


of Pennsylvania. The Commonwealth further stated that it had obtained the recordings from the United States Attorney's Office, under the law enforcement exception to Title III, only after clearing significant procedural hurdles (including the approval of a federal judge).

8. During a phone conference on March 7, 2016, Judge Diana L. Anhalt of the Court of Philadelphia Court informed defense counsel that publicly filing a selective and vindictive prosecution motion in this case would likely result in a finding of contempt against both defense counsel and Attorney General Kane.

9. The Exhibit attached hereto and referenced in the Memorandum of Law is:

EXHIBIT A *Steve Esack, Source: Consultant said Kathleen Kane asked him to pass along documents at center of leak probe, FBI recording shows, The Morning Call, February 25, 2016*

Dated: New York, New York
March 18, 2016



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News / Local News / Watchdog Report

Source: Consultant said Kathleen Kane asked him to pass along documents at center of leak probe, FBI recording shows



Attorney General Kathleen Kane (RICH SCHULTZ / AP FILE PHOTO)



By **Steve Esack** · Contact Reporter
Of The Morning Call

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HARRISBURG — Attorney General **Kathleen Kane**'s political consultant was caught on an **FBI** wiretap talking about how she wanted the consultant's help in passing along documents that later became the subject of a grand jury leak probe, The Morning Call has learned.

The FBI recorded the conversation between Kane's consultant, Josh Morrow, and an unidentified person during its 2014 extortion **investigation of state Treasurer Rob McCord**, a source told the newspaper.

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The FBI later provided the recording to the Montgomery County District Attorney's Office, which has charged Kane with lying about her role in passing along the grand jury documents that were discussed in the call, the source said. The grand jury documents involved were supposed to be kept private. Instead, prosecutors say, they were used by Kane to discredit a rival. County prosecutors gave the recording to Kane's legal defense team Feb. 5 in preparation for her trial this summer, the source said.

Ten days later, Kane announced that for her children's sake, she would not seek re-election.

Such a recording offers potentially corroborating evidence to bolster prosecutors' claims that Kane lied under oath by denying a role in the leak. And it is audio evidence that stands apart from what Morrow told an investigator about a similar phone conversation described in the county's affidavit of probable cause.

One legal expert called the recording a "slam dunk" for prosecutors.

Audio or video evidence greatly aids prosecution, said Jeffrey Lindy, a Philadelphia defense lawyer and former federal prosecutor who has defended high-profile clients such as Monsignor William Lynn, accused of covering up child sex abuse in the Catholic Archdiocese of Philadelphia.

Morrow didn't know he was being recorded in that 2014 telephone conversation. So Lindy said it will be hard to convince jurors that he wasn't telling the truth.

The recording previously has not been publicly disclosed or mentioned in public court documents in the Kane case. Kane's trial is scheduled to begin Aug. 8.

The FBI has turned over 10 recordings of Morrow; the nine others were routine political conversations, the source said.

Kane's defense lawyer, Gerald Shargel, declined to comment.

"I can't make any comment about any FBI recordings," Shargel said.

Morrow's Philadelphia defense lawyer, Catherine Recker, did not return calls for comment. McCord's Philadelphia lawyer, Robert Welsh, declined to comment.

McCord, a Democrat from Lower Merion Township, Montgomery County, pleaded guilty last year to trying to force at least two businesses to give him campaign donations or they would lose state contracts. He is free on bail and has not been sentenced, federal court records show.

The Morning Call was unable to determine whom the FBI had bugged when Morrow called. Authorities have not publicly identified the person.

The FBI bugged at least two phones during its McCord investigation, according to a newspaper report and a second source.

One belonged to McCord himself, according to the second source, who received a letter from the FBI saying calls and electronic communication might have been intercepted. In a wiretap, the court requires the FBI to notify anyone whose call has been intercepted. It is unknown how many people got letters about the wiretaps.

The other phone belonged to John Lisko, McCord's Treasury Department chief of staff and gubernatorial campaign manager, according to an FBI letter cited in an Oct. 8 Pittsburgh Tribune-Review story.

Reached last Friday, Lisko told a Morning Call reporter he was in a meeting and would call back. He didn't.

It's unclear when the FBI shared the Morrow recordings with county authorities, who charged Kane in August and October 2015 with perjury, false swearing and obstruction for allegedly lying under oath about leaking grand jury records to discredit Frank Fina, a former state prosecutor who feuded with Kane.

The county's affidavit claims Kane targeted Fina because she blamed him, without proof, of being a source in a March 16, 2014, Philadelphia Inquirer story that she thought made her look soft on crime.

Kane sought to damage Fina's reputation, the affidavit states, by providing the Philadelphia Daily News with information from a closed 2009 grand jury investigation Fina supervised. The 2009 grand jury dealt with government grants bestowed on organizations run by J. Whyatt Mondesire, ex-chief of the Philadelphia branch of the NAACP, the affidavit states. Mondesire, who has since died, was not charged.

Kane told the county grand jury investigating the alleged leak that Adrian King, her then-first deputy, worked alone to get the material to Morrow on April 22, 2014, the affidavit says.

In his own grand jury testimony, King said Kane had asked him to forward Morrow a sealed envelope. King testified he left the envelope between the front doors of his Philadelphia house without knowing the contents, and Morrow picked it up April 23, 2014, as they had arranged over the phone the day before.

A search of phone records indicated that Morrow had brief phone calls with Kane at 4:54 and 5:03 p.m. April 22, 2014, the affidavit states. That same evening, Morrow had two brief phone conversations with King, the affidavit states.

In a June 10, 2015, interview with a county detective, Morrow described one of his April 22 calls with Kane.

"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," Morrow told a detective, the affidavit states. "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."

The information Morrow gave in his interview is materially similar to what he said on the FBI recording, the first source said.

Morrow is heard saying "Kathleen called me" and then he describes what Kane told him to do with the records, the source said. "He does mention Frank Fina and Mondesire," the source said. "They talk about what the documents are to be used for."

In her county grand jury testimony, Kane said she had never seen the 2009 grand jury records Morrow said she had given him and he delivered to the Daily News.

"I have never seen this document before today," Kane testified, according to a transcript in the affidavit.

"So you don't know anything about the documents that actually went out of your office to Josh Morrow?" special prosecutor Thomas Carluccio asked.

"No I don't," Kane replied.

At a Feb. 15 news conference in Scranton, Kane said she would not seek a second term as attorney general. She also called on politicians to help her fight "this old boy network" of judges, police and lawyers she claims conspired to set up the criminal charges that led to the suspension of her law license, the state Senate's failed attempt to remove her from office, and a state House vote to begin an impeachment probe.

Kane claims the network, which she alleges includes Fina, was angry that she uncovered a trove of porn emails they shared for years on government computers as part of her agency's review of how her Republican predecessors had investigated former Penn State assistant football coach Jerry Sandusky for child sex abuse.

"While this was not an easy decision for me, while I love Pennsylvania, I love my sons first," Kane said.

Kane, a 49-year-old Scranton native, has rejected calls from Democratic Gov. Tom Wolf and others to step down. In a Franklin & Marshall College Poll released Thursday, 58 percent of voters said Kane should resign.

In a related matter, one of Kane's top aides, Patrick Reese, is scheduled to be sentenced Wednesday in Montgomery County Court on a contempt-of-court charge. Reese was found guilty of interfering with the grand jury leak investigation by snooping through computer records. The maximum sentence he can receive is six months.

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