Prof. Carl Swisher, in his "Stephen J. Field, Craftsman of the Law," noted that "[Stephen's] ability to adjust the acts to the needs of California indicates that he had not been idle at the time when Dudley was working at the task of codification a few years earlier." (p. 55)

## FRENCH INFLUENCE

Some of the 1872 California Codes contain references to early Louisiana case laws, which followed France's Civil Code. On March 21, 1804, the **Code Napoleon** was voted into law. According to Cambridge's Modern History, "The codification of French law . . . was the fulfillment of an aspiration, as old at least as the fifteenth century, and partially realised by the ordinances of kings and the textbooks of jurists—an aspiration for the legal unity of France, for 'one weight, one measure, one law.'" (pp. 148)

Will and Ariel Durant's "Age of Napoleon" stated that the Code Napoleon arose from "a nation in economic, political, religious, and moral disarray" after the coup de'etat of 1799. (p. 179) A Commission was formed and after 87 sittings, the Civil Code was taken up, title by title, with Napoleon presiding at 35 of the sittings. "The Code accepted and applied the basic principles of the Revolution: freedom of speech, worship, and enterprise, and equality of all before the law; the right of all to public trial by jury; the end of feudal dues and ecclesiastical tithes; and the validity of purchases made, from the state, of confiscated church or seigniorial property. But—following Roman law—the Code accepted the family as the unit and bastion of moral discipline and social order, and gave it a basis in power by reviving the *patria potestas* of ancient regimes . . ." (p. 181)

The Code Napoleon completely replaced all prior French laws and customs to the point, as observed in 1928 by Sir Maurice Amos, that "it is remarkable today how rarely in the application and interpretation of the French Code, the attention of the judge is invited to any legislative text or judicial decision prior in date to 1804." (page 224 of "The Code Napoleon and the Modern World")