

Senator Chuck Grassley
Additional Questions for the Record

Terrence G. Berg
Nominee, U.S. District Judge for the Eastern District of Michigan

On July 19, 2008, the Detroit Free Press reported that then-Governor Granholm contacted you regarding “the strength of the government’s ongoing investigation of Bernard Kilpatrick.” According to their source, Governor Granholm contacted you in hopes of “achieving a ‘global resolution’ to the federal corruption probe in city government.” The source further claimed that you then spoke with U.S. Attorney Stephen Murphy concerning your discussion with Granholm.

- a. Were you ever approached by Governor Granholm or anyone in her office about this case?**

Response: I was never approached regarding “the strength of the government’s ongoing investigation of Bernard Kilpatrick” by Governor Granholm, as described in the article above. I was approached by Governor Granholm in May of 2008 concerning the then-pending state prosecution of Mayor Kwame Kilpatrick for perjury and whether a guilty plea and resignation by Mayor Kilpatrick in the state criminal prosecution would satisfy the federal interest in its separate, non-public federal investigation of Mayor Kilpatrick for public corruption. To provide context, in March 2008, the Wayne County Prosecutor filed felony criminal charges against then-Detroit Mayor Kwame Kilpatrick for perjury. As a result of these criminal charges, the Detroit City Council was considering bringing an action to remove Mayor Kilpatrick from office based on this conduct. Under Michigan law, the Governor would act as the deciding official in a quasi-judicial capacity in any removal proceeding. In addition, as of May of 2008, there had been published media reports concerning a federal criminal investigation regarding Mayor Kilpatrick and other City officials, but the details and progress of the investigation were not known to the public.

- b. If so, what did you discuss and with whom?**

Response: As indicated above, in May 2008, I recall being contacted by Governor Granholm, who asked whether, if Mayor Kilpatrick were to plead guilty, resign and be sentenced in the then-pending state prosecution for perjury, whether that would satisfy the federal government’s interest in its separate investigation, so that no separate federal charges would be necessary. At that time, I was not involved in supervising or working on the City of Detroit corruption investigation, and I had not been briefed in any detail on its status or progress. Governor Granholm did not ask any questions about the nature of the federal investigation, and I did not provide any information regarding the investigation. I then disclosed all of the details of this contact with the Governor to the U.S. Attorney, and the prosecution team handling the City of Detroit Investigation. After

conferring with the U.S. Attorney and the prosecution team, and acting at their direction, I responded that we did not have sufficient information at that time to make a judgment as to whether such a resolution would be appropriate or not.

- c. Did Governor Granholm or someone from her staff seek to elicit from you a specific result in the case? Please explain.**

Response: No. Governor Granholm did not “seek to elicit from [me] a specific result in the case,” in the sense of advocating for a specific result, but she did make the inquiries described above and below.

- d. Did you speak with the United States Attorney, or anyone else involved in the investigation of Bernard Kilpatrick and the federal corruption probe, about your conversation with Governor Granholm or her representative? If so, please indicate with whom you spoke, the nature of the conversation, and what, if any, decision was made as a result of this conversation.**

Response: As indicated above, I disclosed the contact by Governor Granholm immediately to the United States Attorney, Stephen J. Murphy, as well as to the prosecutors handling the Kilpatrick investigation, so they could also inform the investigating agents. I later described the contact directly to the investigating agents. After I conveyed to the Governor our office’s position that we did not have sufficient information in our investigation to make a determination as to whether a state plea would protect the federal interest, Governor Granholm responded with the question whether, if the Mayor resigned, pleaded guilty to the state case and were sentenced, our office would be open to agreeing not to bring any specific federal charges that might arise out of precisely the same conduct that supported the state conviction. In other words, federal charges relating to other conduct would not be limited. I reported this contact and question to the U.S. Attorney, and the prosecution team as well. After conferring with the U.S. Attorney and the Special Prosecutions supervisor, and at their direction, I responded by indicating that the case was still under investigation, and the potential resolution of the case, if any, would need to be pursued through negotiations with the attorneys for Mayor Kilpatrick, and any of the other targets, and the prosecution team, and that, as in all criminal cases we would take under advisement a proposed resolution if it were raised by their attorneys.

- e. Did you have any further conversations about the Kilpatrick case or the “global resolution” with Governor Granholm or any member of her staff?**

Response: No.