

17

Michael Brandon
27 Seven Pines Avenue
Cambridge, Massachusetts 02140

April 27, 1994

Cambridge City Council
c/o Ms. D. Margaret Drury, City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02140

RECEIVED BY
OFFICE OF CITY CLERK
1994 APR 28 PM 4:58
CAMBRIDGE MA.

Re: Attached City Council communication

Dear Ms. Drury:

Enclosed is a fresh, newly dated copy of my April 7 letter to the City Council—the one you found objectionable and were unwilling to place before the body unless I deleted the word “Honorable” before “City Council” in the salutation.

In conformance with the City Council’s rules and applicable law, please place this item on the April 25 nonconsent communication agenda along with this cover letter.

After thinking things over and consulting with counsel, I have decided to keep my original letter intact. I do not believe that it is appropriate or legal for you, the mayor, or the city solicitor and his staff to act as censors of material submitted to the City Council in accordance with its established procedures.

Although expediency initially prompted me to expurgate my letter to suit your whims, I have concluded that it would be a mistake for me to accept the city’s attempt to control free expression and erode my First Amendment right to communicate with my elected representatives.

You have written that unless you receive a countermand from the mayor or the city solicitor you “do not intend to place this item on the agenda, as in its address it contains personal insults to a member of the City Council in violation of Rule 37(6).”

Rule 37(6) makes no mention of “personal insults,” however. It says: “All persons shall confine their remarks to the question under debate and avoid personalities.” Even if Rule 37(6) were applicable, I do not believe that I have run afoul of it.

Surely you do not contend that this rule in its practice or intent prohibits specific characterization of individual councilors by name. You yourself would then have broken it by addressing your April 8 memorandum about my communication to “The Honorable Kenneth E. Reeves, Mayor.”

As you know, members of the public and the councilors themselves regularly address one another by name in the Sullivan—oops, the Council Chamber.

Last week you placed on the agenda, presumably without seeking guidance from the mayor or the solicitor, a proposed order specifically naming Councilor X, calling him a criminal, questioning his alleged integrity, and going so far as to deign to suggest that he throw aside all of his rights under the Constitution and resign! Talk about personal insults.

Then at Monday's meeting you silently watched as all manner of personal invective was slung about the hallowed halls during a "debate" allowed to range wildly from the matter at hand.

And I vividly recall how the mayor himself recently cast germaneness and Rule 37(6) to the wind by launching into a coarsely worded diatribe against an individual member of the press that was reminiscent of the lying personal attacks on individual reporters, private citizens, city employees, and fellow city councilors that the desperate Councilor Walsh has made a regular part of his Council routine in order to put decent people on the defensive and deflect attention from his criminality.

I didn't hear you or the mayor or anyone else invoke Rule 37(6) in any of those instances.

Is it really just courtesy and relevance that concern you, or do you have a problem with the crux of my message?

I suppose I could take the Marc Anthony ironic approach and deny any intended slight to Councilor Walsh—"For Bill Walsh is an honorable man; So are they all, all honorable men"—but I sure wouldn't want to slight the honorable women on the Council (especially with our sharp-eared mayor at the helm!). And I have to admit that I've heard there can be honor even among thieves.

As for the "personal insults" you allege, I suppose you could make the case if I had aimed my letter to "The Dishonorable Councilor Walsh" and that designation were false or unfair. But I did not address my letter that way, though it would have been appropriate to do so, given the circumstances.

Apparently you want me to include Councilor Walsh under the rubric of "The Honorable City Council," but I am positively at a loss to understand why. In my view, that would be a "personal insult" to eight other members of the Council (or at least to four of them)—and presumably an even more egregious breach of your Rule 37(6).

Perhaps you have not heard—I know the matter has only recently been broached on the floor of the Honorable City Council—but Councilor Walsh last March was found guilty in federal court of bank fraud, making false statements, and conspiracy! So maybe you can stretch your sense of decorum a bit and imagine why I'm a little reluctant to include him in the "Honorable."

To Mr. Webster and me, that word means "deserving of honor, consistent with an untarnished reputation, characterized by integrity." It seems to me Mr. Walsh has outgrown the shoe.

When I asked you to explain to me precisely what bothered you about my salutation, you told me that it was "gratuitous" (a term often tossed about the Sullivan Chamber of late). Well, I looked that one up, too: "not called for by the circumstances." And again, I have to disagree.

Councilor Walsh was not convicted of 41 of your nice, everyday, garden variety felonies, mind you. It was lying and fraud the feds got him on. How can you possibly suggest that he is still "Honorable," especially with a capital H? The very word shares its derivation with "honest." Can there be an honest liar?

No, and my salutation is completely relevant to the circumstances. In fact, it ties in directly with one of the substantive points raised in the body of my letter. Wouldn't it be hypocritical of me to ask the eight honorable councilors to ostracize the felon councilor and not do so myself when addressing them with the request?

In any event, Rule 37(6) is *not* applicable. It does not appear in the "Communications" section of the Council Rules but is rather one of six "Rules of Courtesy" listed in a separate section that is clearly framed to proscribe conduct during meetings of the Council, not to restrict written communications. (If the Council wanted a rule about "discourteous" communications, it could have adopted one, just as it did to handle "repetitive" ones.)

Rule 37(6) itself, which refers to "the question under debate," is irrelevant on its face, because, obviously, there is no question under debate (though I'll allow that you and I are having one heck of a discussion). Now please don't take this as a personal insult, but I'm afraid your citation of this rule is what is truly "gratuitous"—not warranted by the circumstances.

And your attempt to treat this all as a "point of order" for the mayor to decide is truly daffy. General Robert and you seem to be on totally different wavelengths. I would submit that before you or anyone else can raise a point of order for the mayor to rule on, he must first in fact have called a meeting to order, which he cannot do until the necessary quorum of councilors has convened. In the absence of a quorum, his ruling as chair could not be appealed to the full Council, and in any event it would be null and void—or so Robert rules. You could look it up. (I would retaliate in fine parliamentary fashion by raising my own point of order with His Honor, but it, too, would be out of order.)

Your decision to involve the Law Department opens quite another messy can of worms. Since you are an attorney yourself, I would think that dueling legal opinions would only muddy the waters. Maybe you're just worried about becoming one of those fool lawyers who represent themselves. (Even Councilor Walsh doesn't do that.) But if you must seek legal advice, I urge you to find it outside the City Solicitor's office, which I do not believe can render an objective opinion in this matter.

My letter principally addresses the conduct of the city manager, who is not only the city solicitor's boss but his very close friend and business partner. (You may not know about this, since it hasn't been debated on the floor of the Council yet either—in fact, the very mention of it is what got the mayor all aflutter about what you might call "personal insults.") It would be hard for Mr. Higley to assess the situation impartially, don't you think?

Since you've started this business of citing inapplicable Council rules to bolster your arguments, I hope you won't mind if I do likewise. Rule 14: "No member shall vote on any question . . . where his private interest is immediately concerned distinct from that of the public." Because my letter specifically alludes to the city solicitor's official conduct, it therefore would not be appropriate under the Council rules for him to render an opinion to you or to the mayor.

Apparently you agree, because you told me that that was why you had "cc'd" the deputy city solicitor. Unfortunately, this also raises potential conflict problems—not only because my letter deals with the conduct of Mr. Drisdell's immediate superior, but because it also refers to the conduct of Mr. Walsh, who

4

reportedly loaned a considerable sum of money to Mr. Drisdell while they were both public officials. That favor might tend to color Mr. Drisdell's assessment of Councilor Walsh's disputed "honorability."

You might suggest that the city solicitor could step in and rule on that issue at least. Sorry—Mr. Higley is a director and shareholder in a bank that purportedly made real estate loans to Mr. Walsh. So I would also have a qualm or two about Mr. Higley rendering the opinion.

Oh, what a tangled web, eh?

Anyway, you don't really need an opinion. The law is quite clear. The applicable Council rule is Rule 25—ironically, the very one my letter quotes and charges the city manager with ignoring. It provides: "The City Clerk shall place all new communications on the agenda for the next regular City Council meeting." It does not say all communications that meet with the approval of the city clerk, or only those that have been sanctioned by the mayor and the city solicitor or his staff. It says *all* communications.

And the issue has already been adjudicated. I refer you to the Middlesex Superior Court order already on file in your office (*Welch v. Connarton*, Civil Action No. 90-8394). Justice Gershengorn did not equivocate:

"City Council meetings are the focus of highly important individual and governmental interests, and citizens have an enormous First Amendment interest in directing speech about public issues to those who govern their city. . . . Rule 25 mandates that the City Clerk shall place all communications addressed to the City Council on the agenda for the next regular City Council meeting. . . . The City Council has a recognizable interest in accomplishing its business in a reasonably efficient manner. . . . however, it must do so within the rules it has promulgated. . . . *Rule 25 does not allow for the exercise of discretion and [the City Clerk] did not have the authority to exclude . . . communications from the . . . City Council agenda [emphasis added].*

Precisely on point. So rather than enmeshing the city in unnecessary litigation and cluttering the overburdened courts, I hope you will save me the trouble of seeking judicial intervention by reversing your position and placing my communication on the agenda, without changes, as the law requires.

As I told you in person, I'm quite surprised by your overreaction to my letter and your unwillingness to backtrack, since I've previous always found you to be a helpful, efficient, and unceasingly patient and cooperative public servant.

I hope you understand why I must insist on asserting my constitutional right to address my elected representatives without interference, and I trust that we can agree not to let this dispute spoil our future relations.

Sincerely,



Michael Brandon

P.S. Spinoza said: "He whose honor depends on the opinion of the mob must day by day strive with the greatest anxiety, act and scheme in order to retain his reputation. For the mob is varied and inconstant, and therefore if a reputation is not carefully preserved it dies quickly."

Of course, he didn't grow up in Cambridge.

Michael Brandon

cc: Mayor Reeves
City Solicitor Higley
Deputy City Solicitor Drisdell
Justice Wendie I. Gershengorn

Cal # 4
Consent Communication #17

S 206

A comm. received from Michael Brandon
in disagreement with certain actions
taken by the City Clerk.

5/10/94 copy sent to Rules
Committee @

In City Council May 2, 1994

Charter right exer-
cised by Councillor
Triantafellow.

5/9/94 Referred to the

Rules Committee on
motion of Councillor
Triantafellow