

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

Deputy Chief GARY A. BROWN and
Police Officer HAROLD C. NELTHROPE,

Case No. 03-317557-NZ
Hon. Michael J. Callahan

Plaintiffs,

v

KWAME KILPATRICK, Mayor, City of
Detroit, and the CITY OF DETROIT,
a Municipal Corporation; jointly and severally,

Defendants.

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**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF
THEIR MOTION FOR ATTORNEY FEES AND COSTS**

NOW COME Plaintiffs, by and through their attorneys, Stefani & Stefani, Professional Corporation, and for their Supplemental Brief in Support of their Motion for Attorney Fees and Costs state as follows:

Difficulty Factors:

One of the reasons this case required Plaintiffs' attorneys to devote as much time to it as they did was that Defendant Mayor Kilpatrick and his Chief of Staff Christine Beatty repeatedly lied to questions put to them during depositions. The misinformation provided by the Mayor and Beatty during depositions necessitated that Plaintiffs' attorneys engage in a great deal more factual investigation and discovery than otherwise would have been necessary to prove Plaintiffs' WPA claims.

The perjury by the Mayor and Beatty did not stop at discovery but continued right throughout trial.

Believing the Court had records Plaintiffs asked certain questions of Christine Beatty and Mayor Kilpatrick during trial with the expectation that Beatty and Kilpatrick would not lie because the Court would be in a position to compel their answers to the Skytel records.

At the conclusion of Beatty's testimony, the Court disclosed to the parties that it had not received the Skytel records and directed Plaintiffs' counsel to resubpoena them if he desired to introduce those records.

Plaintiffs' counsel then determined that Defendants' counsel had filed a third motion to suppress the subpoena to Skytel but instead of scheduling the motion for hearing, simply contacted Skytel and told it that the City was contesting the subpoena and not to send the records to Judge Callahan as instructed by Plaintiffs' subpoena until the City told them to do so.

Plaintiff's counsel the resubpoenaed those Skytel records on May 5, 2007. Those records show unequivocally that both Ms. Beatty and Mayor Kilpatrick perjured themselves during depositions and at trial.

On _____, 2007, the Plaintiffs filed a motion and brief for an award of attorneys' fees pursuant to the Whistleblower Protection Act MCL §_____. The purpose of this Supplemental Brief is to bring to the attention of the Court newly discovered evidence which Plaintiffs contend justifies the amount of time Plaintiffs' attorneys were required to devote to this case.

Throughout this entire case, the discovery stage, the interim appeals, and the trial itself, Plaintiffs have maintained that Defendant Kilpatrick, Christine Beatty and several of the City's witnesses perjured themselves in depositions, answer to interrogatories, and most recently, during their trial testimony. Plaintiffs' counsel was required to devote a great deal of time to overcoming this perjury. Proving whistleblower claims against top government officials is difficult in and of itself. However, when these officials and their subordinates perjure themselves, the task becomes significantly more difficult.

Although Plaintiffs have had strong circumstantial evidence of this perjury, they have only recently acquired irrefutable direct evidence of it.

During her deposition, Christine Beatty testified that she recommended that Brown's appointment be revoked not because he was investigating Greg Jones and Mike Martin, members of the Mayor's Executive Protection Unit ("EPU"), not because Brown was investigating the Manoogian Mansion party, and not because she was concerned that Brown was about to uncover and report the Mayor's philandering. She steadfastly maintained that she recommended that Brown's appointment be revoked because of an anonymous letter she received on May 6, 2003 or the morning of May 7, 2003 which indicated that Brown was engaged in an unauthorized investigation.

Mayor Kilpatrick also testified during his deposition that he decided to revoke Brown's appointment on May 8, 2003 after Beatty brought some information to his attention that she had received anonymously which indicated that Brown was conducting an unauthorized investigation. During trial, both Christine Beatty and Mayor Kilpatrick testified that the decision to revoke Brown's appointment was made by the Mayor after Beatty's recommendation based on an anonymous letter that she had received to the effect that the two page memo given to her by Chief Jerry Oliver on May 6th was not the complete story and that Brown was conducting an unauthorized investigation.

The evidence now indicates that both the Mayor and Beatty had decided to terminate Brown and to remove Commander Parshall and Inspector Dolunt from Internal Affairs long before Beatty received the two page memo from Oliver on May 6th and allegedly received the anonymous letter on May 6th or May 7th.

On April 30, 2003, two days after Nelthrope contacted Internal Affairs, Loranzo Greg Jones sent the following text message to Christine Beatty: "When you get a chance, could you give me a call." Beatty answered the message with a simple "Yes." On May 1, 2003, Mayor Kilpatrick sent the following text message to Beatty in reference to Walter Harris' transfer out of the EPU, "Big Walt transferred out. Good!" Beatty responded to the Mayor's message as follows, "Yep, all the folks that need to go are going!" On May 6th, Beatty sent the following text message to the Mayor, "Who did we talk about for commander of IA?" The Mayor replied to Beatty as follows, "McClure-comm, Stair-inspector, Morris Wells back over there, Greer-Travis wife also." The Mayor and Christine Beatty were planning to overhaul IA without Chief Oliver's knowledge and when Inspector McClure apparently told the Chief about the Mayor's plans, Beatty and the Mayor became angry with McClure and decided not to transfer him to IA

after all. Beatty sent the following text message to the Mayor on May 6th, "Dig this shit: Inspector McClure told the Chief that I called him and asked him to go back to IA! They know we are making a move! I am so mad at him. AC just told me." The Mayor immediately replied to Beatty's message as follows, "Damn! Well we will see what's up with the Chief. That's what McClure was supposed to do. The Chief is his boss. He doesn't know what's going on." Beatty then replied to the Mayor as follows, "Yea, I guess. That was dumb! If he's that scary or that naïve, he might not be the one." The Mayor then replied, "What about Stair as commander? It's a powerful statement." Beatty then replied to the Mayor as follows, "Can't skip steps right away."

Both in their depositions and in their trial testimony, Mayor Kilpatrick and Beatty denied that Brown had been fired and steadfastly maintained that Brown had a right to revert to the position of lieutenant and that he was aware of his reversionary option. But the evidence shows that although the Mayor and Beatty initially intended to allow Brown to revert to the rank of lieutenant, they were advised that he did not have a right of reversion and could simply be fired. The evidence shows that Commander Shereece Fleming, Chief Oliver's Chief of Staff, along with Assistant Chief Walter Shoulders and Assistant Chief Ella Bully-Cummings, without Chief Oliver's knowledge, were assisting Beatty and the Mayor in removing Brown and reorganizing Internal Affairs. On May 7, 2003, Commander Shereece Fleming sent the following text message to Beatty, "I thought about this thing! Why would you guys offer GB an option to take a demotion? It is obvious that he needs to be gone. He just needs to be gone. No chance or restitution." Beatty responded to Fleming, "Right! Can he just be fired? Doesn't he revert back to the lowest unappointed rank?" The reply from Commander Fleming was, "No, at the DC level and higher, they serve at the pleasure of the Chief and Mayor, just like

Curry, Clark and Bogan were let go.” Christine Beatty then sent the following text message to Chief Oliver, “I need you to send over those documents that you showed me yesterday at the director’s meeting. I need them before 1 pm. Thanks Chief.” The Chief’s reply was a simple, “Will do.” That afternoon, Beatty sent the following text message to the Mayor, “FYI DC Brown’s files are all backed up!” The Mayor replied to Beatty, “Cool!” Beatty then replied to the Mayor, apparently referring to Brown’s termination letter, as follows, “Chief just read my letter. He is tripping out there!” Assistant Chief Ella Bully-Cummings sent the following message to Beatty a few minutes later, “He is livid! Will call you later this evening. He asked Shoulders and I if we had any discussion with you and whether we were involved.” Beatty responded, “What did you all say?” Assistant Chief Bully-Cummings responded, “We said no. And, he queried Shoulders again.”

At 6:21 in the evening on May 9th, the day Brown was terminated, Beatty sent the Mayor the following text message, “Thanks. You too! Just got to the Fox. FYI Gary Brown was following me on the way here.” The Mayor replied, “What?” Beatty responded to the Mayor, “He was in the car behind me for a few blocks. I am almost positive it was him. It was an unmarked car and I could see him the rearview.” The Mayor, apparently referring to Greg Jones’ belief that Internal Affairs was following him, replied, “Okay Greg Jones. Beatty’s response to the Mayor was, “LOLOL! Yep. On this one.”

On May 11, 2003, Jamaine Dickens, the Mayor’s press secretary, sent Beatty the following text message, “Freep called. Says they hear that Mayor fired Gary Brown from dpd. Want to confirm. I know the Chief hires and fires, but is he gone?” Beatty replied, “Yes he is gone. You don’t need to say that the Mayor fired him. He was simply let go. Let me know before you make a comment.”

On May 12th, Ruth Carter sent the following text message to Christine Beatty, "Council (aka Sheila) is calling DOJ re Gary Brown. The issue is how could we fire our accountability person w/o DOJ or [Board of Police Commissioners] knowing since accountability is the concern. They are laboring under the impression that the Mayor fired Brown b/c he was investigating Greg Jones. Accordingly, the Chief and BPC knew nothing about it. Unbelievable!" Beatty then forwarded Ruth Carter's text message to the Mayor and the Mayor responded to Beatty as follows, "Why is Sheila always looking for a scandal with us? That bitch ain't right!" Beatty then forwarded the following message from Ruth Carter to the Mayor, "FYI: Reply from Ruth Carter is well, right now there is just rumor mongering so unless Justice raises an issue I think we're good. I've spoken to them today and not a peep. I doubt we will have a problem. I'll call if one arises. Enjoy your evening."

On May 12th, Christine Beatty sent the following text message to the Mayor, "Got it from Ruth. Do I need to set up a meeting with Ruth and the Chief to discuss? He does have reversion right to lieutenant. Just found out." The Mayor's response was "Yes. Set up to be on same page!" The Mayor then followed up with another text message to Christine Beatty which stated, "I'm sure that is true also. Justice won't jump because of Sheila. We just need to be saying the same thing." Beatty then texts the Mayor the following, "How long before the EPU meeting?" The Mayor replied, "I'm in here now. Come on." Jamaine Dickens then sent the following text message to Christine Beatty, "Did you know Sheila Cockrel sent out a letter asking who fired Brown, was department of justice consulted and what role commissioners played in those decisions. News asking."

Although Beatty and the Mayor steadfastly maintained that Brown was not fired during their depositions and at trial, the text message between the two of them clearly demonstrates

that Brown was fired. For example, on May 15, 2003, Beatty sent Mayor Kilpatrick the following text message, "I'm sorry that we are going through this mess because of a decision that we made to fire Gary Brown. I will make sure that the next decision is much more thought out. Not regretting what was done at all but thinking about how we can do things smarter."

During her deposition and at trial, Beatty testified that she did not tell Bob Berg to release the two page memo containing Nelthrope's name. The Mayor's deposition testimony and his trial testimony was that no one on his staff had anything to do with the release of Nelthrope's identity to the news media and that he believed that it was Brown who released Nelthrope's identity to the news media. Beatty's text messages reveal the truth, however. On May 14, 2003, the day the confidential two page memorandum revealing Nelthrope's identity was distributed to the news media, Jamaine Dickens sent the following text message to Christine Beatty at approximately 11:20 a.m., "WJR now promoting our memo and news stories running." Approximately one hour later, Dickens sent the following message to Beatty, "Need to know when Bob delivers the packages. Getting late and need to get response from the Chief but only after it gets there." The following day, Jamarl L. Eiland sent the following message to Beatty, "There is still a lot of miss-info being reported. The msg. that the Mayor fired Brown is clear. They are saying that it was mistake to disclose Nelthrope. He has retained the same lawyer as Brown." Both Beatty and the Mayor testified during their depositions and at trial that Brown was not fired, but simply had his appointment revoked. The truth, however, is reflected in a May 15th text message from Beatty to the Mayor which said, "I am sorry that we are going through this mess because of a decision that we made to fire Brown. I will make sure that the next decision is much more thought out. Not regretting what was done at all, but thinking about how we can do things smarter."

During her deposition, Beatty testified that she has never dated Mayor Kilpatrick or had a romantic or sexual relationship with him. At trial, the Mayor testified that he and Mrs. Beatty were at no time romantically involved. The Mayor testified that Beatty was a friend of his and Mrs. Kilpatrick's and that the Kilpatrick children referred to Mrs. Beatty as their auntie and that Mrs. Beatty's children referred to the Mayor as uncle. The text messages between Mrs. Beatty and the Mayor, however, reflect a longtime love affair between them. A few examples of the hundreds of text messages which evidence this affair follow.

<u>Date</u>	<u>To/From</u>	<u>Message</u>
April 1, 2003	Beatty to the Mayor	"I know you're having a very important meeting with Pat Turner, LOL but I want to tell you I miss you anyway. I mean I really do. I want you to come and hold me in your arms right now."
April 1, 2003	Beatty to the Mayor	"LOL! No. But I will. Movie? Are you on a date with your wife? Oooo I'm jealous. I'm a little too into you these past few days."
April 6, 2003	Beatty to the Mayor	"I love you so much. Thank you for coming to see me. I was very happy to see you."
April 6, 2003	Mayor to Beatty	"Love you too. I realize more everyday how much. You look real good, by the way. See you tomorrow."
April 7, 2003	Lou Beatty to Mrs. Beatty	"How is your day? It's amazing how you can go out of town, come back refreshed and I immediately piss you off...WRG socks, pan outside, WRG paper towel. You had an attitude until KK came over. Then you were smiling. Wish you smiled at me like that."

April 8, 2003	Beatty to the Mayor	"Hey baby, I'm on my way to bed so I won't get to talk to you tonight. I love you! Will you plan our night soon. Don't meet Serena and fall in love and leave me while your in LA. LOL."
April 8, 2003	Beatty to the Mayor	"My baby wanted to see you. I was just trying to make it happen before we went to the dentist."
April 8, 2003	Mayor to Beatty	"Come on momma."
April 8, 2003	Beatty to the Mayor	"Thanks for that."
April 8, 2003	Mayor to Beatty	"I enjoy that. I might be there stepdad one day."
April 8, 2003	Beatty to the Mayor	"Why might? What happened to "not yet"? LOL. One of my theme songs for you just came on. "Love of my life"
April 8, 2003	Mayor to Beatty	"The "might" is on you!"
April 8, 2003	Beatty to the Mayor	"LOL! Nigga, I already claimed it! KCK 2012. You told me that you would be my boyfriend everyday until I was your wife. Are you renigging?"
April 8, 2003	Mayor to Beatty	"Hell no! Don't start none. Won't be none niggette! LOL"
April 8, 2003	Beatty to Mayor	"I look forward to it. It's official, I need a night. How about you? You don't need to answer now. Enjoy the game."
April 8, 2003	Mayor to Beatty	"Shit. I need it real bad."
April 8, 2003	Mayor to Beatty	"My nigga! I love you, you know that."
April 8, 2003	Beatty to the Mayor.	"Yep! Ditto! You know that?"

April 8, 2003	Mayor to Beatty	"More than you could ever know!"
April 9, 2003	Mayor to Beatty	"Perfect. Please come!"
April 9, 2003	Beatty to the Mayor	"Do you want come there or Houston?"
April 9, 2003	Mayor to Beatty	"There. Damn Houston. Me and you in the islands. Shit come on!"
April 9, 2003	Beatty to the Mayor	"LOL! Okie dokie. Call me tomorrow before you leave LA what we need to do to pay for it."
April 12, 2003	Beatty to the Mayor	"Love you, so much!"
April 12, 2003	Mayor to Beatty	"Love you too!"
April 13, 2003	Beatty to the Mayor	"It is sometimes so amazing how much I love you. I can't even describe most of the time how I feel inside when I think about you. You are an amazing man. Everything about you makes me love you. Your passion about life, your sense of humor, your presence, and your love of family. TBC"
April 13, 2003	Beatty to the Mayor	"All those things and more make up the love of my life. Kwame Malik Kilpatrick. I have so much admiration and appreciation for you. You are like a dream in my life and I can't believe sometimes that our friendship is real."
April 13, 2003	Beatty to the Mayor	"Thank you for fifteen plus years of friendship. Thank you for loving me!"
April 17, 2003	Beatty to the Mayor	"Okay. That damn song is on about the guy seeing his old flame. The one we just listened to! I'm cracking up! LOLOL."

April 23, 2003	Beatty to the Mayor	"I'm sure [you] are safe and sound in TX. I'm going to bed. Dream about me, I'll be dreaming about you. Love you B. I hope you were singing that last R. Kelly song to me. LOL. I definitely like that one. Have a good workout too."
April 23, 2003	Mayor to Beatty	"Just leaving airport. Rest well beautiful. Definitely will dream about you. All love songs, I think about you!"
April 25, 2003	Beatty to the Mayor	"No. I'm not gone from you. I never am. Every second that I was quiet, I thinking about you!"
April 25, 2003	Mayor to Beatty	"Thinking about what?"
April 25, 2003	Beatty to the Mayor	"Thinking about doing a lot of things! Thinking that how hard you diss me, I still want to be in your arms, kiss you, hug you, love you. Listening to you speak and wishing that you were my husband."
April 27, 2003	Beatty to the Mayor	"No response needed to this, but when held me in your arms and looked me in my eyes and said I was your woman. All was right with the world. I love you."
April 27, 2003	Mayor to Beatty	"Damn! Thank you."
April 27, 2003	Beatty to the Mayor	"Can you promise me that I will always be that?"
April 27, 2003	Mayor to Beatty	"You were my girl for as long as I can remember. I was too young and stupid to know. I promise for the rest of my life you will be my girl."
April 27, 2003	Beatty to the Mayor	"Ahh. I'm about to cry. Thank you for that. You need to know

that you are the man in my life that I depend on most. Or I could have just stopped at 'the man in my life'." [At the end of April, 2003, Christine Beatty left her husband and moved into her own apartment.]

May 1, 2003

Beatty to the Mayor

"...I have an insecure thing going on with you right now and I know exactly where it came from. Kind of started when you got back from your trip and I couldn't see you. TBC... Then we the separation thing with Lou and I really kicked in, and we had our conversation at dinner at Tom's it kind of escalated. When I told you started singing 'A stranger's love', and I told you that you seemed that kind of man who be married to your wife forever, you kind of nodded like 'yep'. TBC...I was really kind of trippin after that because of two reasons. I can't see living this way with us being a 'secret' forever. I love you so much and I want to tell somebody, someday! (Smile). Secondly, this separation is really real and it kind of slapped 'lonely' in my mind....when you didn't come on Saturday until 3 hours later, that just kind of topped if off for me. So I'm sorry if I've been trippin. I could only two way this! I couldn't have said it to you personally!"

May 1, 2003

Mayor to Beatty

"In this important and somewhat confusing time in your life, please know with all our hearts and soul that I love you. And you will never, never be alone. TBC."

Mayor Kilpatrick and Christine Beatty testified at trial that Brown was not fired because of a concern that an investigation of the Mayor's EPU would likely uncover the Mayor's use of his bodyguards to facilitate his philandering and his affair with Mrs. Beatty. In addition, Beatty testified that she never sent text messages to the Mayor of a personal nature and that she did not receive personal text messages from the Mayor. She denied sending text messages to the Mayor of a sexual nature or receiving messages of an intimate or sexual nature from the Mayor. Beatty specifically denied communicating with the Mayor concerning Beatty's separation from her husband, Lou Beatty by way of text messaging. The evidence, however, demonstrates unequivocally that Christine Beatty and/or Mayor Kilpatrick perjured themselves by this testimony.

<u>Date</u>	<u>To/From</u>	<u>Message</u>
September 9, 2002	Mayor to Beatty	"Everything is cool. Did you get busted? You were kind of wet last night, inside and out. LOL."
September 9, 2002	Beatty to the Mayor	"Oh, you got jokes? Actually I did get busted, which I was checking with you. I wanted to see if you had room on Leslie for me! LOL."
September 9, 2002	Mayor to Beatty	"LOL LOL LOL! Not on Leslie but anywhere else you want to stay. LOL."
September 9, 2002	Beatty to the Mayor	"LOL, LOL! Dang, you wouldn't take me into your home? You told me the other day that you would anything for me. What happened? LOL."
September 9, 2002	Mayor to Beatty	"LOL LOL LOL! Not the famous flip again. It's still anything! It should be with reason necessity. If you really need to stay with me, it's on. In this case, we can find