

9-12-1989

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

Senate Conference Committee on SCA 32

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CALIFORNIA LEGISLATURE

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

VOLUME II



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HEARING  
STATE LEGISLATURE  
STATE OF CALIFORNIA

CONFERENCE COMMITTEE ON SCA 32 (ROBERTI)

VOLUME II

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 12, 1989

4:48 P.M.

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Reported by:

Evelyn Mizak  
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

1 SENATOR DAVID ROBERTI

2 SENATOR JOHN DOOLITTLE

3 SENATOR BARRY KEENE

4 ASSEMBLYMAN WILLIE BROWN

5 ASSEMBLYMAN ROSS JOHNSON

6 ASSEMBLYMAN JOHN VASCONCELLOS

STAFF

7 CLIFF BERG, Executive Officer  
8 Senate Rules Committee

9 TIM HODSON, Consultant  
10 Senate Elections Committee

11 DEBORAH MITTEN, Secretary  
12 Senate Elections Committee

13 ALVIN GRESS, Counsel  
14 Legislative Counsel's Office

ALSO PRESENT

15 WALTER ZELMAN, Legislative Advocate  
16 California Common Cause

17 MIKE DORAIS, Legislative Advocate  
18 California Newspaper Publishers Association

19 SENATOR KEN MADDY

20 ASSEMBLYWOMAN MAXINE WATERS  
21  
22  
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P R O C E E D I N G S

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1  
2  
3 SENATOR ROBERTI: The meeting will come to order. This  
4 is a meeting of the conference committee on SCA 32.

5 There is a draft proposal of amendments to the  
6 Constitutional Amendment, taking into consideration some of the  
7 testimony that was brought before us yesterday, as well as fine  
8 tuning and cleaning up other portions of the bill.

9 Copies of the proposed amendments have been passed out,  
10 and the Chair entertains comment from the Floor. Mr. Zelman,  
11 you're elected.

12 MR. ZELMAN: We have only a few suggestions on the  
13 latest draft as I read it now. For the most part, we feel that  
14 the improvements made on the Salary Commission yesterday or the  
15 day before are good. I think the Salary Commission proposal is  
16 in good shape.

17 On the statements of principle, we asked you to put in  
18 strong statements of principle. For the most part we think  
19 they're there.

20 I think we have differences on what to do with the  
21 conflict of interest. We think the conflict of interest  
22 proposals are just not what we would like. I don't know that  
23 there is need to go through that again. Basically, they're not  
24 much more than what's in the Political Reform Act now. We think  
25 the critical issue is the enforcement by the Political Reform  
26 Act, but I made that statement yesterday and need not go through  
27 it again.  
28



1           The two or three specifics I noticed in this latest  
2 draft which I had hoped were going to be slightly different are  
3 the following.

4           On Section 5, on Page 1 of the draft, the honoraria ban,  
5 we believe, should include appearance before a group. I  
6 understand there was some concern about lawyers appearing, and  
7 what not, but clearly that's not honoraria. If you have to write  
8 that in, fine, but that's clearly not an honoraria for a lawyer  
9 to appear before a judge for a fee.

10           I don't think anybody reads that -- or, if you have to  
11 write that in, write that in, but some of the most egregious  
12 examples of payments last year that got in the press a lot were  
13 people showing up at dinners, or people showing up to receive  
14 awards and getting payments for it. They didn't speak or  
15 anything. In fact, the media made a great deal about the fact  
16 they didn't even speak and they got the money. So, I think the  
17 word "appearance" has to be placed in that section.

18           The gift language is very close to what we have  
19 advocated. We actually had submitted language that it might  
20 create the appearance of or the reality of conflict of interest.  
21 The term "appearance" has been dropped, at least from our  
22 amendment, maybe intentionally, maybe by mistake.

23           SENATOR ROBERTI: Give me that again? I'm sorry, I  
24 missed that.

25           MR. ZELMAN: We are arguing for Section (b) should  
26 include the term "appearance". Honoraria should include writing,  
27 appearance and speech.

1 And on letter (c), we have:

2 "The Legislature shall enact laws  
3 that ban or strictly ..."

4 et cetera. "The acceptance of a gift might create the appearance  
5 of," comma, "or conflict of interest." We thought the notion of  
6 "appearance" was important there.

7 Other than that, and the reservations I've expressed on  
8 the limitations of the conflict of interest and outside income  
9 section, we think it's pretty solid now.

10 SENATOR ROBERTI: I think basically on the gift section,  
11 you want to make a comment just for the record, because I think  
12 we incorporated a great deal of --

13 MR. ZELMAN: Yes, you incorporated our language  
14 virtually --

15 SENATOR ROBERTI: -- on the gift section.

16 MR. ZELMAN: -- word for word, except for the word  
17 "appearance", which was taken out.

18 SENATOR ROBERTI: Fine.

19 Assemblyman Vasconcellos.

20 ASSEMBLYMAN VASCONCELLOS: On the point Mr. Zelman  
21 mentioned in the honoraria section, I've tried to figure out some  
22 language that would address prohibiting the walk-in that has been  
23 appropriately criticized, and would not prohibit the carrying out  
24 of someone's professional duties as a lawyer, or a nurse, or  
25 whatever else he or she might be.

26 I've tried some language that said, "or appearance,  
27 other than appearance before a court or other adjudicatory body".  
28

1           That still doesn't cover it as well as it probably  
2 should. Or, "appearance other than appearance pursuant to  
3 professional license".

4           MR. ZELMAN: Or line of business.

5           Clearly what we're talking about here, an honoraria is  
6 not somebody doing their job.

7           SENATOR ROBERTI: What about "pursuant to professional  
8 license or line of business"?

9           MR. ZELMAN: Well, as long as that doesn't imply  
10 legislative line of business.

11           ASSEMBLYMAN VASCONCELLOS: "Other than appearance  
12 pursuant to Member's own profession".

13           SENATOR ROBERTI: Professional licensing.

14           MR. ZELMAN: I guess I don't consider it an honoraria,  
15 so --

16           ASSEMBLYMAN VASCONCELLOS: I don't either, but it says  
17 "honoraria or other compensation".

18           MR. ZELMAN: I don't know what you --

19           ASSEMBLYMAN VASCONCELLOS: The language is broad as to  
20 "other compensation", so you couldn't go to court or couldn't --

21           MR. ZELMAN: No, I think we're talking about the same  
22 thing, I don't care what the language is. We're talking about  
23 the same thing.

24           ASSEMBLYMAN JOHNSON: I'm not following. Which language  
25 are you objecting to?

26           MR. ZELMAN: I think that the notion of honoraria, of  
27 banning an honoraria, should include not only giving a speech, or  
28

1 writing something, but you shouldn't be allowed to just appear in  
2 some place.

3 Under this rule, you could go to an event, and you  
4 couldn't be paid for speaking, but you could be paid for  
5 appearing at the event.

6 SENATOR ROBERTI: That's a lot easier.

7 MR. ZELMAN: It may be.

8 SENATOR ROBERTI: We agree with you. We're just trying  
9 to figure out a way of drafting it.

10 ASSEMBLYMAN JOHNSON: Where is the language with respect  
11 to gifts generally?

12 There's no definition by which that appearance is being  
13 paid to appear. There's no construction I can come up with that  
14 doesn't have that represent a gift.

15 MR. ZELMAN: That's right. It would be a gift, but we  
16 don't know what the gift limit is ultimately going to be.

17 ASSEMBLYMAN JOHNSON: Solve that by banning gifts.

18 MR. ZELMAN: I don't think that's where we're headed.  
19 There's probably going to be some tolerance for gifts --

20 ASSEMBLYMAN JOHNSON: You've got one vote, Mr. Zelman.

21 ASSEMBLYMAN VASCONCELLOS: "Other than appearance  
22 pursuant to professional license".

23 Does that cover the ground?

24 SENATOR ROBERTI: As well as anybody can think of right  
25 now.

26 Are you offering that as an amendment?

27 ASSEMBLYMAN VASCONCELLOS: Yes.

1           What it would be would be after the word "writing",  
2 second line, line (b), put "or appearance," parenthesis, "(other  
3 than an appearance pursuant to a professional license)" end of  
4 parenthesis.

5           ASSEMBLYMAN JOHNSON: Not to be difficult, Mr. Chairman,  
6 but I'm not sure I know what that means.

7           I mean, those of us who are Members of the Legislature  
8 are also attorneys? Does that mean we can speak before any group  
9 of attorneys, and somehow that comes within the scope of our  
10 professional licensing, is therefore an exception here? Or  
11 someone who is a certified life underwriter can speak before any  
12 group of life underwriters in the state, or insurance groups and  
13 so on?

14          SENATOR ROBERTI: What about going back to "other than  
15 appearance before a court or other adjudicatory body"?

16          ASSEMBLYMAN VASCONCELLOS: That's even narrower. I'm  
17 not sure what works to your satisfaction.

18          SENATOR MADDY: Even if we've been talking about a limit  
19 of \$250, if you can get a gift for not going some place, why not  
20 the gift for going some place?

21          I mean, isn't it really controlled, the appearance  
22 situation, controlled by gifts?

23          MR. BERG: No, it's not.

24          SENATOR MADDY: Mr. Zelman, if in fact we all agree that  
25 would be a pure gift if you've done nothing, you've shown up, or  
26 you're at a place, isn't it a gift in that you'd have to declare  
27 it?  
28

1 MR. ZELMAN: I understand what you're saying. But it  
2 also seems absurd to me to say you can't get paid for actually  
3 doing something, giving a speech, but you can get paid just for  
4 showing up.

5 SENATOR MADDY: There's a degree of absurdity in all  
6 this.

7 But what I'm saying is, you would have the further  
8 absurdity if you show up and we can't give you anything, but you  
9 stay home, you get a gift.

10 MR. ZELMAN: That's right.

11 SENATOR MADDY: We can keep going in a big circle. I  
12 think we're straining so hard to --

13 MR. ZELMAN: You can't receive an honoraria.

14 SENATOR MADDY: I know what you're trying to get at.

15 MR. ZELMAN: I guess the problem is, the notion of an  
16 honorarium is that theoretically you did something for it.

17 SENATOR MADDY: That's correct.

18 MR. ZELMAN: You appeared, you went somewhere, you did  
19 something, and therefore they're paying you for that.

20 If somebody wants to take the responsibility of saying,  
21 "We gave you a gift, up-front gift," then call it a gift. Don't  
22 call it, "Well, we paid them for showing up," right?

23 Therefore, I think you shouldn't be allowed to pay  
24 somebody for showing up. If you want to lay \$250 on somebody,  
25 lay \$250 on them and say I gave them a gift.

26 SENATOR MADDY: I went to the AT&T. They gave me a gift  
27 bag, a golf cart bag. I declared it as a gift.

1 MR. ZELMAN: We presume that most of the statutes can  
2 allow for that kind of acceptance of that kind of stuff, yes.  
3 But they shouldn't pay you cash for showing up.

4 I realize there may be some problem with that. I think  
5 the problem you're trying to wrestle with is trying to allow  
6 someone to engage in their business, legitimately engage in their  
7 business, and I don't think anybody's going to call it an  
8 honoraria.

9 SENATOR KEENE: But it's compensation.

10 MR. ZELMAN: Then honestly I don't know what "other  
11 compensation" --

12 SENATOR ROBERTI: There's a problem, but it may not be.

13 Showing up for an appearance if there was an agreement  
14 that could be construed as a contract, probably, may not be  
15 construed as a gift. It could be construed as compensation.

16 MR. ZELMAN: You might want to take out "or other  
17 compensation".

18 I mean, we're talking about a principle here, right?  
19 It's going to go under compensation, all of which is going to  
20 have to defined later on.

21 So maybe the simplest way is just maybe you want to take  
22 out the "compensation". What we're really saying is we don't  
23 want them to have honorarium, and we're defining honorarium as  
24 showing up, giving a speech, or writing something for an  
25 honorarium.

26 SENATOR DOOLITTLE: So move.

27 ASSEMBLYMAN BROWN: Or doing nothing.  
28

1           SENATOR ROBERTI: "No Member of the Legislature may  
2 accept any honoraria."

3           SENATOR DOOLITTLE: Strike out "or other compensation".

4           MR. ZELMAN: Maybe I'm missing something.

5           My thought would be that that might solve your problem.

6           SENATOR DOOLITTLE: Then deal with the other issue when  
7 we flesh out the gift.

8           ASSEMBLYMAN VASCONCELLOS: It would read "no honorarium  
9 for any speech, writing or appearance"?

10          MR. ZELMAN: Yes, that's what I -- yeah, and then take  
11 out the "other compensation".

12          ASSEMBLYMAN VASCONCELLOS: Okay.

13          MR. ZELMAN: And someone can receive compensation for  
14 something other than an honoraria, which would be a professional  
15 appearance or a line of business, something like that.

16          ASSEMBLYMAN VASCONCELLOS: So it would read: "shall  
17 accept any honorarium for any speech, comma, writing, comma, or  
18 appearance, comma, except copyright royalties," et cetera.

19          MR. ZELMAN: Again, unless I'm missing something, I'm  
20 not a lawyer. Maybe there's something I'm missing. I don't know  
21 why that phrase has to be there.

22          ASSEMBLYMAN VASCONCELLOS: I would move that, along with  
23 Senator Doolittle.

24          MR. ZELMAN: It's been suggested -- somebody said that  
25 they can give you payment.

26          SENATOR ROBERTI: The problem is the difference of  
27 interpretation as to what honoraria is. That has never been  
28



1 adequately settled. Some people say honorarium covers anything  
2 where you may have had a payment for a speech. And then others  
3 say there's a strict gratuity.

4 We would probably be leaving it up to a court to have to  
5 decide.

6 ASSEMBLYMAN VASCONCELLOS: Earlier statute?

7 SENATOR ROBERTI: Maybe, or a later statute.

8 ASSEMBLYMAN BROWN: I think Mr. Zelman on this point is  
9 correct in the way in which he says strike "other compensation",  
10 because then you leave it to the individual Member.

11 If some Member wishes to foolishly accept any form of  
12 payment that could even be considered an honoraria, a  
13 compensation, or any other form of payment for speech making,  
14 under the circumstances as described herein, he or she is taking  
15 his or her own chance, and the risk is his or hers.

16 I think the common use of honoraria is wrong. Most  
17 people think of honoraria as an actual earned fee, when in fact  
18 the dictionary definition of honoraria is in the nature of a  
19 gratuity. It is, in fact, a gift of some sort.

20 I believe that any Member who would allow that narrow a  
21 definition to control his or her conduct would be equally  
22 foolish, because if they said, "I'm working for a contractual fee  
23 in making this speech rather than a gift," they would be running  
24 the risk of whatever kinds of punishment would be visited upon  
25 anyone for violation of these particular rules.

26 So, I think the language prepared and offered by  
27 Mr. Zelman is appropriate. Strike "or other compensation" and  
28 leave it as it is.

1           SENATOR ROBERTI: Who enforces this section? Do we have  
2 an enforcement authority?

3           MR. ZELMAN: I think with all of this, the reality is,  
4 none of this is really very enforceable until you pass the  
5 statutes.

6           Somebody could bring -- I asked somebody today about  
7 this -- somebody could bring an injunction against you, but all  
8 that could happen is maybe they could win and make you return the  
9 money. But there's no enforcement here. There's no penalty  
10 until you write a statute.

11           SENATOR ROBERTI: The statutes are a necessity,  
12 absolutely.

13           SENATOR DOOLITTLE: Well, in our own internal, as we  
14 develop, each House has its Ethics Committee, and that  
15 enforcement as well.

16           SENATOR ROBERTI: That's another enforcement, yes.

17           MR. ZELMAN: And we'll scream.

18           SENATOR ROBERTI: I guess probably we do have to  
19 recognize the Constitution as a guideline.

20           MR. ZELMAN: The other language that was given to me  
21 was, you might say, "other than in conjunction with a legitimate  
22 practice of a profession," something like that.

23           ASSEMBLYMAN VASCONCELLOS: This gets into Ross' concern.

24           I think it's simpler just to strike "or other  
25 compensation", but "no honoraria for any speech, writing or  
26 appearance," comma, "except copyright royalties," and so forth.

27

28

1           That's the simplest way to state the principle and make  
2 it clear.

3           SENATOR ROBERTI: Assemblyman Vasconcellos is offering  
4 as an amendment to strike "or other compensation", but to add "or  
5 appearance".

6           ASSEMBLYMAN VASCONCELLOS: That's correct.

7           SENATOR ROBERTI: Any discussion or debate?

8           ASSEMBLYMAN JOHNSON: Could somebody read the sentence?

9           SENATOR ROBERTI: It reads:

10                    "No Member of the Legislature may  
11                    accept any honorarium for any speech,  
12                    writing, or appearance, except copyright  
13                    royalties and reimbursement for actual  
14                    travel expenses and necessary living  
15                    expenses in connection therewith."

16           SENATOR DOOLITTLE: Mr. Chairman, if I might, just to  
17 pick up on Senator Maddy's point, but even if we say that, then  
18 someone will argue that they got something because they didn't  
19 appear; they refrained from appearing.

20           ASSEMBLYMAN VASCONCELLOS: That's included in gift,  
21 John.

22           SENATOR ROBERTI: That has to be covered. There's no  
23 way we can avoid those conjectures until we have the statutes.

24           SENATOR DOOLITTLE: Okay.

25           MR. ZELMAN: Senator, let me raise -- at that point, we  
26 wanted "the appearance of conflict of interest" on the gift.

27

28

1           There's one other point which I just want some  
2 clarification on.

3           ASSEMBLYMAN BROWN: I think you ought to let him  
4 complete the process.

5           ASSEMBLYMAN VASCONCELLOS: One thing at a time.

6           MR. ZELMAN: You're right.

7           SENATOR ROBERTI: We will get to that.

8           We have an amendment before us. Assemblyman  
9 Vasconcellos has moved. Secretary will call the roll.

10          ASSEMBLYMAN BROWN: Let me respond. I would oppose that  
11 amendment.

12          I still think the word "appearance" is so broad in terms  
13 of its application that that is, in fact, what lawyers do for a  
14 living before every single, solitary body before whom they appear  
15 for compensation purposes. And I do not believe the word  
16 "appearance" in the Constitution of this nature would not be  
17 subject to that kind of interpretation, and I will not be voting  
18 for that amendment.

19          SENATOR KEENE: On that point, Mr. Chairman.

20          It seems to me that if the argument is made that not  
21 showing up for something constitutes a gift, appearing and  
22 nothing more would certainly constitute a gift as well.

23          We could define it as such in the statutes, and it would  
24 be covered under the gift provisions.

25          SENATOR DOOLITTLE: I'd agree, Mr. Chairman, with the  
26 two previous speakers.

27

28

1 I think if we take out "or other compensation", we've  
2 dealt with the issue.

3 SENATOR KEENE: You could take out "or appearance".

4 ASSEMBLYMAN BROWN: It's not in there. Mr. Vasconcellos  
5 is attempting to put it in.

6 SENATOR DOOLITTLE: Because if you think about it, a  
7 lawyer who goes to court, I mean, conceivably it could be argued  
8 that what he does is make a speech or some kind of communication,  
9 certainly.

10 SENATOR KEENE: Somebody who gets an honorarium for  
11 doing nothing is getting a gift.

12 SENATOR ROBERTI: What about adding a qualifying line,  
13 "and appearance shall not be construed as including an appearance  
14 of a lawyer before a court"?

15 ASSEMBLYMAN JOHNSON: Well, Mr. Roberti, the language  
16 that's proposed is honorarium. A lawyer making an appearance  
17 before a board, or a commission, or in court, or whatever, is not  
18 doing that, unless it's a pro bono thing, and then this wouldn't  
19 apply in any event. But it's not for an honorarium; he's doing  
20 it for a fee, presumably based on an arrangement with his client.

21 So, I don't think that those situations are covered by  
22 the language that Mr. Vasconcellos is suggesting.

23 SENATOR KEENE: But what do the words "or appearance"  
24 add to the situation?

25 ASSEMBLYMAN JOHNSON: It relates back to accepting an  
26 honorarium for one of three things: an honorarium for a speech;  
27 an honorarium for a writing other than a copy --  
28

1 ASSEMBLYMAN BROWN: Why wouldn't you say an honorarium  
2 for any purpose whatsoever?

3 ASSEMBLYMAN JOHNSON: I'm sorry, how could you or why  
4 don't you?

5 ASSEMBLYMAN BROWN: Wouldn't that be more appropriate?  
6 An honorarium for any purpose whatsoever.

7 SENATOR DOOLITTLE: Sounds okay to me. Let's do it.

8 ASSEMBLYMAN VASCONCELLOS: Do it.

9 ASSEMBLYMAN BROWN: And then you're not screwing around  
10 with appearance and all that kind of stuff. Because let me tell  
11 you, appearance before the NFL Players' Council, representing  
12 somebody on -- a player who's about to be suspended on a drug  
13 charge, that's not a judicial body; that's an organization;  
14 that's a group.

15 SENATOR ROBERTI: So what is your proposal? "No Member  
16 of the Legislature may accept any honoraria"?

17 ASSEMBLYMAN BROWN: For any purpose whatsoever, period.

18 SENATOR ROBERTI: "For any purpose."

19 ASSEMBLYMAN JOHNSON: You'd strike that language. I  
20 assume it would read:

21 "No Member of the Legislature may  
22 accept any honorarium except copy-  
23 right royalties and reimbursement  
24 for actual travel expenses ..."

25 Copyright royalties clearly are not an honorarium.

26 ASSEMBLYMAN BROWN: Thank you. That's why you ought to  
27 just say: "No Member of the Legislature may accept an  
28 honorarium."

1 ASSEMBLYMAN JOHNSON: "Except for reimbursement for  
2 actual travel expenses and necessary living expenses in  
3 connection therewith."

4 ASSEMBLYMAN BROWN: It's not an honorarium.

5 ASSEMBLYMAN JOHNSON: I agree with you.

6 ASSEMBLYMAN BROWN: That's not an honorarium. We're  
7 paying you for a \$99 flight down to Los Angeles to make a speech  
8 at the Chamber of Commerce on the L.A. First, or whatever they  
9 call themselves, as I have done. I don't consider that an  
10 honorarium. They paid my way to get me down there.

11 ASSEMBLYMAN JOHNSON: Put a period after "honoraria".

12 SENATOR ROBERTI: Well, I don't know about that.

13 I mean, that's our definition of what's not an  
14 honorarium. But whoever the enforcing power is might decide that  
15 that includes just about everything.

16 ASSEMBLYMAN BROWN: That's why he's correct about the  
17 statute, Mr. Roberti, when he says that the statute ought to be  
18 written outlining exactly what you mean when you say "ban on  
19 honoraria". In the statute, you can make it very clear that  
20 every Member of the Legislature is entitled to be reimbursed for  
21 all necessary expenses incurred in any appearance, in any place  
22 where he has been invited to appear or to present any issue or  
23 paper, or what have you, where he's not reimbursed by the State  
24 or by his campaign account.

25 That can be a statute, or that can be a House rule, and  
26 that takes care of what Mr. Zelman is talking about.

27

28

1           In the Constitution, the word simply says "ban on  
2 honoraria": "No Member of the Legislature may accept an  
3 honoraria," period.

4           SENATOR ROBERTI: Let's ask Counsel. Do we have any  
5 definitions other than this of honoraria anywhere?

6           MR. GRESS: Well, I believe you have a definition in the  
7 Fair Political Practices Act.

8           SENATOR ROBERTI: What do they say?

9           MR. ZELMAN: You mean Prop. 73.

10          SENATOR ROBERTI: When we use the word "honoraria"  
11 subsequent to a formal definition, a court could take cognizance  
12 of the fact that we were taking cognizance of whatever existing  
13 definitions there were.

14          What is the existing political definition of honoraria?

15          MR. ZELMAN: The only thing that the FPPC dealt with, no  
16 Member may receive more than \$1,000 for a gift or honorarium in  
17 connection with a published work, or something like that; right?

18          I don't think honoraria was defined; was it?

19          ASSEMBLYMAN JOHNSON: No, based on the definition of  
20 gift, added gift or honoraria, published work on a subject  
21 related to the legislative process.

22          MR. ZELMAN: But what is the definition of honoraria  
23 previously defined? I think that's the question.

24          MR. GRESS: Then I think you look at the dictionary --

25          SENATOR ROBERTI: Let me add this. What about language:  
26 "no honoraria for speech, writing, or other purpose", and not use  
27 the word "appearance"?



1 If honorarium is to be construed broadly, then it's not  
2 going to be misconstrued. It will be only construed for those  
3 purposes for which honoraria are given.

4 MR. GRESS: I think one of the problems is that there's  
5 no precise definition for honorarium, and you have -- as  
6 Mr. Brown said, you have several different views.

7 And we're placing this in the Constitution, and the  
8 purpose of adding some other phrase, "or compensation", or  
9 something afterwards was if honorarium was given a limited  
10 interpretation, then a payment, which you can argue the term  
11 "payment" or compensation or something else, would cover the  
12 remaining part of the field.

13 Placing honorarium in the Constitution by itself without  
14 providing a definition subjects Members of the Legislature, in  
15 this case, and others to potential lawsuits for publicity value,  
16 or other purposes.

17 You're also taking a risk by leaving it -- being  
18 imprecise.

19 SENATOR DOOLITTLE: How about this, Mr. Chairman. I  
20 think, obviously, if this were easy to do, it would have been  
21 done by now. It's not that easy to do.

22 Why don't we -- we've done it in other parts of this --  
23 say: "The Legislature shall prescribe the definition of  
24 'honorarium'." We do that in the statute after it's been -- after  
25 we've fought through all the intricacies of this.

26 It's clear that our intent is that Members are not to go  
27 and appear and get a fee for appearing, or for giving a speech,  
28

1 or something. We know what the intent is, and then let's confer  
2 the authority on the Legislature to actually --

3 SENATOR ROBERTI: So are you offering as an amendment:

4 "No Member of the Legislature may  
5 accept any honorarium as defined by  
6 statute."

7 SENATOR DOOLITTLE: Or put a period after "honorarium",  
8 and say:

9 "The Legislature shall enforce this  
10 provision by appropriate legislation."

11 But that's the intent.

12 SENATOR ROBERTI: Then it's:

13 "No Member of the Legislature may  
14 accept any honorarium defined by  
15 statute."

16 ASSEMBLYMAN VASCONCELLOS: Read that. I think since we  
17 can't define it, it doesn't really mean much.

18 SENATOR ROBERTI: Well, it does prevent -- it would  
19 prevent -- if we just leave it:

20 "No Member of the Legislature may  
21 accept any honorarium."

22 Our problem is, it opens every one of us up to a suit.  
23 And you can flip a coin as to whether that suit would be  
24 entertained in court based on things right now that we don't  
25 think are honoraria, but somebody could come in and say a  
26 reimbursement is an honorarium. It's a gift for something  
27 enjoyable you got.

1 SENATOR DOOLITTLE: I would think we could probably get  
2 something moving.

3 SENATOR ROBERTI: "No Member of the Legislature may  
4 accept any honorarium as defined by statute."

5 ASSEMBLYMAN JOHNSON: I would like to offer the  
6 following.

7 SENATOR ROBERTI: Yes, please.

8 ASSEMBLYMAN JOHNSON: "No Member of the Legislature may  
9 accept any honorarium" period. "The Legislature shall enact  
10 statutes to implement this section," period.

11 SENATOR DOOLITTLE: That sounds good.

12 SENATOR ROBERTI: Let's write that down:

13 "The Legislature shall enact statutes  
14 to implement this section."

15 Assemblyman Johnson's offering that as an amendment.  
16 Any discussion or debate on the amendment that's been offered?

17 SENATOR KEENE: What is the part immediately --

18 SENATOR ROBERTI: "No Member of the Legislature may  
19 accept any honorarium. The Legislature shall enact statutes to  
20 implement this section."

21 Any comment? Secretary will call the roll.

22 MS. MITTEN: Roberti.

23 SENATOR ROBERTI: Aye.

24 MS. MITTEN: Keene.

25 SENATOR KEENE: Aye.

26 MS. MITTEN: Doolittle.

27 SENATOR DOOLITTLE: Aye.  
28

1 MS. MITTEN: Brown.

2 ASSEMBLYMAN BROWN: Aye.

3 MS. MITTEN: Vasconcellos.

4 ASSEMBLYMAN VASCONCELLOS: Aye.

5 MS. MITTEN: Johnson.

6 ASSEMBLYMAN JOHNSON: Aye.

7 SENATOR ROBERTI: Six to nothing; the amendment carries.

8 Mr. Zelman, were you concluded?

9 MR. ZELMAN: I had -- one other point I had mentioned  
10 was that I had hoped you would add on Section 5(c), the notion of  
11 creating an appearance of conflict as opposed to an actual  
12 conflict.

13 SENATOR DOOLITTLE: What is the difference, do you  
14 think?

15 MR. ZELMAN: A stronger standard. Obviously, any of  
16 it's going to have to be defined.

17 SENATOR ROBERTI: What I'm afraid of by that standard is  
18 that anybody could castigate any adverse comment, even if it's  
19 not well founded, someone would say it's the appearance.

20 ASSEMBLYMAN VASCONCELLOS: It worries me. The realities  
21 ought to be strictly limited, but "appearance" becomes almost a  
22 subjective standard.

23 If somebody gives me a bag of apricots, someone could  
24 say, "That appears to be," and have a charge, which I really  
25 would think would be frivolous. I don't think I want to go  
26 through having to prove it.

27

28

1           And the reality, I think, is the issue here that it  
2 creates a conflict of interest or might create. Even "might" is  
3 considered subjective.

4           MR. ZELMAN: The other suggestion I had, and I think  
5 this may be fine, I just want a definition of what's meant here  
6 on 5(e).

7           Our objection to the previous language was the use of  
8 the term "revolving door", that a Legislator might become a  
9 lobbyist.

10           "Lobbyist" has a particular definition. And if you  
11 think about that, particularly as it might apply to not so much  
12 yourselves, but to lobbying the executive branch, one or two  
13 appearances in the right place --

14           SENATOR ROBERTI: In the draft proposal we have, we have  
15 taken your suggestion, I believe, and changed the word "lobbyist"  
16 to "lobbying".

17           That hasn't been moved in toto by everybody here.

18           MR. ZELMAN: It's my understand that what you mean by  
19 "lobbying" is not necessarily a registered lobbyist in that  
20 definition, but the more standard term of attempt to influence in  
21 some way the legislative process.

22           SENATOR ROBERTI: Yes.

23           MR. ZELMAN: If that's what that means, the --

24           SENATOR ROBERTI: Yes.

25           ASSEMBLYMAN JOHNSON: Where is the language?

26           SENATOR ROBERTI: Page 2, Section (e).  
27  
28

1 MR. ZELMAN: And that is clearly a strengthening of this  
2 provision if that's what -- is that the way you read it? From  
3 "lobbying for compensation" to "lobbying"?

4 MR. GRESS: Well, the language has expressly, as  
5 governed by the Political Reform Act of 1974, "lobbying for  
6 compensation". So, that whole body of law would apply.

7 MR. ZELMAN: My question is, does "lobbying" then get  
8 interpreted to mean you have to meet the threshold for which you  
9 register as a lobbyist under the Political Reform Act, which is  
10 much more than just occasional talking to Legislators.

11 SENATOR ROBERTI: Counsel, then staff would like to  
12 comment.

13 MR. GRESS: Well, in this case, (e) says: "The  
14 Legislature shall enact laws that prohibit", and I would think  
15 the statutes or law enacted by the Legislature would fill in the  
16 details of how it is to be interpreted, et cetera.

17 MR. HODSON: The Political Reform Act does not contain a  
18 definition of "lobbying"; therefore, we cannot use the phrase "as  
19 defined by the Political Reform Act." We had to use the phrase  
20 "as governed by the Political Reform Act", because the Act  
21 repeatedly refers to "lobbying", lobbying contacts, regulations  
22 of the FPPC referring to lobbying and definitions.

23 But by phrasing it "governed by", we are incorporating  
24 those. We simply couldn't say "defined by the Political Reform  
25 Act" because that would be referencing --

26 MR. ZELMAN: I'm not concerned about --  
27  
28

1 ASSEMBLYMAN VASCONCELLOS: What I gather from what  
2 Mr. Hodson's saying is that the Reform Act talks about what it is  
3 to be a lobbyist, a registered lobbyist, and separately it uses  
4 the word "lobbying" in a much more generic sense.

5 This is the word "lobbying", and therefore it would  
6 prohibit any kinds of activities that are lobbying, not just  
7 those of a registered lobbyist.

8 MR. ZELMAN: That's all I'm trying to clarify. Okay.

9 ASSEMBLYMAN JOHNSON: While Prop. 9 does not contain a  
10 specific definition of "lobbying", there is a cumulative  
11 definition by inference.

12 MR. ZELMAN: We're all agreed that that's what it means.

13 Those are the only further suggestions I have.

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

15 Would someone else like to come forward and make  
16 comment?

17 MR. DORAIS: Mr. Chairman, Members of the committee,  
18 Mike Dorais, representing the California Newspaper Publishers  
19 Association.

20 Our comments today are confined to two areas. One is,  
21 we have the understanding that the injunctive relief, mandamus,  
22 declaratory relief, and the misdemeanor penalty will be following  
23 in the accompanying statute.

24 And we wanted to comment about the caucus language.

25 ASSEMBLYMAN BROWN: I have an understanding of what?

26 MR. DORAIS: That the civil remedies to enforce the open  
27 meeting section of the proposed Constitutional Amendment will be  
28 included in an accompanying statute.

1           SENATOR DOOLITTLE: I had no such understanding, Mr.  
2 Chairman. I would actively oppose such provisions.

3           ASSEMBLYMAN BROWN: Yes, I don't understand where you  
4 got -- who did you have that understanding with, Mr. Dorais, so  
5 we know who you're talking to and made the deal with you?

6           MR. DORAIS: Well, I've spoken to a member of your staff  
7 and to other people who I understood were --

8           ASSEMBLYMAN BROWN: Namely?

9           MR. DORAIS: Well, I don't want to put that person in a  
10 hard spot if that wasn't their understanding of the situation.

11          ASSEMBLYMAN BROWN: Probably an ex-member of my staff.

12          MR. DORAIS: Well then I definitely won't mention who I  
13 was speaking to.

14          And if it's an erroneous understanding, then that's why  
15 I bring it out here today at this moment, because it's clear that  
16 this proposed Constitutional Amendment --

17          ASSEMBLYMAN BROWN: You want civil and criminal  
18 penalties for violating the Open Meetings Act?

19          MR. DORAIS: That's correct, Mr. Speaker.

20          ASSEMBLYMAN BROWN: I wouldn't vote for that.

21          MR. DORAIS: I think you did back in 1974 on the  
22 Grunsky-Burton Act.

23          ASSEMBLYMAN BROWN: Didn't apply to me.

24          MR. DORAIS: Of course it didn't apply to you, because  
25 you weren't going to participate in any illegal meetings.

26          But, this language that we're talking about is simply,  
27 in effect, a recodification of existing law. Without it, the  
28



1 proposed Constitutional Amendment's language with regard to open  
2 meetings would be kind of a toothless tiger. There wouldn't be  
3 any enforcement mechanisms.

4 What we're asking for at this point, I guess --

5 SENATOR ROBERTI: Why don't we leave it at this point.  
6 You discuss the Constitutional Amendment as it is, and methods of  
7 enforcement, we understand that you would like something stronger  
8 than --

9 SENATOR MADDY: Why couldn't you get injunctive relief  
10 if it's in the Constitution? You sure could. Absolutely you  
11 could get injunctive relief.

12 You don't need to -- you just want to get into the  
13 meetings; don't you? Do you want somebody in jail? Do your  
14 publishers want to put someone in jail?

15 MR. DORAIS: No, I don't think the misdemeanor penalty  
16 is particularly important or than as a symbol, because what  
17 you're -- well --

18 ASSEMBLYMAN BROWN: I'm very glad you're casual about  
19 misdemeanor penalties.

20 SENATOR MADDY: Yes. Well, the reason I'm suggesting --  
21 it's like us suggesting a statement of economic interest for your  
22 editorial boards, and that's symbolic.

23 MR. DORAIS: The reason I don't think it's particularly  
24 more than a symbol is because on only one occasion in the years  
25 since 1953, when the Ralph M. Brown Act was enacted, has it  
26 become an issue. And presumably it wouldn't become an issue with  
27 regard to the Legislature.

1           It exists right now, Mr. Speaker. It's in the  
2 Government Code in two different places. It's in Proposition 24;  
3 it's in the Grunsky-Burton Act, and it's never even been an  
4 issue.

5           ASSEMBLYMAN BROWN: It is with me, Mr. Dorais. In the  
6 hands of an overzealous, enthusiastic, hateful prosecutor, it  
7 could be an awfully powerful tool.

8           Civil remedies for compliance with official functions  
9 and responsibilities have nothing to do with economic benefit  
10 coming personally to the person who's involved; ought to be all  
11 you would seek and would be entitled to.

12           Criminal penalties ought to be for some conduct that, in  
13 one manner or another, endangers the safety of some person or  
14 some person's property.

15           SENATOR ROBERTI: Criminal penalty, and of course, we're  
16 talking about something, as you're pointing out, applies to some  
17 others, but a criminal penalty for something where I'm not  
18 getting any remuneration, or not getting any personal benefit, is  
19 a little bit frightening.

20           Now, I personally tend to think you could get injunctive  
21 relief for being in the Constitution. And I personally am  
22 willing to -- and I'm only speaking for myself now -- negotiate  
23 that kind of remedy with you.

24           But the criminal penalty for Legislators who are highly  
25 visible, much more visible than a local -- than most local  
26 legislators --

27

28

1 MR. DORAIS: Say, a member of the San Francisco Board of  
2 Supervisors or Los Angeles --

3 SENATOR ROBERTI: That's why I said most.

4 ASSEMBLYMAN BROWN: My friend, Mr. Johnson, comes from a  
5 county where they have an unusual, enthusiastic District  
6 Attorney. And there's a fellow -- I can't travel in one county  
7 in this state. A fellow named Bradbury, or something like that.

8 SENATOR ROBERTI: That one's Ventura.

9 ASSEMBLYMAN BROWN: But that's the one I can't travel  
10 in.

11 In Orange, he's got an over-enthusiastic District  
12 Attorney as well.

13 SENATOR ROBERTI: Assemblyman Johnson.

14 ASSEMBLYMAN JOHNSON: Well, Mr. Speaker and Members,  
15 what this really points out is a more general question, and that  
16 is the need, as we move along with this SCA, that we address the  
17 statutory components that are going to be a part of it.

18 I don't necessarily have a problem at all. As you know,  
19 I was a strong supporter of Prop. 24, and I don't have a problem  
20 with that.

21 But we need to provide the details of what the statutory  
22 enactments that go along with this SCA --

23 SENATOR ROBERTI: I tend to agree with you. There has  
24 to be some kind of enforcement other than our good intentions.

25 MR. DORAIS: And we understand that -- we feel it's  
26 reasonable to consider that be accomplished in an accompanying  
27 statute --

1 SENATOR ROBERTI: Yes.

2 MR. DORAIS: -- rather than necessarily included in the  
3 Constitution.

4 SENATOR ROBERTI: We at least know four accompanying  
5 statutes we need already, so there may be more.

6 MR. DORAIS: The other point we wanted to speak to  
7 today, Mr. Chairman, is with regard to the language on Page 3. I  
8 think I'm looking at the next-to-the-last most recent version.  
9 I'm looking at the language dealing with:

10 "A caucus of Members of the Senate,  
11 Members of the Assembly, or Members  
12 of both houses, which is composed of  
13 members of the same political party,"  
14 and the provision is that they may meet in closed session.

15 SENATOR ROBERTI: I understand from talking to Counsel,  
16 Mr. Dorais, that the interpretation -- that this language only  
17 applies to partisan caucuses for all the members of that party,  
18 is the correct interpretation.

19 As soon as we get that counsel opinion, as I suspect it  
20 will corroborate that, we will print it in the Journal on the  
21 date of the vote.

22 MR. DORAIS: That would be requested by us, and we  
23 appreciate your doing that.

24 There has been a question that has arisen as to whether  
25 or not this language might permit closed committee caucuses. We  
26 understand that that's not the intent, but we want to make sure  
27 that it's clarified.

1 SENATOR ROBERTI: Yes, that's not the intent. As soon  
2 as we get language to that effect, and I expect it before the  
3 vote, we'll clarify the language.

4 MR. DORAIS: Thank you.

5 SENATOR ROBERTI: Thank you very much.

6 Assemblyman Vasconcellos.

7 ASSEMBLYMAN VASCONCELLOS: Is that better clarified now  
8 if we put the words "caucus of the Members of the Senate, the  
9 Members of the house", or "the Members of both houses", rather  
10 than just "Members"?

11 MR. DORAIS: I think that might help, Mr. Vasconcellos.

12 Also, another clarification could be --

13 SENATOR ROBERTI: Put the word "the" in?

14 MR. DORAIS: -- a sentence that strictly prohibits a  
15 closed committee caucus.

16 ASSEMBLYMAN VASCONCELLOS: Put the word "the" in.

17 SENATOR ROBERTI: "A caucus of the Members of the  
18 Senate."

19 ASSEMBLYMAN VASCONCELLOS: "-- the Members of the  
20 Assembly, or the Members of both houses".

21 SENATOR ROBERTI: "-- the Members of the Assembly, or  
22 the Members of both houses, which is composed of the members of  
23 the same political party."

24 So, we add four "the's" on Page 3, (A) (2) [sic].  
25 Assemblyman Vasconcellos offers that as an amendment.

26 Any discussion or debate? Any opposition?

27 Without opposition, such will be the order.  
28

1 MR. DORAIS: Mr. Chairman, might I ask if you will still  
2 be pursuing the question of a Legislative Counsel's opinion?

3 SENATOR ROBERTI: Oh, yes.

4 MR. DORAIS: Prior to the vote?

5 SENATOR ROBERTI: Yes.

6 MR. DORAIS: Thank you.

7 SENATOR ROBERTI: Leg. Counsel has indicated orally that  
8 the language we have on Page 3, Section (A)(2) [sic] applies only  
9 to caucuses that are called of the whole membership of the house,  
10 or both houses, of that party.

11 Mr. Dorais is concerned that that doesn't mean a  
12 committee caucus, and Counsel has indicated that's the case, and  
13 I have indicated on the day of the vote we will print Counsel's  
14 opinion in the Journal.

15 ASSEMBLYMAN JOHNSON: Thank you, Mr. Chairman.

16 ASSEMBLYMAN BROWN: Mr. Roberti, so that we don't go  
17 without any response, what keeps, as Mr. Johnson said yesterday,  
18 the minority party -- whether they be Democrats or Republicans --  
19 from strategizing with reference to every committee meeting in  
20 private? Nothing, correct? But you do keep the majority party  
21 on that same committee from doing the exact same thing.

22 So, for purposes of competitiveness, the majority party  
23 is at a disadvantage in that situation if their members have not  
24 programmed, as would be the case with the minority party.

25 How do we address that effectively?

26 SENATOR ROBERTI: Well, that is a disadvantage.  
27  
28



1           SENATOR ROBERTI: Or, you could have two meetings and  
2 shuttle a messenger back and forth. I guess that would be okay.

3           Does anyone else wish to comment on the draft before us?

4           ASSEMBLYMAN BROWN: On the open meeting question, I'm  
5 told that there was a trade union's opinion in response to in  
6 inquiry made by some local elected official wherein a city  
7 attorney had gone from one individual member to the next  
8 individual member over a period of several days, saying, "This is  
9 what is being considered. How would you vote on it?" Almost  
10 like a poll. And those individual members said, "I'd vote yes,"  
11 or "nay."

12           When the vote was finally taken at the organized,  
13 called, appropriately noticed meeting, that did in fact happen in  
14 the way in which the city attorney had appropriated noted in his  
15 own notes.

16           I'm told that the Attorney General has opined that that  
17 was an improper meeting.

18           I believe that the Members of the Legislature regularly  
19 seek votes from other Members of the Legislature, commitments.  
20 We have rollcall cards where we walk around and say,  
21 "Mr. Doolittle, how are you voting on my health bill?"  
22 "Mr. Maddy, how are you voting on my health bill?" "Mr. Keene,  
23 how are you voting on my health bill?"

24           And then, when I hand it to the Floor Manager, I say, "I  
25 have these Members who say they will vote for the bill when it is  
26 presented on the Floor."  
27  
28



1 Under that Attorney General's opinion, that provision  
2 may very well -- that conduct may very well be barred. More  
3 often than not in committees it happens regularly, where  
4 Mr. Keene will solicit the individual votes of the committee  
5 Members, or an indication of how they're voting, before the  
6 committee takes place, sometimes using staff, sometimes with a  
7 special interest organization -- League of Women Voters, or  
8 whomever -- that may be interested in the subject matter.

9 If that opinion held, then I you would be, I think,  
10 jeopardizing that time-honored and appropriate technique, and I  
11 don't know that's ever been criticized.

12 I think as we draft this, you ought to guard against it.

13 SENATOR ROBERTI: I agree. It's the first I had heard  
14 of that. Any kind of rollcall shouldn't be prohibited.

15 ASSEMBLYMAN BROWN: The rollcall card, with some  
16 regularity. So, I would suggest --

17 SENATOR ROBERTI: Otherwise, we would never pass a piece  
18 of legislation.

19 ASSEMBLYMAN BROWN: -- doing the legal work, better be  
20 careful.

21 ASSEMBLYMAN JOHNSON: It would be a surprise; wouldn't  
22 it?

23 (Laughter.)

24 SENATOR ROBERTI: I think Assemblyman Johnson may like  
25 the opinion.

26 ASSEMBLYMAN BROWN: It may be that in the statutory  
27 drafting, we get that opinion. We could very well take that  
28

1 opinion, see which section that the Attorney General has used as  
2 his base, and make the necessary alteration in that section.

3 Currently, local governments are operating on the theory  
4 that that opinion is the law. And if they operate long enough,  
5 and anybody ever finally seeks declaratory relief, many court --

6 SENATOR ROBERTI: In other words --

7 ASSEMBLYMAN BROWN: -- by estoppel you can't raise the  
8 question; you've been doing it too many years.

9 SENATOR ROBERTI: In other words, if they're counting  
10 votes --

11 ASSEMBLYMAN BROWN: Custom and usage.

12 SENATOR ROBERTI: -- you can't count votes.

13 ASSEMBLYMAN BROWN: Right, exactly.

14 Believe me, I've not been successful --

15 SENATOR ROBERTI: Put the world on notice, I agree with  
16 you, that certainly isn't my idea of open meeting. I agree.

17 Yes, Assemblyman Vasconcellos.

18 ASSEMBLYMAN VASCONCELLOS: Does that conclude it for  
19 now?

20 SENATOR ROBERTI: Right, but it's an important point,  
21 however, that we have to address.

22 ASSEMBLYMAN VASCONCELLOS: On Page 5, you've got the  
23 same kind of honorarium language in Subsection (b). Do you want  
24 to modify it the same way?

25 SENATOR ROBERTI: Assemblyman Vasconcellos moves that  
26 the honorarium language in Section 14(b) be made to conform with  
27 the language adopted on Page 3, Section (A)(2) [sic].  
28

1 Any discussion or debate?

2 Without objection, such will be the order.

3 Any other observations? Are there any technical  
4 amendments that we haven't gotten to, staff?

5 MR. GRESS: Tim has given us some technical amendments  
6 to incorporate.

7 SENATOR ROBERTI: Have they been passed out to the  
8 Members?

9 MR. GRESS: No, they have not.

10 SENATOR ROBERTI: I think we have to formally adopt  
11 them.

12 ASSEMBLYMAN VASCONCELLOS: I move the adoption of the  
13 technical.

14 MR. HODSON: Let me explain.

15 There is one line where the word "and" was inadvertently  
16 left out.

17 In addition, we have in the conflict of interest  
18 language specified that a Member may vote on the budget bill.  
19 That language was inadvertently left out in two of the places  
20 where it should be.

21 Those are the technical amendments.

22 ASSEMBLYMAN VASCONCELLOS: Move the technical  
23 corrections.

24 SENATOR ROBERTI: Assemblyman Vasconcellos moves the  
25 technical amendments that are before you -- that have been  
26 presented to you.

27 Is there any discussion or debate? Any opposition?  
28

1           Hearing none, such will be the order.

2           Any other observations?

3           ASSEMBLYMAN VASCONCELLOS: We've got the accountability  
4 section --

5           ASSEMBLYMAN BROWN: Excuse me for a second, Mr.  
6 Vasconcellos.

7           Before you go there, Mr. Roberti, we ought to make sure  
8 that that open meeting language is drafted in such a way that  
9 personnel matters, matters of litigation, possible litigation, or  
10 that which Legislative Counsel's opine is subject to legislative  
11 privilege, be the subject matter of closed meetings. That  
12 includes the security questions, et cetera.

13           And I say advisedly that which is subject to attorney-  
14 client privilege, because there are some items in preparation for  
15 litigation that technically there isn't litigation, but it is  
16 attorney-client privilege.

17           One example, if Senator Doolittle asked the question of  
18 whether or not there should be a lawsuit filed, and these are the  
19 reasons why he thinks that lawsuit ought to be filed, there isn't  
20 any pending litigation, but that's attorney-client privilege when  
21 we seeks the advise and counsel under those circumstances.

22           So, attorney-client privilege, as opined by the  
23 Legislative Counsel, ought to be the basis for such a closed  
24 meeting.

25           SENATOR ROBERTI: Most of those points, I think, are  
26 included in Page 3, Sections (A) (B) (C).

27

28

1 ASSEMBLYMAN BROWN: Well, I looked for the  
2 attorney-client privilege, and I don't see it.

3 SENATOR ROBERTI: The attorney-client privilege as such  
4 is not mentioned as such. However, that --

5 ASSEMBLYMAN BROWN: Litigation is there.

6 SENATOR ROBERTI: Yes, litigation is in here, and that  
7 can be delineated in the statute, I would think. I don't think  
8 you have to mention --

9 ASSEMBLYMAN BROWN: I think you'd better put  
10 attorney-client privilege in there, because the Constitution is  
11 the originating document in this regard, and I believe it's  
12 important --

13 SENATOR ROBERTI: I understand, but I don't think the  
14 attorney-client privilege is in the Constitution. I think we  
15 would then be incorporation the statute in the Constitution.

16 Maybe I'm wrong.

17 ASSEMBLYMAN BROWN: I think litigation isn't in the  
18 Constitution either, Mr. Roberti, and it could be defined. There  
19 is not a generic definition of litigation. Litigation is defined  
20 by whatever we make it.

21 ASSEMBLYMAN VASCONCELLOS: Are we going to put "pending  
22 or potential litigation"?

23 ASSEMBLYMAN BROWN: Well, that's pretty broad. I was  
24 trying to make it as restrictive as possible so these newspeople  
25 that want to get in your business don't go off the scale.

26 If it's attorney-client privilege, under the Canons of  
27 Ethics, and as interpreted on a regular basis by the court,  
28 that's a very narrow scope. Attorney-client privilege is narrow.

1 Potential litigation could be anything, and I don't  
2 think you want to say "potential litigation".

3 I think you want to say, if the Leg. Counsel says the  
4 subject matter of this dialogue is attorney-client privilege, you  
5 ought to be able to go into a meeting, and I think the news hawks  
6 of the world would agree with that.

7 If he says "possible litigation", that's anything.  
8 Everything can possibly be litigated. All you'd have to do is  
9 announce, "Hey, we're holding a meeting to discuss possible  
10 litigation."

11 SENATOR DOOLITTLE: Now I'm confused, Mr. Chairman,  
12 because Mr. Brown I thought had used the term "possible  
13 litigation".

14 You just meant litigation, then, or matters subject to  
15 the attorney-client privilege as opined by Leg. Counsel?

16 ASSEMBLYMAN BROWN: Correct, absolutely.

17 SENATOR ROBERTI: Mr. Dorais, I have to go vote on the  
18 Consent Calendar.

19 Five-minute recess.

20 (Thereupon a brief recess was taken.)

21 SENATOR ROBERTI: The committee will come to order.

22 Mr. Dorais, I think, approached the witness stand.

23 MR. DORAIS: Mr. Chairman, the language on Page 3  
24 dealing with the specific question on when you may meet behind  
25 closed doors with counsel has been broadened beyond the approach  
26 taken in the Ralph M. Brown Act, which talks about meetings:

27

28

1 To confer with or receive advice  
2 from legal counsel regarding  
3 litigation when discussion in open  
4 session would not protect the  
5 interests of the house ..."

6 That's this language.

7 In the Local Government law, I think the word  
8 "prejudice" is used, and I think in the Bagley-Keene Act, it's  
9 "adversely impact."

10 Here, we've gotten, I think, as broad a swinging door as  
11 you would want. And think I think the understanding is that you  
12 would describe those meetings in the accompanying statute, along  
13 the lines of the language that's found in the law that you  
14 co-authored two years ago with Senator Keene for application of  
15 local government and to State boards and commissions.

16 SENATOR ROBERTI: That, if I'm not mistaken, was to  
17 protect against, I guess, abuses in the attorney-client  
18 privilege.

19 MR. DORAIS: Yeah. Conceivably, any time you met with  
20 your attorney, you would be exercising the attorney-client  
21 privilege.

22 So, to avoid that type of overreach of the closed door  
23 privilege, we've just restricted it -- I don't think it's very  
24 restrictive, frankly, but it's a legitimate concern -- to  
25 meetings where you've got this interest in protecting the  
26 interests of the house or the committee.

27

28

1 ASSEMBLYMAN VASCONCELLOS: There are two distinct  
2 nuances here. One is whether or not it protects the interests of  
3 the house, or adversely impacts, that standard of justification.

4 The other is the ambiance of what could be discussed.  
5 Only litigation? What about something that's not litigation?

6 They're really distinct pieces, that's all.

7 MR. DORAIS: Yes.

8 Beyond litigation is in the Ralph M. Brown Act now, and  
9 in the --

10 ASSEMBLYMAN VASCONCELLOS: Beyond?

11 MR. DORAIS: Yes, an action that is anticipated. I  
12 thinks the words of art are "under existing facts and  
13 circumstances", you've reached a point where it's likely that you  
14 will be involved in litigation.

15 ASSEMBLYMAN VASCONCELLOS: So, if this read, "permits  
16 counsel regarding pending or anticipated litigation"?

17 I mean, what I think Mr. Brown was about was not the  
18 standard of protection so much as the ambiance of what you could  
19 appropriate talk with counsel privately about. If you didn't  
20 have a lawsuit pending, could you not talk, you know, privately?

21 MR. DORAIS: It's not our intention to preclude those  
22 types of discussions.

23 ASSEMBLYMAN VASCONCELLOS: That's what I'm trying to  
24 find --

25 MR. DORAIS: And it may be that this language needs some  
26 slight modification to ensure that.

27  
28



1           It's clear in the accompanying statute, but then if the  
2 statute is simply just interpreting a prohibition which is too  
3 narrow, then we have a problem.

4           So, yeah, I understand the point, Mr. Vasconcellos.

5           ASSEMBLYMAN VASCONCELLOS: If it says, "litigation  
6 pending or reasonably to be anticipated"?

7           MR. DORAIS: Yes, and the accompanying statute, which is  
8 framed like the Roberti-Keene law, addresses that with  
9 particularity.

10          ASSEMBLYMAN VASCONCELLOS: I'm trying to figure out some  
11 language around litigation that provides more than just a pending  
12 case, and suggest it: "regarding litigation, pending or  
13 reasonably to be anticipated." Or "reasonably anticipated".

14          Does that provide the breadth without being a wide open  
15 door and cover it?

16          ASSEMBLYMAN BROWN: I don't think so, Mr. Vasconcellos,  
17 because let me tell you, the dialogue that you need to protect  
18 would be the serious, intensive, ongoing discussions about  
19 whether or not you should litigate at all. And you may conclude  
20 you shouldn't litigate, period.

21          ASSEMBLYMAN VASCONCELLOS: But that's regarding  
22 litigation. That's covered, I think.

23          ASSEMBLYMAN BROWN: No, it says litigation only.  
24 There's no litigation.

25          Litigation is, somebody has filed a lawsuit, and there  
26 is a complaint, and there is an official paper and document,  
27 period. You've got to do the developmental work, and if you do  
28

1 the developmental work in a meeting where Mr. Dorais reports it  
2 every hour on the hour, you may very well have given away the  
3 totality of the evidence that supports your case.

4 MR. DORAIS: We're in agreement, Mr. Brown.

5 SENATOR ROBERTI: Litigation, I don't know what the word  
6 or art is, bringing litigation or reasonably pending litigation,  
7 or anticipated litigation.

8 ASSEMBLYMAN BROWN: I don't know, but you've got to have  
9 -- you don't like the words "attorney-client privilege", because  
10 you believe that every time Mr. Vasconcellos talks to anybody, he  
11 could allege that it's attorney-client privilege and thereby keep  
12 you out of the room.

13 SENATOR ROBERTI: Mr. Dorais reminds me that I carried  
14 legislation at the local level --

15 ASSEMBLYMAN BROWN: Sure, you've made a lot of mistakes  
16 in your time.

17 (Laughter.)

18 SENATOR ROBERTI: -- to restrict the attorney-client  
19 relationship in those cases where they brought their attorney in,  
20 and that, per se, became the attorney-client relationship prior  
21 to the enactment of the legislation I carried about two or three  
22 years ago. The attorney-client privilege covered that situation  
23 without really color of litigation.

24 I think the words of art are: "litigation", "pending and  
25 reasonably anticipated litigation", and I don't know about  
26 "bringing litigation". There must be a more artful way of  
27 drafting it.

1 ASSEMBLYMAN BROWN: "Potential".

2 ASSEMBLYMAN VASCONCELLOS: That could be anything.

3 It would seem "regarding litigation" would include  
4 whether to litigate as well as the litigation itself. In a  
5 normal understanding of the words, it would for me.

6 MR. DORAIS: The important thing would be the  
7 accompanying statute in terms of making sure that it wasn't wide  
8 open.

9 SENATOR ROBERTI: The other important thing is just to  
10 make sure that the bringing in of the attorney just because you  
11 are asking for advice in a given area that is not related to any  
12 reasonable prospect of litigation should not give the legislative  
13 body color or protection.

14 ASSEMBLYMAN JOHNSON: I think that that's important, and  
15 I supported your legislation relating to local government. I  
16 think that that is an important point, that we not be able to  
17 avoid, or that committees of this Legislature avoid, the open  
18 meeting requirement that we're attempting to put in here by  
19 inviting an attorney in.

20 I think an equally important element of that is the  
21 requirement for notice in advance of that meeting, so that the  
22 press and the public know that the meeting's going to be held,  
23 and they know that if a privilege of some kind is going to be  
24 invoked, what that privilege is.

25 I again raise the suggestion that I raised yesterday,  
26 that consideration be given to a requirement that those noticed  
27 meetings falling under one of these exceptions be tape recorded,  
28

1 and that that recording be preserved so that if the issue arises  
2 as to whether or not the privilege was appropriately invoked,  
3 that that would be available for a judge to consider in camera  
4 and make a determination if, in fact, there was a violation of  
5 the stated privilege claimed.

6 SENATOR ROBERTI: Since we're dealing with the  
7 Constitution in this case, I would think that broader, more  
8 directive language is what's necessary.

9 I have copies of Bagley-Keene and the Ralph Brown Act,  
10 and they're full pages and very detailed.

11 ASSEMBLYMAN JOHNSON: Mr. Chairman, I don't necessarily  
12 quarrel with that approach. I think these questions need to be  
13 addressed, however, and in a broad statement objectives in the  
14 Constitution, we're placing in the Constitution -- or proposing  
15 to place in the Constitution a series of exceptions to the  
16 requirement for an open meeting. In doing that, I think, it's  
17 important that we put in a provision for adequate notice.

18 Leave the details and so on, but if the Legislature or  
19 committees of the Legislature can meet without the press or  
20 public being present, I think that a minimum level of protection  
21 is that that be publicly noticed so that folks are at least aware  
22 that the meeting's taking place, and what is the privilege that's  
23 being claimed.

24 SENATOR ROBERTI: I don't have a problem with that, but  
25 I'm speaking only for myself.

26 I think, Assemblyman Johnson, if I'm reading you right,  
27 you would like something to the effect that the Legislature shall  
28

1 require -- shall enact statutes delineating the notice that would  
2 have to be given for the invocation of the exception.

3 ASSEMBLYMAN JOHNSON: Yeah. I mean, if we're going to  
4 create a series of exceptions in some instances with respect to  
5 the legal privilege that's only going to leave that to a statute,  
6 it just seems to me that we ought to, within the Constitutional  
7 provision here, at least require that the same kind of notice be  
8 available about that meeting.

9 I guess I would be satisfied with that within the  
10 Constitutional enactment, to say that notice requirement has to  
11 be there.

12 We're not going to accomplish much of anything if we say  
13 within these exceptions, you can meet in secret, and you don't  
14 even have to tell the people that you're meeting.

15 SENATOR ROBERTI: First let's get to Speaker Brown's  
16 point on the litigation.

17 What about language, "to confer with or receive advice  
18 from legal counsel regarding pending or reasonably anticipated  
19 litigation"?

20 ASSEMBLYMAN VASCONCELLOS: You could go one step further  
21 without making it -- put it: "regarding litigation,"  
22 parenthesis, "(pending, reasonably anticipated, or whether to  
23 litigate)", or "whether to initiate litigation".

24 In that case, I think, you have some fair parameters  
25 that seem okay.

26 SENATOR ROBERTI: Let's go over that one more time. It  
27 appears on Page 3, Subsection (C).

1 ASSEMBLYMAN VASCONCELLOS: After "litigation", put in  
2 parenthesis, "(pending," comma, "reasonably anticipated," comma,  
3 "or whether to initiate.)"

4 SENATOR ROBERTI: "Pending," comma, "reasonably  
5 anticipated, or --"

6 ASSEMBLYMAN VASCONCELLOS: "Whether to initiate."

7 SENATOR ROBERTI: "Whether to initiate litigation."

8 ASSEMBLYMAN VASCONCELLOS: End of parenthesis.

9 SENATOR ROBERTI: "Reasonably anticipated or whether to  
10 initiate," close parenthesis.

11 Now, Assemblyman Vasconcellos offers that as an  
12 amendment. Is there any discussion or debate? Is there any  
13 opposition?

14 ASSEMBLYMAN JOHNSON: Question.

15 That is an addition to the existing language? We're not  
16 striking anything?

17 SENATOR ROBERTI: Nothing is stricken.

18 ASSEMBLYMAN JOHNSON: Fine, thank you.

19 SENATOR DOOLITTLE: May I just understand something?

20 SENATOR ROBERTI: Yes.

21 SENATOR DOOLITTLE: So after "litigation," in Subsection  
22 (C), parenthesis, "(pending," comma, "reasonably anticipated,"  
23 comma, "or whether to initiate)" close parenthesis.

24 SENATOR ROBERTI: Yes.

25 Any discussion or debate?

26 The motion is before us. Without objection, such will  
27 be the order.

1 Now on the points that Assemblyman Johnson was offering.  
2 I take it, Assemblyman, you would like something indicating that  
3 when one of the exceptions in (A) (B) (C) on Page 3 is invoked,  
4 notice should be given?

5 ASSEMBLYMAN JOHNSON: Yes, that's my intention. Some  
6 requirement of notice.

7 SENATOR ROBERTI: Something to the effect: "Whenever a  
8 closed session shall be invoked, the --"

9 ASSEMBLYMAN JOHNSON: Adequate notice shall be given.

10 SENATOR ROBERTI: "Adequate notice shall be given --"

11 ASSEMBLYMAN JOHNSON: Delineating the exception --

12 SENATOR ROBERTI: "Delineating the exception for which  
13 the closed meeting is being called."

14 How shall give that notice?

15 ASSEMBLYMAN VASCONCELLOS: The convening --

16 SENATOR ROBERTI: The Chair of the convening -- of the  
17 group being convened. Let's do that one more time then.

18 (Thereupon the record was read back.)

19 ASSEMBLYMAN VASCONCELLOS: Giving the reason for which  
20 -- to justify the closed meeting.

21 SENATOR ROBERTI: Delineating the exception or the  
22 reason? What do you want?

23 ASSEMBLYMAN VASCONCELLOS: Setting forth the purpose  
24 which justifies the closed meeting.

25 SENATOR ROBERTI: That's okay: "setting forth the  
26 purpose for which the closed meeting is called. Such notice  
27 shall be given pursuant --"

1 ASSEMBLYMAN BROWN: You're putting this in the  
2 Constitution?

3 SENATOR ROBERTI: That's what -- Assemblyman Johnson  
4 would like something indicating that notice has to be given.

5 Here's another suggestion: "When a closed session is  
6 held for any of the above purposes, reasonable notice thereto  
7 shall be provided by the Chair."

8 Is that okay?

9 ASSEMBLYMAN BROWN: Mr. Chairman, I think that the  
10 reference in the Constitution ought to be for requirement of  
11 adoption of statutory notification procedures. It may be the  
12 Chair; it may be the body; it may be the Speaker; it may be the  
13 President Pro Tem. It may be the head of the committee; it may  
14 be any of those kinds of things.

15 I think to put that specific reference in the  
16 Constitution is wrong.

17 SENATOR ROBERTI: How about "statutes shall be enacted"?

18 ASSEMBLYMAN VASCONCELLOS: Legislature shall enact a  
19 statute providing for reasonable notice and justification.

20 SENATOR ROBERTI: Correct.

21 ASSEMBLYMAN BROWN: Any exception to the open meeting  
22 rules shall be --

23 ASSEMBLYMAN VASCONCELLOS: Legislature shall enact  
24 provisions --

25 ASSEMBLYMAN BROWN: Requiring appropriate notice --

26 ASSEMBLYMAN VASCONCELLOS: And justification.  
27  
28



1 ASSEMBLYMAN BROWN: -- for the exercising of any  
2 exceptions to the open meeting ban.

3 ASSEMBLYMAN VASCONCELLOS: Public notice?

4 ASSEMBLYMAN JOHNSON: Any of the above, (A), (B), and  
5 (C). I don't think we want to get into the business of --

6 SENATOR ROBERTI: "The Legislature shall enact  
7 provisions providing for appropriate notice when any of the above  
8 exceptions are --" or "when any of the exceptions in this Section  
9 are invoked."

10 ASSEMBLYMAN VASCONCELLOS: But you need to put it right  
11 after (C) and before (2) so you don't get into the caucus stuff,  
12 as far as location.

13 SENATOR ROBERTI: You're right.

14 ASSEMBLYMAN VASCONCELLOS: "Anything in this Section"  
15 includes (2) also, so you don't want to use that.

16 SENATOR ROBERTI: "Any of the exceptions in Section --"

17 SENATOR DOOLITTLE: Mr. Chairman I think we have from  
18 Counsel the appropriate solution.

19 (Thereupon a discussion was held off the record)

20 SENATOR ROBERTI: "The Legislature shall enact  
21 provisions providing for appropriate notice for Section 5(A)(B)  
22 and (C)," with the intent that the caucuses not be included.

23 Counsel, you are instructed to draft that in the  
24 quickest time possible.

25 MR. GRESS: We'll incorporate that.  
26  
27  
28

1 SENATOR ROBERTI: Any discussion or debate? Any  
2 opposition?

3 Assemblyman Vasconcellos has moved. Without objection,  
4 such will be the order.

5 We need that because we have to sign.

6 Any other --

7 SENATOR DOOLITTLE: Technical correction, Page 3,  
8 Subsection (A) it reads:

9 "To consider the appointment,  
10 employment, evaluation of performance,  
11 or dismissal of a Member of the  
12 Legislature or other public officer ..."

13 I don't think we do any of those things to Members of the  
14 Legislature, and probably not to public officers.

15 Is there a need to have -- why don't we just strike that  
16 out? We don't employ Members of appoint them.

17 I'll withdraw that, Mr. Chairman.

18 ASSEMBLYMAN VASCONCELLOS: One point on Page 3, Number  
19 (3), after the exceptions on the open meeting:

20 "The Legislature may implement this  
21 subdivision ..."

22 Shouldn't it be "shall implement"?

23 SENATOR ROBERTI: Yes, I think so.

24 Can Counsel or staff indicate why we put "may" in there  
25 instead of "shall"?

26 MR. HODSON: I think it should have been "shall".  
27  
28

1 SENATOR ROBERTI: Assemblyman Vasconcellos moves that on  
2 Page 3, (A) (3), "may" be changed to "shall" -- rather, (c) (3),  
3 "may" be changed to "shall".

4 Any discussion or debate? Any opposition?

5 Hearing none, such will be the order.

6 ASSEMBLYMAN JOHNSON: Mr. Chairman, on that same point,  
7 could someone explain to me why the language is drafted that the  
8 Legislature now "shall implement this subdivision by concurrent  
9 resolution", rather than by statute or concurrent resolution?

10 Why is it limited to concurrent resolution? Is there a  
11 reason?

12 MR. GRESS: If you read on, the last order "or by  
13 statute" appears at the end of the sentence. There's a choice  
14 whether it's by concurrent resolution or by statute.

15 ASSEMBLYMAN VASCONCELLOS: Okay.

16 ASSEMBLYMAN JOHNSON: Withdraw.

17 SENATOR ROBERTI: It just gives the methods whereby a  
18 concurrent resolution can be adopted.

19 MR. GRESS: And then it says "or by statute."

20 ASSEMBLYMAN JOHNSON: Fine, thank you.

21 SENATOR ROBERTI: Anything else?

22 ASSEMBLYMAN VASCONCELLOS: If everybody else is covered,  
23 we've got seven major sections: accountability at the beginning;  
24 honoraria; gifts; revolving door; conflict of interest; open  
25 meeting; and the Compensation Commission.

26 It seems to me that's pretty complete, and I'd move we  
27 adopt the report.

1 SENATOR ROBERTI: Assemblyman Vasconcellos moves  
2 adoption of the report.

3 SENATOR DOOLITTLE: Mr. Chairman, there is an amendment.  
4 May we strike out on Page 3, Subsection (A), the words  
5 "a Member of the Legislature or other public officer or", and  
6 insert in lieu thereof the word "an". It would then read:

7 "To consider the appointment,  
8 employment, evaluation of  
9 performance, or dismissal of  
10 an employee, to consider or hear  
11 complaints or charges brought  
12 against a Member or other public  
13 officer or employee, or to  
14 establish the classification or  
15 compensation of an employee of  
16 the Legislature."

17 All right, we need to leave in "public officer". Let's just  
18 strike out "Member of the Legislature".

19 SENATOR ROBERTI: All you do is strike out the words  
20 "Member of the Legislature"? Any other change?

21 SENATOR DOOLITTLE: Well, "a Member of the Legislature  
22 or other". That would be the change.

23 ASSEMBLYMAN VASCONCELLOS: Better leave the "a" in.

24 SENATOR DOOLITTLE: Okay, leave the "a" in.

25 SENATOR ROBERTI: Okay, the words on Page 3, Subsection  
26 (A), first subsection, strike out the words "Member of the  
27 Legislature or other".  
28

1 SENATOR DOOLITTLE: Right.

2 ASSEMBLYMAN VASCONCELLOS: Then down in Line 5, do you  
3 want to put in the words "Member of the Legislature"?

4 SENATOR DOOLITTLE: Right, okay.

5 SENATOR ROBERTI: And on Line 5, incorporated also  
6 within Senator Doolittle's motion, after the word "Member" insert  
7 "of the Legislature".

8 ASSEMBLYMAN BROWN: What are you attempting to achieve  
9 by that change, Senator Doolittle?

10 SENATOR DOOLITTLE: We don't employ or really evaluate  
11 the performance of Members of the Legislature. So it seems like  
12 it was extraneous language.

13 ASSEMBLYMAN BROWN: How do we provide -- how do we in  
14 any manner not impact adversely upon ethics committees,  
15 committees on standards of conduct in the individual houses that  
16 may very well address the issue in that fashion?

17 ASSEMBLYMAN VASCONCELLOS: Later on it says:

18 "to consider or hear complaints  
19 or charges brought against a Member  
20 of the Legislature ..."

21 SENATOR DOOLITTLE: Right, in the second phrase in this  
22 section.

23 ASSEMBLYMAN BROWN: All right.

24 ASSEMBLYMAN VASCONCELLOS: It's covered there, I think,  
25 what you want.

26 SENATOR ROBERTI: For the moment, Assemblyman  
27 Vasconcellos withdraws his motion, and Senator Doolittle's motion  
28 is before us.

1 Assemblywoman Waters, do you want to wait until after we  
2 vote on this, or do you want to address this point?

3 ASSEMBLYWOMAN WATERS: I've been going over any number  
4 of the items, and still, you know, wanting us to be very clear.

5 Nothing that I have seen so far gives us any direction  
6 on Members who sit on boards where there is pay for sitting on  
7 the board of a corporation.

8 ASSEMBLYMAN VASCONCELLOS: Why don't we just close this  
9 issue and get the amendment down?

10 SENATOR ROBERTI: Senator Doolittle's motion is before  
11 us. Any discussion or debate? Any opposition?

12 Hearing none, such will be the order.

13 The Chair recognizes Assemblywoman Waters.

14 ASSEMBLYWOMAN WATERS: The question was does the  
15 honoraria prohibition extend to the payment to members of boards  
16 who sit on either nonprofit or profit making corporations?

17 ASSEMBLYMAN BROWN: It means memberships on boards of  
18 directors, for an example of AT&T or PacTel.

19 SENATOR ROBERTI: I would assume if a Member of the  
20 Legislature is a member of the board, it wouldn't, and it could  
21 easily be remedied if they could indicate that that's part of the  
22 salary for sitting on the board.

23 SENATOR DOOLITTLE: That certainly wasn't the intent.

24 SENATOR ROBERTI: It's not the intent and --

25 SENATOR DOOLITTLE: That might be dealt with under the  
26 conflict of interest, but not under honorarium.

27  
28

1 SENATOR ROBERTI: You may have a conflict of interest  
2 problem, right, but I don't see how you have an honorarium  
3 problem. That's income, and it falls under the income problems.

4 ASSEMBLYMAN BROWN: Mr. Chairman, you might further  
5 indicate that there is a need for a statutory definition of  
6 honoraria as indicated by Senator Doolittle, and contained  
7 therein would be a clear provision that payment for duties  
8 performed as a member of the board of directors of a profit or  
9 nonprofit corporation in which the individual Member participates  
10 on a regular basis in the decision making, et cetera, would not  
11 be considered honoraria nor banned income.

12 It may be subject to a conflict of interest if in fact  
13 there are occasions when that agency or that board or that  
14 organization would have matters pending before the Legislature.

15 SENATOR ROBERTI: Yes, clearly, and I think this gets  
16 back to the point which we started off with, and that is that  
17 it's incumbent upon us to define honorarium, and that has to be  
18 done in statute.

19 But clearly, just so nobody's misled, fee for services  
20 on a board, I think under everybody's interpretation, that is  
21 income. And where you would fall afoul of the law if that were  
22 the case would be under the conflict provisions and not under the  
23 prohibitions on honoraria.

24 ASSEMBLYWOMAN WATERS: Well, let me just reiterate that,  
25 as I have said before and as has been said today, we really need  
26 a definition. I am worried about this thing called honorarium  
27 being placed in the Constitution. I don't think it belongs in  
28

1 the Constitution, but since, you know, you're set on going in  
2 that direction, I don't think that it is clear enough that people  
3 would know what you're talking about.

4 I would again suggest that it not be in the  
5 Constitution; rather, that it's in statute and rule, because I  
6 don't think you have a clear-cut definition of what an honorarium  
7 is.

8 SENATOR KEENE: For all practical purposes, that's what  
9 we've done under the Doolittle amendment. It says it will be  
10 defined in statute.

11 SENATOR ROBERTI: Yes, in effect we've compromised  
12 between your not wanting to mention it and some of us wanting to  
13 mention it, and that is the phrase: "The Legislature shall enact  
14 statutes to implement this section." That is the section on  
15 honoraria.

16 We do indicate we intend to ban honoraria. We also  
17 indicate what every reasonable person knows, and that is what  
18 honoraria is is subject to definition, and it has to be defined  
19 in statute.

20 ASSEMBLYWOMAN WATERS: That is good.

21 I mean, that helps, because as I have again attempted to  
22 really understand and to be clear, it is clear to me that there's  
23 so many things that have not been considered relative to this  
24 question of honoraria. The one that I bring up today, which you  
25 call fees, has to be, you know, that has to be defined.

26 The other thing is, the idea of just as an attorney has  
27 an attorney's office, a consulting firm is another business  
28



1 that's outside income. And part of what they do in consulting  
2 firms has to do with seminars and workshops that are, you know,  
3 are paid.

4 Is that outside income? Is it honorarium?

5 I mean, I'm being sticky about this, because I think we  
6 need to think it through very clearly. And whether someone  
7 receives honorarium under their business consulting firm, as  
8 lawyers receive outside income, I mean, those are the kinds of  
9 things that I think are real questions, and they really need to  
10 be dealt with very clearly.

11 SENATOR ROBERTI: I think that will have to be done with  
12 the statutes.

13 Speaker Brown.

14 ASSEMBLYMAN BROWN: Conducting a seminar, say,  
15 conducting a seminar on self-esteem with the consulting firm of  
16 John Vasconcellos Company in the State of Maryland, over a two or  
17 three day period, and there is a contractual relationship paying  
18 Mr. Vasconcellos and his firm for doing that, is that subject to  
19 the restrictions that Ms. Waters is concerned about?

20 SENATOR ROBERTI: Since we're going to define that by  
21 statute, I guess it depends on the statute.

22 If you want to know my opinion, a seminar on  
23 self-esteem, personally I feel, would be so inextricably  
24 connected with what we do around here that it would strike me as  
25 an honorarium, but that's the opinion of one.

26 ASSEMBLYWOMAN WATERS: But see, I don't want law based  
27 on what strikes you or doesn't.

1           SENATOR ROBERTI: No, it's not. I'm saying it's not.  
2 I'm one vote. That's why we say we're going to enact statutes.

3           If you want to know what my inclination is, it strikes  
4 me clearly as an honorarium. I mean, I can be outvoted.

5           ASSEMBLYMAN BROWN: But you see, that raises questions  
6 appropriately.

7           I notice our friend, Dr. Bill Filante, who is a medical  
8 physician, who doesn't do a self-esteem seminar but does a  
9 seminar on the new technologies involved in locating and  
10 determining individuals' cholesterol content, high blood  
11 pressure, and hypertension. And he does it in the seminar  
12 setting at the same conference where Mr. Vasconcellos is teaching  
13 techniques of self-esteem and individual survival and self worth.  
14 And he's teaching physical survival and physical worth, and  
15 lecturing under the same circumstances, under the same  
16 contractual arrangement.

17           Would your comment be equally as applicable?

18           SENATOR ROBERTI: No, because I would think that if we  
19 were going to enact the statute, then Dr. Filante's license would  
20 put him in the same category as an attorney, and therefore that  
21 license would put him in the category that this is a fee for  
22 service.

23           That would be my opinion, and frankly, I think that's a  
24 relatively reasonable interpretation.

25           ASSEMBLYWOMAN WATERS: I really take exception to that  
26 kind of thinking because I think that the work that I do with  
27 women and civil rights organizations is just as important as what  
28 any lawyer or any doctor would do with their constituencies.

1 SENATOR ROBERTI: I didn't say it wasn't important.

2 ASSEMBLYWOMAN WATERS: Well, the implication --

3 SENATOR ROBERTI: No, I think what you do is very  
4 important, so I would be the last one to want to say that.

5 But I think we're talking about a different line here,  
6 and that line is what are those things that fall either left or  
7 right of the line as to what is compensable?

8 I think the only thing that we can divide that on is if  
9 it's a business or a profession, and how do you define a  
10 profession? That's arbitrary, but I would say a license is a  
11 good indication.

12 ASSEMBLYMAN BROWN: Why shouldn't we consider the  
13 possibility, Senator Roberti, of making it clear to the public  
14 that under the circumstances that I've described, an appropriate  
15 advisory body of either house who conducts the standard of  
16 conduct, the evaluations, could very well have submitted to it --

17 SENATOR ROBERTI: That's a good possibility.

18 ASSEMBLYMAN BROWN: -- proposed employment plan. And  
19 that employment plan could seek an advisory opinion as to whether  
20 or not --

21 SENATOR ROBERTI: That may be an excellent way out of  
22 it, and I personally am willing to entertain that.

23 Most of these questions, the tough questions that  
24 Assemblywoman Waters raises, you know, she's asking me how I  
25 feel. I'm telling you how I feel. I'm not saying that  
26 reasonable people don't fall on the other side of that line.

27

28

1 ASSEMBLYMAN BROWN: But for the purpose of the ultimate  
2 public acceptance of this measure, we've all got to be pretty  
3 clear and consistent, because if you and Doolittle appeared on  
4 the same program, and Doolittle's interpretation of Filante's  
5 conduct was different from yours, and your interpretation of  
6 Vasconcellos' conduct was different --

7 SENATOR ROBERTI: I understand, I understand.

8 ASSEMBLYMAN BROWN: -- we lose the votes for the SCA.

9 SENATOR ROBERTI: I understand the point you're trying  
10 to make, and certainly the delineation of borderline situations  
11 -- and I don't think the point you earlier raised on a fee for a  
12 board is a borderline. I mean, I personally think --

13 ASSEMBLYWOMAN WATERS: Well, see, and I would differ  
14 with you. I would differ with you because some people have  
15 learned that one way to earn a lot of money is to get appointed  
16 to boards who pay you for serving on those boards. As a matter  
17 of fact, if you look at some of the directorships, and you notice  
18 interlocking directorships where one or two, three, four people  
19 are sitting on five and six boards, and many of these boards pay  
20 very handsomely, very handsomely. And you know, so, you know, I  
21 would differ with you on that.

22 And again, not to over burden you with the point,  
23 licensure would not be acceptable.

24 SENATOR ROBERTI: Yes, but there is a way. If a person  
25 is abusing that, there's a way of getting at them, and the way of  
26 getting at them is through the conflict of interest.

27

28

1           The same could be said of an attorney, of a person who  
2 puts on seminars. I mean, the way to get away for it is to put  
3 in a perfectly foolish seminar, make a perfectly foolish  
4 presentation.

5           At this point, then, we're trying to be qualitative as  
6 to the nature of the work. That's impossible for us to do.

7           ASSEMBLYWOMAN WATERS: That's right.

8           SENATOR ROBERTI: It's impossible.

9           ASSEMBLYWOMAN WATERS: Because if you --

10          SENATOR ROBERTI: Who's an entertaining speaker and  
11 who's not, it depends not only on the speaker, but on the group  
12 they're talking to. I mean, it's impossible.

13          ASSEMBLYWOMAN WATERS: Absolutely, it is.

14          SENATOR ROBERTI: It's impossible to define.

15          ASSEMBLYWOMAN WATERS: You can use licensure as some  
16 kind of degree -- not that you would. You're just thinking out  
17 loud now -- what you're telling me is, one of the Members of this  
18 Legislature with a real estate license somehow is empowered to  
19 use that license to talk about something having to do with real  
20 estate and be exempt from what we're thinking about.

21          SENATOR ROBERTI: On these licensure kinds of points,  
22 I'm willing to defer to the suggestion that the Speaker made, and  
23 that is in areas which are gray as to what is or is not an  
24 honorarium -- and I think we clearly know those things that are  
25 honorariums -- now there is a gray area, and maybe the ethics  
26 committees of each house would be the appropriate standard  
27 whereby we make those decisions. That committee has the  
28

1 reputation of the house as well as the concern about the  
2 individual Member to worry about.

3 I personally would support that kind of language in  
4 statute. I'm inclined to do that in some other areas, such as  
5 the gift statute, as well, where you have certain areas like a  
6 gift from a charitable institution, or something of that nature.

7 ASSEMBLYMAN JOHNSON: Mr. Chairman, I would certainly  
8 resist any effort, either through statute or rules, to have a  
9 committee of the Legislature making decisions on a case-by-case  
10 basis.

11 I think it ought to be laid out very clearly. I don't  
12 see the problem Ms. Waters raises.

13 With the language that we have adopted here so far this  
14 afternoon with respect to honorariums, the striking of the  
15 language "other compensation", I think you clearly are left with  
16 the result where the test becomes a very simple and easy test:  
17 is there a legally enforceable right to the compensation?

18 If you're a member of that board, fulfilling your  
19 obligations of a member of that board, you're legally entitled to  
20 those funds. It clearly is not an honorarium.

21 If you have an interest in any other business operation,  
22 be it a farm, or a construction company, or whatever, you're  
23 legally entitled to those funds. You have a legally enforceable  
24 right in court. That's not an honorarium.

25 An honorarium doesn't leave you with that legally  
26 enforceable right to the funds.

27 It's just not that complicated an issue.  
28

1 ASSEMBLYWOMAN WATERS: Well, I disagree, and I won't go  
2 into it any further.

3 I think you have over simplified the interpretation of  
4 what you appear to be adopting, and I'm suggesting, as has  
5 already been said, that there will be some attempt to give better  
6 definition.

7 SENATOR DOOLITTLE: That's in the provisions now.

8 SENATOR ROBERTI: I think we all understand that we have  
9 to define these terms better, and I will leave my position on  
10 that.

11 The gray areas have to be defined, and there's going to  
12 be, hopefully, a lot of equity; there's going to be a minimal  
13 amount of unfairness, which we're going to try to minimize,  
14 because it's impossible to draw that clear a line and not make  
15 somebody a little bit unhappy for what they think is a hardship  
16 case on their side.

17 ASSEMBLYWOMAN WATERS: It's not so much unhappiness.  
18 It's about being clear, you know.

19 I think that I keep up with the Fair Political Campaign  
20 Practices Commission and other things, probably, as well or  
21 better than most, and I'm able to interpret. And as long as I'm  
22 able to understand what people do, then I have no problem, no  
23 matter how tough the rules may be.

24 But what I worry about is when we move to do this, if we  
25 don't give considered thought to it, that we find ourselves in  
26 all kinds of problems.

27

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1 I guess as I look -- each time, you know, I look at  
2 this, I see those kinds of problems, even on your copyright  
3 stuff. That's an improvement, but does that mean that you cannot  
4 be reimbursed for an article to the Wall Street Journal, or the  
5 L.A. Times, as they do?

6 SENATOR DOOLITTLE: Mr. Chairman, Ms. Waters wasn't here  
7 when we did this.

8 We've taken all of that out. All this simple  
9 prohibition is on accepting an honorarium, and "the Legislature,"  
10 it says, "shall enact statutes to implement this section."

11 Obviously, that is going to take some discussion, some  
12 careful delineation.

13 SENATOR ROBERTI: There is a motion before us by  
14 Assemblyman Vasconcellos. He reiterates his motion to adopt the  
15 draft report as amended as the conference report.

16 Secretary will call the roll.

17 MS. MITTEN: Roberti.

18 SENATOR ROBERTI: Aye.

19 MS. MITTEN: Keene.

20 SENATOR KEENE: Aye.

21 MS. MITTEN: Doolittle.

22 SENATOR DOOLITTLE: Aye.

23 MS. MITTEN: Brown. Vasconcellos.

24 ASSEMBLYMAN VASCONCELLOS: Aye.

25 MS. MITTEN: Johnson.

26 ASSEMBLYMAN JOHNSON: Aye.



1 SENATOR ROBERTI: The vote is five-zero; the measure is  
2 adopted.

3 We will sign the conference committee report as soon as  
4 it's prepared.

5 How long will that be? How long will it take Counsel to  
6 prepare that?

7 MR. GRESS: We're in the process. I can check with  
8 Mr. Gregory.

9 I would anticipate it may take us 45 minutes.

10 SENATOR ROBERTI: In one hour and 15 minutes we will  
11 reconvene in this room. That means we will reconvene at 8:00 in  
12 this room.

13 (Thereupon a recess was taken.)

14 SENATOR ROBERTI: The committee will reconvene.

15 We have before us, I believe, copies of the conference  
16 report which was the draft report with amendments. Everybody has  
17 a copy.

18 The motion already was adopted. Now all we have to do  
19 is sign.

20 Does anyone wish to make a comment?

21 ASSEMBLYWOMAN WATERS: On behalf of the Speaker, the  
22 Speaker is not here; he had to leave.

23 He asked me to be sure and come back, take a look to see  
24 if basically that which had been discussed was such in the  
25 conference committee report, and I think it is.

26 He supports it and would like to be the Floor jockey for  
27 it.

1 SENATOR ROBERTI: Thank you, and certainly he'll be so  
2 designated by the author of the bill; be happy to have him.

3 Counsel.

4 MR. GRESS: I might just ask at this time if there are  
5 any Assembly co-authors or Senate co-authors that wish to be  
6 added?

7 CHAIRMAN ROBERTI: As a principal co-author, Assemblyman  
8 Vasconcellos.

9 ASSEMBLYMAN VASCONCELLOS: Put Willie on, too, as a  
10 principal co-author also?

11 ASSEMBLYWOMAN WATERS: I suppose so, since he's going to  
12 Floor jockey.

13 SENATOR ROBERTI: And Speaker Brown.

14 ASSEMBLYMAN VASCONCELLOS: Put Mr. Katz on as a  
15 co-author.

16 SENATOR ROBERTI: And as a co-author, Mr. Katz.

17 Okay, now, why don't you pass the little pink sheets  
18 out.

19 ASSEMBLYMAN JOHNSON: Mr. Chairman, while that's going  
20 on, if I may.

21 Mr. Chairman, I supported the motion and will sign the  
22 report, but I want to note for the record, if I may, that some  
23 Members, in fact a number of members of my caucus, are concerned  
24 about the concept of an independent Salary Commission, and I want  
25 that noted that those objections are going to be raised.

26 I don't personally share those objections, but many of  
27 our Members do and would have preferred that the language in the  
28

1 conference report allow for some opportunity for either  
2 legislative review or a referendum; opportunity for the  
3 recommendations of the Salary Commission.

4 I also want to note for the record, or to reemphasize a  
5 point I made earlier, and that is that we would like to see the  
6 final draft of the statutory language that will implement this  
7 proposal before we go to a final vote on the Floor. And I hope  
8 that staff would agree that that is possible for us to look at  
9 it.

10 SENATOR ROBERTI: We'll do our very best to have before  
11 a vote proposed statutory language. It's impossible to say that  
12 it'll be the final draft, because that wouldn't be voted on until  
13 January, and we're going to probably be changing it.

14 ASSEMBLYMAN JOHNSON: I understand that, Mr. Chairman,  
15 and frankly, I think that it's appropriate for us to attempt to  
16 seize the moment in terms of these potential reforms.

17 It's not in every respect what I would like to see us  
18 do. In some respects it doesn't go far enough. But I'm willing  
19 and, indeed, eager to support this proposal, but I don't think  
20 that the Members should be asked, nor the people of California,  
21 to entirely buy into it.

22 So, I would like every effort bent to be able to provide  
23 the statutory language that's going to go with this proposal.

24 SENATOR ROBERTI: I agree, and I think that's a  
25 reasonable request.

26 I want to thank staff that has worked on this tome.  
27 It's been an enormous effort.

1 Mr. Gress, I want to thank you for working all hours of  
2 the evening on a very difficult proposal, and my own staff, and  
3 Assemblyman Vasconcellos' staff, the Speaker's staff, the  
4 Republican staff. Much of this was accomplished by them.

5 With that, the committee stands adjourned.

6 (Thereupon this hearing of the  
7 Conference Committee on SCA 32  
8 was adjourned at approximately  
9 8:35 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

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2  
3 I, EVELYN MIZAK, a Shorthand Reporter of the State of  
4 California, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing State Legislature Conference Committee hearing on  
7 SCA 32 was reported verbatim in shorthand by me, Evelyn Mizak,  
8 and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or attorney  
10 for any of the parties to said hearing, nor in any way interested  
11 in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this  
13 14<sup>th</sup> day of September, 1989.

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17 EVELYN MIZAK  
18 Shorthand Reporter  
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