



## GO-TO GUY FOR GOVERNORS

Attorney's latest role involves S. Carolina impeachment attempt

By THOMAS B. SCHEFFEY

If you're a governor facing impeachment, you probably need to speak with Ross H. Garber.

Building on his role as attorney for the office of the Connecticut governor in the impeachment hearings for Gov. John G. Rowland in 2003, Garber has quietly built a national practice advising governors facing – or potentially facing – big political trouble.

His career hit a high point at the moment when the South Carolina legislature voted against impeaching troubled Gov. Mark Sanford on Dec. 16.

Just a month before that, unknown to the press and public, Garber had been hired at a modest \$150 an hour to help represent the South Carolina governor's office. The previous June, Sanford had disappeared with an apocryphal cover story that he was "walking on the Appalachian Trail." In fact he was in the arms of the woman he described as his Argentine "soul mate" and has subsequently been served with divorce papers from his long-suffering wife.

Thanks to a solid legal strategy, however, Sanford escaped impeachment, and a list of 37 ethics charges will not have to be faced for months. At worst, he faces fines of \$75,000.

When newspapers first reported Garber's role in the Sanford defense, on Nov. 23, Garber was delivering a 26-page brief on the history and import of impeachment of a governor to the South Carolina lawmakers who weigh impeachment matters.

The paper, co-authored by Shipman partner Charles Howard, emphasizes that impeachment is an extremely rare remedy,



Law Tribune File Photo

**Hartford attorney Ross Garber says there is no attorney-client privilege for lawyers who represent the office of the governor.**

never to be imposed lightly. Only eight governors have been removed from office in our nation's history, and with only two of those occurring in the last 80 years, Garber noted. Both of those two were under indictment for felonies.

Gov. Sanford's embarrassments, while headline-grabbing, did not rise to the level of "serious crimes" that South Carolina and other states require, Garber argued.

"There have been a lot of investigations [into governors] recently, and that may in part be due to a focus by the Justice Department on public corruption investigations," said Garber. "And, law enforcement has gotten better at that kind of investigation."

In fact an increasingly active Justice Department office of Public Integrity has in recent years made it more common for governors around the nation to face charges of failure to provide honest services, or other misdeeds. Garber gets "under the radar" work from officials caught up in such matters. In addition, he has become a crisis management trainer at conferences sponsored by the National Governor's Association, and is contributing author of a book entitled "Ethical Standards In The Public Sector."

In an interview, Garber said that lawyers who represent a chief executive in government – or in the private sector – are seldom prepared to handle the odd challenges of representing the office itself instead of a particular politician.

"There is an important distinction in representing the office," said Garber. "The lawyer representing the office is looking out for not just the individual, but the institution of government. Any investigation, and particularly an impeachment investigation, can weaken the executive branch of government."

Most government lawyers, he says, are shocked to learn that there is no attorney-client privilege for lawyers who represent the office of the executive, in the event of a grand jury investigation. The one big legal exception to this rule was won by Garber himself, in the Second Circuit Court of Appeals – the second-highest court in the land.

In the course of his representation of the office of Connecticut Gov. John G. Rowland, Garber argued that a lack of attorney-client privilege can unduly affect the balance of power between the branches of government, and weaken not just the individual governor, but the

office of the governor in relation to the legislature.

### **National First**

Garber was the first lawyer in the history of the U.S. whose chief executive client was served with a legislative subpoena. When Rowland was subpoenaed by the Connecticut legislature, Garber knew he'd never heard of such a step being taken by Congress or a state legislature. But was this a U.S. first? It took days and nights of legal work to prove there was no needle in this haystack of legal history. With the help of his colleagues at Shipman & Goodwin in Hartford, and others in the office of former Solicitor General Seth Waxman in Washington's WilmerHale, it slowly became apparent that a legislative subpoena was utterly unprecedented. The next step was to analyze what effect it would have, and what the governor's strategy should be.

In Connecticut's case, the heady process of placing the governor under the microscope of the legislative Committee on Inquiry, to see if the governor should be impeached, had an effect on the power relationship between the legislature and other branches. The legislature got a shot in the arm – laced with steroids.

Not long afterwards, in the midst of a Judicial Branch scandal, an emboldened legislature took another unprecedented step, attempting to subpoena the chief justice of the state Supreme Court. Many considered this political brinkmanship dangerous, no matter who won. The chief justice's state court legal battle to fight the subpoena later collapsed into a truce. He testified volun-

tarily, setting no constitutional precedent.

In contrast to the lawyers representing the executive office, the role of a personal lawyer for a governor – or CEO – is always afforded attorney-client privilege, Garber explained. A governor could, theoretically, only listen to personal lawyers. But a state's executive branch, if only defended on this "every man for himself" level, would wind up giving short shrift to the side-effects to the office itself, Garber said.

The damage that a bloody political battle can do to an executive office may be felt for decades, even generations to come, said Stamford white-collar defense lawyer Stanley Twardy. Twardy, a partner at Day, Pitney, was chief of staff for Gov. Lowell P. Weicker, and before that was U.S. Attorney for Connecticut.

"It goes back to Watergate, which many say was the beginning of the erosion of the power of the executive branch," said Twardy.

The threat of impeachment or serious government investigation has become "a very powerful political tool" for the party that is not occupying the governorship or the presidency, Twardy said.

As the former "consigliere" to Weicker, Twardy knows what the governor's closest confidantes know and do well – and when they need to call in the cavalry. An impeachment situation or grand jury investigation not only threatens the chief executive, it also shines a spotlight on every move the governor's office lawyers make, or fail to make. It's a time like that, Twardy said, when an outside specialist like Garber is virtually a necessity.

A few days after the cloud of impeachment lifted from Gov. Sanford, Twardy was quick to give Garber a nod of appreciation. "Clearly he's done a superb job and is deserving of the attention he is getting from those who are facing trouble."

### **Expanding Privilege**

Garber's practice extends beyond representing executive branch clients. He's been called in as an expert to advise legislative bodies considering whether or not to bring an investigation or impeachment action. In such a case, the fact that he is without local political or social connections is an advantage, in the role of "honest broker."

Low key and plain spoken, Garber is not an excitable man. He does have one topic that can bring a note of earnestness to his voice. He deeply believes in the importance of extending the attorney-client privilege for governors in trouble to more states than New York, Connecticut and Vermont—the three states covered by his Second Circuit victory.

"If the public official has to rely just on their private lawyer, the quality of governing might suffer. We want governors to be able to get open and complete advice from their government lawyer," he said, "and not have to turn to their personal lawyer, who by definition is looking out for their personal interests alone."

Historically, the attorney client privilege is one of the oldest legal privileges there is, Garber noted. "To me it's incredible that for public officials it's still an issue of first impression, one that most courts are still dealing with for the first time." ■