

Many of you know that I filed a resolution on Presidents Day to set up the mechanism for impeachment of Judge Sharon Keller, the presiding Judge of the Texas Court of Criminal Appeals. It was, in large measure the same resolution that was distributed to your desk earlier today. The initial resolution was given a hearing in the Judiciary and Civil Jurisprudence Committee in late April. Several of you have asked whether or not you would have the opportunity to vote for the resolution. Many members of the media have asked about it.

As many of you know the State Commission on Judicial Conduct and the Texas Ethics Commission are both currently investigating Judge Keller on separate matters. Some of you have suggested that those two Commissions should be permitted to complete their investigations before action is taken in the Legislature.

The Texas State Constitution and multiple precedents clearly permit the legislature to pursue impeachment concurrent with other proceedings against a judge. Despite the readily apparent jurisdiction of the Legislature in this matter, I have decided to accommodate the concerns that some of you have expressed and not exercise my right, a right that any member has, to by-pass the committee and bring this resolution forward to the House as a whole.

I would be remiss, ~~however~~, if I did not remind all of you that the UNIQUE power of the Legislature to impeach carries with it the responsibility to use that power when appropriate. I would be equally remiss if I failed to call to your attention the great damage that Judge Keller has done to public confidence in our justice system.

I will not read the resolution in its entirety, but I will highlight some of its contents:

Judge Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, demonstrated gross neglect of duty

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and conducted her official duties with willful disregard for human life in connection with her actions on the evening of September 25, 2007, including her irresponsible refusal to abide by the established practice of the Texas Court of Criminal Appeals in order to receive the appeal of Michael Wayne Richard, conduct which resulted in Mr. Richard's deprivation of life without due process of law and in the embarrassment of the State of Texas in a manner that casts severe doubt on the impartiality of the Texas Court of Criminal Appeals and the entire criminal justice system of this state.

Judge Keller made this critical decision concerning Michael Richard's appeal having a manifested bias against criminal defendants such as Mr. Richard,.... thereby violating the requirements of Canon 2 of the Texas Code of Judicial Conduct that a judge shall act at all times in a manner that "promotes public confidence in the impartiality of the judiciary" and shall avoid "impropriety and the appearance of impropriety in all the judge's activities" and the injunction of Canon 3 that a judge "shall not, in the performance of judicial duties, by words or conduct manifest bias" or decide matters "in which disqualification is required or recusal is appropriate".

.....

The United States Supreme Court [has] recognized that a judge's lack of impartiality may violate due process of law and applicable rules of judicial conduct. [and has also] found that as a matter of constitutional due process as guaranteed by the Fifth and Fourteenth Amendments, a fair trial requires an absence of bias and "justice must satisfy the appearance of justice," indicating that a judge must recuse himself or herself for bias or even the appearance of bias.

Judge Keller's declaration that she is a "prosecution-oriented person," which was further explained as meaning "seeing legal issues from the perspective of the state instead of the perspective of the defense," is the kind of announcement described [by] the Supreme Court as declaring partiality on the part of a judge and thus requiring recusal.

Judge Keller's manifest lack of impartiality required her to recuse herself from participating in any decision in Michael Richard's case. (and Members in all probability all other cases before the Court)

Judge Keller's refusal to recuse herself in these circumstances manifests either willful misconduct of a duty of which she was aware, or incompetence for having been ignorant of an ethical and legal obligation of which she should have been aware.

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Judge Keller has evidenced her "pro-prosecution" bias in numerous other criminal cases including the case of defendant Roy Criner, in which Judge Keller voted to refuse to reverse a conviction even after DNA evidence had confirmed that the appellant was factually innocent of the crime. (and members incredibly enough) Judge Keller explained that refusal, [by] saying, "We can't give new trials to everyone who establishes, after conviction, that they might be innocent". Members her comment was "We can't give new trails to everyone who establishes, after conviction , that they might be innocent". Fortunately, some time later then Governor Bush pardoned Criner.

Additionally,

Judge Keller has misrepresented the facts regarding her personal finances in her official, sworn financial statements required under Texas law, and has further misrepresented the facts about her financial status in her attempts to procure money from the State of Texas for legal fees in connection with the proceedings brought against her by the State Commission on Judicial Conduct. This violates the bedrock ethical standard applicable to all attorneys and judges by, in the words of Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct, engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation" and, in the words of the Texas Code of Judicial Conduct,

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failing to avoid "impropriety and the appearance of
impropriety".

Texas judges are required to file annual, sworn
financial disclosure statements with the Texas Ethics
Commission, and in her financial disclosure statements,
Judge Keller repeatedly omitted reference to her
ownership interest in several residential and
commercial properties of substantial value.

According to the Texas Supreme Court "The primary purpose of an impeachment is to protect
the State". As the sole body capable of impeachment the Legislature has a duty to exercise its
power to protect the state. We can not indefinitely abdicate that responsibility.

If the Commission on Judicial Conduct or the State Ethics Commission does not take action to
remove Judge Keller from office, and if I am privileged next session to represent the people of
District 90 in this body, I may feel compelled to bring this resolution to the floor.

It is my profound hope that that will be unnecessary. I hope and pray that the people of Texas
will not have to wait another two years to see Judge Keller removed from office.