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, after consideration of Attorney General Kathleen G. Kane's MEMORANDUM IN RESPONSE TO THE ORDER DATED APRIL 10, 2015 AND THE AMENDED ORDER DATED APRIL 17, 2015, and after oral argument before the undersigned panel on April 27, 2015, the circumstances surrounding the termination of James P. Barker, Esquire from his position in the Office of the Attorney General of Pennsylvania by Attorney General Kane is hereby referred to the District Attorney of Montgomery County for further investigation of possible violations of the Crimes Code[1] for the following reasons:

1. The District Attorney is currently investigating the criminal charges presented by the Grand Jury against Attorney General Kane and the termination of Mr. Barker may well come within the scope of the District Attorney's ongoing investigation;

[1] 18 Pa CSA § 5301 – Official Oppression – Presented by the grand jury

18 Pa CSA § 4953.1 – Retaliation Against Prosecutor

2. Further investigation that would be required by the Special Prosecutor, without the investigative and prosecutorial resources available to the District Attorney, would be wasteful and duplicative;
3. Attorney General Kane's Memorandum in Response raises issues of fact and law which are better left for determination by the District Attorney after she completes her investigation, and, in the event she determines to file charges for violations of the Crime Code, by the regular criminal trial process, rather than for the Special Prosecutor to proceed on the charge of Indirect Criminal Contempt now.

BY THE COURT:

WILLIAM R. CARPENTER, J.
Supervising Judge

RICHARD P. HAAZ, J.
Judge

WILLIAM T. NICHOLAS, J.
Senior Judge

Copies sent on April 27, 2015
By Electronic and Interoffice Mail to:

District Attorney Risa Vetri Ferman

Honorable William J. Furber, Jr., President Judge

Honorable Richard P. Haaz, Judge

Honorable William T. Nicholas, Senior Judge

By Electronic and Certified Mail to:

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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE:	:	CP-46-MD-0000926-2015
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THE THIRTY-FIVE STATEWIDE	:	
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	:	

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:	**SUPREME COURT OF PENNSYLVANIA NO. 171 M.D.D MISC. KT 2012**
THE THIRTY-FIFTH STATEWIDE	**MONTGOMERY COUNTY COMMON PLEAS M.D. 2644-2012**
INVESTIGATING GRAND JURY	**NOTICE No # 123**

ORDER SEALING PRESENTMENT NO. # 60

The Court has accepted Presentment No # 60. 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 1st 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:	**SUPREME COURT OF PENNSYLVANIA NO. 171 M.D.D MISC. KT 2012**
THE THIRTY-FIFTH STATEWIDE	**MONTGOMERY COUNTY COMMON PLEAS M.D. 2644-2012**
INVESTIGATING GRAND JURY	**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. Whyatt 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 Dale 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 NACCP 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 [am] 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. Final].*" 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. Whyatt 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

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[1] PA CONST. Art. I, §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