



KWAME M. KILPATRICK, MAYOR
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August 14, 2008

Mr. Kelly Keenan Esq.
Legal Counsel to the Governor
The Honorable Jennifer M. Granholm
George W. Romney Building
111 South Capitol Avenue
Lansing, Michigan 48909

Re: Immunity issue

Dear Mr. Keenan,

We note from this morning's Free Press that, once again, the reporter has misrepresented our position relative to immunity from prosecution and the Governor's "pardon" powers. It is important to clarify the concerns raised in our letter to you as it relates both to immunity and to the reference to a "pardon". Parenthetically, we do have a tape recording of the conversation where the Free Press reporter was told directly that we were not asking for a "pardon": Yet, she chose to write the article, which she knew was false.

Essentially, we are suggesting to you that the Governor can only obtain evidence of the intent of the Mayor in settling the Brown case from the Mayor himself. In that she is a governmental official acting in a judicial capacity, she may not hold a hearing in which she considers the identical allegations in the pending criminal case and then remove the Mayor from office because he did not testify as to his own intent: That would constitute compulsion in violation of the Fifth Amendment.

If the Governor is to allow the Mayor a defense at all, she must provide some protection of his Fifth Amendment rights. You said she has no power to offer immunity, to subpoena witnesses, etc. My point was that the Governor has been meeting with the Prosecutor and could have discussions with the Prosecutor; if you are correct that only the Prosecutor has the power to offer immunity, the Governor might attempt to convince the Prosecutor to offer immunity.

We have received your letter in which you indicate that the Governor could only offer a "pardon" after a conviction: That is indeed the plain language of the Constitutional provision. There is no language to suggest that the Governor may not



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commit to do so in the event of a conviction, in order to secure the protections of the Fifth Amendment: Any decision on the manner of protecting the Respondent's privileges would certainly be entirely within the purview of the Governor. Let us be clear that we are raising these issues because we believe that the Constitution is violated by three governmental agencies meeting and conferring and then holding three separate proceedings, all of which will require testimony in violation of the attorney-client privilege and the Fifth Amendment. The United States Supreme Court cases on the subject seem clear in their condemnation of governmental processes which require the Respondent to choose between his Fifth Amendment rights and potent sanctions.

Having defined the issue before the Governor as solely related to the settlement of the Brown case, you cannot place the Respondent in the position of having the Hobson's choice of waiving his Fifth Amendment rights by testifying or refusing to testify and subjecting himself to the forfeiture of his Office.

We hope that this clarifies our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon McPhail".

Sharon McPhail
Counsel for the Honorable Kwame M. Kilpatrick

Cc: William Goodman
David Whitaker
James Thomas
James Parkman
Daniel Webb