

SPECIAL MEETING
CITY COUNCIL MINUTES

Friday, August 28, 1970
City Council Chambers

The special meeting was called to order by Mayor Johnston at 7:00 P.M. Mr. Ernstad led the flag salute. All members were present on roll call, except Dr. Herrmann.

Verbatim Transcript

Mayor Johnston: In opening the meeting I might read the last paragraph of the Notice to the Council, which reads as follows: "The purpose of this request is because of three inconsistent decisions by three separate judges of the local Superior Court, which are now being appealed, and which cast a serious cloud upon the government of the City. We therefore request that a special meeting of the City Council be held on Friday August 28, 1970 at 7:00 P.M. in the City Council Chambers on the 3rd floor of the County-City Building, Tacoma, Washington to consider some problems which might arise if any of the decisions are reversed or if five members of the City Council are recalled."

This special meeting is called by Councilwoman Banfield, Deputy Mayor Cvitanich, and Councilman O'Leary. I should ask you jointly..... it is my understanding that Special Meetings have to be defined specifically, and perhaps you could define a little more specifically, Deputy, the purpose of the meeting. I don't disagree with the meeting but I think we are entitled to have a little more specific definition of our purpose so that we will know when we have concluded our meeting.

Mr. Cvitanich: Mr. Mayor, first of all, on behalf of the other members I would like to say we appreciate and for those members who set aside their own personal problems this evening on a Friday night to come down we sincerely appreciate it. And secondly, that this complies with Sec. 2.18 of the Charter in terms of conformity. And specifically that the last paratrph indicates that there is a serious problem regarding the legality of the functioning of the City of Tacoma. And we, as three of the five members who are being recalled by petition, and perhaps on the primary ballot, are concerned to the extent that because of the inconsistencies rendered by three different judges in the Superior Court, we're gravely concerned what transpired, in the event that perhaps all five of the councilmen were recalled, in the event some of these cases that are being appealed, are reversed.

And thirdly, and very importantly, what happens if for example if one of these five is recalled, or two members of the five are recalled, when all five of us are charged with the same allegation. It raises some serious, substantial legal questions about the present and future action of the City Council -- whether it be composed of five replacements for us or perhaps two being recalled, or what. We are really sincerely interested and endeavoring to determine what the conditions would be in the City. And that's primarily the reason why we got together here tonight. We felt that the total council should address themselves to this problem because it is a problem that affects each

and every member of this Council, not only those being subjected to recall.

Mr. Finnigan: Before we start this meeting I would like to state that I did not receive the legally-required 12 hours notice of this meeting. I didn't know until the middle of the morning when the City Clerk's office called me, and I don't begin to sit here tonight and listen to another tirade, and elecution and evading, etc. If you can conduct this meeting, and stick to the point without getting into personalities, and that sort of thing, I will stick around. Otherwise -----

Mr. Dean: Mr. Finnigan, I did not receive 12 hours notice for the pajama party either. And I came for this meeting and I have not received 12 hours notice for it either.

(Audience laughs)

Mayor Johnston: (Addressing the audience.)

I know you are not fond of my remarks about your conduct, but I -- this is a special meeting of the City Council of Tacoma relative to a very serious matter, and I will not tolerate applauses or any emotional reaction. I sometimes feel you don't recognize the seriousness of this matter, and we do, up here. If you don't have respect for your city government, as you would suggest you do, by your attendance, at these special meetings regardless of the hour they are called, then please respect that by proper conduct. This is a seat of government, and the least you can do is be respectful to it.

Mr. O'Leary, please ----

Mr. O'Leary: I would like to get down to business as soon as possible to keep this as short as possible, if I might.

Mayor Johnston: Good point. But I would like to ask Mr. Chapin, who is representing the legal department this evening, if it's at all proper for the Council to be discussing this matter that is now in litigation. I personally wonder about the discussion at public meeting on a matter that is being litigated. Could you give me your point of view on that?

Mr. Chapin: Mayor, and members of the Council, I think that most of you are aware that Mr. Hamilton is in the process of preparing a Writ of Certiorari to the Supreme Court to review the decision of Mr. Worswick, and of course the decision of Judge Cochran, which were incorporated into that file. So, many of the points suggested by the Call here are certainly pertinent to that discussion. I certainly wouldn't like to make any comment on this matter, and whether the Council chooses to do so, I suspect is their own business.

Mr. O'Leary: With that in mind, I think I can speak for myself, and I think I have the assurance of those who are speaking with me. It will only touch on these subjects insofar as what was in the paper, which is public knowledge. There are several questions that have arisen from this problem, and it is going to be a real problem for the City if there is a cloud on this election.

Now, I would ask the questions in order, to get an answer from Mr. Chapin, and build up to what we are here for: And number one, did

Judge Cochran in fact decide that the City Council is the proper authority to fix the date of the recall election?

Mr. Chapin: Again, I wouldn't particularly like to comment, Mr. Mayor and members of the Council. I have read Judge Cochran's decision and I have also reviewed the pleadings that led to the decision. The issue which was presented to the judge was basically, "Should the Council be required to set the election between those prescribed dates?"

Mr. O'Leary: Did he then direct the council to set the dates of election between September 11 and September 21st?

Mayor Johnston: May I interrupt? It occurred to me that the appeal to the State Supreme Court by the City of Tacoma is based on that one question, which is one of the questions being raised, isn't this -

Mr. Chapin: Mr. O'Leary, that is correct. One of the issues is the propriety of that ruling, and I really don't think it is appropriate for me to make comments to answer these questions. I am sure you have read Judge Cochran's decision, as I have, so I would be pretty much repeating what you already know.

Mr. O'Leary: Anyway it is public knowledge, and I don't think we are violating or threatening anything that is in litigation by giving these answers out --- which builds up to a very important question. I would like this to be on record; and I imagine you will have the same comment on "Did Judge Worswick decide the date of the election is to be set by the County Auditor?"

Mr. Chapin: Well, Mr. O'Leary, it is clear that that was his decision. That it was proper for the County Auditor ----- to set the specific date.

Mr. O'Leary: Then in your opinion, as our attorney, one of the main questions: Are these decisions consistent?

Mayor Johnston: I will rule that question out of order because that is a matter for before the State Supreme Court, Mr. O'Leary.

Mr. Chapin: I would only comment -- that is one of the issues being raised to the Supreme Court. And further than that, I would not like to go.

Mr. Cvitanich: Well, certainly none of us are attorneys, but we five are involved in this quite deeply and I think that we should have the courtesy of the Chair to ask the questions we wish without interruption. Now I don't particularly care to sit up here and have you render an opinion or a ruling that is inconsistent with what has transpired in the past. We start first with matters that are pending litigation, and I know some of the members of the Council, as a matter of policy, that don't discuss them. The very fact of the matter is that two weeks ago there was pending litigation in the Superior Court, and the Planning Commission discussed it, and the Council discussed it. But I think that

Mr. O'Leary's questions are very basic to the over-all problem we are confronted with. It stated in that letter that three separate superior courts judges have rendered three inconsistent opinions. And I think that his questions are very valid. Now if the City Attorney does not choose to answer, I think that is certainly his prerogative, but I think Mr. O'Leary should have the benefit of your courtesy and the dignity of the Chair in letting him proceed uninterrupted.

Mayor Johnston: Mr. Cvitanich, that requires me to rule as the Mayor of this City that any discussion of a matter in the courts is completely out of order, and I do so rule it.

Mr. Cvitanich: Well, Mr. Mayor, I challenge the ruling of the Chair.

Mr. O'Leary: I second the motion.

Mayor Johnston: An 'aye' vote is to deny the decision of the Chair, and a 'no' vote is to confirm the decision of the Chair.

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| Mrs. Ursich: | Mrs. Banfield: | Aye |
| (Deputy Clerk) | Mr. Cvitanich: | Aye |
| | Mr. Dean: | Aye |
| | Mr. Finnigan: | No |
| | Dr. Herrmann: | Absent |
| | Mr. Jarstad: | No |
| | Mr. O'Leary: | Aye |
| | Mr. Zatkovich: | Aye |
| | Mayor Johnston: | No |

Mayor Johnston: The motion carries 5 to 3. Mr. Jarstad

Mr. Jarstad: We were elected as a legislative body. We have delved greatly into being an administrative body, and it seems to me in the area of this thing we are getting into the area of a judicial body. I think that is what the City Attorney is objecting to -- we are trying to establish ourselves up here now -- the kind of opinions you are asking for, as if we were judges. And I rather think this is not the trend of what this meeting was going to be about. I thought we were going to ask information about what were our alternatives if certain things happened. And now we're asking for pre-judgment from our legal advisor.

Mr. Cvitanich: I am sure if Mr. O'Leary had the opportunity to proceed uninterrupted, he would eventually get to the point of the meeting. But I don't think this is a bit different, Mr. Jarstad, from you inquiring of the legal department back in June or July what actually would happen to the City of Tacoma in the event five members of the Council were recalled. It's not a bit different, only that we are doing it at a public meeting, out in front, rather than going back there

Mayor Johnston: Well, the Chair has been overruled to make this matter improper. Proceed, Mr. O'Leary.

Mr. O'Leary:

Thank you. I would like to keep this as Mr. Finnigan suggested, without getting into a lot of bickering, and get it over and done with, with these questions out where people can view them. And I would appreciate it if we could go through uninterrupted so we can have consistence to the meeting, rather than argument between each question. Because one question leads to another.

I would like to know, and I think Mr. Chapin has already answered this, what the status of Judge Worswick's decision at the Supreme Court is. It is going in. You said that Mr. Hamilton, is, in fact, issuing a writ .

Mr. Chapin:

Yes, that is correct. He is intending to file it with the Supreme Court on Monday. Mr. McCormick advises me that hopefully it will be heard on Thursday of next week, as an emergency matter.

Mr. O'Leary:

Now, we as a legislative body cannot live in hopes, and we cannot put our trust in the Lord that this will be satisfied the same way as He does on leaky roofs -- that he will stop it from raining. There is a possibility that these judges will see fit -- in view of the fact there has been conflicting and inconsistent decisions handed down -- that they may take some time to study this, and if they do we are interested in what the situation will be in the City government. If the election is held on September 15, and if after the September 15 the Supreme Court decides that Judge Cochran was right and Judge Worswick was wrong -- what I am getting at is Judge Cochran ordered us to set a date. We set the date of September 16. If in fact there is no election on September 16, will this put a cloud on the September 15th election? What if our bonds fail; what if City government pay to the workers; what if replacing department heads ... and all of our city business; would it be operating under a cloud? That's the first part of the question.

Mr. Chapin:

That's a long question, but if I understand you correctly, I think the point you are making is the primary reason our office feels it is necessary to take these decisions to the Supreme Court -- to remove any question of such a cloud, as you are referring to. The court, I might say, has the right of hearing this writ or not. In the event they refuse to hear it, then the decision of Judge Worswick would stand. If they do hear it, and they do not reach a decision before that; I am aware of at least one case where the court said "We will consider this matter and in the event the decision is not rendered before the election, the election will be held and the ballots not canvassed -- that is, counted until after our decision is reached." I am only speculating, really, because I think that is what the question calls for.

Mr. O'Leary:

Another part of the question: has your office -- this is probably in Mr. Hamilton's territory, but -- has your office contemplated asking for a stay of the election until these questions have been answered -- the various legal questions, not only this one, but others about a possible cloud on the election?

- Mr. Chapin: Mr. O'Leary, in answer to that, I am not aware of any such action pending at this point. The recall statute itself provides that such matters are emergent, and the Supreme Court should be able to hear at least the issue that we are raising, if they choose to, before that time.
- Mr. O'Leary: Then if it could be -- not if it would be -- but if it could be possible I have been approached on different sides of this election, by different people, on different items of the ballot if there were a cloud on the September 15 election in Tacoma; and Tacoma being the seat of Pierce County and having a majority of the voters in it, would it in fact jeopardize any of the elections for State senator or United States senator.
- Mr. Chapin: No. Those elections are all independent of our city elections; they are set by state statute, and I don't think there is any question they are going to be in accordance with those state statutes. This is a federal.
- Mr. O'Leary: If there was a reversal of this decision, they would only rule out that part of the ballot and not the total ballot.
- Mr. Chapin: Oh yes, I am sure that is true. As Mr. McCormick reminds me, this is a Special Election, the other one is a state-provided primary, A statutory primary.
- Mayor Johnston: Are there any additional questions by the Council?
- Mrs. Banfield: I would like to know how you propose on filling the vacancies if all five of us are recalled.
- Mr. Chapin: I don't know who requested it. I do know that under consideration in our office, is a request for an opinion. Mr. Cross is currently doing the research on that. I think it substantially completed, as a matter of fact, on that very question. Our charter is not completely clear on that point. Probably that is an understatement.
- Mrs. Banfield: Would it not be a matter of fact that we would not have a city government in order to operate with only four members of the council present?
- Mr. Chapin: I am not able to arrive at any particular conclusion on that point.
- Mrs. Banfield: I think this is a decision that should be made before election comes up. If we should be wiped out of office, we don't have any city government. Do you not think this is true? These questions should be answered before election.
- Mr. Chapin: Well, I think that is one of the reasons for the request for the opinion, and hopefully it will be released the first of the week. Certainly the research in the area of such thing -- but there always seems to be some alternative.
- Mrs. Banfield: Well, actually, there is no law
- Mrs. Chapin: There is none provided in our Charter, I suspect -- unless you could

arrive at one interpretation. And I think that will be more clearly pointed out as Mr. Cross's opinion is released.

Mrs. Banfield: The thing that bothers me, really, is the fact that I figure in my own mind that this is pretty unconstitutional. It was my opinion in the United States of America you are innocent until proven guilty. That's rather amazing -- it seems as though we are guilty until we can prove innocence. And we have been denied to even go to court to prove that we are innocent. So I think there is something radically wrong somewhere along the line, and it would seem to me that the people are acting as a jury when they don't know that we are charged with things that are a factor. Is there no way that we have any defense for justice at all.

Mayor Johnston: I am just a member of the Council, as Mr. Cvitanich reminds of frequently up here. I wish you would run that by me again, Mrs. Banfield, because I lost you someplace. I seem to think that in this great big society that you speak of frequently, the people make the decision. You are suggesting here that the people should not make the decision?

Mrs. Banfield: No, you are putting words in my mouth, Mr. Mayor.

Mayor Johnston: I misunderstand you, and I am just asking you to repeat what you said so I understand.

Mrs. Banfield: Well, I think you misunderstood entirely. I am saying we are being judged by a jury of people that do not understand the facts behind the recall, and to me this is unconstitutional, because we are in effect being charged with falsehoods, that we have not been able to defend in court on our own -- to even say whether we are guilty of same, or not. Are you listening?

Mayor Johnston: I think so -- you are saying the people do not have the privilege of making a judgment in this instance.

Mrs. Banfield: No, I didn't say that.

Mayor Johnston: Then say it again -- it's a little cloudy.

Mrs. Cvitanich: Mr. Mayor, I think what Mrs. Banfield is saying is quite clear ---

Mayor Johnston: No, let Mrs. Banfield answer the question.

Mr. Cvitanich: Could I have the floor, Mr. Mayor.

Mayor Johnston: I will deny the floor if you are going to answer a question I asked Mrs. Banfield.

Mr. Cvitanich: It's very easy to berate and ridicule a woman -- a man has that certain edge; but I think the fact of the matter is ---

Mayor Johnston: Come on, Mr. Cvitanich. I asked her a simple question; and Mrs. Banfield is an intelligent member of this council, and the question

was simple, and she's entitled, I think, to give me an answer.

Mr. Cvitanich: Do I have the floor, Mr. Mayor?

Mayor Johnston: You do, providing you don't answer Mrs. Banfield's questions, Mr. Cvitanich.

Mr. Cvitanich: Mr. Mayor, I would like to remind you again that your dignity is showing again, as it has repeatedly since you have been in office. And I would only say ---

Mayor Johnston: I would suggest you are out of order, Mr. Cvitanich. My dignity has nothing to do with the questions before us.

Mr. O'Leary: I will challenge the ruling, Mr. Mayor.

Mr. Cvitanich: I have the floor. I will continue uninterrupted if I may, please. But certainly the point that Mrs. Banfield raised is very clear. I don't think it is proper to bring it up here; this is something her attorney can discuss in court from her own particular point of view. But I think that endeavoring to badger and to antagonize people is not the solution to the end of this meeting.

Mayor Johnston: Mr. Cvitanich, I am not badgering anyone. I just did not understand Mrs. Banfield's question, or point, and as a member of this Council I think I am entitled to ask Mrs. Banfield precisely what she was saying. And that's one point I gathered she was saying -- she did not want the people of this community to pass judgment. And I am sure I got that wrong, but I would like to make it a little clearer.

Mrs. Banfield: Mr. Mayor, I did not say that at all. I would be delighted to have the people vote --- that is beside the point. The point of the matter is that we have not been able to come to any defense on our point of view, why the recall was started, or anything of this sort, prior to the time that the people are allowed to vote. They have only gotten one side of the picture at the present time; besides what the recall committee has given them. Does that make sense now?

Mayor Johnston: I interpret that as your point of view. Yes, thank you.

Mrs. Banfield: Now, I think where we have inconsistency in the courts, as we have had, it certainly proves a point, Mr. Mayor. Now, I still would like to know how the vacancies will be filled in case all five of us are recalled. This, I think should be answered prior to any election.

Mr. O'Leary: Mr. Cvitanich and myself are the ones that requested a legal opinion; we discussed this some time ago. We reiterated the request a week or two ago; we have reiterated it several times. When we talked to Mr. Hamilton today he told us he would not be able to attend the meeting. We asked explicitly if the opinion had been made and if it was forthcoming, and he told us at that time that it would be forthcoming the first of the week and we asked if we could have a synopsis or a preview, if you will, of what is in it. And I think, not his exact words, but his ideas or legal opinion is that it is completely up in the air, that there is a vacuum in the laws concerning them.

And the question is very valid: what, in fact, will happen to the city government if five people are recalled and leave a minority of four who have only the power to convene and vote for adjournment to a later date?

One of the major questions we are here for tonight, and I think we will have to ask our legal department is if in fact less than five are recalled, but one or more, and we are charged with the same identical charges --- there will probably be some further lawsuits and litigation which will further cloud this election. And while this election is under a cloud, where does the city government and the City of Tacoma stand as far as legality of operation, issuing bonds, and what not?

Chapin:

Mr. Mayor and Mr. O'Leary, and members of the Council, certainly your point is well taken. The period between when the council may have been recalled, pursuant to an election, and the naming of successors in the event that occurs, of course, and the validity of those things are something the courts are going to have to determine. We acknowledge that. Secondly, insofar as the opinion is concerned that you are referring to, our City Charter is unclear on this point, and provides that the vacancy shall be filled with the --- by the remaining members of the council, and secondly provides that no transactions by the City Council may be made, other than a continuance, with less than a quorum of five members. So unless you read those two provisions independently of each other, there is a vacuum here. I do not feel again this is not but I do not feel this problem is insurmountable. I am sure that there is an ultimate answer -- a number of possible alternatives. Those alternatives will have to be examined and then stand the test of a judicial hearing in order for us to be assured that that we do have a legal body functioning as the legislature of the City of Tacoma.

O'Leary:

Thank you, Mr. Chapin. But we have heard for the last two months --- those of us who have asked for this opinion and have asked these questions --- that it is possible there are several alternatives. It's a good "catch" phrase, but we have had nothing spelled out. What are some of these alternatives? We don't know. We ask them, "Can the Governor appoint?" They don't know. "Can the remaining members of the council appoint?" Nobody knows; but I can foresee the remaining body as the Council being enjoined, or stopped by law, in suits and litigation and being held up for some time against appointing anybody or doing any business, without being under a cloud.

Mayor Johnston:

I know I am rude, Mr. O'Leary, but Mr. Chapin pointed out earlier in our meeting that the legal department has been researching this question and has not yet had a chance, but is about ready to give this Council its response to the question. And yet a moment ago you took it upon yourself to discuss this question of being a vacuum, and all these questions --- I think it is only decent for us, as members of this Council, to wait until the legal department of this City renders its opinion on this point. I think you are inclined to cloud the issue here when you give your legal opinion on this matter. It is a courtesy to wait until the legal department renders its opinion.

O'Leary:

I will agree with your first remark; but on your second, I did not bring up the wording that we have a vacuum in the laws. This was brought up by the City Attorney of the City of Tacoma this afternoon.

Mayor Johnston: I don't know that; I am waiting his opinion. It's your utterance at this point.

Mr. O'Leary: The question came up at a special meeting of the City Council, and the time is getting short. Mr. Hamilton goes to Olympia on Monday. We will not have his legal opinion until Tuesday night, and I took it upon myself in the presence of the Deputy Mayor to ask the City Attorney concerning this opinion. And reading it, not for your benefit, but for the benefit of getting it in the special meeting, I am reciting what Mr. Hamilton told me today.

Mayor Johnston: Well, I would rule that that is quite improper, Mr. O'Leary. And please, Mr. Chapin, do you know when this opinion will be in the hands of the Council. Mr. McCormick.

Mr. McCormick: I think I had better clarify a few things. The opinion which you have reference to is written, and it was completed late this afternoon, about 5 o'clock or somewhere around there. I didn't have time of course to run it off tonight. I am of the opinion, and I think eventually, in accord with what I have discussed and Mr. Chapin has discussed, and I have discussed with Mr. Hamilton many weeks prior to this question arising here tonight. And this isn't something that we haven't given thought to prior to the time I was City Manager here, while I was still in the legal department. And it's one of those situations which Mr. Chapin pointed out, where there are certain sections of our Charter which are in conflict, and I am just saying what he has already told you; and that is that there is apparent conflict. There may be conflict and there may not. It depends on how the court looks at it. There is one section that says the vacancy shall be filled by members of the council; there is another section which says there must be a quorum which shall consist of five members to pass a resolution or to do City business.

Now the question is, in the minds of the court, is this City business or is it simply getting a council ready. And there is a dispute and there are several cases from other jurisdictions which go both ways on it. And it is simply one of those situations where I think their personal feeling is, with which I agree, it is a problem which is going to ultimately have to be settled by the determination of our own Supreme Court. We can interpret it but that may not satisfy somebody else. So I don't think the legal department should be criticized---because this is not a question you can say yes or no to. About all you can do is give the argument on one side, and the argument on the other side, and you take your pick. And we don't know until the Supreme Court itself determines that.

Now, as far as how they are going to be appointed is concerned, I think as Mr. Chapin has stated, there is a state law which provides for the Governor to fill these positions in the event the government comes to a standstill. And he has exercised that in other cases. There have

cases where the whole Council has resigned, and the Governor stepped in and appointed a council. So these are all problems which may or may not arise. They would only arise in the event all five were, as you pointed out, Mr. O'Leary, recalled. Otherwise it would be a moot question. So I just wanted to explain this idea. And you will have this opinion, as Mr. Chapin said, on Monday morning just as soon as the girls can run them off.

- Mr. O'Leary: I would like to apologize to the legal department if it seems that I am picking on you. I had a certain set questions in my mind, and I had a certain approach to this thing, that would be building up to it. But due to some interruptions I lost some of my train of thought, and it may have gotten me a little on edge. But the one question that has not been answered yet is, if one or two of us are recalled and the rest remain, and there is litigation against the remaining body, would that then not put a cloud on this election?
- Mr. Chapin: I have never researched that question; I really don't know. Frankly, it is an issue for the voters to determine which among you, if any, are guilty of violation of your oath of office, or malfeasance etc. Their decision on that matter would be final. That would be my offhand impression.
- Mr. O'Leary: You see, it prefaced some of these questions
- Mr. Chapin: I just don't think the question would upset the election, if one were held.
- Mr. O'Leary: There are certain prerogatives open to me as a councilman and as a defendant in one of these cases. Were I to pursue them, I am interested in what havoc I might bring onto the City, if I am making my point clear on that.
- Mayor Johnston: I didn't hear that correctly, did I.
- Mr. O'Leary: You did. In other words, if I were to appeal one of these judge's decisions, which I have a right to, and I held up an election or put a cloud over it, I want to know what ensues concerning the City government. Can it, in fact, have continuity and go on while these are under appeal. I'll go on a little further on that --- if in fact the Supreme Court decision, in its wisdom, is to carry it beyond the September 15th date before bringing in a decision --- but I think, thinking back before we got interrupted a few times --- you did answer that in part that they would stop the counting or canvassing of the ballots in that case.
- Mr. Chapin: Mr. O'Leary, there was one case where that, in fact, was done. It's a sensible solution to that kind of problem. As far as your making any attack on the validity of these decisions on your own behalf, I don't know if that would throw a cloud -- it would more likely remove a cloud that would raise one more issue that would be thereby defined by the courts.
- Mr. O'Leary: One final question on my part: we spoke of a stay to getting these questions settled, and if in fact after you leave here tonight, there

is any question that you think might cloud this election or cloud the City government of the City of Tacoma, can you, in fact, ask for a stay on this Monday.

Chapin: I am not really prepared to answer that question. I have little doubt but that the Supreme Court will determine, if they decide to hear the review at all --- they have that alternative, and they will hear it expeditiously and before the election --- I don't have much question about that, so a stay would no doubt be of little value, or requesting one.

O'Leary: Thank you.

Mayor Johnston: Any further questions? Mr. Dean.

Mr. Dean: Mr. Mayor, I have a man who has requested some information, and I would like to bring him forward at this time. He has some information he would like to present to the council at this time.

Mayor Johnston: I see no objection to that unless it is not pertinent to the matter now before us.

Mr. Dean: I am sure you will keep it pertinent, sir.

Mr. Carlbon: My name is Fred Carlbon, 1913 N. Mason. It was said tonight that three superior court judges made a ruling on this recall election. As a matter of fact there were four. I filed in the Superior Court of the State of Washington a Petition for Injunctive Relief to the Hon. Hardyn B. Soule, who was the presiding judge of the Superior Court, Monday morning, July 20th. I would like to read part of this petition.

"Your Honor, my name is Fred O Carlbon, United States citizen and a resident of the City of Tacoma, County of Pierce, State of Washington, I seek injunctive relief based on the following: I have exhausted all remedies available to me and must appeal to this court for equitable relief. I have reasons to believe that irreparable harm will result if not granted at this time, since time is of the essence. I respectfully request a temporary injunction of one week's duration against the certification of recall petition signatures at the July 21, 1970 Tacoma City Council meeting.

"First, statutory time limit makes it imperative. A separate recall election one week prior to a primary election will be an added and unnecessary expense and burden on the electorate. No person's rights will be adversely affected if both elections are held at the same time. The citizens would thus be saved thousands of dollars and the irritation of going to the poles twice in a week instead of only once.

"Second, to allow an attorney time to investigate the legality of certain questions posed for certain civic rights may be lost because they were not advanced in a timely manner."

Judge Hardyn Soule denied the request; that irregardless if it is a hardship on the electorate, it is immaterial and irrelevant, so long as the law is complied with in respect to time limits, the court has no jurisdiction to change the date of the election as set by the City Council.

I filed this with the County Clerk's office. I told the judge that I intended to take this matter further and I wanted the record preserved, and he told me to file it. I paid \$31.00 to file it; so I think the City Attorney can go ahead and find out just what the ruling of Hardyn Soule was, and I will present it to the City Attorney, so when he goes down there Monday he will have four of 'em.

(Another citizen, Mrs. Virginia Shackelford, requested to be heard.)

Mayor Johnston: I don't know how we could deny you, Mrs. Shackelford.

Mrs. Shackelford: I am Virginia Shackelford, 1105 North L, and I have just four questions; and this is the first time any citizens have had the opportunity to ask questions concerning some of the knotty problems. First, may I ask you a question personally, Mr. Mayor? Would you define for me, malfeasance?

Mayor Johnston: I certainly would not.

Mrs. Shackelford: Then, since these five are charged with malfeasance, and misfeasance, this is what they are standing to recall election for, including you, Mr. Mayor.

Mayor Johnston: Well, I certainly am not responsible for every voter in the City, as you well know.

Mrs. Shackelford: Do you really think that people will be able define "malfeasance" and "misfeasance"

Mayor Johnston: I don't think that is a decision of this Council or the Mayor of this City. You are trying to badger me a little bit.

Mrs. Shackelford: No, I'm not

Mayor Johnston: Usually on Friday I am enjoying life, and you ask me questions, and I will respond in a sort of a gay way.

Mrs. Shackelford: I'm really not badgering you, Mr. Mayor.

Mayor Johnston: If you are not badgering me, Mrs. Shackelford, what are you doing?

Mrs. Shackelford: I'm really asking if you, as a citizen in Tacoma the same as the other citizens, feel that you are capable of judging them guilty of malfeasance or misfeasance.

Mayor Johnston: Yes, I am, I am.

Mrs. Shackelford: But you can't define them.

- Mayor Johnston: That's not the point.
- Mrs. Shackelford: Okay -- I'll pass on. My second question: they are charged with improper procedure in appointing a City Manager.....
- Mayor Johnston: I am not going to pass judgment on any of these. This is a free society, and I have the privilege of an individual to make my own judgment, and if you want to make my judgment publically
- Mrs. Shackelford: I am not asking you to make your judgment publicly ; I am asking the Council, and perhaps through the Council their attorney --- something may come up out of this, because I think it is important
- Mayor Johnston: I am going to rule you out of order. What you are expecting this Council to do is the privilege of an individual in a free society. Now we can make our own judgment about the guilt or innocence of any one being challenged
- Mrs. Shackelford: You don't even know what I am asking, Mr. Mayor
- Mayor Johnston: Oh yes I do.
- Mrs. Shackelford: You haven't heard my point yet, Mr. Mayor, so how can you rule me out of order.
- Mayor Shackelford: It is pretty obvious what you are doing.
- Mrs. Banfield: I will challenge the ruling of the Chair.
- Mayor Johnston: Maybe I should ask you to do this, Mrs. Shackelford --- ask all your questions, and then we will have the whole thing in proper context.
- Mrs. Shackelford: Marvelous, Mr. Mayor. Thank you so much. The five are being charged with improper procedure in hiring a City Manager. According to the Charter, it reads: "Both his appointment and removal shall require the affirmative vote of five members of the Council. The manager shall be selected on the basis of his training, experience and other administrative qualifications for the office, and without regard to his place of residence at the time of his appointment."

It says absolutely nothing about circulating throughout the country of advertising, interviewing or anything else; and it states that five shall appoint. This is the procedure that was followed. This procedure was not followed --- that is what they are charged with not following. This was not followed when a unanimous vote appointed Mr. McCormick. Are we not, then, in Tacoma setting a dangerous precedent that may impinge upon the future hirings or firings of any other City Manager or any other employee? If you follow the City Charter --- you can be recalled.

My third question: They are also charged with ignoring expert opinion concerning Cable TV. If this then stands, that is, if they are recalled, because they allegedly ignored allegedly expert opinion, then again

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does that not again set a dangerous precedent? Does that not mean that any expert who comes before

Mayor Johnston: Mrs. Shackelford, I am ruling you out of order because you are using this microphone to feed your position in terms of the issue that may be before this community. Now, I don't think it is the purpose of this special meeting of the Council for you to use the microphone to state to us this position in terms of the challenges. Let me read to you, Mrs. Shackelford, the purpose of this meeting:

"The purpose of this request is because of three inconsistent decisions made by three separate judges of the local Superior Court, which are now being appealed, and which cast a serious cloud upon the legal ability of the government of the City."

It states then about the hour and the date "to consider some of the problems that might arise if any of the decisions are reversed or if five members of the City Council are recalled."

Now what you are doing, Mrs. Shackelford, is to use this microphone to express your feeling about the challenges that unfortunately five members of the Council are faced with. And that is not the purpose of this meeting. And I rule you out of order.

Mr. Dean: I challenge the ruling of the Chair.

Mrs. Shackelford: I am asking

Mayor Johnston: I rule you out of order, Mrs. Shackelford, and I don't expect you to continue to speak, once the Mayor of this City has ruled you out of order. And whether you like it or not, that's the way the government in a free society operates. And if you continue to act that

(Cheers from audience)

And if you continue to act that way, I will clear the room, because we don't have to tolerate this --- I don't, anyway. You are excused, Mrs. Shackelford.

Mr. Dean: How about my challenge, Mr. Mayor.

Mayor Johnston: I didn't hear a second, Mr. Dean. But I am sure I will.

Mr. Zatkovich: Second.

Mayor Johnston: Mr. Zatkovich seconds the challenge of the Chair. An "aye" vote is to deny the decision of the Chair, and a "no" vote is to confirm the decision of the Chair. Call the roll, please.

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| Mrs. Ursich: | Mrs. Banfield: | Aye |
| | Mr. Cvitanich: | Aye |
| | Mr. Dean: | Aye |
| | Mr. Jarstad: | No |
| | Mr. Finnigan: | No |
| | Mr. O'Leary: | Aye |
| | Mr. Zatkovich: | Aye |
| | Mayor Johnston: | No |
| | Dr. Herrmann: | Absent |

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Mrs. Ursich: 5 to 3.

Mr. O'Leary: Point of information, Mr. Mayor. If we want to give a citizen the floor or a member of the Council, would we not get out of here sooner to just let them go until they are finished, and then get on with the business.

Mayor Johnston: My response to that, Mr. O'Leary, is that when a special meeting of the Council is called, the only matter before the Council is described in the notice to me.

Mr. Finnigan: It appears to me that the questions are being asked of us who are not in a position to make any decisions. We are not a court, and the four members of the Council who are not on recall certainly are not making any effort at all to try to this isn't the point at all. To me these questions are useless to be directed to us. Each one of the nine has opinions, but that doesn't hold any water. And I feel that these questions are incongruous and absolutely irrelevant at this point. And I feel that if the Council has something to talk about, the Council should do it; but to involve the citizens in this thing, I don't think it is right at this particular time.

Mayor Johnston: Thank you, Mr. Finnigan. Mr. Zatkovich.....

Mr. Zatkovich: Personally, I just want to comment -- the reason I seconded that -- I feel also, as long as you permitted her to speak, you knew what she was going to speak on, and I just wanted to remind you and the community that there are others on the Council. You have one vote; I have one vote, and the others. And I think, again, that as long as you permitted her to speak, you should let her continue, and we probably would have been over with the matter.

And secondly, I think it might be a good idea for people to get another viewpoint. The whole thing was ridiculous to begin with. This issue certainly is before the community, and I think the community should hear both sides. So far we have heard mostly from the Recall Committee, and as a matter of fact I believe they are a little bit presumptuous. I have a piece of material before me that was handed to me just before the meeting

Mayor Johnston: Pardon me, Mr. Zatkovich --- I am probably going to be overruled again. You are now in an area that has not been defined in the Notice for the special meeting. You are about to read from a point of view in terms of a matter that is yet to come before the citizens of this community. You are out of order, and I so rule it.

Mr. Zatkovich: I challenge that, Mr. Mayor. Believe me, I don't want to be long on ~~this; just briefly. Believe me there is a lot of reading~~ this; just briefly. There is a lot of reading material, and I don't want to read it.

Mayor Johnston: Your challenge fails, for lack of a second, Mr. Zatkovich.

(Speaking to Mrs. Shackelford) Yes, I think your privilege has been confirmed.

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Mrs. Shackelford: Yes, the reason that I am bringing this up is because, as a matter of record, then, perhaps they can be considered by the legal department then because it seems to me that the people should realize some of these.

My third question concerned the fact that the five are being accused of ignoring expert opinion which was upheld by one judge. It was completely overruled by another judge. But if these five are recalled, because of the first judge's ruling, then does that not set a dangerous precedent because in other words, in the future, every time a so-called expert appears before the Council, whatever he may be presenting -- you would be bound unanimously to vote. Otherwise you could be recalled. That's what the whole thing -- the charge -- is about. They allegedly ignored alleged experts' advice. It is certainly something to consider by all members of the Council.

And fourth, this disturbs me very much. There has been a great deal of talk about possibly two being recalled, not all five. They are all charged with three counts, they are all charged with the same counts, they are all charged as guilty of malfeasance or misfeasance. If some people in the community use this recall to -- for personal reasons -- to only recall two, then the Recall Committee would be morally bound to challenge the other three; or would our City Attorney challenge the other three. Regardless of how the people vote, they are all five guilty of the same thing. And if one, two or three or four should be found, certainly all five of them should be found guilty of the same thing. It should be well considered part of the decision coming from the City Attorney's office.

These things have disturbed me, Mr. Mayor, and I thought I should ask them. Thank you.

Mayor Johnston: Thank you, Mrs. Shackelford.

(Addressing another citizen) Will you identify yourself.

Mr. Wells: I am Tom Wells, private citizen, and an expert in my own field.

Mayor Johnston: What is that field?

Mr. Wells: Pear trees, your Honor. I am an expert, remember this. This is the reason why the recall is on. In regard to the recall, these five councilmen have been charged for failing to listen to the advice of an expert. Well, here's a little red book, your Honor, that cometh from an expert and says I am an expert on what I am about to say, and I quote: On page 49, Article I of the State Constitution of the State of Washington; in compliance with the 14th Amendment of the United States Constitution, Section 19 of Article I states:
"Freedom of Elections. All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the exercise of the right of suffrage."

Suffrage, your Honor, according to Webster's dictionary printed in 1943 means the right to vote.

That's about it, your Honor. Thank you.

Mayor Johnston: Are there any additional comments by the Council.

Mr. Zatkovich: Well, I have a couple of questions in response to Mrs. Shackelford. We should not lose sight of the fact that if one councilman is guilty of something with reference to the recall committee, then certainly all nine are guilty of the same thing -- not five. This happens every Tuesday.

And again I want to remind the people that the only people -- any official in the State of Washington can be recalled, except the judge. They certainly have some crazy decisions too, I can tell you that. But they are only human, that's probably the reason.

Now, I just wonder. I am going to ask the legal department this: so far I have not been represented by an attorney. Now much has been said about the Texas cases -- I think that everybody seems to stop when we get to a certain part of that. And I recall, in that Texas case this one party -- there wasn't five councilman, but there was one councilman charged. He was acting in an official capacity at the time, and he was defended by the City. Now I just wonder if the councilmen charged, and they were in official capacity at the time, should not the City act in defense of the city councilmen, as they would in any other case. Not only because of the ruling that happened the other day; but let's go back to the beginning. And I will ask you that now. If we asked the City legal department to take over, what is the answer to that.

Mr. Chapin: I am not really too sure I understand your question. Our office has represented the City of Tacoma and the Council in their official actions. In the matter in which some of the Council retained private attorneys, that was a decision, I believe, before Judge Cochran. Our office's position was the same as those private attorneys retained by those people.

Mr. Zatkovich: Well, prior to that time, with respect to the charges or counter-charges, whatever it may be, that's perfectly good of these people if they want to retain their own attorney. But supposing I said "no", let the City legal department of the City of Tacoma take over for me. Is this proper? Isn't the duty of the legal department, when the City official -- in this case the City Council -- is being charged with something, is it not the legal department's duty to act in defense.

Mr. Chapin: Well, Mr. Zatkovich, it seems to me that's precisely what we are involved in here. --- the cases we have defended the City Council recently the writ that we intend to file with the Superior Court, and going back to the sufficiency of the recall petitions -- that was heard in the Superior Court. Our office appealed the sufficiency of those recall petitions to the State Supreme Court. Mr. McCormick, at that time the City Attorney himself, handled the case, unsuccessfully -- unfortunately.

Mr. Zatkovich: Anyway, then, this is clear. This is the City's position. Now if I may, I would like to continue with this little pamphlet, Mr. Mayor.

Mayor Johnston: I will rule you out of order, Mr. Zatkovich. If it is not pertinent to the matter then I would rule you out of order.

Mr. Zatkovich: I beg your pardon, Mr. Mayor. I think it is very pertinent. It has something to do with the recall. That's the reason we are here.

Mayor Johnston: You are out of order and I will so rule.

Mr. Zatkovich: At least you did not start with me being out of order, anyway. Look, here is a pamphlet. I understand it is going to be ready for distribution tomorrow. This is how presumptuous people are. It is headed, "Honestly, now, haven't you finally had enough?" And there is all kinds of garbage on here. The headlines are "Now consider" and it has several paragraphs. "Now consider recall. Post office Box 11252, Terminal Annex, Tacoma, Washington - Paul Bergland, Treasurer."

So it just goes to show you --- I think the community should be informed of the viscousness of

Mayor Johnston: You are out of order, Mr. Zatkovich.

Mr. Zatkovich: I challenge the ruling of the Chair.

Mr. O'Leary: Second it.

Mayor Johnston: Moved and seconded on a challenge to the ruling of the Chair. An "aye" vote will be to deny the ruling of the Chair and a "no" vote is to sustain it. Call the roll please.

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| Mrs. Ursich: | Mrs. Banfield: | Aye |
| | Mr. Cvitanich: | Aye |
| | Mr. Dean: | Aye |
| | Mr. Finnigan: | No |
| | Mr. Jarstad: | No |
| | Mr. O'Leary: | Aye |
| | Mr. Zatkovich: | Aye |
| | Mayor Johnston: | No |
| | Dr. Herrmann: | Absent |

Mayor Johnston: The challenge carries 5 to 3.

Mr. Zatkovich: I might mention this. I can't understand the other people on the Council sitting back like fat cats because they are not involved. They could be very easily in the same position we are in, because they are no different. Now I just wonder

Mayor Johnston: Pardon me, Mr. Zatkovich

Mr. Zatkovich: I don't think it is right for you to keep making these interruptions. I wish you would let me continue. I will have to challenge you again.

Mayor Johnston: I don't think it is at all proper for you to make reference to the people and the means that they vote. They voted in terms of how they interpreted the Chair's ruling with regard to the special matter that is before us.

Mr. Zatkovich: You let these people explain, Mr. Mayor. You can explain your own, but don't talk for these people. You just criticized Mr. Cvitanich.

- Mayor Johnston: We have some rules about impuning the quality of
- Mr. Zatkovich: I didn't impune anything. I just merely made a statement of fact.
- Mr. Jarstad: Mr. Mayor, I will
- Mr. Zatkovich: Just a minute; I have the floor, Mr. Jarstad.
- Mr. Jarstad: I am just affirming what the Mayor said, it has no connection here. Mr. Cvitanich thanked us all for coming down on a special night to consider the things that were in that paragraph, and that's what we are here to consider. And if we waiver too far and express our personal opinions that have to do with other things, we are straying away from what the ground rules are set for.
- Mr. Zatkovich: I didn't particularly want to come down to this meeting myself tonight; I had something else I wanted to do. And I do have to leave very shortly. I will have to skip a lot of this in between, unless somebody wants to take over for me. But here is the garbage that is being sent out by this vicious group. This shows you how intent they are on doing this. Taking away the right of a vote by the people --- no question about it.
- Mayor Johnston: Mr. Zatkovich, I must talk again to the citizens in the council chambers; I have asked you once, and perhaps I am not talking to the same group this time -- please have respect for the public officials who are serving you. This is a very serious matter before you, and I constantly present to all of you: if you don't show your respect, we will do something about your presence in the chamber. And I am not kidding about that.
- Mr. Zatkovich: Thank you, Mr. Mayor. Well, I am not going to read it all, but they have two pages there about why they feel we did wrong. They talk about the TV franchise and they give the reasons there, and also the appointment of a City Manager. And they give the reasons why. And then the last paragraph, I will delve into a little bit -- "two erratic actions:" Now I will quote this: "two erratic actions are serious enough alone to demand an accounting, but there are more, like the way they help their friends when city salary increases came around. Police and firemen received 11½% salary increases at the expense of all other city employees, who only got a 7½% raise. And like the way the Council majority has demolished every human social program. Programs such as the Human Relations Commission, The City Trainee Corps, the Neighborhood Youth Corps, and others such as the Office of Economic Opportunity. Construction, public works projects, and urban renewal projects are at a near standstill, thanks to their whimsies and tantrums. Despite that four new taxes have been added recently, the Council still projects an \$800,000 budget deficit. In short they are bankrupting the City of Tacoma."
- I might remind the people that the City Manager left the city in bankruptcy when he left, believe me, and we are still trying to get out of it.
- Believe me, this is nothing but lies. This one paragraph, "Construction, urban renewal and public works" --- I don't know of any project that is at a standstill. There have always been the necessary votes

to get these projects on the road, and they still continue it! So why do these people want to lie. Bare faced lies! That's all they are, and all the other junk that they put in there. I just wanted to point that out to the people about this garbage that will be sent out. It's costing a lot of money too, and they will probably be asking for more money.

Mayor Johnston: I don't like to keep repeating, or rereading the purpose of this meeting, and I have cautioned the Council to keep their remarks pertinent. Are there any additional comments with regard to the nature of this special meeting.

Mayor Johnston: (Addressing a citizen) Would you identify yourself, please.

Mrs. Odegard: My name is Genevieve Odegard, I live at 3853 East "G" Street, Tacoma. You said the purpose of the meeting was because of the conflict with the judges. Now, I as a conscientious voter am left up in the air. You made reference to four judges. I don't know how many we should go. I don't really know, but Judge Jacques made reference in the Tribune when somebody was mentioning a grand jury, said there has been no evidence of wrongdoing in the City of Tacoma. Now I don't know what he was referring to. Was he referring to somethings bad, or you people on the Council, or who. I voted for one member of the Council who is not a member of the majority; I was voting on his qualifications, not whether he was doing right, or wrong. And you say now that we can vote for these people, like you would in an ordinary election. Like if we were all to vote together like on the Chicago Seven. It wouldn't be the same as people on the jury who hear this side and that side but when people do wrong -- I don't care who they are -- the majority keeps making reference to the purposes behind the recall. I have never really heard much about the purposes behind the recall.

How can I conscientiously vote properly? Unless these people are brought to a trial with a jury --- I went to a hearing the other day where Mr. Greco was, and there would be attorneys for one side, and attorneys for the other side. There wasn't a jury, but the judge heard both sides. Now, I as a voter who doesn't know much about any of these things. If I don't hear all the charges on one side, and then can't hear all the charges on the other side, when the judges can't even seem to get together, how can you be a conscientious voter? That's my question --- I don't think you can answer it, but that's my observation or opinion.

Mayor Johnston: Mr. Cvitanich.

Mr. Cvitanich: You made a statement a little earlier, that I think all of us should be prepared that Tuesday night -- this is the only forum we have in Tacoma to present our point of view. And I as one member of the Council am going to exercise that opportunity Tuesday night. Because for too long, and it's very indicative in what has transpired in the last month and a half, that we were being tried in the press and in this community. And suffice it to say that Mr. Gibbs' article following

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last Tuesday's Council meeting shows to what depth some people will prosecute journalistic principles. And Tuesday night we will take this up at length. That's my only comment.

Mayor Johnston: At the right point on the agenda.

Mr. O'Leary: I, for one have concluded the questions that were in my mind concerning the cloud that may be on the election. I appreciate Mr. Chapin's answers, and Mr. McCormick's explanation of things, and I do appreciate members of the Council that did come down here, and members of the public. I think we have wandered a little astray, but if in thinking this over, over the week end, if you come up with any of the answers that we haven't had tonight, if you would get them to me I would appreciate it very much. That's about all I have to say on the subject tonight.

Mr. Zatkovich: I move the meeting adjourn.

Mr. Cvitanich: I second the motion.

A voice vote was taken and carried. The meeting adjourned at 8:20 P.M.
