

MEMEORANDUM

To: Special Committee of the 95th General Assembly
From: Edward M. Genson, Attorney for Governor Rod Blagojevich
Date: January 2, 2009
Re: Standards for Impeachment: A response to Rep. Rose

On the 29th of December, 2008 the Committee convened and I was allowed to make a statement on behalf of the Governor. In that statement, I referenced the report produced by the Committee of the House of Representatives convened to investigate the conduct of Justice James D. Heiple (the "Heiple Report"). I urged this Committee to abide by the precedent set in the Heiple Report which defined the standard for impeachment as clear and convincing evidence of egregious conduct that must rise to a magnitude of gravity comparable to the criminal standard.

Rep. Rose questioned me about the use of a totality of the circumstances approach in this proceeding and referenced Rep. Carolyn Krause's Dissent. See 12/29/08 Tr. Vol. 5 pp. 826-30. I agreed with the Representative that this Committee should consider the totality of the evidence. Our difference of opinion came as to the standard by which the evidence must be measured. Rep. Rose, although his position is not entirely clear in the transcript, seemed to say that the cumulative evidence presented before this Committee did not need to rise to a magnitude of gravity comparable to the criminal standard. Rep. Rose did not go on to define any standard by which to measure the evidence nor did he explain his point further. I was not given leave to explain my point before the Committee, but was urged to respond in writing.

The majority and the dissents in the Heiple Report each used a totality of the circumstances approach to evaluate the evidence. The majority and dissents also agreed that the standards set out by constitutional experts from the Illinois Bar Association, the Chicago Bar Association and the Chicago Council of Lawyers should apply. The experts testified that the Committee must support their finding with clear and convincing evidence and that only egregious violations should warrant impeachment. For the majority, egregious conduct was

conduct that was of a magnitude of gravity comparable to criminal activity. The majority found that Justice Heiple's "transgressions" lacked such gravity and declined to recommend impeachment. Rep. Scott's Dissent, in contrast, recommended impeachment based on Justice Heiple's pattern of behavior evidencing what he considered serious violations of the Judicial Code of Conduct and an abuse of power. In her Dissent, Rep. Krause found that the cumulative affect of Justice Heiple's actions were egregious violations of the Judicial Code of Ethics and that the impeachment should proceed. While the majority and dissents ultimately disagreed as to how the facts measured up, they each evaluated the cumulative evidence and measured it by the standards outlined by the constitutional experts.

In this present impeachment investigation against Governor Blagojevich, I advocate a totality of the circumstances approach to the evidence presented to this Committee. I also urge the Committee to adhere to the standard outlined by the Bar Associations and adopted by the majority in the Heiple Report requiring clear and convincing evidence of egregious conduct that must rise to a magnitude of gravity comparable to the criminal standard. In order to afford due process to the Governor and to present the House of Representatives of the State of Illinois to the world as an example of integrity and good government, this Committee must adopt the standard and the burden of proof set out by the constitutional experts before the Heiple Committee and ascribed to by the majority in the Heiple Report.