

CONSIDERATIONS

Did I intend to disrupt, or engage in actual disruption? No and No.

1. I brought four dozen roses for staff members, solely as good will gestures.
I brought 64 baggies of Jelly Bellies for my new colleagues " "
I issued 64 invitations for a private meal with new colleagues " "

Are those the actions of a violent, angry, hateful, disruptive person? No.

2. I had asked the photogs **twice** not to disrupt the prayer and pledge. They **admitted** that in their testimony, and agreed not to shoot me during those times. So freedom of the press is not involved, only their "freedom" to lie when someone's eyes are closed. The tap on his knee (the closest point without going down on the floor with him) was not "violent" and was less disruptive than grabbing his camera, walking away during the prayer (an act of disrespect that would trigger even more photos), summoning the sergeant-at-arms, or any other act. Doing nothing would allow him to continue to disrupt my prayer and that of the entire House, which would be attributed to me. This was no worse than poking someone snoring in the next pew (who had never agreed not to snore!) I was trying to **stop** his disruption, **not** to cause one! It was inconceivable to me that House Rules about order had an unwritten exception, that they don't apply to media.

3. Had the photog been a plumber or waiter, would this ever be an issue? Had I put my hand on one's shoulder to escort him out of my office after his disregard of requests to leave, would that have been disorderly conduct by me? Does this alleged freedom of the press allow him to violate my free exercise of religion, as guaranteed earlier in the First Amendment, and that equal right to pray of the entire chamber? No. No. No.

4. There is no House rule that says any touching of another private citizen is disruptive per se. How is that non-notice due process? No member, nor the pastor, was aware I had tapped the photographer's knee. How can an unknown event be disorderly or disruptive?

5. I was not a member, but a private citizen. The stated remedy for public disruption is clearing the aisles or gallery. Since the Speaker was unaware of my tapping the photographer's knee, there was no disruption involved, and no clearing was ordered or justified.

6. The photog said his journalistic ethics code required him to honor the sensitivities of his subject, which he did not. So he violated his ethics.

7. I was a guest, but unprotected from this uninvited media mob. The Channel 4 cameraman stepped on my family Bible while clambering onto the bench for a different angle. This had been going on non-stop for 105 minutes. Both photogs admitted I was "accommodating" all that time.

8. The House was not yet called to order, so can the tapping violate an order not yet established?

9. The photogs **admitted** this was a coordinated provocation. See also the video. The Post photog on the left raised his camera and talked to the News photog. He testified they were discussing shooting me during the prayer. They then told the Channel 4 cameraman who switched his camera angle from them to my right profile, so he can catch my reaction to their breaking their promise. Is that "clean hands?" Is that conduct you wish to protect and encourage? Is the uninjured News photog truly a "victim?" This former prosecutor and volunteer advocate for true victims says "No."

10. Monday's events were intensified by a month-long public disagreement between us on the term limits issue. I kept my communications with you confidential, but the House disclosed them. I followed the court's advice in the Fitz-Gerald case, and for it was labeled as skirting the law, being devious and disrespectful, etc. The Post blasted me editorially. You said a law was needed to prevent my lawful actions. When the date issue ended, the timing issue began, and I was accused of "vanity" and an "unprecedented" request to be sworn in during a meeting, as 60 members had been. I am told it was not unprecedented. What was unprecedented was for an incoming member to be ridiculed and faulted by name during the Speaker's and Minority Leader's speeches, and in the State of the State address. I simply wanted to avoid the image that I was being shady or devious, by getting sworn in when no one was looking, as though my induction was itself a trick. I also asked for 90 seconds to address the House, to defuse and relieve the tension and this negative build-up with some self-deprecating humor. That was another way in which I tried to practice collegiality, and further shows that I was not trying to be disruptive or demanding, but to demonstrate good will towards others. This is noted only to ask you to consider the incident's setting and factors.

ALTERNATIVES

Like the term limits tiff, this process has gone beyond your intentions and become a media spectacle. The former spat cannot be called back, but it is time to de-escalate this latest over-reaction.

See the transcript. The committee engaged in a bidding war in front of the press, showing who could pile on the toughest penalties for this non-injury touching, despite all the mitigations and considerations shown above. One member even publicly challenged the sincerity of my patriotism and religious

faith! I thought that violated House Rules. To adopt their penalties will rupture the bonds of mutual respect and good will I tried to cultivate. I will remain, but as a virtual pariah, condemned solely for an act intended to enforce my respect for the House proceedings (!) Such an ironic result is not only unjust, but incomprehensible.

The papers report that no one has ever been censured in the history of the House. The Clerk is not aware of even any public reprimands. Does this single tapping justly rise to those historic levels? No. The realistic and proportional options range from no action to private warning or admonition by the Speaker. You may also defer consideration for the balance of the session, a sort of informal probation. I also offered to sign a mutual (or individual) statement of regret that the incident occurred. I have already stated it will not happen again. Since there were no damages, isn't that outcome the paramount goal?

Compare with a prior incident on the floor of the House, one member shouted a threat to another member to "shove my fist up your ass." That was a well-publicized violation of House order involving two members in session, not two private citizens. How can this single tapping be considered worse than that? Censure and reprimand in other states are reserved for gross, bad faith, and intentional misconduct, often for a felony. Such a penalty would be demeaned and politicized if used for a nudge.

You stated your term limits concern was that my constituents not be without representation. Can you then politically cripple that same person, and limit his effectiveness by such a historic, excessive, permanently-branded stigma, particularly under this unique fact situation? I don't think any fair man could consider that proportionate or just. This former prosecutor has an unblemished record and not even a hint of "violence." We both know what the media would do with such an outcome. They have indicated it already.

Despite our month-long battle over my rights under term limits, I still want to believe you are fair, interested in justice, and possessed of a moderate and non-vindictive temper. You said you wanted to work together. I accept your word, but how credible will it be seen if it comes from one's executioner?

Penalties as heavy as those recommended do not reflect well on the House. I cannot and would not erase being the author of TABOR, but such sanctions, coupled with a 4-bill limit on me only, a new limit on HCRs after I filed more repealers, the term limits spectacle, etc., will be seen by many citizens as evidence of another act of revenge on the one Coloradoan that members least wanted to see in the House. Does that serve the House's best interests?

As I quoted in an earlier email, "With malice towards none, with charity for all..." Let's bind up our wounds, end this mini-war, and work together for the public good, as you offered.

For your information, I have also decided to refuse permanently any interviews with the Post or News. This will limit my public communication options, but 20 years of Post and News distortions, libelous editorials, etc., is enough. They can't set me up again if I refuse to talk to them. Problem solved.

You may be used to such media behavior in Denver, but it has never happened to me before in 21 years. Now I am forewarned.

House Rules should be changed to respect the prayer and pledge periods for all, including guests. 2-2-404 (d) and (g), C.R.S., provide rules may be established to limit disruptive photographer actions. That statutory invitation should be accepted. As a practical matter, I understand that reform must wait until this furor recedes.

ADDENDUM

- 1) In 2006, while in session and on the House floor, Representative Schultheis was at his desk. Another representative came up to him and screamed very loudly, "You God-damned son-of-a-bitch racist." This expletive was in response to Representative Schultheis's being quoted in a *Denver Post* article about immigration policy. Despite being audible to many members, no sanction was imposed under House Rules 23(b) and 23(d).
- 2) Last year, Governor Ritter violated House traditions and/or rules by criss-crossing the House floor between seats and in the middle aisle. No sanction was imposed under HR 23(c).
- 3) A former Speaker threatened Rep Schultheis on the House floor in a loud voice, saying "If I weren't the Speaker, I would (punch you out), and none of your bills will ever get out of Appropriations." No rebuke was imposed.
- 4) The media also covered that married Speaker's attempted break-in to his girlfriend's residence, using a screwdriver, and then chasing her down the street with his screwdriver. No rebuke was imposed.
- 5) I take House formality and decorum very seriously. I had already decided I will never remove my coat, even when allowed. President Ronald Reagan did the same when inside the Oval Office. I did the same during commission meetings. It was even a campaign promise of mine.
- 6) I even obey the House rules so strictly that I go through the metal detector. I believe we should live under the rules we set for others, not treat the public differently than we do state employees, as though the public is inherently suspect and we are presumed "safe."

7) As a guest, I believed I was confined to the bench and could not "retreat" from the photographer's disruptions.

8) Had the photographer been standing, I would have tapped his shoulder with my index finger. In modern society, that method of emphasis is not considered an assault.

9) See the attached memo from Legislative Council, which searched House records since 1880. There has NEVER been any recorded public disciplinary action in the Journal.

Is this minor contact really such an outrage that it should be the only example of public discipline by the House in state history? Of course not. A private admonition by the Speaker is sufficient.