

COMMONWEALTH OF PENNSYLVANIA
SPECIAL COMMITTEE ON SENATE ADDRESS

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In re: Examining Attorney General Kathleen Kane's ability to perform the duties of her office with a suspended law license.

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VOLUME IV - Pages 1-149

Stenographic report of hearing held in Hearing Room 1, North Office Building, Capitol Complex, Harrisburg, PA

Tuesday
January 12, 2016
1:00 p.m.

SEN. JOHN GORDNER, CHAIRMAN

MEMBERS OF SPECIAL COMMITTEE ON SENATE ADDRESS

Sen. Lisa Baker	Sen. Sean Wiley
Sen. Art Haywood	Sen. Gene Yaw
Sen. Judy Schwank	Sen. Joe Scarnati, ex officio

Also Present:

Joshua Funk, Esquire, Majority Counsel
Shannon Sargent, Esquire, Minority Counsel

Reported by:
Ann-Marie P. Sweeney
Chief Official Reporter

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1 CHAIRMAN GORDNER: Good afternoon. This is the
2 time and place set for the full hearing to be afforded to
3 Kathleen G. Kane as required under Article VI, Section 7, of
4 the Pennsylvania Constitution, and in accordance with Senate
5 Resolution 256, which was unanimously passed by the Senate on
6 December 9, 2015. On behalf of the committee, I would like to
7 welcome Jonathan Duecker, who is Chief of Staff for Kathleen
8 Kane, here today. Actually, you may go ahead and be seated,
9 because I have some opening remarks.

10 The Senate, through its designees, served Senate
11 Resolution 256, this committee's report and the report's
12 exhibits, upon Kathleen Kane and her counsel. That resolution
13 clearly states in paragraph 2 that Kathleen G. Kane's full
14 hearing is scheduled for January 12, 2016, at 1:00 p.m. in
15 Hearing Room 1 of the North Office Building at the
16 Pennsylvania Capitol complex. Certifications of service will
17 be made part of the record of these proceedings. With that
18 said, the committee welcomes the submission of relevant
19 evidence on behalf of Kathleen Kane that you wish for us to
20 consider and view as part of the record in these proceedings.

21 In advance of this hearing, this committee issued
22 a 21-page report with 11 accompanied exhibits that has been
23 posted to the committee's Web page and served upon all
24 Senators, Kathleen Kane, and her counsel. This report
25 contains evidence received to date and made part of the record

1 as Exhibit A, and will be provided to the stenographer as
2 such. They're on the table and marked Exhibit A. This report
3 and its exhibits includes legal analysis of the duties of the
4 Attorney General, factual evidence of the disciplinary
5 proceedings against the Attorney General resulting in the
6 suspension of her law license, factual evidence related to the
7 operations of the Office of the Attorney General before and
8 after the suspension of her law license, factual evidence and
9 legal analysis related to the interactions and authority the
10 Office of the Attorney General has with county district
11 attorneys and other relevant entities, prior correspondence
12 from Kathleen Kane regarding her objections to the legal
13 authority of this committee, documentary and testimonial
14 responses to various subpoenas served by this committee, and
15 legal analysis including a Legislative Reference Bureau
16 opinion related to the authority of this committee and the
17 constitutional provisions from which it derives its authority.

18 The following documents, in addition to the
19 committee's preliminary report, will be entered into the
20 record of these proceedings, and they are also on the table:
21 Senate Resolution 256, which was adopted unanimously by the
22 full Senate on December 9, 2015, and marked as Exhibit B.
23 Certificates of service indicating that the report and
24 resolution we provided to Kathleen Kane and her attorney of
25 record on December 10, 2015, and they are marked Exhibits C

1 and D. Correspondence from Kathleen Kane addressed to the
2 Members of the Senate, and specifically the Special Committee
3 Members, dated January 11, 2016, which was yesterday, that is
4 marked Exhibit E. Written testimony from Jonathan Duecker,
5 Chief of Staff for Kathleen Kane, dated January 12, 2016,
6 which is marked Exhibit F. And correspondence which we
7 received today from Kathleen Kane authorizing Chief of Staff
8 Jonathan Duecker, former appointed Attorney General Walter
9 Cohen, and former Governor Ed Rendell to testify on her
10 behalf, and they are marked as Exhibit G.

11 Today's hearing is to receive and consider any and
12 all relevant evidence from Kathleen Kane or her
13 representatives regarding the ability of an Attorney General
14 to perform the duties of her office with an indefinitely
15 suspended law license.

16 I'll go off-script here a moment. As noted in the
17 resolution that was adopted unanimously on December 9, we
18 provided Kathleen Kane with over 30 days' notice to provide
19 information, documents, affidavits to this committee, with the
20 deadline being yesterday at noon. Just prior to noon
21 yesterday, we did receive two of the documents that I
22 mentioned, a letter from Kathleen Kane indicating her
23 reasoning as to why she believes that the Senate and this
24 committee does not have the authority to proceed under Article
25 VI, Section 7, and that is introduced as an exhibit.

1 And the second document that was provided was
2 written testimony on behalf of Jonathan Duecker dated for
3 today. What was unclear at that time was whether that was
4 strictly written testimony that was going to be submitted by
5 Mr. Duecker or whether, in fact, Mr. Duecker would be coming
6 today in order to testify. Shortly after noon, our office
7 contacted the Attorney General's Office to determine whether
8 Mr. Duecker would be testifying or not. As of 5 o'clock
9 yesterday, that was still unknown and uncertain. About 6
10 o'clock last evening, in a conversation with Mr. Duecker, our
11 office was notified that Mr. Duecker would be testifying, and
12 a request was made that Walter Cohen and Ed Rendell be able to
13 testify as well, even though that request was made after the
14 noon deadline as called for in the resolution. Our office
15 indicated that we would need written authorization from
16 Kathleen Kane, first of all, and that the committee would need
17 to meet prior to 1 o'clock and make a determination in regard
18 to that request.

19 We did this morning receive the letter from
20 Kathleen Kane, which has been submitted as an exhibit,
21 indicating that she had delegated the following individuals to
22 testify on her behalf at this hearing: Former Governor Edward
23 G. Rendell, former PA Attorney General Walter Cohen, and
24 Attorney General Chief of Staff Jonathan Duecker. The
25 committee met at noon, and by a unanimous vote decided that we

1 would go ahead and allow those three individuals to testify
2 today.

3 Prior to 1 o'clock, our office was notified that
4 Walter Cohen had decided that he would not testify. In full
5 disclosure, he asked to meet with me about 5 of noon. I did
6 meet with him briefly. He wanted to know whether he would be
7 allowed to testify or not and what the inquiry would be. I
8 indicated that it would be up to the committee to decide at
9 noon, and that if he would be asked to testify, he would be
10 asked to testify as to whether an Attorney General can perform
11 the duties of the Attorney General with a suspended law
12 license. And again, prior to 1 o'clock, he indicated to our
13 office that he had decided not to testify before this
14 committee.

15 So, at this time, we have Mr. Duecker. Now, Mr.
16 Duecker, would you please stand in order to be sworn in. Will
17 you raise your right hand.

18 (Whereupon, JONATHAN DUECKER, was duly sworn.)

19 CHAIRMAN GORDNER: Mr. Duecker, yesterday was
20 provided to the committee about an 11-page document with your
21 sworn testimony. And you are under oath. Would you like to
22 affirm that that testimony is true and accurate to the best of
23 your knowledge and information?

24 MR. DUECKER: It is.

25 CHAIRMAN GORDNER: Thank you. That testimony is

1 already a part of the record. We have introduced it as an
2 exhibit. I understand that you have some oral testimony that
3 you would like to provide in addition to that, so you may
4 proceed before we begin to ask you some questions.

5 MR. DUECKER: Thank you.

6 Good afternoon, Senator Gordner, Senator
7 Scarnati--

8 CHAIRMAN GORDNER: If I could, and I apologize for
9 interrupting, we are missing a Member. Senator Sean Wiley has
10 been a very active Member of this committee. He participated
11 by phone conference at noon. He was coming in from Erie. If
12 you are aware of the weather, you will know that they are in
13 the process of getting a foot of snow. He was stuck on 80
14 behind a couple of truck accidents, and it appears that he is
15 going to be unable to appear. He does have some questions
16 that he has submitted, and thanks to technology will be able
17 to not only see this hearing but also be able to review the
18 transcripts of it. But I do want to acknowledge that we miss
19 his presence not being here, because he has been and continues
20 to be a very active Member of this committee.

21 So I'm sorry, Mr. Duecker.

22 MR. DUECKER: Thank you. Good afternoon, Senator
23 Gordner, Senator Scarnati, and the Special Committee Members.
24 Thank you for allowing me to discuss the Office of the
25 Attorney General, its breadth of mission, and the tremendous

1 work our people do on behalf of the citizens of the
2 Commonwealth. My name is Jonathan Duecker, and I'm presently
3 the Chief of Staff of the Office of Attorney General. I've
4 been in this position since April of 2015. I report directly
5 to the Attorney General and am responsible for all the
6 administrative, budget, personnel, logistical, and support
7 functions of the office.

8 Prior to becoming Chief of Staff, I was a Special
9 Agent in Charge of the Bureau of Narcotics Investigation and
10 Drug Control for the Office of the Attorney General. In that
11 position, I directed approximately 225 narcotics agents in 8
12 regions and was additionally responsible for 22 Special Agents
13 assigned to the Philadelphia Gun Violence Task Force.

14 Previous positions I have held include Senior
15 Counterterrorism Advisor to the Committee on Homeland Security
16 in the U.S. House of Representatives, Assistant Commissioner
17 for Counterterrorism in the New York City Police Department,
18 Director of Office of Homeland Security for the Commonwealth
19 under then Governor Edward G. Rendell, Special Agent with the
20 U.S. Drug Enforcement Administration, and commissioned officer
21 with the United States Navy, from which I retired as
22 Commander.

23 I graduated from the United States Naval Academy
24 and the University of Wisconsin Law School, and I'm an active
25 licensed lawyer in the State of Penn -- State of Wisconsin.

1 At the outset, I'd like to refer to Attorney
2 General Kane's letter to this panel dated yesterday wherein
3 she asserted that although she greatly respects this panel and
4 the Senate at large, she believes this panel lacks the
5 constitutional authority to contemplate direct removal
6 separate and distinct from the well-established precedence for
7 and process of impeachment.

8 To begin my personal remarks, I would like to
9 point to a comment made by Senator Wiley during testimony
10 provided on November 18, 2015. He stated, quote, "...we are
11 especially interested in what will be presented today in
12 regard to the inner-workings of the Office of the Attorney
13 General. Hopefully, the information that you provide today,
14 coupled with previous testimony and information, will allow
15 the committee to produce a final product that is fair,
16 impartial, and transparent."

17 I read with great care the transcripts of
18 testimony provided by senior legal members of the Office of
19 Attorney General and am now compelled to correct and/or add to
20 the accuracy and completeness of the record. I owe it to all
21 OAG personnel, including those in our three legal divisions,
22 to insure that the citizens of the Commonwealth understand
23 what we do, especially in addition to the technical practice
24 of law. My testimony today is intended to supplement my
25 written testimony submitted to this panel yesterday. My

1 comments are intended to encourage this panel, and those
2 citizens interested in knowing something about their Office of
3 Attorney General, what the Attorney General herself is
4 responsible for outside of the practice of law, and to look at
5 the broad range of constitutional, statutory, and moral
6 responsibilities and authorities inherent in that position.

7 It is true that we are the Commonwealth's law
8 firm, responsible for criminal prosecutions, civil and
9 consumer protection litigation, appeals, and other legal
10 action. However, to leave the impression that our range of
11 roles and responsibilities is limited almost exclusively to
12 our legal effort is to ignore or marginalize the public
13 policy, investigative, operational, budgetary, and
14 administrative functions of the office and the people who are
15 responsible for them. Likewise, to suggest that Attorney
16 General Kane's inability to practice law given her suspended
17 license in effect makes her a lame duck within the office is
18 to misunderstand the vast scope of the Attorney General's
19 position as chief law enforcement officer for the
20 Commonwealth.

21 While there is no accurate way to characterize
22 which of the Attorney General's roles and responsibilities are
23 legal and non-legal in nature, it is clear that most of them
24 are non-legal. This Attorney General is not unique in this
25 respect, vis-a-vis her counterpart Attorneys General

1 throughout the nation. General Kane and I are extremely
2 confident, based on many conversations with Attorneys General
3 and their chiefs of staff from around the country, that my
4 portrayal of the non-legal scope of this office is consistent
5 with those in other States in the nation. To be sure, when
6 Pennsylvania's Supreme Court suspended General Kane's law
7 license, it specifically stated that the suspension was not
8 intended to remove her from office, a distinction that
9 cheerily demonstrates that the Supreme Court understands and
10 respects her vast responsibilities outside the practice of
11 law.

12 Testimony provided by senior legal leadership from
13 this office indicated that most of what Attorney General does
14 or involves the practice of law. On the contrary, most of
15 Attorney General Kane's roles and responsibilities as the
16 Commonwealth's chief law enforcement officer and the second
17 highest elected chief executive in Pennsylvania includes
18 creation of public policy consistent with the criminal and
19 civil threats to the Commonwealth, protection of the public
20 against such threats through targeted investigations,
21 prosecutions, programs and initiatives, and protecting
22 consumers and their rights against crime and fraud, and
23 addressing constituent complaints and issues.

24 As the elected chief executive for the office,
25 Attorney General Kane is the chief representative on behalf of

1 the Commonwealth to local, State, Federal, and international
2 law enforcement leaders and other government agencies
3 responsible for a wide range of public policy and safety
4 issues. General Kane is the steward of over \$100 million of
5 funds provided by this legislature for all of the missions and
6 responsibilities attendant with the office.

7 During testimony in November, there was little to
8 nothing mentioned about the Attorney General's position as,
9 and more importantly, the implications of Pennsylvania's chief
10 law enforcement officer as defined in the Commonwealth
11 Attorneys Act. Notwithstanding the obvious legal implications
12 inherent in that position, the responsibilities of being the
13 Commonwealth's chief enforcement officer are extremely broad
14 and extremely deep. The OAG's jurisdiction is defined by over
15 25 statutes. However, starting and pursuing investigations on
16 behalf of or to protect the citizens of Pennsylvania entail
17 considerations well beyond the criminal or civil statute that
18 this office relies on for its prosecutorial authority.

19 If that were not the case, this office, like all
20 of our district attorney offices statewide and the prosecutors
21 nationwide, would be crushed by the mandate to investigate and
22 prosecute every potential crime encountered, an absurd
23 proposition that the PA legislature well understands, given
24 its yearly budget deliberations. Every prosecutor's office in
25 the nation must prioritize operations, investigations, and

1 prosecutions based upon considerations not necessarily legal
2 in nature, such as budget constraints, inter-office resource
3 management and allocation, prominence of the crime as viewed
4 by the general public, impact on crime as a function of
5 displacement or deterrence, and a vast array of other issues
6 that the chief law enforcement officer is empowered to decide
7 as a matter of public policy and because that chief law
8 enforcement officer was elected to reflect the concerns of the
9 public at large. A prosecutor's discretion is not typically
10 impugned because that discretion is an exercise of privilege
11 not solely based upon or controlled by statutory law.

12 When asked what this Attorney General could do
13 outside the practice of law during November's hearing, one of
14 our Executive Deputy Attorney Generals answered this way,
15 quote:

16 "So the vast majority of work that she does is
17 legal work. There are, of course, other things the Attorney
18 General does. She does public appearances, she does speeches.
19 We run a contest every year among schools to have students
20 draw anti-drug messages for a calendar. There are a lot of
21 those public functions, but the vast majority of the work" the
22 Attorney General does is legal.

23 This absurdly narrow characterization of the
24 Attorney General's roles, responsibilities, and authorities
25 grossly ignores those additional to or outside of the practice

1 of law and serves neither this office nor the citizens of the
2 Commonwealth that she took the oath to protect and serve. The
3 record is silent on Attorney General Kane's numerous policy
4 initiatives and office restructuring efforts that have allowed
5 the OAG to better serve the citizens of the Commonwealth since
6 the beginning of 2013. As a result of her leadership on
7 mission priorities of the office, General Kane has realized
8 three straight years of funding increases, particularly in the
9 areas of drug enforcement, child predator, gun violence,
10 Medicaid fraud, and insurance fraud.

11 For example, General Kane fought and received
12 significant funding for an expanded child predator unit, which
13 included experienced personnel, mobile forensic vehicles
14 deployable throughout the State, and technical resources
15 needed to exploit systems used by child predators. General
16 Kane sought and received funding for the Office of Attorney
17 General's Mobile Street Crimes Unit, a first-ever model for
18 deploying agents, analysts, and attorneys to high-threat areas
19 in Pennsylvania.

20 The mission and focus of OAG's Office of Military
21 and Veterans Affairs has greatly expanded under General Kane,
22 due to the commitment of this office to help and protect
23 Pennsylvania veterans that sacrificed so much for the
24 Commonwealth and the nation. General Kane mandated a complete
25 overhaul of our Consumer Protection Bureau that resulted in a

1 restructured office, resolution of voluminous citizen
2 complaints, and a more efficient way of handling consumer
3 complaints from relative minor issues up to large-scale fraud,
4 price gouging, Internet scams, cell phone bundling, gas
5 leases, and others.

6 Also missing from the testimony provided in
7 November, despite being asked, are the administrative and
8 logistical functions of the OAG outside of the three law
9 divisions. The OAG's complement stands at nearly 830
10 personnel, over two-thirds of which are law enforcement agents
11 and support staff. There is no ambiguity with respect to who
12 runs the non-legal aspects of this office, notwithstanding
13 testimony that, quote, "the issue of personnel is a very
14 tricky one with regard to who controls hiring, firing, and
15 other matters," in light of General Kane's legal status.
16 General Kane is and continues to be in charge of the office in
17 that respect. Likewise, there is a Chief of Staff and
18 commensurate chain of command responsible for everything
19 non-law related that insures efficient, effective
20 administration, logistical and operational practices and
21 procedures that are in place to accomplish this office's law
22 enforcement mission and to protect the Commonwealth.

23 The Attorney General and her administrative and
24 operational chains of command encompass a broad range of
25 responsibilities that more accurately reflect her position as

1 the second highest elected public policy official in the
2 State. Whether it is redefining the strategic priorities of
3 the office based upon today's criminal threat, requesting or
4 obligating a budget well over \$100 million, making personnel
5 decisions for an agency comprised of hundreds of employees,
6 managing 20 Office of Attorney General facilities and a fleet
7 of over 300 vehicles, or representing the citizens of the
8 Commonwealth to local, State, Federal, and international
9 leaders and agencies, the Attorney General remains in charge.
10 Of course, legal decisions made by her legal staff add to the
11 Attorney General's broad array of non-legal considerations she
12 makes daily, but legal decisions alone do not exclusively
13 define nor necessarily impact the Attorney General's vast
14 public policy responsibilities.

15 Testimony is on the record with respect to the
16 practical impact of the Attorney General's legal status to
17 past, present, and future investigations and prosecutions and
18 the universe of potential scenarios that may affect criminal
19 defendants and their status. Our First Deputy Attorney
20 General contemplated so-called nuclear or doomsday scenarios
21 that could potentially consist of creative defense counsel
22 arguing that the OAG has no jurisdiction to proceed with
23 prosecutions based on General Kane's suspended license. Of
24 course, our Criminal Division routinely encounters novel legal
25 arguments through the normal course of prosecutions and

1 subsequent appeals. It is the nature of this line of work.
2 Nonetheless, several courts at the State and Federal levels
3 have already dismissed attempts by defense counsel to argue
4 that the Attorney General's legal status jeopardizes this
5 office's authority to prosecute on behalf of the Commonwealth.
6 Just yesterday, it was reported that Armstrong County
7 President Judge Kenneth Valasek rejected that very argument in
8 an opinion and order dated last Friday. He stated in his
9 ruling that, quote, "that the temporary suspension of Ms.
10 Kane's law license creates an unprovided for doomsday scenario
11 that effectively incapacitates the entire office from doing
12 anything in any pending criminal case simply is nonsensical."
13 Judge Valasek further stated, "there is no support in the law
14 for the proposition that the deputies in this or any other
15 criminal case lost their ability to continue practicing law
16 and prosecute. To come to a different conclusion," he added,
17 "would produce absurd results."

18 Judge Valasek's ruling is, to my knowledge, just
19 the latest of similar rulings on this issue at the State and
20 Federal levels in the last several months. And I would argue
21 that scaring the general public or alarming the legislature as
22 to the spectrum of potential legal scenarios without the
23 benefit of something more than simple supposition is reckless
24 at best. Of course, our line attorneys seem to be making
25 Judge Valasek's case with tremendous success.

1 If there remains any question as to what the
2 Office of the Attorney General does on behalf of the
3 Commonwealth, no one needs look further than our official Web
4 site. Likewise, if there is any question as to the vast array
5 of missions, roles, responsibilities, and moral authorities
6 that are inherent to the position of Attorney General in
7 Pennsylvania, visit our Web site.

8 This office is dedicated to the overall mission of
9 protecting all Pennsylvanians, especially those citizens that
10 cannot protect themselves, such as victims of crime, children,
11 the elderly, veterans, the incompetent, and others. For the
12 purposes of insuring that this record accurately reflects what
13 the Attorney General does outside of the practice of law and
14 how the OAG accomplishes its vast mission set, I outlined a
15 few examples in my written testimony, and I refer you to it.
16 I will note just several this morning -- or this afternoon.

17 Immediately upon taking office in 2013, Attorney
18 General Kane initiated a statewide restructuring and refocused
19 on strategic drug investigations and prosecutions that target
20 external strategic sources of supply of narcotics and
21 dangerous drugs. Our investigations now overwhelmingly
22 reflect the strategic threat that -- excuse me, reflect the
23 strategic threat and have been very successful encountering
24 that threat. This effort did not require a law degree or an
25 active license. Rather, it relied on leadership and insight

1 to change the operating parameters within the office that had
2 been in place for decades. Attorney General Kane's new
3 strategic approach to Pennsylvania's opioid and heroin abuse
4 epidemic was an immediate realization of and response to the
5 fact that the entire State is affected by the scourge of
6 prescription pills and heroin.

7 When confronted with public safety and health
8 issues as serious as the ongoing heroin epidemic, there are
9 two elected State level chief executives in Pennsylvania that
10 have both the actual and the moral authority to address them:
11 The Governor and the Attorney General. This epidemic has
12 General Kane's undivided attention, and she continues to work
13 diligently to address it.

14 Very early into her administration, Attorney
15 General Kane created Pennsylvania's first of its kind Mobile
16 Street Crimes Unit, or IMPACT. This mobile concept was
17 another new initiative of General Kane's that required
18 separate line funding from the General Assembly. As you all
19 know, IMPACT deploys to smaller jurisdictions throughout the
20 Commonwealth based on strategic threat assessments and the
21 local authority's ability to address their drug threat. This
22 unit combines the expertise of over a dozen Attorney General
23 narcotics agents from around the State, with the knowledge of
24 local police and county detectives to combat drug trafficking,
25 gang-related violence, and associated crimes at the street

1 level.

2 To date, IMPACT has had extremely successful
3 deployments to Hazleton, Harrisburg, and the northern tier of
4 Pennsylvania, and it is preparing for another deployment soon.
5 It has amassed over 400 arrests, several million dollars in
6 illicit cash seizures, and most importantly, made significant
7 lasting impacts on the local communities of PA that do not
8 have the adequate resources to address the threat. Many of
9 those communities are represented on this panel. The
10 reputation of General Kane's IMPACT unit has become well-known
11 throughout the State, and we've received countless requests
12 for deployments by Members of the Pennsylvania House and
13 Senate--most of you I think I've spoken to with respect to
14 either future or past deployments--mayors, district attorneys,
15 police chiefs, and others.

16 Along with shifting focus and priorities within
17 the investigative mission of the OAG, the Attorney General
18 immediately began to enhance and professionalize the drug
19 control efforts within the OAG. Prior to Attorney General
20 Kane's administration, the Bureau of Narcotics Investigation
21 and Drug Control exclusively focused on the investigative
22 function of the bureau and did not have a dedicated, focused
23 effort in drug control issues. Because of that overwhelming
24 threat of heroin, opioids, and other highly addictive,
25 dangerous drugs, General Kane mandated that BNIDC began to

1 translate the strategic threat into actual drug control
2 programs and initiatives, as well as meaningful inter-agency
3 partnerships within and external to Pennsylvania. This new
4 drug control effort had never been budgeted. Nonetheless,
5 General Kane has consistently emphasized the critical
6 importance of partnerships and alliances that did not exist
7 prior to her administration.

8 Attorney General Kane was instrumental in
9 advocating for and ultimately passage of Senate Bill No. 1180,
10 enacted in late 2014, and the establishment of the Achieving
11 Better Care by Monitoring All Prescriptions, otherwise known
12 as ABC-MAP program. The monitoring program will provide
13 prescribing practitioners with necessary and valuable
14 information concerning the prescription drug history of their
15 patients so that they can better identify and prevent
16 prescription drug abuse.

17 Law enforcement officials statewide will now have
18 the ability to access information during active investigations
19 in order to detect and prevent unlawful diversion of highly
20 addictive prescription drugs. Pennsylvania's truly the
21 Keystone State in terms of drug trafficking into northeast and
22 mid-Atlantic regions of the United States, which represents
23 the most sought-after drug market in the world. General
24 Kane's strategic direction and investigations has already
25 proven that the Mexican cartels are in fact present and

1 operating in Pennsylvania, and that strategic targeting and
2 intelligence-led investigations allow us to penetrate criminal
3 organizations at a much higher level than before. This is
4 particularly important given limited personnel resources and
5 funding opportunities for the office.

6 As a clear example of General Kane's strategic
7 focus, the General and senior staff traveled to U.S. Northern
8 Command in Colorado Springs, Colorado, to meet with senior
9 leaders and analysts, discuss the strategic threat to the U.S.
10 as it is viewed by the U.S. military and the Federal agencies
11 jointly assigned there, and contemplate potential
12 collaborative efforts between U.S. Northern Command and the
13 Office of the Attorney General of Pennsylvania. Attorney
14 General Kane went to Phoenix, Tucson, and Nogales, Arizona, to
15 meet with numerous Federal, State, and local agencies that
16 deal directly with the threat of Mexican cartels, cross-border
17 and contraband trafficking, human trafficking, bulk cash, and
18 handgun smuggling into Mexico. During her visit, General Kane
19 was reminded repeatedly that she was the first non-border
20 Attorney General in the country to exercise leadership and
21 undertake such a substantive visit to the border. Similarly,
22 they commented that her perspective on Pennsylvania's threat
23 as the Office of the Attorney General sees it greatly enhanced
24 their ability to interdict drugs and money flowing across the
25 border on the border.

1 For Pennsylvania, these new interpersonal
2 relationships between the Office of the Attorney General,
3 investigators and analysts and the U.S. Border Patrol, U.S.
4 Customs and Border Protection, and State and local law
5 enforcement agencies on the southwest border allow for near
6 real-time coordination of operations and analysis in
7 Pennsylvania and this region of the United States.

8 General Kane also visited the U.S. Drug
9 Enforcement Administration's El Paso Intelligence Center, a
10 joint counter-drug operations and intelligence fusion center
11 responsible for coordinating national security, homeland
12 security, and transnational criminal threats emanating from
13 Mexico, Central, and South America.

14 As a result of General Kane's first visit to the
15 southwest border, the director of EPIC requested General Kane
16 to be a keynote speaker at a first-ever synthetic drug
17 symposium held in El Paso. Likewise, the Office of Attorney
18 General's intelligence analysts now enjoy frequent, meaningful
19 dialogue with EPIC's senior intelligence analysts, a
20 relationship that likely would never have been realized
21 without General Kane's exercise of leadership on behalf of the
22 Commonwealth.

23 Closer to home, Attorney General Kane was asked to
24 be the co-chair of the Northeast Mid-Atlantic Heroin Task
25 Force, otherwise known as NEMA, with her counterpart in New

1 York State, Attorney General Eric Schneiderman. This task
2 force was the first of its kind in the nation and has become a
3 model for other regions. The NEMA Heroin Task Force has
4 approximately 20 State level partners from throughout the U.S.
5 northeast and mid-Atlantic and was created in response to the
6 heroin epidemic referred to above. General Kane is now
7 planning to host a drug control summit soon in 2016 and invite
8 NEMA Heroin Task Force members and other local, State, and
9 Federal stakeholders to participate in discussions of drug
10 control policy, counter-drug investigations, intelligence
11 analysis, information sharing, and other relevant topics.

12 Less formal but critical partnerships that the
13 Office of Attorney General has created during General Kane's
14 tenure include those with elements of the National
15 Intelligence Community in Washington, D.C., members and senior
16 staff of the PA delegation to Congress, congressional
17 committee and subcommittee staff, the Office of National Drug
18 Control Policy, the New York City Police Department, and other
19 State and local agencies throughout the region.

20 Likewise, private sector partnerships are
21 critically important to the Attorney General and her
22 investigative, public safety, and public policy missions. In
23 the area of drug control initiatives alone, the OAG has
24 dedicated considerable time and effort into creating
25 partnerships with obvious and not-so-obvious private sector

1 stakeholders, such as hospitals and health systems, members of
2 the pharma industry, entertainment interests, professional
3 sports, and academia. In addition to enjoying the benefits
4 from these new alliances, the OAG has become a trusted
5 clearinghouse and conduit for information across the various
6 sectors.

7 So how do we know what comprises the strategic
8 threat to Pennsylvania? General Kane's strategic mandate came
9 with her determination to create a strategic intelligence
10 analysis capability within the Office of the Attorney General.
11 No such capability existed in the State of Pennsylvania prior
12 to this effort. While rudimentary tactical intelligence
13 support to investigations had been a component of past
14 administrations, this new strategic analysis capability was
15 created from scratch, with the understanding that the OAG is
16 uniquely positioned, geographically and operationally, to
17 address and mitigate gaping holes in our comprehensive
18 understanding of the strategic threat across Pennsylvania.
19 Information used for threat analysis comes from a wide range
20 of sources, including our own investigations, joint
21 investigations with other agencies, biannual statewide surveys
22 that solicit input from every local law enforcement agency in
23 the State, regional partnerships and coalitions, visits to
24 Washington, D.C., to provide and receive threat briefs from
25 Federal agencies comprising the national intelligence

1 community, and tips and leads solicited from the community.

2 The significance of this strategic approach and
3 analytical capability cannot be overemphasized. Nor can the
4 critical importance of insightful, forward-leaning leadership
5 from the Attorney General herself, which not only allows for
6 but insists on creating an in-house capability not
7 specifically budgeted and in near-impossible short order. As
8 an example of the prominence, credibility, and reputation
9 earned by OAG's Intelligence Unit, the Office of Attorney
10 General was recognized with an award and invited to speak
11 specifically about the Attorney General's strategic analysis
12 unit at the International Association of Law Enforcement
13 Intelligence Analysts annual event in early 2015. To be sure,
14 this international recognition was about a year and a half
15 after General Kane created the unit from nothing, an
16 achievement that usually requires years, if not decades, to
17 attain, if attained at all.

18 From the beginning of her administration, Attorney
19 General Kane departed from past administrations and
20 demonstrated extreme leadership in other areas of the OAG that
21 were either dismissed or absent altogether. One well-known
22 area of tremendous expansion under General Kane is our Child
23 Predator and Exploitation Investigation Unit. There has been
24 an 800-percent increase in the number of arrests since the
25 beginning of 2013. More arrests have been made in three years

1 under General Kane than in the previous nine years. Arrests
2 have been made in approximately 45 of the 67 counties, and
3 nearly 20 children have been rescued from predators. The
4 decision to take Pennsylvania's child exploitation threat
5 head-on was one of the political philosophies core Attorney
6 General Kane's campaign, and Attorney General Kane immediately
7 translated that philosophy into a core mission, requesting
8 greater funding from the legislature, ramping up dedicated
9 personnel and technical resources, and turning her philosophy
10 into actionable reality.

11 In addition to her responsibilities in the office,
12 the Attorney General serves as a member of the Board of
13 Pardons, the Joint Committee on Documents, the Hazardous
14 Substance Transportation Board, the Board of Finance and
15 Revenue, the Pennsylvania Commission on Crime and Delinquency,
16 the Civil Disorder Commission, and the Municipal Police
17 Officers Education and Training Commission. Her
18 representation on these boards and commissions does not
19 implicate or rely on her status of practicing attorney.
20 Rather, she brings her depth of perspective on public policy,
21 public safety, law enforcement, and other issue areas unique
22 to her position of Attorney General.

23 At the national level, Attorney General Kane was
24 appointed by the U.S. Secretary of Transportation to chair the
25 Federal Aviation Consumer Protection Advisory Board, another

1 position that does not require her law license. Upon request
2 by the White House Office of National Drug Control Policy,
3 General Kane has met with the director and senior staff at
4 ONDCP on a wide range of drug control policy issues. She has
5 held senior positions on committees and subcommittees in the
6 National Association of Attorneys General, including the NAAG
7 Executive Committee, the Internet Safety and Cyber Privacy and
8 Security Committee, the Meeting Planning Committee, the
9 Veterans Affairs Committee, the Human Trafficking Committee,
10 the Law Enforcement and Prosecutorial Relations Committee
11 group, the Substance Abuse Committee, and she was the Vice
12 Chair of the NAAG Eastern Regional Conference. All of these
13 positions called upon her chief executive leadership and
14 insight, public policy perspective, and representation of the
15 citizens of the Commonwealth.

16 As I mentioned at the outset, this testimony is
17 not intended to outline every role and responsibility in the
18 Office of Attorney General, nor inherent in the position of
19 Attorney General. This panel, and the Commonwealth at large,
20 need and deserve to know what we do, how we do it, and the
21 incredible leadership and authority of Attorney General's Kane
22 position outside of the practice of law. As I was recently
23 reminded by a well-respected Attorney General from another
24 State, quote, the chairman of the Joint Chiefs of Staff at the
25 Pentagon does not fight in combat with our troops. The U.S.

1 Attorney General does not prosecute or litigate cases on
2 behalf of the Federal government in Federal court. Nor do the
3 Attorneys General in most States of the union. So to it is
4 with Attorney General Kane and her position as chief executive
5 for the Office of Attorney General of Pennsylvania. Her scope
6 of responsibilities and authorities is vastly more than the
7 technical practice of law. She remains in charge, and the
8 office continues to function effectively, as it has since her
9 term began.

10 I hope I have added to the accuracy of the record,
11 and can answer any questions you may have.

12 CHAIRMAN GORDNER: Okay, thank you.

13 I'm going to start with some questions as Chair,
14 and then I will go to Senator Schwank, followed by Senator
15 Baker, and continue on to Members of the committee. We'll
16 have a first round of questions, and it will certainly be
17 followed by a second round of questions.

18 In your bio, you list yourself as an active member
19 of the Wisconsin Bar. I assume you're not a practicing
20 attorney but just maintained your law license there?

21 MR. DUECKER: Yes, I'm an active licensed member
22 of the Bar in Wisconsin.

23 CHAIRMAN GORDNER: But not a practicing attorney?

24 MR. DUECKER: I don't practice law in
25 Pennsylvania, and I'm not in Wisconsin, so I don't practice in

1 Wisconsin either.

2 CHAIRMAN GORDNER: Have you practiced law anytime
3 recently?

4 MR. DUECKER: No.

5 CHAIRMAN GORDNER: Okay. And as you mentioned,
6 you are not an active lawyer in Pennsylvania?

7 MR. DUECKER: No. That's true.

8 CHAIRMAN GORDNER: So you're not subject to the
9 Pennsylvania Rules of Disciplinary Enforcement?

10 MR. DUECKER: I don't believe so.

11 CHAIRMAN GORDNER: No. Okay. You are here before
12 us as Chief of Staff of the Attorney General?

13 MR. DUECKER: Yes.

14 CHAIRMAN GORDNER: And you're representing
15 Kathleen Kane?

16 MR. DUECKER: I'm representing the Office of
17 Attorney General.

18 CHAIRMAN GORDNER: All right. You know, in your
19 written testimony, which I guess ended up being your oral
20 testimony, on page 5 you indicated, "If there remains any
21 question as to what the Office of the Attorney General does on
22 behalf of the Commonwealth, no one needs to look further than
23 our official website." I took the time about 10 o'clock this
24 morning to go to the official Web site. When I plugged it in,
25 it immediately took me to a page with big smiling Kathleen

1 Kane with her arms folded, and there were four things at the
2 bottom, below Kathleen Kane's imagery. It doesn't say the
3 Attorney General is Kathleen Kane.

4 The four items, the first one said,
5 "Protecting...children...is the Attorney General's number one
6 priority." And if you wanted to do anything further, you need
7 to click on it. So I clicked on it, and under that tab it
8 took me to things that if I knew of a child predator, I should
9 click on and follow the directions on that. So if I clicked
10 on that and filed a claim against someone that I thought was a
11 child predator, which I would hope to lead to criminal
12 charges, is that something that Kathleen Kane now with a
13 suspended law license would be privy to?

14 MR. DUECKER: Whether charges were filed?

15 CHAIRMAN GORDNER: Yes.

16 MR. DUECKER: She should be.

17 CHAIRMAN GORDNER: Okay. So currently, if there
18 are any charges filed against someone under the Child
19 Predator's Unit, she is advised of it.

20 MR. DUECKER: I don't believe that she's advised
21 of each and every one. She's advised as to the status of
22 ongoing investigations generally.

23 CHAIRMAN GORDNER: Okay. So if there is an
24 ongoing investigation, she is aware of the details of that?

25 MR. DUECKER: I don't know if she's aware of the

1 details to all of the investigations. They have several
2 hundred investigations ongoing at any given time. That's just
3 within Child Predator. But if you talk about all of the
4 investigations statewide, we're talking about the thousands.

5 CHAIRMAN GORDNER: Understand. But so you're
6 indicating that she's aware of some of the investigations?

7 MR. DUECKER: She's made privy to some
8 investigations, particularly if they happen to be high-profile
9 ones.

10 CHAIRMAN GORDNER: Okay.

11 MR. DUECKER: And when I talk about high-profile
12 ones, I'm referring to the ones that may involve actual
13 hands-on children.

14 CHAIRMAN GORDNER: Okay. And with a suspended law
15 license, she is involved in that process?

16 MR. DUECKER: In what process?

17 CHAIRMAN GORDNER: You just indicated that she's
18 involved and aware of the investigation process.

19 MR. DUECKER: She's privy to the investigations,
20 just like all of our investigators are, just like I am, as a
21 matter of normal course of business for the office.

22 CHAIRMAN GORDNER: So any details in regard to the
23 investigation of a few, she's aware of? Thank you.

24 The second tab under there says that if you want
25 to report a sexual cyber crime, and that's certainly something

1 that happens out there, unfortunately, in this day and age, so
2 if I were to click on that and report my thoughts that there
3 may be a sexual cyber crime, that is something I know she has
4 made that a high priority, that is something that during the
5 investigative process she would be made aware of, possibly?

6 MR. DUECKER: Yes.

7 CHAIRMAN GORDNER: All right. And again, as
8 someone with a suspended law license, as it's going through
9 the process, she may be aware of some of those?

10 MR. DUECKER: As would the investigators or
11 intelligence analysts and support staff.

12 CHAIRMAN GORDNER: Okay. That second tab
13 underneath the picture of Kathleen Kane with her arms folded
14 says, "...protect Pennsylvanians from fraudulent and deceptive
15 business practices." When I clicked on that tab, I was able
16 to go first to file a consumer complaint form. So if I were
17 to file a consumer complaint form against some business or
18 entity that I would hope would lead to some sort of action,
19 she would possibly be made aware of some of the details of
20 that?

21 MR. DUECKER: I would expect so.

22 CHAIRMAN GORDNER: All right, the second thing
23 that I can click on under that tab which you drew me to is "Do
24 Not Call Complaint." So if I were being bothered by
25 businesses that were calling me while I was on the Do Not Call

1 list and there were issues there, it's possible that it might
2 rise up to her and she would be aware of them?

3 MR. DUECKER: She would.

4 CHAIRMAN GORDNER: The third thing under that tab
5 is "Civil Rights Complaint." So if I am someone who believes
6 that my civil rights were violated and was filing a complaint
7 against an individual or entity, it's possible that that
8 complaint that I filed may rise up and be reviewed by Kathleen
9 Kane?

10 MR. DUECKER: It should be, as a matter of public
11 policy, certainly.

12 CHAIRMAN GORDNER: All right. The last one was
13 elder abuse, and actually that, prior to becoming a
14 legislator, I was involved with the Area Agency on Aging as
15 someone that was involved with those type of cases where
16 people were either physically or financially abusing elders.
17 And so if I were to click on that and say that I was aware of
18 someone who was being financially taken care of and might want
19 a criminal action or other action brought, that is something
20 that may come before Kathleen Kane?

21 MR. DUECKER: Yes, as the other ones that you
22 mentioned.

23 CHAIRMAN GORDNER: All right. The third tab then
24 to this Web site that you brought me to says, protect seniors
25 from scams and abuse. And actually, I guess that's the same

1 thing. The thing I could click on was elder abuse, and we've
2 already talked about that. And the fourth one was for
3 veterans and reservists and Armed Forces, and it directed me
4 to a brochure involving identity theft, and it says that if I
5 am someone who is subject to identity theft, I can file a
6 complaint with the Attorney General's Office, and it is
7 possible that that is something that currently could come
8 before Kathleen Kane.

9 MR. DUECKER: I don't understand, come before.
10 You just said the information of the complaint itself?

11 CHAIRMAN GORDNER: Yeah, if it's an issue
12 involving a high-profile type of case of identity theft with
13 someone in our National Guard and there needs to be some
14 guidance from the Attorney General, is that something that
15 could come before her for her review and guidance?

16 MR. DUECKER: I would think so. Again, as a
17 matter of public policy, as a matter of strategic direction
18 for the office, as a matter of making sure that she's
19 responsive to constituent services, constituent requests,
20 complaints, of course. Just like all of our support staff,
21 all of our non-attorney investigators. There really isn't any
22 distinction or differentiation in that respect. Although,
23 from her position of leadership, she would like to know and
24 like to be assured that those strategic public policy efforts
25 are ongoing.

1 CHAIRMAN GORDNER: Okay. Just from your
2 background, and I'm sorry, I'm going to have to get a couple
3 of things on the record, and then I will pass off to the other
4 Members of this committee. You have been the Chief of Staff
5 for nine months?

6 MR. DUECKER: Approximately. Since April.

7 CHAIRMAN GORDNER: And prior to that your role was
8 the Special Agent in Charge of the Bureau of Narcotics?

9 MR. DUECKER: Correct.

10 CHAIRMAN GORDNER: You have not been a Deputy
11 Attorney General in the Office of Attorney General?

12 MR. DUECKER: I'm not licensed to practice in the
13 State of Pennsylvania.

14 CHAIRMAN GORDNER: So you've never represented the
15 citizens of the Commonwealth in a courtroom, is that correct?

16 MR. DUECKER: That's correct.

17 CHAIRMAN GORDNER: You've never drafted a contract
18 on behalf of the Commonwealth?

19 MR. DUECKER: No.

20 CHAIRMAN GORDNER: You've never signed off on any
21 of the bonds issued on behalf of the Commonwealth?

22 MR. DUECKER: No. We have a staff of attorneys
23 that is responsible for that.

24 CHAIRMAN GORDNER: Have you ever defended the
25 Commonwealth in a lawsuit filed by an injured party?

1 MR. DUECKER: Nope.

2 CHAIRMAN GORDNER: Have you ever engaged in any
3 legal function within the Office of Attorney General?

4 MR. DUECKER: Not -- not a legal function that is
5 clear. I mean, I don't understand what "legal function" is.

6 CHAIRMAN GORDNER: Well, and you said you're not a
7 practicing attorney, but I just wanted to check--

8 MR. DUECKER: I have not practiced law in the
9 State of Pennsylvania, if that's what you're asking.

10 CHAIRMAN GORDNER: Okay.

11 MR. DUECKER: But legal function -- providing a
12 legal function is a little bit broader than the practice of
13 law. I mean, I did go to law school. I do have about 20
14 years of legal experience working in various positions at the
15 local, State, and Federal government. I don't check that
16 knowledge or that experience at the door when I enter a
17 position like this.

18 CHAIRMAN GORDNER: Okay.

19 MR. DUECKER: I do not practice law in the State
20 of Pennsylvania.

21 CHAIRMAN GORDNER: Are you familiar with Rule 217
22 of the Pennsylvania Rules of Disciplinary Enforcement?

23 MR. DUECKER: I don't have that sitting here in
24 front of me. I'm not--

25 CHAIRMAN GORDNER: Under -- the rules deal with

1 what happens when there is an attorney who has had their
2 license revoked or suspended. There are certain provisions
3 that go into place when someone has a suspended license,
4 whether it is for a definite period or an indefinite period.
5 And part of it is if they are going to do any sort of legal
6 work, they need to have a supervisory attorney. Are you aware
7 of any supervisory attorney that Kathleen Kane has had since
8 October 22?

9 MR. DUECKER: I am not. Although, I would argue
10 that our First Deputy has been historically the supervising
11 attorney under the position of Attorney General.

12 CHAIRMAN GORDNER: Okay, well, we asked him and he
13 is not the supervisory attorney for Kathleen Kane.

14 MR. DUECKER: Well, he is the chief attorney for
15 the office.

16 CHAIRMAN GORDNER: You're not aware of any
17 supervisory attorney for Kathleen Kane?

18 MR. DUECKER: That would be something that would
19 be discussed between General Kane and Bruce Beemer, the First
20 Deputy. But again, historically, the First Deputy is the
21 senior supervising attorney for the Office of Attorney General
22 under the Attorney General herself.

23 CHAIRMAN GORDNER: All right. I certainly have a
24 lot more questions, but I'll move on to Senator Schwank,
25 followed by Senator Baker.

1 SENATOR SCHWANK: Thank you, Senator Gordner, and
2 thank you, Mr. Duecker, for providing pretty thorough
3 testimony in your written comments. I certainly appreciate
4 it. I have a series of questions, but leading off, because
5 it's in my mind immediately from what Senator Gordner talked
6 about, and the chief law enforcement officer duties of the
7 OAG, you indicated that she is privy to investigations. But
8 do you know what type of information that includes? Does she
9 make any final decisions regarding whether to pursue legal
10 action, or is that something that one of the other attorneys
11 would take on currently?

12 MR. DUECKER: Sure. I would assume that the
13 decision to prosecute is going to be exercised the way it has
14 been before she lost her license, which is at the line
15 attorney or at the Chief Deputy Attorney General level. To
16 the extent that something would have to be brought to the
17 Executive Deputy Attorney General or the First Deputy, in most
18 cases, in most investigative cases, that's not the case.
19 Those decisions are made out in the field. To my knowledge,
20 she has not had any input on the decision to prosecute cases
21 necessarily since her suspension.

22 SENATOR SCHWANK: And that was the way it was
23 prior to the Supreme Court decision as well? Is that what I
24 heard you say, that she isn't directly involved in making
25 those decisions?

1 MR. DUECKER: She is not routinely directly
2 involved in the decision to prosecute. That's usually done
3 out in the field by our line attorneys and the Chief Deputies
4 Attorney General.

5 SENATOR SCHWANK: Okay. Again, getting back to
6 your testimony, and what we have heard prior in other hearings
7 of this committee, I'm really struck by the stark difference
8 in how you're viewing how things are proceeding and how the
9 Deputy Attorneys General, the legal team, perceive. While
10 it's been certainly discussed in the media that there were
11 concerns about leadership within the office, when I had asked
12 them and when others, and if you look in the testimony, you
13 can see that they agree that things are proceeding. And am I
14 hearing you to say that the office is working, that 830
15 members of the Attorney General's staff are continuing to
16 function?

17 MR. DUECKER: Absolutely.

18 SENATOR SCHWANK: And function effectively?

19 MR. DUECKER: Absolutely, and that's why I'm here.
20 I read through their testimony line by line and I felt
21 compelled to come and either add to or correct the record with
22 respect to how the Office of the Attorney General is being run
23 since her suspension.

24 SENATOR SCHWANK: What percentage of her time do
25 you think, or any Attorney General, would be focused on the

1 law enforcement aspects and the other things that you outlined
2 in your testimony?

3 MR. DUECKER: The vast majority. I would say
4 close to 90 percent. As I indicated in my testimony, it's
5 very hard to discern what any Attorney General in any given
6 State how much time that person spends on purely policy or
7 purely legal issues. Having been with the Attorney General
8 now for three years, having been to every staff meeting, every
9 criminal meeting, I understand that the vast majority, the
10 vast majority is operational, investigative, and
11 administrative in nature.

12 SENATOR SCHWANK: And not legal, necessarily.

13 MR. DUECKER: Not her position.

14 SENATOR SCHWANK: Not anything that would violate
15 the Commonwealth Attorneys Act?

16 MR. DUECKER: Her position. Exactly.

17 SENATOR SCHWANK: Okay. You talk a lot about some
18 of the activity specifically focused on drug enforcement, and
19 personally I can recall after Appropriations hearings actually
20 meeting with her to discuss her budget requests, and that was
21 at her request to meet with me based, I guess, on the
22 questions that I asked. That was in the past. What is
23 currently happening now? Is the Attorney General actively
24 engaged?

25 MR. DUECKER: Absolutely. On budget issues?

1 Absolutely.

2 SENATOR SCHWANK: Budget and the law enforcement
3 aspects.

4 MR. DUECKER: Absolutely. Absolutely. I mean, as
5 I mentioned, the vast majority of her focus on any given day
6 is public policy, operations, investigative in nature, aside
7 from the decision to prosecute, because there's so much more
8 that goes into a decision to prosecute outside of the actual
9 statute on which we rely for the charge, the elements of the
10 charge to begin with. Budget concerns. You know, what the
11 general public's concern is with respect to crime in general.
12 There's a lot of public policy decisions and considerations
13 that go into somebody's decision to prosecute.

14 Notwithstanding, she is involved in, very, very
15 closely involved in all of the budget issues, all of the
16 administrative issues of the office, and she wants to insure
17 that for the balance of her term that it continues to
18 function, her strategic approach and direction continue to
19 keep going as she identified when she came into office. She's
20 absolutely engaged.

21 SENATOR SCHWANK: It's another interesting
22 divergence, because when the other four attorneys were
23 testifying before us, nobody could really state whether they
24 had actually even seen the Attorney General. From what I'm
25 surmising from what you're saying, she's at the office. She

1 is working?

2 MR. DUECKER: Absolutely. And with respect to
3 whether, you know, folks in our office, especially at the
4 senior level, see people on a daily basis, we have attorneys,
5 very, very senior attorneys, the most senior attorneys,
6 frankly, that are rarely in the office and there is no thought
7 given to where they might be. They're assumed to be doing the
8 job of the Commonwealth when they're out and about doing
9 whatever it is. We have 20 offices statewide.

10 With respect to how often I see our senior
11 attorneys, the same argument could be made. I rarely see
12 them. There would be no reason for me to. That's not my role
13 in the office. It's not my function, it's not my core
14 mission. So I would not have any reason to encounter them.
15 And as she spends so much of her time now on administrative
16 budget issues, the continued strategic direction of the office
17 from an investigative and operational standpoint, there would
18 be no reason for them to encounter her on a daily basis in
19 that respect.

20 SENATOR SCHWANK: Okay. Thank you for that. How
21 about staff conferences or policy meetings? Is the Attorney
22 General participating in activities like that?

23 MR. DUECKER: She is. We have, for about the last
24 month or so because of the holidays and because of other
25 operational considerations, we haven't had as many as we

1 normally would during the normal course of a typical year. I
2 would say that usually during November, December timeframe and
3 through the holidays, we have very few of those anyway. But
4 generally, yes.

5 SENATOR SCHWANK: In your observation of that,
6 even if it wasn't most recently, but at least since the
7 Supreme Court order, has there been anything that gave you
8 pause as to the Attorney General's participation that this may
9 not be a wise thing to do, based on the order?

10 MR. DUECKER: Her participation in those meetings?

11 SENATOR SCHWANK: Yes.

12 MR. DUECKER: I participate in those meetings.
13 And other senior staff that do not have a law license
14 participate. I mean, one of the things, the only way to make
15 an office like this allowed to run effectively and efficiently
16 is so that everybody's on the same page, not just from a legal
17 standpoint, which is fairly narrow in that respect, but from
18 an operational, from a public policy standpoint. So I have
19 attended, and I haven't had a law license since I've been
20 here, but I have attended, and nobody has ever mentioned or
21 critiqued the fact that I was at these meetings. In fact,
22 most of our senior staff meetings are attended by non-lawyers.

23 SENATOR SCHWANK: But I would assume everybody is
24 somewhat sensitive to that issue, the legal issue. So was
25 there anything, again, that gave anyone concern as to her

1 participation?

2 MR. DUECKER: I can't speak for the lawyers,
3 Ma'am. I can't speak for any concern that they would have.
4 But if they had concern after the suspension of her license,
5 it sure didn't show before the suspension when I was involved
6 in those, and other senior staff that did not have law
7 licenses were present.

8 SENATOR SCHWANK: Thank you.

9 Thank you, Mr. Chairman.

10 CHAIRMAN GORDNER: Senator Baker, followed by
11 Senator Haywood.

12 SENATOR BAKER: Thank you, Mr. Duecker.

13 You've outlined your role in the office to include
14 hiring, administrative, budget-related activities. And
15 obviously, there's a significant question about the role of
16 hiring, firing, staffing within the office. And my question
17 to you, is Kathleen Kane, since her suspension, continuing to
18 make decisions about the hiring, the firing, and the
19 disciplining of individuals within the Office of Attorney
20 General?

21 MR. DUECKER: She is. And she delegates much of
22 that decisionmaking to me because we have so much of it, you
23 know, ongoing. The hiring and firing is usually outweighed
24 by--

25 SENATOR BAKER: Has she, since becoming under

1 suspension, disciplined or fired any lawyers in the office?

2 MR. DUECKER: I don't believe so. I don't believe
3 so.

4 SENATOR BAKER: At your direction. So she is
5 continuing to make those discussions and those directions, and
6 as Senator Gordner--

7 MR. DUECKER: With respect to hiring?

8 SENATOR BAKER: Hiring.

9 MR. DUECKER: She's still--

10 SENATOR BAKER: Firing. How about the assignment
11 of work and assignment of--

12 MR. DUECKER: That's usually not done at her level
13 typically anyway, so it's something that is usually discussed
14 between First Deputy, the Executive Deputies, and maybe Chief
15 Deputies within the office.

16 SENATOR BAKER: Well, we've established that you
17 are not a Deputy Attorney General, that you are not the
18 designated supervising lawyer. You believe that Bruce Beemer
19 is acting in that capacity.

20 MR. DUECKER: Sure.

21 SENATOR BAKER: But he has not been delegated that
22 authority through an official correspondence or action by the
23 Attorney General?

24 MR. DUECKER: As the supervising attorney?

25 SENATOR BAKER: To your knowledge?

1 MR. DUECKER: I don't know.

2 SENATOR BAKER: So under the Rule 217, there is
3 great concern about an attorney whose law license has been
4 suspended being permitted to do certain activities, and that
5 includes supervising attorneys. So is Kathleen Kane currently
6 supervising attorneys?

7 MR. DUECKER: To my knowledge, she is not
8 supervising attorneys, but I would argue that the hiring, the
9 administrative or personnel decisions to hire or fire anybody
10 within the office is an administrative function and not --
11 would not fall under the realm of supervising attorneys in
12 their daily work.

13 SENATOR BAKER: Delegating duties or work to
14 attorneys, you don't believe that that falls under Rule 217?

15 MR. DUECKER: What I'm -- she doesn't routinely do
16 that as the Attorney General anyway, so I don't believe she's
17 been doing that since her suspension.

18 SENATOR BAKER: That would be a great concern,
19 based on the testimony we've received previously about the
20 role and function of a suspended lawyer, including the use of
21 her letterhead and her title. She continues to use that, and
22 we've heard here from others that that could be a violation.
23 Is that anything that you have had cause to be concerned
24 about?

25 MR. DUECKER: No.

1 SENATOR BAKER: Um--

2 MR. DUECKER: Because we send many, many types of
3 correspondence out on her letterhead, on the Office of the
4 Attorney General letterhead, and she is still the elected
5 Attorney General for the State of Pennsylvania, and I believe
6 that she--

7 SENATOR BAKER: But one could assume she is
8 currently still having a license based on use of that title.

9 MR. DUECKER: I can't speak for all of the
10 different, you know, what--

11 SENATOR BAKER: Perhaps that's an assumption that
12 some individuals can make?

13 MR. DUECKER: Sure.

14 SENATOR BAKER: Let me move on to December 1,
15 Kathleen Kane publicly announced the appointment of a Special
16 Prosecutor to review e-mails on State officials, and I'd like
17 to ask you a series of questions. Is there a procedure within
18 the Office of Attorney General to determine that a Special
19 Prosecutor or Special Attorney General is necessary?

20 MR. DUECKER: I don't believe it's -- I don't
21 believe the issue comes up enough to have a process or
22 procedure. I think what Attorney General Kane--

23 SENATOR BAKER: Under--

24 MR. DUECKER: --what she relied on was her
25 authority as Attorney General.

1 SENATOR BAKER: Under what legal authority does
2 she have to make that appointment?

3 MR. DUECKER: That would have to be something that
4 you would have to speak to her or the lawyers in the office.

5 SENATOR BAKER: Who participated in deciding that
6 this Special Prosecutor was needed to investigate?

7 MR. DUECKER: That's something for Attorney
8 General Kane to answer.

9 SENATOR BAKER: Who wrote the contract and the
10 charge?

11 MR. DUECKER: I believe the contract was basically
12 co-written between administrative personnel in our office, an
13 attorney that reviewed it for form and legality, and the law
14 firm that, I mean, essentially, we wrote the contract with the
15 help of the law firm to get the technical terminology correct.

16 SENATOR BAKER: Did any lawyer in the Office of
17 Attorney General review, write this charge before it was
18 signed by Kathleen Kane?

19 MR. DUECKER: The charge?

20 SENATOR BAKER: Yes.

21 MR. DUECKER: I don't know.

22 SENATOR BAKER: So who approved the contract that
23 was executed on December 15?

24 MR. DUECKER: The contract was reviewed for form
25 and legality, as is our practice and protocol, by one of our

1 senior attorneys in the contract office.

2 SENATOR BAKER: How does this differ from
3 appointments of Special Deputy Attorneys General?

4 MR. DUECKER: I can't answer that.

5 SENATOR BAKER: And you mentioned that you have
6 responsibility for budgetary issues within the office. What
7 funding stream will this Special Prosecutor be paid for, and
8 have any payments been executed at this time?

9 MR. DUECKER: I can't answer that.

10 SENATOR BAKER: You also mentioned in your
11 questions that U.S. Attorneys General and other Attorneys
12 General don't all try cases, is that correct?

13 MR. DUECKER: I said, yeah, my point was that they
14 don't typically try cases. Attorneys General throughout the
15 United States don't typically try cases. And our U.S.
16 Attorney General doesn't typically try cases in Federal court.

17 SENATOR BAKER: But aren't they all lawyers?

18 MR. DUECKER: No, they're not. I don't believe
19 that every State in the United States requires an attorney to
20 be the Attorney General.

21 SENATOR BAKER: Thank you.

22 CHAIRMAN GORDNER: Senator Haywood, followed by
23 Senator Scarnati.

24 SENATOR HAYWOOD: Thank you very much for
25 testifying. I have a few questions on this round.

1 So what I think I heard was a description of the
2 Attorney General as kind of the CEO of the office. Is that an
3 adequate--

4 MR. DUECKER: I think that's fair.

5 SENATOR HAYWOOD: Is that what you're saying to us
6 today?

7 MR. DUECKER: I think that's a fair depiction. I
8 mean, she's the chief executive for the office. She's the
9 chief law enforcement executive for the State. I think that's
10 a fair characterization.

11 SENATOR HAYWOOD: And then as a CEO, I'm trying to
12 get a better sense actually at this point is the value of a
13 law license.

14 MR. DUECKER: Sir, if I would, she's not just the
15 CEO. She's the chief financial officer, she's the chief
16 innovation officer, she's the chief information technology
17 officer, she's the chief officer for every -- chief
18 administrative officer. She's the chief officer for every
19 aspect of the office. When she has a law license, then she's
20 the chief legal officer. When she doesn't, that doesn't
21 negate all of the other positions and responsibilities that
22 she holds as the Attorney General.

23 SENATOR HAYWOOD: Now, as Senator Schwank has
24 said, and I'm sure we all realize here, what you said is very
25 different than a panel that we had not that long ago.

1 MR. DUECKER: That's why I'm here today.

2 SENATOR HAYWOOD: I understand. So could you help
3 me understand how you come to your view of her role, and what,
4 if anything, in your role at the Office of Attorney General
5 allows you to see something so different than what the
6 Deputies see?

7 MR. DUECKER: In the scope of what this office
8 does on a day-to-day basis and the authorities on which the
9 office relies on, the practice of law is narrow relative to
10 all of the other things that we do in the office. I'm not
11 part of any of the three legal divisions within the office. I
12 am in charge of, at the direction of the Attorney General,
13 everything else. So I get to see things, frankly, that our
14 attorneys historically have never seen, have never wanted to
15 see, never asked to see, were not interested in seeing. I
16 can't answer why they don't understand or they don't see what
17 the full scope of authorities, responsibilities, and duties
18 are for the office in general. I can't answer that for you.

19 But I can tell you that having been the Special
20 Agent in Charge of the Bureau of Narcotics Investigation and
21 at the forefront of all of our intelligence issues, all of our
22 public policy issues, all of our public safety issues, law
23 enforcement issues on behalf of the office, and now as Chief
24 of Staff in charge of budget, administration, logistics,
25 personnel, all of the other non-legal functions, I can tell

1 you that there is a vast chasm of difference between what this
2 office does and what was portrayed or depicted of doing on
3 November 18.

4 SENATOR HAYWOOD: And prior to being Chief of
5 Staff you were -- could you describe what you were doing on
6 the narcotics side, and particularly what your relationship
7 with was with the Attorney General in the position you were in
8 prior to your current one?

9 MR. DUECKER: In my position as the Special Agent
10 in Charge of the Bureau of Narcotics Investigations and Drug
11 Control under General Kane, almost immediately upon taking
12 office she expanded the office. That was one of the reasons
13 why I chose to join her team and that she invited me onto her
14 team was because she wanted to expand the office to include a
15 much more robust, much more sophisticated look at drug law
16 enforcement and drug control, for that matter, throughout the
17 State of Pennsylvania. That included intelligence analysis,
18 that included drug control policy, that included listening to
19 Senators and House Members on what they thought the threat to
20 their districts were, that included reaching out to every law
21 enforcement jurisdiction in the State of Pennsylvania,
22 something that had never been done in Pennsylvania, to ask
23 them not only what they needed, what they thought their threat
24 was from a local perspective, but what they needed from the
25 Office of Attorney General.

1 The answer we got when we first did this back in
2 early 2014 was we didn't know that there was an Office of
3 Attorney General. And if we did, we didn't know what they
4 did. And if we did, we didn't know who they did it with,
5 because we sure didn't see any of them.

6 So what I did for the balance of my time as
7 Special Agent in Charge was to create relationships on behalf
8 of General Kane and this office to maximize the amount of
9 information we could gather from and give to local
10 jurisdictions throughout the State of Pennsylvania and do it
11 from a strategic perspective. And frankly, try to get some
12 funding, and we realized that through our IMPACT team, some
13 funding that we could start to apply to the huge, huge heroin
14 and opioid epidemic we have here.

15 SENATOR HAYWOOD: I just want to cut you off for a
16 second. To what extent was that connection in leadership of
17 the Attorney General fundamentally based upon having a license
18 or not?

19 MR. DUECKER: It wasn't. It wasn't. Because she
20 and I worked hand-in-hand in this respect, and I reported that
21 on an operational basis, I and the two other Special Agents in
22 Charge generally reported right to her. Because she
23 understands that first and foremost, investigations, at least
24 in our office, need to be run by investigators and not
25 lawyers. There's a huge difference, and even the Commonwealth

1 Attorneys Act identifies the difference between our authority
2 to prosecute crime and our authority to investigate crime.
3 The Commonwealth Attorneys Act refers to other statutes with
4 respect to our investigative authority, and we rely on those
5 statutes for investigations. The Commonwealth Attorneys Act
6 refers to the prosecutorial authority that the office has.

7 I would argue that from an investigative or
8 operational standpoint, it didn't require the practice of law.
9 It doesn't mean that the knowledge that she or I brought to
10 the operational direction that we were taking, the legal
11 knowledge, didn't help us, because we had to understand what
12 the legal limitations, restrictions, impact, however you want
13 to characterize it. There are always legal implications with
14 how we decide to do things from an operational or strategic
15 standpoint, but that doesn't mean that that's necessarily the
16 practice of law, and it doesn't mean that you need a law
17 license to understand the importance of those.

18 SENATOR HAYWOOD: All right. Thank you.

19 CHAIRMAN GORDNER: Senator Scarnati, followed by
20 Senator Yaw.

21 SENATOR SCARNATI: Thank you, Mr. Chairman.

22 Good afternoon. First, let me thank you for your
23 service to the country and to the Commonwealth. Certainly
24 appreciate it.

25 Listening to your remarks, I think it's fair to

1 say you have a high regard for Kathleen Kane.

2 MR. DUECKER: I am objectively loyal to her
3 because I think that she has done a tremendous job for this
4 office and for this Commonwealth in three short years,
5 notwithstanding the outside pressures on her abilities.

6 SENATOR SCARNATI: Now, you've been Chief of Staff
7 since April 2015?

8 MR. DUECKER: Correct.

9 SENATOR SCARNATI: Now, who hired you for that
10 position?

11 MR. DUECKER: I was moved into that position by
12 General Kane.

13 SENATOR SCARNATI: She hired you?

14 MR. DUECKER: She hired me when I came on to the
15 Attorney General's Office in 2013.

16 SENATOR SCARNATI: So what are your duties as
17 pertain to directly working with Kathleen Kane?

18 MR. DUECKER: I work directly for her and directly
19 with her on the range of issues that I mentioned in my
20 testimony.

21 SENATOR SCARNATI: So you have a close
22 relationship?

23 MR. DUECKER: I do.

24 SENATOR SCARNATI: Those of us that have Chiefs of
25 Staff recognize that the Chief of Staff is probably the

1 closest person in the staff to the elected official, and
2 that's typically how it works in the Senate, and you're saying
3 that is the way it works in the AG's office.

4 MR. DUECKER: It does. I hope it does.

5 SENATOR SCARNATI: Okay. So what office do you
6 work out of?

7 MR. DUECKER: I work out of Harrisburg, but I
8 spend considerable time getting out -- trying to get out on
9 behalf of the agency and her leadership to get out to other
10 offices, I think we have roughly 20 statewide, as often as
11 possible.

12 SENATOR SCARNATI: In the last 10 days, how often
13 has Kathleen Kane been at work?

14 MR. DUECKER: I can't tell you that. I don't
15 manage her schedule that closely. And I myself haven't been
16 -- I have been working out of our Norristown office over the
17 holidays for the most part because I live down in that area of
18 the State.

19 SENATOR SCARNATI: But the Chief of Staff is the
20 closest to the elected official.

21 MR. DUECKER: Yes.

22 SENATOR SCARNATI: That's what you told me.

23 MR. DUECKER: Maybe not geographically. I'm as
24 close to her as anybody can be virtually.

25 SENATOR SCARNATI: Has she come to work in the

1 last, I'm just saying, 10 days?

2 MR. DUECKER: Yes, she has.

3 SENATOR SCARNATI: And where has she gone to work
4 at?

5 MR. DUECKER: She has an office in Scranton that
6 she goes to work. She has her schedule, which I'm not
7 necessarily privy to, has her all over the State on occasion,
8 and she has been down in Harrisburg.

9 SENATOR SCARNATI: She's working on a lot of
10 budget issues?

11 MR. DUECKER: Very, very closely.

12 SENATOR SCARNATI: What budget issues is she
13 working on?

14 MR. DUECKER: The fact that we didn't have a
15 budget until recently, she's been working on the budget issues
16 and the implications of being six months tardy with respect to
17 obligating funds for the office. That's number one. Number
18 two is as we leave this last budget hearing six months tardy,
19 we're going into the next budget hearing, into the next budget
20 season, and like she has in the last three years, she's been
21 very diligent at, as we all have, working on her behalf, at
22 coming up with strategic priorities to make sure that we get
23 funded to a degree and to the extent that we need to for the
24 next fiscal year.

25 SENATOR SCARNATI: Well, I appreciate the fact

1 that you spoke that the General Assembly has supported many of
2 the--

3 MR. DUECKER: They have, sir.

4 SENATOR SCARNATI: --of the policies and also
5 funding requests. Is that accurate?

6 MR. DUECKER: That is accurate.

7 SENATOR SCARNATI: Okay. I'm just pleased that
8 you point out there has been much support--

9 MR. DUECKER: There has been.

10 SENATOR SCARNATI: --in the past.

11 MR. DUECKER: It goes beyond support, Senator. It
12 goes beyond. It goes to, I think, the core of her leadership
13 and her ability to do in three years what hadn't been done in
14 about five or six years prior to her administration, which is
15 to have three sustained years of increases in funding.

16 SENATOR SCARNATI: What did the Governor do in the
17 line of the Office of Attorney General when he signed the
18 budget?

19 MR. DUECKER: This last?

20 SENATOR SCARNATI: Just a few days ago.

21 MR. DUECKER: What did he do? I'm sorry, I don't
22 understand.

23 SENATOR SCARNATI: What did he do in regard to the
24 line of Office of Attorney General when he signed the budget?
25 Did he veto that line or did he blue-line it?

1 MR. DUECKER: No. We got the funding that we
2 needed.

3 SENATOR SCARNATI: Okay.

4 MR. DUECKER: Let me correct that. We got the
5 funding that we requested.

6 SENATOR SCARNATI: Okay. So the budget issues
7 she's working on aren't past, they're future?

8 MR. DUECKER: No, they're past--

9 SENATOR SCARNATI: They're past?

10 MR. DUECKER: Because there were funds that we
11 could not obligate during the impasse.

12 SENATOR SCARNATI: Okay.

13 MR. DUECKER: There are funding and personnel
14 decisions, there are holds on the acquisition of personnel,
15 the acquisition of material, the acquisition of office
16 mergers. I mean, there's all sorts of things that we have to
17 deal with on a daily basis, and she is part of those
18 deliberations.

19 SENATOR SCARNATI: I believe that the First Deputy
20 quoted that the Office of Attorney General does a vast amount
21 of legal work, or a vast amount of the work is legal.

22 MR. DUECKER: The office? That's true.

23 SENATOR SCARNATI: That's what he testified.

24 MR. DUECKER: The office, that's true.

25 SENATOR SCARNATI: Okay. The office. Okay.

1 And you basically said Beemer's characterization
2 of that is almost absurd.

3 MR. DUECKER: What I said was the -- what I said
4 was that the vast majority of -- you said that he said that a
5 lot of it is legal. What I said is the vast majority of what
6 we do on a day-to-day basis is operational or administrative
7 or logistical or investigative in nature.

8 SENATOR SCARNATI: Did you not use the word
9 "absurd"?

10 MR. DUECKER: I think it is an absurd
11 characterization that the vast majority of what this office
12 does is legal -- is legal technically. Absolutely.

13 SENATOR SCARNATI: So what part -- so you're
14 saying that he -- let me get this straight then. Are you
15 saying that those that testified previously, such as the First
16 Deputy, they misled or lied to this committee?

17 MR. DUECKER: I can't speak for them. I can tell
18 you what, based on my experience and my role in the office,
19 and what it is I do on behalf of the Commonwealth, I can tell
20 you that the vast majority of what this office does is outside
21 the practice of law. I'm not saying that it doesn't involve
22 law. We have 300-plus attorneys that work legal issues on a
23 daily basis. But if I go back to what I said about our Web
24 site, we have -- if the creation of public policy is not law,
25 if keeping our staffing up to appropriate levels is not law,

1 we do a lot of things outside the practice of law. And what
2 my comments were meant to imply were that the characterization
3 was absurd because what we do is far greater than what was
4 presented on November 18.

5 SENATOR SCARNATI: Well, if his characterization
6 is absurd, then his testimony was absurd.

7 MR. DUECKER: I can't -- I'm just telling you how
8 I saw it.

9 SENATOR SCARNATI: All right. And just one more,
10 just a comment. You know, you can visit any elected
11 official's Web site, and trust me, it will appear that they
12 can part the Red Sea and walk across water. So Web sites are
13 a useful tool, but not necessarily the litmus test to
14 anybody's ability or lack of ability to function.

15 Thank you, Mr. Chairman.

16 MR. DUECKER: That may be true, Senator, but our
17 Web site is the window through which the general public views
18 our office and what our responsibilities and roles are, and
19 our authorities. So we have to be--

20 SENATOR SCARNATI: My Web site isn't?

21 MR. DUECKER: I can't speak for your Web site.
22 I'm just saying that our Web site is designed to be the
23 looking glass, so to speak, for the Commonwealth citizens to
24 see what it is we do and how we do it.

25 SENATOR SCARNATI: But you're implying in that Web

1 site she's still a licensed attorney. That's what you imply
2 in that Web site.

3 MR. DUECKER: That's a matter of -- I guess that's
4 a matter of argument.

5 SENATOR SCARNATI: And that's why we're here.
6 Thank you.

7 CHAIRMAN GORDNER: Just before I go to Senator
8 Yaw, I want to just confirm something you just said to Senator
9 Scarnati. You said you're not privy -- as Chief of Staff,
10 you're not privy to the Attorney General's schedule?

11 MR. DUECKER: I don't manage it and I don't look
12 at it every day, no.

13 CHAIRMAN GORDNER: But your comment was under oath
14 that you're not privy to her schedule. Is that accurate?

15 MR. DUECKER: I'm not privy to her day-to-day
16 schedule. No, I'm not.

17 CHAIRMAN GORDNER: Senator Yaw.

18 SENATOR YAW: Thank you, Mr. Chairman.

19 Sir, something that you mentioned, and maybe I
20 misunderstood it, you were giving a whole long line of duties
21 that the Attorney General has, like she's the chief financial
22 officer, I don't know, there were a whole bunch of other ones
23 that you said, and then you said not the chief legal officer
24 without a law license. Is that accurate? Did you say that?

25 MR. DUECKER: Yeah, I probably said that. I mean,

1 she's not the chief attorney without a law license.

2 SENATOR YAW: Well, is she or isn't she the chief
3 law enforcement and legal officer?

4 MR. DUECKER: Law enforcement and legal officer
5 are two different -- that's the distinction between the two.
6 Law enforcement officer, a chief of police or a commissioner
7 of police would be the chief law enforcement officer for the
8 city, with or without a law degree. Chief legal officer is a
9 different distinct-- that's a different thing.

10 SENATOR YAW: Well, I still don't understand. You
11 mean as the chief law officer you have to have a legal
12 license?

13 MR. DUECKER: No.

14 SENATOR YAW: Okay. So that's not required?

15 MR. DUECKER: As the chief law enforcement officer
16 for the State of Pennsylvania, or any other jurisdiction? The
17 chief law enforcement officer for the city of New York does
18 not necessarily require a law license.

19 SENATOR YAW: Well, sir, with all due respect,
20 we're not talking about the city of New York. We're talking
21 about the State of Pennsylvania. And does the chief law
22 enforce-- law officer of the Commonwealth of Pennsylvania need
23 a law licence?

24 MR. DUECKER: The chief law enforcement officer as
25 defined by the Commonwealth Attorneys Act? Is that what

1 you're asking?

2 SENATOR YAW: No, I'm asking what your opinion is.
3 Do you know? Do you know what the Constitution says?

4 MR. DUECKER: I don't understand your question,
5 Senator, I'm sorry.

6 SENATOR YAW: Do you know what the Constitution
7 says?

8 MR. DUECKER: Verbatim, I don't have it sitting
9 here in front of me.

10 SENATOR YAW: Well, the Constitution requires that
11 the Attorney General to have a law license.

12 MR. DUECKER: And my understanding is that she has
13 a law license suspended. It's not the same as being disbarred
14 and not having a license at all.

15 SENATOR YAW: And I'm telling you, under the
16 Pennsylvania Constitution, the Attorney General is the chief
17 law enforcement -- law officer of the Commonwealth. Okay?
18 Are you familiar with the Commonwealth Attorneys Act?

19 MR. DUECKER: I am.

20 SENATOR YAW: Under the Commonwealth Attorneys Act
21 then you are aware that there's a provision in Section 201
22 that says, "The Office of Attorney General shall be an
23 independent department and shall be headed by the Attorney
24 General."

25 MR. DUECKER: Okay.

1 SENATOR YAW: Right?

2 MR. DUECKER: (Indicating in the affirmative.)

3 SENATOR YAW: So there's a distinction there
4 between the Attorney General and the Office of Attorney
5 General. Do you agree with that?

6 MR. DUECKER: According to the way it's written.

7 SENATOR YAW: Okay. And then, and just mention a
8 couple. In Section 204, it says, "Upon the request of the
9 Governor or the head of any Commonwealth agency, the Attorney
10 General shall furnish legal advice concerning any matter or
11 issue arising in connection with the exercise of the official
12 powers or the performance or the official duties of the
13 Governor or agency." That's pretty clear, it's "the" Attorney
14 General has to give the legal advice. Do you agree?

15 MR. DUECKER: From what the Commonwealth Attorneys
16 Act says, yes.

17 SENATOR YAW: Yes?

18 MR. DUECKER: I would, again, point out though
19 that when the Supreme Court suspended her license, they
20 specifically stated that they -- it was not meant to strip her
21 of her title or duties of the Attorney General.

22 SENATOR YAW: Well, you are aware of the provision
23 that in Pennsylvania in order to give legal advice, you have
24 to be a member in good standing of the Bar?

25 MR. DUECKER: I am aware of that.

1 SENATOR YAW: Well, it sounds to me like then that
2 you've created your own conflict here. You agree that the
3 Attorney General can't furnish legal advice, but the
4 Commonwealth Attorneys Act says that the Attorney General is
5 the one who should be furnishing the legal advice to the
6 Governor.

7 MR. DUECKER: Senator, I think that the issues
8 that you're bringing up, as were stated earlier, is why we're
9 here. I think that if it were that cut and dry, we wouldn't
10 be here. And at the risk of being accused of practicing law
11 without a license, I'm not comfortable getting into what some
12 even legal scholars and lawyers throughout the State of
13 Pennsylvania can't agree to.

14 SENATOR YAW: Well, I just want to mention a
15 couple of other things that under the Commonwealth Attorneys
16 Act, also in Section 204, and this is in (b), it says, under
17 "Commonwealth agencies," "The Attorney General shall review
18 for form and legality, all proposed rules and regulations of
19 Commonwealth agencies before they are deposited..." and so
20 forth. That section also continues, it says, "The
21 Commonwealth agency may revise a rule or regulation to meet
22 the objections of the Attorney General and submit the revised
23 version for his review."

24 That's pretty specific. Do you agree?

25 MR. DUECKER: Sounds so.

1 SENATOR YAW: And this is one of those things
2 also, the next section, section (c) says, in "Civil
3 litigation; collection of debts.--The Attorney General shall
4 represent the Commonwealth and all Commonwealth agencies," and
5 so forth, and then it goes on to about all other departments.
6 I mean, these sections and what you said is that all these
7 things were that the Attorney General does, they do very
8 little of legal work. Well, it seems to me--

9 MR. DUECKER: I didn't say that, Senator. What I
10 said is the Attorney General herself. I also said that it's
11 not -- I did not say that we don't do a lot of legal work
12 within the Attorney General's Office. That would be absurd.
13 What I said was the vast majority of what the office does on a
14 day-to-day basis could be construed as being outside the
15 practice of law. That's what I said.

16 SENATOR YAW: Well, I know this from being
17 involved in it, that one of the things that the Attorney
18 General does is, by statute, and again, under Section 204,
19 this would be 204(d), it says, "The Attorney General shall
20 approve all settlements over such maximum amounts as he shall
21 determine arising out of the claims brought against the
22 Commonwealth...." So any claim against the Commonwealth has
23 to be approved by the Attorney General.

24 And in the next section under 204, in (f), "all...
25 deeds, leases and contracts..." are approved by the Attorney

1 General. And it says "he shall notify in writing" any agency
2 that's involved.

3 I mean, these are all really specific questions.
4 And, you know, now, you mentioned about being a big law firm,
5 and I understand how law firms work. You can have the named
6 attorney who may delegate authority to do research and give an
7 answer, but the primary attorney is still the one who signs
8 the document. And the way I read the Commonwealth Attorneys
9 Act, that's exactly what this document, the Commonwealth
10 Attorneys Act, says. The person that's responsible is the
11 Attorney General. You may solicit advice from somebody else,
12 but you, that person, has to be able to fulfill the duties.
13 And in order to fulfill the duties under the Commonwealth
14 Attorneys Act to give legal advice, you have to be a member in
15 good standing under Pennsylvania law.

16 I have another question about -- Senator Baker
17 asked you about supervising the Deputies. I want to go a
18 little bit further than that. Who makes the decisions in the
19 Attorney General's Office to accept plea agreements in major
20 cases or to prosecute? Who does that? Does the Attorney
21 General make those decisions?

22 MR. DUECKER: Under normal circumstances, yes.

23 SENATOR YAW: The Attorney General does. Is she
24 doing that today?

25 MR. DUECKER: She, with decisions to prosecute,

1 under extraordinary circumstances, it would reach her level.
2 As I indicated, for prosecutions throughout the State on
3 typical drug cases, the Attorney General doesn't get involved
4 in making those decisions. She confers that authority down to
5 the level at which -- the level best capable of handling those
6 decisions, our line attorneys, our Chief Deputies Attorney
7 General and our Executive Deputies Attorney General. We open
8 and shut cases constantly throughout the State of
9 Pennsylvania. She does not review and she does not -- she's
10 not even privy to the vast majority of, for example, drug
11 cases that are initiated or prosecutions that might be
12 undertaken.

13 SENATOR YAW: I understand that in the day-to-day
14 things. Let's say you have a high-profile case. Pick some
15 high-profile person that you may or may not prosecute. I
16 don't want to give anybody an impression that there's any
17 inside knowledge here. I'm trying to make up something. A
18 State Treasurer is found to be or is suspected to be guilty of
19 a crime. Who would make, under the current set-up in the
20 Attorney General's Office, who would make the decision as to
21 whether or not to prosecute that person?

22 MR. DUECKER: From a legal standpoint, it would be
23 the First Deputy, or somebody that he would designate for
24 that. But I would argue that there are reasons to prosecute,
25 to investigate cases like that that fall well outside of

1 purely in the interest of law. For example, public policy,
2 or, I mean, there's public corruption cases that are
3 contemplated throughout the United States all the time, and
4 the decision to prosecute them or even investigate them may or
5 may not be -- does not involve the technical aspects of the
6 law. It involves contemplations well outside of that.

7 SENATOR YAW: But if it were going to be a major
8 shake-up of--

9 MR. DUECKER: You would still insist on getting
10 the non-legal considerations at least discussed or
11 contemplated, because if you don't, if you look at things
12 purely from a prosecutorial standpoint without regard to those
13 considerations, you can't run an effective office.

14 SENATOR YAW: I want to go back to the answer to
15 your original when I asked you, you indicated that the First
16 -- the high-profile case, like whether or not the Attorney
17 General's Office was going to prosecute, under today's
18 circumstances, given the Attorney General has a suspended law
19 license, it would be the First Deputy that made that decision.
20 Is that right?

21 MR. DUECKER: Yes.

22 SENATOR YAW: All right.

23 MR. DUECKER: I would hope that when he makes that
24 decision now, to the extent that he does not seek, you know,
25 information or perspective outside of the law, and when it

1 gets into public policy and other budgetary considerations, I
2 would expect, in order to make sure that he made the right
3 decision, he would confer with the Attorney General in that
4 respect. She's still the Attorney General for the State of
5 Pennsylvania.

6 SENATOR YAW: Well, in your written testimony you
7 quote the question that I asked at the prior hearing, and that
8 was I gave the history about when Pennsylvania decided to have
9 an elected Attorney General, and what seems to have happened
10 at this point, I mean, you acknowledged that my summary was
11 correct, but then you disagreed that because I said, you know,
12 it's like having the engineer of the train, and we don't have
13 the engineer of the train that the people elected. And, you
14 know--

15 MR. DUECKER: You're right, I did disagree with
16 that that, Senator, because that's not true. That's not the
17 case.

18 SENATOR YAW: Well, I disagree with you because it
19 is the case, because the people elected somebody who had a law
20 license, and that person who was elected had the ability to
21 give advice to the Governor, had the ability to approve
22 leases, had the ability to approve contracts. She, in fact,
23 took action with regard to the Lottery contract that was
24 pending, and she did all those things. And under today's
25 circumstances, she cannot do that. She cannot render legal

1 advice on any of those issues to the Governor or anybody else.

2 So I will continue with what I said, the people
3 elected a person who could fulfill all of those jobs and make
4 policy decisions as to whether or not are we going to
5 prosecute some high-profile person. That's the type of person
6 that was elected, the people thought that they were electing
7 as Attorney General. And my suggestion to you is without a
8 law license, that person does not exist. She can't fulfill
9 those duties or promises that she made to the voters who
10 elected her.

11 Thank you, Mr. Chairman.

12 CHAIRMAN GORDNER: Thank you.

13 We'll now have a second round of questions. I'm
14 going to go back to, I'm not sure if I'm going to go back. I
15 forget if we mentioned it or not, but the October 22 memo from
16 the First Deputy Attorney General and three Executive Deputy
17 Attorneys General. Their memo states, and they testified here
18 under oath, that they ended up producing that memo because
19 prior to that date there was no clear written direction from
20 the Attorney General as how to proceed. We as a committee
21 provided a subpoena to Kathleen Kane, and among the items in
22 that subpoena was asking for any written documentation, et
23 cetera, in regard to that issue. She provided us with none.

24 Can you confirm that other than this October 22
25 written memorandum, there was no direct written document in

1 regard to how the office was going to proceed after October
2 22?

3 MR. DUECKER: I can't confirm that there is one or
4 was one. I can't confirm that there wasn't. I don't know.

5 CHAIRMAN GORDNER: As Chief of Staff, you cannot
6 confirm or deny whether there was any written direction or
7 not?

8 MR. DUECKER: I don't know because that direction
9 would have been something that she would have probably have
10 given to the legal team outside of, you know, my role as Chief
11 of Staff. I mean, that's her prerogative.

12 CHAIRMAN GORDNER: I guess I'm getting very amazed
13 at your role of Chief of Staff. So you don't know what her
14 direct schedule is day-to-day, and you would not have known if
15 there was any written document in regard to direction as to
16 legal actions after October 22. That's correct?

17 MR. DUECKER: Correct.

18 CHAIRMAN GORDNER: All right. You obviously --
19 you've seen the October 22 memorandum?

20 MR. DUECKER: I have.

21 CHAIRMAN GORDNER: All right.

22 MR. DUECKER: I don't have it sitting here in
23 front of me though.

24 CHAIRMAN GORDNER: It's okay. We have it. It's
25 part of the record.

1 MR. DUECKER: But if you're going to refer to it
2 like line by line, I should probably have something that I can
3 refer to.

4 CHAIRMAN GORDNER: I'll read it. It's not going
5 to be a challenge. In it they indicated that after October
6 22, a decision on whether to bring a civil action or a
7 criminal action could no longer be made by the Attorney
8 General and should be made by the First Deputy. Do you agree
9 with that, or is the Attorney General currently making
10 decisions as to whether to bring civil or criminal actions?

11 MR. DUECKER: I agree with the notion that
12 ultimately it's a legal decision, but it should implicate
13 public policy and other issues that I mentioned, other
14 considerations that I would expect that the Attorney General
15 would at least be given some amount of deference in terms of
16 deciding whether, especially if it's a high-profile case.

17 CHAIRMAN GORDNER: Since October 22, since she has
18 a suspended law license, can Kathleen Kane make decisions on
19 whether to bring a criminal or civil action?

20 MR. DUECKER: Make the actual final decision?

21 CHAIRMAN GORDNER: Yes.

22 MR. DUECKER: I don't believe so. It doesn't mean
23 she wouldn't be involved in the decisionmaking process outside
24 of the practice of law.

25 CHAIRMAN GORDNER: But the ultimate decision?

1 MR. DUECKER: It's a legal decision.

2 CHAIRMAN GORDNER: She can or cannot make?

3 MR. DUECKER: My understanding, from what you're
4 saying is, yeah, I would agree with that. And I think that
5 the Attorney General is on the record of agreeing with most of
6 what or all of what you're about ready to read me.

7 CHAIRMAN GORDNER: Okay. Well, we don't know
8 that. She's not here, so we can't ask her.

9 MR. DUECKER: But she has said that publicly, I
10 believe.

11 CHAIRMAN GORDNER: Well, she hasn't said it here
12 and she hasn't said it under oath, so you're the next best
13 thing.

14 MR. DUECKER: Are you going to ask me questions to
15 whether she thinks--

16 CHAIRMAN GORDNER: I'm going to ask you a question
17 as to whether you, who has a law license and is her Chief of
18 Staff--

19 MR. DUECKER: I do not have a law license in the
20 State of Pennsylvania.

21 CHAIRMAN GORDNER: No, but you are, as you
22 indicated, you are her representative here at this hearing.

23 MR. DUECKER: I am. I just don't want to be
24 accused of practicing law in the State of Pennsylvania without
25 a law license.

1 CHAIRMAN GORDNER: Can Kathleen Kane make a
2 decision right now as to whether to settle civil actions?

3 MR. DUECKER: I believe that's -- no. I believe
4 that she has conferred that to her Deputies.

5 CHAIRMAN GORDNER: Right now, can Kathleen Kane
6 make decisions on whether to offer or accept plea bargains?

7 MR. DUECKER: I believe she has done the same with
8 those.

9 CHAIRMAN GORDNER: That she cannot do it?

10 MR. DUECKER: No. Exactly.

11 CHAIRMAN GORDNER: All right. Can Kathleen Kane
12 make any decisions involving grand juries?

13 MR. DUECKER: No. That's been conferred to her
14 Deputies.

15 CHAIRMAN GORDNER: Can Kathleen Kane make any
16 decisions on whether to join amicus briefs?

17 MR. DUECKER: Same.

18 CHAIRMAN GORDNER: Can Kathleen Kane make any
19 decisions on whether to use particular defenses in the cases
20 that the office is defending?

21 MR. DUECKER: Same answer.

22 CHAIRMAN GORDNER: All right. Can she do anything
23 in regard to making decisions on wiretaps?

24 MR. DUECKER: Only to the extent that when a
25 wiretap is contemplated within the office, it is not just

1 purely a legal issue. It has everything, maybe more
2 sometimes, to do with budget and whether we can afford both
3 the funding and the personnel to actually go up on a wiretap
4 and proceed with it. So outside of the actual signing on the
5 technical aspects, the technical legal aspects of the wire
6 tap, no.

7 CHAIRMAN GORDNER: But she's making decisions in
8 regard to wiretaps, you said? I just want to confirm that.

9 MR. DUECKER: Not legal decisions on whether to
10 sign. She may still insist on whether she is involved in the
11 budgetary concerns or the personnel management concerns.
12 Aside from that, though, no, that authority has been
13 conferred.

14 CHAIRMAN GORDNER: Okay. Can she sign off on the
15 State issuing bonds?

16 MR. DUECKER: I don't believe so. Again, this is,
17 for the purposes of this hearing, I'm a layman in the State of
18 Pennsylvania, a legal layman.

19 CHAIRMAN GORDNER: Yeah, you're her Chief of
20 Staff.

21 MR. DUECKER: I am.

22 CHAIRMAN GORDNER: And you're here under
23 testimony.

24 MR. DUECKER: I am. But I'm representing the
25 non-legal functions of the office. I'm not here to represent

1 the First Deputy, the Executive Deputies, or their thoughts or
2 ideas or notions about what is and is not the practice of law.

3 CHAIRMAN GORDNER: So if there was a budgetary
4 issue in regard to a wiretap, she would nix it?

5 MR. DUECKER: No, I think she's a little bit more
6 professional than that. I think by the time a wiretap
7 application gets to her desk, whether it's under normal
8 circumstances or under current circumstances, she's likely to
9 respect the chain of command that that wiretap application
10 goes through, understand that it has been well vetted by our
11 attorneys and it has been well substantiated by our
12 investigators. She, I don't believe, has nixed any wiretap
13 application since she came on board in 2013.

14 CHAIRMAN GORDNER: Okay. I think there was just a
15 loan, there was just a loan that the Commonwealth apparently
16 did, a \$2 billion loan. Did she sign off on that?

17 MR. DUECKER: I have no idea. I don't believe so,
18 but I have no idea. I can't answer that question.

19 CHAIRMAN GORDNER: You're her Chief of Staff.

20 MR. DUECKER: I am. It's been established. I
21 don't know the answer to that question.

22 CHAIRMAN GORDNER: In regard to the October 22
23 memo, it was testified before this committee by the First
24 Deputy Attorney General that they did the October 22 memo
25 because there was no direction from the Attorney General as to

1 how to proceed after that. Do you disagree with that?

2 MR. DUECKER: I do disagree with that.

3 CHAIRMAN GORDNER: All right. Go ahead and
4 provide us again. Under subpoena, she provided us nothing.

5 MR. DUECKER: I can't speak for the General, so--

6 CHAIRMAN GORDNER: So what should she have
7 provided us under subpoena that she didn't?

8 MR. DUECKER: What I can tell you is that the
9 direction that was provided to not just the senior attorneys
10 of staff, and this was the day after, I believe, of her
11 suspended license she gave clear, unambiguous direction that
12 the office will continue as it did beforehand, that the vast
13 majority of legal decisions will be made at or below the First
14 Deputy rank anyway, because in most cases the Attorney
15 General, only in extraordinary cases, reviews all of those
16 legal decisions. She delegates that authority to people well
17 below her position. Her mandate was very clear: Nothing is
18 going to change in this office with respect to how those
19 issues are going to be handled. She doesn't routinely handle
20 those as a matter of law to begin with.

21 CHAIRMAN GORDNER: Okay, so when we sent her a
22 subpoena--I have it in front of me--asking for any and all
23 documents, including electronic communications, et cetera,
24 detailing the operations of the office following the
25 suspension of the October 22, and she responded that there is

1 none, that's incorrect, you're saying?

2 MR. DUECKER: I can't answer for her.

3 CHAIRMAN GORDNER: Well, I think you just did.

4 MR. DUECKER: I can tell you--

5 CHAIRMAN GORDNER: So it's incorrect that she did
6 not comply with the terms of the subpoena that we sent her?

7 MR. DUECKER: I can tell you, you asked if any
8 direction or guidance was given as a matter of her license
9 being suspended. I just told you that immediately thereafter
10 at the first staff meeting that we had that clear guidance was
11 given. Whether she provided something to the legal chain of
12 command afterward in writing, I don't know.

13 CHAIRMAN GORDNER: Senator Schwank.

14 SENATOR SCHWANK: I do understand and respect the
15 fact that you are not one of the Deputy Attorneys General,
16 that you are simply a Chief of Staff -- not simply, but that--

17 MR. DUECKER: I'm okay with that.

18 SENATOR SCHWANK: No, no, you're not necessarily
19 involved in those day-to-day decisions, those legal decisions.
20 And again, I think your testimony has been really clear that
21 there's a big divergence between what those four gentlemen,
22 their world view on how the office is operating and what you
23 are seeing as well, and that's something that we'll have to
24 wrestle with. But in regards to the list of items that
25 Senator Gordner, you know, all of those specific things that

1 were outlined in that October memo, in normal operations,
2 would the Attorney General--as her Chief of Staff, as best to
3 your knowledge--would she absolutely be involved in every
4 single one of those things?

5 MR. DUECKER: In what he referenced?

6 SENATOR SCHWANK: Yes, right.

7 MR. DUECKER: No. I think I was fairly clear that
8 she would be involved in very few of them.

9 SENATOR SCHWANK: Typically, how would that
10 evolve? Explain to me how that process would look.

11 MR. DUECKER: For example, for investigations
12 throughout the State, those are driven at the local level, or
13 I should say on the regional level. Whether it's a drug
14 investigation, a child predator, I mean, the OAG has been
15 around a little bit, well before she ever came in as the
16 Attorney General. There are systems and protocols and
17 procedures to begin investigations and proceed to prosecutions
18 that never rise to her level. I mean, that would be to
19 suggest that the Governor is apprised of every single thing
20 that happens in each of his agencies and departments down to
21 the street level. That's just not the way the office
22 functions, and it's not the way she has decided to run it.
23 She came in and she very well defined and delegated
24 authorities to her -- both on her lawyer side to the senior
25 legal staff of the office and to the non-legal side to the

1 investigators and operations people that took that authority
2 and ran with it.

3 SENATOR SCHWANK: Let's go to the scenario of if
4 this committee moves forward and the vote is positive or we
5 would, the Senate, vote to remove the Attorney General from
6 her office. What effect would removing her have on the
7 performance of policy and administrative duties of the
8 Attorney General's Office? So what's the aftermath, in other
9 words, is what I'm asking you?

10 MR. DUECKER: I personally think, but my personal
11 opinion is based on my experience with the office and my
12 experience that I brought into the office from other
13 positions, it would have a catastrophic impact on not just the
14 operations of the day for the office, but on the tremendous
15 work that she's done in terms of reestablishing the Attorney
16 General's Office as the preeminent law enforcement agency for
17 the State and giving this agency the strategic direction and
18 guidance and leadership to proceed in that fashion. I can
19 tell you that when it comes to drug law enforcement alone,
20 there was no drug control part of drug law enforcement in the
21 State of Pennsylvania prior in 2013. There is now. And as
22 all of the Senators on the panel and in the Senate at-large
23 understand, Pennsylvania is getting crushed with opioid and
24 heroin abuse statewide.

25 SENATOR SCHWANK: We're well aware of that.

1 MR. DUECKER: It goes well beyond the borders of
2 Pennsylvania. It goes all the way down across the border into
3 Mexico. That strategic focus and that strategic approach
4 would suffer greatly. It may set it back, for all I know it
5 may kill it, because very rarely do you have somebody in
6 General Kane's position, not just in the position as the fifth
7 largest State in the United States in terms of population, but
8 her reputation now and credibility for identifying the true
9 strategic threats to the State of Pennsylvania, in three short
10 years, by the way, in addressing those threats in a
11 meaningful, relevant way.

12 SENATOR SCHWANK: My last question for you, are
13 the citizens of the Commonwealth currently, from the
14 standpoint of the many individuals, whether it's agencies or
15 district attorneys or the individuals that I refer as a
16 Senator that have consumer complaints or issues that we funnel
17 through our office, any of those entities that interact with
18 the OAG's office, are they being served any differently now
19 after the suspension of Kathleen Kane's license, law license?
20 Are they being served any differently?

21 MR. DUECKER: No, not at all. In fact, I would
22 argue that there probably -- I don't want to say that they're
23 being addressed better, because if we could do it better
24 before her suspension, we would have been doing it better.
25 But what I can tell you is that General Kane understands the

1 importance of this issue at large and she understands the
2 stakes for her personally for the agency, you know, given what
3 the outcome is going to be. She understands that this is not
4 the time to ease up on constituent services or consumer
5 protection issues or public policy issues or drug law
6 enforcement issues or child predator issues. In fact, she is
7 even more so adamant that now is the time to full-speed-ahead
8 press through these issues and continue with the balance of
9 her first term.

10 SENATOR SCHWANK: Thank you.

11 CHAIRMAN GORDNER: Senator Baker, followed by
12 Senator Haywood.

13 SENATOR BAKER: Thank you.

14 Mr. Duecker, I think you would agree, and I heard
15 you state, that under our Constitution, a person who is not
16 eligible to be Attorney General of the Commonwealth is someone
17 who is not a member of the Bar of our Supreme Court. Is that
18 accurate in what you said?

19 MR. DUECKER: I would agree with that. That's
20 what the Constitution says. But what I would disagree with is
21 what the definition of being a member of the Bar is, because
22 my understanding is that there are disbarred folks that are
23 not members of the Bar, and suspended members of the Bar that
24 are members of the Bar.

25 SENATOR BAKER: So what is the difference between

1 a suspended license and a disbarred license?

2 MR. DUECKER: Somebody who's disbarred has no
3 license. Somebody who has, my understanding anyway, and it's
4 treated differently in different States, somebody who has a
5 suspended license, that person's license can be re-- I guess
6 reenacted or reengaged within minutes after that distinction
7 is made. But somebody who's disbarred--

8 SENATOR BAKER: But a disbarred lawyer and a
9 suspended lawyer cannot do the same things. The only thing
10 that a disbarred lawyer has that a suspended license person
11 doesn't have is they might be eligible to get it back,
12 correct?

13 MR. DUECKER: The distinction I was making was
14 that a person with a suspended license is still a member of
15 the Bar of that State, upon somebody who's been disbarred is--

16 SENATOR BAKER: In good standing?

17 MR. DUECKER: I don't -- I'm not an expert on the
18 professional requirements of Pennsylvania Bar licensure.

19 SENATOR BAKER: Let me ask you another question.
20 You are here today on behalf of the Attorney General, who has
21 come on record stating that the Senate and this Special
22 Committee is without authority to act. Do you agree with
23 that?

24 MR. DUECKER: I'm not -- I can't comment on that.
25 I'm here to represent the Office of the Attorney General.

1 SENATOR BAKER: So you're not going to--

2 MR. DUECKER: I'm not going to comment on that.

3 SENATOR BAKER: --comment on that. When I asked
4 you earlier about the appointment of the Special Prosecutor,
5 you didn't seem to have the kind of knowledge about the
6 contract that was entered into or the agreement, and I'd like
7 to follow up on that. Do you know if anyone else was
8 considered for this appointment, or was this appointment to
9 Doug Gansler given solely to him? Were there other
10 individuals considered, and who made the determination to
11 engage Mr. Gansler?

12 MR. DUECKER: The ultimate decision was the
13 Attorney General's. What went into that decision, I can't
14 tell you, because I don't know.

15 SENATOR BAKER: So you're not aware if anyone
16 else--

17 MR. DUECKER: I'm not aware of anyone else. It
18 doesn't mean that there wasn't anyone else. I don't know. I
19 can't answer the question.

20 SENATOR BAKER: What is the contractual
21 relationship, you mentioned earlier that you handle many of
22 those kinds of issues, what's the relationship between the
23 office and the law firm that will work under Mr. Gansler's
24 supervision?

25 MR. DUECKER: The contractual details were

1 actually worked out with our Management Services Division, in
2 coordination with a senior attorney, one of which testified
3 here on November 18. He reviewed it for form and legality.

4 SENATOR BAKER: Who in the Office of Attorney
5 General ordered the release of the e-mails to Buckley Sandler?

6 MR. DUECKER: The Attorney General.

7 SENATOR BAKER: In releasing those e-mails, has
8 the Office of Attorney General in any way violated procedures
9 of the grand jury secrecy, its lawyers' oaths, or the
10 investigators or staff members?

11 MR. DUECKER: I can't answer that.

12 SENATOR BAKER: When were the e-mails delivered?

13 MR. DUECKER: I don't have that offhand.

14 SENATOR BAKER: Did anyone waive privacy,
15 attorney-client privilege, or attorney-client confidentiality
16 rights on behalf of the Commonwealth before releasing these
17 e-mails?

18 MR. DUECKER: I don't know that.

19 SENATOR BAKER: Were the e-mails released before
20 the Office of Attorney General received signed secrecy oaths
21 from the lawyers or the staff working on the contract?

22 MR. DUECKER: They may have been released
23 beforehand. My understanding is that they were not reviewed
24 beforehand. I would add, though, that in the Office of
25 Attorney General, grand jury secrecy oaths are often signed

1 after access to grand jury information is obtained.

2 SENATOR BAKER: Who has, in the Office of Attorney
3 General, asked Buckley Sandler or Doug Gansler to return
4 e-mails to the Office of Attorney General?

5 MR. DUECKER: I believe in conversations it may
6 have been First Deputy Beemer. But I don't know that because
7 -- I just know that because that's what I've heard.

8 SENATOR BAKER: And what other issues or problems
9 related to this appointment have resulted?

10 MR. DUECKER: I don't know.

11 SENATOR BAKER: So this is a pretty significant
12 development that occurred after the Attorney General came
13 under a suspended law license, a very significant,
14 high-profile appointment, and you are here before us as her
15 Chief of Staff and you can't answer those questions?

16 MR. DUECKER: I'm not privy to the information
17 that you're asking. I mean, if somebody in our legal
18 department, whether it's the First Deputy or one of his three
19 Executive Deputies, expressed concerns to the law firm or Doug
20 Gansler in verbal communications, I wouldn't have any reason
21 to know that.

22 SENATOR BAKER: Well, perhaps that's something
23 that I will look to.

24 You talked to Senator Schwank about it being
25 catastrophic if a decision were made to remove the Attorney

1 General. But as you've testified today, everything else is
2 being done without her involvement. So how would that be
3 catastrophic?

4 MR. DUECKER: No, I didn't say without her
5 involvement. What I said was the office is functioning as it
6 did before her license was suspended. What I also said was an
7 office like this relies on an extreme amount of leadership and
8 moral authority that goes with the position of Attorney
9 General. And to take that out, whether it's taking it out and
10 replacing it or taking it out altogether, especially given the
11 operational and strategic threat implications that we have in
12 Pennsylvania, it would be catastrophic. It has less to do
13 with how we function on a day-to-day basis and more to do with
14 the strategic guidance and leadership of the Attorney General
15 herself.

16 I've had the pleasure of serving some very, very
17 well-accomplished chief executives in my career, and I can
18 tell you that I think a lot of folks would agree with me that
19 General Kane has provided this Commonwealth with an awful lot
20 of insight and leadership into some of the threats, the
21 greatest threats that we have in Pennsylvania, and she's done
22 a lot to address those threats. That doesn't come along very
23 often.

24 SENATOR BAKER: Do you believe that the Attorney
25 General is eligible to run for the office?

1 MR. DUECKER: I can't tell you that. I'm not an
2 elections law expert in Pennsylvania. I don't know.

3 SENATOR BAKER: Thank you.

4 CHAIRMAN GORDNER: Senator Haywood, followed by
5 Senator Scarnati.

6 SENATOR HAYWOOD: Thank you. Now, you've been
7 asked quite a few questions that probably would be a lot more
8 appropriate for the Supreme Court. So don't feel bad that any
9 one of those questions about matters of law you didn't have an
10 answer to. Just don't feel bad about it. Most of those are
11 Supreme Court.

12 MR. DUECKER: Senator, I would tell you that my
13 legal training and experience tells me that if the questions
14 are being asked, the law is unsettled.

15 SENATOR HAYWOOD: I understand. Now, I'd like to
16 get a better sense of what was delegated before the suspended
17 license. Could you share with me what kind of functions were
18 delegated to either the First Deputy or the executives and the
19 tier below that? And I give this context, the hearing of the
20 Deputies and the First Deputy, there was sharing that I
21 believe the criminal investigations had already been delegated
22 to the executive director for Criminal. Is that your
23 understanding?

24 MR. DUECKER: That's true, and then he in turn
25 delegates those authorities to his Chief Deputies Attorney

1 General, who are the senior attorneys below him, and then to
2 the line attorneys below that.

3 SENATOR HAYWOOD: So could you give us a picture
4 of what was key functions, key activities, that were delegated
5 prior to the suspension? I'm just trying to get a sense of
6 how you operate.

7 MR. DUECKER: Yeah, I would say that as I
8 mentioned, most of the functions that would need to be
9 delegated from the Attorney General as a consequence of her
10 license being suspended were delegated well before her license
11 being suspended, because that's the way this office works.
12 Now, some Attorneys General in the past may have wanted to
13 hold that authority and the exercise of that authority higher
14 up on the organizational chart. Under General Kane, she has
15 insisted on allowing our middle managers, so to speak, whether
16 it's on the legal side or the operational side, to exercise a
17 lot more of that authority, most importantly because it's more
18 efficient, and it usually ends up in greater results. So she
19 has shown great leadership in that respect.

20 Under those circumstances, nothing has really
21 changed between when she was -- when she had an active license
22 and now under her suspension. I can't really answer the
23 questions from the legal standpoint because I'm not
24 necessarily privy to the day-to-day legal discussions going on
25 inside the office. I can tell you that we have a fairly good

1 working relationship and a good delegation system where those
2 decisions are pushed down below, well below her as Attorney
3 General. I'm talking about the legal decisions.

4 Same thing for the operational decisions. As
5 Chief of Staff, I delegate a tremendous amount of authority to
6 people that work for me.

7 SENATOR HAYWOOD: Now, could you share with me a
8 little bit more about the role of the investigators? These
9 are the non-legal, non-lawyers who are in the Office of
10 Attorney General. What is it that they do and what's the
11 authority that they have?

12 MR. DUECKER: They have the authority under, from
13 a drug law enforcement standpoint, I don't know all of, I
14 think there's 25 or so different State statutes that we derive
15 authority for investigations, and I don't know all of them off
16 the top of my head. From a drug law enforcement standpoint,
17 we have the substance abuse -- I'm sorry, the Controlled
18 Substance, Drug, Device and Cosmetic Act, we have some other
19 acts that fall into that as well. The investigators have the
20 authority to go out and investigate on behalf of the Attorney
21 General's Office and the Commonwealth crimes committed under
22 that act and others.

23 Before General Kane came onboard, the vast
24 majority of investigations were actually run by attorneys.
25 Under General Kane, she--I think very wisely--decided that

1 investigators investigate and lawyers prosecute. And coupled
2 with her strategic mandate, her strategic focus, in that we
3 are trying to go after drug trafficking organizations in
4 Pennsylvania at the highest levels, and when we say the
5 highest levels, we're talking about, hopefully anyway, into
6 Mexico, or certainly into elements of the cartels along the
7 southwest border. You have to have the operational mindset to
8 actually go into these investigations and not be necessarily
9 controlled by non-investigators making decisions that have
10 absolutely nothing to do with the operational aspects of the
11 office.

12 SENATOR HAYWOOD: I understand. Now, how many
13 investigators does the office have, approximately?

14 MR. DUECKER: You know, our numbers have been
15 fluctuating quite a bit just due to normal, normal attrition,
16 budget impasse issues, and some other things. I think that we
17 are -- roughly a third of our agency, which is about 830, are
18 investigators. And that kind of spans drug law enforcement,
19 which is by far the largest, and then you have the agents that
20 are part of the Bureau of Criminal Investigations, Bureau of
21 Special Investigations, Medicaid fraud and insurance fraud
22 investigators.

23 SENATOR HAYWOOD: And what is the ratio of
24 lawyers? How many lawyers are in the Office of AG?

25 MR. DUECKER: It's several hundred. I think that

1 out of the office of 830, over two-thirds of that office, of
2 our office of 830, are agents and support staff. And then the
3 balance of that, it may be close to 300, I'm not sure. It may
4 not be that many. Between 250 and 300, I think.

5 SENATOR HAYWOOD: So of the 830 or 800-some folks
6 who are in the Office of Attorney General, you're saying well
7 less than half are actually attorneys?

8 MR. DUECKER: It would be less than a third.

9 SENATOR HAYWOOD: Less than a third. So if less
10 than a third of the office are attorneys, and two-thirds are
11 non-attorneys, I'm assuming there's no requirement to have a
12 law license to supervise two-thirds of the office?

13 MR. DUECKER: There isn't, and there's no
14 requirement to have a law license to supervise our
15 investigators, up to and including the Special Agents in
16 Charge of each of the bureaus.

17 SENATOR HAYWOOD: Thank you.

18 CHAIRMAN GORDNER: Senator Scarnati, followed by
19 Senator Yaw.

20 SENATOR SCARNATI: Thank you. Just taking off
21 from Senator Haywood's questioning and statement. You know,
22 the Constitution is pretty clear. Speaking to the Attorney
23 General, "he shall be the chief law officer of the
24 Commonwealth and shall exercise such powers and perform such
25 duties as may be imposed by law." So what is it? Does she

1 have to be an attorney? Doesn't she have to be an attorney?
2 How can she stand up and take credit for all these great
3 prosecutions, fighting drug cartels, saving old people,
4 defending the Constitution, but yet she's not involved in all
5 the day-to-day operations?

6 MR. DUECKER: Oh, she is. She's absolutely--

7 SENATOR SCARNATI: You can't even tell me when
8 she's been to work last. I had four Deputies in here at the
9 last hearing, and the four of them couldn't tell me when she's
10 been to work last. So what is it? You told me you're her
11 Chief of Staff, the closest person on the staff. And I can
12 guarantee you that the chiefs of staff that are sitting in
13 this room, if I asked them where their elected official boss
14 has been in the last 10 days, they could sit here and give me
15 an answer. Why can't you? What is it?

16 MR. DUECKER: I'm not sure what the question is.
17 What are you asking me? My testimony stands. I don't control
18 her schedule and--

19 SENATOR SCARNATI: So you're telling me under oath
20 that you do not know her schedule?

21 MR. DUECKER: I do not -- no, I don't know her
22 schedule, and I--

23 SENATOR SCARNATI: What are you telling me under
24 oath? Because I want to make sure I get this clear. You do
25 not know her schedule where she has been in the last 10 days?

1 MR. DUECKER: I don't.

2 SENATOR SCARNATI: You do not?

3 MR. DUECKER: I do not. I have--

4 SENATOR SCARNATI: Has she been into work in the
5 last 10 days in an office?

6 MR. DUECKER: She has, and I've met with her--

7 SENATOR SCARNATI: So how do you know that?

8 MR. DUECKER: Well, I have met with -- knowing her
9 schedule and meeting with her on a periodic basis are two
10 different things. I don't -- I'm not privy to her calendar.
11 I don't know what her schedule is outside of the meetings that
12 I have with her or the meetings that she has down in
13 Harrisburg or the teleconferences that we have up in Scranton.

14 SENATOR SCARNATI: So when was the last time you
15 had a meeting with her in the office?

16 MR. DUECKER: In the office? I believe it was
17 middle or end of last week, so.

18 SENATOR SCARNATI: So was that 10 days ago?

19 MR. DUECKER: Of last week.

20 SENATOR SCARNATI: Was that within the last 10
21 days?

22 MR. DUECKER: Of course.

23 SENATOR SCARNATI: Well, why couldn't you tell me
24 that?

25 MR. DUECKER: You asked me if I knew what her

1 schedule is. I don't. I'm not privy to her day-to-day
2 schedule.

3 SENATOR SCARNATI: In the last 10 days.

4 You see, my problem is, my problem is you can't
5 have it both ways. You can't be this effective, worldly,
6 well-respected Attorney General with all these great
7 appointments and positions, defending the Constitution,
8 defending everybody in this Commonwealth, but you don't come
9 to work, nobody knows what you're doing--

10 MR. DUECKER: She does come to work.

11 SENATOR SCARNATI: --she's not privy to details,
12 she can't make the decisions, and if she is making the
13 decisions, it's in violation of the law with her suspended law
14 license.

15 So let me ask you this question: You have said
16 several times in front of this committee, quote, you don't
17 want to be accused of practicing law in Pennsylvania without a
18 law license. Why is that.

19 MR. DUECKER: Why would I not want to be accused
20 of--

21 SENATOR SCARNATI: You said, you said, I'm not an
22 attorney with a law license in Pennsylvania. You don't want
23 to be accused of practicing law in Pennsylvania without a law
24 license. That's what you said.

25 MR. DUECKER: That's what I meant.

1 SENATOR SCARNATI: Okay. Well, why don't you want
2 to be accused then? What difference does it make?

3 MR. DUECKER: What difference could it make?

4 SENATOR SCARNATI: I'm asking you.

5 MR. DUECKER: I don't think anybody wants to be
6 accused of anything they don't do.

7 SENATOR SCARNATI: But what are the repercussions
8 of being accused of practicing law in Pennsylvania without a
9 law license?

10 MR. DUECKER: I have no idea because the
11 Pennsylvania Bar doesn't have any jurisdiction over me.

12 SENATOR SCARNATI: Well, why are you so worried
13 about being accused of it?

14 MR. DUECKER: I'm not worried about it. I'm
15 worried about--

16 SENATOR SCARNATI: Well, you said, three times you
17 said you don't want to be accused.

18 MR. DUECKER: Never said I have been accused. I
19 said I didn't want to be accused.

20 SENATOR SCARNATI: You said you don't want to be
21 accused.

22 MR. DUECKER: And there's a bunch of things I'm
23 sure that you would not want to be accused of either, Senator,
24 and it's on principle alone.

25 SENATOR SCARNATI: Well, I wake up in the morning

1 worrying about being accused of a lot of things other than
2 having a law license.

3 Thank you, Chairman.

4 CHAIRMAN GORDNER: Senator Yaw.

5 SENATOR YAW: Thank you, Mr. Chairman.

6 I have a couple of lines of issues that are of
7 concern to me, and one of them you mentioned real early on in
8 your testimony about the court case involving delegation.
9 Criminal defendants are raising the issue that because the
10 Attorney General does not have a law license, she has no
11 authority to delegate any responsibility to any Deputy. I
12 mean, and the court case you cited said that the judge
13 indicated that that was not a good argument.

14 MR. DUECKER: Correct. No, he dismissed it as an
15 argument.

16 SENATOR YAW: I don't disagree with you, because
17 that argument, I think, though, is very real, and we had
18 district attorneys that sat here and said they understood why
19 criminal defendants were raising that argument, because not to
20 raise it they would be accused of being ineffective counsel.
21 And probably it's encouraging that there's a Common Pleas
22 decision now that says, okay, that is not a good argument.
23 But we're not going to know the final answer to that until
24 somebody takes it up on appeal and we find the answer. And
25 whether we think it's not good or it's facetious or whatever

1 it is, it's something that's out there. And it's of concern
2 to me because it could--we don't know what the appellate
3 courts might do, you know, and it could cause a real problem.

4 You have a naval background, and I think that you
5 understand, you know, as a commander in any unit, if you're
6 going to delegate authority, you have to have the authority to
7 start with before you can delegate something to somebody. And
8 I think that the argument is that simple. And that is the
9 concern of mine. And I'm not sure, I'm not asking you a
10 question, but, you know, that's where my head is in this.
11 Maybe I think it's a silly argument too, but nevertheless,
12 there is some logic to it.

13 The other thing is that, and you've agreed with
14 this, and this comes down to the whole thing. Once again, you
15 know, as a commander of a unit, you're responsible for
16 everything your unit does or fails to do. You know that from
17 your military background. And you've given a great background
18 as to all the side things that go on with the Attorney
19 General's Office. And in the last round of questioning you've
20 deliberately, you've avoided talking about the legal issue,
21 which is about one-third of the population of the Attorney
22 General's Office. And I understand that. But that is a major
23 concern, and that's what this whole license, law license
24 suspension involves. It involves one-third of this office.
25 It involves the legal aspect of the office and what can and

1 can't be done. I mean, in my opinion, and I think that you
2 agree with this, with the issue that faces us is this: is that
3 much the same as any other commander, whatever, but a lawyer
4 in Pennsylvania can't give legal advice. Do you agree with
5 that?

6 MR. DUECKER: I would agree--

7 SENATOR YAW: Or a suspended lawyer in
8 Pennsylvania cannot give legal advice.

9 MR. DUECKER: I would agree with that.

10 SENATOR YAW: And based on the questions that I
11 asked you before under the Commonwealth Attorneys Act, I think
12 it's pretty clear that in following up with what Senator
13 Scarnati said, the statutory language in the Commonwealth
14 Attorneys Act, following the Constitution, says that there are
15 duties assigned to the Attorney General, and it's very
16 specific that the Governor asks the Attorney General for
17 advice. Now, somebody else may provide the background, but
18 the Governor can ask, and that's the person that they go to.
19 It seems to me very simple. We have a suspended lawyer who
20 can't give legal advice, we have a statute that requires that
21 person to give legal advice, but the person can't do it, so
22 they can't fulfill the requirements of the statute. I mean,
23 that's as simple as I can make this whole argument in those
24 two points - the delegation plus being able to meet the
25 requirements of the statute.

1 Thank you, Mr. Chairman.

2 CHAIRMAN GORDNER: Thank you.

3 Just one clarification, and maybe you can update
4 me. My knowledge in the past in the Attorney General's
5 Office, there was three major divisions. There was the
6 Criminal Division, there was the Civil Division, and there was
7 the Consumer Division.

8 MR. DUECKER: Yeah, the Public Protection
9 Division.

10 CHAIRMAN GORDNER: Okay, the Consumer is the
11 Public Protection?

12 MR. DUECKER: Yes.

13 CHAIRMAN GORDNER: Maybe the correct name or the
14 updated name. So in regard to cases that come out of the
15 Criminal Division, my understanding that currently Kathleen
16 Kane is not able to make any final decisions involving any
17 cases that come out of the Criminal Division. Is that
18 accurate, to the best of your knowledge?

19 MR. DUECKER: To the best of my knowledge, I would
20 have to defer to the Executive Deputy Attorney General for
21 Crim and First Deputy on that.

22 CHAIRMAN GORDNER: Okay. Out of the Civil
23 Division, any cases that are going to be brought under the
24 Civil Division, currently Kathleen Kane cannot make any final
25 decisions in regard to those?

1 MR. DUECKER: Same answer.

2 CHAIRMAN GORDNER: To the best of your knowledge?

3 MR. DUECKER: I would argue, though, that that
4 doesn't mean that she would not be privy to them.

5 CHAIRMAN GORDNER: Okay. And out of the Consumer
6 or Public Protection Division, any cases that are investigated
7 and followed through and then filed, she would not be able to
8 make any final decisions in regard to any of those cases
9 currently, to the best of your knowledge?

10 MR. DUECKER: Yes.

11 CHAIRMAN GORDNER: Okay.

12 Mr. Duecker, we thank you for your two-plus hours
13 of testimony and being able to answer the questions before
14 you. You're dismissed. Thank you.

15 MR. DUECKER: Thank you.

16 CHAIRMAN GORDNER: All right, according to the
17 letter from Kathleen Kane dated today, she did authorize and
18 delegate former Governor Edward G. Rendell to testify on her
19 behalf in regard to the issue before the committee. I see
20 that former Governor Edward G. Rendell is here. Governor, if
21 you want to come forward. I guess before you sit, I'll swear
22 you in.

23 (Whereupon, GOVERNOR EDWARD G. RENDELL, was duly
24 sworn.)

25 CHAIRMAN GORDNER: Thank you. You may be seated.

1 Governor, I will ask you to state your name, and
2 I'm going to, and hopefully this was told to you, but the
3 specific question before this committee is the ability of an
4 Attorney General to perform the duties of her office with an
5 indefinitely suspended law license. So as Chair, I will
6 restrict your comments to that question. Your knowledge, I
7 guess, as a former Governor, I'm not sure what current
8 knowledge you would have, but the question before the
9 committee is her ability to perform the duties of Attorney
10 General with an indefinitely suspended law license.

11 So in regard to that subject, you're willing to go
12 ahead and make a statement, and then we'll have questions from
13 the committee. Thank you, Governor.

14 GOVERNOR RENDELL: Sure. Thank you, Senator. I
15 do understand that, and I want to correct the Attorney
16 General's transmission to you. I'm not here to support her
17 position, per se. I'm here to talk about the legal issue,
18 because I think it is an important legal issue. And I
19 happened to come out on the issue that I would advise the
20 committee and the Senate not to remove her based on the
21 suspended license. But I'm not here for her or to support any
22 particular position or individual. It's an interesting legal
23 question, and it goes back to my time as district attorney of
24 Philadelphia.

25 As you may know, I was district attorney of

1 Philadelphia for eight years, from 1978 to 1986. Before that,
2 I spent nine years in the district attorney's office, two as a
3 summer intern, seven as an assistant district attorney,
4 including being chief of the homicide unit, perhaps the most
5 impactful unit in the district attorney's office. And during
6 that time I was in charge of an office of approximately 160
7 attorneys, about 85 or 90 county detectives, and about 100
8 support personnel, from secretaries to paralegals and the
9 like. And the vast, vast majority, well over 95 percent of my
10 duties were administrative or policy setting or
11 communications, PR, and outreach. In none of those functions,
12 in none of those functions did I act as a lawyer. I acted as
13 an elected official. I acted as a policymaker. The district
14 attorney, as the Attorney General, makes policy for that
15 office.

16 Let me just give you a quick rundown of the things
17 that I did. Administratively, I was actively engaged in the
18 hiring, firing, and disciplining of attorneys and county
19 detectives. No one got hired without me interviewing them
20 personally, no one got disciplined without me reviewing the
21 charges and any statements they had. We had a hiring
22 committee. In that committee there were four lawyers and two
23 non-lawyers. I reviewed their decisions, reviewed their
24 recommendations, and made the ultimate decision after I
25 interviewed all the prospective attorneys.

1 Secondly, I had budgetary responsibility. So
2 hiring decisions, no need for me to have been a lawyer. I
3 brought the same common sense to that decisionmaking process
4 as I did as mayor and Governor. Budget. I was intimately
5 involved in the preparation of the yearly budget. I was
6 intimately involved in decisions on ongoing budget questions,
7 on how much money we could spend, if we were running a deficit
8 in the middle of the year, how we corrected it. And I was the
9 spokesman for us in city council. I testified in front of
10 city council on our budget request, why we needed this amount
11 of money for this function, why we needed that amount of money
12 for that function. And I often would, after city council
13 would rule, I would take my appeal to the mayor. Mayor Rizzo
14 was mayor for my first two years as district attorney. And if
15 council had turned my request down, I would go to see Mayor
16 Rizzo and I would tell him, Mayor, it's a war out there, and
17 he would pound the desk and I would get everything that I
18 wanted. Nowhere in those budgetary discussions was it
19 necessary for me to be a lawyer. It was necessary for me to
20 have the sense and the policymaking ability that I did have as
21 mayor and Governor.

22 Where the office should be. During my eight years
23 as district attorney, we relocated our office three times. We
24 were in, when I became district attorney, we were in a fancy
25 downtown office building known in Philadelphia as the

1 Clothespin Building. They wanted us to re-up our lease, but
2 they charged us an inordinate amount of money, and I thought a
3 public office should not be in a fancy building like that
4 paying an inordinate amount of money, and I made the decision
5 to move. That decision didn't require any legal ability or
6 legal skill. It required administrative skill, policy, and
7 judgment. The same that, hopefully, I showed as mayor and
8 Governor.

9 Training. When I became district attorney, I
10 didn't think the training that our new assistant district
11 attorneys received was adequate, so I set up a training
12 program. I got money from council to build a mock courtroom
13 with videotape, and that whole upgrading of our training
14 function was done by me in an administrative capacity. I
15 didn't need to be a lawyer to know that we needed that
16 function.

17 Salaries and promotions. I was intimately
18 involved in what's very important to our attorneys, as well as
19 our detectives and support personnel, what salaries they were
20 going to be paid initially, when they would get increases in
21 salaries, when they would get promotions from unit to unit. I
22 didn't need to be a lawyer to assess the value of the
23 individuals in their performance, and I made those decisions
24 as the administrator.

25 Deployment. How many attorneys do I give to

1 homicide division, how many attorneys do I give to the major
2 crimes division, how many attorneys to the motions divisions,
3 how many attorneys to the appeals division? Those are
4 administrative decisions, and I didn't need to be a lawyer to
5 carry out those decisions.

6 Grants. We were very active in seeking grants
7 from foundations, from Federal government, the Federal
8 government and State government. I personally supervised the
9 preparation of those grant requests, and often I would come
10 and appear before those bodies and make the requests for
11 grants. I didn't need to be a lawyer to do that. I did the
12 same thing as mayor, and later as Governor, and I wasn't
13 acting as a lawyer.

14 That's about 90 percent of my job right there --
15 not 90 percent, about 80 percent of my job right there was
16 administrative, and those are the major functions, and I
17 didn't need to be a lawyer for any of them.

18 The second function I did was what I call the PR
19 function, the communications function. So, for example, one
20 of the great communications, and you all know this because you
21 do the same as I did when I was DA, mayor, or Governor, is
22 communicating with the public; and to that end, mail. I read
23 every piece of mail I received as district attorney. Passed
24 it on to the appropriate person, answered -- often I would
25 dictate letters in response to the citizens' letters that I

1 received. I didn't act as a lawyer in formulating those
2 responses or sending out those letters to be answered by
3 others. That was purely a way of having significant outreach
4 with some of my constituents.

5 Secondly, I made speeches. I made speeches at
6 breakfast, I made speeches at lunchtime, and I made speeches
7 at night. And those speeches would rally support for some of
8 the initiatives that we wanted to do as an office. I didn't
9 need to be a lawyer to make those speeches any more than I did
10 when I was mayor or Governor.

11 The third thing I did was I instituted something
12 called "Wednesday Night Talk to the DA." It had never been
13 done before, but I sat in my office from 6:00 to 11:00 on
14 Wednesday nights and would meet with any citizen who wanted to
15 see me about an issue, about a concern, et cetera. I did this
16 throughout most of my eight years as district attorney. I
17 didn't need to be a lawyer to hear those complaints and to try
18 to find ways to rectify the things that the citizens were
19 complaining about.

20 Press conferences. I did press conferences,
21 because press conferences, as all of you know, is the way that
22 we communicate to our constituents what we're doing, how we're
23 doing it, why we're doing it. And I didn't need to be a
24 lawyer or to employ legal skills to do press conferences.

25 I started a newsletter, a newsletter that we sent

1 to community groups--and in Philadelphia, there are some
2 300-plus community groups--on a monthly basis. I did it to
3 inform and continue good outreach and solicit suggestions.
4 But also did it to push for policy initiatives that we were
5 trying to do to get citizen support. That was a very
6 important component of what I did. And if you combine that
7 with my administrative function, I'd say I'm up to about 90
8 percent of my functions.

9 Lastly, I made policy decisions. And those policy
10 decisions were very significant. I decided that we needed new
11 units when I became district attorney, and sometimes in the
12 middle of my service as district attorney. So, for example, I
13 started the first police brutality unit to investigate issues
14 of police brutality that the district attorney's office ever
15 had. I didn't do that because I thought it was legally
16 required, I did it because I thought it was good policy. And
17 when you think of what's happening today, it was a very good
18 policy at the time.

19 I instituted a rape unit with specially trained
20 lawyers to try rape cases. They did nothing else. I did it
21 because I didn't think that victims of sexual assault were
22 getting proper handling in the court system. I was persuaded
23 to do this by the Citizens Against Rape, and I didn't need to
24 be a lawyer to know that they weren't getting proper treatment
25 in the courts, so I produced a new unit.

1 In the middle of my time as district attorney, I
2 wasn't satisfied that we were getting significantly long
3 sentences for repeat offenders, so I established a career
4 criminal unit. I got a Federal grant for the career criminal
5 unit, and we went forward and was eminently successful in
6 dramatically increasing the sentences given to recidivistic
7 career criminals. Didn't need to be a lawyer to make that
8 judgment.

9 The second thing I did in the policy realm was
10 legislation. So I don't think any of you were here when
11 Governor Thornburgh was governor, but I proposed to Governor
12 Thornburgh that we institute a mandatory minimum sentence for
13 five specific crimes of violence, so that judges could be free
14 to give more. So assume someone was guilty of aggravated
15 assault with a firearm against a policeman. It calls for 10
16 to 20 years as a maximum, but no judge could give less than 5
17 years. Mandatory minimums, not maximums. And I proposed the
18 legislation to Governor Thornburgh. We submitted legislation
19 to Governor Thornburgh. I lobbied for the legislation not
20 only with Governor Thornburgh, with members of the
21 legislature. We created public outcry to support that
22 legislation. It got passed and it is still on the books
23 today. Didn't need to be a lawyer to do that function.

24 Death penalty cases. I had a rule in the office,
25 and this is an interesting aspect, that no one could seek the

1 death penalty when we got a first-degree murder conviction
2 without first coming to see me. They would come to see me
3 with the chief of the homicide unit, they would review the
4 facts, review the background of the offender, if there were
5 any extenuating circumstances, they would present them to me.
6 And as a policy, I wanted to limit the number of first-degree
7 murder cases that we sought the death penalty in, because in
8 Philadelphia during my first year as district attorney, for
9 example, we had over 100 first-degree murder convictions. I
10 wanted to limit them to the most egregious cases with the most
11 egregious offenders. Didn't need to be a lawyer to do that.
12 I needed to be a policymaker to decide how much, when, where,
13 how egregious those were. The law had all been settled. The
14 conviction was already returned.

15 Lastly, enforcement of laws. When I became
16 district attorney, there was a law on the books called sodomy.
17 The legislature, I don't know if any of you voted to repeal
18 that law, but you eventually did repeal the sodomy law. And
19 sodomy would, in those days, be committed by two adults who
20 were doing what were called unnatural sex acts, and they were
21 guilty of sodomy. That would include people having lesbian
22 and gay sex. The police would, because the law was on the
23 books, the police would arrest those people if they saw them
24 doing it, and I decided that that wasn't a good use of police
25 time. I decided that as long as it was consenting adults,

1 there was no governmental policy that justified the allocation
2 of resources. I made that decision not as a lawyer but as a
3 policymaker. That was about 98 percent of my job.

4 I want to refer, you asked Mr. Duecker some very
5 good questions. You went through that list and asked did the
6 Attorney General -- was she authorized to do this, was she
7 authorized to do that. I just wrote down three of them real
8 quickly. One was authorized to bring suit. Yes, the Attorney
9 General, even in her status, could bring suit because often
10 the decision to bring suit is not a legal one. It's a policy.
11 So as you may be aware, several, I don't know if the Attorney
12 General joined in this, but several district attorneys sued
13 Governor Wolf when he instituted the moratorium on the death
14 penalty. They sued him and said he didn't have the power to
15 do it. That's a legal decision in the sense that they thought
16 he didn't have the legal power to do it, but it was a policy
17 decision to see whether you'd bring that suit or join that
18 suit. And the policy decision would have been tempered by the
19 fact that there was a committee that was reviewing the
20 appropriateness of the death penalty, how the death penalty
21 had been applied in Pennsylvania. And had I been district
22 attorney of Philadelphia at that time, I would have agreed
23 that we should wait until that commission came back with its
24 report. Not as a lawyer, but because I'd be interested as you
25 are, you are, and I don't know how many lawyers are on the

1 bench, but in the way that the death penalty is being applied
2 in Pennsylvania. I'd be interested in seeing all those facts,
3 statistics, and examples.

4 You asked if it was okay for the Attorney General
5 -- could the Attorney General make a decision to join amicus
6 briefs. And again, often those are policy decisions, not
7 legal decisions. So as you know, many Attorneys General
8 across the United States decided to file a lawsuit or come in
9 as amicus saying that the Affordable Care Act was
10 unconstitutional. That was a policy decision as well as a
11 legal decision. The policy was whether the Affordable Care
12 Act was, in fact, something good or bad for our citizens of
13 the State. Those decisions were made on policy, and to be
14 frank, when you look at who joined and who didn't - on
15 politics, not on legal decisions.

16 You asked about wiretap decisions. Often, the
17 decision on wiretap is not a legal decision, it's again a
18 policy decision. So, for example, if someone came to me and I
19 was the DA and said, we have indication that the mayor has
20 been betting or running a betting consortium on sports and we
21 want to wiretap his office to get evidence of this so we can
22 prosecute him. Well, as district attorney of Philadelphia, I
23 wouldn't authorize a wiretap against a mayor, even if it was
24 legally okay to do it, because it's a policy decision. You
25 don't put a wiretap in the mayor's office for running a sports

1 betting pool.

2 So what I'm saying is there are some decisions
3 that are mixtures between legal decisions and policy
4 decisions, but 97 percent of the work of a prosecutor in a
5 major office inherently has to be administration, policy,
6 communications, and outreach. At least 97 percent. And I
7 think that's the case with an office as big as the Attorney
8 General's Office here in Pennsylvania.

9 I would also say, in closing, and then I'm happy
10 to answer any questions, I think we're in a very difficult
11 position because as you know, the Attorney General has sought
12 reinstatement of her license from the Supreme Court. There
13 now is almost an entirely new Supreme Court from the one that
14 suspended her. What would happen if this committee
15 recommended that she be removed on this issue, the Senate as a
16 whole voted and voted to remove her, and then a week later the
17 Supreme Court decided that they were going to reinstate her
18 license? Does her license get reinstated automatically? Do
19 we have to come back to the Senate for action? How do you
20 frame your decision? Are you removing her as long as her
21 license remains suspended? It's a very difficult question
22 because she's going before a new court, at least three judges
23 who have never heard this issue before. I would urge you not
24 to take action at all, but certainly not to take action until
25 the Supreme Court has ruled on her request.

1 And lastly, let me say this. I know this is a
2 controversial subject. I care very much about the conduct of
3 public officials and law enforcement officials. I was a law
4 enforcement official for 18 years of my life. I was a public
5 official for 16 years of my life. I care very deeply about
6 the reputation. And there's been a lot of roads gone down
7 here, and if you believe that the Attorney General's conduct
8 was egregious, the proper remedy is not this one, because this
9 one is clouded, it's not going to ever be clear. It hasn't
10 been used for 100 years. The proper remedy is impeachment,
11 and I would urge you to step back and begin the impeachment
12 process, where all of this can be heard. But to remove her on
13 this issue, where I think she probably has the right side of
14 the argument, that she can continue to function and do her job
15 and the citizens of Pennsylvania wouldn't suffer, I think
16 would be the wrong thing to do. And I thank you for the
17 opportunity to express my opinion.

18 CHAIRMAN GORDNER: Thank you for your testimony.
19 A couple of questions, and then we'll ask committee members
20 for questions as well.

21 Just to clarify, you were the district attorney in
22 Philadelphia County from 1978 to 1986?

23 GOVERNOR RENDELL: The elected district attorney,
24 right.

25 CHAIRMAN GORDNER: All right. So you were last in

1 office about 30 years ago?

2 GOVERNOR RENDELL: Right. And I served for nine
3 years as an assistant before that under Arlen Specter, and
4 Arlen Specter, interestingly, never overruled my judgment on
5 any decision I made as chief of homicide. Interesting. And I
6 don't know if any of you ever worked for Arlen Specter, but
7 that's saying a lot.

8 CHAIRMAN GORDNER: You currently have a law
9 license?

10 GOVERNOR RENDELL: Oh, yeah.

11 CHAIRMAN GORDNER: Has your law license ever been
12 suspended?

13 GOVERNOR RENDELL: No. But interesting you ask
14 that, because I was thinking on the way up, you can lose your
15 law license in Pennsylvania if you don't fulfill your CLE
16 requirements. The lawyers on the panel know what I'm talking
17 about. Let's assume for a second that we had a district
18 attorney or Attorney General who just was too busy or thought
19 the CLE requirements were, you know, not important, et cetera,
20 and didn't fulfill the requirements of the CLE, and the court,
21 after several warnings, decides they had no recourse but to
22 suspend her, or to suspend him. Would we be having these
23 hearings if someone had a suspended license because they
24 didn't fulfill their CLE requirements? Of course not. You're
25 having these hearings because of the other things that

1 Kathleen Kane is charged with doing. Do it the right way,
2 impeach her, if that's what you believe.

3 CHAIRMAN GORDNER: And that's apples and oranges,
4 Governor.

5 GOVERNOR RENDELL: I don't think so.

6 CHAIRMAN GORDNER: As you indicate, there's
7 several warnings that take place. It's, I think, about a 90-
8 or 120-day period that you have in order to get those CLE
9 requirements.

10 GOVERNOR RENDELL: And let's assume for some
11 reason the officeholder doesn't do it.

12 CHAIRMAN GORDNER: It's apples and oranges, so.

13 GOVERNOR RENDELL: No, it's not apples and
14 oranges.

15 CHAIRMAN GORDNER: It is.

16 GOVERNOR RENDELL: It's a suspended license.
17 You're saying you can't be an officeholder in a law
18 enforcement office with a suspended license. Would you really
19 suspend someone who lost their law license for failing--

20 CHAIRMAN GORDNER: After several warnings and not
21 doing the CLE.

22 GOVERNOR RENDELL: You would? I don't think so.

23 CHAIRMAN GORDNER: Well, it is apples and oranges.

24 Let me just -- we had a panel here of district
25 attorneys, District Attorney Heckler from Bucks County,

1 District Attorney Adams from Berks County, and the district
2 attorney from Somerset County. They all indicated that they
3 would not be able to perform the overwhelming majority
4 functions of their office with a suspended law license. So
5 you're going to disagree with all three of them?

6 GOVERNOR RENDELL: I am, and I do it respectfully,
7 but I will say that none of those offices are anywhere in the
8 scope of district attorney's office of Philadelphia. The only
9 office -- the only two offices that are even close to the
10 Attorney General are the district attorney of Allegheny County
11 and the district attorney of Philadelphia. Senator, I never
12 tried a case and I never handled an appeal in my eight years
13 as the elected district attorney.

14 CHAIRMAN GORDNER: Yeah, and no offense, I mean,
15 you very clearly stated that while you were district attorney
16 you were more a public official than you were a district
17 attorney. And you're obviously very proud of that, and that's
18 very interesting.

19 GOVERNOR RENDELL: I was a very good district
20 attorney. The district attorney's office did very, very well.

21 CHAIRMAN GORDNER: Just a second. You said you
22 were very much a public official.

23 GOVERNOR RENDELL: Right.

24 CHAIRMAN GORDNER: Not a district attorney.

25 GOVERNOR RENDELL: Right.

1 CHAIRMAN GORDNER: We happened to have a panel
2 here of three folks that were district attorneys--

3 GOVERNOR RENDELL: I was also district attorney.

4 CHAIRMAN GORDNER: --who are district attorneys
5 and are very proud of the fact that they involve themselves on
6 the criminal type of cases and the wiretaps and the
7 presentments and the arrests and stuff like that. You,
8 obviously, while you were district attorney, decided not to do
9 any of that, is that correct?

10 GOVERNOR RENDELL: Because of the scope of the
11 office. None of those offices have anywhere close to the
12 number of people, the number of cases that the Attorney
13 General or the district attorney of Philadelphia--

14 CHAIRMAN GORDNER: So if we were to ask the
15 district attorney from Philadelphia and if we were to ask the
16 district attorney from Allegheny County, Mr. Zappala, who I
17 think is going to be candidate for Attorney General, they
18 would indicate that they're strictly public officials and
19 they're not district attorneys and they don't make decisions
20 in regard to public cases, is that correct?

21 GOVERNOR RENDELL: The public office that they
22 hold is district attorney.

23 CHAIRMAN GORDNER: Right. And so right now, the
24 current DA from Philly and the current DA from Allegheny
25 County, to the best of your knowledge, make public decisions,

1 they don't make any district attorney type of criminal
2 decisions or legal decisions on a day-to-day basis?

3 GOVERNOR RENDELL: No. Deciding whether to
4 prosecute sodomy against two consenting adults is a district
5 attorney decision. But what I'm telling you is it's driven by
6 policy. And to make decisions based on policy, you don't
7 necessarily have to be a lawyer with an active license.

8 CHAIRMAN GORDNER: Let me give you a hypothetical.
9 Let's say that there is an Attorney General out there that is
10 going to -- or had the opportunity to prosecute some State
11 Representatives who are elected officials. And let's say they
12 decide not to do that. So let's just say in the hypothetical
13 that there was a county district attorney that asked for that
14 information, looked and reviewed the cases and decided to go
15 ahead and prosecute. They're making that decision on a public
16 official basis, or they're making that decision on a legal
17 basis?

18 GOVERNOR RENDELL: Probably a little of both.

19 CHAIRMAN GORDNER: All right. So there would have
20 to be a legal basis, and you'd have to have an attorney. Do
21 you have to be an attorney to be a district attorney?

22 GOVERNOR RENDELL: Yes. But there's nowhere that
23 says if you have your license suspended, you're automatically
24 disqualified from office.

25 CHAIRMAN GORDNER: So in your opinion, if a

1 district attorney has a suspended law license, they could
2 continue to operate?

3 GOVERNOR RENDELL: I think so. And by the way--

4 CHAIRMAN GORDNER: Is the answer "yes" or "no"?

5 GOVERNOR RENDELL: --if the Senate is so clear in
6 your desire to do that, just pass a law saying--

7 CHAIRMAN GORDNER: Well, again--

8 GOVERNOR RENDELL: --if any attorney, district
9 attorney, Attorney General has their license to practice law
10 suspended, they will forfeit their office. That's easy. Vote
11 it. Let's roll.

12 CHAIRMAN GORDNER: So if the Philadelphia district
13 attorney has a suspended law license, can continue to operate
14 and prosecute and do everything else?

15 GOVERNOR RENDELL: Can continue to be the elected
16 head of the office, yes.

17 CHAIRMAN GORDNER: And make decisions with regard
18 to the hypothetical that I just gave you in regard to pursuing
19 cases against State Representatives and judges and that sort
20 of thing?

21 GOVERNOR RENDELL: Yes, because--

22 CHAIRMAN GORDNER: That's--

23 GOVERNOR RENDELL: --because as district attorney
24 you rely -- in a large office you rely on your appeals chief,
25 your motions chief, your homicide chief. As I said--

1 CHAIRMAN GORDNER: And you're not making any
2 legal--

3 GOVERNOR RENDELL: --Arlen Specter never
4 overruled--

5 CHAIRMAN GORDNER: --any legal decision?

6 GOVERNOR RENDELL: --any decision that I made, the
7 evidence was sufficient to bring charges against an
8 individual.

9 CHAIRMAN GORDNER: And he didn't use his legal
10 background to do that?

11 GOVERNOR RENDELL: He essentially delegated on a
12 day-to-day basis his judgment to my recommendation.

13 CHAIRMAN GORDNER: He didn't use his legal
14 training to do that?

15 GOVERNOR RENDELL: I don't know.

16 CHAIRMAN GORDNER: You didn't use your legal
17 training at all? You were just a public official?

18 GOVERNOR RENDELL: I did as the chief of the
19 homicide unit, as an assistant DA, absolutely.

20 CHAIRMAN GORDNER: But when you were district
21 attorney, you didn't use your legal opinion to make decisions
22 as to whether to pursue cases or not?

23 GOVERNOR RENDELL: In the small percentage of
24 cases that I said.

25 CHAIRMAN GORDNER: How many cases -- in a year,

1 how many cases were prosecuted in Philadelphia County when you
2 were there 30 years ago?

3 GOVERNOR RENDELL: About 35,000.

4 CHAIRMAN GORDNER: 35,000. All right. And you
5 weren't involved in any of those, making decisions as to
6 whether to prosecute or not?

7 GOVERNOR RENDELL: Probably--

8 CHAIRMAN GORDNER: A handful?

9 GOVERNOR RENDELL: --20 to 30.

10 CHAIRMAN GORDNER: Okay. So again, and I get it.

11 GOVERNOR RENDELL: Involved in the decision, but
12 that doesn't necessarily mean that I used legal judgment. I
13 often used policy judgment. Like I said, the decision to
14 bring charges against two consenting adults for sodomy, that's
15 not a legal decision.

16 CHAIRMAN GORDNER: You did not review the legal
17 statute in order to make a decision?

18 GOVERNOR RENDELL: No. I knew the law was clear.

19 CHAIRMAN GORDNER: So you went against the law?

20 GOVERNOR RENDELL: I made a policy decision.

21 Sure. District attorneys do not prosecute every case on the
22 books. Do you know why, Senator? Because the offices
23 couldn't function. They make decisions all the time based on
24 policy. Yes, there's evidence against Mary Smith, but it's
25 not significant enough for us to prosecute, to waste our court

1 time prosecuting. We'll put her in the ARD program, or we'll
2 just drop charges. In fact, one of the things I did as
3 district attorney of Philadelphia is I instituted a charging
4 unit, and I got the charging responsibility. So now in
5 Philadelphia the police no longer decide what charges to place
6 on an individual, the district attorney's office does. And we
7 routinely--

8 CHAIRMAN GORDNER: So lawyers do.

9 GOVERNOR RENDELL: But we routinely--

10 CHAIRMAN GORDNER: Lawyers do.

11 GOVERNOR RENDELL: Yeah, lawyers do.

12 CHAIRMAN GORDNER: Okay.

13 GOVERNOR RENDELL: But we routinely make decisions
14 not to charge someone when it's clear that they violated the
15 law. We don't charge people in Philadelphia, for example, for
16 possession of a small amount of marijuana because the decision
17 is made not to waste court time on that. That's not a legal
18 decision, that's a policy decision.

19 Look, the answer is, your complaint with Kathleen
20 Kane isn't that she has a suspended license. Your complaint
21 with Kathleen Kane is her conduct. Impeach her.

22 CHAIRMAN GORDNER: That is not the issue before
23 this committee.

24 GOVERNOR RENDELL: I agree. But I'm just giving
25 you my two cents. I don't get the chance very often anymore.

1 CHAIRMAN GORDNER: That's apparent.

2 Senator Haywood, followed by Senator Scarnati.

3 SENATOR HAYWOOD: Thank you very much.

4 We've had some analogies used in some prior
5 hearings, one was a barbershop analogy. So the barbershop
6 analogy went pretty much as follows: If a barber loses their
7 license, then they can't cut hair. And so that analogy was
8 extended to the Attorney General's Office. The Attorney
9 General's Office can't practice law, then what's she doing
10 there? Now, I heard you say pretty much this large number of
11 non-legal responsibilities, which is pretty much what the
12 Chief of Staff said prior to your arrival. What I'd like to
13 get and what I've been trying to get a sense of is the
14 operation of some of these offices. When you were Governor,
15 I'm assuming you had some interaction with whoever was the
16 Attorney General at that time?

17 GOVERNOR RENDELL: I did. Attorney General
18 Corbett.

19 SENATOR HAYWOOD: And at that time, did you have,
20 would you say, mostly policy conversations with him, or they
21 were mostly legal determinations?

22 GOVERNOR RENDELL: Exclusively policy.

23 SENATOR HAYWOOD: Exclusively policy. And for
24 what? Is this a frequent kind of conversation, or was this--

25 GOVERNOR RENDELL: I would speak to the General 10

1 or 20 times a year.

2 SENATOR HAYWOOD: And in 10 or 20 times, you said
3 you never had a legal, they were all policy?

4 GOVERNOR RENDELL: All policy. Questions of
5 budget, questions of do we want to preempt and take over the
6 civil case from him? Things like that.

7 SENATOR HAYWOOD: Thank you.

8 CHAIRMAN GORDNER: Senator Scarnati, followed by
9 Senator Schwank.

10 SENATOR SCARNATI: Thank you. Good afternoon,
11 Governor.

12 GOVERNOR RENDELL: Good to see you, Senator.

13 SENATOR SCARNATI: Nice to see you. You're
14 looking well.

15 So under your testimony--

16 GOVERNOR RENDELL: You can ask me about the
17 budget. No.

18 SENATOR SCARNATI: We'll do that in the other
19 room.

20 So under your testimony, as you know, I'm not an
21 attorney, but it appears I could be a district attorney.

22 GOVERNOR RENDELL: Well, you only couldn't because
23 the law says you have to be an attorney.

24 SENATOR SCARNATI: Yeah.

25 GOVERNOR RENDELL: But by the way, do you know,

1 Senator, that you don't have to be an attorney to be a Supreme
2 Court Justice?

3 SENATOR SCARNATI: Well, it sounds, I mean, I
4 listened to your testimony of I didn't need to be an attorney.
5 I did this, but I didn't need to be an attorney. It almost
6 sounded like the Red Buttons "and I didn't get a dinner," you
7 know. You performed all these functions as DA, but you didn't
8 do it as a lawyer, they were functions of public relations.
9 It almost sounded like, and don't take this with any
10 disrespect, but it sounds like you were running for mayor
11 while you were a DA.

12 GOVERNOR RENDELL: No, no. Again, the
13 administrative in a large office is a very important function.
14 It's the key to whether that office can be effective. But
15 what I said, and I'm sorry if I didn't say it well enough or
16 succinctly enough, what I said is I didn't use any legal
17 judgment in the administration of the office, I used policy
18 judgment, just as I did when I was mayor or Governor. I was a
19 lawyer and I was admitted to practice, but I didn't use those
20 legal skills in administration.

21 SENATOR SCARNATI: But isn't it fair to say,
22 though, the legal skills come into play on the big issues?
23 The big issues while you were DA that you, the 20 or 30 you
24 made decisions on, those were because of your experience as a
25 prosecutor and experience as an attorney?

1 GOVERNOR RENDELL: To some degree, but they were
2 -- the biggest decisions were policy decisions. Like, for
3 example, starting a police brutality unit.

4 SENATOR SCARNATI: Okay, but--

5 GOVERNOR RENDELL: You have no idea how difficult
6 a decision that was back in 1978 in Philadelphia.

7 SENATOR SCARNATI: But on these big issues, let's
8 take a big issue that happened.

9 GOVERNOR RENDELL: Well, that's as big as it got.

10 SENATOR SCARNATI: Okay. Well, let's talk about a
11 big issue in Philadelphia back in, I think it was May 13,
12 1985. That's when the shoot-out, the bombing, and the fire
13 and the deaths at the MOVE house, okay?

14 GOVERNOR RENDELL: Right.

15 SENATOR SCARNATI: Who made the decisions on who
16 to investigate that death? Who made that decision?

17 GOVERNOR RENDELL: On who to investigate?

18 SENATOR SCARNATI: Whether or not to investigate
19 the shootings, the bombings, the fire, and the deaths at the
20 MOVE house on May 13, 1985. Who made the decision not to
21 investigate that?

22 GOVERNOR RENDELL: Well, there was investigation
23 on part of it, and part of it we deferred to the Federal
24 prosecutor. I made the decision to defer to the Federal
25 prosecutor.

1 SENATOR SCARNATI: And that's right--

2 GOVERNOR RENDELL: But that wasn't a legal
3 decision.

4 SENATOR SCARNATI: Well, I'm confused. Your quote
5 in the Philly paper of September 20, 1991, was "I made that
6 decision in two weeks." You made that decision.

7 GOVERNOR RENDELL: Right, I made it, but not
8 necessarily as a lawyer.

9 SENATOR SCARNATI: But you didn't make it as a
10 lawyer to not investigate bombings, fire, shoot-outs, and
11 deaths?

12 GOVERNOR RENDELL: I made the decision that given
13 our relationship with the police at the time, it would be
14 better, and given the fact that the Federal attorney had said
15 they were willing to investigate, that from a policy matter,
16 rather than have us and the police going at each other at that
17 level, that the Federal attorney would go ahead and do that
18 investigation.

19 SENATOR SCARNATI: Would you be comfortable with a
20 non-attorney, non-licensed attorney making that decision? Is
21 the public served, is the public served with decisions such as
22 this had you not been an attorney?

23 GOVERNOR RENDELL: But the question is, did I use
24 legal--

25 SENATOR SCARNATI: No, the question is -- no, let

1 me frame the question better then. You had to have used your
2 legal and prosecutorial background to make the decision
3 whether or not to prosecute and investigate that bombing and
4 shooting.

5 GOVERNOR RENDELL: My decision was made based on
6 the fact that the Federal U.S. Attorney was going to
7 investigate and that I thought it was better for the
8 administration of justice that the Federal U.S. Attorney do it
9 rather than the DA's office. That was not based on any legal
10 opinion.

11 SENATOR SCARNATI: No legal opinion?

12 GOVERNOR RENDELL: No. Legally, someone should
13 have investigated it. So the question was as a policy
14 decision, who was the better office to investigate it?

15 SENATOR SCARNATI: But you said you made the
16 decision in two weeks.

17 GOVERNOR RENDELL: I made the decision.

18 SENATOR SCARNATI: You made that decision.

19 GOVERNOR RENDELL: Absolutely.

20 SENATOR SCARNATI: And you did not make that one
21 bit on the fact of your legal background? You made it purely
22 on a public relations background?

23 GOVERNOR RENDELL: No, a policy decision.

24 SENATOR SCARNATI: Policy. Policy.

25 GOVERNOR RENDELL: Senator, let me go again.

1 Given the relationship between the Philadelphia Police and the
2 district attorney's office at that time, I made the decision
3 that it would be better off, and given the fact that the
4 United States Attorney was going to investigate, I made the
5 decision that it was better for the administration of justice
6 in Philadelphia County that the U.S. Attorney do it and not
7 the district attorney.

8 SENATOR SCARNATI: I accept that answer. But our
9 Attorney General can't do that. I accept your answer.

10 Thank you, Governor.

11 CHAIRMAN GORDNER: Senator Schwank, followed by
12 Senator Yaw.

13 SENATOR SCHWANK: Thank you, Senator Gordner.
14 Good to see you, Governor Rendell.

15 GOVERNOR RENDELL: Good to see you.

16 SENATOR SCHWANK: Thank you. Pretty good memory
17 and recall. A lot of activities.

18 GOVERNOR RENDELL: I haven't--

19 SENATOR SCHWANK: He must have drawn that back out
20 of you, to see Senator Scarnati.

21 Look, I'm not interested in laying any traps for
22 you or to -- I really, I'm not a lawyer, and what I'm really
23 most interested in is what you think exactly the Supreme Court
24 order means in terms of what the Attorney General can do or
25 can't do. To me, quite frankly, it doesn't mean that all the

1 legal knowledge, all of her training, all of her education has
2 just flown out of her head. It is still there.

3 GOVERNOR RENDELL: Right.

4 SENATOR SCHWANK: But what specifically can she
5 do, in your opinion, that stays within the letter of the
6 order?

7 GOVERNOR RENDELL: All of the administrative,
8 policy, communications, outreach functions of the Attorney
9 General's Office, that, my guess is, are the same 97 percent
10 as they were when I was district attorney.

11 SENATOR SCHWANK: So what you're saying is that
12 the office can function even if she doesn't have a license?
13 That the duties -- that the people of Pennsylvania are still
14 being served, that it's extraordinary, certainly it is, and
15 maybe she can't sign something, but--

16 GOVERNOR RENDELL: But someone can.

17 SENATOR SCHWANK: Yeah.

18 GOVERNOR RENDELL: And I think Senator Yaw asked a
19 very interesting question about the lawsuit brought by the
20 criminal defense lawyers. That's a spurious lawsuit. Anybody
21 could have told you that it had about as much chance of
22 succeeding as -- it just wasn't. I mean, you're going to
23 throw something out because Kathleen Kane didn't bring it and
24 her First Deputy or her Executive Deputy signed the
25 indictment? Of course not.

1 SENATOR SCHWANK: So you have pretty good recall
2 of what you did--

3 GOVERNOR RENDELL: I never signed an indictment.
4 The head of the indictment division signed every indictment.
5 I never signed one.

6 SENATOR SCHWANK: So you have pretty good recall
7 of what happened in the district attorney's office. Then when
8 you were serving as the Governor and you worked with an
9 Attorney General, you're independent offices, obviously, but
10 in your recollection, what were the specific duties of the
11 Attorney General, and was the Attorney General as intimately
12 involved in all of the details of the office, the operations
13 of the office? That's pretty broad, but.

14 GOVERNOR RENDELL: And I couldn't really tell you
15 that. I don't know how Governor Corbett ran his office. Some
16 people get it, some people are Jimmy Carter, they said he used
17 to decide who could use the White House tennis court, and he
18 was not a very good delegator. Other elected officials are
19 good delegators. I couldn't tell you about the inner workings
20 of Governor Corbett's office, but I will tell you that when
21 Governor Corbett and I discussed -- when he called me to
22 discuss issues, they were all policy considerations. We
23 didn't sit around and say, well, the Supreme Court said this
24 in Jones vs. Dubrow. We didn't do it. They were policy
25 considerations.

1 SENATOR SCHWANK: Does making policy decisions
2 violate the Supreme Court order?

3 GOVERNOR RENDELL: No, absolutely not.

4 SENATOR SCHWANK: So the Attorney General is
5 operating appropriately if she's involved in policy decisions?

6 GOVERNOR RENDELL: Sure. If she decided to, let's
7 say, switch a third of the personnel from the Public
8 Protection Unit to the Drug Enforcement Unit, that's a policy
9 decision, and she certainly has absolute right, even under the
10 Supreme Court order, to do just that.

11 SENATOR SCHWANK: Would your opinion be the same
12 if she were disbarred rather than just having a suspended
13 license? What would be the difference you would see in what
14 she could do or could not do?

15 GOVERNOR RENDELL: Well, because if you're
16 disbarred, you're no longer an attorney.

17 SENATOR SCHWANK: Correct.

18 GOVERNOR RENDELL: If you have a suspended
19 license, you're still an attorney. And then, so if you're
20 disbarred, you couldn't fulfill the constitutional
21 requirement. Or in the case of the district attorney's
22 office, the Home Rule Charter requirement that you be an
23 attorney.

24 SENATOR SCHWANK: But on the State level, it's the
25 State Constitution that says that you must be an attorney.

1 GOVERNOR RENDELL: Right.

2 SENATOR SCHWANK: And if you're disbarred--

3 GOVERNOR RENDELL: You're no longer an attorney.

4 SENATOR SCHWANK: You no longer are an attorney.

5 But she's not disbarred.

6 GOVERNOR RENDELL: And again, I have no clue what
7 the Supreme Court's going to do, but there's a chance in four
8 or five weeks she's going to be reinstated. And then what
9 would happen then?

10 SENATOR SCHWANK: In your testimony, you mentioned
11 that you didn't think we should move forward on this action,
12 and you then did make the argument about what would happen if
13 the Supreme Court does reverse that decision. Is that what
14 you were basing that on, or is there something else there?

15 GOVERNOR RENDELL: No. I mean, it would be
16 chaotic. And again, would you, and I don't know what the
17 Senate at-large would do or this committee would do, but would
18 you frame your order as long as she has a suspended license,
19 Kathleen Kane can no longer serve as Attorney General, so that
20 if the court reinstates her license, she becomes Attorney
21 General again? I don't know what you do. And then you'd have
22 the Senate throwing her out, and the Supreme Court reinstating
23 her license. What would the law be on that? Who would decide
24 what happens next? It would add to the chaos.

25 Guys -- Senators, impeach her. If your main

1 complaint is the way she has conducted herself in office,
2 impeach her. Don't use this method.

3 SENATOR SCHWANK: Thank you, Governor.

4 CHAIRMAN GORDNER: Senator Yaw, followed by
5 Senator Baker.

6 SENATOR YAW: Thank you, Mr. Chairman.

7 Thank you, Governor, for being here. You've heard
8 about the three DAs that were here and sat in those chairs,
9 and they were -- it was a very good cross-section of the way I
10 think the district attorney's offices are operated in the
11 State. One of them was very similar to apparently the way you
12 operated the district attorney's office in Philadelphia,
13 purely administrative, or he never went to court. One person
14 was in court all the time, handled all the cases, and then one
15 in the middle, actually where you sat, was kind of the person,
16 well, they did a little bit of everything but didn't go to
17 court too much, but they still went to court.

18 But the common thread that they all had is that
19 even though they may not go to court, they all had the
20 ability, the legal ability to go to court if they had to.
21 Even the administrator said, you know, and I assume, from what
22 you said when you were the district attorney of Philadelphia,
23 even though you didn't go to court, and that's fine. The
24 district attorney's office has always been, in the legal
25 world, that's the best job anywhere because you have no

1 supervisor, except to get elected every once in a while. But
2 you can run the office anyway you want. But you still had the
3 ability, if push came to shove, you could go to court, you
4 could go to an appellate argument, you could go to a
5 post-conviction hearing, or anything.

6 GOVERNOR RENDELL: Sure.

7 SENATOR YAW: And that's where my problem comes up
8 in this case. And you were present, I know, in the room when
9 I asked the question about the Commonwealth Attorneys Act,
10 which specifically draws the distinction between the Attorney
11 General, which it says the Attorney General -- "The Office of
12 Attorney General shall be an independent department...headed
13 by the Attorney General." Draws the distinction between the
14 two. And then the very first one involving legal advice, it
15 says, "Upon the request of the Governor or the head of any
16 Commonwealth agency, the Attorney General shall furnish legal
17 advice concerning any matter or issue arising in connection
18 with the exercise of the official power or the performance of
19 the official duties of the Governor or agency."

20 Since a suspended lawyer cannot give legal advice,
21 the Attorney General in Pennsylvania is a suspended lawyer,
22 then how do we get around the fact that the current Attorney
23 General cannot meet the statutory requirement of giving legal
24 advice to the Governor?

25 GOVERNOR RENDELL: I think the phrase "Attorney

1 General" there applies -- I know it says Attorney General, not
2 Attorney General's Office, but it applies to the Attorney
3 General's Office. So, for example, when I was chief of
4 homicide, I did try cases, and I would come in and I would
5 say, "If it please the court, my name is Edward Rendell,
6 Assistant District Attorney, Chief of the Homicide Unit,
7 representing the District Attorney's Office and the
8 Commonwealth."

9 So, and when Governor Corbett would ask questions
10 to me that required -- and often, most often it never
11 happened, but it required us to make a legal judgment, I would
12 have my Chief Counsel, either Leslie Miller or Barbara Adams,
13 respond. I wouldn't respond.

14 So I think as long as there's -- the only way it
15 would become relevant, the ability of the Attorney General or
16 the district attorney to go to court, is if something happened
17 and everyone else in the office was either wiped out or not
18 there, or whatever. That's the only way it would be relevant.
19 When an assistant DA goes to court, an assistant Attorney
20 General goes to court, they're representing the Attorney
21 General's Office. And as long as the office has that
22 capacity, it can function.

23 SENATOR YAW: Well, I guess I disagree with you a
24 little bit, because there are numerous places in the
25 Commonwealth Attorneys Act where, unfortunately, the gender at

1 the time it was written it refers to "he shall," or matters
2 being--

3 GOVERNOR RENDELL: Well, there you go.

4 SENATOR YAW: --apparently "for his review." That
5 specifies. It's a little bit different. And the way I look
6 at both the offices of district attorney and the Commonwealth
7 -- and the Attorney General is I assume that there's nobody
8 else in that office but that one person. That's the way the
9 statutes are all written. Now, obviously, they have the
10 authority to hire enough people under them.

11 GOVERNOR RENDELL: Who act for them.

12 SENATOR YAW: To act for them.

13 GOVERNOR RENDELL: For them.

14 SENATOR YAW: But, the way the statutes are
15 written is that this is the only person in that office, and
16 that person has to have all the qualifications to meet the
17 duties that are imposed either by the Constitution or by
18 statute for that office.

19 GOVERNOR RENDELL: And you think, for example, if
20 the response to the question was the Attorney General or the
21 DA gave a response that said here's a memorandum from my
22 office saying -- a legal opinion saying you can do it, I did
23 that. I'm the Attorney General, I gave the answer. It's a
24 memorandum signed by the chief of the appeals division.

25 SENATOR YAW: Well, that raises the argument

1 though is that you have to possess all the powers in that
2 office in order to be able to give them to somebody else.

3 GOVERNOR RENDELL: You're saying the Attorney
4 General is required by the Commonwealth Attorneys Act to give
5 an opinion. Hands in a memorandum prepared by the chief of
6 the appeals decision that says this is a memorandum from the
7 Attorney General's Office. I am providing you with it.

8 SENATOR YAW: No. I look at it a little bit more
9 narrowly like in a major law firm that somebody asks you for
10 an opinion and they ask you and you say, I'm going to have
11 three associates do the research and draft a letter for me and
12 I'll sign it.

13 GOVERNOR RENDELL: Let's assume a client came into
14 the head of a major law firm, and I now work for a major law
15 firm, and said, I want you to tell me whether -- I want you to
16 give us an opinion saying that what we're doing is legal.
17 Often, the SEC requires that. The managing partner six weeks
18 later calls back and says, here's an opinion written by Jake
19 Schrager of our office who's expert in this field of law
20 saying it is lawful, it's the opinion of the Jones, Smith and
21 McCaughey law firm.

22 SENATOR YAW: That's a different situation.

23 GOVERNOR RENDELL: No, I think it's analogous.

24 SENATOR YAW: Well, I know, but if I ask for your
25 opinion, I want your opinion, and that's what I think that the

1 Commonwealth Attorneys Act says. I want your opinion. I
2 don't want the opinion of somebody else in your office. I
3 understand you're going to do research and have somebody else
4 do it for you, I want yours -- I want your name on the line.

5 GOVERNOR RENDELL: Well, the office's name is on
6 the line, and therefore my name's on the line. But in my time
7 as district attorney, when we were asked for advisory opinion
8 or asked for this or this, I don't think I ever answered that
9 solely by myself. I always answered it based on research of
10 the people who were the experts in that particular area.

11 SENATOR YAW: All right. Thank you.

12 Thank you, Mr. Chairman.

13 CHAIRMAN GORDNER: Senator Baker.

14 SENATOR BAKER: Thank you.

15 Good afternoon, Governor.

16 GOVERNOR RENDELL: Good afternoon.

17 SENATOR BAKER: You have been asked or delegated
18 by the Attorney General to appear today, and I just want to
19 establish on the record, are you appearing here as her lawyer,
20 or are you appearing here as a private citizen who is a former
21 public official? Were you asked by the Attorney General, or
22 did you offer to appear today on her behalf?

23 GOVERNOR RENDELL: I think I made the mistake of
24 answering a question from the press saying I thought that you
25 didn't have to be a lawyer with an active license to continue

1 being an Attorney General, and as a result of that being in
2 the press, the Attorney General, or one of her
3 representatives, called me and said, is that your feeling?

4 SENATOR BAKER: Was it Mr. Ardo who asked you to
5 appear?

6 GOVERNOR RENDELL: I don't really remember. But
7 it may have been the General herself, it may have been Mr.
8 Ardo, it may have been someone else.

9 SENATOR BAKER: So you are not acting today in the
10 capacity as a lawyer on her behalf--

11 GOVERNOR RENDELL: No.

12 SENATOR BAKER: --but as a private citizen and
13 former public official?

14 GOVERNOR RENDELL: I tried to make it clear at the
15 beginning of my testimony, I'm not here to take sides in the
16 personal aspect of this. I'm just giving my opinion of what
17 the law requires or doesn't require.

18 SENATOR BAKER: Sure, and as I listen to--

19 GOVERNOR RENDELL: And by the way, also as
20 someone, one of the things I've tried to do as Governor, and
21 you probably noticed it because I write to you all on occasion
22 my opinion about stuff, like the transportation bill, I said
23 to myself that as long as I have the capacity to do so, I'm
24 going to try to weigh in on issues of public concern. I do so
25 on legislation, I do so on administrative issues in

1 Harrisburg, and I'm here because this is an issue that
2 concerns me, and I really deeply believe that this is not the
3 proper way to go. That there are other better avenues to
4 pursue.

5 SENATOR BAKER: I appreciate that. You've
6 established, and I've listened to you say that much of the
7 duties and functions both in the Office of Attorney General
8 and a district attorney's office are administrative, but the
9 law requires the district attorney to be admitted before the
10 Supreme Court; the law requires and the Constitution requires
11 that the Attorney General be a lawyer. So are you
12 recommending to us today that both of these offices don't need
13 lawyers to run them?

14 GOVERNOR RENDELL: No. That could only be done--

15 SENATOR BAKER: You're offering significant
16 policy, and as I'm listening to you, it's pretty clear that
17 you're suggesting that the office doesn't necessarily need
18 that to function. Am I incorrect in that assumption?

19 GOVERNOR RENDELL: Yeah. I thought, again, I
20 apologize if I didn't say it precisely enough, but, no, I'm
21 here to answer the very narrow question: Does an attorney
22 who's had their license suspended have the power to remain as
23 the head elected official of an office?

24 SENATOR BAKER: Well, the rules for suspended
25 lawyers are pretty clear. They cannot represent the clients

1 that they previously represented. The client of the Office of
2 Attorney General is, in fact, the Commonwealth.

3 I listened to you earlier about the interactions
4 with Governor Corbett and you said all of it was policy. I
5 know one of your major policy initiatives was the Growing
6 Greener initiative. That was a bond executed through the
7 Commonwealth that we heard from the Office of Attorney General
8 that only an Attorney General can execute and sign. So
9 clearly, there are some situations here that differ and would
10 require the Attorney General to sign them. And I'm just using
11 one of your major policy initiatives that you were proud of.

12 GOVERNOR RENDELL: Okay, let's take the bond issue
13 as an example. Let's assume the Attorney General had a stroke
14 and was incapacitated. Bond issue had a time deadline, it has
15 to go to the market a week after the stroke. If the Deputy
16 Attorney General signed that bond issue, believe me, it would
17 be legal.

18 SENATOR BAKER: That would be a vacancy in office
19 and it would fall to the First Deputy.

20 GOVERNOR RENDELL: No--

21 SENATOR BAKER: We now -- that would be my
22 understanding of how that would operate.

23 Let me ask you, you have been pretty clear today
24 in saying that you believe that impeachment is the appropriate
25 mechanism to address this situation. Do you believe the

1 Senate has the authority to act under the reasonable clause.

2 GOVERNOR RENDELL: Act on its own?

3 SENATOR BAKER: To conduct what we're doing. Do
4 you believe we're doing something that's proper and in the
5 purview and jurisdiction of the Senate to act?

6 GOVERNOR RENDELL: I haven't given it much
7 thought, but I probably believe you have the purview and the
8 ability to act. I'm just urging you that you don't act.

9 SENATOR BAKER: Thank you.

10 CHAIRMAN GORDNER: Governor, thank you for your
11 testimony.

12 GOVERNOR RENDELL: Thank you very much.

13 CHAIRMAN GORDNER: This hearing is in recess.

14 GOVERNOR RENDELL: I'd like to say I miss all of
15 you, but I don't like to lie.

16 CHAIRMAN GORDNER: The hearing is closed.

17 (Whereupon, the proceedings were recessed at 4:12
18 p.m.)

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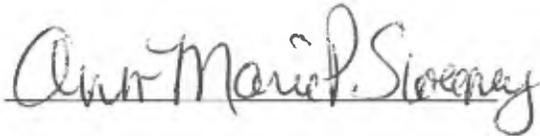
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1 I hereby certify that the proceedings are contained
2 fully and accurately in the notes taken by me during the
3 hearing of the within cause, and that this is a true and
4 correct transcript of the same.

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7 

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9 Chief Official Reporter
10 Senate of Pennsylvania
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