

9-11-1989

## Conference Committee Hearing on SCA 32 (Roberti), Volume 1

Senate Conference Committee on SCA 32

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CALIFORNIA LEGISLATURE

**CONFERENCE COMMITTEE HEARING  
ON SCA 32 (ROBERTI)**

VOLUME I

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State Capitol  
Sacramento, California

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HEARING  
STATE LEGISLATURE  
STATE OF CALIFORNIA

CONFERENCE COMMITTEE ON SCA 32 (ROBERTI)

VOLUME I

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 11, 1989  
5:00 P.M.

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Evelyn Mizak  
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI  
SENATOR JOHN DOOLITTLE  
SENATOR BARRY KEENE  
ASSEMBLYMAN WILLIE BROWN  
ASSEMBLYMAN ROSS JOHNSON  
ASSEMBLYMAN JOHN VASCONCELLOS

STAFF

CLIFF BERG, Executive Officer  
Senate Rules Committee  
  
TIM HODSON, Consultant  
Senate Elections Committee  
  
DEBORAH MITTEN, Secretary  
Senate Elections Committee  
  
ALVIN GRESS, Counsel  
Legislative Counsel's Office

ALSO PRESENT

WALTER ZELMAN, Legislative Advocate  
California Common Cause  
  
MIKE DORAIS, Legislative Advocate  
California Newspaper Publishers Association  
  
LILY SPITZ  
Fair Political Practices Commission  
  
ASSEMBLYMAN PAUL WOODRUFF

I N D E X

	<u>Page</u>
1	
2	
3	1
4	1
5	
6	2
7	4
8	4
9	5
10	5
11	5
12	5
13	6
14	7
15	7
16	7
17	
18	9
19	9
20	11
21	
22	
23	11
24	15
25	18
26	19
27	20
28	

I N D E X (Continued)

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Conflict of Interest Issue

21

Removal of Legislature's Exemption

21

Questions by ASSEMBLYMAN BROWN re:

Reason for Exemption in Prop. 9

21

Comments by ASSEMBLYMAN VASCONCELLOS

22

Vote of People on Prop. 9

22

Possibility of Subjecting Legislature to  
Vote on Possible Salary Increase

24

Subject Proposal for Salary Increase  
to Referenda

25

Questions by SENATOR KEENE re:

Tying Ethics Package to Salary Increase

25

Tying Statutes to Approval of Constitutional  
Amendment

26

Proposal for Voting on Salary Increase

26

Questions by ASSEMBLYMAN BROWN re:

Refusal to Take Salary Increase if  
Legislator Voted No

27

Statement by ASSEMBLYMAN JOHNSON

27

Questions by SENATOR KEENE re:

Allowing Legislators to Reject Salary  
Increase

28

MIKE DORAIS, Legislative Advocate  
California Newspaper Publishers Association

29

Open Meeting Guarantee

29

Party Caucuses Subject to Private Closure

30

Questions by ASSEMBLYMAN JOHNSON re:

Kinds of Exceptions

30

Assurance to Prevent Potential Abuse  
of Attorney-Client Exception

31

I N D E X (Continued)

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Analogous Kinds of Litigation 31

Requirement of Same Notice Requirements  
for Exceptions with Subject Matter  
Delineated 31

Tape Recording Executive Sessions 32

Exception of Party Caucuses 33

Distinction between Party Caucus and  
Committee Meeting 34

Necessity for Strong Open Meeting  
Requirement 36

Appropriate Notice Prior to Closed  
Meeting 36

Questions by ASSEMBLYMAN VASCONCELLOS re:

Definition of Proceedings of the  
Legislature 37

Necessity for Quorum 37

Questions by SENATOR KEENE re:

Social Affair with Quorum of Committee  
Members Present 38

LILY SPITZ  
Fair Political Practices Commission 38

Honoraria 39

Suggested Word Change 39

Ban Applied to Written Works, and Ban on  
Travel Expenses for Written Works 40

Outside Earned Income 40

Need for Compensation Commission to Have  
Specific Authority on Limiting Income 40

Questions by ASSEMBLYMAN JOHNSON re:

Possibility of Discouraging Successful  
Individuals from Entering Politics 41

Real Issue Should Be Conflict of Interest 41

I N D E X (Continued)

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Necessary Parameters to Guide Commission 42

Unearned Versus Earned Income 43

Statements by ASSEMBLYMAN JOHNSON re:

Support to Decision to Prohibit Gifts  
and Honoraria 43

Strong Reservations on Banning Outside Earned  
Income that Doesn't Represent Conflict of  
Interest 44

Questions by SENATOR KEENE re:

Proposal for Salary Commission to Make  
Recommendations to Legislature re:  
Restrictions on Outside Income 44

Questions by ASSEMBLYMAN BROWN re:

Tenure with Commission 46

Revolving Door Issue 46

Staff People and Appointees 47

Questions by ASSEMBLYMAN JOHNSON re:

Revolving Door with Respect to Staff 49

Necessity to Know Details of Statutory  
Enactment 50

Legislative Staffers Going off Payroll for  
Partisan Political Campaigns 51

ASSEMBLYMAN PAUL WOODRUFF 51

Draft Language on Open Meeting Provision 51

Adjournment 52

Certificate of Reporter 53

P R O C E E D I N G S

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2  
3 SENATOR ROBERTI: The conference committee will come to  
4 order, the conference committee on Senate Constitutional  
5 Amendment 32.

6 The Senate Members are Roberti, Keene and Doolittle.  
7 The Assembly Members are Speaker Brown, Vasconcellos and Johnson.

8 The Constitutional Amendment before us this afternoon  
9 represents the work product of both the Senate and the Assembly.  
10 The product began with Assemblyman Vasconcellos having a series  
11 of hearings on his ACA 15. The State Senate has passed this  
12 legislation. Assemblyman Vasconcellos' bill in the Assembly was  
13 incorporated in our legislation. The bills have had different  
14 courses but pretty much are all geared toward reforming the way  
15 we do business in the State Legislature, to hopefully constrain  
16 some of those activities which the public fears puts us in a  
17 conflict appearance, if not actual conflict, in the way we do the  
18 public's business and the way the Legislature is remunerated.

19 At the same time, most people who have studied all  
20 aspects of the legislative remuneration recognize that the  
21 Legislature today has a salary that has not kept pace with the  
22 cost of living over the 22 years in which the current formula has  
23 been in operation. This, more than anything else, has caused  
24 Legislators to try to find other ways in which to seek  
25 remuneration to do all the things that a person has to do in life  
26 when they hold a full-time position, and have families to  
27 support, and homes on which there's a mortgage that has to be  
28 paid, just to name a few items.

1 This Constitutional Amendment represents the culmination  
2 of a tremendous amount of work on the part of both Members and  
3 staff. As it has wended its way through the Legislature, new  
4 points have been added. Certainly the most significant of those  
5 points in the last couple of weeks has been the attempt to  
6 include open meetings legislation, along with the general reforms  
7 that we are contemplating.

8 Right now before us is SCA 32. Provisions of ACA 15  
9 have been amended into it, and we would now like to take  
10 testimony from the public on either version of the bill, as well  
11 as recommendations that members of the public might have as to  
12 how the legislation before can be change to make it better.

13 If anyone wishes to testify, please come forward.

14 You're first.

15 MR. ZELMAN: Am I it?

16 SENATOR ROBERTI: No, you're not it. I think Mr. Dorais  
17 is coming later.

18 Mr. Walter Zelman, representing Common Cause.

19 MR. ZELMAN: Thank you, Mr. Chairman.

20 We have circulated -- I believe all of you should have  
21 our draft of -- unfortunately, I put September 14th on it; I was  
22 a little ahead of the game -- but our most recent draft  
23 suggesting our recommendations to the package as we have last  
24 seen it.

25 I want to commend you all on the efforts to get to this  
26 point in time, and I think how you fare today, and how your  
27 colleagues fare when this comes out of this committee will  
28

1 largely determine the success of the efforts made this year, and  
2 they have been prodigious efforts by many Members of both  
3 parties.

4 SENATOR DOOLITTLE: Question, Mr. Chairman.

5 SENATOR ROBERTI: Yes, Senator Doolittle.

6 SENATOR DOOLITTLE: Mr. Zelman, I have something from  
7 you.

8 MR. ZELMAN: Yes.

9 SENATOR DOOLITTLE: Is this the one you referred to?

10 MR. ZELMAN: That's it.

11 SENATOR DOOLITTLE: September --

12 MR. ZELMAN: The next one on my home computer doesn't.  
13 We tried to correct that flaw.

14 The decision making process, I think, that you have all  
15 been going through for approximately the last eight months has  
16 really come down to this bill for the moment. And that's really  
17 a concept of establishing a Salary Commission, which Common Cause  
18 has long endorsed, and we will be on the record as saying we  
19 believe you should get higher salaries, although this amendment  
20 does not say that. A Salary Commission, and laying out  
21 principles in an ethics package that will later require statutory  
22 detail to be filled in.

23 Our goal is to try to convince you to put the maximum  
24 number of such principles in this SCA, and to make those  
25 principles strong and effective.

26 My testimony today is really based on two goals: one is  
27 to suggest what I think you should put into SCA 32 that isn't  
28

1 there, or strengthen a few provisions; and secondly, to tell you  
2 what we believe will help win voter approval of SCA 32.

3 Fortunately, the two goals don't conflict.

4 I think it's important to -- turning our attention to  
5 the Salary Commission specifically, and to the goals of what you  
6 put in here and how you make this as strong as possible, and as  
7 credible as possible to the public, to keep in mind that the last  
8 time this was put on the ballot was 1978. Senator Mills put it  
9 on. As I recall, Common Cause signed the ballot argument, and it  
10 lost overwhelmingly. So, that's a precedent.

11 We also have the recent federal precedent, so we have to  
12 keep in mind this is not going to be an easy thing to pass. So,  
13 we have to do a lot to it, I think, to make it as positive as  
14 possible.

15 We would -- quickly, I will go through our  
16 recommendations which follow along the line of the memo we sent  
17 to you this morning.

18 On the Salary Commission, we would strengthen the Salary  
19 Commission a little bit by designating that some of the -- where  
20 some of the public members appointed by the Governor might come  
21 from. We've listed a few of those possibilities. We don't say  
22 that those are the best; we say there are some that we think  
23 perhaps the Governor's discretion should be limited a little bit  
24 in terms of some of these kinds of possibilities in terms of  
25 suggesting where they come from.

26 We suggest taking out the language that one of the  
27 business representatives be from a top 100 firm. That's just a  
28 red flag. Large businesses, fine.

1           And we believe there ought to be in here some kind of  
2 statement of principle. The principles we hold are  
3 contradictory. That is that you should be paid according to your  
4 responsibilities, and yet you have to recognize and we should  
5 follow the principle that public officials simply should not  
6 expect to make what they might make for comparable  
7 responsibilities in private industry. That's the reality, and it  
8 always probably will be the reality, but we think a statement  
9 like that will help secure the public support that the  
10 Legislature isn't thinking about some salary comparable to chief  
11 executives in corporations.

12           Lastly, we also believe you should take out the  
13 reference to Congress. That's just another red flag. Nobody's  
14 even dreaming of salaries in that realm, and we don't want people  
15 to use it against us.

16           SENATOR ROBERTI: We agree.

17           MR. ZELMAN: On the question of honoraria, which is the  
18 second element in our argue, we have suggested some language on  
19 honoraria. We think this is, perhaps, the toughest issue of all  
20 beyond the campaign finance issue in terms of potential conflicts  
21 of interest, in terms of potential abuse, in terms of public  
22 criticism, and we just urge you to take language like this and to  
23 not weaken some of these provisions.

24           We think publications should be covered; although, we  
25 think it should be written in such a way that if we think if  
26 somebody writes for a bona fide publication or writes a book,  
27 that's acceptable. But there's a difference between writing an  
28

1 article for the Los Angeles Times or Atlantic Monthly, and  
2 writing an article, getting \$500 for writing for the  
3 pharmaceutical newsletter.

4 SENATOR ROBERTI: I agree with you in principle on that,  
5 except that it's very difficult to draft language, I think, to  
6 differentiate between, say, the Los Angeles Times and a  
7 pharmaceutical weekly, or whatever it would be. It would be  
8 difficult.

9 MR. ZELMAN: Well, we've played with terms like general  
10 circulation, is one term, those kinds of things, as opposed to  
11 limited circulation, which just goes to the membership.

12 SENATOR ROBERTI: The correspondent from the L.A. Times  
13 is smiling. He's wondering why anybody would want to be asked to  
14 write for the L.A. Times.

15 MR. ZELMAN: The matter of gifts, which comes up again  
16 and again, has been from day one the toughest one for us. As  
17 soon as you say you can't take any gifts at all, you start  
18 noising: well, what about the plaque, what about the political  
19 reception? There are hundreds of exceptions to a ban on gifts,  
20 and it becomes impossible; it becomes a 20-page statute. And you  
21 have a good 20-page statute that Mr. Vasconcellos' committee came  
22 up with. Obviously, that can't go in here.

23 We've been trying to find some concept or some principle  
24 to put in, and the closest we've been able to come is that the  
25 Legislature shall enact a stiff limitation on gifts, especially  
26 gifts from those who would wish to influence the process.

27

28

1           Any way, if you insist on putting a number in, and we  
2 know the number 250 has been quoted, personally we think that's  
3 too high. But if you insist on putting in a number, then at  
4 least say something like, "no more than" this, and then let's  
5 fight it out when we come to the statute as to what it should  
6 actually be.

7           We think you should add language on gifts of travel,  
8 which have been put in. If you don't add gifts on travel, then  
9 you may be subject to 250, or some other limit on gifts. But we  
10 think that the public has been critical, and the media has been  
11 critical of relatively expensive trips, especially when paid for  
12 by people having interests before you.

13           Our strict interpretation of this is that interstate and  
14 foreign travel should not be paid for by anyone other than bona  
15 fide educational institutions and other government entities.

16           If you feel the need to expand that, or that's  
17 unworkable, then you might want to go to some proposal such as  
18 we've laid out here, by which a House or a joint ethics  
19 committee, of Fair Political Practices Commission, could allow a  
20 Member to go to Israel, or go to Japan, or go to China on some  
21 kind of a trip, providing they submitted evidence that there was  
22 a governmental purpose served, and they didn't see that it would  
23 be a conflict of interest. You might want to play with something  
24 like that, but we think language along those lines should be  
25 included.

26           Outside earned income is another one we've struggled  
27 with. We recognize the legitimate differences of philosophy that  
28

1 exist on this issue. Republicans especially seem to feel people  
2 should be allowed to be part -- citizen legislators, make their  
3 money on the outside as well as on the inside. Democrats tend to  
4 like the professional legislature concept more.

5 There are two ways we can see doing it. One is to just  
6 state the concept that Legislators should do all they reasonably  
7 can to avoid outside -- accepting outside income which might  
8 create the appearance or reality of conflict of interest, and  
9 leave that, in effect, up to an ethics committee to say: okay,  
10 this one is; this one isn't. You should or should not be taking  
11 that money.

12 The other way of doing it that we have played with  
13 before was rejected by the Select Ethics Committee, as I recall,  
14 is to leave that decision -- well, maybe it wasn't -- is to leave  
15 that decision to the commission, and let the commission deal with  
16 the question of outside income. I can even conceive of a  
17 two-track system by which some Legislators might say, "I will  
18 take the higher State legislative salary level and ban my outside  
19 earned income," where some other Legislator might say, "No, I  
20 prefer to make some money on the outside. I'll take a lower  
21 level of State salary in exchange for the tolerance of my making  
22 \$15-20-30,000 on the outside in my private business because I  
23 want to keep my hand in that." I can even see a commission  
24 coming up with something like that.

25 So, one alternative is to leave the outside earned  
26 income question to the commission to resolve.

27  
28

1 ASSEMBLYMAN BROWN: Why would you suggest that outside  
2 income should be left to the commission, and the question of  
3 gifts and travel not left to the commission?

4 MR. ZELMAN: Because I see the outside earned income as  
5 inexorably linked to the salary level. It's a direct  
6 compensation question, how State Legislators and other public  
7 officials should be compensated.

8 For example, I've seen proposals to allow for 30 percent  
9 of salary in outside earned income. The problem with that  
10 proposal is that it's going to do damage to those in the  
11 Legislature that don't want to earn outside earned income,  
12 because the Salary Commission's going to look at that and say,  
13 "Well, they can make 30 percent on the outside; therefore,  
14 reasonable salary is 50." Whereas, if they can't make anything  
15 on the outside, then a reasonable salary may be 65.

16 You're going to hurt those people that don't want to  
17 make money on the outside, and most of you don't.

18 ASSEMBLYMAN BROWN: You referenced, however, you said  
19 the concept of trips had been not terribly acceptable to the  
20 public as you defined it.

21 I assume that that was rooted in some idea that people  
22 would be corrupted by virtue of trips, or influenced by virtue of  
23 trips.

24 You don't think people are influenced more by income?

25 MR. ZELMAN: I think, especially when you have  
26 Legislators making very modest salaries, salaries on which they  
27 could not afford to go to Japan for two weeks, and they get an  
28

1 opportunity, some interest group takes them on a trip to Japan  
2 with their wife for two weeks, or with their spouse for two  
3 weeks, I think that's a sizeable gift.

4 And it's looked upon, I think, by the media, and to the  
5 extent I have any perception of it, by the public as -- that's  
6 where the term "junket" comes from. It's a negative term,  
7 frequently inappropriately applied.

8 ASSEMBLYMAN BROWN: No, junket comes from using public  
9 dollars. You didn't decide to call it a junket until the public  
10 stopped paying for it and somebody else -- you called it a  
11 junket, but you're just beginning to use that term with reference  
12 to trips paid for by, say, a group of interested citizens who  
13 happen to be all Jewish, who are trying their best to create a  
14 favorable image for Israel. So, they've put together a series of  
15 educational opportunities for people to go over there, some in  
16 government; some outside of government. Some in the private  
17 sector; people at the university level; people in your business  
18 of being citizen advocates, and they're all on the same trip.  
19 And they go over with the idea of trying as best they can to give  
20 a better image of what they believe to be their homeland.

21 And it is your belief that that is more corrupting than  
22 somebody accepting income from people who may or may not do  
23 business with the Legislature?

24 MR. ZELMAN: I don't know. I wouldn't necessarily say  
25 one is worse than the other. It depends upon where the money is  
26 coming from.

27

28

1           The trip you're referring to, the Jewish Federation  
2 trip, probably falls in the gray area.

3           If the California Medical PAC were to pay for that trip,  
4 I think people would be concerned. I mean, I think there's a  
5 cause for concern. The California Medical PAC are giving a  
6 Legislator a \$6,000 trip for two weeks to Japan. I think the  
7 public wonders about that.

8           The Jewish Federation --

9           ASSEMBLYMAN BROWN: Mr. Zelman, please.

10          Paul Gann just died.

11          MR. ZELMAN: I express my grief with all of you, I'm  
12 sure.

13          So, that was our view on the outside income question.

14          We do believe that we would expand the limitation on  
15 appearances by Members of the Legislature to include all  
16 government entities for pay. We don't believe it's appropriate  
17 for State Legislators who have influence in a wide variety of  
18 areas to be appearing before State or local government boards, or  
19 commissions, or city councils, for pay.

20          Of course, not for pay is perfectly reasonable and  
21 appropriate. But for pay, we don't believe that's proper. They  
22 represent a government body, and not for pay, that's just fine.

23          ASSEMBLYMAN BROWN: No, no, no, no.

24          How about law firms who represent school boards, that  
25 represent water districts? You can have Members of the  
26 Legislature who are part of those law firms.

27  
28

1 MR. ZELMAN: Our view of it would be at least that  
2 Legislator ought not to be appearing. If the Legislator has a  
3 law firm, and there are other lawyers in the firm that appear,  
4 that's another question.

5 ASSEMBLYMAN BROWN: How do you separate that, though,  
6 Mr. Zelman?

7 MR. ZELMAN: The human being involved. If the human  
8 being is a Legislator, and the human being's law firm is taking  
9 money from a private client, and that Legislator appears before a  
10 local body --

11 ASSEMBLYMAN BROWN: No, no. They represent the local  
12 governmental body.

13 MR. ZELMAN: They represent the local government for  
14 pay. If they represent the local government for pay, we think  
15 that's inappropriate.

16 We think they bring more leverage to that table than the  
17 average citizen, so frequently because they have control over  
18 budgets and other factors, the local government needs them.

19 ASSEMBLYMAN VASCONCELLOS: You're talking about  
20 representing local government before local government. Is that  
21 what the question is?

22 ASSEMBLYMAN BROWN: No. Representing local government  
23 in a fight with you, Mr. Vasconcellos, over whether or not you  
24 should receive compensation for some injury that you received in  
25 an accident involving a local government facility.

26 ASSEMBLYMAN VASCONCELLOS: Okay.  
27  
28

1           Your rule wouldn't apply in that case? It's  
2 representing for pay before a local government or State  
3 government?

4           MR. ZELMAN: Yes.

5           ASSEMBLYMAN VASCONCELLOS: So, if I were representing  
6 Los Angeles School District --

7           MR. ZELMAN: If you want to represent someone in a  
8 court, that's another story.

9           ASSEMBLYMAN BROWN: No, you're representing the local  
10 government agency. You are the law firm for a school district of  
11 San Jose.

12           MR. ZELMAN: And if you're representing the local  
13 government and you go to a court of law, that's one thing. If  
14 you represent the local government, you know, in some  
15 circumstance, it may be fine.

16           The problem is if you represent the local government and  
17 appear before another local government --

18           ASSEMBLYMAN BROWN: Court of law is a State agency.

19           MR. ZELMAN: Yes, but a court of law, perhaps, has --  
20 there's a little less politics; although, it's a gray area, I'd  
21 say.

22           My general view is you probably should not do it.

23           ASSEMBLYMAN BROWN: So this year you get this one, and  
24 next year you get the next one.

25           MR. ZELMAN: No, our general view is, Legislators ought  
26 not to be making money -- ought not to be using the stature they  
27 have, intentionally or not, the stature they have to give them  
28 some leg up in some other process.

1 A normal -- a lawyer who's just an average citizen who  
2 goes before a local government agency, whomever they may be  
3 representing, does not have, I suggest, in some cases the clout  
4 that a Legislator has, because that local government knows I have  
5 to come before the Legislator.

6 ASSEMBLYMAN BROWN: Your interest is in equalizing the  
7 opportunities for everybody.

8 MR. ZELMAN: No, our interest --

9 ASSEMBLYMAN BROWN: Right?

10 MR. ZELMAN: No, our interest is in preventing the  
11 potential conflict of interest that the Legislator may have, or  
12 that the Legislator may have some undue lever of influence, or --

13 ASSEMBLYMAN BROWN: You're trying to equalize the  
14 playing field.

15 MR. ZELMAN: In that case, yes.

16 Do you think there's something wrong with that?

17 ASSEMBLYMAN BROWN: Yeah, I don't subscribe to  
18 mediocrity necessarily.

19 MR. ZELMAN: I don't think it's mediocrity, Mr. Speaker.  
20 I believe it's a fair fight.

21 ASSEMBLYMAN BROWN: If you're trying to equalize the  
22 playing field, and you're trying desperately to make sure that  
23 Doolittle isn't any better than Brown in an arena, you are  
24 pursuing a standard that I don't subscribe to.

25 MR. ZELMAN: I think you ought to pursue excellence.

26 ASSEMBLYMAN BROWN: If I can get Barry Keene, with all  
27 of his enormous ability and skill that he somehow acquired while  
28 being a brain surgeon, trained at the University of California --

1 SENATOR KEENE: And former star of the Roller Derby, I  
2 might add.

3 ASSEMBLYMAN BROWN: Occasionally -- I think I should be  
4 entitled to get him.

5 MR. ZELMAN: I'm glad you gave me the opportunity to use  
6 another example.

7 If Mr. Keene is a lawyer and I'm a lawyer, and we both  
8 appear before --

9 ASSEMBLYMAN BROWN: No, no. Forget the lawyer. He's a  
10 brain surgeon, and you're a brain surgeon.

11 MR. ZELMAN: Whatever it is, Mr. Keene and I both appear  
12 in a contested matter before the Marin County Board of  
13 Supervisors, I suspect that he's got a little bit of a leg up on  
14 me in that fight. I may be just as good as what we're appealing  
15 about, but they have to deal with him as a Legislator, not me.  
16 And he's got a little bit of an advantage. They bend a little  
17 bit to him, and the public perception may be that he's going to  
18 have a leg up on that fight. That's not a fair fight.

19 That's why we oppose --

20 ASSEMBLYMAN BROWN: You have a contemptuous attitude  
21 towards public officials.

22 MR. ZELMAN: No, I do not.

23 ASSEMBLYMAN BROWN: You believe that a public official  
24 cannot be objective with reference to your cause, period, and  
25 that you need to orchestrate a process by which to ensure that  
26 they do. That is rather contemptuous of the ability of elected  
27 officials, Mr. Zelman.

1 MR. ZELMAN: I prefer to differ.

2 ASSEMBLYMAN BROWN: I have the highest respect for them.  
3 I have the highest respect for you.

4 I would not assume that you are somehow less because you  
5 happen to be a citizen advocate. Nor would I suggest that you  
6 are more because you happen to be a citizen advocate. That's the  
7 way you earn your living. You're not doing it out of the  
8 goodness of your heart. You're earning your living doing that.  
9 And it's respectable, and it's appropriate, et cetera, and I  
10 respect you for it.

11 I don't think that you ought to be penalized because  
12 that's all you do.

13 MR. ZELMAN: I don't want anything I'm saying to be  
14 categorized as being disrespectful of anyone. I don't view it  
15 that way.

16 I'm viewing it as a citizen looking at how does the  
17 public view this process. Is the public concerned that this  
18 process, somehow or another, is a biased or unbalanced process?  
19 If it is, I think we should try to correct that, even if it may  
20 not be.

21 There is a problem in this issue area. It has come up,  
22 and I'm expressing our view on it. We may have a difference of  
23 opinion on it, but I don't mean any disrespect of any public  
24 official, either the Legislator or those he or she may be  
25 appearing before.

26 ASSEMBLYMAN BROWN: Don't you think that the title  
27 President of the League of Women Voters is impressive?  
28

1 MR. ZELMAN: Yes, but the President of the League of  
2 Women Voters has no direct power over the budget of that local  
3 government. That's the difference.

4 ASSEMBLYMAN BROWN: How about the head of Common Cause?

5 MR. ZELMAN: I have no power over any of you, except  
6 that to the extent that I can appeal to other forces to leverage  
7 or persuade you.

8 ASSEMBLYMAN BROWN: How about the owner of the  
9 Oakland Tribune? The publisher and the owner of the  
10 Oakland Tribune?

11 MR. ZELMAN: If I were the owner of the Oakland Tribune,  
12 and I wanted to keep the credibility of my paper intact, I'd be  
13 very wary of certain private activities, yes, I would be. And I  
14 think ethical standards of a lot of --

15 ASSEMBLYMAN BROWN: L.A. Times, the same thing.

16 MR. ZELMAN: These are not government bodies, but I  
17 would suggest to them if I were talking to them, I'm sure  
18 Mr. Josephson, who talks about these ethical questions with  
19 people like this all the time, would suggest to them, yes, the  
20 L.A. Times, the boards of directors, and the editors of the  
21 L.A. Times should be very careful about the private kinds of  
22 appearances they make and other kinds of income they have, and  
23 the holdings they may have.

24 ASSEMBLYMAN BROWN: How do we avoid the extraordinary  
25 influence that persons like you would have upon us as  
26 distinguished from just an ordinary citizen, Mr. Zelman? Your  
27 rep. and your image, and what have you, could be devastating in a  
28

1 campaign for the re-election of Ross Johnson or Willie Brown.  
2 And Ross Johnson, Willie Brown have to keep that in mind, as  
3 distinguished from Joe Smallowitz, who just happens to step up  
4 here and may have the same issue that you are debating, but  
5 invariably, Willie Brown or Ross Johnson, according to your  
6 theory, would have to be far more sensitive to your advocacy than  
7 we would to his, because when he leaves he's gone. When you  
8 leave, you walk out and hold a press conference on us and get in  
9 print, full-time, every day, under every circumstance, with lots  
10 of negatives being spewed forth.

11 So, how do we set up a standard of ethics for you that  
12 causes you to restrict yourself in such a way that you don't  
13 exercise undue influence in the policy making process, separate  
14 and distinct and to the disadvantage of ordinary citizens?

15 MR. ZELMAN: I think there are such clear  
16 differentiations between my role and yours that I hardly need to  
17 enumerate them. You have a vote; I don't. You're accountable to  
18 voters; I'm accountable to my board of directors.

19 ASSEMBLYMAN BROWN: Wait. If I'm accountable, should I  
20 not be in a position where I make the decision as to when I  
21 believe that my judgment as being altered by virtue of a personal  
22 relationship or previous relationship? Just as you're in the  
23 position, shouldn't I then disqualify myself appropriately, and  
24 that's all that should happen?

25 MR. ZELMAN: That's certainly one approach to the  
26 situation, but you're not disqualifying yourself if you're  
27 appearing before a local government agency.  
28

1 ASSEMBLYMAN BROWN: If you elect to make the appearance,  
2 you have already decided that you are not exercising undue  
3 influence in that way, Mr. Zelman.

4 You're substituting your judgment for mine or for some  
5 other person. And all I suggest to you is, Mr. Zelman, your  
6 position and our positions are not necessarily as separate and  
7 distinct.

8 You say that it's okay for you to do it because you  
9 don't have a vote. It isn't okay for me to do it because I do  
10 have a vote. I think that's a very narrow, self-serving view.

11 MR. ZELMAN: I'm not an elected public official. I'm  
12 not publicly accountable. I don't have a vote. I have no --

13 ASSEMBLYMAN BROWN: You're not a public official.

14 MR. ZELMAN: I have no direct lever of power. I have  
15 persuasion, yes, but we all have persuasion. You have a vote.  
16 That's very, very different.

17 You are an elected official with public  
18 responsibilities. I am not. That's very, very different.

19 ASSEMBLYMAN BROWN: And I go before the voters regularly  
20 and request -- they're evaluating my performance. And when they  
21 evaluate my performance and re-elect me, Mr. Zelman, they have  
22 said, "What Walter Zelman may or may have said about you,  
23 obviously, we don't care. We want you to be our elected  
24 representative," period, "and regardless of Mr. Zelman's  
25 pronouncements."

26 But Mr. Zelman, you're not prepared to accept that. You  
27 will constantly suggest that there was something wrong with their  
28

1 judgment, and there needed to be some new procedures to, in fact,  
2 in one manner or another regulate the conduct.

3 MR. ZELMAN: Mr. Speaker, I don't believe we're here  
4 today because of me.

5 We're here today because there is a much larger public  
6 perception which Common Cause is only a little bit of the spark  
7 to. So obviously, there's some larger issue here, and if you  
8 don't want to view it that way, we have a difference of views.  
9 But I don't think it's any one individual, or any one  
10 organization, creating what is before us here today --

11 ASSEMBLYMAN BROWN: Nobody wishes to take the  
12 responsibility, Mr. Zelman.

13 We all keep talking about that great group of people out  
14 there, and if you walk around the streets and you say, "What's  
15 the leading problem?" "Crack cocaine." "What's the next leading  
16 problem?" "I don't feel safe in the streets." "What's the next  
17 leading problem?" "I don't have any place to live." What's the  
18 next leading problem?" "I'm hungry. I don't have a job. I  
19 don't like the traffic."

20 You can go 30 times, Mr. Zelman, and I guarantee you,  
21 you won't bump into anybody that says the problem is the trip to  
22 Israel.

23 MR. ZELMAN: Well, I read the stories all the time, and  
24 the sense I get there's a problem.

25 But, Mr. Speaker, someone's going to have the last word  
26 here, and I'll let it be you.

27

28

1           The last issue that we touched in our report deals with  
2 the conflict of interest issue. We believe that the  
3 Constitutional Amendment should remove the exemption that the  
4 Legislature now has from the enforcement of the Political Reform  
5 Act.

6           We do recognize that there was a legitimate reason that  
7 exemption was put in. There are problems applying the Political  
8 Reform Act across the board in conflict of interest to the State  
9 Legislature. You vote on hundreds of bills a day. You  
10 frequently do not know every detail; you may not be aware of the  
11 conflict. So, it is appropriate that some exceptions be carved  
12 out in there in terms of that, and I think the Lempert bill does  
13 that very effectively. As one of your staff people says, it's  
14 taken 15 years to get that language down.

15           But I think in concept, the Legislature should take  
16 itself out of the unique role of being exempt from that  
17 enforcement.

18           ASSEMBLYMAN BROWN: Mr. Zelman, so that there's no  
19 misunderstanding, why don't you tell us how that exemption got  
20 there?

21           The proponents of Proposition 9 at the time, the people  
22 of the State of California, by a vote in 1974 in Proposition 9,  
23 said the Legislature shall not be subject to the same conflicts  
24 of interest provisions as is the case for local elected  
25 officials. That's what the people said; not the Legislature.

26           And so that the listening world will not misinterpret  
27 what you said, I don't want to be tagged with having to put that  
28 exemption in. The people put that exemption in.

1 MR. ZELMAN: I was going to say the proponents of  
2 Proposition 9, of which my organization was one, put it in, but  
3 if you want to take it on the people, that's fine, too.

4 ASSEMBLYMAN BROWN: Well, the people had the vote.

5 MR. ZELMAN: Yes, the people had the vote.

6 ASSEMBLYMAN BROWN: The people had the vote, and more  
7 than members of your organization, I think, participated in that.  
8 The numbers reflect that, at least.

9 SENATOR ROBERTI: Both the organization and the people  
10 put it in.

11 MR. ZELMAN: And the people have also put in a large  
12 number of other amendments which we've all tried to change since  
13 also.

14 I'm just making a suggestion. You don't have to take  
15 it.

16 The last thought I would throw out --

17 ASSEMBLYMAN BROWN: What you're suggesting is, we say we  
18 don't like the exemption, but you're suggesting that we should,  
19 what, remove what the people said?

20 MR. ZELMAN: Basically you should say that the  
21 Legislature is going to be treated the same as others in terms --

22 ASSEMBLYMAN BROWN: You're saying, "You, the people,  
23 were wrong."

24 ASSEMBLYMAN VASCONCELLOS: No, no.

25 What he's saying, if anything, Willie, is that we put  
26 back before the people for them to decide for themselves, not  
27 that we say they're wrong.

1 ASSEMBLYMAN BROWN: Mr. Vasconcellos, a matter which was  
2 voted upon by the people, Mr. Walter Zelman says, he believes was  
3 incorrect, and that they ought to correct it.

4 ASSEMBLYMAN VASCONCELLOS: Believes isn't correct.

5 ASSEMBLYMAN BROWN: He believes that they were incorrect  
6 when they did it, and he believes it ought to be corrected.

7 ASSEMBLYMAN VASCONCELLOS: He believes they ought to  
8 vote upon it again.

9 ASSEMBLYMAN BROWN: But that is changing what they  
10 previously have done.

11 ASSEMBLYMAN VASCONCELLOS: That's their right.

12 ASSEMBLYMAN BROWN: I understand that, Mr. Vasconcellos,  
13 but it is changing what the people have done.

14 Which means that you believe that they should not have  
15 done it the way in which they did it.

16 ASSEMBLYMAN VASCONCELLOS: No.

17 ASSEMBLYMAN BROWN: That's the only thing you can  
18 conclude.

19 ASSEMBLYMAN VASCONCELLOS: That's not my conclusion.

20 ASSEMBLYMAN BROWN: Well, I'm sure --

21 ASSEMBLYMAN VASCONCELLOS: Conclude how you want; it's  
22 not what I conclude.

23 ASSEMBLYMAN BROWN: I'm sure it is; I'm sure it is.

24 But I think it's fairly clear, if the people said  
25 yesterday this is the way you ought to do business, and then you  
26 decide that no, that isn't what ought to be done, we're going to  
27 ask you to look at it again, people, I fear that,

1 Mr. Vasconcellos, I fear that a lot, because I don't want to set  
2 myself up ever as trying to be the individual who says to the  
3 people what the people should or should not do.

4 They spoke on this issue. If they'd left it to me to  
5 speak on this issue, I may have spoken differently.

6 If there is to be a different expression, then I think  
7 we ought to write what shall be the appropriate conflict of  
8 interest provision for the Legislature and not attempt to undo  
9 what the people did.

10 MR. ZELMAN: Mr. Speaker, we have the Gann changed  
11 amendment on the ballot this time. It's exactly the same  
12 circumstance. People are changing the rules, and we do it all  
13 the time.

14 The only last thought I have for you is the -- Common  
15 Cause has always believed that the commission should make a  
16 recommendation, and it should take effect without any vote.  
17 That's still, we believe, the soundest, good government principle  
18 we can think of.

19 However, I think you might want to consider the  
20 possibility of subjecting this to a Legislator vote. And the  
21 reason I suggest that is, if in fact the -- as I understand it,  
22 the Members of the Legislature, the Senate especially, seem  
23 wedded to the notion that none of the statutes on conflict of  
24 interest and revolving door and ethics, and the other statutes  
25 that are floating in the Legislature now, should take effect  
26 unless this passes, then this had better pass.

27  
28

1           And the single greatest attack that this measure will  
2 suffer, I suspect, at the hands of the voters will be, "Ah-ha!  
3 They're going to get a salary increase and not even vote on it."

4           So, you may wish to consider that, whether or not the  
5 Legislature as a body is willing to bite that bullet should it  
6 come down, and put that vote provision in. On a good government  
7 basis you shouldn't, but as a political reality, you might want  
8 to consider it.

9           Mr. Johnson, I mentioned this morning, did have an idea  
10 which I thought was creative in this respect, and that is perhaps  
11 subject the proposal for a salary increase, if there is a salary  
12 increase, to a referenda should someone qualify such a referenda.  
13 And that may also be a way of having some public backup to the  
14 Salary Commission.

15           But I think if there isn't such a backup in some way, we  
16 may be subject to a lot of criticism and may lose the vote and  
17 never get all the goodies that may be in this.

18           SENATOR KEENE: Question.

19           SENATOR ROBERTI: Senator Keene.

20           SENATOR KEENE: Just so I understand the operative  
21 sequence, you're saying that if the Legislature were to tie the  
22 ethics package to a salary increase, and the public approved that  
23 package, then what would come back to the Legislature is not the  
24 package but just the salary increase?

25           MR. ZELMAN: Yes.

26           Although we discussed once putting no -- wrapping the  
27 whole thing together, which was the real political gamut.

1 But no, I think that's right. That's the way I'm  
2 suggesting.

3 I'm not saying that's the right way to do it. I'm  
4 saying you should think about whether or not --

5 SENATOR ROBERTI: There's a difference between policy  
6 and tactics here.

7 MR. ZELMAN: Yes. There is a tactical --

8 SENATOR ROBERTI: It's a difficult one.

9 MR. ZELMAN: Yes.

10 But our view is, that of course the statute should be  
11 passed and take effect, whether or not the amendment passes.

12 What I fear is that that's not going to happen; that the  
13 Legislature will only pass the statutes, and tie it to the  
14 approval of the Constitutional Amendment. If that's the case,  
15 then you're putting everything into that basket, and we'd better  
16 make sure that basket sells.

17 And I hate to see it so open to attack, and that's the  
18 attack I would fear, that there'll be a salary increase, and you  
19 won't vote on it.

20 I understand the problem of you may get a salary  
21 increase and have difficulty voting on it. One of the proposals  
22 we would have is that you should -- if you want to consider  
23 voting on it, it should be only those Members present and voting  
24 that count. And if someone doesn't want to vote on it, they can  
25 walk, but they don't count as a "no" vote. It's only those  
26 present and voting that would count on that vote. That's a  
27 thought.

1 SENATOR ROBERTI: You might end with a vote of 8-2.

2 (Laughter.)

3 MR. ZELMAN: Fine, but let those people who have the  
4 courage to accept the vote 8-2, and let the others take a walk,  
5 and that'll be the first walk we approve of.

6 ASSEMBLYMAN BROWN: Mr. Zelman, would you care to  
7 comment on whether or not people, if a person votes "no", whether  
8 or not there ought to be some means by which we let the world  
9 know they shouldn't accept it?

10 MR. ZELMAN: I've heard that gambit, but I don't --

11 ASSEMBLYMAN BROWN: I'm serious. If you think a salary  
12 is inappropriate, you're a sitting Member of the Legislature and  
13 you voted on it, if you vote "no", your next act ought to be not  
14 to take it; right?

15 MR. ZELMAN: No, I don't think that's logical because if  
16 a union member rejects a contract, it doesn't mean they don't get  
17 it if it goes through.

18 The same logic would be that if a union member votes to  
19 reject a contract, he doesn't get the increase if the majority  
20 votes for it.

21 SENATOR ROBERTI: Assemblyman Johnson.

22 ASSEMBLYMAN BROWN: Well, I think it should be.

23 ASSEMBLYMAN JOHNSON: I was just going to observe that I  
24 think that'd be a little unfair. I mean, some folks might have  
25 voted "no" because they thought it wasn't high enough. So, your  
26 logic doesn't necessarily follow at all.

27

28

(Laughter.)

1  
2 ASSEMBLYMAN BROWN: Well, I don't think there's anybody  
3 who'd vote "no" because they didn't think it was high enough. I  
4 think that might be a scam that they'd want to run, but I'm  
5 deadly serious.

6 I think there ought to be a real question. I recall a  
7 gentleman around here who objected to the idea that the per diem  
8 went up. And I mean, he raised all kinds of hell: Floyd  
9 Wakefield, your seat mate. He raised all kinds of hell about the  
10 per diem going up. The per diem went up anyway because it was  
11 necessary to reimburse Members for the expenses incurred.

12 After he had gone through the whole process at the end  
13 of the rainbow, two days before he got the hell out of here, he  
14 filed a claim with the State Board of Equalization for his  
15 previously unaccepted 2½ years of per diem.

16 I thought that was the height of -- and let me tell you  
17 something. If I was standing near the Pearly Gates and he walked  
18 by, you know exactly where he'd be.

(Laughter.)

19  
20 ASSEMBLYMAN JOHNSON: I don't know. You may be on to  
21 something there, Mr. Speaker.

22 If I vote against a tax increase -- that's an  
23 interesting line of logic there.

24 SENATOR ROBERTI: Senator Keene.

25 SENATOR KEENE: What if we just allowed Legislators to  
26 reject the salary increase if they chose to do so?

27 MR. ZELMAN: If they chose to reject it?  
28

1           SENATOR KEENE: Yes, or by some act, have individual  
2 Legislators accept or reject the salary increase. Wouldn't that  
3 be a better measure of --

4           MR. ZELMAN: Yeah, all those are possible. And think  
5 there are tactical questions which -- you are the people who've  
6 run more elections, maybe you have some sense of how the voters  
7 will respond to this.

8           I'm just concerned that even if this proposal is as  
9 strong as I would like it to be, and offers the public a great  
10 deal, it is open to that attack. I hope I'm wrong and Common  
11 Cause will help to pass it if we approve of it in its final form.

12           I'm just throwing that out as something for you to think  
13 about as a tactic.

14           SENATOR ROBERTI: Thank you very much, Mr. Zelman.

15           Representing the California Newspaper Publishers  
16 Association, Mr. Mike Dorais.

17           MR. DORAIS: Mr. Chairman and Members of the Committee,  
18 my name is Mike Dorais. I'm representing the California  
19 Newspaper Publishers Association.

20           Our purpose here to day is to urge you to include in the  
21 ethics package provisions for an open meeting guaranteed. And  
22 the language that I would urge to be included has been drafted.

23           SENATOR ROBERTI: Let's just, for purposes of the  
24 record, have that here. We don't have it before us.

25           MR. DORAIS: It's language that's been developed in a  
26 series of discussions between us and -- I thought it was here.

27           SENATOR ROBERTI: I thought it was here, too.

1 Staff says we're still in the process of drafting, so  
2 why don't you basically give us what you're trying to get at.

3 MR. DORAIS: Essentially, it would provide that the  
4 Legislature would be required to meet openly and publicly in a  
5 system of rules analogous to the Ralph M. Brown Act and to the  
6 Bagley-Keene Act.

7 The one major distinction, I think, that can be drawn is  
8 that the party caucuses would remain subject to closure to  
9 private meetings should the caucuses so desire.

10 SENATOR ROBERTI: Okay, fine.

11 Assemblyman Johnson.

12 ASSEMBLYMAN JOHNSON: The kinds of exceptions that would  
13 be available to committees of the Legislature would be on matters  
14 relating to potential discipline of a Member, to potential  
15 discipline of an employee, or a personnel matter, hiring or  
16 firing, or discipline of an employee in security matters relating  
17 to the security of the Capitol, and a possible exception for  
18 political caucuses, political partisan caucuses.

19 MR. DORAIS: And attorney-client privilege, Mr. Johnson.

20 ASSEMBLYMAN JOHNSON: How would that apply? I mean,  
21 obviously when local government is involved in a condemnation  
22 proceeding or a potential lawsuit, or so on, they avail  
23 themselves of that exception.

24 Senator Roberti has carried legislation, I've co-  
25 authored legislation with him in the past in this subject area.  
26 That is an area that local government, at least in the minds of  
27 some, have abused in the past, lumping everything together in  
28

1 that one, catchall exception that says that there may be some  
2 potential litigation here.

3 How would that work in your view, and what is the  
4 appropriate language to put into it to ensure that that potential  
5 abuse is not engaged in in the Legislature?

6 And secondly, what are the analogous kinds of litigation  
7 or potential litigation that the Legislature might be involved in  
8 that should provide for that exception?

9 MR. DORAIS: Well, I think the Legislature's involved in  
10 a great deal less legal activity --

11 ASSEMBLYMAN JOHNSON: Than a typical city or school  
12 board?

13 MR. DORAIS: Or, say, a county board of supervisors.

14 But the argument was advanced, and we concurred in it,  
15 that to some limited extent, situations do arise and provisions  
16 should be provided.

17 I believe the language took the better part of  
18 three-quarters of a page in terms of securing all of the proper  
19 safeguards in the procedures surrounding the usage of this  
20 executive session privilege.

21 ASSEMBLYMAN JOHNSON: Do you agree that if those  
22 exceptions are carved out for these kinds of justifications for  
23 an executive session, that there should be the same notice  
24 requirements in advance of that committee meeting, or committee  
25 of the whole, or whatever it might be, so that -- and the  
26 subject, general subject matter, be delineated in that notice?

27  
28

1 For example, a meeting of the Assembly Rules Committee  
2 held in executive session to discuss personnel matters: the  
3 hiring of staff, or the potential dismissal of staff. Some kind  
4 of a notice of what the purpose of the meeting is.

5 MR. DORAIS: Yes, we do support that concept. We think  
6 it's a good idea.

7 ASSEMBLYMAN JOHNSON: What about the idea that's been  
8 advanced that if an executive session is held, that that  
9 executive session should be tape recorded and the recording  
10 maintained for a period of time, so that if an issue arises as to  
11 whether the meeting extended the scope of that notice, that that  
12 could be reviewed in camera by a judge to determine if the  
13 meeting went beyond the stated purpose and the stated exemption?

14 Would you support that kind of a concept?

15 MR. DORAIS: I think it'd probably be a good idea,  
16 particularly for the protection of the people attending the  
17 executive session. But for us, it wouldn't be a make it or break  
18 it issue in terms of supporting the eventual concept as it's  
19 developed for inclusion in this package of an overall effort to  
20 upgrade, improve public support for the Legislature.

21 ASSEMBLYMAN JOHNSON: Let me ask just one final  
22 question. I don't mean to dominate this.

23 The issue has been raised concerning party caucuses.  
24 And I frankly, personally, believe that's a reasonable exemption  
25 to allow for party caucuses to meet.

26 But the point has been raised, or the point has been  
27 made that when the Democratic Caucus meets in either House of the  
28

1 Legislature currently, and if all Democrat Members of the Senate  
2 or the Assembly are present, then a majority of every standing  
3 committee of the Legislature is present, meeting behind closed  
4 doors.

5 Many of us have raised the question of the propriety of  
6 a majority of a given committee meeting privately prior to a  
7 public meeting in order to discuss -- and there've been some  
8 recent examples of that, and many of us are concerned about that.

9 I'd just like your response to that observation, that  
10 with respect to the majority party, every time the majority party  
11 meets in private party caucus, a majority literally of every  
12 committee in the House is present, as well as a majority of the  
13 House.

14 MR. DORAIS: Well, I know your concern would probably be  
15 the same if you were representing the majority party right now.

16 And we would have the same opinion then as we do now,  
17 which is there are several distinct points involved here. One of  
18 them is the question of the partisan nature of the Legislature  
19 versus, say, the nonpartisan nature of local government.

20 A second point, I think, that's been essential to our  
21 consideration of what should be done here is that we believe  
22 while caucuses of the whole should be permitted behind closed  
23 doors should the caucus so desire, we oppose the concept of, say,  
24 a caucus of a committee meeting to discuss matters pending before  
25 a policy committee.

26 The determinative issue for us is that in the committee  
27 process, you've got the public invited to participate, to offer  
28 testimony, and to observe the decision making process at work.

1           The Floor debate, a different situation. And while it's  
2 not a perfect solution to the factual setting, for us, we  
3 recognize the need, I think, for party caucuses to go behind  
4 closed doors during Floor sessions.

5           ASSEMBLYMAN JOHNSON: Not withstanding your quick  
6 response that you're sure my concern would be the same, I think I  
7 indicated in my question that this was not a concern of mine in  
8 particular, and that I feel that it is appropriate to allow for  
9 partisan caucuses to meet. This is a concern that's been raised  
10 by a number of Members, and I was not asking the question in any  
11 flip way, but in a very serious way.

12           What is the distinction that your organization sees  
13 between a prohibition allowing the Human Services Committee, a  
14 majority of the Human Services Committee, to meet in a private  
15 meeting and discuss the action that they'll take on a pending  
16 bill, versus a majority of that committee meeting within the  
17 context of a broader partisan caucus?

18           I think it is a legitimate issue.

19           MR. DORAIS: And if I appeared flip, I didn't intend to  
20 be. I really was more thinking of a situation as it relates to  
21 the majority party right now.

22           I think one of the concerns that I've heard voiced  
23 frequently surrounding this issue is, if the minority party,  
24 since they are less than a quorum of a committee, and presumably  
25 will be, is able to meet behind closed doors and strategize on  
26 legislation before a committee, should not the majority party be  
27 similarly treated? Won't they be operating with one arm tied  
28 behind their back?



1 SENATOR ROBERTI: We're in recess for five minutes.

2 (Thereupon a brief recess was taken.)

3 MR. DORAIS: Our comments on the subject, I think we're  
4 in the process of answering some questions from Mr. Johnson. I  
5 don't know if we had finished that or not.

6 ASSEMBLYMAN JOHNSON: No, you've answered my question.

7 The only issue was the question of these party caucuses.  
8 I, as a matter of fact, agree that that is an exception that is a  
9 reasonable one.

10 And one of the distinctions that I would make is that,  
11 obviously, unlike local county boards of supervisors, city  
12 councils, school boards, and so on, the Legislature is a partisan  
13 body, and we run as Democrats, Republics, Independents. And I  
14 think that exception makes a great deal of sense.

15 I'd also like to say, Mr. Chairman, that I strongly  
16 agree with the thrust of the testimony; that whatever package we  
17 come up with has to have a strong open meeting requirement, and  
18 that we need to look at what are reasonable exceptions.

19 You didn't -- I think if you answered the question about  
20 the appropriate notice prior to a closed meeting, I didn't really  
21 catch that answer.

22 MR. DORAIS: No, we are very supportive of a notice, the  
23 prior notice concept, Mr. Johnson, and recognize that you provide  
24 leadership in that area. It's an important part of it.

25 ASSEMBLYMAN JOHNSON: Thank you.

26 SENATOR ROBERTI: Thank you, Assemblyman.

27 Assemblyman Vasconcellos.  
28

1 ASSEMBLYMAN VASCONCELLOS: Question, Mike.

2 The language I've seen talks about proceedings of the  
3 Legislature. How is that understood commonly and/or defined?

4 MR. DORAIS: You would not only include Floor sessions  
5 but also meetings of committees.

6 ASSEMBLYMAN VASCONCELLOS: Okay. So that it means, in  
7 effect, an event where a majority of the persons involved are  
8 present?

9 MR. DORAIS: Yes.

10 We have -- in response to the question that did come up  
11 during prior discussion of this about the advantages that a  
12 partisan minority might have by being able to go in and  
13 strategize behind closed doors, we suggested that consideration  
14 be given to possibly extending the ambit of the openness  
15 requirement to meetings of less than a quorum; say, where you had  
16 one-third of the committee or more present. So, that's one  
17 possibility that might be considered by --

18 ASSEMBLYMAN VASCONCELLOS: The other times generally are  
19 proceedings or an official meeting, which only is when there's a  
20 quorum?

21 MR. DORAIS: Yes. That's been a long-standing Attorney  
22 General's opinion with regard to local government, and I think it  
23 applies here as well.

24 SENATOR ROBERTI: Any other questions? Senator Keene.

25 SENATOR KEENE: If someone arranges a dinner that  
26 involves ten people, and it happens to include, coincidentally,  
27 seven out of eleven members of a committee, would that be banned?  
28

1 MR. DORAIS: Not necessarily. I think the determination  
2 would hinge on whether or not matters pending before the  
3 committee, or likely to pend before the committee, were  
4 discussed.

5 If it were strictly a social affair, these situations  
6 arise with regard to local government all the time, and there's  
7 no -- there may be a question, but there's no legal consequence  
8 if they are strictly social affairs.

9 SENATOR ROBERTI: Thank you, Mr. Dorais.

10 MR. DORAIS: Thank you.

11 SENATOR ROBERTI: We've taken the various interest  
12 groups that have participated in the drafting of this measure, so  
13 I think we'll continue, and then we'll take up Members of the  
14 Legislature.

15 Representing FPPC, Lily Spitz.

16 MS. SPITZ: Mr. Chairman, Members, I'll make my comments  
17 very brief. I hope to finish before the Speaker gets back,  
18 actually.

19 (Laughter.)

20 SENATOR KEENE: We hope to have adopted the package by  
21 the time he gets back.

22 MS. SPITZ: First of all, the Commission --

23 ASSEMBLYMAN VASCONCELLOS: You were once on his staff;  
24 right?

25 MS. SPITZ: I was, yes, although this brings back  
26 memories.

27

28

1           The Commission would like to commend the Members of the  
2 Assembly and the Senate both for working so diligently on the  
3 issue of ethics reform this year. I think you've come a very,  
4 very long way, and we do commend on your hard and difficult work.

5           We cannot comment on the provisions in the Senate  
6 Constitutional Amendment regarding the creation of the  
7 Compensation Commission because that's outside of our  
8 jurisdiction. But we have had some experience as relates to  
9 gifts, honoraria and income received by public officials, and  
10 restrictions on lobbying activities. And clearly, these concepts  
11 interact to some extent with the potential for some increased  
12 compensation.

13           We've submitted to you a letter tightening up some of  
14 the provisions of Senate Constitutional Amendment 32. The  
15 Commission already has an official support position on SCA 32 as  
16 it was amended August 31st.

17           Rather than review what we've already written to you, I  
18 think relative succinctly, I'm happy to take any questions that  
19 you have.

20           SENATOR ROBERTI: We have a letter here on file,  
21 September 11th. I guess that's the latest position of the FPPC.

22           MS. SPITZ: Correct.

23           There are basically five things that we bring to your  
24 attention. First of all, the term "living expenses" that's used  
25 relative to reimbursements in connection with honoraria, we  
26 believe that it's a very broad expression, and we would like to  
27 see that narrowed to "necessary accommodations", or some similar  
28 language.

1           SENATOR ROBERTI: I think that's fine. I don't think  
2 there's a problem. I see your point.

3           MS. SPITZ: Right.

4           Secondly, relative to the honorarium ban, we would like  
5 it to also be applied to written works in addition to oral  
6 presentations. We feel that if there is to be a ban on  
7 honoraria, that it would be appropriate to apply it to both oral  
8 presentations as well as written works, understanding, of course,  
9 that there is some concern about a total ban on both those areas.

10          SENATOR ROBERTI: You think they should be handled the  
11 same, however?

12          MS. SPITZ: Correct, although we don't believe that  
13 there ought to be any reimbursement for travel expenses in  
14 connection with written works. We simply think it doesn't apply.

15          Thirdly, relative to a limit on outside income, we think  
16 it simply goes with the potential for increased compensation to  
17 put a limit on outside income at the same time. We would prefer  
18 that any Compensation Commission have the specific authority to  
19 limit outside income as well.

20          ASSEMBLYMAN JOHNSON: I'd like to pose a question, Mr.  
21 Chairman.

22          SENATOR ROBERTI: Yes, Assemblyman Johnson.

23          ASSEMBLYMAN JOHNSON: How do we rationalize putting a  
24 limit on outside earned income from a Member who, let's say, has  
25 a successful construction company that he's worked, maybe, most  
26 of his adult life to make successful? How do we limit a Member  
27 from having outside earned income who may have a successful  
28

1 farming operation that he's worked most of his adult life to make  
2 a success? Or an individual who has a wholesale flower business  
3 that he literally built from scratch, from nothing, and say to  
4 that person: We're going to limit your ability to earn income on  
5 the outside?

6 MS. SPITZ: I agree that --

7 ASSEMBLYMAN JOHNSON: I mean, isn't the inevitable  
8 result of that that we will discourage precisely those  
9 individuals who have been successful in the world outside of  
10 politics from entering that world?

11 I mean, I absolutely support the idea of a ban. And if  
12 it were up to me, and if I were a Legislature of one, we would  
13 ban all gifts and honoraria, including honoraria for published  
14 works, from any organization that employs a lobbyist, or any  
15 member of any organization that employs a lobbyist.

16 But how do we get at this question of outside earned  
17 income and avoid discouraging people who've been successful in  
18 the outside from entering into the political arena?

19 MS. SPITZ: I think it's certainly a legitimate  
20 question, and that's why we -- and a ticklish one and a delicate  
21 one, and that's why we believe that a simple statement  
22 authorizing the potential Compensation Commission to deal with  
23 that question and to set limits where appropriate is about all  
24 that you can do in a proposed Constitutional amendment.

25 ASSEMBLYMAN JOHNSON: Isn't the real issue -- shouldn't  
26 the real issue be a conflict of interest, or a potential for a  
27 conflict of interest, or the impression of the potential or the  
28 reality of undue influence over the elected official?

1 I mean, shouldn't that be the measurement by which we  
2 judge this?

3 MS. SPITZ: I think, certainly, that's a consideration,  
4 yes.

5 ASSEMBLYMAN JOHNSON: Then what is the conflict in an  
6 individual who's had a successful farming operation, as an  
7 example, or wholesale flower? And I can go on. These are not  
8 just examples pulled out of the air. These are Members of the  
9 Legislature today.

10 Shouldn't the test really be whether that's a conflict,  
11 or that income is coming to them by virtue of the elected  
12 position that they occupy?

13 MS. SPITZ: As I say, it's a very delicate and ticklish  
14 situation.

15 We, the Commission, has not previously really discussed  
16 the question of outside income and limitations on it, except to  
17 the extent that there ought to be some attention paid to that  
18 question, and particularly since there is a proposal to create a  
19 Compensation Commission, that the opportunity is ripe at this  
20 point to put that discussion on the table with that Commission.

21 ASSEMBLYMAN JOHNSON: Well, then, what kinds of  
22 parameters would it be appropriate to put into the statute, or  
23 into the Constitution, to guide the Commission in their  
24 deliberations if we create this independent Citizens' Salary  
25 Commission, or whatever it's called? What kinds of guidelines  
26 ought we to give them?

27

28

1 For example, if we limit outside earned income, what  
2 about unearned income? We're saying that it's all right to be  
3 the son or daughter of a fabulously wealthy individual, live on  
4 your inheritance, clip coupons; that's acceptable. But if you  
5 started a neighborhood hardware store with borrowed funds, and  
6 built that into a successful business over 25 years, that somehow  
7 it's inappropriate for you to continue to earn that income. But  
8 maybe something that comes -- a far larger amount of money that  
9 comes in as a result of sitting and doing nothing, but living on  
10 an inheritance, that that's appropriate.

11 What kind of guidelines would you suggest that are  
12 appropriate for this Commission, if as you suggest we simply  
13 throw the issue to the Commission?

14 MS. SPITZ: Well, I think that the specific guidelines  
15 could be left to statutory interpretation.

16 I think the Commission feels very strongly that the  
17 Constitution should be limited to basic philosophical positions,  
18 and that the fact that this Commission is created for purposes of  
19 dealing with compensation for Members of the Legislature ought to  
20 also look at, or at least be authorized to look at, this added  
21 question.

22 ASSEMBLYMAN JOHNSON: Mr. Chairman, again, I have no  
23 hesitation whatever in flatly prohibiting gifts, and honoraria  
24 from individuals, organizations, that regularly lobby before the  
25 Legislature, or members of such organizations. If ultimately a  
26 decision is made to limit that to \$100 or \$250, or whatever, I  
27 will support that.  
28

1 But I want to express very strong reservations at the  
2 idea of dealing with outside earned income that is legitimate and  
3 does not represent a conflict of interest. I think the test  
4 ought to be does it represent a conflict or a potential conflict  
5 of interest.

6 I'm very hesitant to buy into the notion of just turning  
7 this over to some independent commission without benefit of some  
8 specific guidelines.

9 SENATOR ROBERTI: Thank you, Assemblyman.

10 Senator Keene.

11 SENATOR KEENE: What would be your response to a  
12 proposal that left the Salary Commission charged with the  
13 function of coming up with the salary, and provided further that  
14 the commission shall make recommendations to the Legislature  
15 concerning restrictions on outside income?

16 MS. SPITZ: I think that that would be sufficient for  
17 our purposes.

18 As I said, initially the Commission really feels that  
19 the issue of compensation is outside our jurisdiction. But in  
20 light of the vehicle that's being presented for purposes of these  
21 various proposals, we thought we might make that suggestion.

22 We're certainly not wedded to it specifically.

23 SENATOR KEENE: But I'm suggesting something a little  
24 bit different. Not that they shall make regulations, but that  
25 they shall make recommendations --

26 MS. SPITZ: To the Legislature. That would be fine.

27 SENATOR KEENE: There would be something --  
28

1 MS. SPITZ: So long as there's some statement in here  
2 about discussion of a limit on outside income, and not a  
3 differentiation between earned and unearned income, but just  
4 allowing that discussion to take place, or actually requiring  
5 that it take place.

6 SENATOR ROBERTI: Thank you, Senator.

7 Thank you very much, Ms. Spitz.

8 MS. SPITZ: Thank you.

9 SENATOR ROBERTI: Assemblyman Brown.

10 ASSEMBLYMAN BROWN: Mr. Johnson had one more item, Mr.  
11 Chair.

12 SENATOR ROBERTI: Right.

13 ASSEMBLYMAN BROWN: Mr. Johnson, I think, wanted to chat  
14 with Ms. Spitz about lobbying by former Members, and he had to  
15 step out for two seconds.

16 While he's out there, so no one thinks there's a  
17 conflict of interest, Ms. Spitz came into the halls of the  
18 Legislature by way of my office many years ago. First, I think,  
19 as an intern and a staff person of mine, through my Speakership,  
20 as a matter of fact.

21 SENATOR ROBERTI: She alluded to that.

22 ASSEMBLYMAN BROWN: She announced that?

23 MS. SPITZ: No.

24 SENATOR ROBERTI: No, she didn't announce it, but she  
25 was saying she was hoping she would finish before you got here.

26 (Laughter.)  
27  
28

1 ASSEMBLYMAN BROWN: What's that?

2 SENATOR ROBERTI: She said that she was hoping she could  
3 finish before you got here.

4 ASSEMBLYMAN BROWN: You are kidding me.

5 How long have you been with the Commission?

6 MS. SPITZ: Two years.

7 ASSEMBLYMAN BROWN: You were their lobbyist?

8 MS. SPITZ: Yes, sir.

9 ASSEMBLYMAN BROWN: If we had had the provision in where  
10 you couldn't do lobbying for a year after your leaving, you would  
11 not have been able to take that job.

12 MS. SPITZ: Oh, no, I had a different position for six  
13 or seven years. I've been out of your office for quite a few  
14 years, Mr. Speaker.

15 ASSEMBLYMAN BROWN: I'm aware of that, but I mean, on  
16 the assumption that you'd gone directly from here to there, would  
17 you have been in the category?

18 Because it's of some concern to professional staff  
19 people around here in allegedly closing a loophole, we're putting  
20 some people on the beach for a full year with no income  
21 whatsoever.

22 Would you have been able to leave my staff and go  
23 directly to the new job that you currently hold --

24 MS. SPITZ: Well --

25 ASSEMBLYMAN BROWN: As a lobbyist for the Fair Political  
26 Practices Commission?

27

28

1 MS. SPITZ: In regard to SCA 32, the provisions of the  
2 Constitutional Amendment apply only to Members of the Legislature  
3 and State officers, which are enumerated: the Governor, the  
4 Lieutenant Governor, et cetera. So, any staff person is not  
5 covered within --

6 ASSEMBLYMAN BROWN: Should staff people be covered?  
7 Shouldn't cabinet level people be covered?

8 You know, sometimes if you're talking about whether or  
9 not there's an advantage or disadvantage for influence purposes  
10 by an individual who was formerly a Member of the Legislature,  
11 sometimes a person who directs the department's even more deadly  
12 in that regard. For example, the current HUD scandal is clearly  
13 involving people who were not elected officials, who were all  
14 appointed persons holding very significant positions.

15 The same could be the case in State government,  
16 literally. You would not assume that Michael Frost would not be  
17 an influential person if Michael Frost left, or Michael Galicio,  
18 or Cliff Berg, if they left.

19 Has there been any discussion in your agency about  
20 exploring the necessity of doing something about people in that  
21 category?

22 MS. SPITZ: We have consistent -- well, we have over the  
23 years have been supportive of legislation to close the revolving  
24 door, if you will, and we do have some provisions in the act that  
25 deal with that specifically.

26 We're very supportive of seeing progress in that area,  
27 and we know that there are some pieces of legislation that are  
28 pending currently, and we're trying to work with staff on those.

1 I think you're absolutely right. High level staff  
2 people, whether they're in the Legislature or in the executive  
3 branch, have a lot of contacts and a lot of influence they can  
4 use after they leave, and there ought to be some restrictions on  
5 those.

6 But I don't think there should be a muddying of the  
7 provisions of SCA 32 to specify those limitations on staff  
8 people. I think you should limit the specifications to Members  
9 of the Legislature and State officers, as you have, and also  
10 require that the Legislature pass tougher restrictions on others  
11 as you have done or propose to do --

12 ASSEMBLYMAN BROWN: But not appointed officials? For an  
13 example, the Chairman of the Fair Political Practices Commission  
14 could have awesome influence.

15 MS. SPITZ: Over who?

16 ASSEMBLYMAN BROWN: The day he leaves, the day he  
17 departs in his administering of his semi-judicial function, he  
18 could make an awful lot of friends and an awful lot of enemies.

19 MS. SPITZ: Well, we seem to be making more enemies than  
20 friends at the FPPC. I don't know that --

21 ASSEMBLYMAN BROWN: No, you've always made friends with  
22 me. You've inspected me more than you have either one of the  
23 sisters. So far, I haven't paid a fine yet, and that's lucky for  
24 me. Pure luck.

25 Now that Mr. Johnson's back --

26 ASSEMBLYMAN JOHNSON: The letter addresses comments on  
27 the question of the revolving door.

1           One of my main concerns in government today is the  
2 revolving door. And to have witnessed, as I have over the last  
3 year, hearings in which one month staff attorneys for the Fair  
4 Political Practices Commission are urging the adoption of, by the  
5 Commission, of regulations that they've drafted, and at the  
6 following month's hearing, have those same staff attorneys  
7 representing private clients in arguing against the very  
8 regulations that they've helped to draft.

9           I'd like to have your response to that, whether, as we  
10 look at this overall area of ethics, that is something that we  
11 ought to be addressing as well.

12           MS. SPITZ: Well, as I mentioned to the Speaker, there  
13 are some revolving door laws presently within the Political  
14 Reform Act, as you know. Unfortunately, they're very cumbersome,  
15 they're very difficult to understand.

16           The proposals that are on the table presently -- Senator  
17 Marks' proposals and others -- would prohibit exactly what you  
18 just said, and that would be for a staff person who -- to come  
19 back before his or her own agency and represent another for  
20 compensation.

21           However, for purposes of the Constitutional Amendment  
22 that's before you today, we believe that the specifics regarding  
23 prohibitions on lobbying should rest with identifying Members of  
24 the Legislature and State officers, and that the direction that's  
25 in the proposed Constitutional Amendment to strengthen current  
26 laws relative to the revolving door provisions ought to be  
27 supported.

1 We don't think that you should muddy a Constitutional  
2 Amendment with specifics about staffers when the entire proposal  
3 specifies only Members and State officers.

4 ASSEMBLYMAN JOHNSON: But we're going to be, presumably  
5 -- and I might just parenthetically, Mr. Chairman, state that  
6 it's my hope that, as this conference committee goes forward in  
7 its deliberations, that we're going to be talking about and  
8 addressing the statutory enactment that we envision as a part of  
9 this ultimate total package; that we not simply say, "We're going  
10 to enact or put before the voters a Constitutional Amendment, and  
11 then worry about the details, we'll fill those in down the line."

12 Before I buy into that, I want to know a good deal about  
13 what the details are going to be. That's just a parenthetical  
14 comment.

15 With respect to the issue of revolving door, do you  
16 think that the question of lobbying one's former colleagues is  
17 the full dimension of the problem?

18 MS. SPITZ: Well, I think it depends on one's definition  
19 of the term "lobbying". Certainly attempting to influence a  
20 decision is what the term "lobbying" means, and I believe that  
21 the proposed statutory amendments, which would prohibit that kind  
22 of activity in whatever form it takes, is appropriate for a  
23 12-month period.

24 And in response to your parenthetical comment, I do  
25 believe that prior -- for the six months between January and  
26 June, before this measure comes before the voters, the voters  
27 will be looking very carefully at what the Legislature is putting  
28

1 forward in terms of statutory changes. And they will judge the  
2 performance of the Legislature at that time, and then will cast  
3 their vote appropriately in June on this measure.

4 ASSEMBLYMAN JOHNSON: Let me ask you just one more  
5 question.

6 MS. SPITZ: Okay.

7 ASSEMBLYMAN JOHNSON: Don't you think, for example, that  
8 the practice of staff members of Legislators going on and off the  
9 payroll to go out and participate in partisan political campaigns  
10 is a greater real-world problem than former Members of the  
11 Legislature lobbying their colleagues within a year's time of  
12 leaving office?

13 MS. SPITZ: I think potentially certainly that's a  
14 problem that ought be addressed as much as any that's before you  
15 today.

16 ASSEMBLYMAN JOHNSON: Thank you.

17 MS. SPITZ: Thank you.

18 SENATOR ROBERTI: Thank you very much.

19 We have, in the order in which they came, Assemblyman  
20 Woodruff.

21 ASSEMBLYMAN WOODRUFF: I'm just going to make a brief  
22 statement to add to what was said in the Election and  
23 Reapportionment Committee relating to the open meeting  
24 provisions.

25 As you all know, the amendment that Senator Roberti, the  
26 language he agreed to put in, was very general, and you'll be  
27 working on the specific language. I received Friday, late  
28

1 Friday, some draft language that I've had a chance to look at  
2 which I think is adequate and good language. I guess that  
3 language that I have, apparently, is still being worked on.

4 SENATOR ROBERTI: We're still working on that, but  
5 basically that's what we're -- well, those will be contemplated  
6 in some set of amendments.

7 ASSEMBLYMAN WOODRUFF: So, inasmuch as what I have here  
8 before me may well be the product of this conference committee,  
9 I, one, think it's good progress and hope that what I do see will  
10 end up in the final product, and look forward to seeing what  
11 those final changes may or may not be to the language that I  
12 received on Friday.

13 SENATOR ROBERTI: Very good. We're glad to keep you  
14 apprised since you made the motion in committee. Thank you,  
15 Assemblyman.

16 Assemblyman Lempert is here just as an observer.

17 Does anybody else wish to testify?

18 Then the committee will stand adjourned until notice and  
19 time of the Chair tomorrow. Is there any objection to that?  
20 Sometime in the late morning. The Chair will call the meeting  
21 tomorrow sometime in the late morning.

22 We are adjourned for today.

23 (Thereupon this meeting of the  
24 conference committee on SCA 32 was  
25 adjourned at approximately 6:45 P.M.)

26 --oo0oo--  
27  
28

