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Department of Justice

October 22, 1984

STATEMENT BY TOM DeCAIR TO '60 MINUTES'

This is a very important prosecution aimed at allegations of extraordinarily serious, large-scale tax fraud. Involving some \$122,000,000, it is one of the largest tax fraud prosecutions in United States history. We have carefully reviewed the decision and opinion of the trial court, and we feel strongly that we must proceed with this case either through appeal or by seeking reindictment from a new grand jury. We have a responsibility to all honest taxpayers to protect the integrity of the tax system.

The rulings and statements of Judges Winner and Kane are extreme and unjustified. We are convinced that, on the whole, they do not fairly reflect either the facts or the law in this case. That does not mean that we have failed to take the charges of prosecutorial misconduct seriously. The matter was referred to the Office of Professional Responsibility, a watchdog unit charged with investigating allegations of misconduct by Department of Justice professionals. After an extensive and independent investigation, that Office concluded that, although there may have been instances in which the prosecutors did not fully comply with certain rules of criminal procedure, those instances did not prejudice the rights of the defendants, undermine the independence of the grand jury, or even warrant disciplinary action.

After a thoroughgoing review, we can find no basis for abandoning our prosecution of this large-scale tax fraud.

#

THE WHITE HOUSE

WASHINGTON

October 26, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Allegations of Misconduct by Justice
Prosecutors and IRS Officials

Bo Callaway has written Mr. Baker concerning United States v. Kilpatrick, the somewhat celebrated tax fraud case in Federal district court in Colorado. In an opinion issued September 24, 1984, Judge Kane dismissed all twenty-seven counts of the indictment in a scathing opinion charging the Justice Department Tax Division prosecutors with misconduct and unethical behavior. Judge Kane wrote that the prosecutors abused the grand jury process, violated grand jury secrecy, improperly used "letters of assurance" rather than the statutory immunity process, mischaracterized evidence, and mistreated witnesses. He relied heavily on a prior opinion in the case by now-retired Judge Winner, which was even more vituperative in its treatment of the Tax Division attorneys. Judge Winner's opinion contains several remarkable allegations of "discourtesy" directed at the judge by the prosecutors, including shouting and obscenities, "glowering," and throwing jackets on the floor. (You may recall that this case first achieved notoriety after an ill-advised and improperly cleared motion was filed by the prosecutors to prevent the printing of Judge Winner's opinion.)

Callaway's letter assumes the accuracy of the two opinions, and urges the President to call for a thorough investigation of the charges against the prosecutors. The matter is urgent because "60 Minutes" has been preparing a segment on the case, which Callaway thinks will air either this Sunday or next.

The Justice Department has issued a statement to "60 Minutes." The statement notes that, in the view of the Department, the opinions of Judges Winner and Kane are "extreme and unjustified." (The Department has filed a protective notice of appeal, but may decide to proceed by re-indictment instead.) The statement also notes that the Office of Professional Responsibility has reviewed the charges of prosecutorial misconduct, and concluded that while there were instances in which the attorneys failed to comply fully with certain rules of criminal procedure, the failures did not prejudice the defendants and did not warrant any disciplinary action.

There is no need for the President to call for an investigation as suggested by Callaway; that investigation has already taken place and has essentially "cleared" the Tax Division attorneys. A reply advising Callaway of this is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

October 29, 1984

Dear Bo:

Your letter of October 10 to Jim Baker has been referred to me for consideration and direct response. In that letter you reviewed the Justice Department tax fraud prosecution United States v. Kilpatrick, noting the charges of prosecutorial misconduct featured in the two opinions in that case. You suggested that the President call for a thorough investigation of those charges, prior to the airing of a "60 Minutes" segment on the case.

Such an investigation has already taken place. The Justice Department watchdog unit, the Office of Professional Responsibility, has conducted an extensive and independent investigation. According to the Department of Justice, that Office concluded that while there may have been instances in which the prosecutors did not fully comply with rules of criminal procedure, those instances did not prejudice the rights of the defendants and did not warrant disciplinary action. The Department considers the statements of Judges Winner and Kane to be extreme and unjustified, and, on October 24, filed a notice of appeal in the case. "60 Minutes" has been apprised of the foregoing.

Thank you for sharing your concerns about this matter with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Howard H. Callaway
State Chairman
Colorado Republicans
1275 Tremont Place
Denver, CO 80204

FFF:JGR:aea 10/29/84
bcc: FFFielding/JGRoberts/Subj/Chron

October 26, 1984

Dear Mr. Callaway:

Your letter of October 10 to White House Chief of Staff James A. Baker, III has been referred to me for consideration and direct response. In that letter you reviewed the Justice Department tax fraud prosecution United States v. Kilpatrick, noting the charges of prosecutorial misconduct featured in the two opinions in that case. You suggested that the President call for a thorough investigation of those charges, prior to the airing of a "60 Minutes" segment on the case.

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Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Howard H. Callaway
State Chairman
Colorado Republicans
1275 Tremont Place
Denver, CO 80204

FFF:JGR:aea 10/26/84
bcc: FFFielding/JGRoberts/Subj/Chron



Department of Justice

October 22, 1984

STATEMENT BY TOM DeCAIR TO '60 MINUTES'

This is a very important prosecution aimed at allegations of extraordinarily serious, large-scale tax fraud. Involving some \$122,000,000, it is one of the largest tax fraud prosecutions in United States history. We have carefully reviewed the decision and opinion of the trial court, and we feel strongly that we must proceed with this case either through appeal or by seeking reindictment from a new grand jury. We have a responsibility to all honest taxpayers to protect the integrity of the tax system.

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#

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: Howard H. Callaway

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Allegations of misconduct by Justice prosecutors and IRS officials

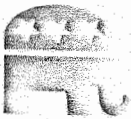
ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
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- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure
 - I - Info Copy Only/No Action Necessary
 - R - Direct Reply w/Copy
 - S - For Signature
 - X - Interim Reply
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 - B - Non-Special Referral
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COLORADO REPUBLICANS

1275 Tremont Place, Denver, Colorado 80204 (303) 893-1776

Howards H. Callaway
State Chairman

October 10, 1984

Mr. James Baker
Executive Assistant to the President
The White House
Washington, D.C. 20500

Dear Jim:

This letter concerns an unusual situation and I hope that you will ask one of your aides to investigate the matter thoroughly.

There is a man named Bill Kilpatrick, who lives in Denver, who was indicted for tax fraud a number of years ago. The indictment has proved to be highly irregular and two U.S. District Court judges, a Republican appointee, Fred Winter, and a liberal Democrat appointee, John Kane, have accused Justice Department prosecutors and IRS officials of misconduct and have dismissed all of the indictments.

Sixty Minutes has investigated the accusations and counter-accusations and filmed a story. I talked to Mike Wallace personally at some length, when he was in Denver a couple of months ago, and he indicated that Sixty Minutes would have a devastating story documenting the misconduct by government officials and exonerating Kilpatrick.

The Sixty Minutes program will be shown either October 21, October 28, or November 4. Ira Rosen, the producer, a liberal Democrat and staunch Mondale supporter, has indicated that he prefers to show the program on November 4, in the hope that a scathing denunciation of misconduct by government officials would be harmful to the Reagan campaign.

The facts, as I understand them, are that the misconduct was a result of Jimmy Carter's change in the Organized Crime Strike Force and that the Grand Jury was convened before Reagan was even sworn in.

Nevertheless, since all of this happened on Reagan's watch, it could be easy for people to believe that it was Reagan's fault.

Some local friends of the President had planned to call Mike Wallace, urging him to delay the program until after the election. I believe that the President's friends have been talked out of this. It seems to me that a call to Mike would be counter-productive. Mike Wallace is not likely to rearrange schedules to help anyone in an election and there is some likelihood that if a friend of the President's called, the program would begin with "This is the program that the President's friends tried to delay until after the election."

It seems to me that there is a simple solution; one that fits the President's personality and is in the public interest. That would be for the President to call for the thorough investigation of the allegations. He could ask that any misconduct, if proven, be subject to the appropriate disciplinary measures. Conversely, if the allegations are proven to be false, exoneration of the people accused would be in order. If the President initiates the investigation before the Sixty Minutes airing, he could lessen the negative impact the story might have.

This is not a small, local story. We are talking about a large international operation. Senator Bill Armstrong and Congressmen Dan Schaefer and Guy VanderJagt are all familiar with the situation. I am sure they could give you more information.

Thanks, Jim, for listening to the story.

Sincerely,

HHC:bfa

Enclosures:

- (1) Rocky Mountain News story
- (2) Judge Winner's opinion
- (3) Judge Kane's opinion
- (4) Wagner & Waller, P.C. letter

WAGNER & WALLER, P.C.
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*ALSO ADMITTED IN FLORIDA

OF COUNSEL
JAMES C. SHEARON

October 10, 1984

OUR FILE NO.

HAND DELIVERED

Bo Callaway
Republican State Committee
1275 Tremont Street
Denver, CO 80203

Re: William A. Kilpatrick Case

Mr. Callaway:

It is my understanding that Jim Reeves furnished you with copies of Judge Winner's decision and Judge Kane's decision in Mr. Kilpatrick's case so I will not attempt to restate or recast what the judges themselves have most eloquently stated. However, there are two or three additional points that I think may be of assistance to you and anyone else attempting to evaluate the implications of these decisions.

I. ROLE OF THE GRAND JURY

The grand jury is a cornerstone of our criminal justice system. Since the Magna Carta was signed in 1215 A.D., people living in the common law countries have been guaranteed that the government must present its case to an impartial, independent panel of ordinary citizens to establish that there is good cause to bring the criminal charges. Its primary role is to protect citizens. In order to carry out its functions, it has traditionally been granted very broad powers - broader powers than any agency of the government - to investigate wrongdoing by the citizens or the government itself. Secrecy of the proceedings has always been inviolate. Obviously, the grand jury must be free to investigate or consider whatever charges are brought before it without running the risk of harming or destroying the reputation of innocent citizens. The

courts have traditionally been responsible for supervising and policing the grand jury process, but as a practical matter, it is up to the individual prosecutor conducting the Grand Jury to insure that the grand jury process is free from abuse or taint.

II. ROLE OF THE JUSTICE DEPARTMENT

Although it is not always a distinct line, prosecutors in the Justice Department are not investigators. Investigators are the people who gather the evidence and try to make a case against an individual suspected of wrongdoing. Investigators are often not trained in the intricacies of the law or the functions and importance of the grand jury process. Many limitations are put on the activities of the investigator to protect the rights of the citizens. These same limitations are not placed on the grand jury which possesses broad power to subpoena witnesses, compel testimony and conduct investigations. Obviously, any agency would be tempted to utilize the grand jury to expand or broaden its own powers to investigate.

The Department of Justice has a criminal division. The criminal division, in turn, has a section which prosecutes tax cases. The prosecutors assigned to the tax section work very closely with the IRS to bring cases. From one view this is a very efficient organization, but I believe the efficiency of the process is somewhat illusory while the danger inherent in this organizational structure is very real. The prosecutors find themselves working hand-in-hand with the IRS to make cases.

In most situations a criminal investigation has been completed by an agency such as the FBI and is referred to the prosecutor to decide whether or not criminal charges should be brought. The prosecutor looks at a completed investigation. In our case, which is not unusual in the tax situation, the referral was made to the Department of Justice well in advance of an investigation being completed. In fact, the referral letter, which was referred to by both Judge Kane and Judge Winner, specifically stated that one reason the referral was made was because the IRS had determined it would be difficult or impossible to make a case utilizing the powers which have been delegated to the IRS. That meant the prosecutors joined the investigation and commenced a two and one-half year process aimed not so much at determining the truth of the allegations but at obtaining a criminal indictment against one or more defendants. My experience tells me that an investigation acquires a dynamic of its own once a certain amount of time and

money has been expended. The individuals in the bureaucracy responsible for carrying out that function begin to identify with the outcome. That is, the prosecutors instead of being able to maintain a somewhat detached view of the investigation with no personal stake in whether or not an indictment is ultimately obtained, identify with the "success or failure" of the enterprise. They are no longer able, in my opinion, to carry out the function of supervising the grand jury process.

To a certain extent, this dichotomy always exists, but the situation is exacerbated here. I believe there is an institutional defect associated with the overspecialization in the criminal division of the Department of Justice and the willingness of the Department of Justice to become involved with IRS investigations at such an early stage.

There is also the problem (apparent in our case) of an excessive delegation of authority. The "United States Attorneys Manual" contains detailed instructions regarding all areas of grand jury investigations. Unfortunately, the testimony in our case made it clear that many of these procedures and practices were not followed. The primary reason was that responsibility for making certain decisions was delegated too far down the chain of command. That resulted in either younger, more inexperienced attorneys making decisions that should have been made by higher ups or in many cases, as Judge Kane alluded to, the responsibility being delegated all the way down to the agents in the Internal Revenue Service.

III. WIDESPREAD ABUSE

If the abuses present in the Kilpatrick case were isolated to this case, we would have a problem that could be easily solved. Any organization is always going to have a few bad apples that need to be dealt with from time to time. However, I am presently convinced that the abuses present in the Kilpatrick case are widespread.

An affidavit filed by an official of the Department of Justice referred to the importance of an all out campaign against the tax shelter business. That may true, but the Department of Justice cannot allow itself to become a "tool" for the Internal Revenue Service, Congress or anyone else who is out to make a public example of the individuals involved. It is not a coincidence that a major tax shelter indictment is returned in the fall of each year in order to discourage investment in tax shelters which are primarily promoted toward the end of the year.

Kilpatrick Case
October 10, 1984
Page 4

When I interviewed numerous witnesses who had served in the Department of Justice or as prosecutors in the United States Attorney's office they conceded that any prosecutor worth a grain of salt could get an indictment from any grand jury. The grand jury process was little more than an impediment to getting the indictment. The whole attitude about the grand jury exhibited by many of the people was appalling.

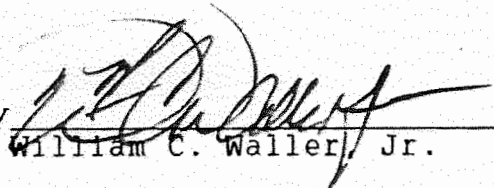
As further evidence of the widespread nature of these abuses the Washington Post quoted Jared Scharf, one of the prosecutors singled out by Judge Winner and Judge Kane in their opinions, to the effect that many of the practices present in the Kilpatrick case are commonly carried out in other cases around the country.

This letter is very short and does not begin to deal with all of the ramifications of this case, but I hope it will be helpful. if you need any further information or if you have any questions, please do not hesitate to let me know.

Very truly yours,

WAGNER & WALLER, P.C.

By


William C. Waller, Jr.

cc: William A. Kilpatrick

WCW:scy

Briefing for the Commissioner
(A/C CI)

William A. Kilpatrick, et al.

Current status

Solicitor General has authorized an appeal and Notice of Appeal has been filed. The 10th Circuit Court of Appeals has not yet set their calendar and no docket number issued or call made for the appellate brief. Once this is done, the Department of Justice will file a brief appealing the decision rendered by Judge Kane on September 24, 1984. Because of Rule 6(e) concerns, the appeal brief will be filed under seal, but a motion will be made to remove the seal. If the seal is removed, we will be able to obtain a copy of the appeal brief.

Background

The investigation was initiated in the Denver District on October 22, 1979. The investigation developed information indicating that Kilpatrick had created a number of corporations and established a number of foreign bank accounts in promoting abusive tax shelters. The tax shelter schemes involved coal leases and the production of methanol. Investors paid 25% in cash and the other 75% was represented by nonrecourse notes. In addition to being fictitious, these notes were handled in a "daisy chain" type fashion through the various corporate entities and foreign bank accounts, including the Grand Cayman Islands and

Amsterdam. Check "kiting" and swapping was also involved. The end result was that investors only had to make the initial 25% cash payment in order to achieve a 4 to 1 ratio in tax benefits.

The investigation also established that no mining activity or methanol production was taking place. The deductions consisted of advance royalty payments and research and development payments. 250 investors were identified prior to the case being referred to the Department of Justice for grand jury investigation. Also, substantial information had been developed for civil use prior to this referral by Chief Counsel on July 30, 1980.

There were 2 consensual monitorings during this
investigation. One was conducted by an informant/investor and the other by an informant/corporate officer.

Also, there was an SEC investigation involving Kilpatrick's promoting an unworkable methanol process (civil fraud on investors). We don't have the details.

Defendant Pettingill

One of the main participants in the coal funding scheme, Pettingill, entered a plea of guilty to 1 count of 26 USC 7206(2) on December 3, 1982. He was sentenced on January 8, 1983 to 3 years suspended and 5 years probation. He also agreed to stay out of shelters and cooperate against Kilpatrick.

Indictment

An indictment involving 8 defendants (Kilpatrick, 6 associates and the Bank of Nova Scotia) was returned in Denver on September 30, 1982. The 27 counts of this indictment were as follows:

Count 1 - 18 USC 371, included 7 defendants in a conspiracy represented by false deductions to investors relating to the advance royalty payments.

Count 2 - 18 USC 371, included 5 defendants in a conspiracy involving false deductions relating to nonexistent research and development payments.

Counts 3 thru 10 - 26 USC 7206(2), involved various defendants.

Counts 11 and 12 - 26 USC 7206 (1), Kilpatrick and O'Donnell; individual income tax violations.

Counts 13 thru 26 - 18 USC 1341, mail fraud involving various defendants for defrauding their investors via the use of the U.S. mail.

Count 27 - 18 USC 1503, Obstruction of Justice, Kilpatrick.

Judge Kane

On February 21, 1983, Judge Kane dismissed counts 1 and 2 relating to the conspiracies. On February 23, 1983 he dismissed counts 3 thru 26. The only count he did not dismiss was count 27, the obstruction of justice charge involving Kilpatrick. The judge held that the financing method had some economic substance and was not just a sham or scheme to provide deductions to investors.

He further held that the indictment failed to allege a crime involving the Bank of Nova Scotia (Cayman Islands Branch) in that it did not set forth the requisite intent. Also, in the case of the conspiracies he held that the indictment failed to allege facts sufficiently detailed to constitute an offense and was not sufficiently detailed for the defendants to enter a pleading. The Department of Justice appealed this decision to the 10th Circuit. No mention was made of prosecutorial misconduct or grand jury abuse in this decision.

Judge Winner

Judge Winner presided over the trial of William Kilpatrick for the obstruction of justice charge and Kilpatrick was found guilty by a jury in May of 1983. On June 20, 1983 Kilpatrick filed a motion for dismissal of his indictment and for a new trial citing prosecutorial misconduct and grand jury abuse.

At Judge Winner's suggestion, the defense requested a partial remand of the remainder of the case from the 10th Circuit in order that the additional grounds for dismissal could be considered. (Briefs had been filed but oral argument had not been made.) On August 8, 1983 the 10th Circuit granted the partial remand.

On August 16, 1983, at a hearing, Judge Winner stated from the bench that since he would be retiring soon, this matter would be decided by another judge. Because of this statement, the Government did not file a response to Kilpatrick's motion.

On August 25, 1983, Judge Winner issued a Memorandum Opinion granting Kilpatrick a new trial and excoriating the three Department of Justice attorneys who handled the grand jury investigation, indictment and prosecution of Kilpatrick. The Department appealed to the 10th Circuit Court of Appeals for suppression because of the nature of and manner in which this Memorandum Opinion was issued. The Tax Division called it slanderous, no finding of fact, and potentially damaging to the legal careers of the three attorneys.

The 10th Circuit granted DOJ's motion on January 3, 1984, but vacated the order on January 24, 1984.

For a summary of Judge Winner's conclusions, see the succeeding section entitled Judge Kane.

Judge Kane

On September 24, 1984, Judge Kane dismissed the entire indictment for the following stated reasons:

Prosecutorial misconduct; violation of FRCP Rule 6(d) - 2 special agents in the grand jury at the same time, without the Government attorney and not being under oath; (the rule relating to testimony is 1 witness at a time, but the Government's position is that the agents were only reading transcripts from a previous grand jury). The record does not indicate whether or not the agents were under oath, but it does appear that the attorney conducting the grand jury was not in the grand jury room at all times when the 2 agents were there.

Violations of Rule 6(e), improper disclosure of grand jury information. Letters sent to prospective witnesses disclosed grand jury information. (Letters were also signed by special agents at the attorney's direction.)

The use of so-called "pocket immunity" in order to encourage witnesses to testify for the government, instead of using the provisions of 18 USC 6002 and 6003. ("Pocket immunity" is becoming a problem for the Department of Justice in other cases around the country and they are addressing the situation).

Summary testimony by a special agent was deemed to be misleading.

The prosecutors deliberately asked certain witnesses questions before the grand jury knowing they would take the "5th".

The prosecutors imposed an obligation of secrecy on certain witnesses in violation of Rule 6(e)(2).

Judge Kane appears to have taken Judge Winner's earlier Memorandum Opinion and written his opinion consistent with that. He particularly noted the confusion caused by swearing in special agents of the IRS as "agents of the grand jury". (This practice is not provided for in the IRM and is unnecessary.) The FRCP Rule changes legislated in 1976 that became effective in 1977 established Rule 6(e)(3)(A)(ii), which provides that attorneys conducting grand jury investigations can disclose grand jury information to other Government employees assisting such attorneys. Prior to this rule change, many judicial districts operated under the theory that the only way to disclose grand jury information without violating the existing rule, was to swear the agents in as "agents of the grand jury". Both Judges stated in writing that this procedure interferes with the independence of grand jury.

Judge Kane also concluded that grand jury information was improperly used for civil purposes. The Government can factually rebut this conclusion. All civil actions taken were predicated on the indictment (public record) and/or the information developed administratively before referral for grand jury. In addition, computations made by a Revenue Agent assigned to assist in the grand jury investigation were mistakenly deemed to have been for civil purposes.

Final Note

DOJ believes Judge Kane's factual conclusions are clearly erroneous and much of his legal holdings are unsupported by or are contrary to law.

However, procedural errors are reflected in the record (e.g. Rule 6(d) - 2 special agents in the grand jury room, and Rule 6(e) - letters disclosing investigative material signed by special agents, even though at the direction of attorneys could result in a "per se" ruling of rules violations.

Finally, the "60 Minutes" show, where the two Federal Judges participated voluntarily, and which involves a matter actively before the 10th Circuit, could boomerang and go in our favor. A close factual review will be to our benefit.

A copy of DOJ's statement to "60 Minutes" is attached. This statement was not acknowledged during the broadcast.

Attachment

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Memorandum for the President Prepared
by Alfred Kingon Regarding "60 Minutes"
Broadcast on the Kilpatrick Tax Case

David Chew has asked if we have any problem with forwarding to the President a memorandum from Al Kingon regarding the "60 Minutes" segment on United States v. Kilpatrick, the tax fraud case currently pending before the United States Court of Appeals for the Tenth Circuit. I reviewed this case in an October 26, 1984 memorandum for you (Tab A), prompted by a letter from Bo Callaway. You will recall that Kilpatrick is one of the largest tax fraud prosecutions in U.S. history, involving \$122 million. The twenty-seven count indictment was dismissed last fall by the district court, with two Federal judges involved in the case criticizing Tax Division prosecutors for prosecutorial misconduct and unethical behavior ranging from violations of grand jury secrecy to courtroom tantrums. A review of the matter by Justice's Office of Professional Responsibility concluded that the prosecutors did at certain points fail to comply fully with the Federal Rules of Criminal Procedure but that those failures did not warrant disciplinary action of any sort and did not prejudice the defendants. Justice is appealing the dismissal of the indictment. (You may recall that this case first achieved notoriety after an ill-advised and improperly cleared motion was filed by the prosecutors to prevent the printing of one of the opinions criticizing them.)

Kingon's memorandum strikes me as inadequate in failing to note that an OPR investigation took place, and that the investigation generally cleared the prosecutors. The President probably wants to know if something should be done about the allegations in the judges' opinions and the "60 Minutes" segment, and the memorandum should tell him that something -- the OPR review -- has already been done. The draft memorandum attached at Tab B suggests a suitable addition to the Kingon draft.

More generally, the fact that this memorandum was prepared by Kingon rather than our office troubles me. He apparently gathered information from Justice about a pending Federal

case, in what I assume was an inadvertent violation of established policy with respect to communications with the Department of Justice (White House Staff Manual, Standards of Conduct 8.B., page F-10). I will leave it to you whether and if so how to raise this concern, but I think this might be a good opportunity to alert the new staff members to applicable restrictions on communications. If you agree, something along the lines of the draft memorandum at Tab C could be sent.

Attachments

THE WHITE HOUSE

WASHINGTON

February 19, 1985

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: FRED F. FIELDING *Fig. signed by JFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Memorandum for the President Prepared
by Alfred Kingon Regarding "60 Minutes"
Broadcast on the Kilpatrick Tax Case

You have asked for our views on a proposed memorandum from Al Kingon to the President concerning United States v. Kilpatrick, the subject of a recent "60 Minutes" segment. I recommend that the memorandum be revised to note that the Justice Department Office of Professional Responsibility conducted an independent investigation of the allegations in the judicial opinions. That investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action. The President should know that the proper action in response to allegations of the sort involved here has already been taken.

Accordingly, I recommend adding the following at the end of the penultimate paragraph:

The internal watchdog unit of the Department of Justice, the Office of Professional Responsibility, conducted an independent review of the allegations made against the Justice Department prosecutors. The investigation concluded that the prosecutors failed to comply fully with certain rules of criminal procedure, but that the failures did not prejudice the defendants and did not warrant any disciplinary action.

In light of your staffing responsibilities I should take this opportunity to alert you to certain restrictions on communications with the Department of Justice contained in the Standards of Conduct for members of the White House Staff. A copy of the pertinent provision is attached. In view of these restrictions, any inquiries, such as the instant one, concerning pending Federal cases should be referred in the first instance to the Counsel's Office. Similar restrictions apply to contacts by White House staff members with independent regulatory agencies, investigative

and intelligence departments and agencies, procurement agencies, and the Department of the Treasury. These restrictions are designed to preserve public confidence in the effective and impartial administration of the laws, and operate to protect the White House staff from allegations of undue interference in particular pending matters. If you feel that some action is necessary to ensure that new members of the staff are fully cognizant of these restrictions published in the Staff Manual, please advise.

FFF:JGR;aea 2/19/85

cc: FFFielding
JGRoberts
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 / 1 /

Name of Correspondent: David P. Chew

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: memo from Alfred Kingon re: "60 minutes"
Broadcast on the Kilpatrick Tax Case

ROUTE TO:	ACTION	Tracking Date	Type of Response	Completion Date
Office/Agency (Staff Name)	Action Code	YY/MM/DD	Code	YY/MM/DD
<u>CUHOLL</u>	ORIGINATOR	<u>85102115</u>		<u> 1 / 1 / </u>
	Referral Note:			
<u>CUAT18</u>	<u>R</u>	<u>85102115</u>		<u>S 85102119</u> <u>COB</u>
	Referral Note:			
		<u> 1 / 1 / </u>		<u> 1 / 1 / </u>
	Referral Note:			
		<u> 1 / 1 / </u>		<u> 1 / 1 / </u>
	Referral Note:			
		<u> 1 / 1 / </u>		<u> 1 / 1 / </u>
	Referral Note:			

ACTION CODES:

- A - Appropriate Action
- I - Info Copy Only/No Action Necessary
- C - Comment/Recommendation
- R - Direct Reply w/Copy
- D - Draft Response
- S - For Signature
- F - Furnish Fact Sheet to be used as Enclosure
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- C - Completed
- B - Non-Special Referral
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/15/85 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/85

SUBJECT: MEMO FROM ALFRED KINGON RE "60 Minutes" BROADCAST ON
THE KILPATRICK TAX CASE

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input type="checkbox"/>	OGLESBY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	VERSTANDIG	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>KINGON</u>	<input type="checkbox"/>	<input type="checkbox"/>
TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>	<u>BUCHANAN</u>	<input type="checkbox"/>	<input type="checkbox"/>
HICKEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McFARLANE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
McMANUS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Do you have any problem with the attached being forwarded to the President?

RESPONSE:

1985 FEB 15 PM 1:57

David L. Chew
 Staff Secretary
 Ext. 2702

THE WHITE HOUSE

WASHINGTON

February 15, 1985

MEMORANDUM FOR THE PRESIDENT

FROM: ALFRED H. KINGON *AHK*

SUBJECT: "60 Minutes" Broadcast on the Kilpatrick Tax Case

You had expressed an interest in a recent "60 Minutes" program which reported on a large tax fraud indictment in the U.S. District Court in Denver, Colorado. This is a summary of the issues involved in the case.

The matter involves an investigation of a tax shelter of coal leases and methanol production which the IRS alleged to be fraudulent. The Justice Department became involved when the scale of the alleged fraud became apparent - \$122 million. It is one of the largest tax fraud prosecutions in U.S. history.

The IRS/Justice investigation dates back to 1979 and revealed that no mining or methanol production was taking place. A 27 count indictment against William Kilpatrick and six others was returned in September 1982. In December 1982, one of the main participants in the coal funding scheme, Pettingill, pleaded guilty and received a three year suspended sentence.

Kilpatrick, the primary defendant, has contested his indictment on the grounds that three Department of Justice attorneys committed procedural irregularities during the grand jury investigation. After being found guilty in May of 1983 for an obstruction of justice charge, Kilpatrick won a new trial. In ordering a new trial, the judge openly criticized the three Justice Department attorneys involved in the case. The Department of Justice asked the court to keep the district court judge's opinion from being published. The appeals court originally agreed with DOJ and then later ruled otherwise. Both Federal judges who reviewed the case appeared on the "60 Minutes" program.

The CBS presentation neglected to address the scope of the allegations against the Kilpatrick and the tax fraud charges. CBS also neglected to acknowledge the position of the Justice Department as presented in a statement released in October 1984.

The Justice Department firmly believes that the conclusions of both judges in the Kilpatrick case are erroneous and their legal holdings are unsupportable. The Solicitor General is appealing the matter, and the case is now pending. Both Treasury and Justice advise that any public discussion of this matter would be inappropriate.

cc: Donald T. Regan