

www.chicagotribune.com/news/local/chi-bлагоjevich-impeachment30dec30,0,5361630.story

chicagotribune.com

'We're fighting shadows'

Blagojevich's lawyer Ed Genson bemoans inability to call witnesses

By Ray Long and Jeff Coen

Tribune reporters

1:27 AM CST, December 30, 2008

SPRINGFIELD — Heading toward a decision on the ultimate political sanction, members of a House impeachment committee Monday rejected complaints by Gov. Rod Blagojevich's attorney that he was battling "shadows" in his fight to keep the disgraced governor in office.

Criminal attorney Edward Genson was given the floor for nearly three hours to argue the legislative hearing was unfair because his attempts to call witnesses were denied and lawmakers had not defined their standard for impeachment. At one point an exasperated Genson asked "Isn't anyone here going to stand up for the governor?"

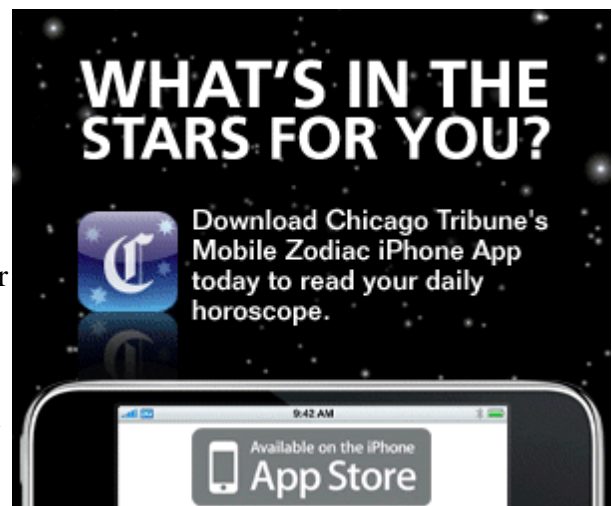
The panel's chairwoman, state Rep. Barbara Flynn Currie (D- Chicago), said Genson was simply "throwing up whatever fairy dust he could" to delay lawmakers' decision on whether to recommend the full House move ahead with the first-ever impeachment of an Illinois governor.

The House Special Investigation Committee had largely finished its work since first convening Dec. 16, but suspended its hearing for likely a week while awaiting the possibility of receiving rare and potentially helpful evidence. U.S. Atty. Patrick Fitzgerald has asked a federal judge to allow him to give lawmakers edited portions of four secret recordings in which Blagojevich allegedly sought campaign cash for signing legislation helpful to the state's horse-racing industry.

Fitzgerald emphasized that his office took no sides in the impeachment issue. But court watchers said it was unusual for such evidence to be made available before a criminal indictment.

Blagojevich was arrested Dec. 9 on a federal criminal complaint alleging he sought to personally benefit from his decisions as chief executive, including the sale of President-elect [Barack Obama](#)'s vacant Senate seat. The governor has denied any wrongdoing.

Genson had previously described the taping as "illegal." But he told the committee he wanted to review Fitzgerald's motion before discussing whether he believed the recordings should be released. Genson also said expletive-filled transcripts filed with the criminal charges against the Democratic governor



showed "unfortunate talk" but nothing illegal.

"We're fighting shadows here. We're fighting unnamed people. We're fighting witnesses who aren't available," Genson said.

Genson also told lawmakers they should not take a negative view of Blagojevich's refusal to appear before them, citing his constitutional right against self-incrimination over the criminal charges he faces.

"He has a 5th Amendment right and he's exercising that," Genson said of Blagojevich. "Until the United States government tells us what he's charged with, we choose not to talk about it."

But comments from Currie and other committee members indicated Blagojevich's refusal to appear may be one factor as they deliberate.

"We would be happy to have the governor stand up for himself and explain those shadows," Currie told Genson. And Rep. Lou Lang (D- Skokie) said, "I'd be interested in just having the governor come here and tell the truth once."

Genson repeatedly said Blagojevich had not "violated the law" and that the panel's witnesses "have not shown impeachable conduct."

But he was consistently rebuffed by panel members who said their work was not bound by courtroom rules, such as proving guilt. Instead, said Rep. Roger Eddy (R-Hutsonville), the panel's job was to determine whether the two-term governor is "competent and fit to govern the people of the state of Illinois."

Genson was allowed to enter into evidence an internal report released last week by President-elect Barack Obama's transition team, looking into any dealings with Blagojevich over the vacant U.S. Senate seat. But Genson said he should have been allowed to call witnesses including incoming White House chief of staff Rahm Emanuel and top Obama friend and adviser Valerie Jarrett. Committee members refused at the request of Fitzgerald, who said their appearance could hurt the ongoing criminal investigation of the governor.

The Obama report identified Emanuel, the North Side congressman, as the point man for talks with Blagojevich and aides to the governor over the Senate vacancy. But the report also found nothing involving the quid pro quo that federal prosecutors allege Blagojevich sought for naming an Obama-favored candidate to the Senate. Jarrett had been viewed as the candidate backed by Obama.

While the panel's work has largely focused on allegations of abuse of power and not the pending criminal charges, Fitzgerald's decision to seek the release of some secret recordings involving the governor provides a potential avenue for committee members.

In the recordings, described in an affidavit accompanying the criminal charges, Blagojevich allegedly sought \$100,000 in campaign contributions from a donor who wanted the governor to sign a bill directing a percentage of casino revenues to the state's horse-racing industry.

Fitzgerald's motion is expected to be argued in federal court next week.

Dean Polales, a former federal prosecutor who is now a defense lawyer, said the scenario of Fitzgerald providing transcripts to the panel represents new legal territory.

"I don't know of any case in which, prior to indictment, wiretaps have been disclosed to a state legislature," Polales said. Polales said Genson might argue that the transcripts represent conversations taken out of context and request that more recorded conversations, perhaps beneficial to the defense, be turned over to the panel.

Genson said he had never heard of secret recordings released before a trial.

Currie said there was "no question" that lawmakers want the covert recordings offered by Fitzgerald. But she said the committee may not wait if the release of the transcripts is subject to a lengthy court battle.

Tribune reporter Rick Pearson contributed to this report.

rlong@tribune.com

jcoen@tribune.com

Copyright © 2008, [Chicago Tribune](#)