

CITY OF PROVIDENCE

RHODE ISLAND

IN CITY COUNCIL

CITY COUNCIL

MAY 4 1978
READ:

PUBLIC HEARING

WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.

APRIL 24, 1978

Spice M. Merola CLERK

Record of Proceedings regarding communication from Ronald H. Glantz, Private Citizen, advising the City Council, April 10, 1978, that Council President Robert J. Haxton, and Councilman Anthony C. Merola cease to possess the qualifications of Councilmen as specified in Section 3.8 of the Charter of the City of Providence.

ROLL CALL

Present: Council President Pro Tempore Fagnoli and Councilmen Addison, Ahern, Almagno, Bradshaw, Councilwoman Brassil and Councilmen Cirelli, Cola, Flynn, Garan, Glavin, Gorodetsky, Griffin, Henries, Johnson, Lynch, Mansolillo, Merola, Pearlman, Petrosinelli, Salvatore, Tomasso and Xavier - 23.

Absent: Council President Haxton and Councilmen Stravato and Turchetta - 3.

This is a record of the Proceedings before the City Council held this evening at 8:00 o'clock P.M. (E.S.T.) in the City Council Chamber concerning the following, which was submitted for a second Public Hearing by vote of the said Council at its meeting held on Thursday, April 6, 1978.

The Clerk is in receipt of a communication addressed to all Members of the City Council, care of the City Clerk, City Hall, Providence. Re: Public Hearing, April 24, 1978.

"Dear Members:

Please be advised that on the original communication addressed to the City Council, it listed my address as 1258 Reservoir Avenue. That was a typographical error and should have been 1258 Elmwood Avenue, which has been my office address since January, 1978. Further, be advised that I have been a lifelong resident of the City of Providence and have as a voting address, 76 Overhill Road, Providence, Rhode Island, and I have owned my own home for the past eleven (11) years.

Very truly yours,
Ronald H. Glantz, Private Citizen."

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: The Clerk proceed.

CITY CLERK MENDONCA: Frank Principal, 133 Sutton Street.

MR. PRINCIPAL: Mr. President and Members of this Council. I am here to speak on behalf of Mr. Anthony C. Merola and I would like, before I do so, I would like to read this letter for the Mayor of the City of Providence

"We, the residents of Federal Hill, wish to Petition and inform you, that we strongly feel that Anthony Merola should not resign from his position as Councilman. To set forth our plans, the undersigned designate the following. He is the only Councilman that can be called upon for assistance on any matter and respond immediately.

He helps with any problems small or otherwise, and is the type of person we need in the restoration of Federal Hill. (As the East Side of Providence).

This community feels that he will keep alive and ultimately help to accomplish our goals.

It is a feeling of the community that there is a political motivation to remove him from his Office.

Mayor, we who have signed this Petition voted for you in good faith in the last Election, but if the outcome is Mr. Merola's removal from his seat as Councilman, we the undersigned, do not feel we can give you our support in the upcoming election.

We must add, that you have done a tremendous job with the City of Providence with all its shortcomings, but we could not support you in your future political career since we deeply feel Mr. Merola is a person of high esteem and according to the undersigned, has done an excellent job for Federal Hill and its residents."

Now, I have a Petition here with about 300 names and I would also read a letter from Mr. Mayor Vincent A. Cianci, Jr., to Mr. William Bailey:

"Congratulations on the occasion of your Testimonial. Considering the aggravation you have been through, no one deserves it more. I deeply regret that I cannot join you on your night, but notice was short and urgent City Business required my attend-

ance at an out-of-town conference this evening. As you well know, I have always been impressed by your courage and attitude. It takes a man of great determination to go all out as you have for something that is rightfully his.

I have supported your crusade to regain your civil rights and wrote to the General Assembly on your behalf because of my concern that complete justice be done for you. Please be assured, of my continual support, but what is much more important than my good wishes, is the support of your South Providence Constituents. They have found you a fighter and a leader and their confidence and hope in you is well deserved. Please convey my sentiments and sincere best wishes to the many friends and supporters who have joined with you on this festive occasion".

What kind of a hypocrite can this man be? To stick up for someone else and to knock down Mr. Merola from the Thirteenth Ward. Thank You.

Judith W. Clem; 12 Laurel Court.

There is a restriction on City Council Members in that they may not retain their positions once convicted of certain crimes. I would suggest that this Council act to uphold the regulations in its moral and legal sense. To refuse to uphold the only governing Charter is to make a mockery of the System. Ideally it should not be necessary to unseat these Councilmen, one would hope that these men would have enough concern for their constituents and fellow Councilmen to step down gracefully. I find it amazing to think that there should be any questions as to whether a convicted felon should be allowed to keep their position on the City Council.

I guess I shouldn't be surprised, having had other dealings with this Council, I am well aware that some of you don't always represent your constituents. Though I am grateful that a few of you would follow your conscience in this matter, others see what they want to see, and they hear what they want to hear. The decision to unseat the convicted Councilmen should not be a matter of party allegiance. However, I can just imagine the shouts of outrage from some of

you if Mayor Cianci or Mr. Glantz were convicted of crimes and wanted to retain their positions. There are people in this City who are qualified to hold positions and responsibility, who do not have criminal records. The double standard that seems to exist from some of the Councilmen in this Chamber, only serves to weaken good Government and to discourage people from becoming more involved. In any event, I hope that those Citizens who are not being properly represented by their Councilmen in this matter will act accordingly at the next Election. Additionally, I hope that those Councilmen here, will act according to the Laws they agreed to abide by. Thank You.

Edward Malise, 128 Tell Street, Providence, Rhode Island.

I did not write a speech, so I'll say what I have to say, my way.

I've been living in the 13th Ward all my life. This is the only time we've had a Councilman that would give us anything we wanted there, that is Councilman Merola. I went around to houses, door to door, I didn't write their names down, but I'm pretty sure that if it came down to that, we could fill this whole place up with Merola people. He is a good Councilman and I don't know why they are picking on him like this. Thank You.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Anyone else in the audience that wishes to speak? If not, we will have one of the Attorneys from either Mr. Merola or Mr. Haxton come forward.

Mr. President and Members of the City Council:

I'm here to speak on behalf of Mr. Haxton, I introduced myself at the last session. I would indicate that I have submitted to the Council copies of the Memorandum of Law.

COUNCILMAN GORODETSKY: Excuse me, can we have him state his name for the record.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: State your name, please.

My name is Attorney Peter DiBiase, from the Law Firm of Toro Law Associates.

I was indicating I have submitted to the Clerk, 26 copies

of the memorandum which I asked the Council to consider before it rendered a decision in this matter. I would very briefly like to outline some of the points of that memorandum.

Essentially, we have taken three issues. The first issue is that Mr. Haxton has not been convicted within the contacts of the City Charter provision Section 3.8. The cases that have been outlined in the Memorandum clearly indicate that when Courts have been confronted with a Statute similar to 3.8 which are disqualifications or disenfranchisements statutes, that the Court, has very, very strictly and technically interpreted the phrase "conviction".

Two weeks ago when I was before the Council, I indicated that historically, the Courts had not considered the finding of guilty or a plea of guilty, coupled with probation, to equal a conviction. Additional research indicates that the cases are even stronger, that the Courts have gone so far as to say that a finding of guilty, or a plea of guilty, coupled with even a suspended sentence, does not constitute a conviction. The primary authority is 36 ALR 2d, 1238, for the non-attorney members of the Council, an ALR Citation is a compilation of all cases on a particular topic. This topic deals with the issue of what constitutes conviction within the Constitution or Statutory Provisions for disenfranchisement or one convicted of a crime. That annexation indicates as follows: There seems to be little authority on the question of annexation, but the little there is seems to hold uniformly that disenfranchisement does not follow unless there is something in the nature of the final judgment, upon the verdict of guilty declared by the jury. There is therefore, no conviction where one has not been convicted within the meaning of the Constitutional or Statutory Provisions where sentence was suspended or probation granted. Clearly, in this case even in Mr. Glantz's memorandum and statements before the Council, the facts are that Mr. Haxton was found guilty by a Judge sitting without a jury and was subsequently given a One Year Probationary Period which he successfully completed. The leading cases that analyze this concept

of conviction, as defined in that annexation, go on to make very pointive reference to the issue that is clearly before this Council. Once again to quote some language from the case People's Versus Fabian in New York Appellant Court decision. The New York Court indicated it is the duty to disenfranchise a person convicted of bribery or any infamous crime imposed by the Constitution upon the Legislature is authorized only upon a conviction in the more comprehensive sense of that term.

That is to say, upon a judgment based on a verdict of guilty and that a person against whom sentence has been suspended, after verdict, is not convicted within the meaning of the Constitution or Statutes, Statutes inactive, pursuant with Law.

Quite clearly, all of these cases without going into everyone that is cited in the Memorandum, indicates that when dealing with disenfranchisement or disqualification to hold Public Office, the term convicted takes on a very technical meaning. There is one final point that I would like to adjudge as one of the issues that was made by Mr. Gorodetsky at the last session and that is, if conviction does not encompass a finding of guilty, what in fact is it? Well, I suggested at the last session that one must go beyond the actual jury finding and examine the entire sentence that has been imposed. A case which very precisely deals with this is a Pennsylvania Case Copy is entitled, Commonwealth vs. Redding.

In that case, the Pennsylvania Supreme Court noted the word convicted can mean only final judgment of sentence and not merely a verdict of guilty rendered by a jury. When the law speaks of conviction, it means that judgment, not merely a verdict of the common ----- neither the provisions of the Constitution nor the Statute involved in this case, is there any indication that there is a popular rather than the legal meaning of conviction is to be implied. Until they have their conviction as evidenced by a Trial Judge, they cannot be deprived of the right to hold Office. That case then goes on to say that a finding of guilty coupled with a suspended sentence, is not a conviction, within the confines of the Statute similar to 3.8.

One of the earlier speakers asked this Council to follow their conscience. I respectfully request that the Council examine very closely the cases that are cited in this Memorandum, and follow not their conscience, but the dictates of the Law and the rationale to problem in these particular cases.

I think that careful examination of these cases in comparison to the cases that have been cited by Mr. Glantz in his Memorandum would give a great deal of reason for this Council finding that Mr. Haxton has not been convicted within the meaning of the City Charter.

The second point that is raised is something that was discussed last time I will not go into it in any detail, that is mainly that the Trial Judge in very precise and detailed language, indicated that he did not convict Mr. Haxton of a crime. He had in mind exactly what would be the ramifications of his judgment and I think as in interpretation of the Statute we must presume that a Trial Judge was well aware of the existing Law when he took the particular action that he did. In this case, I think we must imply that Judge Needham was well aware of the outstanding line of caseism, the strong majority of caseisms, that has been cited in the Memorandum when he made the comments that he did back at Mr. Haxton's sentencing in November.

The third point which is a very difficult point that must be confronted by the Council, is the jurisdiction of the City to actually enact Section 3.8 of the Charter; Now in 1973, there was a constitutional convention and two provisions of our State Constitution were enacted or amended and those were amendments 38 and 39.

Essentially, Amendment 39 dealt with the qualification for a person to hold office and the very brief language of that Section is that "No Person shall Hold any Civil Office Unless he be a Qualified Elector for Such Office".

Then they refer back to Section 38, Amendment 38 which goes on to explain what the qualification to be an Elector are, briefly without reading it all, it is that one is of Legal Age and that he has some residency requirement. And then he goes on to note the following language, "Nor shall Any Person Otherwise Qualified to Vote, as Provided in this Article be

permitted to vote while serving a prison sentence on final conviction of a felony, nor subsequent to any such imprisonment until the Grand Tract shall be restored by the General Assembly".

In summary, what this provision does is saying that anyone can hold office, as long as he maintains residency requirements, is of legal age, and has not been sentenced to a prison term. And in the case of Mr. Haxton, he certainly was not sentenced to a prison term. I suggest to the Council that Section 3.8 goes back to as early as I believe, 1940. I suggest that that provision is absolutely inconsistent with the State Constitution. Now, there are 12,000 concepts of law that a municipality cannot enact any legislation without Authority either from the State Constitution or some enabling laws of legislation. Certainly, the section that has been issued, Section 3.8, is inconsistent with the State Constitution and I found no enabling clause legislation in any of the statutes of our General Laws that permit the City to be given additional powers to make such a restriction such as existing Section 3.8.

In conclusion, I would again respectfully submit to this Council that the issues that are before the Court, are very complex issues and unlike the request that was made by one of the speakers that preceded me, I very sincerely ask this Body to carefully analyze the legal issues that are before it and all the Rules of Law that have come down and lend some support and guidelines to what the ruling should be in this particular case. Thank You very much.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Merola's Attorney?

Mr. President, as you know last time I was here

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: State your name, please.

John Cicilline, Practicing Law at 380 Broadway in Providence.

Last time I was here I^{was} asked to submit memorandum on behalf of two Councilmen, Turchetta and Merola; I have not heard Turchetta's name mentioned tonight. Is that matter being considered at this Hearing?

Is the Turchetta matter being considered at this Hearing?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: No, it is not.

John Cicilline: In respect to Mr. Merola, I pointed out last time that he filed an application for post conviction relief pursuant to Chapter 9-1 of the General Laws. Now that section of the General Laws provides that any person who claims that his conviction or sentence was in violation of the Constitution of the United States or the Constitution of the State, they seek relief through this Statute.

The Statute further says where there exists evidence and material facts not previously presented, he may also secure relief under this particular Chapter of the General Laws.

I reminded the Council last time that since Mr. Merola's conviction, he has secured information which was made a part of this application to post conviction relief which will be heard in Superior Court in a very short time. The case is in respect to the effector has on disqualification for office, seem to say that that matter ought to be treated in the same way an appeal should be treated and therefore, I suggest to the Council that there has not been a final conviction, sentence of final conviction, so long as that application still has vitality.

The second, more convincing aspect of Mr. Merola's position in this matter has to do with the Section 3.8 of the City Charter, the so-called Ouster Law. Looking at the cases in this regard, points out that the purpose of the Ouster Law was to achieve a removal of unfaithful public officers who have breached the Public Trust and the cases in this respect seem to say that the trust is given to the elected official at the time he assumes the office. And that any transgression that took place at the time before his election, is not a matter that ought to be considered by the Council and is not a matter which can be reason for disqualification. The cases repeatedly hold that a Public Officer is not subject to removal from office because of acts done by his previous term of office. You know, in this case, the offense alleged to have been committed happened in

1970. Mr. Merola was indicted by a Grand Jury in 1971 and he was elected to the City Council in 1974, at the time he ran for Public Office, in 1974, his constituents in the 13th Ward of Providence, were aware of the fact that an accusation had been made against him. That matter was much discussed throughout his Campaign. It may only be considered if the act had happened during the course of his tenure. There is a Pennsylvania case that has been raised which points out that each official term is a separate entity and a Citizen whom the electors have chosen to a Public Office cannot be deprived thereof, because of non-performance or misperformance of any duty that happened at some other time.

That holding is the holding of a majority of jurisdictions in this Country. It is the holding of the best Law writers that Lawyers look to for assistance in preparing briefs and making arguments before Courts. Wigwa^m and a number of others cite the same rule and I would like to remind the Council that back in the 93rd Congress, there was some discussion about this matter, in the report that is presently Report No. 81, which was put together for the House of Representatives, it was pointed out that there was no Constitutional right to remove a person from Public Office because of conviction for crimes.

Instead, as the report indicated, at that time, that the best resort, the best opportunity to remove people, from Public Office, was through their constituents,-----and the Council may not set up qualifications for Public Officers.

This qualification was set up by the Constitution and the Charter of the City of Providence and when this Council attempts to remove a man by adding an additional qualification, that is, that do not, has been convicted of a crime, it is doing something there is no constitutional authority for.

I suggest as my brother DiBiase just refuted, the most serious matter, in that we cannot be whipped into a frenzy and this Council should not be asked to act on such short a notice, that this Council ought to take the time to look with more careful attention to the cases of both parties in this proceeding, as pointed out for us. To get the input from the City

Solicitor on these particular matters that we now raise, before any kind of action is stated.

I would again remind the Council that this is a matter which should be the exclusive problem of the voters of the 13th Ward and should not be a matter for this Council to vote on. For those reasons, I ask this Council not to remove Councilman Anthony Merola.

COUNCILMAN GORODETSKY: Mr. President.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Gorodetsky.

COUNCILMAN GORODETSKY: I have a motion to offer. I have some remarks in favor of the motion which I will present before making the actual motion.

I would like to compliment John Cicilline, the Attorney for Mr. Merola and Peter DiBiase, the Attorney for Mr. Haxton who have done a very good job. I have thumbed through your Memoranda for briefs and I know that many hours of research and preparation went into framing those Memoranda. To the loyal supporters of Councilman Merola, I congratulate you and I respect you for coming in here and publicly stating your views in support of Councilman Merola, I think that's the way it should be.

The point which is apparently missed by some of the public and hopefully not missed by any of the Councilmen, is that we are not arguing the merits of Councilman Merola and whether he has done an excellent job as a Councilman. I certainly am not going to stand here and say that he has not done good things for his people, his constituency. I don't know that to be a fact, that he has not, and the same for Mr. Haxton. As I stated at the last Public Hearing, I don't stand on this Council and in any way demean Councilman Merola or Councilman Haxton. In fact, I stated that personally I've gotten along with the gentlemen. I have no personal animosity or dislike toward them. So that is not the point of this Public Hearing, to find out whether they did a good job or not and we're not a jury, and the eloquent statements made by Counsel for the respective Council persons, should be advised, that we are not a jury to

sit in judgment of the Law. We can't make any findings of Law, but all we can do is and I've agreed with it even before the Attorney General of the State of Rhode Island said it, I agreed with it and that's what I tried to tell this Council, both in private and publicly, to provide the information that what matters here according to our Charter and from what I heard, one of the Counsel say, we are supposed to assume that the Charter is unconstitutional. The Counsel well knows that is not an appropriate thing to do, you cannot do that.

In fact, it must be presumed to be constitutional until it is declared unconstitutional. I need not cite any legal authority for that, it is quite evident to all Counsel I'm sure.

So, with a Charter, which as far as we know, is constitutional, we are bound to follow it. Whether we like Councilman Merola or we don't or whether we like Councilman Haxton or we don't. Or whether we like the party they are affiliated with or not, or the faction of this Council they are affiliated with. We have no choice but to make an assessment amongst ourselves, not even follow legal precedent because that isn't our job, and Julius Michaelson, the Attorney General, said that very thing. He said it in plain English and he said the only issue which is truly germane to the Council's consideration of these matters is the meaning of the term as it is used in Sections 3.8 and 3.9 of the City Charter at this point, only the City Council may resolve this issue. Only the City Council may resolve this issue, I repeated that he didn't write it twice, I said it twice to make certain that I was heard. So, I said before and I say again tonight, I'm ready to decide it, right here and now and perhaps it becomes a little easier for me being a Lawyer too, to make up my mind. I hope that by this time the rest of you Council Members have made up your minds as to what you are going to do, because I don't think now is the time to delay. I've learned something when I arrived here tonight, well, I knew before that we were kind of the laughing stock and when I say we, I mean the City Council. We are kind of the laughing stock of the City of Providence and those of you who haven't heard that, haven't been around on the Streets. And we are

the laughing stock of the State of Rhode Island. How far our laughing stock has been distributed, I don't know throughout New England, but you know what I'm afraid of, I'm afraid that after tonight we are going to be the laughing stock of the Country, because I understand that some of these Media People are from the Network. Well, I'm not prepared to remain the laughing stock any longer and I don't think that its the proper example to set for our children. When a Law says something that you're going to mask your actions on this Council with some kind of legal technicalities, I certainly hope not, and I hope I'm being premature by assuming that something like that may take place. Now, I was going to think up something flowery to say that the words just sprung into my head, I didn't do it but, I remember those immortal words of Patrick Henry as he stood on the floor and he said, "I know not what thoughts others may think but as for me, give me Liberty or Give me Death".

We don't have to make those choices at this time, but I don't think that we have much of a choice because we, now, are not a jury deciding whether Councilman Haxton or Councilman Merola should remain, but we ourselves are being tried, you see, because Councilman Merola and Councilman Haxton have made us, the subjects of a trial.

I respectfully submit to you that you can argue all you want about the meaning of conviction or non-conviction. When a Party goes through a Court Action and is found guilty, either by a Judge or a Jury, and a sentence is imposed, whether its a sentence of probation or whether its a sentence of money or a sentence of prison, for purposes of our Charter, it says conviction.

The spirit is there, we all know it, we should not deny it.

I am offering a motion at this time that the Seat of Council President Haxton and the Seat of Councilman Anthony C. Merola, be forfeit.

COUNCILMAN MANSOLILLO: I second that motion.

COUNCILMAN XAVIER: Mr. President.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Xavier.

I'm a layman, but I would like to know where in Section 3.8 or 3.9 that it says that the Council shall act to remove members of the Council. 3.9 says that he shall have a Public Hearing, that's all it says. I would like to know where, in these two Sections, it gives us authority to push anyone out of the Council.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Bradshaw?

COUNCILMAN BRADSHAW: I rise to second Mr. Gorodetsky's motion because of the fact that some 3 years ago I was the one who made the original motion that those seats be declared vacant. Lou Mascia, the City Solicitor at the time, ruled that nothing could be done then until those who were to forfeit their seats had exhausted all of their appeals. I think that we've come to that point now. I want to thank Mr. Glantz for having done the job I should have done. I say, now that these appeals are exhausted, let us proceed forthwith. Thank You Mr. Glantz, I am glad to second Mr. Gorodetsky's motion.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Motion made and seconded.

COUNCILMAN TOMASSO: Mr. President?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Tomasso.
COUNCILMAN TOMASSO:

I must rise on this occasion and I'm sure that we all recognize that this is not a happy occasion. I am very concerned with these Hearings and with these Proceedings and I felt that it was incumbent upon me to do some research into the matter, to determine, or to form an opinion as to how I should conduct myself and vote when this matter is finally brought to a vote before this Council. I look at these Memorandums submitted by Mr. DiBiase and respectfully refer to the Appendix, Appendix II, which is Page 235, and Trial Judge Needham specifically says, "Mr. Haxton, I am going to sentence you to be put on probation for One (1) Year". On the following page, Page 236, again the Honorable Justice says, "I found you guilty, a Year's Probation supervised".

I did some research into some local Law, being very concerned as to what have we done in Rhode Island. I've heard many expressions as to what's happened in Pennsylvania,

in Georgia, California and Tennessee, but I'm looking for our own jurisdiction and I found a case of Peneerella vs. Hoffman, 91, Rhode Island, 487, a 1960 case, on Page 491 it states that the Federal Court that judged him, in this particular case, Hoffman, guilty upon his plea of guilty and thereupon in effect sentenced him to a period of probation for 30 days. According to the Federal Authorities, this was a judgment of conviction. I looked further and refer to a case of Churchervale vs. United States, 207 U.S. 220, in here the Supreme Court stated that a plea of guilty is in itself a conviction.

In Nix vs. United States, 131 Federal----857, Page 858, the Court held that probation "involved the judgment of conviction even when the imposition of sentence is suspended, because probation can only be visited on a convict and is in itself a mild form of punishment".

I think that we could look for a local case for, and interpret what has been said to us, this was a 1960 case, I believe at this point that it is still good Law. I think the method we should be getting is in these cases, there was, in fact, a conviction. I think it is incumbent upon us to have an understanding of the Law, to look back to what some of our Chief Justices have said, what our Supreme Court Justices have said in the past, relative to conviction.

I would say, it is not easy for me to stand on this floor tonight, and bring forth this type of information, I think I've had a fine relationship with Mr. Merola who sits next to me and I've sat next to him for a period of over 3 years. I don't regard it as a reflection upon Mr. Merola, because I think we have enjoyed a good relationship over the years and certainly I hope to be friends with Mr. Merola from this day forward. The same with Mr. Haxton, I don't think this is a matter of personality, I think it is a very, very difficult job that the Council has been called upon to do. I would have been much happier had the gentlemen involved resigned on their own to relieve the Council of the burden of making this very, very difficult decision.

COUNCILMAN XAVIER: Mr. President?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Xavier.

COUNCILMAN XAVIER:

You quoted the cases of people pleading guilty there is a difference. Merola and Haxton did not plead guilty.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Tomasso?

COUNCILMAN TOMASSO: Mr. President, I would certainly feel that where a person is willing to admit his own guilt, certainly is a burden upon that person to where a person is found guilty after a trial, is also a very, very clear indication of guilt.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Pearlman?

COUNCILMAN PEARLMAN: In the 16 years I have been on the Council I find this one of the most difficult problems that has faced me, additionally and I think the Council as a whole. And I want to say this, that it doesn't matter that people might consider us a laughing stock as far as I'm concerned, it is a question of what we have to do, what we should do, and what we think is right. As you know, I helped draft that Resolution that we passed 2 weeks ago to refer this matter to the Attorney General for an opinion. We asked him in our Resolution what was a conviction, a definition of conviction and he said there was various definitions.

We asked, in the second paragraph, whether or not Councilmen Merola and Haxton were convicted and he referred to the case number and he didn't answer that except to say that the decision was up to the City Council to make. Now, the sentence that we have to act under is and I think its worth reading again because with all the talk you're apt to get away from it, it says and I'm reading from Section 3.8 of the City Charter, "If any member of the Council shall cease to possess any of the qualifications as specified in this Section,----- or "while in office is convicted of a felony or of any other *crime not a felony but involving moral turpitude*, he shall immediately forfeit his office" and then it cites, Public Law 1940 Chapter 832, Section 14, and we know that applies to when the City adopted this Charter with a legislative enactment in 1940. One of the Commission Members being Dennis J. Roberts and so forth, now what did the City mean when it says convicted,

and I think we have some analogy. We have a recent analogy at the Federal Level on the impeachment proceedings against President Nixon, which as you know, I took the view which perhaps many of you were on the opposite sides of. I felt that he was not convicted of any crime. That he should not be impeached. That he was being unfairly treated. And that they were giving him a trial without the-----of a Court. And I must say, I still feel that way. But, I asked myself this question, if President Nixon had been convicted by a Court even if he hadn't exhausted his revenue, if he had been convicted of a felony or a crime involving moral turpitude, what would my position have been then? And I never had to face that question, we have to face it here I think, but I think my answer would probably have been, if the President of the United States was convicted of a felony or a crime involving moral turpitude, that's a position of such high trust, that I would be impelled to say that he might have to forfeit his Office.

And then we have recently in the State of Rhode Island the case of Representative Bailey, where the General Assembly has faced the same issue and although their Charter and the Laws which they enact and the laws in which they operate, the City Council came to the conclusion that a man who is convicted of a crime involving moral turpitude and a felony does qualify to be a member of that-----.

Now, I'm going to be positive, I say Councilman Merola and Councilman Haxton have done an outstanding job in the Council. My observations of them is that and I think they've done an excellent job. I think they have been above average Councilmen. I want to compliment them and I consider them friends, and I'm very troubled by this procedure. But I also know that the youth of our Community consider a Public Office to be that, held-----they consider us trustees of the City's business and they hold us to a higher standard of-----I think than the average voter or citizen and I think that they have a right to. I think that just as anybody who makes the Rhode Island Hospital Trust the trustee of their funds, holds the

Rhode Island Hospital Trust to the highest degree of care in handling their funds and so are we, as the City Council.

And if, a Lawyer is found guilty of a felony or a crime involving moral turpitude, if he is disbarred, and I think unfortunately, that's what you've started here, so typical; and I sympathize with Councilman Merola because I know that the Boston Patriots lost their game on what might have been called a Bad Call and I know that while it rarely happens, it does happen and that trial in the State of Rhode Island has convicted the wrong person. As a matter of fact, the State of Rhode Island is one of the first State's to abolish the death penalty because being convicted and executed, a person for murder and it later turned out that the person was not guilty that the person who committed that crime was later admitted. It does happen and I hope and pray that Councilman Merola as it turns out with his outstanding Counsel, ends up in that position.

Although, it rarely happens, it is possible here. But, that is not our function. We have to carry out this Charter and it says that he shall immediately forfeit his Office.

Mr. President and Members of the Council, I feel that we have no alternative but to vote in favor of Councilman Gorodetsky's motion, which I realize that he reluctantly made and Councilman Bradshaw reluctantly seconded.

COUNCILMAN JOHNSON: Gentlemen, I stand probably for a totally different reason this evening. I usually listen to many arguments stating the removal of the two Councilmen. Myself, I stand for a particular different reason. I stand to congratulate this Council. And why do I stand to congratulate this Council? I've heard that we are the laughing stock of Providence of the State, and maybe because of the Media, the whole United States. Gentlemen, I think under the first amendment every individual is entitled to a defense. This Council guaranteed two gentlemen the right to a defense this evening and how did they do that? It was an attempt on the part of the City Solicitor of certain Councilmen to ramrod us,

it was said I have been able, we should be able to reach a decision, immediately. Last week I stood here and I said it would take time, that we should have a chance to evaluate the expertise of their Attorneys, have at our resource the many individuals qualified to assist us in making a decision. This is why I sit and I listen and I congratulate each and every Councilman here because we did not bend to the will of a few individuals. All of us here are privy to this esoteric situation and it is, its political, don't think that it is not. Each and every one of us that knows what is going on here knows that this is absolutely. So, we as individuals that have taken a chance to listen, should be complimented because you didn't follow the will of a couple of people and the reason I would like to thank you this evening.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Before we take a vote I'm going to ask the Council to stand at ease for a few minutes so we can digest whatever arguments were made tonight. Stand at ease for Fifteen (15) Minutes.

COUNCIL AT EASE

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: May we have your attention please. Everyone quiet, this is very important. Will everybody find a seat. Clear the aisle. I think this Council has had enough time to digest arguments from both sides,

COUNCILMAN XAVIER: Mr. President, before we take a vote on this,

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Yes, the meeting is now in order, Councilman Xavier, would you like to say something?

COUNCILMAN XAVIER: I'm still unclear on 3.8 3.9, and I'm not a Lawyer. The one getting paid to represent me is the City Solicitor and representing the other party so you can't ask him. So, I would like to ask the Deputy City Solicitor, or whatever his title is, ^{where} does it say in 3.8 that the Council can take this seat away, it says they must forfeit their seat, doesn't say that we take it away. Now, I want for him to explain to me so that when I vote, here, I will know why

and how I'm voting.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Deputy City Solicitor Jack Rotondi, would you please give us some information on the Charter - 3.8?

DEPUTY CITY SOLICITOR ROTONDI: 3.8 it does state that any member of the Council who cease to possess any qualifications specified in this section, or while in office is convicted of a felony or of /^{any} crime not a felony but involving moral turpitude, he shall immediately forfeit his office; However, there is an ample case law, if I may suggest, Powell vs. McCormick, 395 U.S. 486, the Court stated that the Legislature may expel its own members also just recently in Rhode Island, the State Legislature excluded one of its members in the much heralded Bailey Case. In conforming with the Attorney General's statement which if I may quote, "The only issue which is truly germane to the Council consideration of these matters is the meaning of the term as it is used in 3.8, 3.9 of the City Charter. At this point, the City Council may resolve this issue, it seems clear on his face that this Body acting as a Legislative Body may judge the qualifications of its members and as a result of the case law and with the suggestions of the Attorney General's Department, it is the position of the City Solicitor's Department that the motion counted for the City Council, should be voted upon.

COUNCILMAN XAVIER: Well, we're not talking about Bill Bailey, now. The General Assembly has a written law, that they can decide, it doesn't say it in the Charter, it says they will forfeit seat now, where does it say that we shall, will you tell me that-----.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Griffin.

COUNCILMAN GRIFFIN: In response to Mr. Xavier, the Law that they tried Bill Bailey and his seat under was unclear, too, at that time. The Law is not clear, Mr. Xavier. One of the things that bothered me tonight, I've heard over and over again we can't judge, we're not fit to judge our own. There are alot of people who are watching this, particularly alot of minority group people in this State, o.k., and there are alot of people

-----to the children, they're all concerned about children. There has been enough precedents set. When I was a little boy, I remember Adam Clayton Powell and they judged him, they judge Nixon, they judged Bailey. If we're not qualified to do our jobs, then let's get the hell out of here.

I'm not screaming for anybody's blood. It took me a long time to get here, some of the very people who are sitting here tonight made it almost impossible for me to get here. All whatever the decision we're going to end up in Court/tomorrow, I'm saying is let's have one Law for everybody, o.k., let's make the decision, let's not sit here and keep beating around the bush that's all.

COUNCILMAN XAVIER: I'm not beating around the bush, I'm here and I'm concerned.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Clerk, will you call the Roll, which will explain how the vote will go.

CITY CLERK MENDONCA: A motion has been made by Councilman Gorodetsky, seconded by Councilmen Mansolillo and Bradshaw, that the Seats of Council President Haxton and Councilman Merola be forfeited, those who are in favor will vote "Aye".

COUNCILMAN BRADSHAW: I don't see how you can vote on Two (2) people at once. I don't think this has been resolved yet. I think you must take up one at a time.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: A motion was made not to that effect to take one at a time. Councilman Gorodetsky made a motion that both Councilmen be unseated.

COUNCILMAN BRADSHAW: For right now who is eligible to vote?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: All Councilmen are eligible to vote.

The Roll is called as follows:

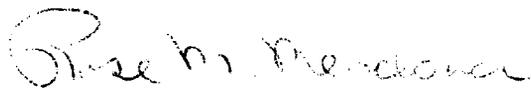
Council President Pro Tempore Fargnoli	NO
Council President Haxton	ABSENT
Councilman Addison	AYE
Councilman Ahern	NO
Councilman Almagno	AYE
Councilman Bradshaw	AYE
Councilwoman Brassil	AYE
Councilman Cirelli	NO

Councilman Cola	NO
Councilman Flynn	NO
Councilman Garan	AYE
Councilman Glavin	NO
Councilman Gorodetsky	AYE
Councilman Griffin	AYE
Councilman Henries	AYE
Councilman Johnson	NO
Councilman Lynch	NO
Councilman Mansolillo	AYE
Councilman Merola	NO
Councilman Pearlman	AYE
Councilman Petrosinelli	AYE
Councilman Salvatore	AYE
Councilman Stravato	ABSENT
Councilman Tomasso	AYE
Councilman Turchetta	ABSENT
Councilman Xavier	NO

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: 13 Ayes, 10 Noes,
3 Absent, the motion passes.

COUNCILMAN LYNCH: Mr. President, I make a motion that the
City Clerk be directed to forward to the City Council a copy of
tonight's proceedings and that this meeting stand adjourned at
9:30 o'clock P.M.

COUNCILMAN FLYNN: I second that motion.


Rose M. Mendonca,
City Clerk.