

On Your Behalf ...

Legislative and Practice Affairs Division

Government Secrecy Is Becoming More Transparent

By *William E. Barnaby, Esq., Legislative Counsel*

Secrecy hides key government decisions from the public these days despite mandates for open meetings, public records and claims of transparency by decision-makers. One wonders if the contradiction feeds the cynicism and public distrust that is so prevalent.

The “solution” to virtually every recent state crisis has been a budget, tax, bond or policy deal developed behind closed doors by the “Big 5,” meaning the Governor plus the four legislative leaders. A “cone of silence” envelops these discussions until a package of proposals, usually complex and inextricably linked together, emerges.

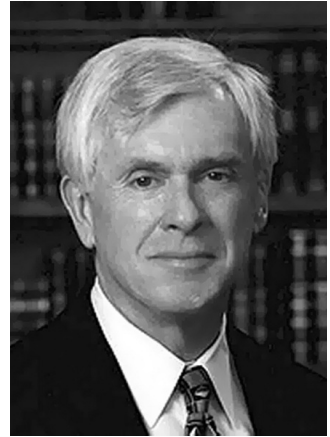
A similar pattern has surfaced in the national health care reform debate before Congress. Multi-faceted proposals have been produced by various committees, caucuses and subsets of members of Congress.

As with “Big 5” discussions, myriad controversies are exhaustively aired in the media but the final products are cobbled together in closed meetings or Congressional “mark up” sessions.

The trade-offs, rationale and subtle undercurrents frequently remain out of public view and understanding.

Perhaps it is an irony or quirk of our times that the 24/7 news and information glut may crowd out meaningful context, particularly at a time when ruling parties and opponents fight incessantly for public support. With the art of compromise largely sidelined, political debate has become arguments from polar opposites.

Persuading public opinion is a constant, overriding purpose of incumbents and candidates. It is a vibrant part of the political dynamic. Some politicians are better at it than others, especially those from the entertainment industry.



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Knowing when and how to exploit positive events and messages, or to use one's celebrity, are major political strengths. At the same time, keeping issues quiet or totally off the public's radar screen can be equally advantageous.

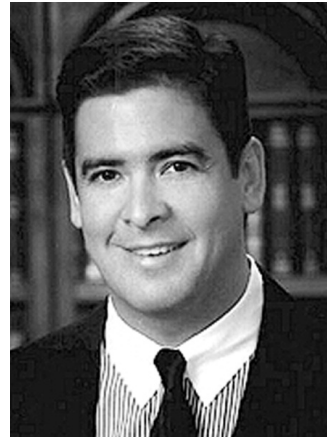
Governor Arnold Schwarzenegger is a case in point. "Smashing the car tax" and "tearing up the state's credit cards" were messages to promote both his personal leadership and a policy agenda. But it isn't always the big issues that earn the spotlight or are avidly kept from view.

Take the nurse anesthetist opt-out for example. Not only has there been no announcement or explanation by the Governor's Office why it was done, his staff insists it was purposely handled covertly so there would be no criticism that it was a reward or a reprisal for or against any interest groups or individuals. Go figure.

CSA Confidentiality Becoming More Necessary

By William E. Barnaby III, Esq., Legislative Advocate

Dovetailing nicely on the above article, "Government Secrecy is Becoming More Transparent," we have faced an information disclosure dilemma—to whom, how much and when. Since the opt-out occurred, we have been pouring over thousands of pages of Public Records Act (PRA) responses, legislative histories and other documents with Dr. Hertzberg, Ms. Baldwin and other lawyers for CSA and CMA. Our collective dilemma is how much information can be disclosed to satisfy CSA members' concerns that the opt-out is being aggressively addressed while protecting the confidentiality necessary for litigation and political strategy purposes. For years it has been a challenge to inform CSA members about the full extent of activity by your legislative and legal counsel in pursuing goals set by CSA leadership without alerting potential foes of these same activities.



Documents produced in response to PRA demands reveal actions in concert between the Board of Registered Nursing (BRN) and the California Association of Nurse Anesthetists (CANANA). More troubling, however, are indications they had information regarding pertinent internal activities of CSA long before that

information was generally available. To a considerable extent their efforts to advance their questionable interpretation of the law required a strong degree of stealth, and it succeeded on that score. Conversely, they knew about related CSA policy discussions.

Many CSA members may be understandably concerned that litigation contesting the opt-out has not commenced sooner. Unfortunately, the preliminary steps required for the best chance of success have been extremely time consuming, labor intensive and require patience while waiting for governmental responses to our demands. It has also been necessary to conduct this work quietly and in close coordination with a small group to preserve essential attorney/client confidentiality (which can be waived by an inadvertent disclosure by any member of the client [i.e., CSA]).

We are confident the final result will prove the value of these labors. Until then, rest assured every effort is being made to build the strongest case possible. More details will be disclosed as legal constraints permit.

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