

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2202 Disciplinary Docket No. 3
Petitioner	:	
	:	Board File No. C3-15-558
v.	:	
	:	Attorney Registration No. 69680
KATHLEEN GRANAHAN KANE,	:	
Respondent	:	(Dauphin County)

ORDER

PER CURIAM:

AND NOW, this 21st day of September, 2015, upon consideration of the responses to a Rule to Show Cause why Kathleen Granahan Kane should not be placed on temporary suspension, the Rule is made absolute; Respondent Kathleen Granahan Kane is placed on temporary suspension; and, to the extent applicable, she shall comply with all the provisions of Pa.R.D.E. 217.

Respondent's rights to petition for dissolution or amendment of this order pursuant to Pa.R.D.E. 208(f)(4), and to request accelerated disposition of charges underlying this order pursuant to Pa.R.D.E. 208(f)(6), are specifically preserved.

This order should not be construed as removing Respondent from elected office and is limited to the temporary suspension of her license to practice law.

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

Paul J. Killion
Chief Disciplinary Counsel

Paul J. Burgoyne
Deputy Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528



OFFICE OF DISCIPLINARY COUNSEL
www.padisciplinaryboard.org

September 14, 2015

PERSONAL & CONFIDENTIAL

Via Federal Express Mail

Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219

Attention: John A. Vaskov, Esquire
Deputy Prothonotary

RE: Office of Disciplinary Counsel
v. KATHLEEN GRANAHAHAN KANE
No. 2202 Disciplinary Docket No. 3
Board File No. C3-15-558

Dear Mr. Vaskov:

Enclosed please find an original unbound and one bound copy of Reply of Office of Disciplinary Counsel to Respondent's Response to the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) with Certificate of Service, which is being electronically filed today. I certify that I am providing copies of this letter and the Petition to individuals as indicated below.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Harriet R. Brumberg".

Harriet R. Brumberg
Disciplinary Counsel

HRB:deg

Enclosures

cc: Paul J. Killion, Chief Disciplinary Counsel
Paul J. Burgoyne, Deputy Chief Disciplinary Counsel
James F. Mundy, III, Esquire, Counsel for Respondent
Elaine M. Bixler, Secretary, The Disciplinary Board

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OFFICE OF DISCIPLINARY COUNSEL, : No. 2202 Disciplinary Docket
Petitioner : No. 3
:
: Board File No. C3-15-558
:
v. :
: Atty. Reg. No. 69680
KATHLEEN GRANAHAN KANE, :
Respondent : (Dauphin)

REPLY OF OFFICE OF DISCIPLINARY COUNSEL TO RESPONDENT'S
RESPONSE TO THE PETITION FOR EMERGENCY TEMPORARY SUSPENSION
AND RELATED RELIEF PURSUANT TO Pa.R.D.E. 208(f)(1)

Office of Disciplinary Counsel ("ODC"), by Harriet R. Brumberg, Disciplinary Counsel, and Paul J. Killion, Chief Disciplinary Counsel, respectfully submits this Reply to Respondent's Response ("R. Response") to the Petition for Emergency Temporary Suspension, and in support thereof states:

I. RESPONDENT'S DENIAL THAT SHE AUTHORIZED THE DISCLOSURE OF THE 2014 MILETTO TRANSCRIPT IS INCREDIBLE.

Respondent, through her hired agents and in her grand jury testimony, has represented that she authorized the

disclosure of the 2014 Miletto Transcript. Now, in her Response to the Rule To Show Cause, Respondent, for the first time, disavows her agents' evidentiary admissions and denies her own evidentiary admissions. Respondent's disavowals and denial are not credible.

A. Lanny Davis's Media Statements.

After Respondent testified before the grand jury, Lanny J. Davis, Esquire, Respondent's "legal strategist," announced to the media that Respondent authorized the disclosure of the 2014 Miletto transcript. In her response to this Court, Respondent claims that Mr. Davis's "comment to the press" was "incorrect." (R. Response, p. 5 n.3) The facts and circumstances belie Respondent's claim. Mr. Davis made the same comment on two different days, twelve days apart. Respondent would have the Court believe that Mr. Davis, a seasoned attorney and advocate, misspoke to the entire world on two occasions, yet Respondent did nothing to correct the purported error.

On January 10, 2015, Mr. Davis held a press conference, which was reported in the news media that same day. According to that same-day posting, which is attached as "Exhibit L":

Attorney General Kathleen Kane leaked a memo from 2014 that she believed was not part of the 2009 grand jury investigation, her attorney said.

Lanny Davis said Kane authorized what he called a "legal disclosure," through a staff member, of a

2014 memo summarizing an interview with a special agent concerning J. Whyatt Mondesire, president of the National Association for the Advancement of Colored People in Philadelphia. Mondesire had not been interviewed or brought before the 2009 grand jury, he said.

The intent, however, was not intended to hurt Mondesire but to address rampant media speculation at the time.

"She never intended to disparage [his] reputation," Davis said during a news conference Saturday in Philadelphia. "To the contrary, what she read was that he had never been interviewed or brought before the grand jury."

Davis said he believes Kane did nothing wrong in leaking the 2014 memo because she had not been sworn to secrecy in 2009 and the 2014 memo was not part of that original investigation.

"You're in 2014, you don't worry about a 2009 grand jury," he said. (Exhibit L, p. 1)

A next-day media posting, which is "Exhibit F" to ODC's Petition, is equally consistent with Mr. Davis's revelation:

Davis confirmed Saturday that Kane allowed a deputy to leak a 2014 summary of the NAACP probe. However, he insisted that she did not leak any of the grand jury material, including a 2009 memo that was quoted.

"She had no idea who got that 2009 memo to the reporter," Davis said. "The only thing she did, when she read the 2014 memo, she said, 'I have no problem with that being released. Do what you have to do.'" (ODC Exhibit F, pp. 2-3)

On January 22, 2015 (twelve days after the press conference), Mr. Davis issued a statement in which he spoke consistently with his statements during the January 10, 2015 press conference, as quoted below. And the first sentence of

the quoted passage confirms that on January 22, Mr. Davis was repeating what he had said on January 10:

Please recall my comments on January 10 at my press conference in Philadelphia. Attorney General Kane authorized only the release of a brief report written by a senior official in the AG's office in March of 2014....

The Grand Jury Report confuses the publication in the newspaper of a 2009 Memorandum, written by then Deputy Attorney General William Davis, with the 2014 memorandum that Attorney General ***Kane authorized be disclosed*** to the media.... (ODC Exhibit E, pp. 3-4) (underscore in original) (bold and italics added for emphasis).

Moreover, it defies common sense for Respondent to now claim that Mr. Davis's comments, which are precise and detailed, are incorrect. Mr. Davis did not wholesale fabricate Respondent's admission that she authorized the release of the Miletto Transcript. The Court would be well within its discretion as fact-finder to infer that Mr. Davis's information came directly from Respondent.

In sum, Respondent's bald denial of Mr. Davis's public statements has done nothing to defeat Respondent's heretofore uncontradicted evidentiary admissions.

B. Respondent's Counsel's Statement To This Court.

On February 4, 2015, which was only 14 days after Mr. Davis's second press release, Respondent's counsel, Gerald L. Shargel, Esquire, who represents Respondent in her criminal

case, filed a Supplemental Memorandum of Law with this Court in support of Respondent's *quo warranto* action. (See Exhibit M, consisting of the cover page, page 7, signature page, and Certificate of Service of Respondent's Supplemental Memorandum) The Supplemental Memorandum represents:

On November 17, 2014, Attorney General Kane appeared as ordered before the grand jury. She answered each question posed by Mr. Carluccio, and her answers were absolutely truthful. ***She told the grand jury that she had authorized the release of the 2014 memorandum,*** because she believed it did not contain confidential grand jury information, and because she believed strongly in a policy of public transparency. She told the grand jury that she did not authorize the release of the 2009 memorandum, and indeed had never even seen it. 2015 WL 1379962 *7 (PA) (emphasis supplied).

True to form, Respondent now claims that the bolded and italicized language was "incorrect" (R. Response, p. 5 n.3). Once again, Respondent's claim is not credible.

To be sure, Respondent's Supplemental Memorandum is no shoddy piece of work. One would not expect to see such a monumental "error" involving a core fact in a filing of such legal significance. Nor would one expect that such a filing would occur without Respondent, who is a lawyer, having reviewed the document and giving her stamp of approval.

As an excuse for her counsel's purported misstatement, Respondent proffers that the Supplemental Memorandum "was made

without the benefit of the grand jury transcript." (*Id.*) This excuse further underscores the flimsiness of Respondent's current denial. Respondent's counsel accompanied Respondent when she appeared before the grand jury. (R. Response, Exhibit B, p. 3, lines 11-13) Thus, Respondent's counsel had a first-hand factual basis for including the statement in his brief to this Court. In addition, it is reasonable to believe that Respondent's counsel interviewed Respondent before her grand jury appearance as well as confirmed the facts with his client prior to drafting, signing, and filing the Supplemental Memorandum.

All told, it is well within this Court's discretion to infer that Respondent's counsel learned from Respondent that she had authorized the release of the Miletto Transcript and that Respondent's counsel left the grand jury room confident that Respondent had conveyed to the grand jury that she had authorized the release of the Miletto Transcript. If Respondent's counsel ever had any doubt, all he had to do was ask.

C. Respondent's Grand Jury Testimony.

Respondent's conversation with First Assistant Adrian King regarding the 2009 grand jury investigation of J. Wyatt Mondesire, when considered in the context in which Respondent testified the conversation occurred, makes clear that

Respondent authorized, at a minimum, the release of the 2014 Miletto Transcript. Respondent testified before the grand jury as follows:

Q. Okay. Did you give him [Adrian King] any direction to deal with this case, anything to do with documents or anything -

A. Yes.

Q. - on this case?

A. Yes.

Q. Okay.

A. ***Agent Pfeiffer's memo summarizing Agent Miletto's testimony of 2014***, after the meeting that we had, Adrian and I said, you know, this is a pattern that has been developing. This is not right. This is a pattern of nonprosecutions, and this was somebody who could have been prosecuted except for the lapse of time that had occurred. And we said that it's the public's right to know what is happening in the office, as I've always said. And Agent - Adrian and I then said well, then let's put ***it*** out into the press, ***and we did***.

Q. Okay. And how did that happen?

A. I said to Adrian, you know, we should get ***it*** out. We should put ***it*** out to the press. People have a right to know. He said I agree and, you know, he said well, what do you think? It was - I remember it was later in the day because I was in a hurry to get back to Scranton and he was going to Philadelphia, and our press department was dismantled and, you know, we have a young team, unfortunately. And Adrian said well, I can take care of it. You know, we'll give it to - let Josh take care of it, as we typically did. And Adrian said something like, you know, have Josh call me, and I did. I called Josh, and I said Adrian wants

you to call him. (*Id.* pp. 27-28) (emphasis supplied).

...

Q. What were your directions for Adrian King to do?

A. Well, it wasn't a direction. Adrian and I worked very closely together, obviously. He's my First Deputy. ... So Adrian and I, I said this isn't right. People need to know. He said i [sic] agree, and we said we need to put this out into the press.

Q. So what did you give Adrian King to put out in the press?

A. Well, I didn't give him anything, **but Agent Pfeiffer's 2014 memo was there.**

Q. Do you know what other documents went with -- to be given to Josh Morrow?

A. As far as I know -- well, I've never seen the 2009 document. I never even knew of its existence until I read the article in the newspaper in August.

Q. So how did you direct these documents to get to Josh Morrow?

A. Well, again, I mean, you're saying direct, but you have to understand that the relationship between the Attorney General and the First Deputy is not, you know, that I tell him what to do and he does it. That's just not the way it works. (*Id.* pp. 29-30) (emphasis supplied).

...

Q. So who did you counsel besides Adrian King about getting this information to the press **or this memo that you talk about?**

A. Just Adrian.

Q. Just Adrian?

A. Uh-huh. (*Id.* p. 33) (emphasis supplied).

...

A. I did not give this document to the press. I did not direct Adrian to give specific documents to the press. What I said to Adrian was is people need to know about this. He agreed. *The only document that we had in front of us was Agent Pfeiffer's memo regarding his talk or interview with Agent Miletto, so* – and I didn't read it. ... (Id. p. 35) (emphasis supplied).

...

Q. So what was your understanding of what documents were going to Josh Morrow and to the press?

A. Well, there was no understanding. You know, it was a simple conversation with Adrian. ... *But I would assume – I would assume that Adrian would have taken Agent Pfeiffer's memo with his, his talk with Agent Miletto and would have done that.*

Q. Okay.

A. *That would have been –*

Q. So it's –

A. – *logical.* (Id. pp. 35-36) (emphasis supplied).

Thus, even from Respondent's own version of events, it is apparent from the tone, tenor and circumstances of Respondent's purported discussion with Mr. King, that Respondent authorized the release of the Miletto Transcript to the press, as such release was only "logical."

D. ODC Was Correct In Alleging That Respondent Authorized the Release of the 2014 Miletto Transcript.

Based on the totality of the foregoing, including Mr. Davis's two statements to the press, Respondent's counsel's

brief before this Court, and Respondent's testimony before the grand jury, it is clear that ODC did not err in concluding that Respondent authorized the release of the Miletto Transcript. Indeed, all three sources of evidence are consistent and corroborate each other on this pivotal issue. In the Honorable William R. Carpenter's Supplemental Opinion in support of his appointment of a special prosecutor, Judge Carpenter relied upon the fact that "Attorney General Kane had admitted publically and in her Supplemental Memorandum of Law in Support of Quo Warranto Action that she authorized the release of the 2014 Memorandum...." *In Re: The Thirty-Fifth Statewide Investigating Grand Jury*, 2015 WL 1381911 *10 (2/18/2015). ODC urges this Court likewise to conclude that Respondent authorized the release of the Miletto Transcript.

II. THE MILETTO TRANSCRIPT CONTAINED INVESTIGATIVE INFORMATION PROTECTED FROM DISCLOSURE BY CHRIA.

Respondent denies that she authorized the release of "investigative information" protected by CHRIA because in 2014 the OAG did not conduct an "investigation" or "inquiry."¹ (R. Response at pp. 7-9) Respondent's denial that the 2014 Miletto Transcript contained "investigative information" is

¹ CHRIA defines "Investigative information" as "Information assembled as a result of the performance of any *inquiry, formal or informal*, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S. § 9102 (emphasis supplied).

illusory. At the outset, the statutory definition of "investigative information" expressly requires an "inquiry," not an "investigation," so it is irrelevant whether there was an "investigation." Furthermore, a quick perusal of the Miletto Transcript, which Respondent attached to her Response, clearly shows that it contained very specific details regarding multiple matters before the 2009 grand jury. It is egregious for Respondent, who is statutorily mandated to obey and enforce CHRIA, not to recognize that the Miletto Transcript merited CHRIA protection.²

Respondent counters that the 2014 Miletto Transcript shows that the OAG conducted only "an internal review and legal analysis of an historical OAG charging decision" and not an inquiry. (R. Response, ¶ 20) This is pure sophistry. Although CHRIA itself does not define "inquiry," an "inquiry" is defined as:

1. The act of inquiring. 2. A question; a query.
3. A close examination of a matter in a search for information or truth. THE AMERICAN HERITAGE COLLEGE DICTIONARY, 3rd ed. 1993.

Again, Respondent's own Exhibit A (the Miletto Transcript) establishes that the OAG conducted an "inquiry" in 2014. In

² Although Respondent correctly points out that violation of CHRIA is a civil, and not a criminal violation, Respondent has a statutory duty to enforce CHRIA. 18 Pa.C.S. § 9161(3).

fact, Respondent's grand jury testimony firmly established there was an "inquiry":

Q. So you didn't know before [OAG Special Agent David C. Peifer] interviewed [OAG Agent] Miletto? You never knew he was going to do that?

A. I don't know. I remember that he came -- he came into my office. I knew that there was something with Agent Miletto. He told me that Agent Miletto had some information. He was concerned about a case that may be out there. I didn't know any of the details before that. And knowing Agent Pfeiffer [sic], he was going to sit down with Agent Miletto, talk to him about it, and then he said he would brief me on it **once he had the information**.

Q. So he did tell you he was gonna **interview him** before you had your staff meeting?

A. He told me he was going to talk to him, **sure**. (R. Response, Exhibit B, p. 16, lines 13-25) (emphasis supplied).

...

A. I don't recall ever [Peifer] telling me that he was taping it. ... I just knew he was going to sit down with Agent Miletto and **find out what was going on**. (*Id.* p. 17, lines 8-9, 14-16) (emphasis supplied).

A. ... I said to Agent Pfeiffer [sic] that he needed to get together with Mr. Beemer and make sure that if there were criminal charges to be either investigated or brought against Mr. Mondesire that **they needed to look into it**. (*Id.* p. 19, lines 8-11) (emphasis supplied).

In her Response, Respondent admits that she "authorized [the] release of *information* in accordance with the public's right to know that OAG had decided -- improperly and without

justification – to discontinue a 2009 investigation.”³ (R. Response, ¶ 13) Respondent violated CHRIA in that for purposes of a CHRIA violation, the release of the “information” contained in the documents is the equivalent of the release of the documents themselves.

Finally, Respondent’s mantra of openness and transparency rings hollow when one considers that, as found by Judge Carpenter, Respondent authorized the release of the Miletto Transcript “not ... through a traditional press release, but in a secret non-transparent manner.” *In Re: The Thirty-fifth Statewide Investigating Grand Jury*, *supra*, at *10. And the secretive nature of the act is proof from which your Honorable Supreme Court may infer that the highest law enforcement officer in the Commonwealth was engaged in improper conduct and knew that to be the case. *Cf. Commonwealth v. Snyder*, 335 Pa. Super. 19, 29, 483 A.2d 933, 938 (1984) (“Concealment of an act, which, owing to the circumstances, may or may not be criminal, has always been regarded as evidence that the act was criminal.” (quoting *Buckley v. Massachusetts Bonding & Insurance Co.*, 113 Wash. 13, 26, 192 P. 924, 929 (1920))).

³ In Respondent’s zeal to let the public know, Respondent harmed Mr. Mondesire. That Mr. Mondesire’s reputation may have already been subject to public scrutiny (R. Response, pp. 16-17 n.7) did not prevent Respondent from causing further harm to Mr. Mondesire.

III. RESPONDENT'S CONTINUED PRACTICE OF LAW IS CAUSING IMMEDIATE AND SUBSTANTIAL HARM.

Respondent asserts that no immediate or substantial harm will result from her continued practice of law. (R. Response at pp. 14-16) In support of her assertion, Respondent proffers statistics of the prosecutions that the Attorney General's Office has undertaken in the nine months following the grand jury's presentment. As more fully set forth in ODC's Petition, Respondent's continued practice of law has had, and may continue to have, negative impacts on these and other prosecutions by the Attorney General's Office. Indeed, even when the Attorney General's Office has undertaken a facially worthy prosecution, questions have surfaced whether the charges "may be inspired more by political agendas," i.e., Respondent's personal interests. (Exhibit N)

Furthermore, without in any way diminishing the merit of the Attorney General's Office's prosecutions, RPC 1.7(a)(2) focuses not only on what an attorney has done, but encompasses what an attorney may not have done due to a personal conflict of interest. As Comment [8] to the Rule explains, while there may be no direct adverseness, "a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result

of the lawyer's other responsibilities or interests." This significant unmeasurable risk, that Respondent's ability to objectively consider an appropriate course of action given her personal interests, will continue to cause immediate and substantial harm to the Commonwealth.⁴

IV. THE CONSTITUTION GRANTS THE PENNSYLVANIA SUPREME COURT THE EXCLUSIVE POWER TO REGULATE THE PRACTICE OF LAW.

Respondent protests that ODC is attempting to circumvent constitutional impeachment and removal procedures. (R. Response at pp. 17-18) Respondent overlooks the fact that the Supreme Court has the inherent and exclusive power to regulate the practice of law, which power is reasserted in the Pennsylvania Constitution, Article V, Section 10(c). See Pa.R.D.E. 103. The Court's exclusive disciplinary jurisdiction applies to **any** attorney admitted to practice law in the Commonwealth, irrespective of the job she or he may hold. Pa.R.D.E. 201(a)(1). Respondent does not fall outside the Court's disciplinary jurisdiction because she was elected

⁴ During any investigation pertaining to grand jury secrecy or CHRIA, for example, Respondent will be inclined to evaluate any factual situation and interpret any law in a manner consistent with the legal theories advanced by Respondent in her defense, e.g., R. Response, ¶¶ 14, 20-21.

to a public office.⁵

While there may be processes for "impeachment" and "removal" of an elected official (R. Response, ¶¶ 31-34), these processes do not preclude ODC from following its mandate to enforce the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement. ODC's "clear goal" (R. Response, p. 18 n.8), is not, as Respondent contends, to remove Respondent from elected office. Rather, ODC is proceeding against Respondent's license to practice law. The fact that Respondent used her public office to engage in misconduct is relevant, but does not detract from the fact that this proceeding is limited to Respondent's law license.

V. RESPONDENT HAS NO RIGHT TO A HEARING BEFORE AN ORDER OF IMMEDIATE SUSPENSION.

Respondent maintains that she has a due process right to a hearing before any disciplinary action is taken. (R. Response at pp. 18-19) Rule 208(f)(1) does not confer a right to a hearing before the Supreme Court enters an order of immediate suspension. The Rule, however, does provide a procedure for an accelerated disposition of the charges that

⁵ The Rules of Professional Conduct is a code of ethics that sets attorneys apart from other professions. An attorney's alleged ethical misconduct is to be judged by the Disciplinary Board and your Honorable Supreme Court, not the public, electorate, news media, opinion polls, or juries.

form the basis for the temporary suspension. Pa.R.D.E. 208(f)(6), (7). Thus, the Rule comports with due process. **Barry v. Barchi**, 443 U.S. 55 (1979).

WHEREFORE, ODC respectfully requests that this Court enter an Order that Respondent be suspended in accordance with Pa.R.D.E. 208(f)(2).

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel
Attorney Regis. No. 31032
Office of Disciplinary Counsel
1601 Market Street, Suite 3320
Philadelphia, PA 19103-2337
(215) 560-6296

VERIFIED STATEMENT

I, Harriet R. Brumberg, Disciplinary Counsel, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that:

I am a Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania assigned to prosecute this matter pursuant to the Pennsylvania Rules of Disciplinary Enforcement;

I am authorized to make this verified statement;

The facts contained in the attached Reply of Office of Disciplinary Counsel to Respondent's Response to the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) are true and correct to the best of my knowledge, information and belief; and

The attached Exhibits referenced in the attached Petition are, to the best of my knowledge, information, and belief, true and correct copies of the sources cited therein.

9/14/2015

Date



Harriet R. Brumberg
Disciplinary Counsel

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Kathleen Kane leaked documents from 2014, not 2009, attorney says



Lanny Davis at a press conference regarding a grand jury investigation of his client, Attorney General Kathleen Kane, in Philadelphia. (Wallace McKelvey)



By Wallace McKelvey | WMckelvey@pennlive.com

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on January 10, 2015 at 12:27 PM, updated January 10, 2015 at 2:51 PM

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PHILADELPHIA — Attorney General Kathleen Kane leaked a memo from 2014 that she believed was not part of the 2009 grand jury investigation, her attorney said.

Lanny Davis said Kane authorized what he called a "legal disclosure," through a staff member, of a 2014 memo summarizing an interview with a special agent concerning J. Whyatt Mondesire, president of the National Association for the Advancement of Colored People in Philadelphia. Mondesire had not been interviewed or brought before the 2009 grand jury, he said.

The intent, however, was not intended to hurt Mondesire but to address rampant media speculation at the time.

"She never intended to disparage [his] reputation," Davis said during a news conference Saturday in Philadelphia. "To the contrary, what she read was that he had never been interviewed or brought before the grand jury."

- [What you need to know about the grand jury leak case](#)

KANE INVESTIGATION

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Exhibit L



Politics



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John L. Miccik: Morning Coffee and More



Capitol Notebook

Davis said he believes Kane did nothing wrong in leaking the 2014 memo because she had not been sworn to secrecy in 2009 and the 2014 memo was not part of that original investigation.

Lanny Davis discusses Kathleen Kane leak inquiry

Attorney General Kathleen Kane's attorney, Lanny Davis, discusses the grand jury leak investigation in Philadelphia on Saturday, Jan. 10, 2015.

"You're in 2014, you don't worry about a 2009 grand jury," he said.

Kane was not responsible for the 2009 memo quoted in the Philadelphia Daily News article that prompted the grand jury investigation into leaks.


"Kane never saw, read or authorized the disclosure of that 2009 memo," he said.

Davis said the attorney general has not given consideration to resigning, because even an indictment is not an admission of guilt.

Amid calls for Attorney General Kathleen Kane's impeachment, leaders stress caution


"When a ham sandwich is indicted, which is what prosecutors can do, politicians call for resignations," he said.

This article has been edited to correct the content of the 2014 memo.




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POWERED BY VUZU SAFE & ANONYMOUS

IN THE SUPREME COURT OF PENNSYLVANIA

No. 197 MM 2014

IN RE: THE THIRTY-FIFTH STATEWIDE INVESTIGATING GRAND JURY

PETITION OF ATTORNEY GENERAL KATHLEEN G. KANE

SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF ATTORNEY GENERAL KATHLEEN G. KANE'S
QUO WARRANTO ACTION

Proceedings upon Attorney General Kathleen G. Kane's December 18, 2014 *Quo Warranto* Action in this Court's Original Jurisdiction pursuant to Pa. C.S. § 721

PETITIONER'S BRIEF

Amil M. Minora, Esq.
Minora, Minora, Colbassani,
Krowiak, Mattioli & Munley
Attorney ID: 22703
700 Vine Street
Scranton, PA 18510
(570) 961-1616

Gerald L. Shargel, Esq.
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
(212) 294-2637

*Attorneys for Attorney General
Kathleen G. Kane*

Received in Supreme Court

FEB 4 2015

Middle

As “Special Prosecutor,” Mr. Carluccio was charged with investigating whether the Office of Attorney General unlawfully disclosed confidential grand jury material. The material at issue included two memoranda: one drafted in 2009 and the other in 2014. Both related to a 2009 grand jury proceeding.

On September 11, 2014, Attorney General Kane received a subpoena under which she was ordered to appear as a witness before the Pennsylvania Statewide Investigating Grand Jury “to testify and give evidence regarding alleged violations of the laws of the Commonwealth of Pennsylvania[.]”¹ The subpoena was signed by Supervising Judge William R. Carpenter. It instructed Attorney General Kane to direct any questions about her appearance to Thomas Carluccio.

On November 17, 2014, Attorney General Kane appeared as ordered before the grand jury. She answered each question posed by Mr. Carluccio, and her answers were absolutely truthful. She told the grand jury that she had authorized the release of the 2014 memorandum, because she believed it did not contain confidential grand jury information, and because she believed strongly in a policy of public transparency. She told the grand jury that she did not authorize the release of the 2009 memorandum, and indeed had never even seen it.

On December 18, 2014, Attorney General Kane filed a *quo warranto* action in this Court to quash the appointment of Thomas E. Carluccio, Esq. as Special Prosecutor for the 35th Statewide Investigating Grand Jury, as unlawful and unconstitutional. (Exhibit C, Memorandum of Law in Support of Attorney General Kathleen G. Kane’s *Quo Warranto* Action, at 1-2.) Attorney General Kane argued that Judge Carpenter’s appointment of a Special Prosecutor was

¹ This subpoena is not attached as an exhibit because it remains sealed as part of the underlying grand jury proceeding. It was not part of the record at the time this *quo warranto* action was unsealed.

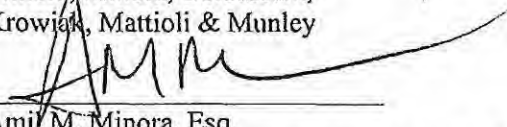
Conclusion

For the reasons set forth above, and in our opening Memorandum of Law, Attorney General Kane's *quo warranto* action should be granted.

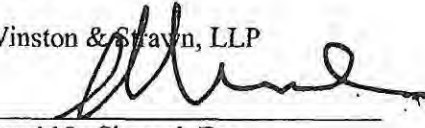
Judge Carpenter exceeded his authority in unilaterally appointing a Special Prosecutor to conduct an investigating grand jury into the actions of the Office of Attorney General. He deputized a Special Prosecutor with all of the powers of the executive branch – powers that were not his to delegate. He acted without statutory authority, and in contravention of this Court's precedent. Mr. Carluccio's appointment should be quashed as unlawful and invalid, and any report or presentment issuing from this investigating grand jury should be vacated.

Dated: February 3, 2015

Minora, Minora, Colbassani,
Krowiak, Mattioli & Munley


Ami M. Minora, Esq.
Attorney for Attorney General Kathleen G. Kane
Attorney ID: 22703
700 Vine Street
Scranton, PA 18510
(570) 961-1616

Winston & Strawn, LLP


Gerald L. Shargel, Esq.
Attorney *Pro Hac Vice* for Attorney General
Kathleen G. Kane
200 Park Avenue
New York, NY 10166
(212) 294-2637

IN THE SUPREME COURT OF PENNSYLVANIA
HARRISBURG DISTRICT

IN RE:

THE THIRTY-FIVE STATEWIDE
INVESTIGATING GRAND JURY

SUPREME COURT OF
PENNSYLVANIA NO. 176 M.D.
MISC. DKT. 2012

MONTGOMERY COUNTY
COMMON PLEAS
M.D. 2644-2012

QUO WARRANTO ACTION

197 MM 2014

PROOF OF SERVICE

I hereby certify that on February 3, 2015, I caused the service of a Supplemental Memorandum of Law in Support of Attorney General Kathleen G. Kane's *Quo Warranto* Action in a the above-captioned *Quo Warranto* Action upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

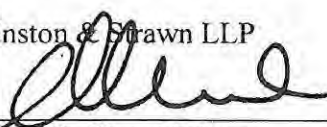
Service by Federal Express addressed as follows:

Thomas E. Carluccio
Special Prosecutor
(484) 674-2899
Law Office of Thomas E. Carluccio
1000 Germantown Pike, Suite D-3
Plymouth Meeting, PA 19462

Hon. William H. Carpenter
Court of Common Pleas
Montgomery County Court House
2 East Airy Street
P.O. Box 311
Norristown, PA 19404

Date: February 3, 2015

Winston & Strawn LLP


Gerald L. Shargel, Esq.
Attorney for Attorney General Kathleen G. Kane
200 Park Ave., New York, NY 10166
(212) 294-2637

Received in Supreme Court

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Kane dodges 'political' question with non-sequitur



Pennsylvania Commonwealth Media Services
Pennsylvania Attorney General Kathleen Kane announces charges against former Harrisburg Mayor Stephen R. Reed during a news conference Tuesday, July 14, 2015, in Harrisburg.



By Brad Bumsted
Saturday, July 18, 2015, 9:00 p.m.

HARRISBURG

Attorney General Kathleen Kane sometimes overstates her case. She'll be doing fine, then, WHAM, she veers off into the deep end.

Her comment at a press conference last week was minor in the scheme of things. But it was, perhaps, telling.

Kane, a Democrat, announced criminal charges against former Harrisburg Mayor Stephen Reed on 499 counts of corruption. Kane, who might soon face criminal charges herself in a Montgomery County investigation of her conduct, generally handled herself well at the news conference detailing the grand jury presentment against Reed, once viewed as the capital's Democrat "mayor for life." Reed was defeated in 2009.

Reed was accused of an array of charges — from theft, to bribery, for manipulating bond proceeds to pay for his pet projects, including a Wild West Museum in Harrisburg to go with the Civil War Museum he initiated. He traveled throughout the West collecting cowboy-type artifacts for the museum that never materialized.

Many of those artifacts were found in his home when agents from the Attorney General's Office executed a search warrant. He also was collecting sports memorabilia for a sports museum that was more dream than reality. His attorney says he looks forward to "complete vindication."

Again, Kane deserves credit for seeming to have command of the facts in the complex case and for answering questions — without hesitation — about the investigation she faces. I thought beforehand she would duck those questions; many pols would do so, citing "the advice of counsel."

Montgomery County District Attorney Risa Vetri Ferman, a Republican, is reviewing a statewide grand jury's recommendations to charge Kane with perjury, obstruction of justice and official oppression stemming from a 2014 grand jury leak of secret 2009 material. Kane denies any wrongdoing.

From a public relations standpoint, Kane appeared spot-on at the Reed announcement. But one thing was bothersome: Kane

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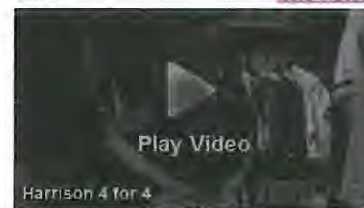


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Exhibit N

was asked about Reed's attorney's contention that the charges "may be inspired more by political agendas."

The basis of the question was that Kane might be attempting to take heat off her own legal woes.

Her response: "I don't even know what party Mr. Reed is,"

Kane said.

That shows, she said, that she was not political.

Huh?

Google + Reed was mayor for 28 years. He was, prior to the charges, an institution, who vastly improved the city. Kane investigated

Reddit Reed for almost two years. Kane took office in 2013. Kane in 2008 worked on Hillary Clinton's Democrat primary campaign in Pennsylvania.

Blogger She had previous PR scrapes, like suggesting on national television that pornography her office discovered in the AG's office under her predecessors included child porn. It didn't and stole the moment from her.

On another occasion, when announcing her report of why it took so long to charge convicted child molester Jerry Sandusky, Kane backtracked from remarks — not included in her report — suggesting there were two additional victims in 2009 as the investigation plodded along. Ex-prosecutors who handled the case flatly denied it.

Kane's remark on Reed was an "honest answer" — not a mistake, said her spokesman, Chuck Ardo. Brad Bumsted is the Trib's state Capitol reporter (717-787-1405 or bumsted@tribweb.com).

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IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2202 Disciplinary Docket
Petitioner : No. 3
:
: Board File No. C3-15-558
:
v. :
: Atty. Reg. No. 69680
KATHLEEN GRANAHAHAN KANE, :
Respondent : (Dauphin)

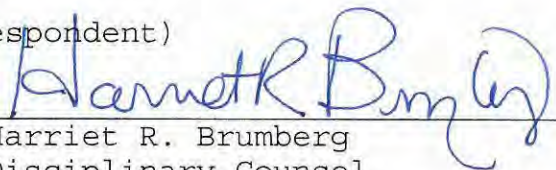
CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of the Reply of Office of Disciplinary Counsel to Respondent's Response to the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) and all accompanying documents upon James F. Mundy, III, Esquire, counsel for Respondent, 527 Linden Street, Scranton, PA 18503-1605, by electronic transmission in the form of email, as requested by Mr. Mundy, addressed to:

JFMUNDY52@gmail.com

(Counsel for Respondent)

Date: 9/14/2015



Harriet R. Brumberg
Disciplinary Counsel
Attorney Registration No. 31032
Office of Disciplinary Counsel
1601 Market Street, Suite 3320
Philadelphia, PA 19103
(215) 560-6296

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	DISCIPLINARY BOARD OF THE
	:	SUPREME COURT OF PENNSYLVANIA
Petitioner	:	
	:	NO.: 2202 DDB 3
VS.	:	
	:	ATTORNEY REGISTRATION #: 69680
KATHLEEN GRANAHAHAN KANE	:	
	:	(DAUPHIN COUNTY)
Respondent	:	

ORDER

PER CURIAM:

AND NOW, this _____ day of _____, 2015, an Order and Rule to Show Cause having been entered by this Court on _____, and upon consideration of the responses filed, it is hereby ORDERED that the Rule is WITHDRAWN.

BY THE COURT:

J.

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	DISCIPLINARY BOARD OF THE
	:	SUPREME COURT OF PENNSYLVANIA
Petitioner	:	
	:	NO.: 2202 DDB 3
VS.	:	
	:	ATTORNEY REGISTRATION #: 69680
KATHLEEN GRANAHAHAN KANE	:	
	:	(DAUPHIN COUNTY)
Respondent	:	

**RESPONDENT'S RESPONSE TO THE PETITION FOR EMERGENCY TEMPORARY
SUSPENSION AND RELATED RELIEF PURSUANT TO P.A.R.D.E. 208(F)(1)**

INTRODUCTION

1. This Response to the *Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1)*, dated August 25, 2015 ("Petition") and *Rule to Show Cause*, dated August 28, 2015, is respectfully submitted on behalf of Attorney General Kathleen G. Kane.
2. The Petition raises three allegations against Attorney General Kane, all of which are false.

3. The Petition alleges that:
 - a. Attorney General Kane authorized or directed disclosure of a March 21, 2014 transcribed interview of OAG Agent Michael A. Miletto (hereafter the “Miletto Transcript”)¹ (Petition ¶ 25);
 - b. Disclosure of the Miletto Transcript constituted egregious misconduct because it contained investigative information under CHRIA (Petition ¶ 26); and
 - c. Failure to investigate the disclosure of protected grand jury material constituted egregious misconduct (Petition ¶ 29).
4. In reality, as supported by the facts of this case and Pennsylvania law:
 - a. Attorney General Kane authorized only the release of *information* relating to a pattern of unjustifiable selective prosecution or non-prosecution by OAG before she took office – information that the public had a right to know, and that was not protected under either the Investigating Grand Jury Act or CHRIA;
 - b. Even if Attorney General Kane had authorized disclosure of the Miletto Transcript, that document did not contain investigative information as defined by CHRIA; and

¹ The Miletto Transcript is attached hereto as Exhibit A.

- c. Attorney General Kane made the considered decision not to investigate the potential leak of protected grand jury information, in order to avoid interfering with the Special Prosecutor's already-ongoing investigation. That decision was appropriate and correct under the circumstances, and in any event was a legitimate exercise of prosecutorial discretion that cannot form the basis of disciplinary charges.

5. As detailed below, none of the allegations raised in the Petition are true and correct. And, the facts and circumstances of this case make clear that Attorney General Kane had *no intent* to commit any misconduct. Rather, her demonstrated intent was to inform the public of a troubling pattern of selective prosecution or non-prosecution by OAG, a public information role that is an inherent part of her duties as Attorney General and in proper furtherance of the public's right to know. Therefore, there is no basis whatsoever for a finding that Attorney General Kane engaged in "egregious misconduct" sufficient to justify an Emergency Temporary Suspension.

6. Further, an Emergency Temporary Suspension is unwarranted because the Petition fails to address the applicable legal standard: Attorney General Kane's fitness to practice law as a member of the Pennsylvania Bar. The Petition only (improperly) alleges abstract prejudice that could accrue *from her continuing to serve as Attorney General*. Emergency Temporary Suspension is warranted only if the Office of Disciplinary Counsel can establish that "immediate and substantial" harm would result from her continued practice of law – not from her continuing to serve in elected office.

7. An Emergency Temporary Suspension is also unjustified because it represents an impermissible attempt to circumvent the formal impeachment and removal processes as set forth in Article VI of the Pennsylvania Constitution. Under the Constitution, the Office of Disciplinary Counsel has no power to engage in the *de facto* impeachment or removal of an elected official – here the Commonwealth’s chief law enforcement officer – under the guise of a disciplinary proceeding. Since Article IV requires the Attorney General to be a member of the bar of the Supreme Court of Pennsylvania, , a loss of this status may require forfeiture of the Office of Attorney General.

8. Finally and most importantly an Emergency Temporary Suspension issued by Petition and Rule would result in the deprivation of constitutionally protected property right: the right to continue to practice a lawful acquired profession without due process of law

ARGUMENT

A. Attorney General Kane Authorized Only Disclosure of Information, in Accordance with the Public’s Right to Know

9. The allegations in the Petition are grounded in the false premise that Attorney General Kane directly authorized or directed disclosure of the Miletto Transcript.

10. As the Office of Disciplinary Counsel “is not proceeding on the substantive allegations of criminal wrongdoing contained in the Affidavit” (Petition ¶ 10 n.2), the Petition must rely on Attorney General Kane’s grand jury testimony.²

² A Transcript of Attorney General Kane’s testimony before the Grand Jury, dated November 17, 2014 (“Tr.”), is attached hereto as Exhibit B.

11. As Attorney General Kane repeatedly explained in her sworn grand jury testimony, she authorized only the release of *information* relating to a 2009 OAG decision to discontinue an investigation, and the pattern of selective prosecution or non-prosecution that it demonstrated. She did not authorize or direct the disclosure of any particular document, including but not limited to the Miletto Transcript.

Attorney General Kane's testimony before the grand jury was as follows:

Q: Do you have any idea how that specific document got to the press?

A: I don't know what [First Deputy] Adrian [King] gave to Josh [Morrow]. (Tr. at 34:20-22.)

Q: But the article said – they specifically quoted that document. Do you know how – again, do you know how that specific document got to the press?

A: I did not give this document to the press. I did not direct Adrian to give specific documents to the press. What I said to Adrian was is people need to know about this. He agreed. (Tr. at 35:3-9.)

Q: So what was your understanding of what documents were going to Josh Morrow and to the press?

A: Well, there was no understanding. You know, it was a simple conversation with Adrian. People need to know about this. (Tr. at 35:24-36:3.)³

³ The Petition states that one of Attorney General Kane's attorneys (actually legal strategist Lanny J. Davis) in a press statement "admitted that she authorized the disclosure" of the Miletto Transcript. (Petition ¶ 24.) Mr. Davis' comment to the press was incorrect. The true and correct facts – which are that Attorney General Kane authorized the release of *information*, not of any specific document – are contained in Attorney General Kane's sworn grand jury testimony.

The Petition likewise states that in a Memorandum of Law submitted to the Pennsylvania Supreme Court, Attorney General Kane's attorneys stated that she testified before the grand jury that "she had authorized the release" of the Miletto Transcript. (Petition ¶ 24 n.3.) This statement is likewise incorrect. It was made without the benefit of the grand jury transcript, which was not available to Attorney General Kane's attorneys at the time the Memorandum was filed.

In fact, during the grand jury proceedings even Special Prosecutor Carluccio – at Attorney General Kane’s prompting – began correctly referring to the release of “information”:

Q: So did you discuss anything to do with bringing these documents to the press so that they can have it?

A: I didn’t know about the 2009 document. So when you say documents –

Q: Information. (Tr. at 32:21-25.)

Q: So who did you counsel besides Adrian King about getting this information to the press or this memo that you talk about? (Tr. at 33:12-14.)

Q: And again, how did you arrange for this information to get to the press? (Tr. at 33:18-19.)

Q: Did you call him or what? What was your conversation with Adrian before he left that evening?

A: About what?

Q: About the information that you wanted to get out. (Tr. at 39:9-12.)

Q: And you felt you needed to get that information out there?

A: *We felt we needed to get the information out that there was a viable [prosecution] that Agent Miletto felt that he should have been investigating, but was denied the opportunity to investigate him, that he should have been prosecuted or could have been prosecuted.* (Tr. at 41:5-11) (emphasis added).

Q: Did you ever – before you released it to the press, did you make sure with Bruce Beemer that this information – did you tell him that you were going to release information to the press to make sure that didn’t happen? (Tr. at 43:21-24.)

12. Attorney General Kane testified that although there was no discussion or decision that specific documents would be disclosed, she “would assume” that Adrian King may have taken the Miletto Transcript when he met with Josh Morrow, and may have provided that document to Morrow, if he provided anything. (Tr. at 36:1-37-19.) Those comments were made with the important caveat, however, that she did *not* authorize or direct any disclosure of documents, and has no knowledge of what King may have actually provided Morrow:

Q: It’s your assumption that Adrian King went somewhere and got this memorandum from Bill Davis and this interview?

A: No. That is not my assumption. I don’t know what Adrian did. We did not discuss which memorandum or what he had or what he gave to Josh. We didn’t discuss it.

Q: Okay. Did you ever give him a package to give to Josh Morrow?

A: No.

Q: Did you have anyone prepare a package that went to Josh Morrow?

A: No.

Q: So you don’t know anything about the documents that actually went out of your office to Josh Morrow?

A: No, I don’t.

Q: Through Mr. King?

A: No. (Tr. at 36:17-37:9.)

This falls far short of the allegation in the Petition that Attorney General Kane authorized or directed disclosure of the Miletto transcript. As the Office of Disciplinary Counsel “is not proceeding on the substantive allegations of criminal wrongdoing contained in the Affidavit” (Petition ¶ 10 n.2), the plain language of Attorney General Kane’s grand jury testimony must control.

13. Attorney General Kane authorized this release of *information* in accordance with the public’s right to know that OAG had decided – improperly and without justification – to discontinue a 2009 investigation. She viewed this as part of a troubling pattern of selective prosecution or non-prosecution by OAG.

Attorney General Kane's testimony before the grand jury makes this clear:

Agent Peifer's memo summarizing Agent Miletto's testimony of 2014, after the meeting that we had, Adrian and I said, you know, *this is a pattern that has been developing. This is not right. This is a pattern of non-prosecutions, and this was somebody who could have been prosecuted except for the lapse of time that had occurred. And we said that it's the public's right to know what is happening in the office, as I've always said. And agent – Adrian and I then said well, then let's put it out into the press, and we did.* (Tr. at 27:24-28:8) (emphasis added).

So when afterwards, we said, you know, this isn't right. This is a pattern, and people need to know what's happening. And, you know, we put things, information out into the press every single day, multiple times a day. It is our belief and it's still my belief that people have a right to know what you're doing and what you're not doing. I answer those questions all the time and, you know, sometimes it's, it's – the press is tough on you, but that's ok. It's their right to know. So Adrian and I, I said this isn't right. People need to know. He said I agree, and we said we need to put this out into the press. (Tr. at 29:11-23) (emphasis added).

And I'm just – you know, I believe that all prosecutions need to be done fairly and evenly across the board. I don't care who you are. I don't care what party you come from. It doesn't matter to me. It's gotta be done in an evenhanded way. And if it isn't, then I think the public needs to know. There's no way we're gonna be better government if it isn't exposed to the light of day, and same with me. You know, if I make a mistake, then yes, people need to know I make a mistake. You know, I'm an elected official, and they need to know that for the next election or even to hold me accountable now. (Tr. at 31:25-32:11.)

People need to know about this. This is a developing pattern of perhaps selective prosecution or non-prosecutions. It was something that our office had, you know, been under questioning for before, whether we prosecuted, why we prosecuted or why we didn't prosecute. So it is a legitimate inquiry, and we felt that it was important that people know that as well, and that, that was about it. (Tr. at 36:2-9) (emphasis added).

14. The release of information about historical charging decisions made by OAG – particularly when those decisions demonstrate a pattern of unjustifiable selective prosecution or non-prosecution – is clearly warranted and proper. We submit that the release of such information by an elected official (the chief law enforcement officer of the Commonwealth) is not only proper, but commendable.

15. A finding here that Attorney General Kane’s decision to release information about a troubling pattern of selective prosecution or non-prosecution by OAG constitutes “egregious misconduct” would, we respectfully submit, set a disastrous precedent for law enforcement officers in the Commonwealth of Pennsylvania going forward.

16. The Petition is also wrong in alleging that Attorney General Kane in her grand jury testimony “admitted that she authorized the disclosure of information” from the 2009 investigating grand jury. (See Petition § 23.)

This allegation is based on a mischaracterization of Attorney General Kane’s grand jury testimony. As detailed above, Attorney General Kane authorized the release of *information* regarding a pattern of selective prosecution or non-prosecution by OAG. This was not protected grand jury information under the Investigating Grand Jury Act. See 42 Pa.C.S.A. § 4549(b) (regulating disclosure only of “matters occurring before the grand jury.”).

Attorney General Kane’s grand jury testimony demonstrates that she did not believe that any protected grand jury information would be disclosed. In addition to her own judgment, no one on the experienced OAG staff contemporaneously raised the possibility that information relating to the pattern of selective prosecution or non-prosecution, or information in the Miletto Transcript, was protected grand jury material:

Bruce Beemer was there. I didn't have to ask him. If Bruce Beemer for one second thought it was Grand Jury information, Bruce Beemer would have said we're not even talking about this. We're not even going to look at any documents. Everybody stop, get out the oath, and everybody sign the secrecy oath. He would have done it if he thought so. I would have done it if I thought so. Agent Peifer would have done it if he thought so, and whoever else was there would have done it. You would think that if that room was filled with all these experienced prosecutors and this was Grand Jury information, one of them would have said stop, everybody stop, we're not going to talk about this. We're not going to look at it. This is Grand Jury, but they did not because it was not. (Tr. at 43:7-20.)

I did not tell Mr. Beemer that, and I did not need to ask his opinion. He would have voiced it. He was at the briefing with Agent Peifer with me. We would not even have let Agent Peifer go on. Agent Peifer himself would have said before we go on, I have Grand Jury information to tell you, and we all would have stopped. If Agent Peifer perhaps made a mistake and started telling us about Grand Jury information, either myself or Bruce Beemer would have said wait a second. This is Grand Jury information. Stop. We're not even talking about it, and we would have gone down the hallway to get the oath of secrecy. He did not do that. (Tr. at 43:25-44:11.)

What Agent Peifer told us – and again, Agent Peifer is one of the best police officers I've had the privilege of working with. If Agent Peifer for one second thought that this was Grand Jury information, he himself before he talked to Agent Miletto or if he realized during his interview with Agent Miletto that this was Grand Jury information subject to a secrecy law, Agent Peifer would have stopped immediately and signed a secrecy oath. When Agent Peifer came to us, he would have said before my briefing this is Grand Jury information, you need to sign the oaths. That would have happened. Before that staff meeting, if Agent Peifer said to everyone this is Grand Jury information or if anyone at the meeting thought that it, in fact, was Grand Jury information, we would have immediately stopped to sign the oath. (Tr. at 46:12-47:2.)

17. Based on Attorney General Kane's unequivocal sworn testimony before the grand jury, the Petition is wrong in alleging that Attorney General Kane directly authorized or directed disclosure of the Miletto Transcript, or that she admitted authorizing the release of protected grand jury information.

B. The Miletto Transcript Does Not Fall Within the Scope of the Criminal History Record Information Act (CHRIA)

18. The Petition is also wrong in alleging that Attorney General Kane "engaged in egregious misconduct" by disclosing information in violation of CHRIA, because the Miletto Transcript contained no such information. (See Petition ¶¶ 18-21.)

19. CHRIA regulates disclosure of "investigative information" as defined in 18 Pa.C.S.A. § 9102 ("Investigative information.' Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.").

20. The Miletto Transcript does not contain "investigative information," because OAG did not conduct an "investigation" or "inquiry" in 2014 as those terms are defined under CHRIA. OAG conducted an internal review and legal analysis of an historical OAG charging decision. OAG reviewed the decision to discontinue a 2009 investigation, attempted to determine why that decision was made, and conducted a legal analysis to determine if any potential charges had survived the statute of limitations.

The Miletto Transcript did not reflect an inquiry or investigation “into a criminal incident or an allegation of criminal wrongdoing” – rather, it reflected an examination and appraisal of historical OAG decision-making. A review of the Miletto Transcript demonstrates that this was the clear focus of the transcribed interview. This does not constitute “investigative information” under CHRIA.

21. Attorney General Kane’s grand jury testimony confirms that OAG did not undertake an investigation in 2014:

The memo, Agent Peifer prepared a memo that he brought to the staff meeting within a couple of days of interviewing Agent Miletto, came into my office, as I said, with Mr. Beemer there right before a staff meeting, told me that he had spoken with Agent Miletto. He had, you know, a document in his hand. He briefed me on what it was. I said to Agent Peifer that he needed to get together with Mr. Beemer and make sure that if there were criminal charges to be either investigated or brought against Mr. Mondesire that they needed to look into it. (Tr. at 19:2-11.)

My concern then was, as I said to Agent Peifer and to Bruce Beemer, was take a look at the case. You two get together, take a look at the case and see whether there’s any investigation or prosecution that needs to be brought forth against Mr. Mondesire. (Tr. at 22:5-9.)

OAG’s legal analysis determined that there were no potential charges to be investigated, as they were all barred by the statute of limitations. (Tr. at 23:2-10.) Therefore a 2014 investigation was never conducted, an inquiry “into a criminal incident or an allegation of criminal wrongdoing” was never performed, and “investigative information” was never generated.

22. Further, even if the Court were to disagree with Attorney General Kane’s interpretation and conclude that CHRIA did prohibit disclosure of the Miletto Transcript, there would be no basis for a finding of “egregious misconduct” justifying an Emergency Temporary Suspension.

First, there is no basis for concluding that Attorney General Kane made any disclosure in bad faith, or that she intentionally or knowingly violated CHRIA. Second, CHRIA is not a criminal statute, and violations can result in only general administrative sanctions (Section 9181) and potential civil actions (Section 9183). Such a violation could not constitute “egregious misconduct,” let alone egregious misconduct resulting in “immediate and substantial” harm sufficient to warrant Emergency Temporary Suspension.

23. For all of these reasons, the allegation that Attorney General Kane “engaged in egregious misconduct” by disclosing information in violation of CHRIA must fail. And, even had a CHRIA violation occurred (which it did not), we respectfully submit that would not justify an Emergency Temporary Suspension.

C. Attorney General Kane Did Not Improperly Fail to Investigate the Alleged Release of Grand Jury Information

24. The Petition is wrong in alleging that Attorney General Kane “engaged in egregious misconduct by failing to investigate” the release of “secret information from the 2009 GJ.” (See Petition § 29.)

25. Attorney General Kane testified before the grand jury that this was not a “failure” to investigate, at all. Rather, she made the considered decision not to investigate any potential leak of grand jury information to avoid interfering with the Special Prosecutor’s already-ongoing investigation⁴:

⁴ (See In re: The Statewide Investigating Grand Juries, Order of Supervising Judge William R. Carpenter, dated May 29, 2014, appointing Special Prosecutor Carluccio to “investigate and prosecute to the maximum extent authorized by law any offenses related to any alleged illegal disclosure of information protected by the law and/or intentional and/or negligent violations and rules of Grand Jury secrecy as to a former Statewide Investigating Grand Jury[.]”)

Q: So what was your reaction again when you read the article and found out they had this memo from 2009 that said Frank Fina coming from the office? What was your reaction to that?

A: Well, my reaction was is that you were appointed to look into how and why.

Q: Okay. Did you do any internal investigation on that?

A: We couldn't. We couldn't do an internal investigation because that would be seen as interfering with your investigation, and we didn't want to do that.

Q: I mean, asking anybody. Did anybody in this office leak it? Did you ask anybody those questions?

A: Mr. Beemer, he was looking to see what the allegations were, what the – what the elements were, what the article was about. I know he had conversations with the judge. I'm not sure whether he had them with you as well about what we could do to help. There was nothing that anyone wanted us to do. Mr. Beemer asked me whether we should start an Office of Professional Responsibility internal investigation, and I felt that may be seen as interfering with your investigation, so I said no, to allow you to do your investigation. (Tr. at 13:11-14:8.)

26. Based on Attorney General Kane's sworn testimony before the grand jury, and her credible explanation for OAG's decision not to investigate, the Petition is wrong in alleging that she improperly failed to investigate the alleged disclosure of grand jury information.

D. The Petition Fails to Demonstrate that Attorney General Kane's Continued Practice of Law Is Causing Immediate and Substantial Harm

27. The Petition fails to meet the statutory standard for Emergency Temporary Suspension under the Pennsylvania Rules of Disciplinary Enforcement. (See Petition ¶¶ 34-37.)

28. Under Pa.R.D.E. 208(f)(1), the Disciplinary Counsel must produce an "affidavit demonstrating facts *that the continued practice of law* by a person subject to these rules is causing immediate and substantial public or private harm because of ... egregious conduct[.]" Pa.R.D.E. 208(f)(1) (emphasis added).

29. The Petition in this case fails to meet the statutory standard because it does not address any potential harm that could be caused by “the continued practice of law” by Attorney General Kane. Instead, it addresses a wholly different question: potential harm that could supposedly be caused by Attorney General Kane’s *continued employment in her current position*. In other words, the alleged harm in the Petition does not flow from her continued membership in the Pennsylvania Bar, but rather from her position as Attorney General. This is not the standard set by statute, see Pa.R.D.E. 208(f)(1), and therefore the Petition is deficient.⁵

30. Further, the arguments in the Petition as to potential “immediate and substantial public or private harm” are specious.

The Petition argues that “it is a concurrent conflict of interest” for Attorney General Kane to continue in her position while being prosecuted. (Petition ¶ 34 at p. 16.) In support, the Petition offers only the vague claim that Attorney General Kane could not fulfill her “duty of loyalty and to exercise independent judgment on behalf of the Commonwealth.” (See Petition ¶ 34 at p. 17). This argument is wrong. The Commonwealth has lodged nothing but an *accusation* against Attorney General Kane. She intends to present a vigorous defense to this accusation. And, she can and will defend herself while concurrently investigating and prosecuting crimes

⁵ The Petition also claims, without citation, that “[t]he public’s confidence and trust in Respondent’s continued practice of law has been totally eroded, as evidenced by the Governor, leaders from both Houses, and the electorate all requesting that Respondent resign.” (Petition ¶ 34 n.10.) Again, the Petition conflates purported “confidence” in Attorney General Kane’s ability to hold her elected office with confidence in her ability to practice law. (How the Office of Disciplinary Counsel can purport to speak for the “electorate” – which expresses itself only in the voting booth, which last did so when it elected Attorney General Kane, and whose decision will be nullified if she is removed from office by suspension – is a mystery.)

committed by others. There is no inherent conflict of interest in this position.⁶ A decision to the contrary would also establish a categorical rule that an elected official *must* step down or be removed from office after a mere *allegation* – by any person – of any crime. Such a rule does not exist, nor should it. It would be ripe for abuse by overzealous prosecutors seeking to usurp the will of the People by removing elected office-holders by way of unfounded criminal accusation.

The argument that Attorney General Kane cannot continue to fulfill her duties is also belied by the facts: in the nine months following the grand jury presentment in this case, OAG announced 35 child predator arrests, 645 drug arrests, and a third settlement with electric generation suppliers to return \$2.4 million to consumers (in addition to their previous payout of \$4.1 million); in the 15 months following the first news stories cited in the charges, OAG announced 247 child predator arrests and 1,174 drug arrests; since Attorney General Kane took office, there has been an 800% increase in child predator arrests and a 30% increase in drug arrests. These statistics demonstrate beyond any doubt that Attorney General Kane has suffered no impediment to fulfilling her “duty of loyalty and to exercise independent judgment on behalf of the Commonwealth.”⁷

⁶ Rules 1.7 and 1.8 of the Pennsylvania Rules of Professional Conduct address “Conflict of Interest.” Neither rule is violated by an individual personally being a defendant in one case, and functioning as a prosecutor in another.

⁷ The Petition also alleges that J. Whyatt Mondesire suffered “immediate and substantial private harm” as a result of Attorney General Kane’s conduct. (Petition ¶ 30.) Among other things, Mondesire testified “that following the publication of articles containing information about the 2009 GJ, ‘public opinion of him changed,’” and “people ‘questioned whether he had done something dishonest.’” (*Id.*) Mondesire’s claim is belied by the facts. Articles raising questions about Mondesire’s finances and suggesting wrongful conduct on his part appeared repeatedly between January and May of 2014 – all before the publication of the June 6, 2014 article at issue. (*See* Exhibit C, Articles.) “Public opinion” of Mondesire had therefore already

E. The Petition Attempts to Unlawfully Circumvent Constitutional Impeachment and Removal Procedures

31. The Pennsylvania Constitution provides a set procedure for impeachment or removal of an elected official. See Pa. Const. Art. VI §§ 4-7. The Petition attempts to unlawfully circumvent this procedure by engaging in the *de facto* impeachment or removal of Attorney General Kane under the guise of a disciplinary proceeding. (See Petition ¶¶ 32-37.)

32. Under the Pennsylvania Constitution, the House of Representatives – not the Disciplinary Board – holds the “*sole* power of impeachment.” Pa. Const. Art. VI § 4 (emphasis added). “All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.” Id. at § 5. With regard to removal, “[a]ll civil officers elected by the people ... shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.” Id. at § 7.

33. The procedure set forth in the Pennsylvania Constitution “has been held to be ‘exclusive and prohibitory of any other method’” of impeaching elected officials or removing them from office. See Birdseye v. Driscoll, 534 A.2d 548, 551 (Pa. Cmwlth. 1987) (as elected constitutional officer, district attorney may be removed from office only by following Constitutional procedure). When an action conflicts with Constitutional procedure by “providing an alternative method of removing [elected officials] from office, it must fail.” See id.; see also Citizens Committee to Recall Rizzo v. Bd. of Elections, 470 Pa. 1, 27 (1976) (“For constitutional

“changed” for the worse – and people already “questioned whether he had done something dishonest” – before the June 6, 2014 article appeared.

officers, or officers created by the Constitution, the methods of removal provided for in Article VI, Section 7, are exclusive.”).

34. In this case, the Petition plainly attempts to circumvent Constitutional procedures by removing Attorney General Kane from elected office through a Disciplinary Board Proceeding. (See Petition ¶ 37) (“In sum, Petitioner has demonstrated that Respondent’s continued practice of law will result in the Commonwealth lacking a loyal chief law enforcement officer [.]”). This unlawful effort at *de facto* impeachment or removal, which directly conflicts with the set provisions of the Pennsylvania Constitution, must fail.⁸

F. An Emergency Temporary Suspension Would Result in the Deprivation of Attorney General Kane’s Constitutional Rights Without Due Process of Law

35. An Emergency Temporary Suspension would violate Attorney General Kane’s constitutional due process rights.

This Court has firmly established that the right to pursue a livelihood or profession is a right fully protected by Article I Section 1 of the Constitution of the Commonwealth of Pennsylvania. Kahn v State Board of Auctioneer Examiners, 577 Pa. 166 (2004). Thus before an individual can be deprived of this right he or she must be afforded due process of law. Pa. Const. Art. I §§ 1, 9, 11; Lyness v Com. State Bd. Of Medicine, 529 Pa.535 (1992). Entitlement to due process emanates not only from the Pennsylvania Constitution, but further implicates the Fourteenth Amendment of the Constitution of the United States. Pennsylvania Game Com’n v

⁸ Although removal of Attorney General Kane from her elected office is the clear goal of the Office of Disciplinary Counsel in this proceeding, it is far from clear that an Emergency Temporary Suspension would in fact automatically result in her removal. (See Charles Thompson, Bid to Suspend Pa. Attorney General Kathleen Kane’s Law License Moves Controversy Deeper into Uncharted Waters, Pennlive, available at: http://www.pennlive.com/midstate/index.ssf/2015/08/heres_what_next_in_the_battle.html, August 31, 2015.)

Marich, 542 Pa. 226 (1995). Regarding due process this Court has stated, “[w]hile not capable of exact definition, the basic elements of procedural due process are adequate notice, opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction of the case.” Commonwealth v Thompson, 444 Pa.312, 316, 281 A2d 856.858(1971).

In this case, the Petition demonstrates a compelling need for a hearing before an impartial fact finder, before any disciplinary action could be taken. The central facts of this case are in dispute, and due process demands more than mere allegations set forth in a Petition before Attorney General Kane’s right to pursue her profession could be curtailed.

The due process concerns in this case also run deeper than a vested property right, or Attorney General Kane’s right to continue in the Office to which she was elected. The allegations in the Petition are closely related to a criminal case currently pending against Attorney General Kane. The totality of the circumstances therefore entitle Attorney General Kane to the full constitutional safeguards provided by the Fourth, Fifth and Sixth Amendments to the Constitution of the United States, and guaranteed to all citizens by the due process clause of the Fourteenth Amendment. These rights include the right be heard, to confront witnesses and to have her fate decided by a fair and impartial jury, before an adverse ruling can be entered.

CONCLUSION

For the reasons set forth above, we respectfully submit that the *Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1)* should be denied.

Dated: 09/04/15

/s/ Ross M. Kramer
Ross M. Kramer, Esquire
Admitted Pro Hoc Vice: 4368171

/s/ Gerald L. Shargel
Gerald L. Shargel, Esquire
Admitted Pro Hoc Vice: 1068915

ATTORNEYS FOR RESPONDENT
200 Park Avenue
New York, NY 10166-4193
(212) 294-6700

/s/ James F. Mundy
James F. Mundy, Esquire
Attorney I.D. #: 08499

/s/ James J. Powell, III
James J. Powell, III, Esquire
Attorney I.D. #: 08431

ATTORNEYS FOR RESPONDENT
527 Linden Street
Scranton, Pennsylvania 18503
(570) 961-0777

VERIFIED STATEMENT

I, KATHLEEN GRANAHAHAN KANE, Respondent, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that:

The facts contained in the attached Response to the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) are true and correct to the best of my knowledge, information and belief; and

The attached Exhibits referenced in the attached Response to the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) are, to the best of my knowledge, information and belief, true and correct copies of the sources cited therein.

Dated:

Sept. 4, 2015



KATHLEEN GRANAHAHAN KANE
RESPONDENT

Exhibit A remains under seal per the
September 17, 2015, instruction of the
Honorable William R. Carpenter.

EXHIBIT A

Disclosure of Exhibit B was approved by
the Honorable William R. Carpenter on
September 17, 2015.

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
THIRTY-FIFTH STATEWIDE INVESTIGATING GRAND JURY

IN RE: NOTICE NO. 123

TRANSCRIPT OF PROCEEDINGS
OF GRAND JURY

WITNESS: KATHLEEN KANE

DATE: NOVEMBER 17, 2014, 1:40 P.M.

PLACE: 1000 MADISON AVENUE

THIRD FLOOR

NORRISTOWN, PENNSYLVANIA

COUNSEL PRESENT:

BY: THOMAS CARLUCCIO, ESQUIRE

VICKI NUNAN, REPORTER
NOTARY PUBLIC

1 BY MR. CARLUCCIO:

2 Q. Good afternoon, General Kane.

3 A. Good afternoon.

4 Q. Could you, I guess, spell your name for the
5 record and your position?

6 A. K-A-T-H-L-E-E-N, and Kane is K-A-N-E, and I am
7 the Pennsylvania Attorney General.

8 Q. General Kane --

9 MR. CARLUCCIO: The attorney can give his
10 name, if he wants, and spell it.

11 Mr. SHARGEL: Yes. Gerald Shargel,
12 S-H-A-R-G-E-L. I'm an attorney representing Attorney
13 General Kane.

14 BY MR. CARLUCCIO:

15 Q. Attorney General Kane, when did you take office?

16 A. January 15, 2013.

17 Q. And when you took office, what was your duties as
18 Attorney General? What are your duties? Explain to the
19 Grand Jury.

20 A. As Attorney General, I am the chief law
21 enforcement officer of the Commonwealth of Pennsylvania.
22 We gain our authority and our jurisdiction pursuant to the
23 Commonwealth Attorneys Act that was enacted in 1978. We
24 have jurisdiction over certain criminal matters. We have
25 original or concurrent jurisdiction in child predator,

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EXAMINATION

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KATHLEEN KANE 3

COPY

1 drug cases, public corruption cases. We receive original
2 jurisdiction pursuant to cases such as child abuse or
3 murder only upon referrals from the D.A.'s of the counties
4 if they have a conflict or if they -- if they don't have
5 the resources to prosecute. We also have public
6 protection, a public protection division, and that
7 encompasses charities. We oversee all non-profits in the
8 Commonwealth of Pennsylvania. Anti-trust issues. That's
9 if you see two airlines merging. If it violates anti-
10 trust matters in the Commonwealth, then it's up to the
11 Attorney General's office to bring suit against them.

12 We also are the Bureau of Consumer Protection,
13 which represents the people of Pennsylvania in consumer
14 protection matters. We also have a civil division. We
15 protect the Constitutional rights. We have to obey by the
16 Pennsylvania Constitution and the United States
17 Constitution. So if there are Constitutional violations,
18 it's up to the Attorney General's office to almost resolve
19 those or represent a party. We oversee all contracts that
20 are made in the Commonwealth of Pennsylvania, so between
21 any agency. We also represent every agency in the
22 Commonwealth of Pennsylvania, including the governor in
23 any civil suit filed by or against the Commonwealth of
24 Pennsylvania. We also have a Management Services Division
25 and 17 offices across the state. We have jurisdiction

1 over 67 counties, all 67 counties.

2 Q. And then briefly what did you do before becoming
3 the Attorney General of Pennsylvania?

4 A. Before that, I was a stay at home mom. And
5 before that, I was an assistant district attorney in
6 Lackawanna County. And before that, I worked in
7 Philadelphia in a civil law firm.

8 Q. And you do have an executive staff when you came
9 in. Who was it back then when you first came in?

10 A. Well, there's a transition period. So I was
11 elected in November of 2012, and then there's a transition
12 period. And in that period, what typically is done is you
13 ask for transition memos of all of the divisions. Tell us
14 what the important cases are that you have going, what's
15 coming up, what is your compliment, what is your staff,
16 things like that.

17 Q. So who was your executive staff pretty much when
18 you first --

19 A. When I came in? The -- Bill Connolly was still
20 there. He was the First Deputy under Attorney General
21 Linda Kelly, and we kept him on as overlapping also with
22 Adrian King as First Deputy. I believe Mr. Connolly
23 stayed on somewhere between six and eight weeks, and we
24 kept him on because he had institutional knowledge of how
25 everything ran, what cases were there, what was coming up

1 made -- he is now the head of the Management Services
2 Division, and that's Will Otto.

3 Q. And who is your executive staff today?

4 A. It's exactly how I said. The only person that's
5 different now is that Bill Connolly left and went to
6 the Attorney General's office in North Carolina. Bruce
7 Beemer -- Adrian King has left, and Bruce Beemer is now
8 the First Deputy Attorney General.

9 Q. When did that happen? Do you know? Do you
10 recall?

11 A. June of 2014.

12 Q. We're here with the Grand Jury, as you're aware,
13 and I'd like you to explain to the Grand Jurors what Grand
14 Jury secrecy means to you.

15 A. Well, it's the law. I was a prosecutor for
16 almost 12 -- more than 12 years in the Lackawanna County
17 D.A.'s office, and I was in front of many Grand Juries and
18 conducted many Grand Juries. There is a certain section
19 that is a statutory section, and it indicates that any
20 prosecutor before the Investigating Grand Jury, all Grand
21 Jurors, the stenographer, anybody operating the recording
22 device, any investigator before the Investigating Grand
23 Jury that they are sworn, that they have to take an oath
24 of secrecy, which I'm sure that you all have. It's a form
25 that you sign, and that indicates that you cannot reveal

1 and he was a great help to us. There was also -- I'll
2 just explain the executive staff to you, if that's okay --

3 Q. Thank you.

4 A. -- make it easier. Also, there is -- there was a
5 chief of staff under Linda Kelly, but we did not -- we
6 took that position away and instead made it an executive
7 deputy Attorney General spot. So whereas the chief of
8 staff didn't have to be a lawyer, this spot now was a
9 lawyer, and that was Linda Dale Hoffa. We also have a
10 COO, chief executive officer. We have communications
11 director. We had senior counsel to the Attorney General,
12 which was Bruce Beemer. Bruce's duties then also
13 overlapped into the head of the criminal unit. And then
14 across the top of the organizational chart, it goes the
15 Attorney General, First Deputy, Senior Counsel to the
16 Attorney General, press and COO, and then below that is
17 another line of executive officers. The first is the
18 Executive Deputy Attorney in charge of the Public
19 Protection Division, and that is Jim Donahue. Jim was the
20 head of Anti-trust, and we moved him to the head of the
21 division. Larry Turbo, who was the head of the Criminal
22 Law division. Sue Formey, who was also there prior to my
23 administration, she is and still is the head of the Civil
24 Division. There was nobody in charge of the Management
25 Services Division, and so we took the head of IT and he

1 any information that has occurred before you.

2 Q. And why is that important to you?

3 A. It's important to all of us. It's important
4 because you have to operate in an environment where you
5 can act freely, where you can hear testimony, where you
6 can discuss amongst yourselves, and it's important that
7 you protect the reputations of those who appear before
8 you. It's important that you protect their identities.
9 It just makes it an easier forum rather than a public
10 forum like a trial for you to conduct your investigations
11 because you're an investigating Grand Jury, unlike in an
12 open courtroom where there's a regular jury.

13 Q. Do you sign secrecy oaths? Do you personally?

14 A. Of course.

15 Q. And which ones have you signed?

16 A. I, I would have to pull them and let you know
17 exactly what they are. But when I first went into office,
18 there were existing Grand Juries at the time, and we
19 signed those oaths. And then, of course, new Grand Juries
20 have developed since I've taken office, and we sign those
21 oaths.

22 Q. And how do you treat past Grand Juries before you
23 took office? How do you treat those secrecy?

24 A. Well, there's nothing. We, we don't go back and
25 sign every Grand Jury from the beginning of time. You

1 just can't do that. If, for example, like the Sandusky
 2 investigation. When I first took office, I --
 3 we pledged -- I pledged that I was going to look into why
 4 it took so long to take Sandusky through the Grand Jury
 5 process and into a trial. And because of that, when we
 6 were opening up, you know, the e-mails and when we were
 7 looking at the, the files, some of it may have been Grand
 8 Jury testimony or some it may have involved even a
 9 question before the Grand Jury. So we then went to the
 10 judge and said is this something that you believe that may
 11 be Grand Jury material? And if we do a public report,
 12 will that involve any Grand Jury testimony or any Grand
 13 Jury information? He indicated that it might and that we
 14 should sign it, and we did. The -- only those involved,
 15 not the entire agency.

16 Q. So with prior Grand Juries, you would get
 17 permission from the judge before you release that
 18 information?

19 A. Well, this case was different. This case was
 20 different because it was a -- we were reviewing the
 21 investigation, so in reviewing --

22 Q. What do you mean by this case? What case?

23 A. Sandusky.

24 Q. Okay.

25 A. Sandusky was different because it's something new

1 to all of us, and we were reviewing the investigation. We
 2 were reviewing why it took so long to take it through the
 3 investigatory process. And the special deputy that I
 4 appointed who came in only to do that case and only to
 5 review those facts and only to make that report, he
 6 suggested that it might be a good idea after speaking with
 7 the judge that we sign those -- that we sign those oaths,
 8 and we did.

9 Q. How would you deal with other Grand Juries that
 10 you want to look into that were older?

11 A. Well, we haven't done that. But if -- well,
 12 let's, let's get right to the point, I guess. Right?

13 Q. Right.

14 A. If somebody came to me with a document from a
 15 Grand Jury, notes of testimony or something of that nature
 16 and it was Grand Jury material, we would do as, you know,
 17 we would typically do, stop and say, you know, if this is
 18 Grand Jury material, then we have to sign an oath of
 19 secrecy. So for example, we got -- if we have new
 20 employees. I have a new person on my protection detail.
 21 He wasn't there from the beginning. And whereas I may,
 22 you know, discuss in our executive suite anything relating
 23 to Grand Jury materials, we forgot that he was not sworn
 24 in because he didn't come in with us. We said stop and
 25 signed the Grand Jury oath. And I would not -- you know,

1 I don't even allow backdating Grand Jury oaths. That's
 2 not -- we stop. No one says a word from there on until we
 3 get the oaths. And it's a piece of paper, and we file it
 4 then with -- I'm not sure. I believe Anita gets them, and
 5 then she keeps them on file for us. So if you need to
 6 know exactly which ones we have sworn into, she'll have
 7 those.

8 Q. She'll have all of those?

9 A. Yes.

10 Q. Getting to the point where -- as you said,
 11 getting to the point of where we are with it, are you
 12 familiar with the Mondesire article that came out in a
 13 2009 Grand Jury on CUES? Are you familiar with the --

14 A. The June 6th?

15 Q. Yes.

16 A. Yes. I read that around August of 2014.

17 Q. Is this the article which is named Commonwealth,
 18 I guess? Is that the article that you read?

19 A. I only read it from our clips, so I don't read it
 20 in the newspaper.

21 Q. Nobody reads newspapers anymore.

22 A. But it's the June 6th article, yes.

23 Q. And you recall that article?

24 A. Yes.

25 Q. What did you do when you read that, I guess,

1 online? What was your --

2 A. Well I didn't read it first. The first I heard
 3 about it was after it appeared in the -- in the newspaper.
 4 I believe it was Agent Pfeiffer came to me and said and
 5 maybe -- I'm not sure if anyone else was there -- and said
 6 this article appeared in the newspaper. There's
 7 information in there from his June -- his 2014 memo.

8 Q. And what was your response to that?

9 A. Well, by then, I had already known that you had
 10 been appointed as special prosecutor to look into the
 11 potential leak. And my response was is -- you know, what
 12 is going on? I believe that Bruce Beemer called the judge
 13 to say what is this all about? You know, why is the --
 14 what is the special prosecutor looking into? Maybe we can
 15 help you with it or if there's any information that we
 16 have on it that, you know, we cooperate.

17 Q. What was your reaction as far as them mentioning
 18 a transcript and a memo of Grand Jury and Grand Jury
 19 information? Were you concerned or not?

20 A. Well, of course, if there's -- you know, I don't
 21 believe everything I read in the newspapers. That's
 22 number one.

23 Q. No problem.

24 A. And number two, if there was a leak of Grand Jury
 25 information, then of course I would be concerned. I knew

1 that I had been briefed on Agent Pfeiffer's 2014 memo, and
2 I knew that that was not Grand Jury information. Any
3 other information contained in the article, I didn't know
4 anything about.

5 Q. If we get to that now, the -- which has been
6 marked as Commonwealth 1, which is a memorandum from Bill
7 Davis to Frank Fina, are you familiar with that document?

8 A. No.

9 Q. Have you ever seen that before?

10 A. No.

11 Q. Okay. So what was your reaction again when you
12 read the article and found out they had this memo from
13 2009 that said Frank Fina coming from the office? What
14 was your reaction to that?

15 A. Well, my reaction was is that you were appointed
16 to look into how and why.

17 Q. Okay. Did you do any internal investigation on
18 that?

19 A. We couldn't. We couldn't do an internal
20 investigation because that would be seen as interfering
21 with your investigation, and we didn't want to do that.

22 Q. I mean, asking anybody. Did anybody in this
23 office leak it? Did you ask anybody those questions?

24 A. Mr. Beemer, he was looking to see what the
25 allegations were, what the -- what the elements were, what

1 members of my staff in that position.

2 Q. So just to make it clear, today is the first day
3 you've seen this memorandum?

4 A. That is correct.

5 Q. I'll show you what's marked Commonwealth 3, which
6 is a transcript by Mr. Miletto. Do you recall ever seeing
7 that?

8 A. This is not the form that I saw it in, but I
9 saw -- and I can't tell you whether I saw the transcript
10 of Michael Miletto. I saw a memo from Dave Pfeiffer
11 regarding his interview of Agent Miletto.

12 Q. Was that that document or not?

13 A. I don't know. I didn't read it.

14 Q. You didn't read it?

15 A. Agent Pfeiffer came into my office and briefed
16 myself and Bruce Beemer on the memo. I know that he had
17 it in his hand when he presented it to a -- members of our
18 staff, but I never read it. I didn't need to read it.

19 Q. Did he give it to you?

20 A. I don't recall. I know that when I came into my
21 office, it was me and Mr. Beemer. We were -- it was right
22 before a staff meeting. He told me about his interview
23 with Agent Miletto. He told me what the substance of it
24 was. It was that Agent Miletto came to him. I believe it
25 was at night. They were both working later, and that

1 the article was about. I know he had conversations with
2 the judge. I'm not sure whether he had them with you as
3 well about what we could do to help. There was nothing
4 that anyone wanted us to do. Mr. Beemer asked me whether
5 we should start an Office of Professional Responsibility
6 internal investigation, and I felt that that may be seen
7 as interfering with your investigation, so I said no, to
8 allow you to do your investigation.

9 Q. So the memo between -- from Bill Davis to Frank
10 Fina, you never saw it before that article came out?

11 A. Is it the one you just showed me?

12 Q. Yes.

13 A. No.

14 Q. Okay.

15 A. Today is the first day I've seen it.

16 Q. Today is the first day you ever seen this?

17 A. Correct.

18 Q. So even afterwards, you never requested it so you
19 could look at it or discuss it with your staff?

20 A. You have to understand. We've been under certain
21 orders, and those orders are very broad. And those orders
22 could -- if we even ask to see it, if we talked to each
23 other about it, if we talked to anyone about it, it could
24 be deemed that we were interfering with your
25 investigation, and I wasn't about to put myself or any

1 Agent Miletto was concerned that there was a case out
2 there that needed to be prosecuted or could possibly be
3 prosecuted, that it was not presented before the Grand
4 Jury in 2009, and he was concerned that it would be a case
5 that would be brought up by either members of the press or
6 former employees as saying that we did nothing with it,
7 that it was still within the statute of limitations, that
8 it was a viable prosecution, and he wanted Agent Pfeiffer
9 to know about it.

10 Q. When did he tell you that?

11 A. He told me that -- well, within days of his
12 interview with Agent Miletto.

13 Q. So you didn't know before he interviewed Miletto?
14 You never knew he was going to do that?

15 A. I don't know. I remember that he came -- he came
16 into my office. I knew that there was something with
17 Agent Miletto. He told me that Agent Miletto had some
18 information. He was concerned about a case that may be
19 out there. I didn't know any of the details before that.
20 And knowing Agent Pfeiffer, he was going to sit down with
21 Agent Miletto, talk to him about it, and then he said he
22 would brief me on it once he had the information.

23 Q. So he did tell you he was gonna interview him
24 before you had your staff meeting?

25 A. He told me he was going to talk to him, sure.

1 Q. And when did he first tell you that he was going
2 to tape it?

3 A. I didn't know he was going to tape it.

4 Q. When did he first tell you -- well, he told you
5 later on he taped it after you had your meeting or your
6 briefing. So when did you first learn that there was
7 gonna be a tape and a transcript of Mr. Miletto?

8 A. I don't recall ever him telling me that he was
9 taping it. That doesn't surprise me. It doesn't concern
10 me. I mean, Agent Pfeiffer's a cop, you know. That's
11 what he does. I believe that he probably wanted to make
12 sure it was accurate, so it didn't concern me. I don't
13 recall him ever specifically telling me that he was going
14 to tape it and make a transcript of it. I just knew he
15 was going to sit down with Agent Miletto and find out what
16 was going on.

17 Q. And when did he -- and when he did find out what
18 was going on, when did he brief you on Mondesire?

19 A. I can't give you the exact date. It was probably
20 within a couple of days.

21 Q. And do you remember what he told you about it?

22 A. He told it was a couple minute conversation, and
23 Mr. Beemer was there. He told me that there was a case
24 that was not presented before the Grand Jury, that he --
25 Agent Miletto thought that Mr. Mondesire should have been

1 about a memo or an interview?

2 A. The memo, Agent Pfeiffer prepared a memo that he
3 brought to the staff meeting within a couple of days of
4 interviewing Agent Miletto, came into my office, as I
5 said, with Mr. Beemer there right before a staff meeting,
6 told me that he had spoken to Agent Miletto. He had, you
7 know, a document in his hand. He briefed me on what it
8 was. I said to Agent Pfeiffer that he needed to get
9 together with Mr. Beemer and make sure that if there were
10 criminal charges to be either investigated or brought
11 against Mr. Mondesire that they needed to look into it.

12 Q. And what did you do with the memo or interview?
13 Did you -- again, did you see it?

14 A. Well, I'm not sure whether we're talking about
15 two different things, so I can tell you that Agent
16 Pfeiffer had a document in his hand. This was his -- this
17 is what he talked about with Agent Miletto and that yes,
18 it was there. I don't recall him saying it was a
19 transcript. But again, it wouldn't have mattered to me.
20 That wouldn't have alarmed me that Agent Pfeiffer did
21 that. We then sat down at our staff meeting Agent
22 Pfeiffer briefed everybody at the staff meeting exactly
23 what he told me, and then I know he had either one or more
24 documents with him.

25 Q. As far as what you recall the memorandum, did you

1 investigated and should have -- may have criminal
2 liability, that the case was not presented, that he took
3 his case -- that case to his superiors, and his superiors
4 said that they did not want him to go on with it, and
5 Agent Miletto was concerned that it would be something
6 that would be brought up and that we would look like we
7 did not prosecute it because Mr. Mondesire was a Democrat.
8 So Mr. Miletto, Agent Miletto was concerned that it might
9 have been repercussions against him, and he was concerned
10 it might have repercussions against the office.

11 Q. And that's when he told -- he told you that
12 briefly, I guess, within days of his interview with him?

13 A. That's correct.

14 Q. And did you direct him at all to get -- to put
15 this on tape or to get a transcript for you?

16 A. No, no.

17 Q. Okay. So he did that on his own?

18 A. I would assume so. I don't know if anyone else
19 directed him to, but I did not.

20 Q. But nobody at your behest?

21 A. No, not that I know of. I mean, I didn't tell
22 anyone to --

23 Q. That's what I'm talking.

24 A. -- have that tape recording. No.

25 Q. And again, when's the first time you learned

1 pick that up and review it or did not?

2 A. I don't know whether I picked it up to review it.
3 I know I didn't read it because he had already briefed me.
4 And that may sound unusual to you, but I get memos and
5 briefings all the time from every member of -- most
6 members of my staff. If they brief me on it beforehand or
7 they verbally tell me about it, there's no need for me to
8 read it all over again. Agent Pfeiffer's very
9 experienced. I would have no doubt that there isn't
10 anything that he would have missed, and the memo was then
11 meant to be for the file. So then Agent Miletto's
12 statement to Agent Pfeiffer was, you know, preserved for
13 Agent Miletto's sake as well as for the sake of the
14 office, and in the events that any investigation or
15 charges were brought against Mr. Mondesire.

16 Q. So what you believed to be a memo was you may
17 have looked at it, but you didn't read it?

18 A. Correct.

19 Q. Now, the transcript that says transcript of
20 interview, do you remember reading this?

21 A. No.

22 Q. Do you remember seeing it?

23 A. No. What -- the document that Agent Pfeiffer had
24 I remember was thin. It had a blue back on it and a clear
25 face on the front.

1 Q. But did it say memorandum? Did it say interview?
2 Do you recall?

3 A. I didn't look at it.

4 Q. You didn't look at it?

5 A. I didn't need to. Agent Pfeiffer briefed me on
6 it.

7 Q. But you say he may have had two documents.

8 A. Well, I remember him coming in. Whether they
9 were with regard to a different matter, I don't know.
10 Agent Pfeiffer's big on reports, so I get one every week
11 from him on the Child Predator Unit, the Bureau of Special
12 Investigations. Whether it was on that or something else,
13 I couldn't tell you.

14 Q. So you don't -- what do you recall? Again, what
15 do you recall about the documents that Pfeiffer brought
16 into the senior staff meeting?

17 A. I recall that he had a document in front of him.
18 It had a blue back, a clear face on it. He said that this
19 was the summary of his interview or his talk with Agent
20 Miletto. He told me what it was about. He told me that
21 it was -- Agent Miletto told him that there was a Grand
22 Jury in 2009, that Mr. Mondesire was not -- there was no
23 evidence presented, but Agent Miletto felt that he should
24 have been investigated at the time, and he was not. Agent
25 Miletto was concerned that there would have repercussions

1 against him. He was concerned it would have repercussions
2 against the office as having an investigation out there
3 that no one looked at, and he was also concerned that it
4 would -- could possible still be a viable investigation
5 and prosecution. My concern then was, as I said to Agent
6 Pfeiffer and to Bruce Beemer, was take a look at the case.
7 You two get together, take a look at the case and see
8 whether there's any investigation or prosecution that
9 needs to be brought forth against Mr. Mondesire.

10 Q. And you don't recall what document you looked it?

11 A. I didn't look at it. He had it in his hand. And
12 again, because he briefed me on it, I didn't need to look
13 at it.

14 Q. And whatever that document was, did you ever see
15 it again?

16 A. No.

17 Q. The -- when was that staff meeting? Do you
18 recall?

19 A. Well, it was the same time that he came into my
20 office and briefed me, so it would have been a couple of
21 days -- within a couple of days after he talked to Agent
22 Miletto.

23 Q. Do you remember what time of the year, what that
24 would have been?

25 A. No. I believe Agent Pfeiffer's memo was in March

1 some time, so it would have been some time in March 2014.

2 Q. Did you have any follow up since I think your
3 direction, you said, was to go out and investigate this
4 thing? Did you have any follow-up on Mondesire?

5 A. Yes.

6 Q. Another meeting?

7 A. At another meeting, Bruce Beemer came to me and
8 said it's beyond the statute of limitations, and there's
9 nothing we can do about it. I said I want you to make a
10 memo or put it in writing and put it with the file.

11 Q. And did that happen that you're aware of?

12 A. I don't know. I haven't seen it. I would assume
13 so.

14 Q. Did you ever see that final memo that said
15 there's nothing here?

16 A. No. He didn't say there's nothing here. What he
17 said was it's beyond the statute of limitations.

18 Q. I agree. Sorry about that.

19 A. That's okay.

20 Q. But you never -- did you ever see that memo?

21 A. No.

22 Q. Did you ever ask that if it was done?

23 A. No.

24 Q. Now, at the senior staff meeting where Pfeiffer
25 came in and briefed you, who else was there?

1 A. I can't tell you exactly who was there. I
2 remember the table was filled. I have a table in my
3 office that's very large. It seats maybe 8 to 10 people
4 with their other chairs, and it was filled. I remember
5 Bruce Beemer was there because he was with me beforehand.
6 Adrian King was there. Obviously, Agent Pfeiffer was
7 there. I was there. And anybody else, I don't exactly
8 know who. You know, our meetings sometimes change with
9 personnel depending on what we're meeting about.

10 Q. Would Linda Dale Hoffa be there?

11 A. She could have been, sure.

12 Q. And who is she?

13 A. She was the executive Deputy Attorney General.

14 So when I told you that when I came in, there was a chief
15 of staff position that was not a lawyer. I took that out
16 and made the position Executive Deputy Attorney General
17 and that is a lawyer, so that is another layer of, you
18 know, legal expertise before it gets to me.

19 Q. And you said you recall her being there or not?

20 A. I don't know, but she could have been.

21 Q. You believe this to be in March?

22 A. It must have been March because it was within a
23 couple of days that Agent Pfeiffer talked to Agent
24 Miletto.

25 Q. Was your, I guess, head of security -- who's

1 Patrick Reese?
 2 A. He is on my protection detail. He is a
 3 supervisory special agent.
 4 Q. Was he there?
 5 A. I don't recall that. It's doubtful. He's
 6 usually not at staff meetings. My other agent on my
 7 protection detail is Agent Ruddy, and they are never at
 8 our typical staff meetings.
 9 Q. Who's Colleen Teege? Is that how you pronounce
 10 it?
 11 A. Tighe.
 12 Q. Tighe. Sorry about that.
 13 A. That's okay. She gets it all the time.
 14 Q. Who is she?
 15 A. She is my administrative assistant.
 16 Q. Would she have been there?
 17 A. That's doubtful, too. She -- we have staff
 18 meetings once a week every Tuesday. She's at the staff
 19 meetings for -- my scheduler is there. Bruce Beemer's
 20 secretary is there. Our press is there, head of OPR. All
 21 of the heads of our divisions are there, but she never
 22 typically sits in unless I ask her to take notes on a
 23 specific meeting.
 24 Q. Would you remember if she took notes on this
 25 specific meeting?

1 A. I doubt it, but I don't know.
 2 Q. As far as would anybody from the press, your
 3 press department be there?
 4 A. I don't remember. Our press department has been
 5 dismantled for quite some time. I don't believe at that
 6 time we had a director of communications, but I don't
 7 know. Rence Martin has been filling in, but that -- we
 8 went without a director for weeks before it was -- they
 9 needed some management, so we took her from the Education
 10 and Outreach Department and also then gave the dual duties
 11 of just making sure that the press department runs
 12 smoothly.
 13 Q. Okay. So who --
 14 A. So I don't remember who was there.
 15 Q. Who was it before she took over? Do you
 16 remember?
 17 A. Joe Peters.
 18 Q. Could he have been there, you think or --
 19 A. He left the office. I'm not sure when he left
 20 the office.
 21 Q. So in April, you gave some direction to Pfeiffer
 22 to I guess continue to look at this Mondesire?
 23 A. It was March.
 24 Q. It was March?
 25 A. 2014.

1 Q. I guess for everyone, who is Adrian King?
 2 A. Just because I know I'm extremely technical, but
 3 that's what we lawyers do, I didn't tell him to look at
 4 Mondesire. I told him to give the information to Bruce
 5 Beemer to see whether there was any viable charge, and
 6 Mr. Beemer said that there was no need to look into it.
 7 It was beyond the statute of limitations, just for that.
 8 Adrian King was the First Deputy Attorney General, and
 9 that on the organizational chart is the Attorney General,
 10 and right below the Attorney General is the First Deputy,
 11 and then everybody reports into the First Deputy.
 12 Q. And back, I guess, in March of April, he was
 13 there, correct?
 14 A. Yes.
 15 Q. Was he --
 16 A. Yes. He left in June of 2014.
 17 Q. Okay. Did you give him any direction to deal
 18 with this case, anything to do with documents or
 19 anything --
 20 A. Yes.
 21 Q. -- on this case?
 22 A. Yes.
 23 Q. Okay.
 24 A. Agent Pfeiffer's memo summarizing Agent Miletto's
 25 testimony of 2014, after the meeting that we had, Adrian

1 and I said, you know, this is a pattern that has been
 2 developing. This is not right. This is a pattern of
 3 nonprosecutions, and this was somebody who could have been
 4 prosecuted except for the lapse of time that had occurred.
 5 And we said that it's the public's right to know what is
 6 happening in the office, as I've always said. And
 7 agent -- Adrian and I then said well, then let's put it
 8 out into the press, and we did.
 9 Q. Okay. And how did that happen?
 10 A. I said to Adrian, you know, we should get it out.
 11 We should put it out to the press. People have a right to
 12 know. He said I agree and, you know, he said well, what
 13 do you think? It was -- I remember it was later in the
 14 day because I was in a hurry to get back to Scranton and
 15 he was going to Philadelphia, and our press department was
 16 dismantled and, you know, we have a young team,
 17 unfortunately. And Adrian said well, I can take care of
 18 it. You know, we'll give it to -- let Josh Morrow take
 19 care of it, as we typically did. And Adrian said
 20 something like, you know, have Josh call me, and I did. I
 21 called Josh, and I said Adrian wants you to call him.
 22 Q. What happened after the phone call?
 23 A. Well, that I don't know. Then I -- you know,
 24 I --
 25 Q. All right.

1 A. -- moved on.
 2 Q. Did you talk with Josh Morrow, I assume? Did he
 3 call you or did you talk to him?
 4 A. I called him and said Josh, Adrian wants you to
 5 call him. He said okay.
 6 Q. And then any follow-up on that?
 7 A. No.
 8 Q. What were your directions for Adrian King to do?
 9 A. Well, it wasn't a direction. Adrian and I worked
 10 very closely together, obviously. He's my First Deputy.
 11 So when afterwards, we said, you know, this isn't right.
 12 This is a pattern, and people need to know what's
 13 happening. And, you know, we put things, information out
 14 into the press every single day, multiple times a day. It
 15 is our belief and it's still my belief that people have a
 16 right to know what's going on in their government. People
 17 have a right to know what you're doing and what you're not
 18 doing. I answer those questions all the time and, you
 19 know, sometimes it's, it's -- the press is tough on you,
 20 but that's okay. It's their right to know. So Adrian and
 21 I, I said this isn't right. People need to know. He said
 22 I agree, and we said we need to put this out into the
 23 press.
 24 Q. So what did you give Adrian King to put out in
 25 the press?

1 A. Well, I didn't give him anything, but Agent
 2 Pfeiffer's 2014 memo was there.
 3 Q. Do you know what other documents went with -- to
 4 be given to Josh Morrow?
 5 A. As far as I know -- well, I've never seen the
 6 2009 document. I never even knew of its existence until I
 7 read the article in the newspaper in August.
 8 Q. So how did you direct these documents to get to
 9 Josh Morrow?
 10 A. Well, again, I mean, you're saying direct, but
 11 you have to understand that the relationship between the
 12 Attorney General and the First Deputy is not, you know,
 13 that I tell him what to do and he does it. That's just
 14 not the way it works.
 15 Q. How does it work?
 16 A. Well, we're -- you know, he's the ying and I'm
 17 the yang, I guess. He's -- the reason I hired him was
 18 because we've known each other for so long. He has
 19 expertise in civil law, and I have expertise in criminal
 20 law. I sometimes move quick, and he moves slower. We
 21 have a relationship where -- and it's the same way with
 22 Mr. Beemer and that's the way it's gotta be -- that we
 23 have to have a dialogue. You know, if something's wrong,
 24 then he needs to say I disagree with this. And if I
 25 disagree with what's he's doing, then I need to say I

1 disagree with you, and then we come to a meeting of the
 2 minds most of the time. So it wasn't a case where, you
 3 know, I order him to do something, and he does it.
 4 That's -- first of all, that's not Adrian. And number
 5 two, that's not the way our officer works. It didn't
 6 then, and it doesn't now. The conversation was is that,
 7 you know what? This just isn't right. It's not right.
 8 And again, in the for transparency that we do all the
 9 time, people need to know what's happening.
 10 Q. So how did Adrian King get the documents that
 11 would eventually get into --
 12 A. I don't know.
 13 Q. You don't know? Did you discuss -- you said you
 14 discussed that this isn't right, and you discussed that
 15 with Adrian King?
 16 A. Right.
 17 Q. Did you discuss it with Bruce Beemer?
 18 A. Yes.
 19 Q. Okay.
 20 A. You know, we -- our office is very -- we're used
 21 to putting things out into the press. We're used to being
 22 scrutinized by the press ourselves, and we understand that
 23 that's part of our jobs. And even with Bruce Beemer and
 24 probably the rest of the staff, it's -- you know, this is
 25 an example of what wasn't occurring then. And I'm just --

1 you know, I believe that all prosecutions need to be done
 2 fairly and evenly across the board. I don't care who you
 3 are. I don't care what party you come from. It doesn't
 4 matter to me. It's gotta be done in an evenhanded way.
 5 And if it isn't, then I think the public needs to know.
 6 There's no way we're gonna be better government if it
 7 isn't exposed to the light of day, and same with me. You
 8 know, if I make a mistake, then yes, people need to know I
 9 make a mistake. You know, I'm an elected official, and
 10 they need to know that for the next election or even to
 11 hold me accountable now.
 12 Q. So what was your discussion with Bruce Beemer?
 13 What did you tell him about getting this information out
 14 to the --
 15 A. I don't -- I didn't discuss getting it out to the
 16 public with Bruce Beemer, but we did discuss that this is
 17 another example of what was not happening, that, you know,
 18 Mr. Mondesire could have had criminal liability, and he
 19 very possible escaped it because it went on beyond the
 20 statute of limitations.
 21 Q. So did you discuss anything to do with bringing
 22 these documents to the press so that they can have it?
 23 A. I didn't know about the 2009 document. So when
 24 you say documents --
 25 Q. Information.

1 A. The only information I had was Agent Pfeiffer's
 2 2014 memo that Agent Miletto said Mr. Mondesire was not
 3 the subject of a Grand Jury investigation in 2009, that he
 4 felt that he should have been, but he was denied that
 5 opportunity and there may be a viable charge out there
 6 against him. That's what our concern was.
 7 Q. And giving this to the press, did you discuss
 8 that with Bruce Beemer?
 9 A. No.
 10 Q. Did you discuss that with Agent Pfeiffer?
 11 A. No.
 12 Q. So who did you counsel besides Adrian King about
 13 getting this information to the press or this memo that
 14 you talk about?
 15 A. Just Adrian.
 16 Q. Just Adrian?
 17 A. Uh-huh.
 18 Q. And again, how did you arrange for this
 19 information to get to the press?
 20 A. Adrian said have Josh call me. And we knew that
 21 Josh -- you know, Josh is an experienced communications
 22 person. He worked on my campaign. He's been around
 23 forever. That's what he does. Josh has relationships
 24 with, with reporters, and Josh is well respected in the
 25 communications and the -- in that arena. It's a very

1 small group, so we knew that Josh would be able to
 2 effectively communicate what was happening with the press.
 3 Whereas our team, you know, as I said, was young and
 4 inexperienced. We had already had a number of, say,
 5 missteps with the press, and our team just wasn't up to
 6 the job. And it was a simple -- you know, it was
 7 something as simple as that this is now a pattern that's
 8 been developing. This is important to us. It's important
 9 for people to know, and the easiest and most efficient way
 10 was through somebody that we knew would handle it
 11 properly.
 12 Q. But do you have any idea how these two -- 'cause
 13 the paper said an actual transcript of Miletto. You'd
 14 agree with me it actually said a transcript of Miletto and
 15 went into the whole transcript, the article in June?
 16 A. Well, you'd have to show it to me again. I can't
 17 remember it word for word. It is what it is.
 18 Q. Right, but this document is an interview of Agent
 19 Miletto. And as you said, you knew that was going to
 20 happen. Do you have any idea how that specific document
 21 got to the press?
 22 A. I don't know what Adrian gave to Josh.
 23 Q. Okay.
 24 A. I don't. I, I would assume it was Agent
 25 Pfeiffer's memo to us summarizing the -- his, his -- the

1 -- interview or talk or whatever you wanna say it was with
 2 Agent Miletto.
 3 Q. But the article said -- they specifically quoted
 4 that document. Do you know how -- again, do you know how
 5 that specific document got to the press?
 6 A. I did not give this document to the press. I did
 7 not direct Adrian to give specific documents to the press.
 8 What I said to Adrian was is people need to know about
 9 this. He agreed. The only document that we had in front
 10 of us was Agent Pfeiffer's memo regarding his talk or
 11 interview with Agent Miletto, so -- and I didn't read it.
 12 So I know you're asking me whether this was the specific
 13 document, but I did not read it, so all I know is what
 14 Agent Pfeiffer told me.
 15 Q. And again, just ask you again for the record.
 16 The Commonwealth 1, which is the Frank Fina memorandum of
 17 Bill Davis to, I guess, Mr. Fina, you don't know how that
 18 got to the press itself?
 19 A. I have never seen this document before today. I
 20 did not even know of its existence until I read the June
 21 article. I don't read the press, either good or bad,
 22 about any of us until I read it word for word in around
 23 August of 2014.
 24 Q. So what was your understanding of what documents
 25 were going to Josh Morrow and to the press?

1 A. Well, there was no understanding. You know, it
 2 was a simple conversation with Adrian. People need to
 3 know about this. This is a developing pattern of perhaps
 4 selective prosecutions or non-prosecutions. It was
 5 something that our office had, you know, been under
 6 questioning for before, whether we prosecuted, why we
 7 prosecuted or why we didn't prosecute. So it is a
 8 legitimate inquiry, and we felt that it was important that
 9 people know that as well, and that, that was about it.
 10 But I would assume -- I would assume that Adrian would
 11 have taken Agent Pfeiffer's memo with his, his talk with
 12 Agent Miletto and would have done that.
 13 Q. Okay.
 14 A. That would have been --
 15 Q. So it's --
 16 A. -- logical.
 17 Q. It's your assumption that Adrian King went
 18 somewhere and got this memorandum from Bill Davis and this
 19 interview?
 20 A. No. That is not my assumption. I don't know
 21 what Adrian did. We did not discuss which memorandums or
 22 what he had or what he gave to Josh. We didn't discuss
 23 it.
 24 Q. Okay. Did you ever give him a package to give to
 25 Josh Morrow?

1 A. No.
 2 Q. Did you have anyone prepare a package that went
 3 to Josh Morrow?
 4 A. No.
 5 Q. So you don't know anything about the documents
 6 that actually went out of your office to Josh Morrow?
 7 A. No, I don't.
 8 Q. Through Mr. King?
 9 A. No.
 10 Q. The -- did you do any follow up to see what
 11 documents went out or any follow-up to make sure Josh
 12 Morrow got the information he needed? Did you do any of
 13 that?
 14 A. The only document that I knew existed was Agent
 15 Pfeiffer's March of 2014 memo. That's the only document
 16 that I would have assumed that Adrian gave. I didn't know
 17 about a 2009, so I didn't ask him whether there were any
 18 more. It was my assumption because that's all I was
 19 briefed on that there was only one document.
 20 Q. Okay. Do you know how Adrian King was going to
 21 get information to Josh Morrow?
 22 A. I, I don't. I, I believe that they were going to
 23 meet, but I don't know where or when 'cause Adrian was
 24 heading back to Philadelphia.
 25 Q. Okay. And how did you know that?

1 A. He told me.
 2 Q. What did he told you?
 3 A. Well, that night when we were talking about it,
 4 he said I'm going back to Philly tonight. I was going
 5 back to Scranton.
 6 Q. And then what did he told you he was going to do?
 7 A. He just said have Josh call me.
 8 Q. And that's it?
 9 A. And I called Josh and said give Adrian a call.
 10 Q. But there was no package of any kind of documents
 11 that you gave him?
 12 A. No. I didn't know -- I only knew of one
 13 document. I can't stress this enough. I only knew of one
 14 document. So when you said I prepared -- you're asking me
 15 whether I did prepare a package of documents, I did not
 16 know any other ones existed besides Agent Pfeiffer's
 17 summary.
 18 Q. And again, what's the one document you knew of?
 19 A. Agent Pfeiffer's 2014 summary of his interview or
 20 talk with Agent Miletto wherein Agent Miletto said that,
 21 you know, as I said before, that this case could be out
 22 there, that it was not investigated in 2009 and that it
 23 could be a viable prosecution.
 24 Q. Then you called -- you made a phone call to Josh
 25 Morrow?

1 A. Correct.
 2 Q. And what again did you tell him?
 3 A. Josh, Adrian wants you to call him.
 4 Q. And then what did you tell Adrian?
 5 A. Well, Adrian said have Josh call me. I said I'd
 6 call him.
 7 Q. You said you'd call him?
 8 A. Yeah.
 9 Q. Did you call him or what? What was your
 10 conversation with Adrian before he left that evening?
 11 A. About what?
 12 Q. About this information you wanted to get out.
 13 A. One more. So after the meeting, there were still
 14 people. My office is right in the executive suite, as
 15 they call it. My office door was open. There was people
 16 out in the reception area. I have a secretary out there,
 17 a scheduler. Linda Hoffa's office is out there, both
 18 security. The administrative assistant's office is out
 19 there. First Deputy's office is out there, as well as his
 20 secretary. And the people from the meeting, I could still
 21 hear people out there. As Adrian and I were standing
 22 there, I said to him this isn't right. You know, the same
 23 conversation that I just testified to, and we said we need
 24 to let the public know about this. This, should go out
 25 into the press. And then, you know, he said well, you

1 know -- I don't remember the exact conversation, but he
 2 said have Josh call me. We -- and I thought it was a good
 3 idea too that Josh should be the one to do it. Our press
 4 department just -- you know, they just -- they were too
 5 young. They were inexperienced. This wasn't some -- this
 6 wasn't a typical press release. This was information that
 7 we put out, and we typically put things out either through
 8 Josh Morrow or Pete Shelly.
 9 Q. And again, I guess we should know who is Josh
 10 Morrow?
 11 A. Josh Morrow is a communications person. He's
 12 from Philadelphia. He worked on my campaign. He's worked
 13 on other campaigns in the past, too.
 14 Q. And who is Peter Shelly?
 15 A. Pete Shelly owns Shelly Communications. Because
 16 we have had a press department that's been in disarray
 17 basically from the beginning, we sometimes use outside,
 18 outside communication firms.
 19 Q. And this Mondesire with this information that was
 20 given out to the press, he was never prosecuted, was he?
 21 A. By us?
 22 Q. By anyone.
 23 A. He was never investigated. He was never
 24 prosecuted in the 2009 ever. That's correct, and we could
 25 not because it was beyond the statute of limitations by

1 the time we got it.

2 Q. So the 2009 Grand Jury for some reason didn't
3 prosecute him, correct?

4 A. I would assume so.

5 Q. And you felt you needed to get that information
6 out there?

7 A. We felt we needed to get the information out that
8 there was a viable prosecute that Agent Mileto felt that
9 he should have been investigating, but was denied the
10 opportunity to investigate him, that he should have been
11 prosecuted or could have been prosecuted. He was denied
12 the opportunity to prosecute him and that it may be
13 something that was an opportunity for former employees to
14 come back and say criticize our office saying that this
15 case was there, and we did nothing with it, even though
16 that was the first that we learned of it.

17 Q. Now, with Sandusky, you said you went to the
18 judge to get information from the Grand Jury and got his
19 permission to do that, correct?

20 A. Special Deputy Moulton did that, correct.

21 Q. And why didn't you do the same with Mondesire?
22 Why didn't you get a judge's permission to do that?

23 A. For a couple of reasons, because the law is very
24 clear on what constitutes Grand Jury information. Agent
25 Pfeiffer's statement from Agent Mileto was clear that

1 memo, that Agent Mileto felt that he -- Mr. Mondesire
2 should have been investigated, and he was not. That's
3 what the point of it was.

4 Q. But you just said you didn't ask Bruce Beemer
5 whether or not these documents, whatever you had was Grand
6 Jury before you released it to the press?

7 A. Bruce Beemer was there. I didn't have to ask
8 him. If Bruce Beemer for one second thought it was Grand
9 Jury information, Bruce Beemer would have said we're not
10 even talking about this. We're not even going to look at
11 any documents. Everybody stop, get out the oath, and
12 everybody sign the secrecy oath. He would have done it if
13 he thought so. I would have done it if I thought so.
14 Agent Pfeiffer would have done it if he thought so, and
15 whoever else was there would have done it. You would
16 think if that room was filled with all these experienced
17 prosecutors and this was Grand Jury information, one of
18 them would have said stop, everybody stop, we're not going
19 to talk about this. We're not going to look at it. This
20 is Grand Jury, but they did not because it was not.

21 Q. Did you ever -- before you released it to the
22 press, did you make sure with Bruce Beemer that this
23 information -- did you tell him you were going to release
24 information to the press to make sure that didn't happen?

25 A. I did not tell Mr. Beemer that, and I did not

1 Mr. Mondesire was not investigated by the 2009 Grand Jury,
2 that there was not evidence presented, that there was no
3 testimony presented before the 2009 Grand Jury. If it had
4 been the opposite, if he had said he was investigated by
5 the 2009 Grand Jury, there was evidence presented, there
6 was testimony presented, it would have been a different
7 story, but this was the opposite. He was not
8 investigated. It was just -- by saying, you know,
9 Mr. Carluccio, you were not investigated by the Grand
10 Jury, that is not Grand Jury information. It is -- it was
11 made five years after the close of the Grand Jury, Agent
12 Pfeiffer's memo.

13 And another -- you know, I'm an experienced
14 prosecutor. I've been a prosecutor for 14 years. In that
15 room, we had experienced agents. We had, you know,
16 experienced prosecutors. Mr. Beemer was there, who's been
17 an experienced prosecutor his entire career. If Ms. Hoffa
18 was there, she's a federal prosecutor, and we had people
19 who would have said if this was Grand Jury, Grand Jury
20 document, somebody in that room, one of them would have
21 said well, wait a second. This is Grand Jury information.
22 This is a Grand Jury document. We need to stop, just as
23 we had in the past. Nobody did that because it was
24 clearly not a Grand Jury document. It was not testimony.
25 It was not evidence. That was the whole point of the

1 need to ask his opinion. He would have voiced it. He was
2 at the briefing with Agent Pfeiffer with me. We would not
3 even have let Agent Pfeiffer go on. Agent Pfeiffer
4 himself would have said before we go on, I have Grand Jury
5 information to tell you, and we all would have stopped.
6 If Agent Pfeiffer perhaps made a mistake and started
7 telling us about Grand Jury information, either myself or
8 Bruce Beemer would have said wait a second. This is Grand
9 Jury information. Stop. We're not even talking about it,
10 and we would have gone down the hallway to get the oath of
11 secrecy. He did not do that.

12 And then we sat in a meeting where Agent Pfeiffer
13 briefed the rest of the staff on it. And if that was
14 Grand Jury information, one of them would have said if it
15 was, in fact, Grand Jury information that we needed to
16 sign the secrecy oath because we all knew that we were not
17 sworn into a 2009 Grand Jury. I was a stay at home mom at
18 the time. Agent Pfeiffer was in charge -- was the
19 commander of the Internet -- of the Internet Crimes
20 Against Children Task Force. I think Mr. Beemer was in
21 the Allegheny County D.A.'s office. None of us were sworn
22 into that Grand Jury. And if in a case as was in
23 Sandusky, if we knew that that was Grand Jury information,
24 if any of us had any inkling, we would have stopped, but
25 it was not. None of us thought so or one person, you

1 would think, would have spoken up and said wait a second.
2 It would have been as simple as signing an oath.

3 Q. As Attorney General of Pennsylvania, can you look
4 into old cases?

5 A. Well, that depends.

6 Q. Grand Jury information or Grand Jury cases? Can
7 you look at it, investigate it or at least be aware of it?

8 A. Well, I'm not sure what the context of your
9 question is? Can I be aware of it?

10 Q. Okay.

11 A. If I'm sworn in.

12 Q. Okay. So you have to be sworn in before you,
13 even the Attorney General in your office can look at Grand
14 Juries from before you came in?

15 A. That's correct. The statutory law is very clear
16 that you have to be the enumerated people; the Grand
17 Jurors, the prosecutor, the witness, the person operating
18 the recording device, the stenographer. You have to be
19 that group of people, and you have to sign an oath of
20 secrecy. That's what the law clearly states, and the case
21 law also then goes on to explain what constitutes Grand
22 Jury information. So if I wanted to go back to, say,
23 2000, there was a -- you know, say a murder case that has
24 no statute of limitations, and I wanted to go back. And
25 you would have to then assume I knew it was a part of a

1 Jury information, we would have immediately stopped to
2 sign that oath.

3 Q. Did you put --

4 A. Was that your question? I think I actually --

5 Q. Did you put out a directive as to that? Do you
6 know? Ever put out a directive that if you want to look
7 at Grand Jury information, you need to sign an oath or
8 anything of that nature?

9 A. I don't need to put out a directive. We're all
10 experienced prosecutors. We know the law.

11 Q. So what happens if you -- somebody wants to put a
12 transcript of 2009 in front of you that says Grand Jury
13 transcript? What is your procedure?

14 A. Our procedure is is to go and get the secrecy
15 oath, to have it typed up whatever Grand Jury it's from,
16 and then we would sign it.

17 Q. Okay.

18 A. And then we would file it.

19 Q. And then if you want to release that information
20 to the press, what are you gonna do?

21 A. We wouldn't.

22 Q. You wouldn't?

23 A. No.

24 Q. But say you wanted to.

25 A. You would have to get an order from the judge.

1 Grand Jury. You know, we can't know what we don't know.
2 If somebody this was a part of a Grand Jury, we need to go
3 back, then we would find which Grand Jury it was, and we
4 would have an oath of secrecy. It would say in regard to,
5 you know, let's say the 29th Grand Jury. And even if you
6 wanted to look -- just look at a specific case, it could
7 then mention a specific case.

8 Q. But didn't Pfeiffer explain all that when he was
9 talking at the conference or the meeting? Did he explain
10 this was from 2009 Grand Jury, and these were information
11 we got from Grand Jury transcripts and subpoenas?

12 A. No. What Agent Pfeiffer told us -- and again,
13 Agent Pfeiffer is one of the best police officers I've had
14 the privilege of working with. If Agent Pfeiffer for one
15 second thought that this was Grand Jury information, he
16 himself before he even talked to Agent Miletto or if he
17 realized during his interview with Agent Miletto that this
18 was Grand Jury information subject to a secrecy law, Agent
19 Pfeiffer would have stopped immediately and signed a
20 secrecy oath. When Agent Pfeiffer came to us, he would
21 have said before my briefing this is Grand Jury
22 information, you need to sign the oaths. That would have
23 happened. Before that staff meeting, if Agent Pfeiffer
24 said to everyone this is Grand Jury information or if
25 anyone at the meeting thought that it, in fact, was Grand

1 Q. Now, the paper did list these two documents. You
2 will agree that the paper did list that they had these two
3 documents in there?

4 A. That's what it says. Yes, sir.

5 Q. And those documents, you believe -- who had
6 possession of those documents in your office? Who would
7 have had possession of those documents?

8 A. Of those documents?

9 Q. The interview by Michael Miletto on March 21st
10 and -- well, let's stay with that one first. Who would
11 have had possession of this interview?

12 A. The March 2014?

13 Q. Yes, March 21st.

14 A. The memo from Agent Pfeiffer.

15 Q. Anyone besides him?

16 A. Well, our entire staff would have -- anybody at
17 that meeting would have access to it.

18 Q. Okay. Because did they get a copy of it? Do you
19 know?

20 A. I don't know.

21 Q. So the only one you know actually would have a
22 copy of it would be Pfeiffer, correct?

23 A. Well, he would certainly keep a copy. Correct.

24 Q. As far as the memo from Bill Davis to Frank Fina,
25 who would have a copy of that?

1 A. Well, if that was from Grand Jury testimony,
 2 notes of testimony, then that would be from wherever that
 3 Grand Jury was seated. As it turns out, it's here in
 4 Norristown. It would be in their evidence locker or
 5 should be in that evidence locker, but it could also be --
 6 at that time, it could also be on their computers.
 7 Q. Would Agent Pfeiffer have those documents?
 8 A. I don't know. You'd have to ask him.
 9 Q. So the documents got in the paper. You don't
 10 know how they got these documents, or do you know? Tell
 11 us.
 12 A. You're lumping the two documents together. The
 13 2014 memo from Agent Pfeiffer, yes, I told you how that
 14 happened. The 2009 memo, the Davis memo as you're
 15 referring to it, I don't know. I never even knew of its
 16 existence until I read the article.
 17 Q. And as far as the interview of Michael Miletto,
 18 do you know how that got to the press?
 19 A. I don't know. All I can tell you is that the
 20 document that Agent Pfeiffer had with him at our staff
 21 meeting that he held up was, you know, a couple pages
 22 long. He briefed me on it, and then he briefed our team
 23 on it. And then, you know, I had our conversation that I
 24 had, had just testified to with Adrian.
 25 Q. And again, when you read the article on June 6th,

1 And then we knew that you were looking into it, so we did
 2 not want to interfere with your investigation, so we did
 3 not give it to OPR.
 4 Q. Now, as far as the Pfeiffer coming, do you know
 5 when he came and told you about that?
 6 A. About what?
 7 Q. About what was in the paper and this article. Do
 8 you know when he came and approached you?
 9 A. I don't.
 10 Q. Was it at or near the time of June or do you
 11 think it was in August?
 12 A. Probably June.
 13 Q. And was he concerned or what was --
 14 A. He was a little ticked off.
 15 Q. Okay. And why?
 16 A. He was ticked off because his name was in the
 17 newspaper, and he's a cop. Like I said, cops do not like
 18 to see their name in the newspaper, and they're not used
 19 to it. Typically if you -- if their police report
 20 appears, it doesn't say who it was authored by. Also,
 21 because it was -- he felt that it was a -- like an
 22 interoffice police report. It was an interoffice memo,
 23 and he was a little ticked off that anything would go out
 24 in his name -- well, with his name on it that was an
 25 interoffice kind of work product.

1 what was your reaction again?
 2 A. Well, I didn't read it on June 6th. I read it
 3 some time in August.
 4 Q. Okay.
 5 A. Because again, I don't read press, good or bad.
 6 It's -- I think it colors the way you then proceed, and I
 7 don't think that that's a good thing for a prosecutor. My
 8 reaction was is the May 2014 was not Grand Jury
 9 information. But the 2009 could have been, but I didn't
 10 know where it came from, and I didn't know who had it.
 11 It's quite possible even members who are no longer with
 12 the Attorney General's office had access to it.
 13 Q. Again, when did you read the article or when did
 14 you --
 15 A. Around August of 2014.
 16 Q. And who told you about that? Who told you that
 17 the article was in there?
 18 A. I knew the article was in there, but I didn't
 19 have to read it. As Attorney General, I get briefed on
 20 quite a bit of things. I can't possibly read every
 21 document anyone gives me, so I get briefed on it.
 22 Somebody, I think it was either Mr. Beemer or Agent
 23 Pfeiffer, told me that this article was in the newspaper.
 24 By then, Mr. Carluccio, you had already -- well, you were
 25 appointed before the article appeared in the newspaper.

1 Q. Did you inform him that you wanted that, that
 2 information to get out there anyway because it was a
 3 misjustice?
 4 A. No.
 5 Q. You didn't tell him that?
 6 A. No.
 7 Q. Why wouldn't you tell him that? This way, he
 8 wouldn't be concerned.
 9 A. Because he was upset that -- well, he wasn't
 10 upset. He was ticked off that that's what had happened,
 11 and there was no need for it. He -- the 2009 memo, I knew
 12 nothing about. So how that got out, I knew it was going
 13 to be in your hands.
 14 Q. But you knew information did get out on
 15 Mondesire?
 16 A. I knew information got out that Mondesire was not
 17 the subject of a Grand Jury investigation and that Agent
 18 Miletto thought that it should have been, but he was told
 19 by his superiors you're not allowed to investigate him.
 20 That's what I knew.
 21 Q. But again, why didn't you tell Pfeiffer that this
 22 information was okay to go out because I said it was okay
 23 to go out?
 24 A. Because I had not read the article at that time,
 25 and I didn't know anything about a 2009 transcript, and I

1 did not know how that got out.
 2 Q. Your attorneys on behalf of you filed some motion
 3 to quash your subpoena to be here today, correct, to
 4 quash --
 5 A. Well --
 6 Q. -- your subpoena. You wouldn't have to testify
 7 today?
 8 A. Not really sure what you're -- because there's a
 9 lot of motions filed.
 10 MR. CARLUCCIO: We can take a quick break, if
 11 this would be a good time to do that, if you need to
 12 take a quick break because we're going to go see the
 13 judge.
 14 (The witness and counsel left the room at 2:40 p.m.)
 15 (The witness and counsel entered the room at 2:52 p.m.)
 16 BY MR. CARLUCCIO:
 17 Q. Back in the spring when you had this conversation
 18 with Adrian King letting the press know that I guess there
 19 was some kind of wrong here that you -- did you talk about
 20 giving it to anyone else, this information?
 21 A. Such as?
 22 Q. Anyone else that you say we need to -- they need
 23 to know about this information about Mondesire?
 24 A. I'm not sure who you're referring to, but that
 25 was the entire substance of our conversation.

1 Q. Did --
 2 A. Besides my conversation with Bruce Beemer about
 3 we need to take a look at this and see whether it's
 4 viable.
 5 Q. But the Mondesire information that you had
 6 gotten, did you decide to release that or give it to
 7 anyone else?
 8 A. Well, Mondesire -- the information that I had
 9 wasn't specific on Mondesire. It was Agent Miletto's
 10 feelings, you know, that this case was not prosecuted. It
 11 was not investigated, and somebody needed to look into it,
 12 so that's the information that I had. No, I don't know
 13 who you mean by someone else. In our office or outside of
 14 the office?
 15 Q. Anyone outside your office? Anyone else?
 16 A. No.
 17 Q. Did you discuss with Adrian King about releasing
 18 information on Mondesire to anyone outside your office
 19 beside Josh Morrow and the press?
 20 A. No.
 21 Q. And again, you felt this was not Grand Jury
 22 material, correct?
 23 A. I knew it wasn't Grand Jury information. I, I
 24 know the law. I know the case law. I know that I have
 25 experienced prosecutors. I know that I have experienced

1 agents. And if by any chance I made a mistake as to what
 2 the law was, before we even started someone would have
 3 corrected me. And, you know, there were many people there
 4 that could have and would have. We, we knew it was not
 5 Grand Jury information. I still believe to this day it
 6 wasn't Grand Jury information. It's the opposite of Grand
 7 Jury information. It's that he was not investigated.
 8 Q. So if it was Grand Jury information, that would
 9 have been wrong to release it to the press?
 10 A. If it's Grand Jury information, if it's clearly
 11 Grand Jury information, then you also then have to be
 12 sworn into the Grand Jury, so the law has two prongs to
 13 it. The law says that you -- it's gotta be Grand Jury
 14 information, and the law says that you had to have signed
 15 a sworn oath of secrecy. So you have to fulfill both
 16 prongs of the law, or else then you could be held in
 17 contempt of court.
 18 Q. My question was if this was 2009 Grand Jury
 19 information and you released it to the press, is that
 20 wrong in and of itself?
 21 A. No, because you have to have both prongs of the
 22 law. You have to be sworn into that Grand Jury for you to
 23 be criminally liable for a contempt of court. That's what
 24 the law says.
 25 Q. So if you release Grand Jury information from

1 2009, is it wrong or not?
 2 A. I didn't release Grand Jury information from
 3 2009. I was not sworn into the Grand Jury from 2009, as I
 4 could not have been since I was home with my kids at the
 5 time. I didn't even know there was a Grand Jury
 6 investigation in 2009, so there's no way I could go back
 7 and say well, I know that there's a Grand Jury, and the
 8 information that I had -- I did not have the 2009 Fina
 9 memo that you're referring to. The information that I had
 10 was not Grand Jury information.
 11 Q. So let me rephrase that. If someone in your
 12 office released information, Grand Jury information from
 13 2009, would that be wrong or right for them to give that
 14 to the press?
 15 A. According to the law, you had to have been sworn
 16 into that Grand Jury and released Grand Jury information.
 17 Q. So that's the law.
 18 A. That's the law.
 19 Q. How do you feel?
 20 A. It doesn't matter how I feel. That's the law.
 21 I, I, I don't get to interpret the law. I don't get to
 22 pick and choose which one I, I, I want to enforce or how I
 23 want to enforce it. The question is is do the facts fit
 24 the law. If they do, it's a crime. If they don't, then
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 23 want to enforce it. The question is is do the facts fit
 24 the law. If they do, it's a crime. If they don't, then
 25 we can't, you know, find a prosecution where there is

1 none.

2 Q. So if someone to -- in your office took Grand
3 Jury information from 2009 and released it, what should
4 happen to them?

5 A. If they were sworn into a Grand Jury and they
6 released Grand Jury information, then they could be held
7 in contempt of court by that judge.

8 Q. So you're saying nothing should happen to them
9 because of that statute?

10 A. I'm not saying that. I'm telling you what the
11 law is. I'm a prosecutor. It doesn't matter how I feel
12 what the law should be. That's the law.

13 Q. Well, I asked you a question how you feel.

14 A. It doesn't matter how I feel. I'm a prosecutor.

15 Q. Right. I'm asking you how you feel.

16 A. I feel that there is -- if your question is is if
17 somebody released information from a 2009 Grand Jury and
18 they weren't sworn into it, you know, that's the law. For
19 example, we had a case where a woman -- the police charged
20 a woman for assisted suicide on her father. Whether I
21 agreed with whether she should have done that or not
22 doesn't matter. The law in Pennsylvania says assisted
23 suicide is illegal in Pennsylvania, and we took a lot of
24 heat for that. I took a lot of heat for that. I mean,
25 you know, the national groups shut down our servers four

1 the law. It doesn't matter what I feel about it. That's
2 the law, so I feel that you have to follow the law. And
3 if the law says it's gotta be Grand Jury information, you
4 have to be these specific people and you had to have
5 signed an oath of secrecy, that's the law. That's how I
6 feel.

7 Q. So if Grand Jury information from 2009 under your
8 watch is released, you're okay with that? Just tell me
9 how you feel.

10 A. I, I, I said it a couple times already.

11 Q. We know what the --

12 A. I understand what're you going for. I do. I
13 understand, and I understand your question, but you have
14 to understand my answer. My answer is I'm the Attorney
15 General of the Commonwealth of Pennsylvania, and I believe
16 that the law has to be followed, and I follow it.

17 Q. Do you believe the law --

18 A. And the law as it's stated, not how as I feel it
19 is or not how I think it should be, the law as stated.

20 Q. Well, do you feel -- you're the Attorney General
21 of Pennsylvania. Do you feel the law should be changed?

22 A. No, and here's why. Because, you know, say for
23 example. In 2009, I was home with my kids, right? I
24 don't know where you were in 2009. If somebody advances
25 that law -- if somebody wants to stretch it to every

1 times protesting into our office. You can't prosecute
2 this woman. Maybe I felt bad for her. Maybe I felt that
3 the law should be different, but my answer was I have to
4 follow the law. If, if somebody doesn't like the law,
5 then it's up to the people of Pennsylvania to call their
6 legislators and have them change it. But the law is what
7 it is, and I have to follow it regardless of what I think
8 or how I feel it should be.

9 Q. Again, my question is not what the law is. My
10 question is how you feel?

11 A. Mr. Carluccio, I think you and I could go all day
12 on this one.

13 Q. Just let the Grand Jury know how you feel if 2009
14 information from a Grand Jury was released to the press.
15 How do you feel?

16 A. I answered your question.

17 Q. Okay. Well, I'd like to hear it again. How do
18 you personally feel about that?

19 A. I personally feel that the law has to be followed
20 every single time. And when the law says something, you
21 have to follow it. If the law says you have to be sworn
22 in and the law says -- the law's there for a reason. The
23 law is there because someone has thought it through. The
24 law has been interpreted by the courts because people
25 smarter than me have thought it through already. That's

1 single possibility, then every single law enforcement
2 officer could be potentially hold in contempt if they do
3 something that they don't even know they're doing. So for
4 example, if we were bringing an investigation into a child
5 predator, for example, what you're stretching it to mean
6 or what, you know, maybe --

7 Q. I'm just asking you what you think.

8 A. -- is your thoughts. I'm not putting word in
9 your mind. If we try and stretch it so that every single
10 case and every single prosecutor and every single Grand
11 Jury from the beginning to the end of time, you have to
12 figure out before you investigate that child predator
13 whether this person was ever a subject of any Grand Jury,
14 whether they were not the subject of any Grand Jury,
15 whether every -- any agent even thought they should be the
16 subject of any Grand Jury. We would never have any
17 prosecution. It would be impossible. And if we did, then
18 we would have to hold every law enforcement officer
19 responsible for, you know, things that there's no way that
20 they could know. And not only would it be our own
21 statewide Grand Jury, but we would have to then affix that
22 to every county Grand Jury. We have 67 counties. You'd
23 have to affix it to every federal Grand Jury. There's no
24 way we could know that. It's impossible. And to stretch
25 the law that far literally shuts down the criminal justice

1 sure, and I'm pretty darn sure that's not what was meant
 2 by this very simple statutory law.
 3 Q. So again, to make it really simple, if something
 4 comes across your desk, and you look at it and it says
 5 2009 Grand Jury transcript or information we got from the
 6 Grand Jury, you feel that can be given out or not?
 7 A. I can tell you what I would have done. I think
 8 we already answered that question, but I can tell you if I
 9 saw that there was Grand Jury material, notes of
 10 testimony, piece of evidence, then I would have said no,
 11 don't show it to me. Let's just go get the secrecy oath,
 12 and do you have the secrecy oath? Were you sworn in? And
 13 if there's anybody that we needed to pass it on to, then
 14 you need to be sworn in as well, but that's not what
 15 happened here.
 16 Q. And what happened if that got released to the
 17 press? Would that be okay or not okay from your office?
 18 A. If that person was sworn into the Grand Jury and
 19 they released Grand Jury information to the press, then
 20 they could be held for contempt of court.
 21 Q. But if they were not sworn in and they released
 22 Grand Jury information from 2009, that's okay?
 23 A. I admire your tenacity.
 24 Q. I'm just trying to find how you feel.
 25 A. And I understand, but I, I, I think I've answered

1 - Q. I'm just --
 2 A. I guess that's up to you guys. But sometimes the
 3 effects of the concussion were I get very tired. I get
 4 headaches. I have -- sometimes, I'll say a word when I
 5 actually mean another word. I will pick up my cell phone
 6 to call someone, and then I'll completely forget that I'm
 7 calling them. I think that's getting better. The results
 8 of the MRI the other day showed that I apparently had
 9 something that preexisted -- I can't tell you because the
 10 reason I'm a lawyer is because I can't be a doctor -- and
 11 that, that, that -- the accident has exacerbated it, and
 12 then it sometimes exhibits symptoms of a stroke.
 13 Q. When you came in today, you did see press
 14 downstairs, correct?
 15 A. Yes, uh-huh.
 16 Q. And again --
 17 A. Best-kept secret in Pennsylvania.
 18 Q. And your name was actually -- they -- the press
 19 knew that you had -- your name was subpoenaed to come in a
 20 couple times?
 21 A. Yes.
 22 Q. Do you have any information where you can tell me
 23 how that happened or how that occurred?
 24 MR. SHARGEL: Excuse me.
 25 MR. CARLUCCIO: Thank you.

1 it four or five times already. It's just not gonna
 2 change.
 3 Q. We are trying to get through this thing. And at
 4 some point in time, I think you were subpoenaed to come in
 5 last time. I think last month, correct?
 6 A. Yes.
 7 Q. And you were in an accident?
 8 A. That's right.
 9 Q. Can you just explain to them what the accident
 10 was and if it's affected you in any way.
 11 A. The accident was -- I was not driving. I was --
 12 I had two of my agents with me. I was in the back seat.
 13 It was early in the morning. And I don't know how it
 14 occurred, but the police report was in the newspaper.
 15 Agent Ruddy hit a parked car. I did not have my seat belt
 16 on, and I hit my head off a side widow. I have a
 17 concussion and neck and back injuries, and the doctor says
 18 as of Monday, I can start going back to work as I
 19 tolerate. And I just had an MRI of my brain the other
 20 day, and there were some findings that they think may
 21 delay it.
 22 Q. And how do feel your testimony today? Do you
 23 feel that your memory's okay and what you testified to was
 24 coherent?
 25 A. Some -- well, I hope so.

1 THE WITNESS: There have been leaks
 2 throughout this Grand Jury almost since the beginning.
 3 I read that the OAG was the target of this Grand Jury
 4 in the newspaper. I read that, that the testimony --
 5 we heard from reporters that the testimony of David
 6 Tyler, when and where and what the questions and the
 7 answers were. They knew that. They knew the dates I
 8 was subpoenaed. They knew the date I was subpoenaed
 9 now which, you know, I've now gotten used to the fact
 10 that again, it's the worst-kept secret in
 11 Pennsylvania. So there are a lot of leaks from this
 12 Grand Jury, as typical.
 13 BY MR. CARLUCCIO:
 14 Q. But do you know any information of who might have
 15 done it?
 16 A. I heard from a reporter -- from former reporter
 17 that all the reporters knew.
 18 Q. Do you know how or how that information got out?
 19 A. No.
 20 Q. You don't?
 21 A. Nuh-huh.
 22 MR. CARLUCCIO: One moment.
 23 BY MR. CARLUCCIO:
 24 Q. Just one last question. Do you have any
 25 disagreement with Adrian King on any of the Mondesire

1 information being leaked to the press or anyone else?

2 A. Well, in our opinion, it wasn't leaked because it
3 wasn't Grand Jury.

4 Q. Given that information, did you have any other
5 disagreement with Mr. King about information on Mondesire
6 getting out to anyone outside of the office?

7 A. Adrian and I have had numerous disagreements, but
8 not that I recall. This wasn't one of them.

9 Q. Not on Mondesire, correct, any information to
10 deal with him?

11 A. Correct.

12 MR. CARLUCCIO: If you could take a step
13 outside.

14 (The witness and counsel left the room at 3:07 p.m.)

15 (The witness and counsel entered the room at 3:16 p.m.)

16 BY MR. CARLUCCIO:

17 Q. And I will apologize. I thought I wrote down all
18 the questions. If not, I may ask you to step out again to
19 make sure I did them.

20 MR. SHARGEL: No problem.

21 BY MR. CARLUCCIO:

22 Q. One question is a budget question. There's been
23 testimony that there are files that are, at least in this
24 case, that you can get to very easily and they're not
25 protected. Is there money in your budget to make sure

1 A. Bruce Beemer. He was the head of the Criminal
2 Unit and head -- the criminal unit falls under the
3 criminal division.

4 Q. Did you ask Adrian King to look into the matter
5 at all?

6 A. No.

7 Q. And I guess the question was if you asked Bruce
8 Beemer to look into it, did you do any follow up with him
9 to make sure that it was looked into to --

10 A. Yes.

11 Q. -- make sure that it was followed up? How did
12 you do that?

13 A. Yes. Bruce has been a prosecutor his entire
14 career, and he also worked under Linda Kelly. He came
15 back to me -- I don't know whether it was the next day or
16 two days or three days later -- and said that he -- the
17 very first thing we do in determining whether a case is
18 viable is number one, you look at whether we had
19 jurisdiction and number two, to see whether it's within
20 the statute of limitations. He said that it was outside
21 of the statute of limitations because it had occurred so
22 long ago. I said are you sure, and he said absolutely.

23 Q. So that was your follow up, and then you were
24 done?

25 A. Yes.

1 that the files are kept more secret or more segregated in
2 that rather than just being in a room?

3 A. I think that would fall under our Management
4 Services Division. Our budget is broken out into line
5 items, so our Criminal Division will get a certain amount
6 of money. Our Management Services IT will get a certain
7 amount of money. We do have -- well, our maintenance
8 department just went way down because we had to terminate
9 some people for doing some inappropriate things on state
10 time, but it would fall under our Management Services.
11 They are the ones responsible for making sure that our
12 evidence lockers are secure and the actual building
13 maintenance.

14 Q. Okay. But there is budget money available for
15 that in the future or you're not sure?

16 A. Well, we -- we've received our budget already, so
17 our budget runs June to June. That's our fiscal year.
18 And if that's the case, then yes, our Management
19 Services -- I mean, they'd have to find it. You know,
20 it's -- of course, we're on a strict budget like everybody
21 else. But for things like that, you know, we already have
22 them on staff. It would be something that they could do.

23 Q. Did you ask Adrian King to look into the charges
24 in this case or see whether there was charges? Did you
25 ask actually to look into the case?

1 Q. The question was when you had this information
2 that you wanted to get to the press, how come you didn't
3 have a press conference and release it? How come you kind
4 of, in their words, leaked it out the way you did through
5 Josh Morrow to the press?

6 A. Yeah. I don't consider that a leak. A leak to
7 me is something that you do secretly or something that
8 you don't want anyone to know. We use Josh sometimes in
9 situations where our press department can't handle it or
10 they're busy or, you know -- maybe in that case, who
11 knows? Maybe it was even because it was later at night.
12 We also use Shelly Communications to do the same thing.
13 Our volume of information that we get out to the press
14 is -- it's substantial. We used Josh in this case because
15 it was efficient, because it was quick and because we knew
16 that the message would be conveyed correctly. As I said,
17 our press team is made up of young -- you know, they work
18 hard, but they're young and pretty inexperienced, and
19 we've had some situations in the past where the message
20 just wasn't communicated clearly, and I think it's
21 important that it's communicated.

22 Q. I guess the question was why didn't you issue a
23 press release in relation to that?

24 A. Because that would entail the same thing with our
25 press department. And our press department, if they do a

1 press release, you know, it goes through a couple
 2 different people. It takes a couple days, then it comes
 3 to me. I edit it. It goes back to them. It comes to me.
 4 I re-edit it. It goes back to them. It's very
 5 inefficient, and we've been looking for press directors
 6 for a while. We just can't seem to find people who can
 7 handle the volume and the complexity of issues that we
 8 deal with. Tell me your question again. I'm sorry.
 9 Q. Why didn't you issue a press release?
 10 A. Oh, why didn't I issue. That's why we didn't
 11 issue a press release, and your other question was a press
 12 conference. I don't hold press conferences for anything
 13 but I think something, you know, like when we denied the
 14 lottery contract to keep the Pennsylvania Lottery from
 15 being sold to the, the British company. I have a level of
 16 what constitutes a press conference and what doesn't.
 17 Q. Next question was you said there's a lot of leaks
 18 in the Grand Jury. And are you comfortable with that?
 19 A. Well, there's a lot of leaks in this Grand Jury.
 20 There's a lot of leaks in Grand Juries in counties.
 21 There's a lot of leaks in federal Grand Juries. No, of
 22 course not. You know, the Grand Jury is meant for a
 23 reason. You meet in a room for a reason, but there's
 24 logistical problems with it. You know, the press waits
 25 downstairs. They see everybody who comes up and down.

1 There's, there's problems with information now that things
 2 are on computers. People have access to what's on
 3 computers. There's -- as you pointed out, there could be
 4 problems with where Grand Jury information is held if it's
 5 not held in a secure location, if there's people who have
 6 access to it, then yeah, that's a problem. So there's
 7 many, many problems, and there's leaks. It's almost
 8 becoming typical in county Grand Juries. We've had leaks
 9 in state Grand Juries. There's leaks in federal Grand
 10 Juries. We've had wiretaps, you know, taken out of our
 11 office. That's a felony in Pennsylvania.
 12 Q. The other question again was from the Grand Jury.
 13 If 2009 Grand Jury information that says Grand Jury is in
 14 your office and it is released, how do you feel about it
 15 being released? Even though you say it might be a law to
 16 prosecute that person criminally, how do you feel that the
 17 Grand Jury information from 2009 under your watch is let
 18 out? How do you personally feel? They want to know.
 19 A. I like the way you give the disclaimer.
 20 Q. I'm trying. I tried. I told -- it's up to them?
 21 A. That's okay. If somebody came to me and said I
 22 have this Grand Jury document or if I thought it was Grand
 23 Jury, and they said well, I want to put it out even though
 24 know I'm not sworn, the law says I'm not sworn so
 25 therefore, I can put it out, I would say to them no, wait.

1 You have to stop. You have to be sworn. Sign the oath of
 2 secrecy. There's no point in trying to get around this.
 3 You know, there -- there's been an occasion or two in our
 4 office where, you know, sometimes you get under siege.
 5 And people in the heat of battle -- not on this case, but
 6 on other cases -- say let's just put it out, let's just
 7 put it out just to get the press off your back or you --
 8 and my answer always was it's not worth it. Don't violate
 9 sealing orders. Don't violate Grand Jury. It's not worth
 10 it. Why would anyone risk their entire career over
 11 something like that when all you have to do is go and sign
 12 the oath? So my answer to that would be don't risk it,
 13 don't do it. Even though it's not against the law, go and
 14 sign the secrecy oath. Go -- it's a piece of paper. Go
 15 and grab it and file it.
 16 Q. Do you feel it should be against the law?
 17 A. I feel that Grand Juries have a function. I
 18 mean, I've worked in Grand Juries quite a bit. I, I
 19 prosecuted a supervising judge of a Grand Jury for trying
 20 to obtain Grand Jury information, you know, from me. I
 21 then became the witness, and the Attorney General's office
 22 prosecuted it. I think there are a lot of problems in the
 23 Grand Jury system. I think Grand Juries have a -- they're
 24 a great tool. They have a specific purpose, whether it's
 25 a report, whether it's recommendation on charges by way of

1 a presentment. I think your investigative function,
 2 whether obtaining document or testimony, is very much
 3 needed. But there are a lot of problems with the Grand
 4 Jury, and I've been saying this for years. There are
 5 problems, and they need to be fixed.
 6 Q. If somebody did release that information and it
 7 said Grand Jury, should they be punished?
 8 A. Now, that's you again now.
 9 Q. Well, I've got a lot of feedback on that. So you
 10 feel they should be punished if they release Grand Jury?
 11 Just because they didn't sign an oath, should they be
 12 punished if they released it and it says Grand Jury?
 13 A. No, they can't be punished. They can't.
 14 Q. Should they?
 15 A. No, because the law doesn't say that. So as a
 16 prosecutor, you know, you're asking me whether I would
 17 prosecute someone who had Grand Jury information who was
 18 not sworn and who released it. Whether I should prosecute
 19 them and whether I could prosecute them are two different
 20 things. I shouldn't if it's against the law. That's not
 21 my place. I have to follow the law. So should I? No.
 22 Could I? No. The law -- if everybody feels the law needs
 23 to be changed, then change the law, but my problem is the
 24 same as we talked about before. And maybe this is a
 25 little too, you know, digging into the weeds, but my

1 problem is is if you start punishing people with a Grand
2 Jury -- that could be Grand Jury information and they
3 weren't sworn in, then you're stifling law enforcement.
4 We have way too much to do. We have important cases to
5 bring. The investigative function is vital, and you can't
6 stop law enforcement by threatening criminal sanctions
7 against them for something that just is not what the law
8 says it is.

9 Q. And the other question was Miletto said, I guess,
10 according to your testimony that he was upset that this
11 guy didn't get prosecuted from a 2009 Grand Jury
12 investigation. Didn't that lead you to believe this was
13 Grand Jury information?

14 A. No, because just that -- just saying the words
15 Grand Jury doesn't mean it's Grand Jury information.
16 Miletto's point was is that he was not the subject of a
17 Grand Jury investigation, that there was not testimony.
18 There was not an investigation, and he felt there should
19 be. So, you know, if you say well, somebody who's not the
20 subject of an investigation is now Grand Jury information,
21 well then anybody here, including me and you, who has
22 never been the subject of a Grand Jury investigation,
23 testimony, evidence, that now includes all of us. That's
24 not what the law was meant to do. The law was meant to
25 protect the sanctity of the Grand Jury process. It wasn't

1 A. Yes.

2 Q. Why didn't you just have Adrian King call Josh?

3 A. Adrian said just have Josh call me.

4 Q. So you called Josh first?

5 A. Yes.

6 Q. Okay. And why did you do that again?

7 A. Because Adrian said just have Josh call him.

8 Q. Who is Colleen?

9 A. Tighe, T-I-G-H-E.

10 Q. You said --

11 A. Administrative assistant.

12 Q. -- she was at the meeting or not at the meeting?

13 A. I don't recall her being at the meeting, but I
14 don't recall everyone who was there. Our meetings switch
15 in and out of personnel, depending on what they're about.
16 Colleen only sits in on regular staff meetings, and those
17 are held every Tuesday starting at 10:30.

18 Q. And wouldn't this be a regular staff meeting?

19 A. No. This was later in the day, and I don't know
20 what it was about or why. I just remember it was later in
21 the day because I was heading back to Scranton right after
22 it.

23 Q. And what is the purpose of Colleen? What does
24 she do?

25 A. She -- she's an administrative assistant to me,

1 meant to stifle law enforcement. It wasn't meant to put
2 criminal liability on prosecutors and investigators for
3 things that they don't even know, and the mere mention of
4 the word Grand Jury doesn't make it Grand Jury. The point
5 was is that Mondesire was not investigated. That's the
6 point. If it was the opposite, if Miletto came and said
7 Mondesire was investigated, there was this testimony, it
8 would have been a whole different story, but that's not
9 what the facts of this case are.

10 Q. But that's what the article printed, though. It
11 printed that this came -- all these figures came out of a
12 Grand Jury investigation. This memo came out of the Grand
13 Jury, but that's what the article stated.

14 A. Well, I don't know whether the article says that
15 this memo came out of a Grand Jury investigation. And if
16 it did, it's incorrect because it couldn't have. It was
17 five years later. That Grand Jury was long closed. And
18 we didn't have another one started into it, so it was not
19 in preparation of, during or subsequent to a Grand Jury
20 investigation. We didn't have a Grand Jury. We do not
21 have a Grand Jury investigation into Mondesire.

22 Q. What did you tell Adrian King about Josh Morrow?
23 Who was gonna call who? What did you tell Adrian King.

24 A. Josh was going to call Adrian.

25 Q. And you called Josh?

1 so she would travel with me. She sometimes keeps
2 calendars. So if I'm on the phone in the car with
3 somebody, say I'm talking to, you know, the -- pick
4 anybody and they want a meeting with me, then Colleen will
5 listen to that and she'll get on the phone with my regular
6 scheduler, schedule the meeting. She's supposed to make
7 sure I'm on time for everything, that I get there on time.
8 She has all the information about where we're going. She
9 passes that along to the protection detail. Once we get
10 there, she's almost like the advance team. She'll go in
11 and find out who our point of contact is. Whenever I go
12 places, you know, I frequently talk to people, and she is
13 supposed to be close by so that if somebody says I need to
14 talk to you about a certain issue, can I call you, she
15 writes down, you know, Mrs. Jones needs a call from you,
16 and then she'll then follow up with Mrs. Jones or whomever
17 needs to -- whoever needs to get that information. She
18 also has to make sure I leave events on time. She is
19 supposed to keep the trains rolling.

20 Q. Does she take the minutes?

21 A. No. We don't keep minutes in our staff meetings.

22 Q. So there's no minutes to say what happened, what
23 was discussed or not discussed?

24 A. No.

25 Q. Is there any recap done in any manner?

1 A. No.
 2 Q. Any recap of the meeting?
 3 A. From meeting to meeting?
 4 Q. Yeah.
 5 A. Well, sometimes I'll write something down. Like
 6 if I say there's a case before the Grand Jury and we -- I
 7 wants to know how it's proceeding, then I'll write down on
 8 my sheet of paper for the next week's meeting, ask about,
 9 you know, the case that you have before you or another
 10 Grand Jury had before you. How is it going? Do you need
 11 more personnel? Do you expect a presentment? What's --
 12 you know, what's the time table?
 13 Q. And is there something that goes out about a
 14 general staff meeting that says everybody will meet
 15 Tuesday, general staff meeting?
 16 A. They're scheduled for every Tuesday at 10:30
 17 regularly. Now, if I have to switch it, if I'm in
 18 Pittsburgh or some place else and I need to be at that
 19 staff meeting, then they'll switch it and then my
 20 scheduler will send out an e-mail to everyone saying we're
 21 switching the staff meeting from Tuesday to Wednesday.
 22 Q. But as you said, the Mondesire meeting was a
 23 special meeting in the afternoon?
 24 A. It was a meeting. It wasn't about Mondesire
 25 because I don't remember what it was about. We frequently

1 Q. I hope that answered that question.
 2 A. -- and -- but I want to tell you. I mean, I knew
 3 what I was walking into. Of course, I knew. I -- even
 4 some of our transition memos. You know, we asked for
 5 transition memos. Even some of them were not gotten.
 6 Q. Okay. Hopefully. Sorry. I hope I got them all.
 7 I know I probably missed one.
 8 (The witness and counsel left the room at 3:33 p.m.)
 9 (The witness and counsel entered the room at 3:37 p.m.)
 10 BY MR. CARLUCCIO:
 11 Q. We learned that Agent Pfeiffer signed a Grand
 12 Jury oath on the 29th Grand Jury days before he was
 13 supposed to testify. Was that at your direction? Was
 14 that at anyone's direction? Are you aware of that?
 15 A. I would never have someone sign a Grand Jury oath
 16 afterwards that -- you sign it in the beginning. No, that
 17 was not under my direction.
 18 Q. Do you know who did that or have any idea?
 19 A. It's my understanding that either someone from
 20 your office or someone from the Grand Jury told him to
 21 sign it.
 22 Q. Okay. So you don't know who asked him?
 23 A. I did not direct him. No.
 24 Q. Did you ever ask him?
 25 A. Who directed him to? Yes.

1 switch out. You know, if we're talking about, say,
 2 American Airlines merger or, you know, a case before the
 3 Supreme Court or something like that, then we'll have
 4 staff meetings because it's easier, and I want everyone on
 5 the same page. I want one hand to know what the other
 6 hand is doing, and it also makes it quicker. But
 7 sometimes, the personnel changes depending on the staff,
 8 on the -- on the subject of the case.
 9 Q. There was a question on between the new and the
 10 old administration, how did that pass? Was it
 11 comfortable? Was it uncomfortable? What was the feelings
 12 between when you came into the office versus the old
 13 administration?
 14 A. That is a loaded question. I'm gonna be here a
 15 while. Well, let's put it this way. I mean, I was the
 16 first Democrat elected in 32 years. I was the first woman
 17 elected in ever. It wasn't comfortable. No, it wasn't
 18 comfortable. There are many people who didn't like the
 19 fact that I was looking into how they handled Sandusky,
 20 into their investigation into Sandusky. There were many
 21 people who resented my political party. There were people
 22 who resented me because I was a woman. It wasn't -- Linda
 23 Kelly was great, but it wasn't very comfortable at all.
 24 And I walked into 800 people, and some of them didn't want
 25 there. Some of them still don't want me there, but --

1 Q. And who did he say?
 2 A. He said someone from your office and someone who
 3 works for the Grand Jury.
 4 Q. Somebody from my office did that?
 5 A. Well --
 6 Q. From my office --
 7 A. -- office, your Grand Jury.
 8 Q. Somebody from my Grand Jury asked him to sign
 9 that? Does he know who?
 10 A. I don't know.
 11 Q. The question was you don't know who?
 12 A. Right.
 13 Q. What prompted you to read the entire article in
 14 August?
 15 A. There was -- there are -- were, as you know,
 16 motions filed before this Grand Jury, and there was a
 17 certain motion that I thought it would be best to go
 18 through the article line by line to see what exactly it
 19 said rather than based upon someone else's summary of it.
 20 Q. And again, for what purpose did you do that?
 21 A. For the motions.
 22 Q. If you had the power to change the Grand Jury
 23 law, as you said, would you change it?
 24 A. That's a good question. Would I change it? I'm
 25 trying to think of all the implications in changing it.

1 Q. Take your time.

2 A. You know, like I said, I don't want to stifle law
3 enforcement. I wanna make sure that they're able to do
4 their jobs and do them quickly without criminal
5 repercussions. They already have criminal liability on
6 them a lot or civil liability on them a lot. So would I
7 change if they have Grand Jury information whether they
8 should be -- I mean, I, I think it's a given. In my
9 administration, I think it's a given that if you have
10 Grand Jury information that you sign the oath.

11 Q. But say you --

12 A. Whether somebody -- if somebody forgets to, then
13 that would be something different. If somebody does it
14 for some nefarious purpose, then I guess that would be a
15 different reason. I think we could probably make it
16 clearer so that everybody's -- everybody knows what their
17 responsibilities are. You know, I like to let everybody
18 know what their responsibilities are first rather than
19 playing gotcha afterwards, you know. Well, I didn't tell
20 you what your responsibilities are. I didn't tell you
21 what your duties are. But you didn't do them, so now I'm
22 gonna hold you responsible for them. That's not fair, and
23 I think it should be fair. I know that doesn't answer
24 your question, but that's the best I can do right now.

25 Q. Well, we'll have you go out and we'll see if that

1 to -- you know, once that's out, it trying to get it back
2 in and say wait a second, that's not what they meant to
3 say, and I can't blame my press department out in public
4 because then it makes it look like I'm -- you know, I'm
5 not taking responsibility for it. So then I say wait, I
6 didn't say I'm not enforcing the law. I don't have
7 enforcement provisions over this. I'm telling you that
8 I'm not going to be the governor's lawyer. It took weeks,
9 and that kind of -- those kind of mistakes are costly.
10 They're costly to the Office of Attorney General, and it's
11 my duty to look out for our entire office.

12 I've always had problems with them. And then
13 when we lost our second press secretary, we didn't have
14 anybody. And we tried to move somebody up and hope that
15 they could rise to the occasion, and that just didn't work
16 either because in the Sandusky, he said something that
17 turned out to be incorrect. And he attributed it to me,
18 and again it was, you know, another like okay, how many
19 mistakes can we make here? So it just got to the point
20 that we just sort of worked around them, and we only let
21 them do their regular --

22 Q. But was there any reason to rush --

23 A. -- easy stuff.

24 Q. -- to rush to get it out?

25 A. That's the way I am. I mean, I'm like all right,

1 answered the question or not. Not right now. Gotta
2 finish up. The other question was you said you didn't
3 have a good press in March or April of 2014. So
4 therefore, you thought you should use I guess this Josh
5 Morrow to release that information. What was the rush to
6 do that at that point? Why wouldn't you wait and wait
7 until your press is better and release it? What was the
8 rush in that time to release it?

9 A. I have described myself -- and I'm looking around
10 the room, and I know that everybody's of age that they can
11 remember who I'm talking about, but I've described myself
12 as the Murphy Brown of press secretaries. If you
13 remember, Murphy Brown was constantly going through
14 secretaries, and that's me. I -- from the beginning, my
15 first press secretary, it was a disaster. Then I hired
16 somebody else, and that was a disaster. You know, simple
17 things such as the -- for example, when I said that I was
18 not going to represent the governor in -- we represent the
19 governor's office, as I told you, in lawsuits.

20 Now, the governor and myself were sued for the
21 same-sex marriage law, and I said that I was not going to
22 represent the governor. Well, our press department put it
23 out as that I'm refusing to enforce the law. Well, that
24 was incorrect. And then that got me, you know, a whole
25 bunch of -- and it took us forever, literally forever

1 let's get it off our plate. There was no reason not to,
2 either. It was timely. It was an issue, and move on
3 because there's always something else around the corner.

4 Q. Was this because of the Ali had been released
5 around that time, the Grand Jury leak on Ali? Did you
6 want to release this in order to compensate for that?

7 A. Ali wasn't a Grand Jury, but there were court
8 orders. There were sealing orders and gag orders on that.
9 So your question was did I wanna release it because of
10 that? No. You know, I, I understand that my job as
11 Attorney General, I have to answer to the press because
12 the press answers to the people. I get that. I'm not --
13 I believe in that. I believe that if I do prosecute, then
14 I should answer why I prosecuted. I believe if I don't
15 prosecute, then I should answer why I didn't prosecute, so
16 it doesn't bother me.

17 Q. So the release of this information to the press
18 had nothing to do with the release of any information that
19 went out on Ali around the same time?

20 A. Not from me, no.

21 Q. And again, I guess the question would be that
22 around this time when Ali got released, did you release
23 this Mondesire information to anyone in connection with
24 who's helping you with Ali?

25 A. Say it again, please.

1 Q. Did you release any information to anyone else on
2 Mondesire with anything in connection with Ali, anyone you
3 were dealing with in connection with Ali?

4 A. I'm not sure what your question. I don't
5 understand your question.

6 Q. Did you release any Mondesire information to
7 anyone else?

8 A. No, I did not.

9 Q. Besides King and Morrow and the press?

10 A. Correct.

11 MR. CARLUCCIO: I may have forgotten one.

12 Hopefully I didn't.

13 (The witness and counsel left the room at 3:41 p.m.)

14 (The witness and counsel entered the room at 3:43 p.m.)

15 BY MR. CARLUCCIO:

16 Q. You stated that you were gonna make corrections
17 or you could make corrections to the Grand Jury process
18 with leaking information. What would those corrections
19 be?

20 A. I would start with first, I would make
21 corrections as to how the Grand Jury is, is used. I don't
22 think -- I, I have certain ideas, as I've said out in
23 public before, of what Grand Juries should be used for.
24 If -- Grand Juries, by your very nature, take a long time.
25 You meet once, once a month, you know, maybe for a week or

1 I, VICKI NUNAN, a Notary Public and
2 Professional Shorthand Reporter of the State of
3 Pennsylvania, do hereby certify that the foregoing is
4 a true and accurate transcript of the testimony as
5 taken stenographically by and before me at the time,
6 place and on the date hereinbefore set forth.

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10 *Vicki Nunan Inc*
11 VICKI NUNAN
12 Notary Public
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1 in a county Grand Jury three days. If there's a timely
2 issue, then I don't believe that Grand Juries should be
3 used, which was my criticism in Sandusky. If -- it can't
4 take 32 months. And if the Grand Jury by its very nature
5 takes 32 months, then, then that's not a good idea, and
6 there should be certain protocol or certain guidelines or
7 even amongst, you know, the, the -- say, the DA or the
8 Attorney General for their own policy reasons. I would
9 change that.

10 I would change how Grand Juries meet. I think
11 that if you're going to be in a -- operating in an
12 environment that's secretive, then you need to be able to
13 make do sure witnesses can come in and out. I don't know
14 how you solve the leaks. I don't know how you solve when,
15 you know, there's people, secretarial staff or
16 everything's on computers now or things are held in an
17 office where people have access to it. I don't know how
18 you solve those leaks. It was a problem even when I was a
19 county prosecutor. I don't know.

20 MR. CARLUCCIO: All right. If you can step
21 outside.

22 (The testimony was concluded at 3:45 p.m.)
23
24
25

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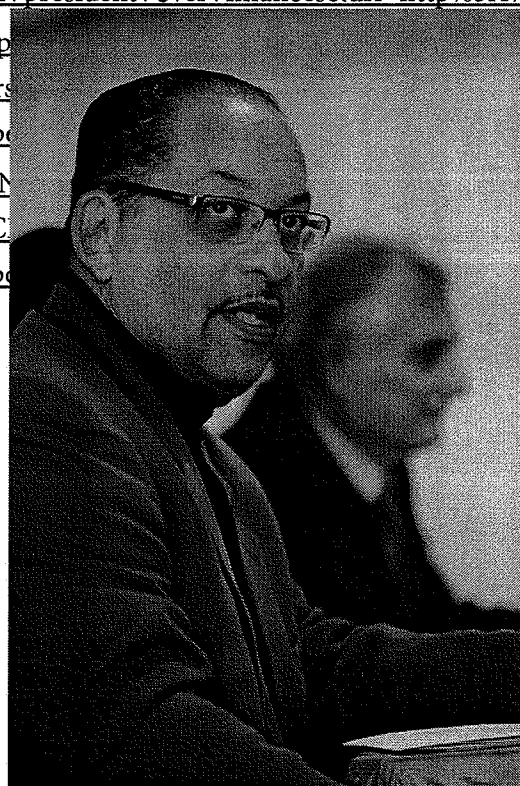
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Local NAACP officers question president over finances

by Isaiah Thompson (<http://axisphilly.org/author/isaiah/>), Jan. 21, 2014



Jerome Mondesire

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Some executive committee members and officers of the Philadelphia NAACP branch are questioning how long-time chapter president J. Whyatt Mondesire has handled the branch's finances and they are asking officials from the NAACP's national branch to intervene and examine the local group's books.

The concerns focus in particular on the relationship between the local NAACP branch and a long-defunct nonprofit called Next Generation CDC, also headed by Mondesire, which has served as a financial arm of the local NAACP. The CDC has had financial troubles of its own, including back taxes owed.

In early December, a letter was sent to Mondesire from the local NAACP's executive committee enumerating 22 distinct questions for Mondesire. Among them: "Who controls the Next Generation CDC? ... Who are the board members of the Next Generation CDC? ... Why does the Next Generation CDC collect money that is earmarked for the Philadelphia NAACP [local branch]?"

The letter (included below), on NAACP letterhead, contains no signatures but states it was submitted by "unanimous vote of the NAACP #2346 Executive Committee." Below that is the typewritten name of NAACP Assistant Secretary Rev. Elisha B. Morris.

Rev. Morris, who was first elected branch assistant secretary in 2004, verified the letter's authenticity and said that it had been sent to Mondesire after a unanimous vote by the attendees of a November meeting of the local branch. The branch's local first secretary, Rochelle Bilal, did not return calls for comment.

Threats, criticism and false accusations

The local branch has also filed a [separate formal letter](https://www.documentcloud.org/documents/1008126-fedex.html) (<https://www.documentcloud.org/documents/1008126-fedex.html>) and petition with the national NAACP organization asking it to step in and audit the local group's finances.

The strongly worded letter, signed by three longtime officers of the group—restaurateur Sidney Booker, longtime political operative Donald "Ducky" Birts, and Rev. Morris—refers to "threats, criticism and false accusations" leveled against members of the group's executive committee and implies that Mondesire has overstepped in his role as chapter president:

"There is no excuse for those who serve only to create their own fiefdoms," the letter says, "reigning as if the Philadelphia NAACP and all of its assets belongs to them."

"We are... asking that the National Office immediately take control of the Philadelphia branch, [and] conduct an internal investigation and audit of our financial records," the letter states.

The accompanying petition bears the additional signatures of more than twenty NAACP members.

Mondesire, reached by phone this week, declined to comment. And other members of the local NAACP contacted also declined to comment or confirm these details, appearing reluctant to bring an internal dispute to the public

light.

But Rev. Gill Ford, director of chapter administration for the national NAACP, acknowledges having received the letter requesting intervention by the national NAACP. His organization, he says, is still reviewing the request.

Ford downplayed the significance of the letter, characterizing the apparent rift as an interpersonal conflict between “people who were friends and now not getting along” on the one hand, and seemingly defending Mondesire’s role in any trouble on the other: “If there’s an issue with finances,” he said, “they should talk to their own treasurer.”

Next Generation CDC

But the implications of the questions being raised seem to go far beyond personal grievance and point to a relationship between the local NAACP branch and another nonprofit in which Mondesire’s role is prominent—the Next Generation CDC.

Exactly what the Next Generation Community Development Corporation is at this point in time isn’t clear. The organization was founded as a nonprofit in 1999, a few years after Mondesire was elected president of the local NAACP chapter. Federal tax documents list Mondesire as the president of Next Generation as well.

Rev. Morris, who was at one point listed as a board member of Next Generation—and whose name appears first on the petition asking national NAACP officials to audit the local branch’s books—says that he was recruited by Mondesire and that his understanding was that the organization was meant to be a financial arm of the local NAACP branch.

“My understanding was that it was a nonprofit put together by Jerry [Mondesire] so that [donors] could get a write-off directly from the Philadelphia branch.... Jerry wanted to keep the money local,” Morris explained. (Local NAACP branches are not independent nonprofits, but members of the national nonprofit organization. For that reason, donations to local chapters usually have to go through the national office.)

Morris was brought onto the Next Generation board in 2005 but says that the board “never had any meetings, never voted.... I certainly was never informed as to how money was being spent.”

“In honesty, [Mondesire] was my friend, and I thought everything was good and didn’t question it,” Morris said. “And in hindsight that was a mistake.”

Morris, and presumably the signatories of the letters to Mondesire and the national NAACP, say that they believe that money meant for the local branch of the NAACP—proceeds of fundraisers, grants, etc.—has for years been passing first through the Next Generation CDC, under the supervision of Mondesire, with little scrutiny and little reporting to branch members (Question #6: “Checks... [are] being cashed and then a Next Generation CDC check is written and given to the NAAP”).

AxisPhilly could not confirm this financial relationship, but the two organizations have been closely tied. A 1999 press release from the local NAACP chapter describes the organization as “an affiliate of the Philadelphia

branch of the NAACP [which] handles the branch's economic development programs."

Reason for scrutiny

But the fact that any relationship exists at all may be reason for scrutiny—on paper, the Next Generation CDC ceased to exist long ago.

Morris did not know until he was informed by AxisPhilly that the Next Generation CDC has been defunct as a nonprofit organization for nearly 10 years.

Next Generation CDC itself hasn't filed required annual tax forms with the Internal Revenue Service since 2005. It isn't listed in a state database of active nonprofits. The organization has no website, no apparent phone number, and has left virtually no trace of its existence on the Web.

It has appeared only briefly in news accounts in the 15 years since it was founded. A 2005 article by Daily News gossip columnist Dan Gross suggested that Mondesire was considering moving into a house on Phil Ellena street "owned by his Next Generation CDC."

The nonprofit briefly reappeared in the public light again in 2010, when a grand jury report led the state's attorney general to charge a Philadelphia woman, Harriet Garrett, and her daughter with misappropriating hundreds of thousands in taxpayer dollars from a state contract via a different nonprofit, Creative Urban Educational Systems (C.U.E.S.), with close ties to Next Generation CDC. Garrett had been the treasurer of Next Generation CDC, which initially had been awarded the contract, and Mondesire had been a board member of C.U.E.S.

It was around this time that Next Generation stopped filing federal tax forms. In 2010, the state of Pennsylvania officially revoked its nonprofit designation in state databases.

But the organization still has several properties under its name, several of which have close ties to Mondesire himself.

According to city records and old tax filings, Next Generation CDC owns five properties in Philadelphia, three of which were sold to Next Generation by the city's Redevelopment Authority for the nominal price of \$1 each.

Among them: 1619 Cecil B. Moore Ave.—the headquarters of the local NAACP branch (which the letter to Mondesire claims has been without heat).

Another is 213 Phil Ellena St., in which Mondesire appears to have lived himself at least for some time. A 2006 lawsuit over voting rights issues lists as a plaintiff Mondesire, "who resides at 213 E. Phil Ellena."

The defunct CDC also owns 6661 Germantown Ave., the building which houses the Philadelphia Sunday Sun, a (for-profit) newspaper owned and published by Mondesire. (Among the outstanding debts listed Next Generation's decade-old tax filings is a \$3,000 loan to the Philadelphia Sunday Sun).

Two of these properties, still under the title of the defunct CDC, have enjoyed considerable tax breaks under city laws exempting nonprofit organizations from real estate taxes.

Michael Piper of the city's Office of Property Assessment said that the properties had enjoyed a tax exemption for nonprofit status, but that the city was re-examining that exemption status since AxisPhilly brought the nonprofit's status to the office's attention. City spokesman Mark McDonald points out that the city has adopted a new rule that goes into effect next year, which requires nonprofits to prove their nonprofit status upfront.

Delinquent real-estate taxes

Taxes indeed seem to have been a problem for the ghost nonprofit entity. It's been sued a half-dozen times in the years since it stopped filing tax forms, in some cases for delinquent gas service claims, all of which were eventually satisfied.

In October, the city moved to foreclose on 6661 Germantown Ave., the property which houses Mondesire's Sunday Sun, for over \$13,000 in delinquent real-estate tax payments. The property was scheduled for sheriff sale, but was "stayed," or removed from the sale, at the last minute. The city's law department says a private party paid off the debt.

Rev. Morris says that he believes that money meant for the local branch has nonetheless still been passing through Next Generation, under the oversight of Mondesire.

"It's obvious that, according to the past two treasurers, the CDC gets the money that comes for NAACP Philadelphia branch and deposits them in the CDC account. Then Jerry will issue a check from the CDC to the NAACP," said Morris. "But we never know how much the original check is."

NAACP current treasurer Theresa Spotwood could not be reached for comment and former treasurer Jennifer Whitfield declined to comment.

Morris, who initially declined to comment for the story, says that revelations about the nonprofit's defunct status and property ownership history changed his mind.

"I allowed my name to be put on that board," he says, referring to the Next Generation CDC, "and I didn't ask questions that I should have about what we were doing," he said. "But this is public business now. People had better tell the truth."

The Philadelphia NAACP website, updated just a week or two ago, features a new list of its officers, in which Morris' name is removed, along with that of Sidney Booker and Ducky Birts, all longtime members who signed the petition asking for intervention from the national organization.

Morris says all three still serve as officers; the removal of their names, he says, is "very interesting."

National NAACP branch director Gill Ford, who says he expects to come to Philadelphia to talk with local NAACP members, says he was unaware of any connection between the NAACP's national office and the Next Generation CDC, the entity of which so many of the questions put to Mondesire were the focus.

"I've never even heard of it," he said.

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Mondesire responds to NAACP funding allegations

Damon C. Williams And Johann Calhoun | Posted: Friday, January 24, 2014 12:00 am

The widening rift within the ranks of the Philadelphia branch of the NAACP has now gone public, as word leaked late this week that three chapter officers — Donald “Ducky” Birts, the Rev. Elisha Morris and Sydney Booker — questioned the leadership and fiscal management of chapter president J. Whyatt Mondesire.

When reached by phone on Thursday, Mondesire took issue with how the information broke, and sought to clarify the situation.

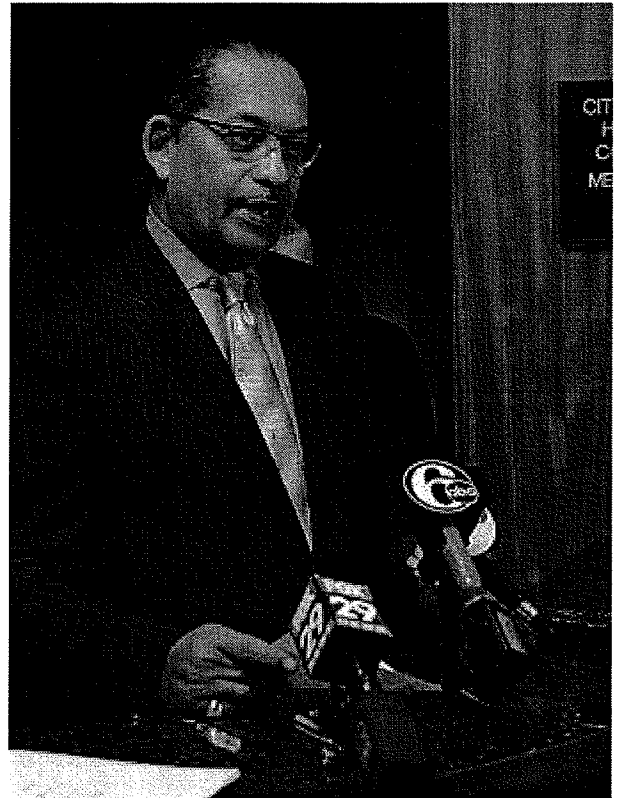
“It’s a gross violation of NAACP policy,” he said, in regard to the actions of his three accusers. “They need to notify the national organization. The majority of the board here in Philadelphia has expressed complete support for our leadership. We had three meetings, of which those three characters were invited, and they never had the guts to show up, so they’ve decided to run to the news media to try to disparage my character rather than face the truth.”

Lawyer Gerald P. Egan is representing Birts, Morris and Booker, and said this situation developed from Mondesire’s reluctance to answer critical questions at a recent board meeting concerning monies intended for the local branch, but found its way into other organizations. Egan contends, Mondesire did not address the issue but instead released a memorandum which blasted the three, with various reports noting that Mondesire labeled the three as a “gang of backstabbers.”

“Questions about financial irregularities and management problems were thoroughly addressed at least twice in two separate board meetings,” Mondesire wrote on Dec. 26, according to published reports. “Nothing has been taken from the NAACP, and no NAACP money is missing.”

Egan sees the situation much differently.

“I was contacted by the three individuals because of their concerns. There was a [Philadelphia



Mondesire responds to NAACP funding allegations

Jerry Mondesire. — Photo/Parents United for a Better Education

Branch] executive board meeting, and at the time, a lot of questions came up about the finances,” Egan explained. “So [Birts, Morris and Booker] sent a letter to Mondesire with 22 specific questions about the finances and how they were being handled.

“Apparently, some checks were coming in for the local branch that were being deposited into a nonprofit’s account,” Egan continued. “One check was for \$100,000 that went to the nonprofit, but only \$55,000 came out. So they sent a letter, asking Mondesire, ‘What happened to the money?’ Mondesire did not respond, but instead wrote a memorandum criticizing the three individuals.

“Based on that, they retained me.”

Published reports listed the nonprofit in question as Next Generation Community Development Corporation — a CDC the IRS has scrutinized. According to GuideStar — an organization that tracks CDC’s and community groups and details their standing with the IRS — Next Generation CDC has not appeared at all on IRS reports and audits going on several months, and Next Generation has not filed the required forms in years.

“This organization’s exempt status was automatically revoked by the IRS for failure to file a Form 990, 990-EZ, 990-N, or 990-PF for three consecutive years,” read GuideStar’s summary of Next Generation CDC’s standing. “Further investigation and due diligence are warranted.”

GuideStar, which prides itself on providing the latest data available — only had financial records of the Next Generation CDC for 2004. In that fiscal year, Next Generation CDC, which considers itself a nonprofit, had total revenues of \$1.17 million, with expenditures of \$736,505. In that same year, Mondesire was listed as primary manager.

Repeated efforts to reach the Next Generation Community Development Corporation were unsuccessful. Next Generation CDC is not listed with the Philadelphia Association of Community Development Corporations — the official CDC listing outlet for the city’s Office of Housing and Community Development. Next Generation CDC is also absent from a list provided by the housing and community development office.

“We created the corporation years ago back when I first became the president in order to get the NAACP properties and that’s what it is,” Mondesire said of the corporation. “It has nothing to do with the NAACP, because we are not allowed to own property. It’s the owner of the buildings. And so the NAACP pays a dollar a year for 99 years - we signed a lease agreement back in the late 1990’s. That’s the only relationship that it [corporation] has with the NAACP.”

Mondesire stated the money from the NAACP does not go through the corporation.

“They’ve [the accusers] alleged that some money is going through it [the corporation],” he said.

“Have people given checks to that corporation in order to get a tax write-off from the NAACP? A few did over the years. But no large sums of money. No.”

When asked about the genesis of this four-way conflict, Mondesire said it stemmed from a decision to fire Morris and provided some salacious details about it.

"I fired Morris as a youth director, and I disassociated Birts from the dinner because he was using the contact information he got from the NAACP to enrich himself with his questionable dinner held every April - the so-called Ducky Birts Foundation," Mondesire said.

Asked if the three are making a push at replacing him as president, Mondesire responded "They can't. They have to run an election in the fall. There's some talk to that. But I won't put that on them yet, not until they declare. They are just trying to dissapage my chracter so they can get ready for an election in the fall. If they have a candidate let them find it."

The local NAACP election is scheduled for Fall 2014.

"This is petty revenge because they have been dismissed for their incompetence and self-aggrandizement," Mondesire said. "Birts was using contacts we had for his dinner, and then contact those same people about tickets for his so-called foundation.

"NAACP business is NAACP business," he added. "There's nothing that's been done. No money was taken, no money was stolen, no money was misappropriated. As I said in my letter to the board in which they accepted. This is all internal. They are the ones that have gone outside. You haven't seen the treasurer. You haven't seen the secretary or other board members joining them. These are three very disgruntled dissatisfied old men. I'm done with talking about it."

Members of NAACP's national board have agreed to come to Philadelphia to discuss the matter, according to Mondesire.

"We have filed all the paperwork we need to do with the NAACP," he said. "All of our end of the year reports, all of our dinner reports have all been filed. We are in compliance with the NAACP's rules and regulations. We've never been found out of compliance. "They [NAACP] have agreed to come in and hold a meeting with the board sometime within the next couple of weeks to try to put an end to this nonsense."

In regard to his accusers, Mondesire did not hold back with intense words.

"These are people I have no respect for," he said. "These are people I have no regard for. They are dead to me."

Calls to the Ducky Birts Foundation seeking comment from Birts weren't returned as of Tribune press time.

When contacted, officials with the NAACP headquarters in Washington, D.C., declined comment, noting that the headquarters' executive board must first meet to go over the details and form a unified stance before speaking with the media. But this controversy comes at crucial time for the local

branch, as it prepares to be the host branch when the NAACP hosts its 2015 annual convention in Philadelphia.

Egan said he felt “uncomfortable” speaking on further action at this point, but reiterated that Mondesire has not responded to other efforts to work through this issue.

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NAACP Suspends Philly Chapter Officers

Philadelphia NAACP President Jerry Mondesire and three other officers were formally suspended by the national organization.

BY DAN MCQUADE | APRIL 11, 2014 AT 2:03 PM

The *Philadelphia Tribune's* Johann Calhoun reports the national office of the NAACP **has suspended four officers involved in a dispute over money**. The NAACP suspended local chapter president Jerome “Jerry” Mondesire, Donald “Ducky” Birts, the Rev. Elisha Morris and Sid Booker. You have to enjoy a scandal that includes a guy with the nickname “Ducky.”

At issue: Birts, Morris and Booker — longtime Mondesire pals who were below him in the local chapter’s hierarchy — didn’t like the way Mondesire managed a certain amount of money. (In the *Daily News* earlier this week, **Stu Bykofsky wrote** that the NAACP’s financial situation is “precarious.”) After the three took leaves of absence, Mondesire fired them.

Trending: Philadelphia UberX Driver Charged With Raping Passenger Is Also a Cab Driver



The situation has since turned personal. The *Tribune* prints some nasty quotes between the parties, including:

- Ducky Birts: "I'm a front stabber not a back stabber.... Mr. Mondesire was treating us like his peons."
- Jerry Mondesire: "This is petty revenge because they have been dismissed for their incompetence and self-aggrandizement."
- Sid Booker: "Jerry is intimidating, and has everyone scared."

According to the letters received by the four, they have 15 days to request a hearing.

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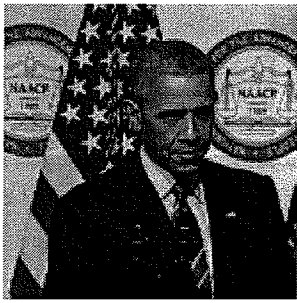
[Philadelphia Tribune]

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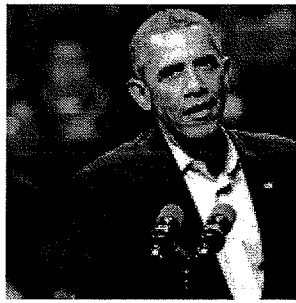
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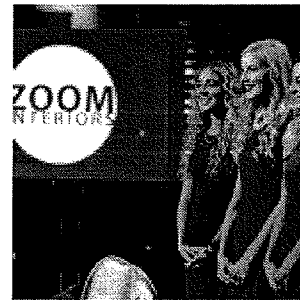


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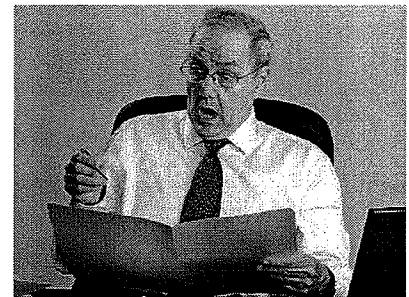
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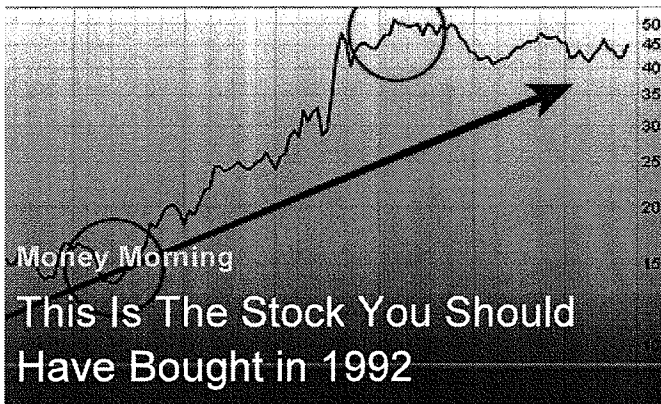
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Local NAACP Members Sue for Records

By Isaiah Thompson | AxisPhilly.org

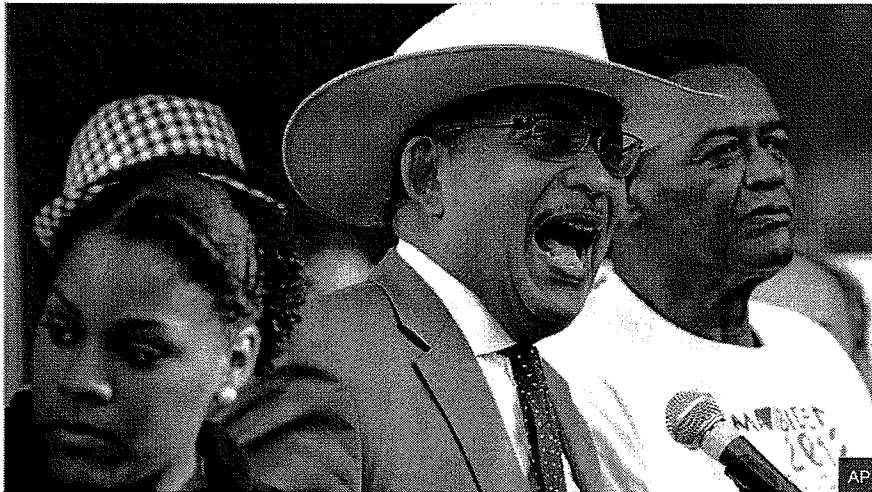
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J. Wyatt Mondesire, middle, speaks to people gathered to demonstrate the opposition of Pennsylvania's new voter identification law during the NAACP voter ID rally, Thursday, Sept. 13, 2012, in Philadelphia.

Updated at 4:23 PM EDT on Friday, May 2, 2014

Two elected officers of the Philadelphia NAACP have gone to court to get a look at the financial records of defunct nonprofit at the center of their claims that Jerry Mondesire, longtime president of the Philadelphia and Pennsylvania NAACP branches, has mishandled the local chapter's finances.

The petition was filed Monday in Common Pleas Court by lawyers for entrepreneur and politico Sydney Booker and Rev. Elisha B. Morris, who have been calling for an investigation of Mondesire in connection with the now-defunct nonprofit Next Generation CDC, founded by Mondesire and which has had a convoluted relationship with the NAACP.

• Ex-School Board President Settles Suit

Booker and Morris, who were listed as members of the board of directors in the Next Generation CDC's last tax filings in 2005, said that board never met and that



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they had little knowledge of its finances or operations — or that it was doing any business at all until recently.

They are asking the court to enforce a section of Pennsylvania law which states that a director of a nonprofit is entitled “to inspect and copy corporate books, records, and documents” of the organization.

The feud between Mondesire and his board members became public after AxisPhilly posted an article about the nonprofit, raising questions about its finances and its relationship with the NAACP.

- ***Attack Ads Begin in Governor's Race***

In March, AxisPhilly reported that two personal checks made out to the Philadelphia NAACP — one of them a \$500 donation by Booker for the group's annual gala, and another a \$10,000 check from a casino venture which Mondesire personally endorsed shortly afterward — were found to have been deposited in the defunct Next Generation CDC's bank account instead.

That article and others (see “The Phantom Nonprofit”), the petition states “raised numerous questions concerning the legitimacy of the Next Generation CDC as a tax-exempt Non-Profit entity, as well as the financial propriety of its receipts and expenditures.”

The court filing came after Gerard P. Egan and Isaac H. Green, attorneys for the dissident NAACP board members, wrote to Mondesire in April seeking the the CDC's financial records.

- ***Corbett Backs Marijuana Extract for Kids***

In a letter, Mondesire responded that the men had “resigned” as members of the CDC's board and that, “your clients as former board members should produce whatever records you need from their own files. If you discover that they kept no records, I suggest to you that they were derelict in their duties.”

“I would appreciate it,” Mondesire added, “if you would advise your clients that they can go to that very hot place which is the opposite of heaven.”

- ***Ex-Eagle, Villanova Track Star Frank Budd Dies***

Mondesire, who has repeatedly declined to comment to AxisPhilly about any aspect of the dispute, has until May 19 to file a formal response to the court filing. Should he fail to respond, Egan says, his clients will seek legal sanctions, such as a ruling of contempt.

Three weeks ago, the NAACP's national office informed Mondesire, Booker, Morris and a third board member, Donald “Ducky” Birts, that they were all suspended.

The National Office has declined repeated requests by news outlets to comment on the matter and does not appear to have taken any steps to audit the group's

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finances as requested by much of its executive board.

The story was published through a news content partnership between NBC10.com and AxisPhilly.org

Published at 4:17 PM EDT on May 2, 2014

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Chief Disciplinary Counsel

Pennsylvania Judicial Center
601 Commonwealth Avenue
Suite 2700
P.O. Box 62485
Harrisburg, PA 17106
Phone 717-783-0990
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August 25, 2015

PERSONAL & CONFIDENTIAL

Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219

Attention: John A. Vaskov, Esquire
Deputy Prothonotary

RE: Office of Disciplinary Counsel
v. KATHLEEN GRANAHAH KANE
Board File No. C3-15-558
Attorney Registration No. 69680
(Dauphin)

Dear Mr. Vaskov:

Enclosed please find for filing Office of Disciplinary Counsel's Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) and all accompanying documents (Petition), with Certificate of Service. I certify that I am providing copies of this letter and the Petition to individuals as indicated below.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul J. Killion".
Paul J. Killion
Chief Disciplinary Counsel

PJK:deg
Enclosures

cc: Paul J. Burgoyne, Deputy Chief Disciplinary Counsel
Harriet R. Brumberg, Disciplinary Counsel
James F. Mundy, III, Esquire, Counsel for Respondent
Elaine M. Bixler, Secretary, The Disciplinary Board

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
Petitioner : No.
:
: Board File No. C3-15-558
:
v. :
: Atty. Reg. No. 69680
:
KATHLEEN GRANAHAH KANE, :
Respondent : (Dauphin)

PETITION FOR EMERGENCY TEMPORARY SUSPENSION
AND RELATED RELIEF PURSUANT TO Pa.R.D.E. 208(f)(1)

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

Harriet R. Brumberg
Disciplinary Counsel

1601 Market Street, Suite 3320
Philadelphia, PA 19103-2337
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IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
Petitioner : No.
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: Board File No. C3-15-558
:
v. :
: Atty. Reg. Nos. 69680
:
KATHLEEN GRANAHAN KANE,
Respondent : (Dauphin)

PETITION FOR EMERGENCY TEMPORARY SUSPENSION
AND RELATED RELIEF PURSUANT TO Pa.R.D.E. 208(f)(1)

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME
COURT OF PENNSYLVANIA:

Petitioner, Office of Disciplinary Counsel (ODC), by
Harriet R. Brumberg, Esquire, Disciplinary Counsel, and by
Paul J. Killion, Esquire, Chief Disciplinary Counsel, files
this Petition for Emergency Temporary Suspension and
Related Relief, pursuant to Pennsylvania Rule of
Disciplinary Enforcement (Pa.R.D.E.) 208(f)(1) and
§91.151(a) of the Disciplinary Board Rules (D.Bd. Rules),
and in support thereof states:

I. FACTUAL BACKGROUND.

1. Petitioner, ODC, whose principal office is
located at PA Judicial Center, Suite 2700, 601 Commonwealth
Avenue, Harrisburg, PA 17106-2485, is invested, pursuant

to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement (Enforcement Rules).

2. Petitioner, with the concurrence of a reviewing member of the Board, may file a petition seeking an order of emergency temporary suspension whenever it appears by an affidavit demonstrating facts that the continued practice of law by a person subject to the Enforcement Rules is causing immediate and substantial public or private harm because of egregious misconduct, in manifest violation of the Disciplinary Rules. See Pa.R.D.E. 208(f)(1).

3. Respondent, Kathleen Granahan Kane, was born on June 14, 1966, and was admitted to practice law in the Commonwealth of Pennsylvania on December 7, 1993. Respondent is currently on active status in this Commonwealth.

4. Respondent maintains her principal office for the practice of law at the Pennsylvania Office of Attorney General (OAG), Strawberry Square, 16th Floor, Harrisburg, PA 17120.

5. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

6. In 2009, an investigating grand jury (2009 GJ) was empaneled to sit before the Honorable Barry Feudale pursuant to the Investigating Grand Jury Act, 18 Pa.C.S.A. § 4541 et seq. See *In re the Thirty-Fifth Statewide Investigating Grand Jury*, 112 A.3d 624, 632-633 (Pa. 2015) (Baer, J., concurring). The 2009 GJ received evidence and heard testimony regarding the possible misuse of grant money by a number of individuals, including J. Whyatt Mondesire (Mr. Mondesire), then president to a local chapter of the NAACP. The 2009 GJ was closed without criminal charges being brought against Mr. Mondesire.

7. On November 6, 2012, Respondent was elected Attorney General of the Commonwealth of Pennsylvania; on January 15, 2013, Respondent was sworn-in as the Attorney General of the Commonwealth of Pennsylvania.¹

8. In March 2014, the OAG conducted an inquiry, investigation, and re-evaluation of the activity and results of the 2009 GJ. In connection with that inquiry,

¹ Respondent swore to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth" and to "discharge the duties of [her] office with fidelity." PA. CONST. art. VI, § 3.

OAG Special Agent in Charge of Special Investigations David C. Peifer interviewed OAG Agent Michael A. Miletto regarding the 2009 GJ. Respondent was aware that Special Agent Peifer had interviewed Agent Miletto and that Special Agent Peifer had documented his interview of Agent Miletto.

9. On May 29, 2014, The Honorable William R. Carpenter, Supervising Judge of the 35th Statewide Investigating Grand Jury (35th GJ) issued an Order appointing a "Special Prosecutor with full power, independent authority and jurisdiction to investigate and prosecute to the maximum extent authorized by law any offenses related to any alleged disclosure of information protected by the law and/or intentional and/or negligent violations and rules of Grand Jury secrecy as to a former Statewide Investigating Grand Jury"; on December 19, 2014, the 35th GJ completed its investigation of unauthorized disclosure of secret information from the 2009 GJ and issued a Presentment recommending that criminal charges be brought against Respondent. (A true and correct copy of the Presentment is attached as Exhibit A.) On that same date, Judge Carpenter made an investigative referral of the Presentment to Montgomery County District Attorney Risa Vetri Ferman (DA).

10. On August 6, 2015, the DA announced that she had completed her investigation, confirmed the findings of the 35th GJ, found additional wrongdoing, and charged Respondent with one felony and seven misdemeanors relating to Respondent's release of information from the 2009 GJ and conduct before the 35th GJ. (A true and correct copy of the Criminal Complaint is attached hereto as Exhibit B; a true and correct copy of the Affidavit is attached as Exhibit C.)²

11. On August 24, 2015, Respondent's preliminary hearing was held before Magisterial District Judge Cathleen Kelly Rebar. Judge Rebar found that the DA established a *prima facie* case on all charges. Respondent's arraignment is scheduled for October 14, 2015.

II. RESPONDENT ENGAGED IN EGREGIOUS MISCONDUCT, IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT, THAT CAUSED SUBSTANTIAL PUBLIC AND PRIVATE HARM.

12. The Grand Jury Secrecy Act, 42 Pa.C.S.A. § 4549(b), provides that all matters occurring before a grand jury are to be kept secret. Matters that occurred before the grand jury remain secret even after the grand jury's service has ended. *United States v. Proctor & Gamble Co.*,

² ODC is not proceeding on the substantive allegations of criminal wrongdoing contained in the Affidavit. Should Respondent be found guilty of violating the criminal law, ODC will proceed pursuant to Pa.R.D.E. 203(b)(1) ("Conviction of a crime ... shall ... be grounds for discipline") and Pa.R.D.E. 214 (Attorneys convicted of crimes).

356 U.S. 677, 682 (1958) ("The grand jury as a public institution serving the community might suffer if those testifying knew that the secrecy of their testimony would be lifted tomorrow."). Grand jury secrecy is necessary to encourage the untrammelled disclosures by persons who have information regarding the commission of a crime, as well as to protect the innocent person who is exonerated from disclosure of the fact that he or she has been under investigation. *In re Investigating Grand Jury of Philadelphia County*, 496 Pa. 452, 457-458, 437 A.2d 1128, 1130 (1981) (citations omitted).

13. An attorney for the Commonwealth can disclose matters occurring before the grand jury only with the approval of the supervising judge. 18 Pa.C.S.A. § 4549(b). Any person sworn to grand jury secrecy can be held in contempt of court if he or she reveals any information he or she is sworn to keep secret. *Id.*

14. Respondent was well-versed in grand jury law. In 1999, when Respondent was an Assistant District Attorney in Lackawanna County, she testified about grand jury secrecy as a witness in a criminal trial. Respondent explained that "there are very strict rules" regarding grand jury secrecy and stated that "for me to give out any information

to somebody who is not going into the Grand Jury is actually a criminal offense."

15. The Criminal History Record Information Act (CHRIA), 18 Pa.C.S.A. § 9101 et seq., restricts the disclosure of investigative information assembled as a result of the performance of any formal or informal inquiry into criminal wrongdoing. *Id.* at § 9102 (definition of "Investigative information"). CHRIA provides that investigative information shall not be disseminated to any department, agency, or individual unless the department, agency, or individual "is a criminal justice agency which requests the information in connection with its duties...." 18 Pa.C.S.A. § 9106(c)(4). Additionally, CHRIA does not permit the release of information where "no conviction has occurred; and no proceedings are pending seeking a conviction." 18 Pa.C.S.A. § 9121(b)(2)(ii), (iii).

16. CHRIA places a duty on the Attorney General to: establish rules and regulations with respect to the security of criminal history record information; investigate all matters relating to the administration and enforcement of CHRIA; and to institute civil proceedings for violations of CHRIA and its rules and regulations. 18 Pa.C.S.A. § 9161(1), (3), and (4).

17. The inquiry and subject matter of the 2009 grand jury was "investigative information" as defined in § 9102 of CHRIA; the OAG's 2014 investigation of the 2009 GJ and documentation of that investigation was "investigative information" as defined in § 9102 of CHRIA.

18. CHRIA prohibited the OAG from disseminating any investigative information regarding the 2009 GJ to an individual who was not a "criminal justice agency."

19. CHRIA prohibited the OAG from disseminating any investigative information, including documentation, regarding the OAG's 2014 inquiry, investigation, and re-evaluation of Mr. Mondesire's alleged criminal wrongdoing to an individual who was not a "criminal justice agency."

20. In March 2014, while serving as the Attorney General, Respondent authorized the disclosure of investigative information regarding the 2009 GJ.

- a. Respondent authorized the disclosure without obtaining court approval; and
- b. Respondent authorized the disclosure to an individual who was not a criminal justice agency.

21. In March 2014, while serving as Attorney General, Respondent authorized the disclosure of investigative

information about Mr. Mondesire to an individual who was not a criminal justice agency.

22. On November 17, 2014, Respondent was called as a witness to testify before the 35th GJ. Prior to testifying, Respondent gave a written statement that she "will tell the Special Prosecutor the truth and the facts surrounding the disclosure of information to the public that was done in a way that did not violate statutory or case law regarding Grand Jury secrecy." (A true and correct copy of Respondent's November 17, 2014 statement is attached as Exhibit D.) Respondent stated that she was committed to "transparency in government" and that the "right of the public and media to know what public officials are doing is vital and should be protected by public officials, the media, and the people of Pennsylvania." *Id.*

23. During Respondent's testimony before the 35th GJ, Respondent admitted that she authorized the disclosure of information from the 2009 GJ. According to Respondent's own version of events, there was a meeting in the Attorney General's Office regarding the 2009 GJ. After the meeting, Respondent and Former First Assistant Adrian King, Jr., discussed the release of information regarding the 2009 GJ.

Q. Did you give him [Mr. King] any direction to deal with this case, anything to do with documents or anything--

A. Yes.

Q. --on this case?

A. Yes.

Q. Okay.

A. Agent Peifer's memo summarizing Agent Miletto's testimony of 2014, after the meeting that we had, Adrian and I said, you know, this is a pattern that has been developing. This is not right. This is a pattern of non-prosecutions, and this was somebody who could have been prosecuted except for the lapse of time that had occurred. And we said that it's the public's right to know what is happening in the office, as I've always said. And agent-Adrian and then I said well, then let's put it out into the press, and we did.

Respondent then elaborated how she "put it out into the press."

A. I said to Adrian, you know, we should get it out. We should put it out to the press. People have a right to know. He said I agree and, you know, he said well, what do you think? ... And Adrian said well, I can take care of it. You know, we'll give it to--let Josh Morrow [Kane's political consultant] take care of it, as we typically did. And Adrian said something like, you know, have Josh call me, and I did. I called Josh, and said Adrian wants you to call him.

(Exhibit C, pp. 21-22, 23). Respondent also testified that in terms of what would be released to Morrow and the press, she "would assume that Adrian would have taken Agent Peifer's memo [2014 memo regarding the 2009 GJ and Mr.

Mondesire] with his, his talk with Agent Miletto and would have done that." *Id.* at p. 23.

24. After the release of the Presentment, Respondent, through her attorney, again admitted that she authorized the disclosure of information regarding the 2009 GJ. Respondent's attorney issued a statement that Respondent authorized "the release of a brief report written by a senior official in the Attorney General's Office in March of 2014."

- a. A true and correct copy of the "*Statement by Lanny J. Davis, January 22, 2014, Attorney for Attorney General Kathleen Kane, On the Publication of the Grand Jury Report #2*" is attached hereto as Exhibit E. The quoted passage appears on p. 3 of Exhibit E.

Respondent's attorney also confirmed that Respondent allowed a deputy to disclose a 2014 summary of the NAACP probe. (Exhibit F, pp. 1-2)³

³ In Respondent's Supplemental Memorandum of Law in support of her *quo warranto* action before the Pennsylvania Supreme Court, No. 197 MDA 2014, Respondent wrote that she told the 35th GJ that "she had authorized the release of the 2014 memorandum because she believed it did not contain confidential grand jury information, and because she believed strongly in a policy of public transparency." 2015 WL 1379962 *7 (PA) (Appellate Brief) (filed 2/4/2015).

25. Respondent's authorization to disclose secret information regarding the 2009 GJ without a court order was egregious misconduct.

26. Respondent's authorization to disclose documentation regarding the OAG's 2014 inquiry, investigation, and re-evaluation of Mr. Mondesire's alleged criminal wrongdoing was egregious misconduct.

27. Respondent's egregious misconduct caused immediate and substantial public harm to the criminal justice system, in that it undermined all of the safeguards embodied in the investigating grand jury process and CHRIA.

28. Respondent's egregious misconduct also caused direct and substantial public harm to the criminal justice system in that Respondent's authorization to disclose matters occurring before the 2009 GJ necessitated a grand jury investigation, review by a judge, and an investigation by the DA's Office, thereby expending the criminal justice system's limited time and resources.

29. After secret information from the 2009 GJ was disclosed, Respondent engaged in egregious misconduct by failing to investigate its improper disclosure as mandated by CHRIA.

30. Respondent's egregious misconduct caused immediate and substantial private harm to Mr. Mondesire, the subject of the 2009 GJ. As a result of Respondent's disclosure of information regarding the 2009 GJ, on June 6, 2014, the Philadelphia Daily News published an article about the Attorney General's Office's investigation of "... 'what appeared to be questionable spending' of state money by Mondesire." (A true and correct copy of an on-line posting of the June 6, 2014 Philadelphia Daily News article is attached hereto as Exhibit G.) After the publication of the article, Mr. Mondesire suffered "both professional and personal humiliation, ridicule and loss." (Exhibit C, p. 38) Mr. Mondesire testified before the 35th GJ that following the publication of articles containing information about the 2009 GJ, "public opinion of him changed," people "questioned whether he had 'done something dishonest,'" "he was 'disinvited' to be a guest on a local television panel," and he "felt compelled under the circumstances to defend his honor and integrity to fellow panel members of the Pennsylvania Human Relations Commission on which he served." (Exhibit A, p. 13)

31. All told, Respondent's egregious misconduct has violated Rules of Professional Conduct (RPC) 4.4(a)⁴, RPC 8.4(a)⁵, and RPC 8.4(d)⁶.

III. RESPONDENT'S CONTINUED PRACTICE OF LAW WILL CAUSE IMMEDIATE AND SUBSTANTIAL PUBLIC AND PRIVATE HARM IN MANIFEST VIOLATION OF THE DISCIPLINARY RULES.

32. As the elected Attorney General, Respondent is empowered to "be the chief law officer of the Commonwealth," and is mandated to "exercise such powers and perform such duties as may be imposed by law." PA. CONST. art. IV, § 4.

33. The Commonwealth Attorneys Act, 71 Pa.C.S.A. § 732-201 et seq., sets forth the specific duties of the Attorney General, including: being the "chief law enforcement officer of the Commonwealth" with "the power to investigate any criminal offense which [she] has the power to prosecute" under the Commonwealth Attorneys Act, *id.* §

⁴ RPC 4.4(a) provides: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person."

⁵ RPC 8.4(a) provides: "It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

⁶ RPC 8.4(d) provides: "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

732-206; prosecuting in any criminal court charges against State officials or employees affecting the performance of their public duties or the maintenance of the public trust, *id.* § 732-205(a)(1); and rendering advice to the Governor or the head of any Commonwealth agency, *id.* § 732-204(a)(1).⁷

34. Given the express duties imposed upon Respondent to represent the Commonwealth under the Pennsylvania Constitution and the Commonwealth Attorneys Act, Respondent's continued practice of law will cause immediate and substantial public and private harm in manifest

⁷ Additional duties of the Attorney General set forth in the Commonwealth Attorneys Act include: upholding and defending the constitutionality of all statutes so as to prevent their suspension and abrogation, 71 Pa.C.S.A. § 732-204(a)(1); representing the Commonwealth and all Commonwealth agencies, *id.* § 732-204(c); prosecuting in any criminal court charges against persons attempting to influence State officials or employees or benefit from such influence or attempt to influence, *id.* § 732-205(a)(1); prosecuting criminal charges upon the request of a District Attorney who represents that there is an actual or potential conflict of interest on the part of the District Attorney or his office, *id.* § 732-205(a)(3); and prosecuting criminal charges investigated by and referred to him by an investigating grand jury obtained by the Attorney General, *id.* § 732-205(a)(6).

violation of the disciplinary rules.⁸

As the Commonwealth's chief law enforcement officer, it is a concurrent conflict of interest for Respondent to continue practicing law while being prosecuted for violating the very laws she was vested with the power to enforce. RPC 1.7(a)(2) provides that an attorney shall not represent a client if there is a "significant risk" that the representation of the client will be materially limited by the personal interest of the attorney. Comment [1] of the Rule explains that "[l]oyalty and independent judgment are essential elements in the lawyer's relationship to a client." The case law makes clear that a prosecutor is "required to use independent judgment and prosecute an action in the interests of justice." *Commonwealth v. Balenger*, 704 A.2d 1385, 1389 (Pa. Super. 1997), appeal denied, 727 A.2d 126 (Pa. 1998). Indeed, this Court has recognized that a defendant has "a right to have his case reviewed by an administrator of justice with his mind on

⁸ Respondent has not voluntarily resigned or taken a leave of absence from serving as Attorney General. In fact, on August 6, 2015, following the announcement of Respondent being criminally charged, she reiterated her prior stance that she will not resign from office. (Exhibit H, p. 1) Notably, in October 2013, Respondent re-adopted a provision from the 1998 Attorney General's Office's Code of Employee Conduct (Code) that requires employees accused of felonies to be suspended without pay. On July 7, 2015, a spokesperson for the Attorney General announced that the Code provision requiring suspension without pay does not apply to Respondent as she is an elected official and not an employee. (Exhibit I)

the public purpose, not by an advocate whose judgment may be blurred by subjective reasons." *Commonwealth v. Eskridge*, 529 Pa. 387, 390, 604 A.2d 700, 701 (1992) (citations omitted).

Respondent has a duty of loyalty and to exercise independent judgment on behalf of the Commonwealth. The Commonwealth has the corollary right to have its attorney act in the best interest of the Commonwealth and not Respondent's personal interest. The specter of Respondent not thoroughly fulfilling her law enforcement duties looms large when Respondent, herself, is facing criminal charges for the same statutes she is responsible for prosecuting.

The significant risk of Respondent's blurred subjective judgment is not merely theoretical, but has been borne out by this very matter where Respondent did not direct her staff to undertake an investigation of the disclosure of the investigative information from the 2009 GJ. Respondent's concurrent conflict of interest is in manifest violation of RPC 1.7(a)(2) and necessitates her immediate removal from the practice of law. See, e.g., *Commonwealth v. Charles J. Aliano*, No. 25 DB 2003, D.Bd.

Rpt. 8/31/2005, pp. 11, 12 (S.Ct. Order 12/1/2005)⁹ (the Disciplinary Board found that the District Attorney's decision to downgrade criminal charges against the spouse of his client violated RPC 1.7(a) and opined that the District Attorney, as "an official in a position specifically entrusted with the protection of the public, and from whom the public expects a high level of integrity," engaged in conduct that was "a breach of the public confidence and trust.")¹⁰

35. Respondent's practice of law has been and will continue to be prejudicial to the administration of justice in violation of RPC 8.4(d). A recent Philadelphia Inquirer posting entitled, "Playing the K Card," is just one harbinger of this prejudice. (Exhibit J) During the course of a criminal jury trial against a former judge for misuse of his office, a defense attorney attempted to impeach the credibility of an agent from the Attorney

⁹ Available at:

<http://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/25DB2003-Aliano.pdf>

¹⁰ The public's confidence and trust in Respondent's continued practice of law has been totally eroded, as evidenced by the Governor, leaders from both Houses, and the electorate all requesting that Respondent resign as she cannot continue to be the chief law enforcement officer and serve her constituents when facing serious criminal charges that she violated the laws she was sworn to obey and hurt the people she was elected to defend.

General's Office by sarcastically asking whether the agent "work[ed] for Kathleen Kane." This question prompted the Assistant Attorney General to angrily object, the jury to smile, and the judge to order the attorneys into an anteroom, delaying and potentially prejudicing the prosecution.¹¹ Following Respondent's arrest, a criminal defense attorney who regularly tries cases against the Attorney General's Office confirmed that Respondent's credibility problems could impact the ability of her office to prosecute cases, noting: "[Y]ou could get jurors who don't trust the investigators and prosecutors as much as they normally would." (Exhibit K)

36. The purpose of the attorney discipline system is not only to protect the public and the courts, but also to maintain the integrity of the legal profession. *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 579, 506 A.2d 872, 875 (1986). After the announcement of criminal charges, there was a steady progression of headlines, in heavily bolded capital letters, declaring that Pennsylvania's chief law officer and chief law enforcement officer has been criminally charged, will be turning herself in, and has been arraigned. It is inevitable that

¹¹ The defendant was, however, ultimately convicted.

more of these headlines referencing Respondent's status as a lawyer will appear in the future as Respondent's case winds its way through the court system. Respondent has damaged the integrity of Pennsylvania's legal profession and this damage will not be diminished until Respondent discontinues her practice of law.

Finally, this Court has repeatedly made clear that in "seeking to preserve the public confidence in the integrity of the legal profession, we must consider that [the] respondent was not only an attorney, but an elected official, who by virtue of his office, engaged in" misconduct. *Office of Disciplinary Counsel v. Joshua Eilberg*, 441 A.2d 1193, 1197 (Pa. 1982). *Accord Office of Disciplinary Counsel v. Ernest D. Preate*, 731 A.2d 129, 131 (Pa. 1999) (by former Attorney General Preate's "violating the very laws that he swore to uphold, Respondent [Preate] severely damaged the confidence in our justice system."); *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 616 Pa. 439, 453-454, 48 A.3d 1231, 1240 (2012) (the "Court takes this opportunity to make clear what should be self-evident: the fact that a lawyer holds a public office, or serves in a public capacity" or where the "public position

is that of prosecutor" is a factor aggravating the misconduct).

37. In sum, Petitioner has demonstrated that Respondent's continued practice of law will result in the Commonwealth lacking a loyal chief law enforcement officer and the administration of justice inevitably suffering prejudice, thus causing immediate and substantial public harm in manifest violation of the Rules of Professional Conduct. To protect the public and courts from further harm as well as to restore respect for the legal profession, this Court must suspend Respondent's privilege of continuing to practice law.

NOW THEREFORE, it appearing to Petitioner that Respondent's continued practice of law is causing immediate and substantial public and private harm, in manifest violation of the Rules of Professional Conduct, and that this conclusion having been concurred in by a reviewing member of the Disciplinary Board (as shown by an attachment hereto), Petitioner respectfully requests that your Honorable Court issue a rule upon Respondent to show cause why she should not be placed on temporary suspension from the practice of law, pursuant to Pa.R.D.E. 208(f)(1), returnable within ten days as provided in Pa.R.D.E.

208(f)(1), and with a response to the allegations set forth herein.

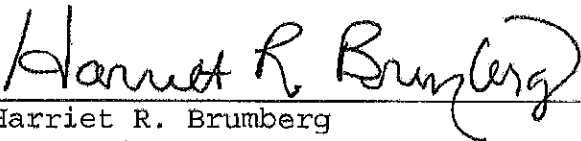
AND FURTHER, that after due consideration of any response made by Respondent and further proceedings held in accordance with Enforcement Rule 208(f), your Court grant the following relief:

- a. Order that Respondent be suspended in accordance with Pa.R.D.E. 208(f)(2), as a matter of "public discipline" as that term is used in Pa.R.D.E. 402, pertaining to confidentiality, and that she comply with Pa.R.D.E. 217; and
- b. Grant such other relief as may be deemed appropriate and necessary by your Honorable Court.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By 

Harriet R. Brumberg
Disciplinary Counsel
1601 Market Street, Suite 3320
Philadelphia, PA 19103-2337
(215) 560-6296

VERIFIED STATEMENT

I, Harriet R. Brumberg, Disciplinary Counsel, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities) that:

I am a Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania assigned to prosecute this matter pursuant to the Pennsylvania Rules of Disciplinary Enforcement;

I am authorized to make this verified statement;

The facts contained in the attached Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) are true and correct to the best of my knowledge, information and belief; and

The attached Exhibits referenced in the attached Petition are, to the best of my knowledge, information, and belief, true and correct copies of the sources cited therein.

8/25/2015

Date

Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
Petitioner : No.
:
: Board File No. C3-15-558
:
v. :
: Atty. Reg. No. 69680
KATHLEEN GRANAHAN KANE, :
Respondent : (Dauphin)

CONCURRENCE OF DISCIPLINARY BOARD MEMBER

TO THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME
COURT OF PENNSYLVANIA:

Pursuant to Rule 208(f), Pa.R.D.E., and Section 91.151(a) of the Disciplinary Board Rules, I have reviewed the foregoing Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1), and concur in the presentation of the Petition to the Supreme Court of Pennsylvania by the Office of Disciplinary Counsel.

08.25.15
Date

John H. Brown

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
Petitioner : No.
:
: Board File No. C3-15-558
:
v. :
: Atty. Reg. No. 69680
KATHLEEN GRANAHAN KANE, :
Respondent : (Dauphin)

CERTIFICATE OF SERVICE

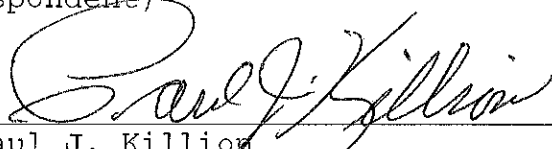
I hereby certify that this day I have served a copy of the Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f)(1) and all accompanying documents upon James F. Mundy, III, Esquire, counsel for Respondent, 527 Linden Street, Scranton, PA 18503-1605, by electronic transmission in the form of email, as requested by Mr. Mundy, addressed to:

JFMUNDY52@gmail.com

(Counsel for Respondent)

Date:

8/25/15


Paul J. Killion
Chief Disciplinary Counsel
Attorney Registration No. 20955
Office of Chief Disciplinary Counsel
PA Judicial Center
601 Commonwealth Avenue, Suite 2700
Harrisburg, PA 17106
(215) 560-6296

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :	No.	Disciplinary Docket
Petitioner :	No.	
	:	
	:	Board File No. C3-15-558
	:	
v.	:	
	:	Atty. Reg. No. 69680
KATHLEEN GRANAHAN KANE,	:	
Respondent :	(Dauphin)	

ORDER AND RULE TO SHOW CAUSE

PER CURIAM:

AND NOW, this _____ day of _____, 2015,
after consideration of the Petition for Emergency Temporary
Suspension and Related Relief Pursuant to Pa.R.D.E.
208(f)(1), this Court issues a Rule upon Respondent to show
cause why she should not be placed on temporary suspension
pursuant to Pa.R.D.E. 208(f)(1).

FURTHER, Respondent is directed to file any Response
to the Petition and to this Rule within ten (10) days of
the date hereof and to timely serve a copy of said response
upon the Office of Disciplinary Counsel.

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
 Petitioner : No.
 :
 : Board File No. C3-15-558
 :
 v. :
 : Atty. Reg. No. 69680

KATHLEEN GRANAHAH KANE, :
 Respondent : (Dauphin)

ORDER

PER CURIAM:

AND NOW, this _____ day of _____, 2015, an Order and Rule to Show Cause having been entered by this Court on _____, and upon consideration of the responses filed, it is hereby ORDERED that:

1. The Rule is made absolute and Respondent is placed on temporary suspension until further definitive action by this Court;
2. Respondent shall comply with the provisions of Rule 217, Pa.R.D.E.; and

This Order constitutes an imposition of public discipline within the meaning of Rule 402, Pa.R.D.E., pertaining to confidentiality.

NOT FILED UNDER SEAL

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE:	:	CP-46-MD-0000926-2015
	:	
THE THIRTY-FIVE STATEWIDE	:	
	:	
INVESTIGATING GRAND JURY	:	
	:	

ORDER

AND NOW, this 27th day of April, 2015, The Grand Jury Act providing that the Supervising Judge "may" seal a presentment, but is not required to do so; and the reasons for sealing Presentment # 60 no longer existing; and the unsealing of Presentment # 60 having been requested;

Therefore, Presentment # 60 is ORDERED to be UNSEALED, and filed as a public document with the Clerk of Courts.

BY THE COURT:



WILLIAM R. CARPENTER, J.
Supervising Judge

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE:

THE THIRTY-FIFTH STATEWIDE

INVESTIGATING GRAND JURY

SUPREME COURT OF PENNSYLVANIA
NO. 171 M.D.D MISC. KT 2012

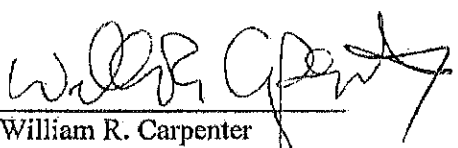
MONTGOMERY COUNTY COMMON PLEAS
M.D. 2644-2012

NOTICE No # 123

ORDER SEALING PRESENTMENT NO. # 600

The Court has accepted Presentment No # 600. This Presentment shall be sealed and no person shall disclose a return of the Presentment except when necessary for issuance and execution of process, or as otherwise directed or permitted by Order of the Supervising Judge.

SO ORDERED this 19 day of December 2014.


Hon. William R. Carpenter
Supervising Judge

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE:	: SUPREME COURT OF PENNSYLVANIA
	: NO. 171 M.D. MISC DKT. 2012
THE THIRTY-FIVE STATEWIDE	:
	: MONTGOMERY COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY	: M.D. 2644-2012
	:
	: NOTICE NO. 123

ORDER ACCEPTING PRESENTMENT NO #60

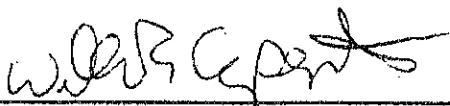
A. The Court finds Presentment No #60 of the Thirty-Fifth Statewide Investigating Grand Jury is within the authority of said Grand Jury and is in accordance with the provisions of this Investigating Grand Jury Act, 42 Pa.C.S. §4541, *et seq.* Further I find that the determination of the Thirty-Fifth Statewide Investigating Grand Jury is supported by Probable Cause and establishes a Prima Facie case against Attorney General Kathleen Kane. Accordingly, this Presentment is accepted by the Court.

B. The County conducting the trial of all charges pursuant to this Presentment shall be Montgomery County.

C. The District Attorney for Montgomery County, or her designee, is hereby authorized to prosecute as recommended in the Presentment by instituting appropriate criminal proceedings in the aforesaid County.

SO ORDERED this 19th day of December, 2014.

BY THE COURT:



WILLIAM R. CARPENTER, J.
Supervising Judge

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE:

**THE THIRTY-FIFTH STATEWIDE
INVESTIGATING GRAND JURY**

**SUPREME COURT OF PENNSYLVANIA
NO. 171 M.D.D MISC. KT 2012**

**MONTGOMERY COUNTY COMMON PLEAS
M.D. 2644-2012**

NOTICE No # 123

TO THE HONORABLE WILLIAM R. CARPENTER, SUPERVISING JUDGE:

PRESENTMENT No. # 60

We, the Thirty-Fifth Statewide Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court and testifying before us. We find reasonable grounds to believe that various violations of the criminal laws have occurred. So finding with no fewer than twelve concurring, we do hereby make this Presentment to the Court.


Foreperson – The Thirty-Fifth Statewide
Investigating Grand Jury

DATED: The 18 day of December, 2014

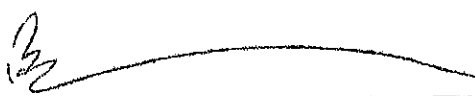
IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 171 M.D. MISC DKT. 2012
THE THIRTY-FIVE STATEWIDE :
: MONTGOMERY COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : M.D. 2644-2012
: :
: NOTICE NO. 123

TO THE HONORABLE WILLIAM R. CARPENTER, SUPERVISING JUDGE:

PRESENTMENT #60

We, the Thirty-Fifth Statewide Investigating Grand Jury, authorize the Amendment of Presentment # 60 to properly reflect the name and citations to Obstructing Administration of Law or other Governmental Function 18 Pa. C.S.A. §5101 (pages 26, 27) and Official Oppression 18 Pa. C.S.A. §5301 (page 27).



FOREPERSON – The Thirty-Fifth Statewide
Investigating Grand Jury

DATED: The 19th day of December, 2014

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE:	:	SUPREME COURT OF PENNSYLVANIA
	:	NO. 171 M.D. MISC DKT. 2012
THE THIRTY-FIVE STATEWIDE	:	
	:	MONTGOMERY COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY	:	M.D. 2644-2012
	:	
	:	NOTICE NO. 123

ORDER ACCEPTING PRESENTMENT NO #60

I accept and approve of the Amendments to Presentment No #60.

SO ORDERED this 19th day of December, 2014.

BY THE COURT:



WILLIAM R. CARPENTER, J.
Supervising Judge

I. INTRODUCTION

We, the Thirty-Fifth Statewide Investigating Grand Jury for 2014, were summoned pursuant to Act 42 Pa.C.S. §4541, *et seq.* of the Pennsylvania Judiciary Code. We were duly charged by the Court to investigate allegations of crimes occurring statewide within the Commonwealth of Pennsylvania. We, this Investigating Grand Jury, received and reviewed evidence pursuant to Notice of Submission of Investigation No. # 123.

The submission concerned whether there was a violation of grand jury secrecy. Specifically, the investigation was to look into whether there was an improper release of grand jury information subject to grand jury secrecy protections from a prior 2009 Grand Jury Investigation that included among other things an inquiry into the finances of former NAACP head J. Wyatt Mondesire. Documents and detailed information from the 2009 Grand Jury investigation were subsequently published by the Philadelphia Daily News in a June 6, 2014 newspaper article.

This Investigating Grand Jury reviewed extensive evidence including testimony from numerous witnesses who provided detailed knowledge into the facts and circumstances of the improper disclosure of grand jury information. We find that the testimony of Attorney General Kane was not an honest account of the events, and she mischaracterized events to cover-up activities undertaken at her direction to unlawfully release documents subject to grand jury secrecy. In comparing her testimony before us to the testimony of others and additional evidence presented, this Investigating Grand Jury did not find her testimony truthful while intending to divert attention from her actual role as the principal of the leak.

In view of the foregoing, we the Thirty-Fifth Investigating Grand Jury make the following findings of fact and recommendations of charges:

II. FINDINGS OF FACT

(I) BEGINNINGS

Agent Michael Miletto of the Office of Attorney General (OAG) testified that in March of 2014, he wanted information to get to the attention of Attorney General Kane that related to a 2009 Grand Jury investigation in which the former NAACP head J. Whyatt Mondesire was identified as a potential suspect. Specifically, he testified he had information and a 2009 Memorandum authored by then Deputy Attorney General William Davis, Jr. addressed to then Chief Deputy Attorney General, Frank G. Fina. The 2009 Memorandum contained extensive detail and particulars and evaluated Grand Jury evidence and testimony arising from the 2009 Grand Jury Investigation (the "2009 Memorandum").

Agent Miletto communicated the information and gave a copy of the 2009 Memorandum to Special Agent in Charge of Special Investigations David Peifer. In his testimony Agent Peifer confirmed that he received the 2009 Memorandum and information from Agent Miletto.

The 2009 Memorandum included details never before publicly disclosed, and at all times deemed subject to grand jury secrecy protections. In his testimony the author of the 2009 Memorandum, former Deputy A.G. William Davis, Jr. confirmed that the 2009 Memorandum was subject to grand jury secrecy protection.

In his testimony, former Deputy A.G. Davis stated,

"... it is clearly a grand jury memo... So, the whole purpose of the Grand Jury Secrecy Act is to protect someone like him [Mondesire], [so] he doesn't get smeared in the press, because he was not charged with a crime... That is the whole purpose of the Grand Jury Act, ... to protect people who are maybe called in as witnesses, or maybe investigated who aren't later prosecuted. It is secret and it is to remain secret..."

We have heard testimony from many senior staff members of Attorney General Kane, including:

First Assistant Attorney General Bruce Beemer, former Senior Executive Deputy Attorney General Linda Del Hoffa, former First Assistant Attorney General Adrian R. King, Jr, Agent Peifer, and Chief Deputy Attorney General in charge of Appeal and Legal Services James Barker -- all of whom agreed that the contents of the 2009 Memorandum and information from the 2009 Grand Jury investigation were subject to grand jury secrecy protection. Multiple witnesses also testified that the release of the materials was a clear violation of the Criminal History Records Information Act 18 Pa.C.S.A. §9106 (CHRIA).

It is noted that the 2009 Grand Jury investigation concluded without a presentment or indictment of Mondesire.

(ii) MEETING WITH FIRST DEPUTY ATTORNEY GENERAL BRUCE BEEMER

After Agent Peifer's initial conversation with Agent Miletto, a meeting was held with then Chief Deputy Attorney General Beemer (now First Assistant) who testified he reviewed the 2009 Memorandum and the information during the meeting and determined that the concerns of Agent Miletto were not worthy of additional attention. In reaching his conclusion, Chief Deputy A.G. Beemer acknowledged that there was no ongoing criminal investigation of Mondesire, as warranted by the conclusions reached by the 2009 Grand Jury, and there were issues with bringing charges against him due to the applicable statute of limitations.

Beemer testified,

"I remember thinking to myself I don't see how this is a problem for this Administration at all. In fact, what was being described to me seemed to be what I will call a 'dead case.' I mean, it was a grand jury investigation that as I understood it for what he was saying had led to one arrest. The individual, this Jerome Mondesire, had not been charged with anything."

(iii) CREATION OF TRANSCRIPT

Despite being told by Chief Deputy A.G. Beemer that this was a "*dead case*", Agent Peifer testified that he re-interviewed Agent Miletto on 3/21/14 about the 2009 Memorandum, documents and other information Agent Miletto reviewed from the 2009 Grand Jury investigation. Agent Peifer testified he later had another interview transcribed (the "Miletto Transcript") despite being told it was a dead case. Evidence presented to the Grand Jury indicated that Agent Peifer created the Miletto Transcript for Attorney General Kane.

Former Deputy A.G. Davis, the author of the 2009 Memorandum, testified that the Miletto Transcript contained Grand Jury information and was therefore subject to grand jury secrecy protections.

(iv) MEETING AMONG ATTORNEY GENERAL KANE AND SENIOR AND SUPPORT STAFF

After his meeting with Chief Deputy A.G. Beemer, Agent Peifer brought the documents to Attorney General Kane's attention, who called a meeting to discuss the documents. The meeting was conducted by Attorney General Kane in her personal office involving senior and support staff members, where the 2009 Memorandum and Miletto Transcript were presented and directly discussed among those in attendance.

Discussion at the meeting included Mondesire and, in particular, information regarding his being the subject of interest in the 2009 Grand Jury investigation. The meeting concluded without Attorney General Kane or other senior staff attorneys issuing any instruction to undertake any formal action into the matter.

Testimony established that Attorney General Kane retained possession of documents from the meeting, including the only known existing copy of the Miletto Transcript. Specifically, Agent Peifer

testified Attorney General Kane retained possession of the only printed copy of the Miletto Transcript. This was confirmed by the testimony of other senior staff members.

Agent Peifer testified, *"I gave her the statement [the Miletto Transcript], and she was flipping through and looking at it, and then she laid it down in front of her. After the meeting was over, I left and the statement [Miletto Transcript] was still in front of her."* Agent Peifer also testified that it was possible that he gave a copy of the 2009 Memorandum to Attorney General Kane. He further testified that was the last time he saw the Miletto Transcript until he later saw it quoted in the newspaper.

(v) KANE'S DESIRES TO PUBLICLY RELEASE THE MONDESIRE INFORMATION

Former First Assistant Attorney General Adrian R. King, Jr. testified that shortly after the meeting with her senior staff members, Attorney General Kane became fixated on the 2009 Grand Jury investigation where Mondesire was a suspect.

Former First Assistant King testified that Attorney General Kane's interest in focusing on Mondesire was directly related to allegations published in the press that she was personally responsible for not pursuing prosecutions of individuals who had been caught in an undercover sting believed to be engaged in criminal conduct (the "Ali Matter"). In response to the Special Prosecutor's request that he describe Attorney General Kane's behavior in late March of 2014, former First Assistant King testified,

"... I walked into this [meeting about Mondesire] and quite frankly to be dead honest, I am listening to this, and I think it is absurd...[i]t just seems like a complete distraction it seems to be paranoid. And I am also quickly clueing into the fact that the people that she has in her right hand that she appears to be taking advice from is her driver, and the person that she just installed as communications director has absolutely no experience, and they are literally sitting there just nodding their heads in agreement with everything that's being said. And my - reaction to that was this is nuts; I don't want anything to do with it."

In the midst of the Ali Matter, Attorney General Kane retained the services of private legal

counsel. Shortly thereafter, Attorney General Kane forwarded to the attention of former First Assistant King a request for documents from her personal attorney who could have only known about the Mondesire information from Kane. The documents requested sought information pertaining to the Mondesire investigation. He testified that he pointedly advised Attorney General Kane in writing on 3/24/14 that there are legal and ethical prohibitions to releasing investigative documents of the Office of Attorney General (OAG) criminal division, and specifically referenced the impropriety of disclosing documents developed in the Mondesire investigation. He wrote in an email response, *"I fail to see how we can legally give... access to any OAG criminal division file materials."* A copy of the email exchange was entered into evidence before this Investigating Grand Jury.

Former Senior Executive Deputy A.G. Linda Dale Hoffa testified recalling conversations with former First Assistant King where he voiced his concerns that the Mondesire information could not be disclosed outside the office, and to Attorney General Kane's private counsel in particular, due to grand jury secrecy limitations.

Communicating her disagreement, Attorney General Kane responded to former First Assistant King with an email wherein she stated, *"... I am well aware of the limitations of disclosing criminal files ... I have been in this business for quite some time."*

(vi) RELEASE TO PRESS

In late April 2014, former First Assistant King testified he informed Attorney General Kane that he was leaving the Harrisburg offices and planned to work for one (1) day in the Philadelphia office prior to leaving on a personal trip to his summer home. He further testified that Attorney General Kane stated, *"I've got a package I've got to get to Josh Morrow. Can you take that down to Philadelphia for me?"* Joshua Morrow is a political consultant who Attorney General Kane used as her campaign

communications director during her election campaign. Former First Assistant King agreed to deliver the package to Morrow. He further testified that shortly thereafter a sealed and plain envelope appeared in his office, which was the package that the Attorney General requested that he take down to Philadelphia. The content of the envelope was not explained by Attorney General Kane to former First Assistant King, and he testified that he simply assumed it was campaign related materials going to Morrow.

Both Attorney General Kane and Morrow confirmed that they regularly maintained contact with one another. It is noted that Morrow was never employed by the OAG, and had no right to see or possess grand jury information.

As requested, former First Assistant King contacted Morrow during his return to Philadelphia, and Morrow picked up the envelope from King's home.

The envelope was then transmitted by Morrow to Chris Brennan, staff writer to the Philadelphia Daily News, for information for a story to be published.

Morrow and Brennan both testified that the envelope delivered by Morrow to Brennan contained the subject 2009 Memorandum and Miletto Transcript, together with two (2) partially redacted associated emails.

All the documents leaked to Brennan contained redactions. Specifically, all names of OAG prosecutors and investigators appearing on the 2009 Memorandum and emails were redacted, except for the names of former Chief Deputy Attorney General Frank G. Fina and Senior Deputy Attorney General Marc Costanzo.

It is significant that the only two (2) names not redacted were those of the former OAG prosecutors with whom Attorney General Kane was locked in a public battle over how Kane had handled past criminal cases in the OAG, especially the Ali Matter.

Shortly after the delivery of the envelope, Brennan contacted the former prosecutors associated

with the 2009 investigation to elicit their comment. The former prosecutors testified that they declined to comment on the documents, and told Brennan that whomever got the documentation to him had engaged in a criminal act, and that they were duty bound to report his possession of the documents which were subject to grand jury secrecy.

Despite such warnings, on 6/6/14 Chris Brennan of the Philadelphia Daily News, disclosed in a front page news article the existence of the 2009 Grand Jury Investigation, and that Mondesire was a suspect in the investigation. Details including names, dollar amounts of expenditures and disclosure of such expenditures – all under investigation in 2009 – together with names of witnesses and investigators were publicly disclosed in the news article.

The article cited no source(s) for this leak of the Investigating Grand Jury information.

It is striking that the headlines appearing on both the first page of the Philadelphia Daily News and page 3 under the banner Daily News, provided as follows:

“State A.G. is Curious About that Big 2009 Probe of Ex-NAACP Boss’s Finances”
Philadelphia Daily News, Friday, June 6, 2014, at Front Page.

“Attorney General Kane examining ‘09 review of ousted NAACP leader’s finances.” *Philadelphia Daily News*, Friday, June 6, 2014, at Page 3.

In addition, the first sentence of the article reads as follows:

“State Attorney General Kathleen Kane is reviewing a 2009 grand jury investigation of J. Whyatt Mondesire, former head of the NAACP in Philadelphia, and one of his employees, according to documents obtained by the Daily News.” Philadelphia Daily News, Friday, June 6, 2014, at Front Page

The news article presented in detail grand jury evidence, testimony and information while targeting Mondesire in particular, and also attempted to disparage the decisions of former OAG prosecutors who Attorney General Kane viewed to be critics of her administration. First Assistant King

testified that the Attorney General was interested in disclosing the Mondesire information to retaliate against these former OAG prosecutors.

Despite what was reported in the Daily News, no formal investigation of this clear leak of grand jury information was questioned or pursued by Attorney General Kane.

(vii) IMPACT OF PRESS REPORT

The 6/6/14 published Philadelphia Daily News article had an impact within the general community, the OAG, and on J. Whyatt Mondesire personally.

In his testimony Mondesire stated that he was first contacted by Brennan of the Philadelphia Daily News about 4-6 weeks before the news article appeared on 6/6/14. Mondesire testified that Brennan advised him he had documents pertaining to the 2009 Grand Jury investigation, and offered him an opportunity to review the documents and to comment. Mondesire declined to interact with Brennan stating, "*I smelled a rat. I know his [Brennan's] reputation, so I wasn't going to cooperate with him.*" Mondesire testified he was concerned that he would be tricked into saying something damaging to his reputation, and that Brennan's contacting him was a set-up.

In addition, Mondesire testified that he has many years of experience in the printed press and previously worked as a newspaper editor. He made it clear in his testimony to this Investigating Grand Jury that it was his opinion that documents obtained from a Grand Jury investigation had to be by improper means. He testified, "*you don't get documents off the street, they had to come from someone inside.*" He also testified that "*This information, according to my rules I know and practice, I work for a newspaper now... this information is to remain secret, especially when a person has not been charged.*"

Mondesire testified before this Investigating Grand Jury that when he first saw the Philadelphia Daily News report on 6/6/14 he was crushed and dumbfounded. He testified that an event of that

magnitude, where he was identified to be a subject of a grand jury investigation, "*is something that you don't forget.*" Mondesire, further testified that morning "*his phone rang off the hook*" with calls coming from friends, relatives, colleagues and church members.

Mondesire testified of his pride in achievements attained during his long-term service as a member and officer of the local NAACP chapter – all of which had earned him a reputation in the community of someone seeking to improve conditions for African Americans. He further testified that he took pride in being the guy that people sought out for good general advice, admired by the press, but now due to the newspaper article he "*felt like a real jerk*".

Due to the published article, he testified that public opinion of him changed, and his friends, associates and members within his church questioned his judgment and questioned whether he had "*done something dishonest.*" Mondesire testified that under the cloud to his reputation, he was "disinvited" to be a guest on a local television panel addressing public affairs that was regularly telecast on Sundays, and felt compelled under the circumstances to directly defend his honor and integrity to fellow panel members of the Pennsylvania Human Relations Commission on which he served.

Notwithstanding, the potential impact to Mondesire, Attorney General Kane disregarded any such considerations and disclosed the secret information publicly for her own purposes. Attorney General Kane further disregarded any considerations that the 2009 Memorandum and/or Miletto Transcript, which were part of the leaked documents, represented grand jury work-product subject to judicial grand jury secrecy protections; or that the information could not be disseminated due to CHRIA.

Shortly after the publication of the 6/6/14 newspaper article, many witnesses testified there was reaction among members of the OAG senior staff in recognition that the news article in their mind unquestionably contained improperly released grand jury information and documents subject to secrecy protections.

Agent Peifer testified he was "upset" by the published article and expressed to his co-workers, including senior staff members, that he gave the only copy of the Miletto Transcript to Attorney General Kane, and thus he should not be considered the source of the leaked information. Agent Peifer also testified that he understood the leak of the documents represented an improper release of grand jury secrecy.

In his testimony Chief Deputy Attorney General in charge of Appeal and Legal Services James Barker explained that his duties in the OAG include supervision of all statewide investigating grand juries for the OAG. He further testified that he learned of the published news article only days after it appeared in print. He testified that he immediately concluded that the documents that were leaked to the press were grand jury information subject to secrecy protections, and that no reporter should be in its possession. Chief Deputy A.G. Barker testified he understood the documents released to the press, "*... included an interview of one of our agents and a memo of a former Deputy Attorney General -- which appeared to come from a prior grand jury investigation.*" The memo, he testified, "*...appeared to summarize matters that appeared before the grand jury and should not be disclosed publicly.*" Chief Deputy A.G. Barker testified he later learned that one of the documents was a transcript of an interview of Agent Miletto and was concerned that it was disclosed out of the office. "*In fact, the disclosure to a reporter is as much a public disclosure as you make.*" In short, Chief Deputy A.G. Barker concisely stated his conclusions when he testified, "*I concluded based upon my reading that grand jury information had been disclosed.*"

(viii) NO ACTIVITY TO INVESTIGATE LEAK BY THE OAG

Additional OAG employees testified that they expressed their concern about the leak of information to Attorney General Kane, but at no time did Attorney General Kane demonstrate concern over the fact the documents were leaked. Attorney General Kane also took no action in response to the

leak. Indeed, Attorney General Kane despite concerns being raised among all staff about the leak, did not disclose to OAG senior staff she was responsible for the leak of the documents.

Chief Deputy A.G. Beemer testified that he met with Attorney General Kane to advocate for starting an investigation to discover the source of the leak in an interest to preserve the integrity of the grand jury and maintaining grand jury secrecy. Notwithstanding, Chief Deputy A.G. Beemer testified that Attorney General Kane directed the OAG senior staff not to investigate the leak, *"[a]nd her response to me was don't worry about it. It's not a big deal. We have more important things to do."*

The testimony of Chief Deputy A.G. Barker confirmed the truthfulness of Chief Deputy A.G. Beemer's testimony in describing events attempting to get Attorney General Kane to review the leak and seek to uncover its source. Chief Deputy A.G. Barker testified that he took up the concern directly with Chief Deputy A.G. Beemer and was advised by Beemer that Attorney General Kane indicated the matter should be dropped, and any such effort would not be a worthy use of the OAG's resources.

Chief Deputy A.G. Barker provided lengthy testimony to this Investigating Grand Jury into the historical development of the general rule of grand jury secrecy, and secrecy under the Grand Jury Act. He made it clear in his testimony that the Act is not to be interpreted in exclusively identifying those persons who are required to sign a secrecy oath. To the contrary, Chief Deputy A.G. Barker testified that the Act must be read in consideration of related procedures, and taken as a whole – it is common practice for all senior and support staff of the OAG, its investigators, agents, and the Attorney General to have an implied ongoing obligation to honor grand jury information as secret, and such obligation does not expire even when a grand jury no longer is in session. He further testified that to interpret the concern otherwise would completely undermine the secrecy requirements of the Act.

(ix) ATTORNEY GENERAL KANE'S ATTEMPTS TO STOP GRAND JURY INVESTIGATION

First Assistant Beemer testified that after subpoenas were directed to many of the OAG senior staff by the Special Prosecutor for this Investigating Grand Jury, Attorney General Kane phoned him. In the call, Attorney General Kane requested that Beemer take action to stop the investigation of this Grand Jury. First Assistant Beemer testified that the position taken by the Attorney General Kane was in conflict with the OAG's actions up to that point, and that he had pledged his cooperation to the Supervising Judge for investigation into the leak. Beemer testified,

"I was taken aback by it [the call]...She told me she wanted me to go to either the Supreme Court or the Supervising Grand Jury judge and challenge the authority of the special prosecutor to conduct this investigation... my heart stopped actually when she said that because here I have for weeks been pledging the office's full cooperation, and now my boss is telling me she wants me to try to stop it. And I said... on what basis [do] you want me to try to do that? And she said, well... whatever...was released was not Grand Jury material. And I said what are you talking about? And she said that this, this was not Grand Jury material. And I, I said it most certainly was Grand Jury [material.]"

First Assistant Beemer further testified that Attorney General Kane stated that no one could be certain that whoever released the 2009 grand jury information had been sworn into the 2009 Grand Jury.

"And I said... so you want me to go to the Supreme Court and argue that maybe somebody wasn't sworn into the 29th Grand Jury, but we don't know who released it, so we can't do an investigation to find out how it got released? I said I just don't understand that. That doesn't make any sense."

Further, he told the Attorney General

"... quite frankly, I think you would wanna know who in your office released this information ... and I don't understand why we would be opposed to that, and that's how the conversation ended."

First Assistant Beemer testified that at no point in this lengthy conversation did the Attorney General ever tell him she was responsible for the leak.

(x) ATTORNEY GENERAL KANE'S TESTIMONY BEFORE THIS INVESTIGATING GRAND JURY

After approximately six (6) months of investigation, Attorney General Kane finally appeared before this Investigating Grand Jury under oath.

On 11/17/14 Attorney General Kane testified before this Investigating Grand Jury. This Grand Jury finds that her testimony was riddled with inconsistencies, and demonstrated conduct that was clearly inconsistent with the evidence presented to this Grand Jury.

A summary of her testimony is as follows:

- At the beginning of her testimony, Attorney General Kane declared to this Investigating Grand Jury that she is a knowledgeable and experienced prosecutor completely familiar with the law pertaining to grand juries: "*I was in front of many grand juries and conducted many grand juries.*"
- Attorney General Kane further testified a number of times that she had not seen nor was aware of the existence of the 2009 Memorandum until the date of her testimony before this Investigating Grand Jury. "*I've never seen the 2009 document. I never even knew of its existence until I read the article in the newspaper in August.*"
- Attorney General Kane testified multiple times that she had not seen nor read the transcript that was made of the interview between Agent Peifer and Agent Miletto until the date of her testimony before this Investigating Grand Jury. She also specifically testified that she had not been aware that any transcript had been made of this interview.
- Attorney General Kane testified that she had a specific conversation with her then First Assistant King that she wanted to publically disclose the

Mondesire information and claimed that she and King agreed, *"this should go out into the press."*

- Attorney General Kane testified multiple times that *"she never gave any other direction"* to former First Assistant King or anyone else about releasing Mondesire documents or information. Attorney General Kane repeatedly claimed that she did not give any documents to former First Assistant King and had no idea how the Mondesire documents got released to the press.
- Attorney General Kane claimed in her testimony that she never knew, and was never told, that Mondesire had been a part of a prior Grand Jury investigation. In her testimony, she further stated that Agent Peifer never told her that the Mondesire information was from a Grand Jury investigation. Attorney General Kane claimed that the information about Mondesire was not the result of a Grand Jury investigation, and testified that *"it was the opposite"* of Grand Jury information. She further testified that: *"no one told me this was Grand Jury information,"* And yet, she also stated that: *"you know, I'm [an] experienced prosecutor. I've been a prosecutor for 14 years."*
- Attorney General Kane testified that while she was aware of the 6/6/14 Philadelphia Daily News article about Mondesire and that although she had received a copy of it – she never read it until sometime in August 2014.
- Attorney General Kane insisted that the Mondesire information released to the Philadelphia Daily News was not *"grand jury information"*, stating, *"I know the law. I know the case law... We knew it was not grand jury information. I still believe to this day it wasn't grand jury information."*
- Attorney General Kane testified several times that although she was made aware

of concerns by several of her senior staff members that grand jury information had been leaked to the press, she chose to do nothing. The testimony indicates that she never made an attempt to determine how a leak of Grand Jury information occurred in the OAG, a governmental authority whose administration she has sworn to operate under the law. Her explanation as to why she never told her staff about what she knew of the disclosure was that a Special Counsel was appointed and she "*did not want to interfere with your investigation* [referring to the investigation of Thomas E. Carluccio, Esq., the appointed Special Prosecutor to this Investigating Grand Jury.]"

- Attorney General Kane claimed that she never sought to disclose the information on Mondesire to anyone outside the OAG, other than Josh Morrow and the press. Further, Attorney General Kane insisted she never discussed a disclosure of the information with anyone other than First Assistant King.

III. RECOMMENDATION OF CHARGES AND ADDITIONAL FINDINGS OF FACT

This Investigating Grand Jury finds that Attorney General Kane knowingly and intelligently disclosed grand jury information in violation of grand jury secrecy.

The following provides a discussion on a number of violations of the Pennsylvania Criminal Code, which include without limitation the following:

A. PERJURY – 18 Pa.C.S. §4902

Under Pennsylvania law, a person is guilty of perjury if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

Grand Jury investigations are highly confidential since they exist to investigate potential criminal conduct. Information related to a grand jury investigation must be protected to ensure that an integral part of the Criminal Justice process is safeguarded. Specifically, this Investigating Grand Jury was presented evidence that a packet that included: a 2009 Memorandum from former Deputy A.G. William Davis to (former) Chief Deputy A.G. Frank Fina; a March 21, 2014 transcript of a taped interview with Agent Michael Miletto by Agent David Peifer, who heads Attorney General Kane's Office Special Investigations; and emails concerning then Chief Deputy A.G. Frank G. Fina that contained information related to a Grand Jury investigation of purported questionable spending by the former head of the Philadelphia NAACP -- were leaked to the press.

The testimony and evidence that was presented to this Investigating Grand Jury over six (6) months is sufficient to establish that information was leaked concerning a grand jury investigation which should have remained confidential, and that Attorney General Kane's testimony about this matter has been materially false.

On November 17, 2014, Attorney General Kane appeared before this Grand Jury and provided testimony under oath. During her testimony Attorney General Kane ultimately admitted that she leaked information regarding the Mondesire investigation to the press.

It should be noted that the appearance of Attorney General Kane followed extensive litigation pursued by the Attorney General where she sought through her privately retained attorneys to avoid her subpoenaed testimony before this Investigating Grand Jury. The efforts to avoid her appearance and having to testify included, without limitation, multiple continuance requests, a Motion to Quash her subpoena and a Motion to Quash this Investigating Grand Jury. In his testimony Chief Deputy A.G. Barker confirmed that the Motions to Quash the subpoena of Attorney General Kane and to Quash this Investigating Grand Jury.

The Grand Jury will not recite every instance of false testimony by Attorney General Kane; it will simply note that the instances of Attorney General Kane's alleged perjury includes, but are not limited to the following:

- Attorney General Kane made False Statements Under Oath denying any knowledge of the 2009 Memorandum related to the Grand Jury information that was leaked : *"I was not aware of the existence of the 2009 Memorandum [from Deputy A.G. William Davis to Chief Deputy A.G. Fina]."* She also claimed *"The first time she saw the memo"* was the date of her testimony on November 17, 2014.

Evidence was presented, that Attorney General Kane received a 7/25/14 email from Agent Peifer's secretary, Gabriel Stahl (that was also directed to Agent Peifer as a courtesy copy) which included as an attachment the 2009 Memorandum along with two (2) emails which were all included in the packet of documents that was released to the press.

- Attorney General Kane was aware of the 2009 Memorandum prior to its disclosure to the newspaper. Evidence was provided that Attorney General Kane was aware of this 2009 Memorandum (which was part of the packet that she gave to former First Assistant King). This Investigating Grand Jury heard testimony from Agent David Peifer and Bruce Beemer, current First Assistant Attorney General, that the 2009 Memorandum was specifically discussed with Attorney General Kane before it was released to the press. Furthermore, Attorney General Kane admitted during her sworn testimony that she was aware of the 6/6/14 Philadelphia Daily News article which details the 2009 Memorandum and that she was briefed on the same article/information from numerous staff members of the OAG.

Based upon this testimony and evidence presented, this Investigating Grand Jury finds that Attorney General Kane had in her possession and had direct

knowledge of the 2009 Memorandum in direct contravention to her denials under sworn oath that she never knew about the existence of the 2009 Memorandum and related documents.

- Attorney General Kane testified that she did not take part in release of any 2009 Grand Jury investigatory information that was subject to grand jury secrecy protection -- which included the 2009 Memorandum and Miletto Transcript.

To the contrary, this Investigating Grand Jury heard testimony that the leaked documents were delivered as requested by Attorney General Kane to Brennan of the Philadelphia Daily News through a handoff of the documentation first by former First Assistant King to Josh Morrow, and then from Morrow to Brennan. Former First Assistant A.G. King testified that he received the documents in an unmarked envelope from Attorney General Kane.

Attorney General Kane made false statements under oath about the disclosure of the leaked grand jury information in that: Attorney General Kane told the grand jury she wanted the information about Mondesire not being prosecuted to be released to the public and that former First Assistant King told her: *"I can take care of it."* Attorney General Kane denied that she gave *"any direction"* to former First Assistant King on how or what to disclose.

In her testimony Attorney General Kane recollected she told King, *"We should put it out to the press, people have a right to know. And we did."* Attorney General Kane also stated that King supposedly responded: *"Have Josh call me"* in reference to Josh Morrow, her former campaign Communications Director. Attorney General Kane claimed in her testimony that the only action she took was a single phone to call Josh Morrow, briefly instructing him to call First Assistant King.

She consistently testified that the method and contents of any disclosed Mondesire information was entirely the responsibility of First Assistant King. Attorney General Kane testified: *"I don't know what Adrian did. We did not discuss which memorandums or what he had or what he gave to Josh. We didn't discuss it."*

Attorney General Kane specifically denied that she prepared or had anyone else prepare the package of documents to go to Josh Morrow.

Former First Assistant King testified to this Investigating Grand Jury that he never discussed or agreed to release any of the Mondesire information to the press. King's statements were corroborated by the testimony of other witnesses and evidence we received. King's denial to disclosing the Mondesire information to anyone outside the OAG was verified by his March 2014 email exchange with Attorney General Kane. In this email he clearly states to Attorney General Kane that the information related to Mondesire cannot be disclosed. Furthermore, Attorney General Kane's response to that email demonstrates her clear knowledge that the information related to Mondesire should not be disclosed.

Former Senior Executive D.A.G. Linda Dale Hoffa, Former testified to this Investigating Grand Jury that former First Assistant King came to her directly about Attorney General Kane's desire to release the Mondesire information, and King expressed his concerns about releasing this information to anyone outside the office.

Former First Assistant King further testified that during this time Attorney General Kane provided him with a packet of documents in which the contents were not known. When providing the packet to former First Assistant King, Attorney General Kane requested that he forward this packet to Joshua Morrow, the former Communications Director for the Attorney's General Campaign. Both Joshua Morrow and Chris Brennan, staff writer for

The Daily News, testified that this packet contained documents that included the Miletto Transcript. The June 6, 2014 Philadelphia Daily News article specifically referenced the Miletto Transcript and reported on the investigation of Mondesire. Agent Peifer testified to this Investigating Grand Jury that this was the only transcript and it was given to Attorney General Kane.

Based upon this testimony and evidence presented, this Investigating Grand Jury finds that Attorney General Kane had in her possession the transcript of the March 21, 2014 interview of Agent Miletto made by Agent Peifer, and this testimony and evidence proves that original transcript was provided to the press at the direction of Attorney General Kane.

- Attorney General Kane testified that the information she directed to get out to the press was not information from the 2009 Grand Jury which was subject to grand jury secrecy protections. Attorney General Kane offered a defense in testifying that her actions to release the information are lawful because: the information did not qualify for protection because it was not produced during the 2009 Grand Jury; she was not obligated to protect its secrecy because she had not signed an oath of secrecy for an investigation that preceded her administration; and she acted under reasonable belief that the information was not subject to grand jury secrecy because had members of her senior staff believed the information was subject to grand jury secrecy they would have brought to her attention a recommendation that all new persons within her administration, particularly her, should be required to sign oaths of secrecy at that time. Attorney General Kane then testified that it was the OAG's regular policy, to which she approved, to require all persons new to grand jury investigation information would be required to sign oaths of secrecy.

To the contrary, this Investigating Grand Jury received testimony from many

of the senior staff members of the OAG, both former and present, who testified that the information released to the press was clearly subject to grand jury secrecy protection. They all further testified that no formal oath of secrecy needed to be signed by anyone to be bound by grand jury secrecy obligations under the Grand Jury Act, in that secrecy is required of all members of the OAG, including Attorney General Kane, by operation of the Act, related procedures and case law.

- Attorney General made false statements under oath that she did not know that the information concerning Mondesire was from a grand jury investigation.

This Investigating Grand Jury heard testimony from Agent David Peifer and current First Assistant Attorney General Beemer that clearly contradicts the testimony of Attorney General Kane.

- Attorney General Kane made false statements under oath when she insisted in her testimony that the release of the Mondesire information had nothing to do with, and was entirely unrelated to, the controversy regarding the Ali Matter. This Investigating Grand Jury heard testimony and reviewed documents that clearly contradict these claims.

B. FALSE SWEARING – 18 Pa.C.S.A. § 4903

A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true commits the crime of False Swearing. This statute does not require materiality for violation.

Attorney General Kane committed the crime of false swearing when she testified before the Grand Jury.

C. ABUSE OF OFFICE / OFFICIAL OPPRESSION – 18 Pa.C.S.A. §5301

A person acting or claiming to act in an official capacity, or taking advantage of such actual or claimed capacity commits a crime if, knowing that their conduct is illegal they subject another to infringement of their personal rights, or denies or impedes another in the exercise or enjoyment of any right or privilege.

Attorney General Kane committed official oppression while acting in her official capacity as Attorney General when she knowingly disclosed the 2009 Grand Jury information – with knowledge that because the information was subject to grand secrecy protection – its release infringed, denied or impeded J. Wyatt Modesire and others in the exercise or enjoyment of their rights and privileges which are protected under both the U.S. and Pennsylvania Constitutions.¹

In addition, this Investigating Grand Jury heard testimony from Chief Deputy A.G. Barker who has knowledge and expertise in the Criminal History Records Information Act 18 Pa.C.S.A. §9106, *et. seq.* (CHRIA). We understand that this Act makes it unlawful to release information and documents created in a criminal investigation. Chief Deputy A.G. Barker testified that Attorney General Kane has specific responsibility under CHRIA for its application, compliance and enforcement.

Attorney General Kane also committed official oppression by disclosing the Mondesire information in violation of CHRIA.

D. OBSTRUCTING THE ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION - 51 Pa.C.S.A. §5101

A person commits a crime if they intentionally obstruct, impair or pervert the administration of

¹ PA CONST. Art. 1, §1

law or other governmental function, breach official duty, or engage in any other unlawful act.

As stated above, Attorney General Kane engaged in conduct which permitted the release of 2009 Grand Jury investigatory information which was subject to grand jury secrecy protection. This Investigating Grand Jury heard testimony from many senior staff members of the OAG, both former and present, who stated that it was clear to them that the 2009 Memorandum and Miletto Transcript were both subject to grand jury secrecy.

Attorney General Kane's disclosure of Grand Jury information constituted a breach of her official duty and constituted an unlawful act that impaired or perverted the administration of law or other governmental function.

Attorney General Kane also committed obstruction of justice by disclosing the Mondesire information by violating the Criminal History Records Information Act.

IV. CONCLUSION

Based upon the evidence we have obtained and considered, which establishes reasonable grounds and a *prima facie* case on the recommended charges above, we the members of the Thirty-Fifth Statewide Investigating Grand Jury, recommend that the District Attorney for Montgomery County institute appropriate criminal charges as recommended in this Presentment on the following charges:

- Perjury – 18 Pa.C.S.A. §4902
- False Swearing – 18 Pa.C.S.A. §4903
- Abuse of Office / Official Oppression - 53 Pa.C.S.A. §5301
- Obstructing the Administration of Law or
Other Governmental Function – 53 Pa.C.S.A. §5101
- Contempt of Court -- 42 Pa.C.S. §4549

COMMONWEALTH OF
PENNSYLVANIA
COUNTY OF: MONTGOMERY

Magisterial District Number: 38-1-20
MDJ: Hon. CATHLEEN REBAR
Address: 133 LEVEL ROAD
COLLEGEVILLE, PA 19426
Telephone: (610)409-2515



POLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

(NAME and ADDRESS):

KATHLEEN GRAHAM KANE
First Name Middle Name Last Name Gen.
11 NORTH 3RD STREET, HARRISBURG, PA 17120

NOTE: Extradition Code Type

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> 1-Felony Full | <input type="checkbox"/> 5-Felony Pend. | <input type="checkbox"/> C-Misdemeanor Surrounding States | <input type="checkbox"/> Distance: _____ |
| <input type="checkbox"/> 2-Felony Ltd. | <input type="checkbox"/> 6-Felony Pend. Extradition Determ. | <input type="checkbox"/> D-Misdemeanor No Extradition | |
| <input type="checkbox"/> 3-Felony Surrounding States | <input type="checkbox"/> A-Misdemeanor Full | <input type="checkbox"/> E-Misdemeanor Pending | |
| <input type="checkbox"/> 4-Felony No Ext. | <input type="checkbox"/> B-Misdemeanor Limited | <input type="checkbox"/> F-Misdemeanor Pending Extradition Determ. | |

DEFENDANT IDENTIFICATION INFORMATION

Docket Number	Date Filed 08/06/2015	OTN/LiveScan Number	Complaint/Incident Number 2015-1173	SID	Request Lab Services? <input type="checkbox"/> YES <input type="checkbox"/> NO
GENDER <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	DOB 06/14/1966	POB	Add'l DOB / /	Co-Defendant(s) <input type="checkbox"/>	
First Name		Middle Name		Last Name Gen.	
AKA					
RACE <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Native American <input type="checkbox"/> Unknown					
ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown					
HAIR COLOR	<input checked="" type="checkbox"/> GRY (Gray) <input checked="" type="checkbox"/> BLK (Black) <input type="checkbox"/> BLN (Blonde / Strawberry)	<input type="checkbox"/> RED (Red/Auburn) <input type="checkbox"/> ONG (Orange)	<input type="checkbox"/> SDY (Sandy) <input type="checkbox"/> WHI (White)	<input type="checkbox"/> BLU (Blue) <input type="checkbox"/> XXX (Unk./Bald)	<input type="checkbox"/> PUR (Purple) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> XXX (Unknown)
EYE COLOR	<input type="checkbox"/> BLK (Black) <input type="checkbox"/> HAZ (Hazel)	<input checked="" type="checkbox"/> BLU (Blue) <input type="checkbox"/> MAR (Maroon)	<input type="checkbox"/> BRO (Brown) <input type="checkbox"/> PNK (Pink)	<input type="checkbox"/> GRN (Green) <input type="checkbox"/> MUL (Multicolored)	<input type="checkbox"/> GRY (Gray) <input type="checkbox"/> XXX (Unknown)
Driver License	State PA	License Number 21199270	Expires: 06/15/2019	WEIGHT (lbs.)	
DNA	<input type="checkbox"/> YES <input type="checkbox"/> NO	DNA Location			
FBI Number		MNU Number	5' 9"		
Defendant Fingerprinted	<input type="checkbox"/> YES <input type="checkbox"/> NO				
Fingerprint Classification					

DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat <input type="checkbox"/>	Registration Sticker (MM/YY)	Comm'l Veh. Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Office of the attorney for the Commonwealth ☒ Approved ☐ Disapproved because: _____

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

District Attorney Risa Vetri Ferman
(Name of the attorney for the Commonwealth)

(Signature of the attorney for the Commonwealth)

08/06/2015
(Date)

I, DETECTIVE PAUL M. BRADBURY
(Name of the Affiant)

(PSP/MPOETC -Assigned Affiant ID Number & Badge #

of MONTGOMERY COUNTY DETECTIVE BUREAU

PA0465200

(Identify Department or Agency Represented and Political Subdivision)
do hereby state: (check appropriate box)

(Police Agency ORI Number)

1. ☒ I accuse the above named defendant who lives at the address set forth above
☐ I accuse the defendant whose name is unknown to me but who is described as _____

☐ I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have
therefore designated as John Doe or Jane Doe
with violating the penal laws of the Commonwealth of Pennsylvania at [208] LOWER PROVIDENCE TWP
1000 MADISON AVENUE NORRISTOWN, PA (Subdivision Code) (Place-Political Subdivision)

in MONTGOMERY [46,51,22] on or about 3/16/2014 TO THE PRESENT IN MONTGOMERY,
County (County Code) PHILADELPHIA, AND DAUPHIN COUNTIES IN PENNSYLVANIA.



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 08/06/2015	OTN/LiveScan Number	Complaint/Incident Number 2015-1178
Defendant Name	First: KATHLEEN	Middle: GRANAHAN	Last: KANE

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically. (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

<input checked="" type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903					
<input checked="" type="checkbox"/> 1	4902	(A)	18 PA C.S.A. 1	F-3				
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number		<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): 18 PA C.S.A. 4902 PERJURY								
Acts of the accused associated with this Offense: Under Pennsylvania law, a person is guilty of Perjury if in any official proceeding she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and she does not believe it to be true.								

<input type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903					
<input type="checkbox"/> 2	4903	(A)(1)	18 PA C.S.A. 1	M-2				
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number		<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): 18 PA C.S.A. 4903 FALSE SWEARING								
Acts of the accused associated with this Offense: A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when she does not believe the statement to be true and the statement occurs in an official proceeding commits the crime of False Swearing.								

<input type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903					
<input type="checkbox"/> 3	5101		18 PA C.S.A. 2	M-2				
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number		<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		
Statute Description (include the name of statute or ordinance): 18 PA C.S.A. 5101 OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION								
Acts of the accused associated with this Offense: A person commits Obstructing Administration of Law or Other Governmental Function if she intentionally obstructs, impairs or perverts the administration of law or other governmental function by breach of official duty or any other unlawful act.								



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 08/06/2015	OTN/LiveScan Number	Complaint/Incident Number 2015-1173
Defendant Name	First: KATHLEEN	Middle: GRANAHAN	Last: KANE

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.
(Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 - 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input checked="" type="checkbox"/> Conspiracy 18 903
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Lead?	<input type="checkbox"/> 4	Offense# 5101	Section	Subsection	PA Statute (Title) 18 PA C.S.A.	Counts 1	Grade M-2	NCIC Offense Code	UCR/NIBRS Code
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PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
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Statute Description (Include the name of statute or ordinance): 18 PA C.S.A. 5101 OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION

Acts of the accused associated with this Offense: A person commits a crime of Criminal Conspiracy when they agree with any person or persons that they will engage in conduct which constitutes Obstructing Administration of Law or Other Governmental Function or an attempt or solicitation to commit such crime or they agree to aid any person or persons in the planning or commission of Obstructing Administration of Law or Other Governmental Function or an attempt or solicitation of such crime.

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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Lead?	<input type="checkbox"/> 5	Offense# 5301	Section	Subsection	PA Statute (Title) 18 PA C.S.A.	Counts 1	Grade M-2	NCIC Offense Code	UCR/NIBRS Code
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PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
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Statute Description (Include the name of statute or ordinance): 18 PA C.S.A. 5301 ABUSE OF OFFICE / OFFICIAL OPPRESSION

Acts of the accused associated with this Offense: A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a crime if, knowing that her conduct is illegal, she subjects another to mistreatment or other infringement of personal rights commits the crime of Official Oppression.

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input checked="" type="checkbox"/> Conspiracy 18 903
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Lead?	<input type="checkbox"/> 6	Offense# 5301	Section	Subsection	PA Statute (Title) 18 PA C.S.A.	Counts 1	Grade M-2	NCIC Offense Code	UCR/NIBRS Code
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PennDOT Data (if applicable)	Accident Number	<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
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Statute Description (Include the name of statute or ordinance): 18 PA C.S.A. 5301 ABUSE OF OFFICE / OFFICIAL OPPRESSION

Acts of the accused associated with this Offense: A person commits a crime of Criminal Conspiracy when they agree with any person or persons that they will engage in conduct which constitutes Abuse of Office/Official Oppression or an attempt or solicitation to commit such crime or they agree to aid any person or persons in the planning or commission of Abuse of Office/Official Oppression or an attempt or solicitation of such crime.



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 08/06/2015	OTN/LiveScan Number	Complaint/Incident Number 2015-1173
Defendant Name	First: KATHLEEN	Middle: GRANHAN	Last: KANE

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.
 (Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

<input checked="" type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/> 7	5301	(2)	for the 18 PA C.S.A.	1	M-2		
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance): 18 PA C.S.A. 5301 ABUSE OF OFFICE / OFFICIAL OPPRESSION

Acts of the accused associated with this Offense: A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a crime if, knowing that her conduct is illegal, she denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity commits the crime of Official Oppression.

<input checked="" type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input checked="" type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/> 8	5301	(2)	for the 18 PA C.S.A.	1	M-2		
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance): 18 PA C.S.A. 5301 ABUSE OF OFFICE / OFFICIAL OPPRESSION

Acts of the accused associated with this Offense: A person commits a crime of Criminal Conspiracy when they agree with any person or persons that they will engage in conduct which constitutes Abuse of Office/Official Oppression or an attempt or solicitation to commit such crime or they agree to aid any person or persons in the planning or commission of Abuse of Office/Official Oppression or an attempt or solicitation of such crime.

<input checked="" type="checkbox"/> Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
--	--	---	---

<input type="checkbox"/>								
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone	

Statute Description (include the name of statute or ordinance):

Acts of the accused associated with this Offense:



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 08/06/2015	OTN/LiveScan Number	Complaint/Incident Number 2015-1173
Defendant Name	First: KATHLEEN	Middle: GRANAHAN	Last: KANE

2. I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
4. This complaint consists of the preceding page(s) numbered 1 through 5.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

August 06, 2015

(Date)

Paul M. Rancitelli
(Signature of Affiant)

AND NOW, on this date 8/6/15 I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

38-1-20
(Magisterial District Court Number)

Cheryl Kelly Rask
(Issuing Authority)

SEAL

Affidavit of Probable Cause

Commonwealth vs. Kathleen G. Kane

Investigative Referral

On December 19, 2014, the Honorable William R. Carpenter, the Supervising Judge for the Thirty-Fifth Statewide Investigating Grand Jury, made an investigative referral to Montgomery County District Attorney Risa Vetri Ferman. The referral involved possible violations of Grand Jury secrecy and related crimes that were alleged to have occurred in Montgomery, Dauphin, and Philadelphia Counties, Pennsylvania. In addition, Judge Carpenter issued a disclosure order permitting District Attorney Ferman and her designees to use information gathered in the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123, to investigate the matter.

The Thirty-Fifth Statewide Investigating Grand Jury, Notice #123, received evidence and heard testimony concerning the possible violation of Grand Jury secrecy and related crimes. Following an eight month investigation, the Grand Jury issued a Presentment recommending that Pennsylvania Attorney General Kathleen G. Kane be charged with Perjury, False Swearing, Abuse of Office/Official Oppression, Obstructing Administration of Law or Other Governmental Function, and Contempt of Court.

Pursuant to the investigative referral from Judge Carpenter, the Montgomery County District Attorney's Office began an independent investigation into the matter. At the conclusion of an independent investigation, investigators have determined that Kane violated the criminal laws of Pennsylvania and the solemn oath she swore upon assuming the office of Attorney General by engaging in a pattern of unlawful acts and deceit through the release of confidential investigative information and secret Grand

Jury information and then testifying falsely during her appearance before the Grand Jury to conceal her crimes.

Pennsylvania Attorney General Kathleen G. Kane

Kathleen G. Kane was elected to the position of Attorney General for the Commonwealth of Pennsylvania on November 6, 2012, and she was inaugurated as the 48th Attorney General of the Commonwealth of Pennsylvania on January 15, 2013. On that date, Kane was administered the Oath of Office pursuant to Article VI § 3 of the Constitution of the Commonwealth of Pennsylvania whereupon Kane swore to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth" and to "discharge the duties of [her] office with fidelity." Kane then began her four year term as Attorney General.

Motive to Leak: March 16, 2014 and June 6, 2014 Newspaper Articles

The Thirty-Fifth Statewide Investigating Grand Jury, Notice #123, examined the improper release of secret Grand Jury information from a prior 2009 Statewide Grand Jury Investigation (2009 Grand Jury Investigation). The 2009 Grand Jury Investigation included, amongst other probes, an inquiry into the finances of former NAACP head J. Wyatt Mondesire. Detailed information from the 2009 Grand Jury Investigation was published by the Philadelphia Daily News in an article on June 6, 2014. (Friday, June 6, 2014: Daily News article written by Chris Brennan: "Wonder Bread" State A.G. is curious about that big 2009 probe of ex-NAACP boss finances.")

The 2009 Grand Jury Investigation probed the possible misuse of grant money by a number of individuals, including J. Wyatt Mondesire. Mondesire has not been charged in connection with crimes pertaining to that investigation. The June 6, 2014, Philadelphia Daily News article cited two documents related to this Grand Jury investigation. The first document cited was a four page Memorandum authored in 2009 by then Deputy Attorney

General William Davis, Jr., and addressed to then Chief Deputy Attorney General Frank G. Fina and Senior Deputy Attorney General Marc Costanzo (2009 Memorandum). The 2009 Memorandum detailed the 2009 Grand Jury Investigation and included information gathered through the use of the Investigating Grand Jury. The second document cited in the article was a twenty-six page transcript from an interview that was conducted by the Attorney General's Special Agent in Charge of the Bureau of Special Investigations, David C. Peifer, of Agent Michael Miletto and pertaining to the 2009 Grand Jury Investigation (Miletto Transcript). Miletto was one of the investigators who worked on the 2009 Grand Jury Investigation. The interview outlined details from the 2009 Grand Jury Investigation. Investigators have determined that no disclosure order for this material had been issued prior to its release to the press, which is required pursuant to Grand Jury statutes.

Investigators learned that there was a connection between the leak of the Grand Jury information that appeared in the June 6, 2014, Daily News article and the earlier publication of an article in the Philadelphia Inquirer on March 16, 2014. The Philadelphia Inquirer published an article on March 16, 2014, entitled Sources: Kathleen Kane shut down probe of Philly Democrats. The story was written by Inquirer reporters Angela Coulombis and Craig R. McCoy. This article, which was highly critical of Kane, detailed allegations that Attorney General Kane was personally responsible for not pursuing prosecutions of individuals who had been caught in an undercover sting involving politicians accepting bribes, an investigation referred to as the "Ali Investigation." This was an investigation that had been led by Fina while he was in the Office of the Attorney General. Fina left the office in January of 2013 shortly after Kane took office. Soon after, Fina began working as an Assistant District Attorney for the Philadelphia District Attorney's Office. After Kane declined to pursue charges, the investigation was taken over by the Philadelphia District Attorney's Office, which filed charges against six individuals. On March 14, 2014, in preparation for the release of the article,

reporters contacted Kane for a statement which she provided. Kane called the investigation "poorly conceived, badly managed, and tainted by racism" and stated that it had targeted African Americans. It should be noted that four of the six individuals prosecuted by the Philadelphia District Attorney's Office have since pled guilty.

Investigators learned that Kane was angry about the article. Current First Deputy Attorney General Bruce Beemer stated that Kane's reaction to the article was "negative. She was upset." Former First Assistant Adrian R. King, Jr., testified that Kane had "great animosity towards Frank Fina in particular" because she believed that he was responsible for releasing information used in the March 16, 2014, Philadelphia Inquirer article. Joshua Morrow, a political consultant for Kane, testified that there had been a "very public and long feud between the Attorney General's Office and Frank Fina and Costanzo." Morrow later stated to investigators that he believed that the disagreement between Kane and Fina stemmed from "the March 16, 2014 article in the Philadelphia Inquirer concerning Ali."

On the evening of March 16, 2014, Kane released a statement to the press in response to the criticism of her in the Philadelphia Inquirer article. Kane stated that "the allegations made by several cowardly anonymous sources in today's Philadelphia Inquirer paint an inaccurate and sensational version of the details and timeline of events related to Case File No. 36-622. The real truth is that this investigation was not only deeply flawed, but unraveled long before I was elected and then took the oath of office." Kane stated, "Furthermore, I do not have any animosity toward the lead prosecutor of this case. I do not know the former prosecutor any more than I know the individuals targeted in this investigation."

The following day, March 17, 2014, Kane held a press conference where she stated her justifications for not prosecuting the Ali matter. Kane stated that the investigation had been "so poorly handled by her predecessors that it

could not be prosecuted." Kane also stated that the investigation was racially motivated.

On March 20, 2014, Kane appeared before the Editorial Board of the Philadelphia Inquirer accompanied by her private attorney to address the March 16, 2014, Philadelphia Inquirer article. Kane had hired this attorney to represent her personally in potential defamation claims against the newspaper. No such claims were ever filed.

Several senior members of the Office of Attorney General considered Kane's appearance at the Editorial Board a misstep. King said that he thought this decision "was a very, very unwise move" and "cast the whole office and everybody who worked for her in a poor light." The statewide media "was in an uproar" after the Editorial Board meeting, according to King, and he thought Kane's appearance before the Editorial Board was "madness," "truly embarrassing," and "possibly fatal." Based on the extraordinarily negative press coverage, investigators believe that Kane decided to retaliate against the person or persons she deemed responsible for leaking the information that was used for the March 16, 2014, Philadelphia Inquirer article.

It is clear to investigators that the purpose behind the Office of Attorney General review of the 2009 Grand Jury Investigation involving Mondesire was to gain information to attack former state prosecutors. According to Peifer, he first learned of the 2009 Grand Jury Investigation from Miletto. Peifer then invited Beemer to meet with he and Miletto to discuss the case. After that meeting, Beemer determined that the case was past the statute of limitations, and he considered it a "dead case." Beemer testified that he could not understand why anyone in the current administration would be concerned about the case. Beemer also testified that, during the meeting, Miletto expressed a "real disdain for Mr. Fina and others."

Linda Dale Hoffa, a former Senior Executive Deputy Attorney General, testified that Peifer told her that he had been tasked by Kane with reviewing

the 2009 Grand Jury Investigation involving Mondesire. Beemer was unaware that Peifer had discussed the case with Kane after his meeting with Peifer and Miletto. Beemer was especially surprised to learn that a second interview of Miletto was conducted and transcribed. Kevin Wevodau, Special Agent in Charge of the Bureau of Criminal Investigations, testified that "a review of the Mondesire investigation would have been solely done so that may be or could have been used against Mr. Fina."

Kane's motive for releasing confidential investigative information and secret Grand Jury information—to attack and discredit Fina—is no more evident than in a March 16, 2014, email exchange between her and a media strategist. In the emails, which were regarding Kane's response to the March 16, 2014, Philadelphia Inquirer article, Kane wrote, "I will not allow them to discredit me or our office." Kane concluded the email by writing, "This is war." The media strategist replied advising to "make war with Fina but NOT to make war with the Inquirer."

Kane's "war" was not limited to Fina but was directed at anyone potentially associated with him. After Kane refused to prosecute the criminal charges arising out of the Ali Investigation, R. Seth Williams, District Attorney of Philadelphia, invited Kane to refer the case to his Office for prosecution. After Williams challenged Kane to allow him to prosecute politicians who could be heard accepting bribes on tape, Kane had an email exchange with a media strategist in which she shared her feelings of wanting to make "Seth pay." Kane concluded by writing, "This is not over." Morrow told investigators that, on April 25, 2014, he was asked by Kane to gather negative information on Seth Williams. Morrow told investigators that he declined this request. After Kane failed to charge the politicians implicated by the Ali Investigation, Williams charged six, four of whom have pled guilty.

The Leak: The Illegal Release of Confidential Investigative Information & Secret Grand Jury Information

The interview of Agent Miletto by Special Agent Peifer cited in the June 6, 2014, Philadelphia Daily News article was conducted on March 21, 2014. A transcript of this interview was then provided to Kane by Peifer on March 25, 2014, at a senior staff meeting in Kane's office. According to witnesses, the transcript was given to Kane in a folder with a blue back and a clear cover. Peifer testified before the Grand Jury that, during the meeting, Kane was "flipping through looking at" the transcript. Peifer testified that he only brought one copy of the transcript to the meeting and that, after looking at it, Kane placed it "on the table in front of her." Peifer further testified that, during the senior staff meeting, he provided an oral summary of the transcript indicating that Miletto felt that charges could have been brought against Mondesire.

The information contained within the 2009 Memorandum and the Miletto Transcript clearly pertained to the 2009 Grand Jury Investigation and was information subject to Grand Jury secrecy. In addition, several senior staff members of the Office of the Attorney General agreed during testimony that these documents contained Grand Jury information and, as such, were subject to Grand Jury secrecy rules. However, no disclosure order had ever been issued allowing the release of secret Grand Jury information to the public, which is required pursuant to Grand Jury statutes.

Kane's Executive Assistant, Catherine Smith, was called to testify before the Grand Jury. She testified that, in mid-April, Kane left for a trip to Haiti. Investigators determined that Kane left for Haiti on April 13, 2014, and was accompanied by Peifer, Office of Attorney General Agent Daniel Block, and Chief Deputy Attorney General Ellen Granahan, Kane's sister. According to Smith, Kane had, on at least one previous occasion, left a signed designation letter when she traveled outside the Commonwealth. The letter would designate one individual to take any necessary action in the Attorney General's

absence. For this particular trip, Kane wrote a letter designating King as Acting Attorney General, but she did not sign it. According to Smith, Kane gave Smith specific instructions. Smith testified, "[Kane] said I was to hold onto it. And if something came up and she told me to sign it, she would be the one to tell me to sign it, if need be. And otherwise, I was to just hold onto it unsigned." According to Smith, the letter was signed at the direction of King while Kane was in Haiti. Investigators determined that Kane was upset to learn that the designation letter had been signed in her absence in order to allow King to make necessary decisions for an on-going investigation.

Investigators determined that, on Tuesday April 22, 2014, the day Kane returned to the office from Haiti, King informed Kane that he would be working out of the Philadelphia office on April 23, 2014, instead of his office in Harrisburg. King testified that Kane informed him that she had a package that she needed to have delivered to Morrow in Philadelphia. King testified that he agreed to deliver the package and that, later that day, he found a plain, sealed envelope on his desk.

Investigators interviewed Morrow who stated that he had a phone conversation with Kane on the afternoon of April 22, 2014. Morrow stated that Kane "asked me to do her a favor, and to give Adrian King a call because he had something that she wanted me to get to a reporter, I asked her what it was and she told me that it involved an investigation into Jerry Mondesire by Frank Fina and that he had shut it down." Morrow testified that, after Kane called him, he placed a call to King. During that conversation, Morrow testified, King said he would call Morrow back later. According to both King and Morrow, on the evening of April 22, 2014, they had a telephone conversation concerning the delivery of the envelope, and it was agreed that King would leave the envelope between the front doors of his home for Morrow to retrieve on April 23, 2014.

Investigators obtained telephone records for April 22, 2014. These records indicate a call placed by Kane to Morrow at 4:54 PM that lasted 18 seconds and another call placed by Kane to Morrow at 5:03 PM that lasted for one minute and thirty-five seconds. The records also indicate a call placed by Morrow to King at 5:31 PM that lasted thirty-four seconds and a second call from King to Morrow at 7:46 PM that lasted one minute twenty-six seconds.

According to Morrow, at approximately 10:30 AM on April 23, 2014, he retrieved the envelope left for him at King's residence. Morrow described the envelope as an 8 ½ x 11" clasped envelope. Morrow further explained that, when he opened the envelope by releasing the metal clasp, he discovered its contents were a manila file folder marked on the front with "JOSH" in blue ink. Morrow stated that the file contained a transcript, two emails, and what appeared to him to be an interoffice memorandum. One of these documents was inside a folder with a clear cover and a blue backing.

Morrow decided to deliver the contents of the package to Chris Brennan, a reporter for the Philadelphia Daily News and the author of the June 6, 2014, article. Morrow testified that Brennan was a reporter whom he had known for years and considered him to be "friendly." According to Morrow, he did not immediately deliver the package to Brennan. Morrow stated that he waited several weeks before giving the documents to Brennan. Morrow stated that he made redactions to the documents before delivering them. These redactions were designed to ensure that the only Attorney General employee's names evident in the documents were those of Fina and Costanzo. In early May 2014, Morrow contacted Brennan to arrange for the delivery of the redacted documents. The documents were then personally provided to Brennan by Morrow in Philadelphia.

Ultimately, Brennan authored the June 6, 2014, Daily News article using confidential investigative information and secret Grand Jury information given to him by Morrow through Kane and King. When the article appeared in the

paper, both Beemer and Peifer were upset because the article cited secret and confidential information. Beemer testified that, when he read the article, he thought it "was a big problem" because the article contained Grand Jury information. Peifer told investigators that he was "kind of pissed" that the information was "leaked from our office."

The information used in the article was identified as confidential investigative information and secret Grand Jury information in testimony by several witnesses in addition to Beemer and Peifer. James Barker, former Chief Deputy Attorney General, testified that the information contained in the article was secret Grand Jury information. Former Senior Executive Deputy Attorney General Linda Dale Hoffa testified that, when she read the June 6, 2014, Daily News article, she was concerned because the article referenced Grand Jury information "that should not have been made public."

The memorandum and transcript provided by Morrow to Brennan were in fact the 2009 Memorandum and the Miletto Transcript cited in the June 6, 2014, Daily News Article written by Brennan. During testimony in front of the Grand Jury, Morrow identified three exhibits as which he indicated were the same documents delivered to him by King, the 2009 Memorandum, the Miletto Transcript, and two emails. These same documents were identified by Brennan during his Grand Jury testimony as the documents delivered to him by Morrow.

The 2009 Memorandum, the Miletto Transcript, and the two emails, were identified by both Morrow and Brennan during their testimony in front of the Grand Jury. The two emails discussed the Mondesire case where Fina and Costanzo were either authors or recipients. Investigators determined that these were printed at the Office of Attorney General. Investigators also determined that the emails were stored digitally within the Office of Attorney General.

During the course of the investigation, investigators obtained audit results from the Symantec Enterprise Vault system (Evault). This is a program

that the Office of Attorney General's computer system uses to store the emails that are sent or received from the employees of the Office of Attorney General. When an email is either sent or received from an employee, a copy is automatically archived into the Evault system. Regardless of the action taken by the user—whether it is opening, deleting, forwarding, etc. an email—a copy is saved into the Evault system.

Access to the Evault system is restricted to those employees who have been given access by the Information Technology Section (IT) and have a user account and password. There are two (2) employees from IT who act as Administrators and can view, search, and make changes in the Evault system. There is one other group of employees, referred to as Reviewers, who can view the content of, search for, and print emails. The number of Reviewers is extremely limited.

Investigators obtained the Evault audit results for Peifer and Supervisory Special Agent Patrick Reese, who both had access as Reviewers to the Evault system at the times relevant to this investigation, including on March 25, 2014. These audit results log and track all activity of the Reviewer, including search terms and the subject line of viewed emails.

Reese is on Kane's Executive Protection Detail and also acts in the capacity of her driver. Investigators learned that both Peifer and Reese are considered by other members of the Office of Attorney General to be two of Kane's closest confidants. David Tyler, the former Chief Operating Officer for the Office of Attorney General, told investigators that Patrick Reese, the Special Agent in Charge of Kane's security, was considered the "go between" with Kane and members of the Office of Attorney General and was referred to by other employees as "Chief of Staff." Wevodau, who prior to joining the Office of Attorney General was a twenty-nine year veteran of the Federal Bureau of Investigation, testified that there were instances where Peifer would review active investigations under Wevodau's purview. When Wevodau would question

Peifer, Peifer would state that, if Wevodau had a problem, he should "talk to the General." Furthermore, Peifer was so trusted by Kane that, according to King's testimony, Kane tasked Peifer and her security detail with "secretly or surreptitiously review[ing] emails of employees."

Reese was first granted permission to access the Evault system on March 25, 2014. Reese was granted permission by Administrators to the Evault system at the request of Peifer. March 25, 2014, was the same day that Peifer participated in the staff meeting where Kane was briefed on the Mondesire case. Peifer stated that "Patrick Reese was to my right" at the same March 25, 2014, senior staff meeting.

In addition, investigators were able to determine that the emails provided to Brennan were printed at the Office of Attorney General. Investigators learned that, typically, when an employee prints an email at the Office of Attorney General, that individual's name appears printed on the email header. However, there is also a printing feature where the user's name is replaced with a generic "OAG" on the email header. This feature is referred to as the "eDiscovery Printing OAG" and is limited to those employees that have been granted permission by IT Administrators. This feature provides the ability to conceal the identity of the person printing the email. Both Peifer and Reese were part of the "eDiscovery Printing OAG" group during the times relevant to this investigation, including on March 25, 2014. In fact, Reese was first granted permission to use this printing feature on March 25, 2014.

The only other person who had the same access as Peifer and Reese to both the Evault system and "eDiscovery Printing OAG" between March 25, 2014, and April 22, 2014, was Geoffrey Moulton, Jr. Moulton worked as a Special Deputy Attorney General and conducted a review of a high profile, child sexual abuse investigation that was previously conducted by the Office of Attorney General.

As indicated above, among the documents given to Morrow and then delivered to Brennan were two emails discussing the Mondesire case where Fina and Costanzo were either authors or recipients. Investigators learned that these two emails were stored in and could be found using the Evault system. Investigators also learned that these two emails were printed using the "eDiscovery Printing OAG" feature. Again, the group of individuals with access to both the Evault system and the "eDiscovery Printing OAG" feature at the times relevant to this investigation was extremely limited. Kane and King did not have access to either the Evault system or the "eDiscovery Printing OAG" feature. In fact, the only individuals with access to both the Evault system and "eDiscovery Printing OAG" were Moulton—a highly respected member of the bar and a former Federal Prosecutor brought in to conduct a review of a former Office of Attorney General investigation—Peifer, and Reese.

When shown the 2009 Memorandum and associated emails by investigators, Moulton denied ever seeing them. Peifer denied directly participating in releasing the documents to the Daily News. Peifer merely acknowledged leaving the Miletto Transcript, one of the documents used to write the Daily News article, with Kane at the March 25, 2014, staff meeting. Reese has refused to cooperate with investigators.

Furthermore, while investigators were analyzing these Evault audit results discussed above, they discovered that both Peifer and Reese were engaging in search patterns involving the Thirty-Fifth Statewide Investigating Grand Jury. The keyword searches and corresponding emails appeared to be dealing with matters regarding the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123. The Evault audit results analyzed by investigators date back to March of 2014, however, the searches involving the Thirty-Fifth Statewide Investigating Grand Jury occurred at times after the issuance of the August 27th, 2014, Protective Order.

Investigators learned of a directive issued by Kane on September 9, 2014, thirteen days after Judge Carpenter issued the Protective Order intended to address, among other issues, alleged intimidation by Office of Attorney General employees against witnesses appearing before the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123. The Protective Order provided, in relevant part, "[e]mployees of the Office of the Attorney General shall not have access to transcripts of proceedings before the Grand Jury or the Supervising Judge, exhibits, or other information pertaining to the Special Prosecutor's investigation."

On September 9, 2014, Peifer personally informed the IT Administrators that, at the request of Attorney General Kane, they were to remove five employees who previously had authorization to access the Evault system. This reduced the number of Reviewers down to three employees: Peifer, Reese, and Moulton.

Investigators determined that after the privileges of the five other employees had been revoked, both Peifer and Reese's "Query" searches regarding matters involving the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123, intensified. Between September 9, 2014, and December 9, 2014, these searches increased in frequency and were clearly directed at gaining access to information they were prohibited from knowing. These prohibitions were in place to protect the integrity of the Grand Jury, something that Peifer and Reese disregarded with each "Query" search.

Examples of the "Query" search terms include: "Carpenter," "tomc3" (beginning of private email address for Special Prosecutor Thomas Carluccio), "CCarluccio@montcopa.org" (work email address for Hon. Carolyn T. Carluccio, Judge of the Court of Common Pleas of Montgomery County and wife of Special Prosecutor Carluccio), "Barker," "Miletto," "acoulumbis" (beginning of work email for Angela Coulumbis, reporter for the Philadelphia Inquirer), "cmccoy" (beginning of work email for Craig R. McCoy, reporter for the Philadelphia

Inquirer), "perjury," "removal from office," "Target of Leak," and "Leak Investigation." Some of the email subject lines returned by the "Query" search were: "Subpoenas," "Grand Jury," "Notice 123," "Transcripts," and "Special Prosecutor." It is clear to investigators that the above searches were intended to gather information about the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123 and were in violation of the Protective Order.

On the same day, September 9, 2014, that access to Evault was restricted, at Kane's direction, Reese began gathering information he was prohibited from knowing related to the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123. He made the following "Query" searches: "carpenter," "barker," "fina," "tomc3," and "castille." The final "Query" search term, investigators concluded, was an attempt by Reese to gather information on then Pennsylvania Supreme Court Chief Justice Ronald D. Castille, who supervised all Statewide Investigating Grand Juries, including the Thirty-Fifth.

On September 10, 2014, and September 11, 2014, both Peifer and Reese were searching the Evault in an attempt to gather information regarding the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123. By analyzing the Evault audit results, investigators learned that in fact these searches were being conducted at the exact same periods of time. Investigators concluded, based on this evidence, that Peifer and Reese were searching for this information in concert and at the direction of Kane. The "Query" search terms used during this period of time include: "Leak investigation," "target of leak," "Inquirer leak," "carpenter," and "tomc3."

In fact, on December 3, 2014, as the Thirty-Fifth Statewide Investigating Grand Jury was nearing the conclusion of its investigation into Kane, Reese was using the following "Query" search terms: "perjury" and "removal from office."

In his statement to investigators, Morrow said that, during a phone conversation with Kane, she stated to him that the word on the street, "was

that [he had] testified." This conversation occurred on November 18, 2014, one day after Morrow testified. Morrow stated to investigators that he was "pretty livid" that Kane had learned about his testimony, presumably because Grand Jury proceedings are intended to be secret. Investigators find this comment by Kane to be suspect given that it occurred while Peifer and Reese, two of Kane's most trusted allies in the Office of Attorney General, intensified their clandestine surveillance of emails related to the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123.

Investigators concluded that Kane was responsible for the release of the documents used in the June 6, 2014, Daily News article. Investigators also concluded that Kane was assisted by and agreed with at least one other person to assemble the package of documents given to Morrow and then delivered to Brennan. Investigators reached this conclusion based on the facts that: the two emails delivered to Brennan were stored digitally in the Office of Attorney General Evault system; those same two emails were printed using the "eDiscovery Printing OAG;" only three Office of Attorney General employees had access to the Evault system and also had "eDiscovery Printing OAG" privileges; of those three employees, two were Peifer and Reese; Peifer and Reese were considered two of Kane's closest confidants; neither Kane nor King could access the Evault system; neither Kane nor King had "eDiscovery Printing OAG" privileges; and Peifer and Reese both engaged in suspicious searches of the Evault system related to the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123 and were previously tasked with secret assignments by Kane.

Kane authorized the release of the documents in order to retaliate against someone she believed had made her look bad in the press. Kane did so without regard to the damage it would cause to the reputation of Mondesire, the supposed target of the 2009 Grand Jury Investigation. By engaging in this abuse of her Office, Kane committed the offenses of Obstructing Administration of Law and Official Oppression.

Motive To Lie & The Cover Up: Kathleen G. Kane's Grand Jury Testimony

Between July 29, 2014, and January 15, 2015, the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123, received evidence surrounding the questions of how confidential investigative information and Grand Jury information was disclosed to the press. Multiple witnesses were called to testify, including Kane. On November 17, 2014, Kane was subpoenaed to appear and testify before the Thirty-Fifth Statewide Investigating Grand Jury. Prior to reporting to the Grand Jury, Kane issued a statement to the press stating, in part, "I will tell the Special Prosecutor the truth and the facts surrounding the disclosure of information to the public that was done in a way that did not violate statutory or case law regarding Grand Jury secrecy... I can promise you this, the truth and the law will prevail."

Kane was then sworn as a witness before Judge Carpenter on November 17, 2014. She was given the following oath: "You do solemnly swear or affirm that the testimony you will give before the Statewide Investigating Grand Jury in the matters being inquired into by it will be the truth, the whole truth and nothing but the truth, so help you God?" Kane responded, "I do."

Investigators found that Kane made a number of false statements before the Grand Jury during her testimony on November 17, 2014. These statements related to a number of topics: 1) her knowledge regarding the 2009 Memorandum; 2) her involvement in leaking secret documents to the press; 3) that she didn't read the June 6, 2014, Daily News article until August 2014; and 4) that the release of the Mondesire information had nothing to do with Ali Investigation.

Kane made these untruthful statements to the Grand Jury in an attempt to cover up and conceal her crimes of releasing confidential investigative information and Grand Jury information, to mislead the Grand Jury, and to subvert the purpose of the investigation. Kane's untruthful statements throughout her testimony came in a variety of forms: some were

materially false statements intended to mislead the Grand Jury, others were false but not material while still intending to mislead the Grand Jury, and still others were merely false and seemingly served no purpose. By repeatedly making such untruthful statements, she committed Perjury and False Swearing, as well as new acts of Obstructing the Administration of Law. Kane engaged in this conduct to conceal and cover up the crimes she knew she had committed by orchestrating the disclosure of confidential investigative information and secret Grand Jury material.

1. Kane's knowledge of the 2009 Memorandum.

Kane repeatedly stated that she had not seen the 2009 Memorandum between Frank Fina and William Davis prior to her testimony in the Grand Jury on November 17, 2014. Investigators found that this was a false statement. The following exchanges occurred between the Special Prosecutor and Kane:

Exchange 1:

Q: If we get to that now, the—which has been marked as Commonwealth 1, which is a memorandum from Bill Davis to Frank Fina, are you familiar with that document?

A: No.

Q: Have you ever seen that before?

A: No.

Exchange 2:

Q: And again, just ask you again for the record. The Commonwealth 1, which is the Frank Fina memorandum of Bill Davis to, I guess, Mr. Fina, you don't know how that got to the press itself?

A: I have never seen this document before today. I did not even know of its existence until I read the June article. I don't read the press, either good or bad, about any of us until I read it word for word in around August of 2014.

Exchange 3:

Q: So the memo between—from Bill Davis to Frank Fina, you never saw it before that article came out?

A: Is it the one you just showed me?

Q: Yes.

A: No.

Q: Okay.

A: Today is the first day I've seen it.

Q: Today is the first day you ever seen this?

A: Correct.

Peifer testified before the Grand Jury that he had the 2009 Memorandum with him during a meeting with Kane and other senior staff members on Tuesday, March 25, 2014. During this meeting Peifer gave a briefing of the Mondesire investigation and the 2009 Memorandum was made "available if anybody wanted to read it."

Investigators learned that Kane actually had seen the 2009 Memorandum well before her testimony before the Grand Jury on November 17, 2014. On May 12, 2015, Peifer told investigators that, on July 25, 2014, he received a telephone call from Kane asking him for the 2009 Memorandum and the June 6, 2014, Philadelphia Daily News article. According to Peifer, he was not in the Norristown office that day so he in turn called his secretary, Gabriel Stahl, and informed her where in his office those documents could be located. Peifer then directed Stahl to scan the two documents and send them to Kane in an email. Stahl testified that she did receive that request from Peifer and did in fact send Kane the email with these documents. A copy of the email was provided to investigators.

In an interview with investigators, First Assistant Deputy Attorney General Bruce Beemer recounted a telephone conversation that he had with Kane on July 28, 2014, just three days after Kane had the 2009 Memorandum and June 6, 2014, Philadelphia Daily News article emailed to her. Beemer stated that Kane, "launched into a recitation in what was in the [2009 Memorandum] and then we started to argue point for point about the memo. It was clear to me that she looked at the [2009 Memorandum]; there is no doubt in my mind. I got the sense that she had it in front of her and was reading off it."

2. Kane's involvement in leaking secret documents to the press

In her testimony before the Grand Jury, Kane testified that she and King discussed the release of only certain information concerning the Mondesire Grand Jury investigation. Kane also minimized her role by saying that she did not direct what, how, when or by whom this should be done, and stated that King took care of that himself. Investigators concluded that these were false statements.

Exchange 1:

Q: *Did you have anyone prepare a package that went to Josh Morrow?*

A: *No.*

Q: *So you don't know anything about the documents that actually went out of your office to Josh Morrow?*

A: *No, I don't.*

Q: *Through Mr. King?*

A: *No.*

Exchange 2:

Q: *Okay. Did you give him any direction to deal with this case, anything to do with documents or anything --*

A: *Yes.*

Q: *--on this case?*

A: *Yes.*

Q: *Okay*

A: *Agent Peifer's memo summarizing Agent Miletto's testimony of 2014, after the meeting that we had, Adrian and I said, you know, this is a pattern that has been developing. This is not right. This is a pattern of non-prosecutions, and this was somebody who could have been prosecuted except for the lapse of time that had occurred. And we said that it's the public's right to know what is happening in the office, as I've always said. And agent--Adrian and then I said well, then let's put it out into the press, and we did.*

Q: *Okay. And how did that happen?*

A: *I said to Adrian, you know, we should get it out. We should put it out to the press. People have a right to know. He said I agree and, you know, he said well, what do you think? It was—I remember it was later in the day because I was in a hurry to get back to Scranton and he was going to Philadelphia, and our press department was dismantled and, you know, we have a young team, unfortunately. And Adrian said well, I can take care of it. You know, we'll give it to—let Josh Morrow take care of it, as we typically did. And Adrian said something like, you know, have Josh call me, and I did. I called Josh, and I said Adrian wants you to call him.*

Exchange 3:

Q: *Did you talk with Josh Morrow, I assume, did he call you or did you talk to him?*

A: *I called him and said Josh, Adrian wants you to call him. He said okay.*

Q: *And then any follow-up on that?*

A: *No.*

Exchange 4:

Q: *So how did Adrian King get the documents that would eventually get into--*

A: *I don't know.*

Q: *You don't know? Did you discuss—you said you discussed that this isn't right, and you discussed that with Adrian King?*

A: *Right.*

Exchange 5:

Q: So what was your understanding of what documents were going to Josh Morrow and to the press?

A: Well, there was no understanding. You know, it was a simple conversation with Adrian. People need to know about this. This is a developing pattern of perhaps selective prosecutions or non-prosecutions. It was something that our office had, you know, been under questioning for before, whether we prosecuted, why we prosecuted or why we didn't prosecute. So it is a legitimate inquiry, and we felt that it was important that people know that as well, and that, that was about it. But I would assume—I would assume that Adrian would have taken Agent Peifer's memo with his, his talk with Agent Miletto and would have done that.

Exchange 6:

Q: Okay. Did you ever give him a package to give to Josh Morrow?

A: No.

Q: Did you have anyone prepare a package that went to Josh Morrow?

A: No.

Q: So you don't know anything about the documents that actually went out of your office to Josh Morrow?

A: No, I don't.

Q: Through Mr. King?

A: No.

Even according to her own version of events, Kane admits that she agreed with King to release protected information outside the Office of Attorney General.

Multiple witnesses testified to the near collapse of the professional relationship between Kane and then-First Assistant Adrian R. King, Jr., that began with the publication of the March 16, 2014, article in the Philadelphia Inquirer. King testified that, when the article was published, there began a "downward slide with respect to how the office was run, the Attorney General's relations with the press, how she interacted with her staff."

Kane was then scheduled to meet with the Editorial Board of the Philadelphia Inquirer concerning the article on March 20, 2014, concerning the article that appeared in the Philadelphia Inquirer on March 16, 2014. According to King, he attempted to speak with her before the meeting, but his calls went unreturned. Unbeknownst to King, Kane retained a private attorney and brought that attorney to the meeting. King said that he thought this decision "was a very, very unwise move" and "cast the whole office and everybody who worked for her in a poor light." King was especially upset because, as second in command of the Office of Attorney General, he believed that he should have been consulted. King felt so strongly that he drafted a resignation letter later that evening which he ultimately did not submit. David Tyler, former Chief Operating Officer for the Office of Attorney General, told investigators that there was noticeable tension between Kane and King after the Editorial Board meeting. King noted in an email to a communications specialist, that Kane doesn't seem, "to be taking strong guidance from anyone."

According to King, on Friday, March 21, 2014, he spoke with a representative from the law firm of the private attorney hired by Kane. King testified that several requests were made of King, including information and/or documents relating to the Mondesire investigation. Investigators obtained emails between King and Kane discussing her attorneys' request. On Monday,

March 24, 2014, King sent Kane an email questioning the legality of disseminating "any OAG criminal division file materials" to individuals outside the Office of Attorney General. Kane responded that she would manage requests from her private attorney, and that she was "well aware of the limitations of disclosing criminal files and the Wiretap Act. I have been in this business for quite some time."

On Tuesday, March 25, 2014, King met with Kane in her Harrisburg office, and King described the meeting as "a little uncomfortable." King testified that Kane told him that she would handle press matters going forward and that King should focus "on running the office." After this meeting, also on March 25, 2014, Kane and King participated in a staff meeting with senior members of the Office of Attorney General. This is the same meeting where Peifer briefed Kane and others on the Mondesire case and brought the Miletto transcript that had a blue back and clear cover.

King testified that during the senior staff meeting the Mondesire case was identified as the next thing that would be "hung around [Kane's] neck." King thought that the discussion regarding the Mondesire case was a "complete distraction" to the office and that Kane's concern regarding the Mondesire case was "paranoid."

Throughout Kane's testimony, she referenced a "2014 memo" that was presented by Peifer at the staff meeting. The investigation has shown that this document is in fact the Miletto transcript, a transcribed interview that contains confidential investigative information and secret Grand Jury information. Kane testified the document she refers to as the "2014 memo" had a blue back and a clear face. In Peifer's statement, he said that the Miletto transcript, which Kane was flipping through and looking at during the staff meeting, had a blue back and a clear cover. Morrow told investigators that one of the documents he received, later identified as the Miletto transcript, had a blue back and clear cover.

Kane testified that she spoke to King immediately after the staff meeting about putting the information discussed at the senior staff meeting about the Mondesire case "out into the press." Kane claimed that, although she did not direct King on what to release, the document she referred to as the "2014 memo" was present in front of them during this conversation. Kane further claimed that King asked her to have Josh Morrow call him regarding the matter. Kane testified that she called Morrow and said only, "Josh, Adrian wants you to call him." Investigators determined that Kane's testimony regarding the extent of her conversation with Morrow was untruthful.

As discussed previously, Kane left for a trip to Haiti on April 13, 2014. During the time Kane was away, paperwork needed to be signed so that an ongoing investigation could continue. Unable to reach Kane, King and David Tyler, then Chief Operating Officer for the Office of Attorney General, made a decision to have the designation letter signed. Catherine Smith, Kane's Executive Assistant, testified that when Kane found out the letter had been signed, "she told me that I made a bad situation worse." When King and Tyler learned of Kane's reaction, they both cleaned out their offices anticipating that they would be terminated. In fact, when Kane returned from the trip, she made it clear to both Smith and another executive assistant, "behind closed doors in her office that we work for her. We do not work for the First Deputy, we work for her."

Investigators determined that the documents utilized in the June 6, 2014, Philadelphia Daily News article left the Office of Attorney General on April 22, 2014, and were collected by Josh Morrow the following day, April 23, 2014. Investigators made this determination by examining telephone records and conducting interviews. These telephone records showed that, on April 22, 2014, at approximately 5:00 PM, Kane called Morrow, then Morrow called King, and then King called Morrow back. Morrow confirmed in his statement to investigators that these telephone calls occurred on April 22, 2014. This is also consistent with King's recitation of the manner in which he delivered the

envelope to Morrow. However, this is in direct contradiction to Kane's claims that she had a conversation with King about informing the public of the Mondesire investigation immediately after the senior staff meeting on March 25, 2014. Kane also claimed that she called Morrow the same day as the senior staff meeting and after her discussions with King concerning Mondesire. Kane also claimed that the conversation with Morrow simply involved her stating, "Josh, Adrian wants you to call him." However the telephone records, King's testimony, and Morrow's statement demonstrate that these claims, too, were false statements.

Given that the documents were released on April 22, 2014, Kane's claim that King, alone, orchestrated the removal of confidential investigative information and secret Grand Jury information from the Office of Attorney General is not credible. Investigators analyzed telephone records and concluded that there was no telephone contact between either Kane and Morrow or King and Morrow on March 25, 2014, the day Kane claims she and King discussed releasing information related to Mondesire to the public. Kane claimed that King cooperated with her in this venture at a time when their professional relationship was essentially nonexistent. The release occurred after a series of events that made the relationship between the two toxic: the Editorial Board meeting; Kane stating that she would focus on press matters while King should focus on day-to-day operations; and Kane's return to the office after the Haiti trip on April 22, 2014.

In addition, investigators have determined that Kane's claims regarding the extent of her telephone conversation with Morrow were false based upon accounts by Morrow regarding the call. Kane testified that she called Morrow and stated, "Josh, Adrian wants you to call him" to which Morrow replied "okay." When asked if there was any follow up, Kane said "no." Morrow, however, told investigators, that on April 22, 2014, he spoke to Kane and that she, "asked me to do her a favor, and to give Adrian King a call because he had something that she wanted me to get to a reporter, I asked her what it was and

she told me that it involved an investigation into Jerry Mondesire by Frank Fina and that he shut it down.... She also told me that I had to get ahold of Adrian tonight because he was leaving town in the morning."

The false statements made to the Grand Jury by Kane regarding speaking to King and Morrow on March 25, 2014, and having any discussion with King concerning providing information about the 2009 Grand Jury Investigation regarding Mondesire to the public were intended to deceive the Grand Jury about her disclosure of confidential investigative information and secret Grand Jury information. Such statements, had they been credited by the Grand Jurors, could have hampered the investigation and altered the Grand Jury's recommendation with respect to recommending any action against Kane.

3. Didn't read the June 6, 2014, Philadelphia Daily News article until August 2014.

During her Grand Jury testimony, Kane repeatedly testified that she had not read the June 6, 2014, Daily News Article until August of 2014.

Exchange 1:

Q: Getting to the point where—as you said, getting to the point of where we are with it, are you familiar with the Mondesire article that came out in a 2009 Grand Jury on CUES?

A: The [J]une 6th?

Q: Yes.

A: *Yes, I read that around August of 2014.*

Investigators found that in fact Kane had received the article from a number of sources on a number of occasions prior to August of 2014. Renee Martin, Former Acting Communications Director for the Office of the Attorney General responsible for the distribution of information to the press in 2014, was interviewed by investigators and confirmed that, on June 6, 2014, she sent Kane a copy of the article in an email with a message indicating "Need some help on this."

Further, in a statement, Peifer indicated that he forwarded a link to the June 6, 2014, article to Reese in an email. The email was sent on June 6, 2014, after the article appeared in the paper. Peifer stated that he sent the link to Reese "since the Attorney General was not responsive to her emails that if I sent it to Patrick Reese that he would get it on his phone and make sure she saw it." In addition, a review of phone records corroborates two phone conversations between Peifer's cellular phone and Kane's cellular phone after the article was emailed.

Peifer also stated that he received a phone call from Kane on July 25, 2014. Peifer indicated that, in this conversation, Kane requested a copy of the newspaper article and the 2009 Memorandum. Peifer then reached out to his secretary, Gabriel Stahl, and asked that she obtain the information and email it to Kane. As stated above, Stahl scanned the requested documents and emailed them to Kane.

Finally, in testimony before the Grand Jury, Beemer testified that he was in Harrisburg when he read the June 6, 2014, article. Beemer stated that, at lunch time, he called Kane and spoke with her about several matters including the June 6, 2014, Daily News article. Beemer testified that he believed the article was a "problem" and relayed to Kane his concern that it referenced the

2009 Memorandum and the Miletto transcript. Beemer testified that he then requested permission from Kane to "look into what happened," referring to the fact that he wanted to look into how the reporter was in possession of these materials. Beemer testified that Kane responded by saying "don't worry about it. It's not a big deal. We have more important things to do." Beemer told the Grand Jury that, "it was clear from the conversation that [Kane] knew what I was talking about, that I didn't have to like start from scratch with her on this."

Kane's claims that she did not read the June 6, 2014, article prior to August of 2014 are false. Investigators determined that, in fact, she had been provided the article a number of times by a number of sources and spoke about the article in a manner which indicated that she had read it.

4. The release of the Mondesire information had nothing to do with the Ali Investigation.

Kane testified that the release of information concerning the Mondesire Investigation was not done in response to and had no connection with the March 16, 2014, Philadelphia Inquirer article detailing the Ali Investigation. Investigators determined that this was a false statement.

Exchange 1:

Q: So the release of this information to the press had nothing to do with the release of any information that went out on Ali around the same time?

A: Not from me, no.

Investigators learned that, after the March 16, 2014, Philadelphia Inquirer article was published, Kane was upset by its contents. King testified that Kane "took a lot of criticism" from the article and the implications in the article surrounding why the investigation was not pursued. Joshua Morrow, Kane's political consultant, stated that Kane told him after the March 16, 2014, article that "they are just out to get me." First Deputy Attorney General Beemer stated that Kane's reaction to the article was "negative. She was upset." Beemer also testified that, after the March 16, 2014, article, there was "probably a pretty widely held belief" among his superiors and colleagues that the information used in the March 16, 2014, article was given to the Philadelphia Inquirer by "people who were very close to that investigation that had left [the Office of Attorney General]." Among the people identified by Beemer as those "close to that investigation" were Fina and Costanzo. Beemer testified that, around the time of the March 16, 2014, article, there "was clearly a lot of animosity back and forth" between current and former members of the Office of Attorney General.

Investigators found no evidence to suggest that either Fina or Costanzo were the source of the leak of the Ali Investigation material that was used in the March 16, 2014, Philadelphia Inquirer article.

King testified that Kane became obsessed with the 2009 Mondesire Investigation and, in particular, the former state prosecutors who were involved in the case, including Fina. King testified that this obsession began around the release of the March 16, 2014, Inquirer article and the March 25, 2014, senior staff meeting. Furthermore, Morrow stated that the disagreement between Kane and Fina was over "the March 16, 2014, article in the Philadelphia Inquirer concerning Ali."

Beemer testified that, after reading the June 6, 2014, Daily News article, it had a specific slant. Beemer testified that the article appeared to be an attempt to identify "a public corruption case that could have been pursued that

was not" and to have "a damaging effect on—you know or somehow hurt the individuals that hadn't pursued the case."

In a March 16, 2014, email exchange between Kane and a media strategist regarding Kane's response to the March 16, 2014, Philadelphia Inquirer article, Kane wrote, "I will not allow them to discredit me or our office." Kane concluded the email by writing, "This is war." The media strategist replied, advising to "make war with Fina but NOT to make war with the Inquirer."

Kane claimed during her testimony that she was in favor of releasing information related to the Mondesire Investigation because it demonstrated a pattern of "nonprosecutions" and that "it's the public's right to know what is happening in the office." However, based on Kane's reactions to the March 16, 2014, article and her own words around the time of the March 16, 2014, article, Kane's statement that the information related to the Mondesire Investigation being released had "nothing" to do with the release of the information from the Ali Investigation is false.

Concealment and Consciousness of Guilt

Investigators concluded that Kane, both prior to and after she directed the release of confidential investigative information and secret Grand Jury information, acted in a fashion completely inconsistent with her promises of transparency and openness. In fact, Kane engaged in a pattern of clandestine activities in releasing the confidential investigative information and secret Grand Jury information and deception once her actions were uncovered.

Kane directed the surreptitious release of confidential investigative information and secret Grand Jury information. Although the 2009 Grand Jury Investigation was discussed at the March 25, 2014, senior staff meeting, there was no discussion about releasing the information to the public. Kane testified that she wanted to put information regarding the 2009 Grand Jury

Investigation "out into the press." It should be noted that, since Kane took office, she has issued hundreds of press releases and conducted numerous press conferences through her press office. However, rather than utilizing these same conventional means, Kane instead chose the cloak and dagger technique of leaking the information to the press through a political operative. The fact that Kane caused this information to be released in this secretive manner is evidence that she knew that what she was doing was not lawful.

Kane also tried to derail the investigation being conducted by the Thirty-Fifth Statewide Investigating Grand Jury. As discussed above, when Beemer first asked Kane for permission to investigate the leak, she told him, "We have more important things to do." Beemer did, however, promise the Office of Attorney General's full cooperation to Judge Carpenter, when Beemer learned there would be a Special Prosecutor appointed to investigate the leak of secret Grand Jury information. Beemer testified that "on several occasions" Kane questioned why the Office was cooperating with the Thirty-Fifth Statewide Investigating Grand Jury investigation. Beemer also testified that, as "it became apparent that the Attorney General was going to be subpoenaed and other people close to her" were going to be subpoenaed as well, Kane gave Beemer a "direct order" not to cooperate with the Thirty-Fifth Statewide Investigating Grand Jury investigation by assisting in the service of subpoenas.

Kane also intimidated employees with threats of termination if they did not follow her orders. Beemer told investigators that, during a telephone call with Kane, she demanded that Beemer, then-Chief Deputy Attorney General James Barker,¹ Chief Deputy Attorney General Laura Ditka, and Senior Deputy Attorney General Erick Olsen, strictly follow her orders to challenge the Protective Order issued by Judge Carpenter. Kane stated to Beemer, "If I get taken out of here in handcuffs, what do you think my last act will be?" Beemer told investigators that he informed Barker, Olsen, and Ditka of his

¹ James Barker was terminated from the Attorney General's Office on April 9, 2015.

conversation with Kane. Together, all four inferred that they would be fired if they did not challenge the Protective Order as Kane wished.

On November 17, 2014, Kane was compelled to appear as a witness before the Thirty-Fifth Statewide Investigating Grand Jury, Notice #123. During her testimony, Kane attempted to weave an account in which she was free from criminal culpability. In this effort Kane developed a novel interpretation of the Grand Jury Act, testifying that because she was not specifically sworn to the 2009 Grand Jury she could not be punished for releasing secret Grand Jury information.

The Grand Jury heard from Allegheny County District Attorney Stephen A. Zappala, Jr. District Attorney Zappala has been the elected District Attorney of Allegheny County for seventeen years and sits as the Chair of the Appeals/Amicus Committee for the Pennsylvania District Attorney's Association. District Attorney Zappala was called to testify in front of the Grand Jury to provide expert testimony regarding the various criminal offenses that would apply to Kane's conduct. During the course of his testimony, District Attorney Zappala indicated that it would be unlawful for an Attorney General to disclose secret Grand Jury information, regardless of whether or not they had signed an oath to that specific Grand Jury. District Attorney Zappala testified that Grand Jury information remains secret in perpetuity, unless its disclosure is authorized by a judge. District Attorney Zappala also explained that the information in the article would qualify as confidential investigative information and that "you cannot turn it over to anybody other than law enforcement."

In her testimony before the Grand Jury, former Senior Executive Deputy Attorney General Linda Dale Hoffa testified that, even if an Attorney General had not signed an oath for a specific Grand Jury, the information must still be kept secret. William Davis, Jr., former Deputy Attorney General and author of the 2009 Memorandum, testified that the memorandum "absolutely" contained Grand Jury information and that any such Grand Jury information should

have remained secret unless or until a judge authorized its release. Barker also testified that there was not a policy within the Office of Attorney General to sign oaths for former Grand Juries because once you are sworn into a Grand Jury, the secrecy rules apply to all Grand Juries. Barker also testified that Kane's theory that she could not be criminally responsible for releasing Grand Jury information because she was not sworn to that specific Grand Jury was not "viable."

Kane's decision to release confidential investigative information and secret Grand Jury information through political back channels, her demands that Beemer cease from cooperating with the Grand Jury investigation, her threats to terminate employees for not following orders to challenge the Grand Jury Investigation, and her baseless explanations trying to legitimize her actions are all examples of her guilty conscience.

Crimes Committed By Kathleen G. Kane

The Criminal History Records Information Act² protects against the dissemination of information generated during the course of an investigation. "Investigative information" is defined in 18 Pa.C.S.A. § 9102 as "Information assembled as a result of the performance of an inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." Clearly, any Grand Jury investigation is a formal inquiry into a criminal wrongdoing.³ Dissemination of this material is permitted in limited circumstances to other criminal justice agencies. However, the Criminal History Records Information Act does not permit the dissemination of investigative information to private citizens or the press.

² 18 Pa.C.S.A. § 9101 et. seq.

³ The Office of the Attorney General provides a 63 page manual entitled "Seventh Edition 2013 Criminal History Records Information Act Handbook" listing Kane as Attorney General and citing the law as specifically prohibiting the dissemination of any material known as "protected information" to any agency or individual with the exception of the permissible dissemination of information to a criminal justice agency who has properly requested the information.

The Grand Jury Act⁴ demands that the secrecy of the Grand Jury be maintained. The secrecy of the Grand Jury is indispensable to the functioning of an Investigating Grand Jury. This secrecy is necessary for a number of reasons including to "protect an innocent accused who is exonerated from disclosure of the fact that he has been under investigation and from the expense of standing trial where there was no probability of guilt."⁵ Secret Grand Jury information may not be disclosed outside of law enforcement without a disclosure order from the Supervising Judge of the Grand Jury.⁶

While one may presume the Chief Law Enforcement Officer of the Commonwealth of Pennsylvania is aware of the strict nature of the secrecy requirements imposed by the Grand Jury Act, Kane has in fact had experience with Grand Jury practice. It should be noted that, in 1999, Kane, then an Assistant District Attorney in Lackawanna County, testified as a witness in a criminal trial in Lackawanna County regarding the secrecy requirements of an Investigating Grand Jury. During this testimony, Kane acknowledged that, "there are very strict rules" regarding Grand Jury secrecy. She also acknowledged that, "for me to give out any information to somebody who is not going into the Grand Jury is actually a criminal offense."

⁴ 42 Pa.C.S.A. §§ 4541- 4553.

⁵ *In re Investigating Grand Jury of Philadelphia Cnty., Appeal of Philadelphia Rust Proof Co., Inc.*, 437 A.2d 1128, 1130 (Pa. 1981).

⁶ Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the Commonwealth for use in the performance of their duties. The attorneys for the Commonwealth may with the approval of the supervising judge disclose matters occurring before the investigating grand jury including transcripts of testimony to local, State, other state or Federal law enforcement or investigating agencies to assist them in investigating crimes under their investigative jurisdiction. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court. All such persons shall be sworn to secrecy, and shall be in contempt of court if they reveal any information which they are sworn to keep secret. 42 Pa.C.S.A. § 4549(b).

Obstructing Administration of Law or Other Governmental Function

Kane obstructed, impaired, or perverted the functioning of her own Office by breaching her official duties when she used her position as the Attorney General to intentionally gain access to and then disclose confidential investigative information and secret Grand Jury information for her own personal and political gain or benefit. By disclosing confidential investigative information and secret Grand Jury information, Kane violated the integrity of her Office as well as the Grand Jury process, and she specifically violated the principle of secrecy designed to protect all those involved in the Grand Jury process.

Kane obstructed, impaired or perverted the functioning of the Grand Jury when she testified dishonestly under oath. Before testifying, Kane swore to tell the truth and then failed to do so by making repeated false statements under oath. Kane's conduct in making these repeated false statements was unlawful. By making these false statements under oath in an attempt to deceive the Grand Jury, Kane jeopardized the integrity and purpose of the Grand Jury proceedings by preventing truthful information from being obtained by the Grand Jury that was pertinent and/or material to its investigation.

Kane also obstructed, impaired, or perverted the functioning of the Grand Jury by breaching her official duty to uphold the Constitution of this Commonwealth and its citizens. In her Oath of Office, Kane swore to "discharge the duties of [her] office with fidelity." One such duty of the Chief Law Enforcement Officer of the Commonwealth of Pennsylvania would be to uphold the law and not subvert investigations into unlawful activities. By making false statements while under oath in a Grand Jury proceeding Kane engaged in unlawful acts, violated that oath, and breached her official duty. As an elected official chosen to lead the Commonwealth's statewide law enforcement agency,

Kane violated her solemn duty to uphold the law when she failed to testify truthfully.

Official Oppression

Despite her denials before the Grand Jury, investigators concluded that Kane did, in fact, direct the disclosure of materials from the 2009 Grand Jury Investigation. Specifically, Kane directed Deputy Attorney General Adrian King to deliver these materials to Josh Morrow. Kane further directed Morrow to leak these materials to the press, which he did.

Kane engaged in this conduct while acting in her official capacity. The information released qualified as both confidential investigative information and secret Grand Jury information. By directing the release of confidential investigative information, Kane violated the Criminal History Records Information Act. By directing the release of secret Grand Jury information, Kane violated the Grand Jury Act.

Kane's actions in releasing this material mistreated Mondesire and infringed upon his personal rights in that, as a result of the negative information in the media, Mondesire experienced both professional and personal humiliation, ridicule, and loss. Mondesire explained to investigators that he was forced to shut down his charitable organization. Further, after having his photograph appear in numerous newspaper publications and his name associated with an investigation that ultimately led to no charges, he and his family experienced strain. Mondesire expressed that these allegations caused him great personal stress. The release of this information and ensuing press coverage subjected Mondesire to mistreatment and impeded his right to reputation as guaranteed by the Constitution of the Commonwealth of Pennsylvania.

In taking her oath of office as the Chief Law Enforcement Officer for the Commonwealth of Pennsylvania, Kane has a duty to obey and defend the laws

of the Commonwealth. This duty extends to all laws of the Commonwealth, including the Grand Jury Act and the Criminal History Records Information Act.

By violating both the Grand Jury Act and Criminal History Records Information Act Kane committed Official Oppression. Kane, acting in her official capacity, mistreated Mondesire and impeded the exercise and enjoyment of his rights as a citizen. Kane committed this mistreatment by directing the illegal disclosure of materials protected by both the Grand Jury Act and the Criminal History Records Information Act. By violating both the Grand Jury Act and Criminal History Records Information Act in this fashion, Kane committed Official Oppression.

Conspiracy to Commit Official Oppression and Obstructing Administration of Law or Other Governmental Function

As outlined above, Kane committed Official Oppression and Obstructing Administration of Law or Other Governmental Function by directing the release of documents in violation of the Grand Jury Act and Criminal History Records Information Act. However, Kane did not act alone. Kane agreed with and/or directed other individuals to assist her in her illegal acts. By Kane's own admission, she and King agreed to release information to the press. Investigators determined that the information released was protected by both the Grand Jury Act and Criminal History Records Information Act.

In addition to the acts of conspiracy that Kane admitted to during her Grand Jury testimony, investigators also determined that Kane had assistance in compiling the documents that were ultimately released to Brennan and the Daily News. Based on the two emails released to Brennan and used in the June 6, 2014, Daily News article, Kane could have received this assistance from a group of only three individuals, which includes Peifer and Reese, two of her most trusted employees.

Perjury and False Swearing

As outlined above, Kane made multiple false statements during her testimony in front of the Grand Jury. Specifically, Kane made false statements about the following topics: 1) her knowledge regarding the 2009 Memorandum; 2) her involvement in leaking secret documents to the press; 3) that she didn't read the June 6, 2014, Daily News article until August 2014; and 4) that the release of the Mondesire information had nothing to do with Ali Investigation. Had the Grand Jury credited her false testimony, the outcome of the investigation could have potentially been different. Therefore, by making the materially false statements outlined above, Kane committed Perjury. Kane also committed False Swearing by making false statements under oath.

Kane was called to testify in front of the Grand Jury to answer questions regarding her involvement in and knowledge of the leaking of secret and protected documents. Investigators determined that, rather than tell the truth, Kane, Pennsylvania's Chief Law Enforcement Officer, who swore to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth" and to "discharge the duties of [her] office with fidelity," made repeated and calculated false statements. Kane did so under oath in order to deceive the Grand Jury.

Conclusion

On March 16, 2014, the Philadelphia Inquirer ran a story that was highly critical of Kane regarding her decision not to pursue the prosecutions of politicians who had been caught in an undercover sting accepting bribes. Kane perceived this story to be an attack on her personally and professionally. She became incensed at two former state prosecutors whom she believed had released the information used in the article. In an effort to retaliate, Kane directed, in secret concert with at least one other person, the release of confidential investigative information and secret Grand Jury information to the press. This protected information related to a 2009 Grand Jury Investigation

regarding among other things an investigation of J. Whyatt Mondesire that did not result in Mondesire's arrest. Kane believed that releasing this information to the press would publicly embarrass the people whom she believed had publicly embarrassed her. Intentionally avoiding the transparency she so frequently touted, Kane chose to use back channels and a political operative to leak the information. The confidential information was used to produce the June 6, 2014, Philadelphia Daily News article.

According to multiple witnesses and our own independent review, it is clear that the article contained information that should have remained confidential and secret. After the June 6, 2014, article was published, Kane began a campaign of deceit and concealment to try and cover-up her culpability in the illegal release of this information. Kane discouraged her employees from cooperating with the Special Prosecutor's investigation. Then, in her most direct attempt at covering up her crimes, Kane appeared in front of the Grand Jury, tried to misdirect the public with a statement to the press prior to her testimony, and then lied repeatedly to the same citizens she had empaneled for the Thirty-Fifth Statewide Investigating Grand Jury.

In an effort to retaliate and seek revenge against former state prosecutors whom she believed had embarrassed her in the press, Kane orchestrated the leak of confidential investigative information and secret Grand Jury information to the press. This leak was orchestrated as an offensive strike in Kane's "war" against others. Kane conspired with at least one other person to obtain copies of documents containing confidential investigative information and secret Grand Jury materials. She directed the illegal disclosure of this confidential information to a political operative and directed him to leak the secret material to the media to cause harm to the reputation of at least one former state prosecutor. This act of vengeance was done without regard to the laws of Pennsylvania and the defendant's obligations as the Chief Law Enforcement Officer of the Commonwealth. Moreover, it was done entirely without regard to the collateral damage it would cause to the person who was

the subject of a secret investigation and who has not been charged with a crime.

When faced with the exposure of her actions and compelled to appear as a witness before her own Statewide Investigating Grand Jury, Kane endeavored to conceal and cover up her wrongdoing by lying to the Grand Jury regarding both her conduct and her legal culpability. By engaging in these unlawful acts of retaliatory behavior, Kane violated both her oath to uphold the Constitution of the Commonwealth of Pennsylvania and the criminal laws of Pennsylvania. Kane abused the power entrusted to her by the citizens of the Commonwealth of Pennsylvania.



Det. Paul Michael Bradbury-Montgomery County Detectives

SWORN TO AND SUBSCRIBED, BEFORE ME THIS 6 DAY OF AUGUST, 2015.



Issuing Authority

STATEMENT BY PENNSYLVANIA ATTORNEY GENERAL KATHLEEN KANE

Monday, November 17, 2014
Norristown, Pennsylvania

As many of you know, I initiated an independent inquiry into the way the Sandusky investigation was conducted -- a central concern raised during my campaign for Attorney General. During that investigation, thousands of emails were discovered sent and received by Pennsylvania public officials that contained pornographic materials.

As a result of multiple requests to the Office of Attorney General under Pennsylvania's broad Right to Know Law, I released most of these emails to the media and the public. The Chief Justice of the Pennsylvania Supreme Court, in a recently published opinion, described the attachments to these emails as "clearly pornographic" and possibly criminal. As a result, many senior public officials involved in these emails resigned. But others remain on the public payrolls, as the Chief Justice pointed out.

Today I am due to testify before a Pennsylvania Grand Jury, as has been publicly reported. However, due to continuous, even overlapping court orders since last March, I am not allowed to explain why I am testifying or what my testimony has to do with the release of the pornographic emails under the Right to Know Law. These court orders also expose me to legal risk if I do my job as Attorney General that I was elected and trusted by the people of Pennsylvania to do. I am not allowed at this time to explain why.

The Office of Attorney General has cooperated from the beginning of this process and I will do the same. I will tell the Special Prosecutor the truth and the facts surrounding the disclosure of information to the public that was done in a way that did not violate statutory or case law regarding Grand Jury secrecy.

Despite my present situation that restricts my ability to answer your questions, I remain committed to the central theme of my campaign -- transparency in government. The public has a right to know what public officials are doing or not doing with taxpayer dollars and whether they are doing their jobs properly or attempting to investigate or prosecute possible criminal conduct.

I promised I would expose corruption and abuse of the legal system. The winds of change can only blow through open windows. My administration is being prevented from prying open the windows that corruption has nailed shut. But that change is coming.

The right of the public and media to know what public officials are doing is vital and should be protected by public officials, the media, and the people of Pennsylvania. I am fighting for the right of the Attorney General to do my job without interference.

But more importantly, I am fighting for an end to abuse of the criminal justice system, for transparency, and for better government. That doesn't come without cost to us. But if this can be done to me as Attorney General, the chief law enforcement officer of the 5th largest state in the country, I am sickened to think what can and may be done to regular, good people who don't have the resources that I have to challenge it.

In conclusion, I wish I could say more and answer all your questions but I cannot. But I can promise you this: The truth and the law will prevail.

Statement by Lanny J. Davis, January 22, 2014

Attorney for Attorney General Kathleen Kane

On the publication of the Grand Jury Report # 2

Let me reiterate even more today, after the publication of the Grand Jury Report, what I have said before:

This entire process seems more today than ever before a railroad train with biased misuse of the Grand Jury system. There have been, as we all know, massive leaks from this Grand Jury process, that Attorney General Kane is guilty of illegal leaks. And yet, those same leaks have not been investigated over the past four months by the Special Prosecutor – except for what appears to be useless attempt to subpoena reporters, who are protected (as admitted in the Grand Jury Report) by the state Shield Law. This alone demonstrates bias and unfair targeting of the Attorney General by Mr. Carluccio. And all leaves me with the firm impression that this investigation of Attorney General Kane has been largely driven from the beginning by angry men, many of them embarrassed by extreme pornography found on their state-paid-for computers sent during office hours; men who an outside legal expert described were responsible for “inexcusable delay” in getting child predator Jerry Sandusky off the street; men who are on a political vendetta against the first elected female Attorney General ever in Pennsylvania.

It should also be obvious that any comments I make today about Judge Carpenter’s decision regarding the Order and the publication of the Grand Jury Report are also applicable to the Special Prosecutor, Thomas G. Carluccio, since it is likely he encouraged the publication of the Report today and had a central role in drafting it.

First: The supervising judge of the Grand Jury investigating Attorney General Kathleen Kane appears to have violated the Investigating Grand Jury Act when he permitted the distribution to the media today of the Grand Jury’s Report # 2.

Section 4552 (b) of the Act authorizes the supervising judge to make a Grand Jury report public. But Section 4552(c) states that “if the supervising judge finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter” then the “supervising judge...shall order such report sealed and such report shall not be subject to subpoena or public inspection during the pendency of such criminal matter except upon order of the court.” (Emphasis added).

There can be no dispute whatsoever that this Report accusing Kathleen Kane of illegal leaks of Grand Jury information “may” prejudice her legal position before due process and trial. Thus under the express terms of the Act, with all due respect, it seems to me that Judge Carpenter may have violated this provision by making the Report public.

Second: Section 4552 (e) states that “if the supervising judge finds that the report is critical of an individual not indicted for a criminal offense, the supervising judge may in his sole discretion allow the named individual to submit a response to the allegations contained in the report. The supervising judge may then in his discretion allow the response to be attached to the report as part of the report before the report is made part of the public record pursuant to subsection (b).” (Emphasis added).

There can be no doubt that this report is “critical” of Kathleen Kane. I have already suggested the Report should not have been published under Section 4552(c). But once the judge made the decision to make the Report public, I respectfully suggest he abused his discretion when he decided to publish the report without allowing Attorney General Kane to submit a response to the allegations of criminal conduct, and for that response to be attached to the Report released to the public today. At the very least, his decision not to allow the rebuttal suggests a violation of fundamental rules of due process and fairness.

Finally, I submit that the decision of Judge Carpenter to permit the Order and Grand Jury Report dated January 20 to be made public today, on January 22, violates the spirit, if not the letter, of the Stay issued by the Pennsylvania Supreme Court yesterday, on January 21. The Stay – essentially, a freeze on the status quo – was a “stay of Presentment No. 60.” The Court also stayed “any prosecution by the District Attorney of Montgomery County stemming from that Presentment.”

It should be noted what the context of this Stay is. The stay was issued so that the Supreme Court could determine, upon the petition of Attorney General Kane, whether or not Mr. Carluccio’s appointment as a special prosecutor by Judge Carpenter was legal or illegal, constitutional or unconstitutional.

I submit that the decision to make public a Grand Jury Report today that concluded (we believe wholly wrongfully) that Attorney General Kane had illegally leaked Grand Jury information constitutes a prejudicial change to the status quo as represented by Presentment No. 60 and that Judge Carpenter and his special prosecutor should not have allowed publication of the Grand Jury Report.

One final comment about the contents of the Report:

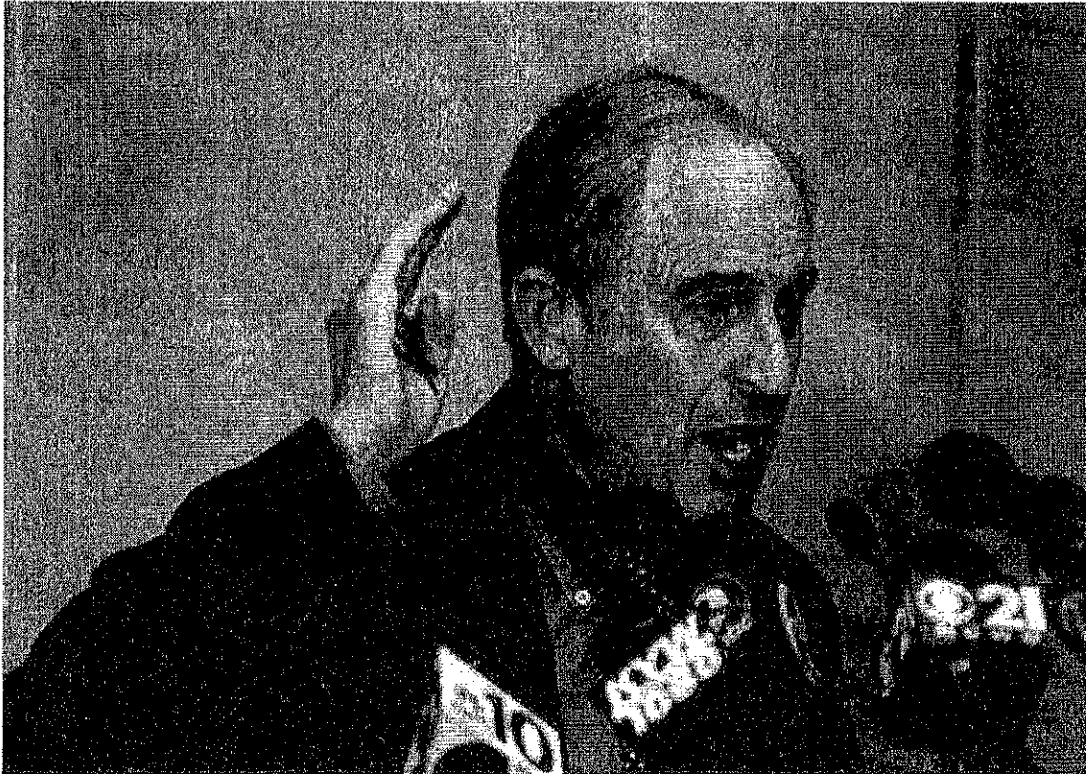
Please recall my comments on January 10 at my press conference in Philadelphia. Attorney General Kane authorized only the release of a brief report written by a senior official in the AG’s office in March of 2014. This was five years after the 2009 Grand Jury – at which time she was a stay-at-home mom. She never took an oath of secrecy regarding that 2009 Grand Jury. Without taking such an oath, she cannot be found to have violated the Grand Jury Secrecy Act, which requires only those who take the oath, and specifically listed in the Act, as subject to secrecy requirements.

The Grand Jury Report confuses the publication in newspaper of a 2009 Memorandum, written by the then Deputy Attorney General William Davis, with the 2014 memorandum that Attorney General Kane authorized be disclosed to the media. That confusion has led them to the erroneous conclusion, and perhaps witnesses who testified, that Attorney General Kane authorized the release of the 2009 memorandum. She did not. To repeat what I said on January 10 in my press conference: Attorney General Kane has said that she never saw or read, much less authorized the release of, that 2009 memorandum.

The Grand Jury Report is wrong in many other respects. Suffice it to say today that I will repeat what the Attorney General has said repeatedly: She has done nothing wrong. She has never authorized the disclosure of Grand Jury information in violation of the Pennsylvania Grand Jury Secrecy Act. She told the truth to the Grand Jury at all times. And I will add after recent disclosures: She never obstructed justice. She never "oppressed" anyone under the law. And Judge Carpenter did not list violation of the Grand Jury Secrecy Act in the list of four alleged crimes that were made public in the last several days – this despite all the leaks that she had violated the Act for the last four months and the appointment of the Special Prosecutor to use the Grand Jury to investigate illegal leaks.

###

Lawyer: Bitter Republican men railroading Kathleen Kane



Lanny Davis, attorney for Pennsylvania Attorney General Kathleen Kane, holds late morning press conference Saturday Jan. 10, 2015, at the Hotel Monaco where he insisted that his client is being railroaded and that the charges that she illegally leaked grand jury documents to the Philadelphia Daily news are incorrect and unfounded by the laws of the commonwealth. Davis said his client will be exonerated and that she will not resign. (AP Photo/Metro, Ed Hille)

By MARYCLAIRE DALE, Associated Press

Posted: 01/11/15, 5:42 AM EST | Updated: on 01/11/2015

[5 Comments](#)



Pennsylvania Attorney General Kathleen Kane looks on before newly elected members of the Pennsylvania Legislature are sworn in, Tuesday, Jan. 6, 2015, at the state Capitol in Harrisburg, Pa.

PHILADELPHIA (AP) — Republicans with political grudges are out to “railroad” and destroy Pennsylvania Attorney General Kathleen Kane through a grand jury probe, a lawyer for the first first-term Democrat said Saturday.

Washington crisis counselor Lanny Davis vowed that Kane will be vindicated, whether or not she faces criminal charges in an investigation over a grand jury leak.

“This railroad train seems to me to be driven by some men with grudges, men who are bitter and angry at being exposed and professionally embarrassed — men who have political agendas to railroad Kathleen Kane out of office and destroy her career,” Davis said.

The Philadelphia Inquirer has cited anonymous sources in saying that a special grand jury this week recommended that Kane be charged over the 2014 leak. The Philadelphia Daily News had reported in August that her predecessor had investigated — but never charged — a local NAACP president over agency finances in 2009.

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Davis confirmed Saturday that Kane allowed a deputy to leak a 2014 summary of the NAACP probe. However, he insisted that she did not leak any of the grand jury material, including a 2009 memo that was quoted.

"She has no idea who got that 2009 memo to the reporter," Davis said. "The only thing she did, when she read the 2014 memo, she said, 'I have no problem with that being released. Do what you have to do.'"

Davis said Kane felt the public had a right to know about the investigation. In hindsight, he said that may have been a political mistake but not a crime.

The former chief justice of the state Supreme Court, Ronald Castille, appointed special prosecutor Thomas Carluccio to investigate the leak to the Daily News in a grand jury probe overseen by Montgomery County Judge William R. Carpenter. All three men are Republicans. They have either declined comment or not returned messages this week.

The decision on whether to pursue the grand jury's reported recommendation and charge Kane is now in the hands of another Republican, Montgomery County District Attorney Risa Vetri Ferman. Davis said he hopes that Ferman keeps "an open mind."

Davis said grudges over Kane's review of the Jerry Sandusky child-abuse investigation — which was run by her predecessor, outgoing Gov. Tom Corbett — and an examination of pornography found on state computers is motivating those out to get his client. The pornography, which Davis called "misogynist," brought down a state Supreme Court justice, a cabinet secretary, state prosecutors and others.

Davis said repeatedly that Kane never knowingly disclosed any secret grand jury material. And he pledged that she would not step down, while conceding she had made some mistakes in her first two years in office.

"She will not resign because she is innocent," Davis said. "She will not let them prevail."

Kane is the first woman and the first Democrat to be elected attorney general since it became an elective post in 1980.

She has endured a difficult year both professionally and personally. In addition to the grand jury problem, she took heat for quashing a probe — later revived by the Philadelphia district attorney — of lawmakers who allegedly took inappropriate gifts.

And she announced after Christmas that she had filed for divorce from her husband of 14 years. They have two children and have lived in Clarks Summit, near Scranton.

Kane has said she is using personal funds to pay for Davis' legal work. Davis worked as special counsel to President Bill Clinton.



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State A.G. probed Philly NAACP leader Mondesire's finances 5 years ago

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BY CHRIS BRENNAN, Daily News Staff Writer
brennac@phillynews.com, 215-854-5973
POSTED: June 06, 2014

STATE ATTORNEY General Kathleen Kane is reviewing a 2009 grand-jury investigation of J. Wyatt Mondesire, former head of the NAACP in Philadelphia, and one of his employees, according to documents obtained by the *Daily News*.

Mondesire's employee, Harriet Garrett, and her daughter pleaded guilty in 2010 to stealing nearly \$220,000 in state grant money for a job-training program. Garrett was sentenced to a minimum of six months in jail and ordered to pay restitution. Her daughter got 18 months' probation.

A 2009 memo written by then-Deputy Attorney General William Davis Jr. says investigators "uncovered what appeared to be questionable spending" of state money by Mondesire.

Kane, a Democrat, is now trying to determine what happened with the Mondesire investigation. Gov. Corbett, a Republican, was the attorney general at the time.

Mondesire, 64, says he was never questioned and denies any financial wrongdoing.

The 2009 Davis memo detailed for his bosses what had been uncovered about Mondesire and Garrett, who worked at the *Philadelphia Sunday Sun*, a weekly newspaper Mondesire publishes.

A nonprofit called Next Generation Community Development Corp., which is operated by Mondesire, held a state-government grant for a job-training program in 2004 and 2006, but handed it off to Garrett, who ran another nonprofit called Creative Urban Education Systems, or CUES, according to the Davis memo.

Mondesire was listed as chairman of the CUES board, the memo noted, while Garrett served as the treasurer for Next Generation's board.

Davis wrote his memo to then-Chief Deputy Attorney General Frank Fina and then-Senior Deputy Attorney General E. Marc Costanzo.

Corbett, as attorney general, named Fina in 2006 to head a new public-corruption unit and Costanzo to work on cases for the unit in the Philadelphia region.

Fina and Costanzo now work in a similar unit for District Attorney Seth Williams.

In the memo, Davis wrote:

* Next Generation's bank-account records, obtained with a grand-jury subpoena, showed deposits of \$1.3 million in government grants in a one-year period.

Another \$521,000 in the account came from political campaigns, rent payments and the intermingling of money from the *Sunday Sun*, which is owned and operated by Mondesire, the memo said.

* Next Generation paid \$2,273 to the Philadelphia Club, a private and exclusive club in Center City.

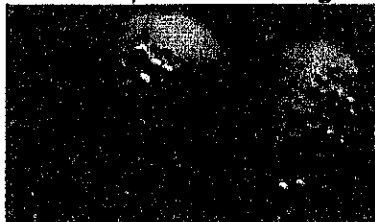
* Next Generation spent "tens of thousands," writing checks to pay Mondesire's American Express bill for "clothes, food, lodging gas and entertainment" and a loan from Mellon Bank. There were also checks written to Mondesire and to "cash."

* Next Generation wrote checks for \$169,960 to Charles and Claudia Tasco and their company, C&C Construction. (Charles Tasco is the son of City Councilwoman Marian Tasco, a friend and political ally of Mondesire's for more than three decades.)

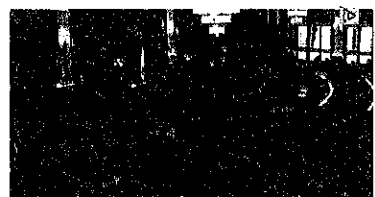
* \$6,431 in CUES money was given to Mondesire for what Garrett called consulting. That type of expense was not allowed, according to the rules of the grant.

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Exhibit G

* In "various correspondence" between Garrett and Mondesire discovered by investigators, she questioned payments of more than \$70,000 he made to Claudia Tasco.

* CUES paid \$1,099 for health insurance for Mondesire.

* Davis wanted to question Mondesire - and possibly subpoena him for sworn grand-jury testimony - about Garrett, CUES and Next Generation.

Never questioned

Mondesire, a former *Inquirer* reporter who served as the top aide to the late U.S. Rep. Bill Gray, said no one from the A.G.'s Office ever questioned him.

"We didn't use any money for personal gain," Mondesire said.

He said that he has not seen the A.G. Office's documents and twice declined an offer from the *Daily News* to review them.

Mondesire said C&C Construction worked on four properties, including the NAACP headquarters and his newspaper office, where the Next Generation non-profit is also located.

"We bought supplies with my American Express card for construction," he said.

"They never asked me a single question back in 2009. We rehabbed the buildings. We spent money buying stuff for the buildings, construction and paying off developers."

Garrett declined to comment about the investigations. Her daughter did not respond to requests for comment.

The May 2010 news release about Garrett's arrest featured Corbett laying out the charges.

Corbett did not respond this week to two questions: Was he briefed on the Mondesire investigation and did he play a role in deciding what happened with that probe?

Mondesire was suspended by the NAACP's national headquarters in April after he feuded publicly with board members about the finances of the local chapter and Next Generation.

Those board members - Sid Booker, Donald "Ducky" Birts and the Rev. Elisha Morris - also were suspended.

Booker and Morris, who say they are still Next Generation board members, are now asking a Common Pleas judge to force Mondesire to show them the nonprofit's financial records.

As a judge considers that request, Kane's staff is reviewing what became of the 2009 Mondesire probe.

David Peifer, who heads the A.G.'s Bureau of Special Investigations, on March 21 interviewed Michael Miletto, the special agent who investigated Garrett and Mondesire.

The *Daily News* obtained a transcript of that taped interview.

Miletto told Peifer that he subpoenaed Next Generation's bank account, the transcript shows.

"When I did that, I found that there was a whole bunch of money that appeared to me to be donations to the NAACP, not [Mondesire], and they were going into Next Generation's account and they were being used for [Mondesire's] lifestyle - much of it," Miletto told Peifer.

Miletto said he was taken off the case after Fina and Costanzo were told about the probe, according to the transcript.

Miletto said "criminal activity was just ignored" after that. He added that two accountants who had worked for Mondesire had provided taped statements, with one asking for immunity and the other asking for protection.

Fina and Costanzo declined to comment about the Mondesire investigation, citing the secrecy of grand-jury proceedings.

Davis, now in private practice, also declined to comment, citing the same restriction.

Miletto, who still works for the A.G.'s office, also declined to comment.

Peifer referred questions to Kane's communications staff.

J.J. Abbott, a spokesman for Kane, declined to comment.

The Kane-Fina feud

Fina and Costanzo have a complicated and controversial relationship with Kane.

Kane criticized Corbett's tenure as attorney general when she ran for office in 2012, specifically targeting the Penn State child-abuse scandal that sent former assistant football coach Jerry Sandusky to prison.

Kane's staff is now conducting an extensive review of that investigation.

Fina led the Sandusky probe.

Kane, on Feb. 5, issued a statement noting that her office's Sandusky review had been underway for one year, adding that delays in the undertaking "will be described in more detail when the report is made public."

A month later, the *Inquirer* reported that Kane declined to pursue an investigation previously led by Fina and Costanzo, starting in 2010, that used Philadelphia lobbyist Tyron Ali as a confidential informant to tape conversations with four Philly state representatives and a former Traffic Court judge. On the tapes, the representatives and judge accept cash or gifts from Ali.

Kane has said Fina dropped 2,033 criminal counts against Ali, who had been charged with stealing \$430,000 from a state program, 24 days before she was sworn into office.

She said that "extraordinarily lenient" deal "crippled the chance of this case succeeding in prosecution."

Fina, in a letter published by the *Inquirer* a week after the first story ran, called on Kane to explain her decision.

The *Inquirer* also published a letter that day from Fina's boss, Williams, critical of Kane.

Kane eventually turned over the Ali case file to Williams, who is now examining whether charges can be brought against the four representatives and the Traffic Court judge, who is currently on trial in an unrelated federal corruption case.

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The New York Times <http://nyti.ms/1M88mOm>

U.S.

Pennsylvania Attorney General, Kathleen Kane, Charged in Leak Case

By RICHARD PÉREZ-PEÑA AUG. 6, 2015

A prosecutor filed criminal charges on Thursday against Pennsylvania's attorney general, Kathleen G. Kane, in a convoluted tale of political maneuvering and retribution that threatens the career of an official who, until recently, was seen as one of her state's rising stars.

Ms. Kane, a Democrat in her first term, has been accused of illegally giving grand jury documents to a newspaper in order to embarrass a critic, and then trying to cover up her actions with false testimony to a different grand jury. The Montgomery County district attorney, Risa V. Ferman, charged the attorney general with counts that include perjury and obstruction of justice. Ms. Ferman also filed a related charge against an aide to Ms. Kane.

"Kane devised a scheme to secretly leak confidential information and secret grand jury items directly to media," Ms. Ferman, a Republican, said at a news conference in Norristown. And then, before a grand jury, "she lied repeatedly about her own actions, about the law and about other matters."

Ms. Kane has admitted to leaking material, but insisted that it was not covered by grand jury secrecy requirements.

"I have maintained my innocence from the day these allegations surfaced and I continue to do so today," she said in a statement, adding that she would not step down. "A resignation would be an admission of guilt and I'm not guilty."

Exhibit H

Ms. Kane, 49, was elected in 2012, becoming the first Democrat and the first woman to become attorney general since the post became elective in 1980. Before and after that election, she drew attention for sharp criticism of the job done by the office before she took over, under Tom Corbett, a former attorney general who was elected governor in 2010, and Frank G. Fina, a longtime chief deputy attorney general.

Ms. Kane made a name for herself during the campaign by charging that the office dragged its feet in investigating child molesting charges against Jerry Sandusky, the former assistant football coach at Penn State who was later convicted. After taking office, she dropped a case against several elected officials accused of taking gifts in a sting operation run by the attorney general's office, claiming that it had been mishandled by people who went before her.

Mr. Fina, who handled both of those cases, was criticized by name by Ms. Kane, and he publicly disputed her claims about the cases. Her critics have charged her with political opportunism, noting that the officials snared in the sting were all Democrats.

Last year, The Philadelphia Daily News reported that Ms. Kane was reviewing another old case handled by Mr. Corbett and Mr. Fina: the attorney general's office had led a grand jury investigation of an N.A.A.C.P. chapter president in 2009, finding evidence of financial impropriety, but never interviewed him or filed charges.

Ms. Kane's critics claimed that she had leaked grand jury materials to embarrass and discredit Mr. Fina.

A judge appointed a special prosecutor to convene a new grand jury and look into the leak — an appointment that Ms. Kane challenged before the state Supreme Court, where she lost. She testified before that grand jury, as did some of her aides.

That grand jury concluded that Ms. Kane had orchestrated the leaks as a campaign of retaliation against Mr. Fina, and lied about her actions in her testimony. Its report, delivered to Ms. Ferman in December and made public in April, recommended criminal charges, but left the matter up to Ms. Ferman.

In addition to charging Ms. Kane, the district attorney charged a member of her security detail, Patrick R. Reese, with indirect criminal contempt, claiming that he gained illegal access to information about last year's grand jury inquiry while it was underway.

Ms. Kane was charged with perjury, criminal conspiracy, obstructing administration of law or other governmental function, official oppression, and false swearing.

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Policy to suspend employees with felony charges doesn't apply to Pa. AG

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AP

Pennsylvania Attorney General Kathleen Kane (right), accompanied by New York Attorney General Eric Schneiderman, speaks about a multistate task force formed to address the Northeast heroin crisis during a news conference Oct. 8, 2014, in New York.

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Daily Photo Galleries

Wednesday, - Aug. 12, 2015



By Brad Bumsted

Tuesday, July 7, 2015, 12:48 p.m.

HARRISBURG — A policy adopted by Attorney General Kathleen Kane requires suspension without pay for any employee of her office charged with a felony, but the rule does not apply to Kane, who is under criminal investigation.

Kane was not under investigation when she signed a code of conduct for employees in October 2013. Kane readopted the policy from 1998 along with other rules for employees during her first year in office, a former aide said.

The provision requiring suspension for accused felons "does not cover the attorney general, who is an elected official rather than an employee," her spokesman Chuck Ardo said Tuesday.

State officials said it is discretionary for elected officials to include themselves in such policies. Philadelphia lawyer George Parry, a former federal and city prosecutor, said, "I'd have to give (Kane) the benefit of the doubt if it was in place when (Tom) Corbett was attorney general. I could not say she was hypocritical."

Kane — the first woman and first Democrat elected attorney general — repeatedly has denied any wrongdoing since a statewide grand jury recommended charging her with perjury, obstruction of justice, official oppression and contempt, most of which are felonies, in connection with documents allegedly covered by grand jury secrecy rules that were leaked to a Philadelphia newspaper.

Some Capitol observers believe Montgomery County District Attorney Risa Vetri Ferman will decide soon whether to prosecute Kane, though Ferman has no timeline.

Ferman could decide not to charge Kane, or Kane could resign as part of a plea deal. Kane has said she would fight any charges.

The attorney general, treasurer and auditor general are statewide elective offices, and Pennsylvanians elect all judges, some of them statewide.

The auditor general "is not exempt from the office's code of conduct," said Barry Ciccocioppo, communications director for Auditor General Eugene DePasquale.

Anyone charged with a work-related crime in DePasquale's office would be suspended without pay. A felony conviction requires termination. Nothing precludes the auditor general from taking action against employees charged with crimes other than felonies and work-related illegality, the agency's code says.

Treasurer Rob McCord resigned in January while under investigation by federal authorities for corruption and later pleaded guilty to extortion for shaking down state contractors for campaign contributions while running for governor last year. McCord has not been sentenced.

His resignation "was pursuant to Rob's decision," said Christopher Craig, who was acting treasurer until the Senate last month confirmed Timothy Reese, a nominee of Gov. Tom Wolf.

The treasury does have a written policy providing for immediate suspension without pay if employees are charged with a crime, Craig said.

Any judge can be suspended with or without pay by the Supreme Court or the Court of Judicial Discipline, a court spokesman said. Court employees are required to report felony convictions to supervisors. They can be suspended with pay, pending an internal investigation. There is no automatic suspension for judges or staff; it depends on circumstances, including whether the crime was job-related or the person poses a threat.

"The code of conduct should apply to all employees in the hive, from the worker bees to the queen bee," said Eric Epstein, co-founder of Rock the Capital, a government reform group.

Epstein said Kane "voluntarily signed up to continue a policy that is unfair and inequitable." She could apply the policy to herself if she wanted, he said.

Two decades ago, former Attorney General Ernie Preate resigned as part of a plea bargain with federal prosecutors. He pleaded guilty to mail fraud and served 11 months in prison. The crime stemmed from illegal campaign donations to Preate from video poker operators.

Brad Bumsted is Trib Total Media's state Capitol reporter.

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Crime & Punishment

Playing the K card

POSTED: Tuesday, July 21, 2015, 5:39 PM

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Joe Slobodzian

POSTED: WEDNESDAY, JULY 22, 2015, 9:10 AM

image: <http://media.philly.com/designimages/partner/icon-Inquirer-2014.jpg>

The Inquirer

The play sometimes gets rough in the courtroom and sometimes a lawyer's verbal shot lands south of the belt.

Maybe that's what happened Wednesday to veteran Philadelphia criminal defense lawyer Nino V. Tinari, one of the lawyers defending former city Common Pleas Court Judge Willis W. Berry Jr. against criminal conflict of interest charges brought by state prosecutors.

Questioning prosecution witness Eric Eklund, an agent for the state Attorney General's office, Tinari asked in faux innocence about his employer: "That means you work for Kathleen Kane?"

If the import of Tinari's remark escaped some jurors, the reaction of Deputy Attorney General Daniel J. Dye did not.

Dye angrily objected: "If we're going to play that way" and then went on to say that Eklund, he and everyone else who worked for the Attorney General's office worked for the "people of the Commonwealth of Pennsylvania."

Tinari then had his own objection: "I think you're objecting in anger."

The jurors, some smiling, watched as Common Pleas Court Judge S. Gerald Corso, a senior judge from Montgomery County specially assigned to preside over the trial, ordered the lawyers into an anteroom.

The allegations — Berry, 72, used his judicial office and staff to manage his personal real estate business — go back to 2007 in a series of articles in *The Inquirer*. Two years later, after a probe by the state's judiciary, Berry was suspended without pay for four months for what the Court of Judicial Discipline determined was a conflict of interest. But it was not until May 2014, almost two years after Berry retired following 16 years on the bench, that the Attorney General's office announced the criminal charges against Berry.

That last fact has been cited repeatedly by Berry's lawyers in an unsuccessful attempt to get the charges dismissed under the theory he's being punished twice for the same crime. In the interim, however, Kane has run into her own legal problems. A grand jury in Montgomery County has recommended Kane be charged with perjury, official oppression and related charges for leaking confidential information to a newspaper to embarrass a critic. A second grand jury in Philadelphia is reportedly looking into Kane's decision not to prosecute six elected Democratic officials caught on tape taking money or gifts from a lobbyist in an undercover sting investigation.

When judge and lawyers emerged from behind closed doors and the sparks between Tinari and Dye threatened to resume, Corso cut them both off.

"I think you both made your points," the judge added.

Read more at http://www.philly.com/philly/blogs/crime_and_punishment/Playing-the-K-card.html#VuH4cAwjzyDRjSvU.99

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Kane's Fight Seen as Uphill Battle

BY LIZZY MCLELLAN
AND MAX MITCHELL
Of the Legal Staff

After being criminally charged last week, state Attorney General Kathleen Kane said she will fight back and refused to step down. But her league of supporters, credibility and political prospects seem to have all but disappeared, observers said.

Kane was charged Aug. 6 in Montgomery County with obstructing administration of law or other governmental function, official oppression, criminal conspiracy, perjury and false swearing. She was arraigned over the weekend.

Since Montgomery County District Attorney Risa Vetri Ferman announced the charges, other public officials have publicly praised the prosecution, called for Kane's resignation or both. Gov. Tom Wolf and Philadelphia District Attorney R. Seth Williams both issued public statements hours after the announcement of charges, and a number of legislators from both parties have



AP photo by Laurence Kesterson

State Attorney General Kathleen Kane arrives to be processed and arraigned on charges she leaked secret grand-jury material and then lied about it under oath Aug. 8 at the Montgomery County detective bureau in Norristown.

reportedly stated that Kane should step down. "She's a woman on her own island now that the governor has weighed in especially,"

Kane continues on 10

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Superior Court said the act's privilege provision only applies to peer reviews initiated by a professional health care provider.

If the hospital where plaintiff Ann Marie Venosh received her care had asked insurer Blue Cross of Northeastern Pennsylvania to review the care given by defendants Dr. Jack Henzes and Cindy Anderson, that would have been privileged. But because Blue Cross initiated the review on its own and for the purpose of determining whether it wanted to continue to cover Henzes and Anderson's services, it was not done under

the parameters of the act, Judge Mary Jane Bower said.

The purpose of the act is to protect peer reviews of one medical professional by another with the goal of allowing the medical profession to "self-police" its quality of care, Bowes said.

"Blue Cross was not a member of the medical care profession involved in self-policing," Bower said. "It was an organization deciding whether its affiliate IPA-HMO should continue to contract with the health

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Kane

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said Jeff Jubelirer, consultant at Bellevue Communications Group. "Wolf coming out ... is to me the nail in the coffin."

Many who have made statements acknowledged that Kane is entitled to due process, but they doubt her ability to fulfill the duties of attorney general while fighting the charges.

"I've not seen anybody say she should stay in her job, since last Thursday," said G. Terry Madonna, director of the Center for Politics and Public Affairs at Franklin & Marshall College. "If you want a full-throated, tough advocate for her, there are none there that I've seen."

Former Attorney General Ernest D. Preate Jr. noted that, along with defending against the criminal charges, Kane has to fight off efforts by the General Assembly to impeach her, continue managing the hundreds of employees making up the office, and continue to handle her personal life.

"It's a physically and emotionally draining experience," said Preate, who stepped down in 1995 the day he was charged with political corruption. "You're fighting charges, worrying about your family, worrying about your law license. That's a plate full of difficulty."

Preate added the difficulties at the office will likely only get worse the closer the case gets to trial. He noted several key witnesses mentioned in the affidavit are still working in her office, including first deputy attorney general Bruce Beemer.

"You got your own staff being principal witnesses against you, but you expect them

to turn around and obey your every whim?" he said.

KANE'S DEFENSE

While she issued a statement following the indictment, Kane is expected to address the charges at a press conference Wednesday in Harrisburg, which she announced Monday.

In a statement last week, Kane's attorney, Gerald L. Shargel of Winston & Strawn, said the attorney general is "innocent of any wrongdoing."

"At no time did she believe that she was asking or directing anyone to do anything improper or unlawful," Shargel said.

An affidavit released with Kane's charging documents listed four alleged false statements, attributed to the attorney general during her November 2014 testimony before a grand jury. But Shargel said "she uttered no lie."

"If's not about what happened ... it's about whether the actions she admits she took constitute a crime," said Jeffrey M. Lindy, criminal defense attorney and former prosecutor, of Kane's expected defense. "That totally misses the point of whether the attorney general should have been engaged in a smear campaign."

Kane made her motive clear in email exchanges with media strategists, the affidavit said. In one, she said, "This is war," seemingly with regard to former chief deputy attorney general Frank G. Fina. In another, the affidavit said, "She shared her feelings of wanting to make 'Seth [Williams] pay.'"

While Kane has maintained that she will not step down, defense attorney William DeStefano of Stevens & Lee noted that several public officials have used their offices as

a bargaining chip, and said this could still be a possibility for Kane.

But either way, court watchers doubted that Ferman would be willing to drop the perjury charge, which is the single felony charge that Kane faces, especially since Ferman is running for a seat on the Montgomery County Court of Common Pleas bench.

DeStefano added Ferman's decision to continue investigating the case on her own for several months after a statewide grand jury recommended charges is an indication that the case against Kane is strong.

"A grand jury is more inclined to charge anybody," DeStefano said. "The fact that Ferman's office did another investigation, it seems to me it would appear that the charges are more valid than if they just did a grand jury investigation."

IF NO RESIGNATION, REMOVAL?

Observers have noted the possibility that the legislature could impeach Kane. A group from the House of Representatives, led by state Rep. Daryl D. Metcalfe, R-Butler, introduced a resolution to do so Monday, which was referred to the House Committee on State Government.

Despite the allegations at hand, Lindy said, an impeachment may not be easily attained, but Kane's office could still function effectively.

"You can't just impeach someone because they're charged with a crime," he said. "The attorney general can be embattled in all kinds of stuff and the career prosecutors are going to keep prosecuting."

But Kane's credibility problems could bleed into her office's ability to prosecute cases, DeStefano said.

According to DeStefano, who often tries cases that have been brought by the Attorney General's Office, Kane's legal woes will likely not be the bedrock for any defense arguments, but overall the topic could become an elephant in the room.

"You could get jurors who don't trust the investigators and prosecutors as much as they normally would," DeStefano said. "It's not necessarily bad for defense attorneys."

Others have highlighted the potential for the Office of Disciplinary Counsel to petition the state Supreme Court for injunctive relief in the form of a temporary suspension of Kane's law license.

Kane also faces a re-election next fall if she is able to retain her position until then.

Madonna said voters may not see the attorney general's duties as being of "paramount importance" in their daily lives. But, he said, it is still one of the most visible state offices in Pennsylvania.

"I think the voters intuitively understand how important the office is, and how important this is," Madonna said. So if she runs, "it would be a huge uphill climb."

He added the Democratic Party would likely seek someone to run against Kane.

Regardless of how her criminal case proceeds, Jubelirer said, 49-year-old Kane's political future seems bleak.

"I just think she's done," he said. "There's nowhere to go."

Lizzy McLellan can be contacted at 215-557-2493 or lmclellan@dm.com. Follow her on Twitter @LizzyMcLellan.

Max Mitchell can be contacted at 215-557-2354 or mmitchell@dm.com. Follow him on Twitter @MMitchell11.