

Richard Gamester

From: Duncan MacCallum [madbarrister@aol.com]
Sent: Monday, September 21, 2020 8:06 AM
To: votenancypearson@gmail.com
Cc: johnktabor@gmail.com; rgamester@comcast.net; amwjcw@comcast.net; commissionerhart@gmail.com; rpsullivan@cityofportsmouth.com; esthersmarina@gmail.com; edinan@seacoastonline.com
Subject: Re: Submissions to ethics committee
Attachments: SColor Copi20091916490.pdf; Pearson tweet - bald-faced liar.pdf; Pearson tweet - evil and despicable.pdf; Pearson tweet - monster.pdf; Pearson tweet - intentional menace.pdf; Pearson tweet - pattern of malevolence.pdf; Pearson tweet - remorseless and untruthful.pdf; Pearson tweet - Your friendly daily reminder.pdf; Pearson tweet - stole the trade name.pdf

I do not know why Ms. Pearson thinks that her credibility and character for truthfulness are not in issue. They most certainly are.

Any third-year law student will tell you that evidence of spite, motive, ill will, hatred, bias, and interest are all highly relevant and admissible on the issue of the witness's credibility, particularly in the case of the accuser testifying against the accused. For those of you who may happen to have a burning interest in the subject, I invite your attention to 1 Robert P. Mosteller *et al.*, eds., McCormick on Evidence §§ 39-40 (8th ed. 2020), and Charles G. Douglas, III, New Hampshire Evidence Manual §§ 608.02[2], -[7] (2020 ed.), for a couple of concise summaries.

Evidence of spite, ill will, or malice is not "salacious but irrelevant material"; rather, it is highly relevant evidence which bears directly on the issue of a witness's credibility—in this case, the issue of whether Ms. Pearson has been untruthful with you. Such evidence would be routinely admitted into evidence by any experienced trial judge in any court in the State of New Hampshire, state or federal. In fact, there are several standard jury instructions which judges regularly give to juries, instructing the jurors that they are to take any evidence of these traits into consideration when assessing the credibility of the witnesses.

I would hope that it is a mere statement of the obvious for me to posit to you that, all other things being equal, you would be far more inclined to accept at face value the testimony of a disinterested, independent witness to a car accident who was not acquainted with either of the drivers and who had no interest in the outcome, than you would the testimony of the two drivers themselves as they launched accusations and counter-accusations against one another, each blaming the other for causing the accident. For the same reasons, you would assess a witness's testimony quite differently if it turned out that the witness happened to be the brother, sister, or spouse of one of the drivers, than if the witness had no connection whatsoever with either driver and had never met either one of them before. So, too, would you appraise a witness's testimony with greater skepticism if it were brought to your attention that the witness knew one of the drivers from prior dealings with him and had a longstanding personal grudge against him.

By now you should all have figured out that one of the central themes of my defense of Councilor Kennedy is that Ms. Pearson's mean-spirited complaint against her is nothing more than "political payback," motivated by spite, animosity, and resentment over the fact that she (Ms. Pearson) was turned out of office in our last City Council election, along with several other incumbents who were her allies and political soul mates. In the 2019 election, Ms. Pearson received 500 fewer votes than she had in 2017, despite the fact that there was a 10% increase in the overall number of registered voters who cast votes in that election in comparison to the number in 2017. The other incumbents who were swept out of office had an average of about 400 fewer votes each, despite the 10% increase.

If you are a regular reader of letters to the editor in the Portsmouth Herald, then you know that Ms. Pearson, Josh Denton, and certain other ex-councilors have been engaging in all manner of sniping and criticism of Mayor Becksted and most of the rest of the City Council, despite the fact that I think that the current Council overall has been doing a very admirable job under the extremely difficult circumstances wrought by the pandemic. To me, it is clear that Denton, Ms. Pearson, and the other disappointed office seekers are planning to try to reclaim their seats on the Council in 2021.

Nancy Pearson despises Esther Kennedy, and she is obsessed with destroying her. She claims otherwise, of course, and she insists that there was nothing personal in her act of filing her ethics complaint, and she claims that she was motivated merely by a sense of civic duty. However, her denials are belied by her conduct, by her Twitter and Facebook posts, and

by her demeanor during the September 16, 2020 hearing. "This is not something that I am enjoying," said Ms. Pearson at the hearing, wearing a sunny smile on her face and plainly relishing the spotlight. She also organized and conducted a public demonstration in Market Square, calling for Ms. Kennedy's resignation, and she arranged with the Portsmouth Herald for a story and a photo op of the demonstration, complete with a picture of herself holding a sign. She also wrote a lengthy op-ed piece which was published in the Herald, blasting Ms. Kennedy, and she recruited others to write letters to the editor, similarly demanding Ms. Kennedy's resignation. "Your friendly daily reminder to demand the resignation of Esther Kennedy who lied to you about the reason she stole the trade name and URL," begins one of Ms. Pearson's tweets to her supporters, with absolutely no evidence to back up her accusations.

And finally, she posted a series of vicious posts on her Twitter account and on her Facebook page disparaging Ms. Kennedy with all manner of malicious slanders. (PDF copies of a sampling of her posts are appended hereto as attachments to this e-mail message, including the aforementioned "friendly daily reminder". I apologize for the poor quality of some of them. I have highlighted most of the relevant phrases and passages in yellow.) As you will see, the terms that Ms. Pearson applied to Ms. Kennedy in her posts included the following:

immoral council woman
pattern of malevolence
bald faced liar
monster
serial saboteur
evil
intentional menace
sabotaging tactics
remorseless and untruthful
dishonest

(See attached posts.) In addition—and again without any evidence—Ms. Pearson accused Councilor Kennedy of "actively try[ing] to harm recovery efforts," of having "torpedoed the Pop Up project with intent to sink it," and of "actively work[ing] to harm nonprofits and volunteers working on community projects". (Id.)

In sum, despite her denials of same, Ms. Pearson is engaged in a personal, vindictive crusade to try to destroy Councilor Kennedy, and she is using her ethics complaint as a weapon to try to remove a political opponent. As I noted at the outset, it is fundamental that evidence of spite, ill will, malice is always highly relevant and admissible on the issue of a witness's credibility, and Ms. Pearson's rash and reckless remarks concerning Ms. Kennedy in her tweets are evidence of that animosity, as is the simple fact that she and Ms. Kennedy are political opponents. Ms. Pearson plainly has a motive to embellish, to exaggerate, to fabricate—and, yes, even to outright lie. At that very least, any pretense of objectivity on Ms. Pearson's part is compromised and tainted by her hatred for Ms. Kennedy.

And her Twitter tweets are not the only evidence that we have of that fact. Despite her sunny, breezy presentation of herself at the September 16th hearing, Ms. Pearson is no Polyanna. We will be adducing additional evidence of that fact very soon.

More anon.

Duncan MacCallum

-----Original Message-----

From: Nancy Pearson <votencypearson@gmail.com>

To: Duncan MacCallum <madbarrister@aol.com>

Cc: johnktabor@gmail.com <johnktabor@gmail.com>; rgamester@comcast.net <rgamester@comcast.net>; amwjcw@comcast.net <amwjcw@comcast.net>; commissionerhart@gmail.com <commissionerhart@gmail.com>; rpsullivan@cityofportsmouth.com <rpsullivan@cityofportsmouth.com>; esthersmarina@gmail.com <esthersmarina@gmail.com>

Sent: Fri, Sep 18, 2020 3:40 pm

Subject: Re: Submissions to ethics committee

Mr. Chairman and members of the Ethics Board,

I respectfully request confirmation that the full Ethics Board will see and review this visual display and deem the content material **relevant and within the scope of the complaint** before the presentation Monday night.

Based on Attorney MacCallum's comments on my credibility, intelligence, and my ability to be truthful during Wednesday night's hearing, I suspect there might be an attempt to cherry pick my social media comments in order to slander, harass and attack my character, which is not at issue.

My personal opinions have nothing to do with whether or not Councilor Kennedy committed the act, whether or not she had some interest in committing the act, and whether this is in conflict with her duties as a city councilor.

Thank you.
Nancy Pearson

On Fri, Sep 18, 2020 at 2:02 PM Duncan MacCallum <madbarrister@aol.com> wrote:

Dear Mr. Tabor:

Esther Kennedy has requested that I obtain clearance from you and the other committee members to present a visual display in conjunction with her testimony on Monday evening.

More specifically, she would like to be able to "screenshare" at Monday night's meeting, meaning, she would like to display a Power Point presentation and/or other, similar graphic displays while she is verbally presenting her case. In some instances, she would also like to present blow-ups of some of the documentary evidence that we will have already submitted by 12:00 noon on that date. We will not, however, be presenting any new exhibits that have not already been submitted.

I have never done a screenshare, but she informs me that whoever is running the Zoom meeting has to give her a "permission" to show the Power Point or other graphic display on the screen, along with the image of herself in a separate window.

Please let me know.

On an entirely unrelated topic, I did not receive the e-mail message that you sent me this morning, even though it appears that you used my correct e-mail address and even though Esther Kennedy received it. I would not have been aware of it, except that Esther mentioned it in a telephone conversation that I had with her a few minutes ago and she forwarded it to me after I indicated to her that I had not received it.

I have absolutely no explanation for this, as I am a member of the "Typewriter Generation," and I am anything but an expert in computer technology. I am not aware that there is anything wrong with my e-mail program. However, as a backstop, would you please continue to send Esther copies of whatever you send me, and she will make sure that I have received it. I would also appreciate a reply from you confirming your receipt of this e-mail message, so that I can be certain that you got it.

Thank you.

Duncan MacCallum

-----Original Message-----

From: Esther Kennedy <esthersmarina@gmail.com>

To: madbarrister@aol.com

Sent: Fri, Sep 18, 2020 12:37 pm

Subject: Fwd: Submissions to ethics committee

----- Forwarded message -----

From: **John Tabor** <johnktabor@gmail.com>

Date: Fri, Sep 18, 2020, 11:49 AM

Subject: Submissions to ethics committee

To: Duncan MacCallum <madbarrister@aol.com>, Esther Kennedy <esthersmarina@gmail.com>, Ann Walker (Ward 4) <amwjcw@comcast.net>, Tom Hart <CommissionerHart@gmail.com>, Nancy Pearson <nespearson@gmail.com>, Robert P. Sullivan <rpsullivan@cityofportsmouth.com>, <rgamester@comcast.net>

Duncan,

As reported in the paper today, I questioned the relevance of the social media posts you brought up Wednesday night, but would allow their submission.

Let me clarify as board chair: we do not want to waste the board's time with salacious but irrelevant material.

Only submissions that prove or disprove that Esther Kennedy acted against the intent of the 9-0 vote of the council, in conflict with her duties, are relevant for our work. See Attorney Sullivan's letter of September 3 defining our task. I hope this gives you criteria to weigh exhibits submitted to the board.

John Tabor

603 557-6025 cell

Very best regards,

Nancy Pearson