

1 COMMONWEALTH OF PENNSYLVANIA  
2 SPECIAL COMMITTEE ON SENATE ADDRESS

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

6 \* \* \* \* \*

7 VOLUME III - Pages 112-187

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

11 Wednesday  
12 November 18, 2015  
13 1:00 p.m.

14 SEN. JOHN GORDNER, CHAIRMAN

15 MEMBERS OF SPECIAL COMMITTEE ON SENATE ADDRESS

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

19 Also Present:

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

22  
23 Reported by:  
24 Ann-Marie P. Sweeney  
25 Chief Official Reporter

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1           CHAIRMAN GORDNER: Good afternoon. I'd like to  
2 call to order the 1 p.m. hearing of the Special Committee on  
3 Senate Address. I have some opening remarks.

4           Gentlemen, on behalf of the committee, I would  
5 like to thank you for appearing here today on this important  
6 issue. Although your appearances were commanded by subpoena,  
7 everyone on the committee recognizes the difficulty that this  
8 testimony creates. We understand that all of you are  
9 practicing lawyers who must honor attorney-client privilege,  
10 and in your unique positions this may include certain  
11 interactions with Kathleen Kane. No one on this panel shall  
12 in any way require or even suggest that you violate this  
13 privilege.

14           We also recognize that being a member of the Bar  
15 of Pennsylvania and an employee of the Office of Attorney  
16 General, you are all charged with enforcing the laws of the  
17 Commonwealth, both civil and criminal, for and on behalf of  
18 the citizens of Pennsylvania, the Governor, and the various  
19 Commonwealth agencies you represent as clients. We understand  
20 that in that role you may be privy to confidential  
21 investigations or litigation matters. This committee  
22 obviously recognizes the need for such confidentiality over  
23 these matters, and we'll respect that.

24           Given this unique nature of your testimony, we  
25 will open with brief introductions by each of you.

1     Thereafter, the committee will pose questions to Mr. Beemer,  
2     who will either respond or designate the appropriate person to  
3     do so. We also understand that the nature of this inquiry may  
4     require you to confer before responding. Please feel free to  
5     do so.

6             We will also honor your request to not be asked  
7     the ultimate question of whether Attorney General Kane remains  
8     competent to act as Attorney General since her law license has  
9     been suspended. That issue is ultimately one for this  
10    committee.

11            Lastly, without your cooperation and candor, the  
12    task of the committee would be much more difficult. We thank  
13    you in advance for that cooperation and candor.

14            Senator Wiley for brief remarks.

15            SENATOR WILEY: Thank you, Mr. Chairman.

16            To echo Senator Gordner, thank you. Thank you to  
17    the panel for their time and testimony today, and I, too, can  
18    understand and appreciate the sensitivity of this matter and  
19    extend our gratitude to you on behalf of the committee. One  
20    question drives this committee and all of our actions, and  
21    that is, can the Attorney General fulfill the duties of this  
22    office with a suspended law license? A seemingly simple  
23    statement, but obviously one that is complex in its own right.

24            We've heard testimony from others specific to the  
25    issue at hand, and we are especially interested in what will

1 be presented today in regard to the inner-workings of the  
2 Office of the Attorney General. Hopefully, the information  
3 that you provide today, coupled with previous testimony and  
4 information, will allow the committee to produce a final  
5 product that is fair, impartial, and transparent. Thank you  
6 again.

7 CHAIRMAN GORDNER: Thank you.

8 Would you stand to be sworn in?

9 (Whereupon, BRUCE R. BEEMER, JAMES A. DONAHUE,  
10 ROBERT A. MULLE, and LAWRENCE CHERBA, were  
duly sworn.)

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

12 As I mentioned in my opening remarks, I think it  
13 would be helpful for us as a panel, for those folks that are  
14 here, the viewing public, if you would first state your name  
15 for the record, state your position, and state your experience  
16 with the Attorney General's Office.

17 And we'll start with you, Mr. Beemer.

18 MR. BEEMER: Thank you, Senator Gordner.

19 My name is Bruce Beemer. I am currently the First  
20 Deputy Attorney General in the Pennsylvania Attorney General's  
21 Office. I have approximately 17 years of prosecutorial  
22 experience. I worked for 14 years in the Allegheny County  
23 District Attorney's Office primarily prosecuting homicide and  
24 violent crime. I joined the Attorney General's Office in 2011  
25 as the Chief of Staff to then Attorney General Linda Kelly.

1 When there was a change of administration in January of 2013,  
2 I stayed on with Attorney General Kane in the capacity of  
3 senior counsel to the Attorney General, as well as Chief of  
4 the Criminal Prosecution Section.

5 In June of 2014, Attorney General Kane asked me to  
6 assume the role of First Deputy Attorney General, where I  
7 remained till this day, and have the honor and privilege of  
8 working with these three gentlemen here who directly report to  
9 me in my role as First Deputy Attorney General as the  
10 Executive Deputies of each of the three major legal divisions  
11 within the office.

12 CHAIRMAN GORDNER: Thank you.

13 Mr. Cherba.

14 MR. CHERBA: Thank you, Senator.

15 Senator, my name is Lawrence Cherba, C-H-E-R-B-A.  
16 It's my 43rd year in law enforcement. I started in 1972 as a  
17 police officer in Bucks County, and in 1986 I began my career  
18 as a prosecutor in Bucks County. And then transferred to the  
19 Office of Attorney General, and it's my pleasure to be here  
20 for 19 1/2 years. Attorney General Kane promoted me at the  
21 beginning of her tenure to Executive Deputy Attorney General  
22 for the Criminal Law Division, where I presently have 13  
23 sections, 71 attorneys, and 274 agents under my control. And  
24 I report directly to Mr. Beemer.

25 CHAIRMAN GORDNER: Thank you.

1 Mr. Donahue.

2 MR. DONAHUE: Thank you, Senator.

3 CHAIRMAN GORDNER: If you could turn the mike on,  
4 please.

5 MR. DONAHUE: Thank you, Senator. My name is  
6 James Donahue. I'm the Executive Deputy Attorney General in  
7 charge of the Public Protection Division. My division  
8 includes the antitrust, charitable trust organizations, civil  
9 rights and special litigation, health care and tobacco  
10 sections, and the Bureau of Consumer Protection. To use a law  
11 firm analogy, the Public Protection Division is the  
12 plaintiff's law firm within the Office of Attorney General.

13 The division has 118 employees, 41 of those are  
14 attorneys. All of them are dedicated public servants and who  
15 are very proud to serve the people of Pennsylvania. I've been  
16 with the office since 1985. I started as a Deputy Attorney  
17 General I. I was appointed Chief of the Antitrust Section in  
18 1997, and was appointed to lead the National Association of  
19 Attorneys General Multistate Antitrust Task Force from the  
20 years 2009-2012. In January 2013, I was asked by Attorney  
21 General Kane to take over and lead the Public Protection  
22 Division, and that's what I've been doing since then. Thank  
23 you.

24 CHAIRMAN GORDNER: Thank you.

25 And Mr. Mulle.

1 MR. MULLE: Good afternoon. My name is Bob Mulle,  
2 and I have the honor to serve as Executive Deputy Attorney  
3 General and Director of the Civil Law Division, as well as  
4 Right to Know Officer for the Attorney General's Office. I  
5 have approximately 30-plus years in State government, 17 years  
6 with the State System of Higher Education, 8 years as chief  
7 counsel for that agency. I joined the Attorney General's  
8 Office in 2003 as Chief of the Legal Review Section. At that  
9 point, it was called Legal Review and Advice, which primarily  
10 dealt with the transactional side of the law affecting State  
11 Government. I was appointed approximately a year ago as  
12 Executive Director of the Civil Division, where I currently  
13 serve.

14 Our division is primarily focused on the civil law  
15 activities of State government. You can divide it pretty much  
16 between litigation and transactional work. The litigation  
17 comprises appellate matters; civil law, which includes  
18 constitutional and civil rights issues; tort litigation; tax  
19 litigation; and debt collection in bankruptcy court and other  
20 venues on behalf of the Commonwealth. On the transactional  
21 side, we review, by law, all contracts, deeds, leases, and  
22 bonds that are entered into by the Commonwealth, we review  
23 them for legality and form. We also review all regulations  
24 under the Regulatory Review Act, and our approval must be  
25 secured before those regulations are promulgated. We issue



1 formal legal opinions when the Attorney General is so  
2 requested by the head of an agency. We do the Right to Know  
3 work for the agency, and a number of other issues which I  
4 won't go into detail now.

5 It is a privilege to be here today, and I thank  
6 you for the opportunity to testify.

7 CHAIRMAN GORDNER: Thank you, gentlemen, for that  
8 background information, and thank you for your many years,  
9 collectively, of being involved in criminal enforcement and  
10 prosecution, as well as civil.

11 This will be a little different than the two  
12 previous hearings. There will be a lot more questions that  
13 will be asked. I will give more time to each of the Members.  
14 We are now going to go in reverse order from yesterday. I'm  
15 going to take the Chair's privilege of asking a number of  
16 questions first sort of to set the framework, and I'll be  
17 followed by Senator Wiley, and then Senator Scarnati.

18 Last Friday, in response to a subpoena duces tecum  
19 served by this Special Committee, the Attorney General  
20 produced an October 22, 2015, memorandum signed by each of you  
21 regarding certain restrictions that you believe are  
22 appropriate to implement as a result of the suspension of the  
23 Attorney General's law license. I guess the first question I  
24 have, maybe a simple answer, is, am I correct that Kathleen  
25 Kane did not request this memo?

1 MR. BEEMER: That is correct, Senator.

2 CHAIRMAN GORDNER: Okay. Therefore, then, the  
3 memo was prepared by the four of you, it was dated October 22,  
4 which I believe was the day that her license effectively  
5 became suspended. Can you provide an overview and context of  
6 the memo for the hearing? And I would like to have Mr. Beemer  
7 describe the rationale behind the group's decision to prepare  
8 the memo, and any other detail that you feel necessary in  
9 regard to that memo. Mr. Beemer.

10 MR. BEEMER: Thank you, Senator.

11 I'll first start by saying that this was a process  
12 that not only the four of us, but many of the other really  
13 outstanding attorneys in the office, had been contemplating  
14 ever since the Supreme Court issued their order on September  
15 21 of this year, which was, how will this, when it takes  
16 operation, affect the office, and what will the office need to  
17 do?

18 It became clear on October 21 that when we were  
19 one day away from the suspension taking effect that, I think,  
20 the collective judgment of the four of us was that there had  
21 not been sufficient information disseminated and dealt with to  
22 handle some of the issues that were going to come up relative  
23 to Rule 217 of the Rules of Disciplinary Enforcement and how  
24 we were going to make that practically work inside of the  
25 office. As a result of that, we felt it was imperative on the

1 first day of the suspension that we outline a plan moving  
2 forward for the office.

3 And it's important to note that the memorandum was  
4 not intended to be completely comprehensive. From the  
5 standpoint of, as you probably have all figured out, trying to  
6 address every single issue that could come up in an agency of  
7 our size, complexity, and scope would be virtually impossible.  
8 So it was intended to be a starting point, if you will, where  
9 we felt no reasonable minds could differ in terms of what  
10 could be construed as the function of an attorney. Because  
11 it's pretty clear that there are many issues that are what we  
12 call hybrid issues or that sort of mix in between the practice  
13 of law and others. And, so, we tried to focus in the memo on  
14 those things that we felt could not be open or subject to  
15 dispute that would -- that simply the rules would not allow an  
16 individual with a temporarily suspended law license to have a  
17 hand in or have involvement in, both for the protection of the  
18 office, for the attorneys and other employees working in the  
19 office, and for the Attorney General herself.

20 So that was essentially the rationale behind  
21 putting that memorandum together, when it was put together,  
22 and the substance of what was contained in it.

23 CHAIRMAN GORDNER: As part of the subpoena that we  
24 delivered to Kathleen Kane, we had asked a number of  
25 questions. And one of the questions was for her to provide to

1 us, "Any and all communications from the Attorney General to  
2 the employees of the Office of Attorney General related to the  
3 suspension of the Attorney General's law license." Her  
4 response was that "No document exists."

5 Am I correct that prior to October 22, that there  
6 was no document issued by Kathleen Kane indicating how the  
7 office would operate?

8 MR. BEEMER: We have absolutely no reason to  
9 believe that that answer to the subpoena is inaccurate and are  
10 unaware of any such communication.

11 CHAIRMAN GORDNER: You're not aware of any  
12 document?

13 MR. BEEMER: No.

14 CHAIRMAN GORDNER: We had a bunch of legal experts  
15 here yesterday and a constitutional expert, and they talked  
16 about when an attorney has a suspended license, that they can  
17 still do -- nothing as an attorney, but they can still do some  
18 things, I guess prepare briefs and do research and that sort  
19 of thing, but they need a supervisory attorney in order to do  
20 that. And if that designation is done, then the Supreme Court  
21 and the Disciplinary Board needs to have a document indicating  
22 that. Are you aware of any document that exists in which  
23 anyone is designated as the supervisory attorney for Kathleen  
24 Kane?

25 MR. BEEMER: I am not. And I'll -- if any of the

1 other members of the panel are, they can certainly feel free  
2 to chime in in that regard. But I would note that my  
3 understanding, and I'm not by any means an expert in the Rules  
4 of Disciplinary Enforcement, is that that would be problematic  
5 anyway because it would require not being supervised by an  
6 attorney where the conduct would have taken place that led to  
7 the suspension. It's probably typically meant to or  
8 contemplates a law firm or other type of private practice  
9 scenario, but I don't know that it would be practically  
10 feasible, in any event, to deal with it in that regard within  
11 the Office of Attorney General.

12 CHAIRMAN GORDNER: Thank you. On page 4 of the  
13 memorandum, towards the bottom, there is a section called  
14 "Process During Suspension." And in that it says,  
15 "Recognizing your role as Attorney General, but the fact that  
16 that [sic] your license is suspended, you should be informed  
17 of all actions that will be taken by the office as you  
18 normally would. However the ultimate decision on legal  
19 matters must lie with the First Deputy. The types of decision  
20 that should ultimately be decided by the First Deputy should  
21 include:"-- and there is a list of six items. Number 1 is "a  
22 decision on whether to bring a civil or criminal action."  
23 Since October 22, is that, in fact, your role, or whose role  
24 is it on whether to bring a civil or criminal action?

25 MR. BEEMER: That is a role within the office that

1 the ultimate decision has rested with myself.

2 CHAIRMAN GORDNER: Okay. And were you delegated  
3 by Kathleen Kane to do that, or have you assumed that  
4 responsibility?

5 MR. BEEMER: That responsibility has been  
6 undertaken as based on the reading and management of both the  
7 Pennsylvania Constitution and the Commonwealth Attorneys Act.

8 CHAIRMAN GORDNER: Okay. And I think we'll get  
9 into some questions more on that, probably Senator Yaw,  
10 because I think there's certain provisions that talk about a  
11 vacancy.

12 The second thing is "decision on whether to settle  
13 civil actions." Who is taking on that responsibility?

14 MR. BEEMER: I have.

15 CHAIRMAN GORDNER: All right. And have you been  
16 designated or delegated to do that?

17 MR. BEEMER: Bob, do you want to address any of  
18 this?

19 MR. MULLE: Senator, we have, as the First Deputy  
20 indicated, as lawyers looked at the controlling statutes that  
21 govern the operation of the Office of Attorney General and  
22 have, in light of the suspension, put together a protocol that  
23 we follow which goes to the First Deputy as currently the  
24 ultimate legal authority for legal decisions within the  
25 office. That is being followed very strictly. It's being

1 followed for all civil matters.

2           So, for instance, and just to clarify, on the  
3 civil side of the house we rarely institute legal actions.  
4 Our main chore is to defend Commonwealth agencies when sued.  
5 And that decision, however, is still an important one because  
6 we routinely review a case when it comes in and determine  
7 whether to represent the agency or to delegate that authority  
8 back to that agency, and that's based on a number of factors  
9 I'd be happy to go into later, if you'd like, but primarily  
10 it's on capability and conflict. That decision, as an  
11 example, would ultimately go from the chief of the section to  
12 myself, and then upon my recommendation to the First Deputy,  
13 who would then make the ultimate decision and we would proceed  
14 from there.

15           CHAIRMAN GORDNER: Prior to October 22, were those  
16 decisions made by the Attorney General?

17           MR. MULLE: In most cases. Not every case,  
18 because some matters are fairly routine and would be handled  
19 at a lower level.

20           CHAIRMAN GORDNER: Number 3 is "decisions on  
21 whether to offer or accept a plea bargain." Who is making  
22 those decisions?

23           MR. BEEMER: I am.

24           CHAIRMAN GORDNER: All right. And prior to  
25 October 22, who was making those decisions? Would the

1 Attorney General have had ultimate say, or were they on a  
2 routine basis being made by you?

3 MR. BEEMER: Well, there's two areas. Prior to  
4 September 21, the Attorney General on any, you know, matter  
5 that was not routine would make those decisions. We had them  
6 carve out a caveat because of the way the Rules of  
7 Disciplinary Enforcement operate, that although the suspension  
8 did not take effect for 30 days, she was not to engage in any  
9 new legal matters during that period of time. So if there was  
10 something that we -- that came up during that period that we  
11 deemed to be a new legal matter in that time period between  
12 September 21 and October 22, we had protocols in place to deal  
13 with that as if the suspension had taken effect.

14 CHAIRMAN GORDNER: Okay. Number 4, "any decision  
15 involving the grand juries." Who is making decisions as  
16 relates to grand juries?

17 MR. BEEMER: That is, we believe, within a legal  
18 function, so that would be with the First Deputy.

19 CHAIRMAN GORDNER: Okay. And prior to September  
20 21, who was making those decisions?

21 MR. BEEMER: The Attorney General Kane.

22 CHAIRMAN GORDNER: All right. Number 5--and I am  
23 almost to 6--5, "decisions on whether to join amicus briefs."  
24 And I'm not sure whether you necessarily had that pop up since  
25 September 21 or not, but who will be making those decisions?



1 MR. BEEMER: The First Deputy. Myself.

2 CHAIRMAN GORDNER: And number 6, "decisions on  
3 whether to use particular defenses in the cases the office is  
4 defending." Is that also your responsibility?

5 MR. BEEMER: Yes.

6 CHAIRMAN GORDNER: And prior to that, would it  
7 ultimately have been the Attorney General's?

8 MR. BEEMER: Ultimately, other than what Mr. Mulle  
9 referred to. There are a number of things, a number of  
10 matters within the office that oftentimes would not leave the  
11 section for decisionmaking, just by sheer fact of volume and  
12 the number of, you know, issues that come up within the  
13 sections. They might often make decisions on a lot of those  
14 matters before they would actually reach the Attorney  
15 General's desk.

16 CHAIRMAN GORDNER: All right. There's one more  
17 sentence right after that, and somebody may have some  
18 follow-ups in regard to this particular sentence, but you  
19 indicated right after that, "The Press Office should not say  
20 that you approved, initiated or decided to take action in a  
21 legal matter." What was your rationale behind that?

22 MR. BEEMER: Several things. The first is, if the  
23 -- a press statement goes out on behalf of our office and it  
24 indicates that the action was initiated by Kathleen Kane, it  
25 opens the door potentially to several lines of attack which we

1 were hoping to avoid, and why it was contained within this  
2 document. The first could be that an individual might claim,  
3 based on the press release, that she in fact did have a hand  
4 or have a decisionmaking role in a particular matter that  
5 could then be litigated in court. And the second is to  
6 protect against the idea that the Attorney General would be  
7 somehow putting herself out there as making decisions on other  
8 types of matters, what consumer protection issues to deal  
9 with, what types of civil cases to settle. All of those  
10 things we felt would be potentially problematic, and that the  
11 safer course of action with this issue sort of largely  
12 unsettled would be that press statements, press releases,  
13 should indicate that it's the Office of Attorney General that  
14 is undertaking a particular action. And that was the genesis  
15 of including that in the memo.

16 CHAIRMAN GORDNER: Okay. Thank you.

17 I'm going to ask now a series of questions as  
18 relates to the Commonwealth Attorneys Act. I'll go through a  
19 number of sections, and then I will move on with the remaining  
20 Members of the committee.

21 The Commonwealth Attorneys Act obviously set up  
22 your office. And there are different sections, there are  
23 different provisions for the Attorney General. One of those  
24 sections is Section 204, which talks about legal advice in  
25 civil matters, says, "Upon the request of the Governor or the

1 head of any Commonwealth agency, the Attorney General shall  
2 furnish legal advice concerning any matter or issue arising in  
3 connection with the exercise of the official powers or the  
4 performance of the official duties of the Governor or agency."

5 Given that the Attorney General's law license is suspended,  
6 can she perform her duty under this section?

7 MR. MULLE: This provision of the act and this  
8 function of the office is, as obviously your intent of asking  
9 the question, identifies a very important function under the  
10 State Constitution. However, the actual instances where it  
11 occurs have become rare. In the very beginning of the  
12 existence of the independent Attorney General's Office, there  
13 were quite a few requests for formal written legal opinions  
14 which are binding on the agency that asks. And those are all,  
15 by the way, I'll put a little commercial in, they're all  
16 published and they're all on our Web site. For some reason,  
17 people sometimes have trouble finding those, and they are  
18 available through our Web site for any lawyers or citizens who  
19 wish to get ahold of them.

20 Of late, however, of late I mean the last 15  
21 years, the instances where we've received requests from the  
22 Governor or head of an agency have become very few and far  
23 between. I would say if we get one a year, that's eventful.  
24 So that brings us to the present, and under the present  
25 situation, were we to receive a request for a formal legal

1 opinion, we would follow the practice we have been following  
2 since October 22 of draft -- as we did before, drafting,  
3 researching, writing the opinion at the section level,  
4 reviewing it at the divisional level, and then ultimately it  
5 would go to the First Deputy for approval and signature, as it  
6 is clearly a legal document.

7 CHAIRMAN GORDNER: Okay. And expect some further  
8 questions on that, because this is one section where it says  
9 "the" Attorney General. I'll let another committee Member ask  
10 that question.

11 Another section here talks about defending the --  
12 "It shall be the duty of the Attorney General to uphold and  
13 defend the constitutionality of all statutes so as to prevent  
14 their suspension or abrogation...." Can an Attorney General  
15 with a suspended law license defend the constitutionality of  
16 all statutes before a court of competent jurisdiction?

17 MR. MULLE: Our view on this provision, which is  
18 far more routine than the prior one--and by routine, I don't  
19 mean unimportant; I mean it happens very frequently, it's one  
20 of our major functions--we routinely defend independent and  
21 executive agencies on constitutional challenges and other  
22 challenges in all of the courts, Federal and State, in the  
23 Commonwealth. And as a matter of process and practice, since  
24 October 22, we again, if there's a need to look for legal  
25 approval, we would look to the First Deputy. I believe the

1 First Deputy has that authority, as the very nature of his  
2 position as set out in the Commonwealth Attorneys Act would  
3 call for.

4 CHAIRMAN GORDNER: Okay. Under another section it  
5 says, "The Attorney General shall review for form and  
6 legality, all proposed rules and regulations of Commonwealth  
7 agencies...." Can an Attorney General with a suspended law  
8 license review for form and legality those rules and  
9 regulations?

10 MR. MULLE: Again, personally, if I haven't made  
11 that clear up to now, I apologize. Personally, obviously, she  
12 could not, but the agency, acting under its authority existing  
13 both before and after the suspension, routinely reviews such  
14 regulations. They're reviewed at the section level. In the  
15 past it was rare that an Attorney General would get involved  
16 with that review unless there were a significant issue that  
17 arose. And it would be the practice now to review and approve  
18 such with the appropriate review at the divisional level and  
19 there would not be review higher up.

20 CHAIRMAN GORDNER: Okay. Just a few more. I  
21 apologize. "The Attorney General shall represent the  
22 Commonwealth and all Commonwealth agencies...." Is she able  
23 to do that with a suspended law license?

24 MR. MULLE: Again, not personally, but I believe  
25 the office can.

1                   CHAIRMAN GORDNER: All right. There's a provision  
2 for reviewing for deeds, leases, contracts, and fidelity  
3 bonds, those for form and legality. Who is taking on that  
4 responsibility?

5                   MR. MULLE: That responsibility, as before, was  
6 done on a daily basis by the Legal Review Section under my  
7 supervision. Any significant issues, I would look at and  
8 approve. I would still do that now. It would be rare,  
9 extremely rare, for a contract issue to go to the Attorney  
10 General for input.

11                   Now, that does raise one interesting question.  
12 One of the types of documents we review are bonds. And as you  
13 know, the Commonwealth does a significant amount of  
14 transactions with bonds. It's one of the major activities of  
15 State government - bonds, and loans, and grants. And we see  
16 most, if not all of those. Generally, I do not believe the  
17 Attorney General has to be personally involved in that review,  
18 as the delegations go back 30 years for all that sort of  
19 thing. However, one issue that has not arisen yet, and may  
20 arise, would be in the event that we have the issuance of a  
21 general obligation bond this year. Because, as you may know,  
22 general obligation bonds, which are a significant funding  
23 source for Commonwealth operations, require the major State  
24 officers to sign them. And, in the past, the Attorney General  
25 has, in most cases, done that himself or herself. So what

1 would happen if that were to come up during the General's  
2 suspension? I, quite frankly, at this point, don't know. But  
3 we would certainly have to look at that.

4 CHAIRMAN GORDNER: Okay. As part of the budget  
5 framework, if there's a multibillion dollar bond that would  
6 affect school districts, that's certainly being considered and  
7 contemplated, so you may end up having to face that issue  
8 sooner rather than later.

9 MR. MULLE: And, in which case, we will research  
10 it and come up with an appropriate approach.

11 CHAIRMAN GORDNER: We had a panel of DAs here a  
12 week ago, and part of the Attorney General's responsibility  
13 sometimes is getting involved in county prosecutions. It may  
14 be when there's a conflict or whether the expertise of the  
15 Attorney General's Office is better than maybe a small DA's  
16 office who may need some help. Under this act, there are  
17 provisions for the Attorney General to exercise their power to  
18 prosecute in those things, take jurisdiction. Could you tell  
19 me what the process was prior to September 21 and what the  
20 process is now as it relates to that?

21 MR. BEEMER: Larry, you want to?

22 MR. CHERBA: Senator, the specific process of  
23 approving criminal complaints, is that your question, before  
24 the 21st?

25 CHAIRMAN GORDNER: Yes.

1 MR. CHERBA: That was delegated to the line  
2 attorneys and to anyone under my jurisdiction by the Attorney  
3 General when she took office. She gave us -- she delegated  
4 powers to us.

5 If I can answer your question this way, I see it  
6 as an authority versus ability. When she took office she had  
7 the authority to delegate certain duties to her attorneys,  
8 which she did. And that gave them the ability to use their  
9 license to practice law on her behalf. After September 21,  
10 her ability to personally practice law became encumbered, but  
11 she still, in my opinion, held the authority to delegate that  
12 authority and/or remove that authority from a particular  
13 attorney. The ability to practice law now lies with a  
14 specific attorney on a specific case. If they become  
15 encumbered for some reason, they would have to be taken off  
16 the case and they would not be able to practice law either.

17 Maybe I'm getting too far in my explanation here,  
18 but at some point it comes down to the individual attorneys.  
19 There are certain statutes that provide for the Attorney  
20 General or her designee to do certain things, such as the  
21 wiretap law, and then there's other statutes that are not that  
22 specific. My research, I feel confident in, that the  
23 Commonwealth's Statutory Interpretation Act under Title 1,  
24 specifically Section 1922, there's a presumption in  
25 ascertaining legislative intent "That the General Assembly



1 does not intend a result that is absurd, impossible of  
2 execution or unreasonable." So, I think, when -- if you would  
3 look at all of the different statutes that pertain to the  
4 Attorney General's Office, just because it doesn't say "the  
5 Attorney General or her designee," that doesn't mean that we  
6 can't act. Just as an aside, besides the Commonwealth  
7 Attorneys Act, there's 30 specific statutes in Pennsylvania  
8 that the legislature has given us original jurisdiction, along  
9 with the district attorney's office.

10 CHAIRMAN GORDNER: You said something in regard to  
11 -- you have a belief that she can, even with a suspended law  
12 license, you have a belief that she can continue to delegate  
13 on new matters since September 21?

14 MR. CHERBA: Yes, I believe that, due to something  
15 that occurred that I cannot discuss here in public.

16 CHAIRMAN GORDNER: Okay.

17 MR. CHERBA: But I could possibly later.

18 CHAIRMAN GORDNER: All right. Thank you.

19 Senator Wiley, followed by Senator Scarnati.

20 SENATOR WILEY: Thank you, Mr. Chairman.

21 I'm not sure if there's any other questions to  
22 ask, now that Senator Gordner went through.

23 CHAIRMAN GORDNER: Lots. There's lots.

24 SENATOR WILEY: I thank you guys, and I'm going to  
25 be very direct in some of my questioning. First and foremost,

1 in follow-up to Senator Gordner's questioning in relation to  
2 the language in the Commonwealth Attorneys Act relating to  
3 "the Attorney General shall," is it your interpretation that  
4 when language states "the Attorney General," does that mean  
5 the Attorney General the person, or does that mean the  
6 Attorney General's Office?

7 MR. MULLE: That is an excellent question, and in  
8 some ways cuts--

9 CHAIRMAN GORDNER: I'm not sure if your microphone  
10 -- you may have turned it off.

11 MR. MULLE: No, I turned it on.

12 CHAIRMAN GORDNER: The green light is on? Okay.  
13 Thank you.

14 MR. MULLE: No, it's my fault. I'll lean over  
15 further.

16 I said, that's an excellent question because that  
17 cuts to the rub of a lot of the things we've been wrestling  
18 with. As I read both the State Constitution and the  
19 Commonwealth Attorneys Act, where references are made to "the  
20 Attorney General shall," and then particular power, duty, or  
21 authority is invoked, it, of course, would depend on the  
22 context. In regard to the Commonwealth Attorneys Act, it is  
23 our understanding that when referencing the Attorney General,  
24 it references the authority of the office that serves the  
25 Attorney General, and that as long as the appropriate

1 jurisdiction and authority exists, that the -- following that  
2 process as called for in the statute would be legal.  
3 Unfortunately, the statute doesn't clearly distinguish and the  
4 matter must be left to interpretation. But based on  
5 experience and what we've encountered in the law, we believe  
6 that absent a specific irrefutable indication of personal  
7 authority, that personal or delegated authority would be the  
8 appropriate interpretation.

9 SENATOR WILEY: Thank you.

10 MR. BEEMER: Senator, could I add one thing to  
11 that?

12 SENATOR WILEY: Sure, please.

13 MR. BEEMER: And that is, it does -- it  
14 underscores a problem that we have to deal with that's unique  
15 to the Attorney General's Office. Other law enforcement  
16 agencies, particularly local district attorney's offices, work  
17 in a very confined jurisdictional area, often have a very  
18 limited bench of judges under which they will deal. The  
19 Attorney General's Office, by its very makeup and its very  
20 nature, we go to 67 counties across this Commonwealth and deal  
21 with hundreds and hundreds of trial judges. And particularly  
22 as it relates to criminal matters, for example, we have to  
23 deal with and anticipate the inevitable array of challenges  
24 that are going to come from, let's say, criminal defendants,  
25 as an example. Anybody that during the process of the

1 suspension, of the temporary license suspension, was  
2 investigated, prosecuted, charged, sentenced, are going to  
3 potentially raise issues. And when those issues get raised,  
4 and we deal with, unfortunately a lot of very dangerous, very  
5 bad people - drug dealers, violent offenders - we are going to  
6 have to deal with creative defense attorneys making arguments  
7 to a vast array of judges. And if something happens at the  
8 trial court level, it only takes one to create a real problem  
9 within the office.

10 So what Mr. Mulle says is absolutely correct and  
11 we believe we are on very solid, firm footing. It doesn't  
12 alleviate the potential problems that could come up over and  
13 over and over again that we have to face and litigate in the  
14 courts to address and deal with this issue. And until it  
15 would ultimately be decided by a court of final jurisdiction  
16 in the appellate courts, it does leave open a measure of  
17 uncertainty. So I just think that's -- I just wanted the  
18 panel to have that in context why it can be so difficult for  
19 the Attorney General's Office because of how broad we are,  
20 statewide, and all of the things that we do not just in  
21 criminal, but in civil and public protection.

22 SENATOR WILEY: Thank you. To the best of your  
23 knowledge, has the Attorney General currently, or has the  
24 Attorney General since October 22, engaged in any practice of  
25 law?

1 MR. BEEMER: To our knowledge, in dealing directly  
2 with the four of us--and if anybody disagrees, please speak  
3 up--we have not encountered any incident where she has  
4 directly inserted herself into the decisionmaking process of  
5 the types of matters that we are discussing today.

6 The caveat to that is, we just don't know about  
7 certain issues. And I raise, because of the unprecedented  
8 nature of this and how reasonable minds can differ as to what  
9 the practice of law means, and I saw with and watched with  
10 some interest part of what was testified to yesterday, I can  
11 even refer to communications with this panel as to -- and none  
12 of the four of us were consulted on that matter where the  
13 Attorney General responded to all of you in terms of the  
14 subpoena and other aspects of what the committee is doing.  
15 Somebody might say that writing on the Attorney General  
16 letterhead and issuing what could be construed as legal  
17 opinions or legal advice constitutes the practice of law--

18 SENATOR WILEY: Mr. Beemer, if I may.

19 MR. BEEMER: Sure.

20 SENATOR WILEY: Pertaining to your  
21 responsibilities in the Attorney General's Office, in your,  
22 and to the best of your knowledge, has the Attorney General  
23 practiced law since October 22?

24 MR. BEEMER: It's open to -- I mean, not with  
25 respect to direct dealings with cases.

1 SENATOR WILEY: That's the question--

2 MR. BEEMER: Yes.

3 SENATOR WILEY: --correct?

4 MR. BEEMER: No.

5 SENATOR WILEY: Thank you. Now, to the best of  
6 your knowledge, has anyone, have any of you or anyone in the  
7 AG's office received any notices of correspondence from the  
8 Disciplinary Board that ethics violations may be occurring  
9 currently in the AG's office as a result of the Attorney  
10 General's suspension?

11 MR. BEEMER: I don't believe -- we could not speak  
12 to that under our understanding of the Rules of Disciplinary  
13 Enforcement.

14 SENATOR WILEY: Getting back to -- we were talking  
15 about the day-to-day operations of the Attorney General's  
16 Office, and this was very important to us, and in a prior  
17 hearing we heard from the three district attorneys from around  
18 the State on the impact that this suspension has had on their  
19 offices. But I'm interested to hear, since the suspension of  
20 the Attorney General's law license, has there been an adverse  
21 impact on the day-to-day operations of the AG's office?

22 MR. DONAHUE: Senator Wiley, we've had a couple  
23 experiences so far. One is in a case that's under seal, we've  
24 received a motion challenging our authority to proceed in that  
25 case basically on the grounds that the Commonwealth Attorneys

1 Act requires the Attorney General to make a lot of the  
2 decisions personally. And we're in the process of briefing  
3 that. So generally, in a civil case, depending on which court  
4 you're in, a motion is filed, you have 10, 14, or 30 days to  
5 respond, and then you get a reply 10, 14, or 30 days later,  
6 and then a judge is faced with making a decision. Obviously,  
7 you know, as we all know here, the decisions involved in this  
8 matter are novel. Nobody has decided anything under this  
9 situation before. We're not aware of this happening anywhere  
10 else in the country.

11 So it's not clear that a decision from a judge  
12 would be prompt. I'm not criticizing the judiciary, it's a  
13 hard issue. So is there an impact? Yeah, there's an impact  
14 that cases, especially complex cases, get further dragged out  
15 because of this. We've had a second case where potential  
16 action has been verbally threatened. It hasn't been -- it's  
17 not in the form of a motion yet, but we do have that verbal  
18 threat out there. You know, it's in the context of other  
19 communications we're having with opposing counsel, and I don't  
20 know what they're going to do. But, you know, I think we have  
21 done some research here, as everybody has identified. And the  
22 Supreme Court issued the order. The order said the Attorney  
23 General's license is suspended, but she's not removed from  
24 office. We can't believe that the Supreme Court intended that  
25 the entire work of the Attorney General's Office would stop

1 for every section here that says the Attorney General shall  
2 review bonds, commence litigation, bring any antitrust cases,  
3 or, you know, all of the other provisions. That would be a  
4 difficult result and a result with really drastic consequences  
5 for the people of Pennsylvania.

6 And, so, but that doesn't stop -- so we think we  
7 ultimately will be successful in saying we've got the  
8 authority to move forward. But that doesn't stop people from  
9 making motions, you know, and in some cases, they may have the  
10 ethical obligation to test us and to make motions to stop us  
11 on the basis that the AG's license has been suspended. And  
12 that just takes time.

13 SENATOR WILEY: Thank you.

14 Thank you, Mr. Chairman.

15 CHAIRMAN GORDNER: Thank you.

16 Senator Scarnati, followed by Senator Schwank.

17 SENATOR SCARNATI: Thank you, Mr. Chairman.

18 Just some clarifications for me. Mr. Beemer, it's  
19 clear that none of you are the supervising attorney for the  
20 Attorney General presently as under the Rules of Professional  
21 Conduct. Is that correct?

22 MR. BEEMER: I believe -- that's correct, yes.

23 SENATOR SCARNATI: But do you know if she has a  
24 supervising attorney?

25 MR. BEEMER: I do not.



1           SENATOR SCARNATI: Nobody knows if she has a  
2 supervising attorney?

3           MR. MULLE: I do not.

4           MR. DONAHUE: I do not either.

5           MR. CHERBA: I do not.

6           SENATOR SCARNATI: Is it fair to say that the  
7 memo, the October 22 memo, you said that there could be more  
8 issues with the operations of the Attorney General that are  
9 outlined in that memo, that you outlined some, but there still  
10 could be more that could come up?

11          MR. BEEMER: Absolutely.

12          SENATOR SCARNATI: And since you've issued that  
13 memo, have you found more issues?

14          MR. BEEMER: There have been other issues that  
15 have been identified, some of which I don't know that we can  
16 discuss here.

17          SENATOR SCARNATI: But there are other issues?

18          MR. BEEMER: Yes.

19          SENATOR SCARNATI: Is the Attorney General coming  
20 to work? Let me ask the question, is she coming to work in  
21 your office?

22          CHAIRMAN GORDNER: I think, Mr. Beemer, to be  
23 fair, I believe even some of you work in different offices and  
24 stuff, so, I mean, answer the question to the best of your  
25 ability. Or if you can't answer it, it's up to you.

1           SENATOR SCARNATI: Let me ask, is she coming to  
2 work in any of your offices?

3           MR. BEEMER: Well, it depends on the day,  
4 certainly, but yes.

5           SENATOR SCARNATI: So how often does the Attorney  
6 General come to work in any offices?

7           MR. BEEMER: I can't answer that question. She  
8 has an office in Scranton where she may often be and where we  
9 don't know.

10          SENATOR SCARNATI: So she could be going to the  
11 office in Scranton, but none of the four of you know that?

12          MR. BEEMER: I don't want to speak for the other  
13 people of the panel.

14          SENATOR SCARNATI: Okay.

15          MR. DONAHUE: I don't know.

16          SENATOR SCARNATI: Just for the record, maybe I'll  
17 have everybody answer that. Is the Attorney General coming to  
18 work in any of the offices that you work in?

19          CHAIRMAN GORDNER: And, Senator Scarnati, I may,  
20 as the Chair, I mean, you can answer if you're comfortable  
21 with answering, but I'm assuming that she has worked maybe at  
22 different offices, out of the house, I don't know, that sort  
23 of thing. If that's the answer, you can certainly give that  
24 answer.

25          MR. MULLE: Well, the interesting thing about it

1 is in this age we live in, a lot of work is done from remote  
2 location through electronic and other sources of  
3 communication. So -- and we have quite a few offices  
4 scattered around the State, as you know. East, west, north,  
5 south, central. So on any given day, we're all in Harrisburg.  
6 The fact that we may not physically encounter the Attorney  
7 General, we would not necessarily know that she was not at  
8 another site unless we had occasion to interact with her.  
9 And, obviously, because her license is suspended and she can't  
10 practice law, there is not as much communication with her as  
11 there would be with an Attorney General under normal  
12 circumstances. So I think that's the reason you get the  
13 hesitation. We really just don't know. We can't say where  
14 she would be at any given moment with any kind of certainty.

15 SENATOR SCARNATI: Thank you. Yesterday, I raised  
16 an issue, I'm not an attorney, but I've been in the business  
17 world all my life, and I recognize that Pennsylvania takes  
18 great pride in licensure. As I said yesterday, we license, of  
19 course, attorneys, we license barbers, we license bus drivers,  
20 doctors, all of us that have a driver's license. We lose that  
21 license, that privilege, we no longer can practice. Is it  
22 your opinion we have two different classes of licensure, or do  
23 we have one class of licensure? Do attorneys have a different  
24 level of privilege than the rest of us? As I look at this, I  
25 have to ask the question, you know, it appears that under Rule

1 217 there's severe consequences and issues that have to be  
2 complied with. Have all the issues under Rule 217 been  
3 complied with by the Attorney General with operations of the  
4 office?

5 MR. BEEMER: I'll answer it in reverse. Clearly,  
6 and I don't think any of us up here are experts in the  
7 disciplinary rules or the types of things that are normally  
8 within the purview of the Disciplinary Board, but I do think  
9 that there is clearly a delineation that is made between a  
10 formerly admitted attorney who has a suspended law license and  
11 one who is disbarred. And there is a recognition that there  
12 is a difference between the two. Where that line goes, that's  
13 really, I think, a difficult question for us, and probably  
14 we're not the appropriate ones to answer.

15 With regard to, I'll answer the same answer I had  
16 for Senator Wiley. All we can tell you is to our knowledge  
17 what has transpired within the office. I cannot speak to  
18 other things that the Attorney General may or may not be doing  
19 because we just -- there are things that have happened that,  
20 for example, the correspondence with your office, that we're  
21 just not, or with your panel, that we're just not -- we  
22 weren't made aware of. And I'm not saying that there was  
23 anything wrong with it. That's not for us to say. But it  
24 raises questions, and would raise questions with, I think,  
25 people as to whether or not certain things constitute the

1 practice of law. Cannot say one way or the other whether  
2 there is other things transpiring. That, we just don't know.

3 SENATOR SCARNATI: Thank you.

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

6 SENATOR SCHWANK: Thank you, Mr. Chairman.

7 I want to go back to the memo that you sent to the  
8 Attorney General and kind of get a context of how that was  
9 written. It sounded to me, and tell me if I'm wrong, that you  
10 had a conversation with the AG maybe a day or two prior to  
11 writing this memo. Is that correct?

12 MR. DONAHUE: That's one -- that's a difficult  
13 issue for us to discuss because we think that communication  
14 was privileged. I can tell you that there was a statement  
15 made in the press, I guess on the 21st, where our press  
16 officer said that 98 percent of the Attorney General's duties  
17 were unaffected. We thought that was a gross overstatement of  
18 the implication of this license suspension, and that was one  
19 of the reasons that prompted us to write the memo.

20 SENATOR SCHWANK: Okay.

21 MR. DONAHUE: It was to deal with what had been  
22 said publicly. I don't feel that we can describe what she  
23 said, you know, privately.

24 SENATOR SCHWANK: What was the reaction to the  
25 memo? How -- you know, it sounds like you have delegated --

1 duties have been delegated. Did she agree with the items that  
2 you outlined in the memo?

3 MR. DONAHUE: According to her press statement the  
4 other day, she agrees with the memo.

5 SENATOR SCHWANK: In terms of working, is that  
6 what is happening?

7 MR. DONAHUE: Yes. I think as Mr. Beemer has  
8 said, we are -- you know, we have been forwarding these legal  
9 decisions through to Mr. Beemer, and there has been no effort  
10 by the Attorney General to interfere with that process.

11 SENATOR SCHWANK: So she hasn't obstructed that at  
12 all, and you're continuing to do your work?

13 MR. DONAHUE: Yes.

14 MR. CHERBA: That's correct.

15 MR. BEEMER: And one of the other things, Senator,  
16 that was important, and that we wanted to get out there on  
17 October 22 as the earliest possible time was, you know, the  
18 protection of everyone in the office so that nobody could ever  
19 be placed -- what we're trying to avoid is anyone ever being  
20 placed in the incredibly awkward position of having to report  
21 a violation of the rules to someone that supervises you or is  
22 your boss. And the only way that we could think of to do that  
23 was to address it in this way and begin, you know, on that day  
24 to implement the procedures that were outlined in the memo in  
25 order to not place any of -- we have more than 200 attorneys

1 in our office, over 200 agents, all of whom in some way--and  
2 wonderful support staff--all of whom could be potentially  
3 placed in an incredibly awkward situation and a difficult one  
4 that we were trying to avoid at all costs, and that was really  
5 the genesis behind the memo and why we've put in place what  
6 Mr. Mulle and Mr. Donahue and Mr. Cherba have already  
7 described, you know, sort of the procedures to avoid that.

8 SENATOR SCHWANK: And, again, to the best of your  
9 knowledge, that has been accepted by the Attorney General, and  
10 that's the way you are proceeding in terms of how your office  
11 is operating?

12 MR. BEEMER: She's not indicated to any of the  
13 four of us or attempted to contravene directly to us anything  
14 that is in the memo. That is correct.

15 SENATOR SCHWANK: Okay. Another question I wanted  
16 to ask in regard to protecting the work of the office as well  
17 as the attorneys and staff. You know, considering that there  
18 might be potential challenges to some of the work that you  
19 have done, have you considered whether an advisory ruling  
20 could be sought in the interest of preserving, you know,  
21 public and judicial resources and insuring that the work that  
22 you've done is valid?

23 MR. MULLE: That, at some point, might be an  
24 option. We have not pursued that to date, in part because it  
25 would be largely speculative.

1 SENATOR SCHWANK: Um-hum.

2 MR. MULLE: This, again, as we're all acutely  
3 aware, this is a unique situation, and as you've heard this  
4 afternoon, we're doing our best to navigate through troubled  
5 waters. We don't want to stir up trouble where it doesn't  
6 exist. At the same time, we want to be as faithful as we can  
7 be to the spirit and letter of the law and in the interests of  
8 our clients, who are the citizens of the Commonwealth. We  
9 have a number of very, a number -- all of our employees are  
10 dedicated professionals who are very proud of the work they  
11 do, and the last thing we want is for them to have to walk  
12 into a problem.

13 Now, we did, early on, request, through a letter  
14 to the Disciplinary Board, that they give us guidance, because  
15 this is, again, a unique situation. As Mr. Donahue alluded  
16 to, the Supreme Court, in taking their action, suspended the  
17 General's license, but at the same time said she's still the  
18 Attorney General.

19 SENATOR SCHWANK: Right.

20 MR. MULLE: So that creates a little ambiguity.  
21 And we are, again, attempting to deal with it. So we wrote to  
22 the board. We set out some specific scenarios and questions,  
23 and we have yet to hear back.

24 SENATOR SCHWANK: Haven't had any response from  
25 them yet? How long ago was that?



1 MR. MULLE: Month. About a month.

2 SENATOR SCHWANK: Okay. I'll defer to make some  
3 questions later. Thank you.

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

6 SENATOR BAKER: Good afternoon. Thank you for  
7 being here.

8 I realize you're here under subpoena, and I just  
9 want to ask a very general question. Do any of you have any  
10 reason to believe that your career potentially could be in  
11 jeopardy because of appearing before our committee or because  
12 of the communications that you have offered as a result of  
13 working under an Attorney General with a suspended law  
14 license?

15 MR. MULLE: We're all -- we have all spent a  
16 lifetime in public service, and I think we've done that  
17 because we believe in what public service stands for. So, as  
18 you noted, your subpoena was accepted, it wasn't resisted. We  
19 are happy to do what we can do today to serve the citizens of  
20 Pennsylvania, as we do and as our good people do every day.  
21 And if there's any negative fallout from this then, you know,  
22 it will come as it may.

23 MR. BEEMER: And we recognize we have, as even  
24 was, I believe, highlighted in the memo, we have, as attorneys  
25 who have the privilege of serving in government, have

1 heightened obligations.

2 SENATOR BAKER: You're held to a higher standard  
3 than--

4 MR. BEEMER: We're held to a higher standard, as  
5 we should be, and we don't -- I don't think any of the four of  
6 us -- that was never a consideration. The only consideration  
7 was making sure that the office continued to function and  
8 function properly, and when we received the subpoena, we  
9 recognized the authority of this panel and our obligation to  
10 provide the information that was sought, you know, as long as  
11 it didn't, you know, cross over a privilege line or something  
12 in that regard.

13 SENATOR BAKER: Sure. Have you asked for or  
14 received any opinions from the Bar Association's Ethics  
15 Committee regarding your abilities to act as deputies in an  
16 agency under a lawyer with a suspended license, or at any  
17 point do you believe or are concerned that your law license  
18 could be in jeopardy or that you're in violation of any  
19 ethical code?

20 MR. BEEMER: We -- I think I can speak uniformly  
21 for the four of us that we do not believe that based on the  
22 actions that we have taken, the actions that the other  
23 attorneys in the office have taken, that we are in any way in  
24 violation of any ethical provisions. That's not to say that  
25 part of the basis of your question -- we expect challenges to

1 the authority of the office to act in various regards, but we  
2 feel we have clearly a good faith legal basis that we will be  
3 successful on, and I think that's all the ethical rules  
4 require of us, is that we're acting appropriately and in good  
5 faith.

6 SENATOR BAKER: I was going to ask, and you  
7 answered my question about did you help draft or prepare the  
8 responses to our committee, and you indicated that you had  
9 not. Do you have any reason or concern -- yesterday an expert  
10 who appeared before us and raised some concerns about it being  
11 problematic that the Attorney General used letterhead. Do you  
12 have any reason to be concerned about that?

13 MR. BEEMER: Yes. I mean, we have reason to be  
14 concerned because so many issues that are raised are issues of  
15 first impression in this regard, and I think we're all  
16 concerned that we're trying to do everything appropriately.  
17 When something like that occurs and senior attorneys in the  
18 office are not aware of it, all we can do is if we have a  
19 concern is raise it in the appropriate forum. But, you know,  
20 that's clearly an issue that reasonable people might differ  
21 on, and that's one of those areas that are -- it's going to be  
22 difficult, I think, to figure out because there's so many  
23 different little hybrid areas within our office, what  
24 constitutes the practice of law. It's also important to note,  
25 it's not just the practice of law, it's engaged in law-related

1 activities, which is actually an even broader spectrum of  
2 things than the practice of law. And so we're very, very  
3 mindful of that. And, you know, that's something that as I  
4 mentioned earlier with press releases and things, we're trying  
5 very hard to make sure that the office is operating in a way  
6 that it does not -- that the Attorney General isn't adversely  
7 affected, that the attorneys aren't adversely affected, and  
8 that the function of the office is not adversely affected.

9 SENATOR BAKER: Historically, we know that the  
10 Attorney General has access to privileged documents and  
11 privileged communications. And so I raise the question, are  
12 you concerned about the loss of privilege or who's entitled to  
13 waive privilege for those kinds of communications, and do you  
14 have any concern about that as you operate?

15 MR. BEEMER: When you say privilege, are you  
16 referring to attorney-client privilege?

17 SENATOR BAKER: Or privileged documents that you  
18 have coming between you and others that you're engaging in  
19 settlements with, and others. Do you have any concern about  
20 that?

21 MR. MULLE: The issue is very important, which is  
22 obviously why you asked the question. And we have, as part of  
23 the restriction of the role of the Attorney General in legal  
24 matters, settlements are a good example, settlements which  
25 before October 22 would have, given the dollar amount, gone to

1 the Attorney General for personal sign-off, do not go to the  
2 Attorney General any longer, they go to the First Deputy.  
3 Likewise, because the Attorney General is not practicing law,  
4 to the best of my knowledge, we have not been sharing legal  
5 files or legal correspondence or legal memos or court  
6 documents other than what's public because it's been filed in  
7 a court, et cetera. So we are acutely concerned always about  
8 ethics and about client privilege, particularly in all the  
9 litigation that we do. And trust me, our clients, the  
10 agencies, would also, I'm sure, are taking a close look and  
11 they would remind us if we ever strayed off of the mark. But  
12 we have not, and we have been, and will continue to be,  
13 diligent on that point, as we're obligated to do.

14 SENATOR BAKER: How many attorneys are in the  
15 complement and how many, as I think of your office as really  
16 our chief law firm for the Commonwealth of Pennsylvania, how  
17 many are lawyers and how many are investigators and who has  
18 the role and function of supervising, evaluating,  
19 disciplining, and the like? Is that something that has fallen  
20 onto you, Mr. Beemer, or is that something that the Attorney  
21 General has continued to do in any way?

22 Mr. BEEMER: To answer your question, it's not  
23 exact, but it's about a third of the office is attorneys. We  
24 have slightly over 800 people as a complement right now, about  
25 a third are attorneys, about a third, slightly more than a

1 third are agents, and about a third are support staff or other  
2 individuals. The issue of personnel is a very tricky one with  
3 regard to who controls hiring, firing, and other matters. I  
4 mean, I do think that we have, particularly as it relates to  
5 attorneys in the office, it creates enormous problems if that  
6 control continues to be vested with the Attorney General  
7 because it opens up to the appearance that--

8 SENATOR BAKER: Is that control still in her  
9 purview?

10 MR. BEEMER: That control is -- we are still  
11 working through that issue, the matter of personnel.

12 SENATOR BAKER: Thank you.

13 CHAIRMAN GORDNER: Senator Haywood, followed by  
14 Senator Yaw.

15 SENATOR HAYWOOD: Thank you. And thank you for  
16 your testimony, and especially for your service as well. The  
17 Attorney General, I'm assuming, has some responsibilities  
18 beyond those which have historically been the category of  
19 practicing law. It's a large operation. Would you share with  
20 me what the role of the Attorney General is beyond the  
21 practice of law functions that have been delegated or  
22 designated to others?

23 MR. BEEMER: Jim, do you want to answer that?

24 MR. DONAHUE: The Attorney General is the chief  
25 law enforcement officer, so most of what the Attorney General

1 does is ultimately make decisions about cases, whether we're  
2 going to bring a criminal case, whether we're going to bring a  
3 case that might arise in the Public Protection Division, or  
4 how we're going to handle the many cases that are brought  
5 against the State that are handled by the Civil Law Division.  
6 So the vast majority of work that she does is legal work.

7           There are, of course, other things the Attorney  
8 General does. She does public appearances, she does speeches.  
9 We run a contest every year among schools to have students  
10 draw anti-drug messages for a calendar. There are a lot of  
11 those public functions, but the vast majority of the work of  
12 the Attorney General is legal work.

13           One of the things that caused us a great deal of  
14 anxiety was that 98 percent/2 percent number that was put out  
15 there in the press because, actually, I don't think there's  
16 any number you can put there. So don't ask me to say what's  
17 the real number if it's not 98 percent. But the vast majority  
18 of the work is to make legal decisions. We present the  
19 Attorney General with information about a case, sometimes a  
20 very complex case, or sometimes a case that has a lot of  
21 policy issues. And, you know, that's what her job is, to make  
22 those decisions. Now those decisions are stopping at Mr.  
23 Beemer.

24           SENATOR HAYWOOD: This might be a little bit  
25 outside of your expertise, but the order that the Supreme

1 Court issued to temporarily suspend the license of the  
2 Attorney General, is it your understanding that the Supreme  
3 Court retains jurisdiction on matters related to the  
4 suspension of her license?

5 MR. BEEMER: It's my -- I mean, I think it's  
6 probably our collective understanding that any matter related  
7 to the suspension of her license is a matter vested with the  
8 authority of the Disciplinary Board, and then ultimately the  
9 Pennsylvania Supreme Court. The attendant issues that flow  
10 out of the fact that the license is suspended may not  
11 necessarily be -- fall within that purview, but certainly the  
12 issue regarding the license suspension, you know, the length,  
13 whether it's temporary, whether it's indefinite, whether it's  
14 -- all of those things fall, I think, directly under the  
15 Court's umbrella.

16 SENATOR HAYWOOD: And would that include  
17 compliance with the order? And by compliance, I mean, would  
18 be if the person was temporarily suspended from practice--

19 MR. BEEMER: Correct.

20 SENATOR HAYWOOD: --but they continue to do so,  
21 would that then be under the authority of either the  
22 Disciplinary Board or the Supreme Court?

23 MR. BEEMER: Absolutely. Yes.

24 SENATOR HAYWOOD: You also mentioned that you all  
25 sent a letter to the Disciplinary Board. Could we get a copy



1 of that?

2 MR. BEEMER: Yes.

3 SENATOR HAYWOOD: Are we getting two rounds or  
4 only one?

5 CHAIRMAN GORDNER: Sure.

6 SENATOR HAYWOOD: Okay, thank you.

7 CHAIRMAN GORDNER: You'll get two.

8 Senator Yaw.

9 SENATOR YAW: Thank you, Mr. Chairman.

10 I understand all of you have tried to do the best  
11 in a bad situation. You didn't create it. I understand that.  
12 I didn't create it either, but nevertheless, I am concerned  
13 about the impact on the Commonwealth of Pennsylvania. Nobody  
14 has asked this: I assume all of you are members of the Bar?  
15 Active members?

16 MR. BEEMER: Yes.

17 MR. DONAHUE: Yes.

18 MR. CHERBA: Yes.

19 MR. MULLE: (Indicating in the affirmative.)

20 SENATOR YAW: Do all of you go to court? Mr.  
21 Cherba?

22 MR. CHERBA: Yes, I do.

23 MR. DONAHUE: Yes, I do.

24 MR. BEEMER: Yes.

25 MR. MULLE: No, I don't.

1           SENATOR YAW: So, we have a mix. We have some who  
2 go to court, some don't; you're still attorneys. Now I ask  
3 you this question: Could any of you do your job as currently  
4 assigned to you if you had a suspended law license?

5           Mr. Cherba?

6           MR. CHERBA: As I currently perform my duties?

7           No.

8           MR. DONAHUE: No.

9           MR. BEEMER: No.

10          MR. MULLE: As my job is currently structured, it  
11 would be impossible.

12          SENATOR YAW: All right. Thank you.

13          There's been some question about, and Mr. Mulle, I  
14 think that you indicated that the First Deputy has the  
15 authority and basically is acting as the Attorney General for  
16 Pennsylvania as a result of the Commonwealth Attorneys Act, or  
17 provisions in it. I have some serious questions about the  
18 act, and maybe it's the way the legislature wrote it back  
19 when, but nevertheless, Section 202 is very specific. It  
20 says, "Whenever there shall be a vacancy in the position of  
21 Attorney General, the first deputy shall exercise the powers  
22 and perform the duties of the Attorney General until the  
23 vacancy is filled." I don't know of any other provision in  
24 the Commonwealth Attorneys Act or anywhere related in the  
25 Constitution that gives the First Deputy authority to act in

1 any circumstance other than when there's a vacancy, do you?

2 Any of you?

3 MR. MULLE: You're correct. The Commonwealth  
4 Attorneys Act speaks to vacancy. It does not define vacancy.  
5 It does not speak to incapacity or disability or use any other  
6 term or set forth any other scenario. That's problematic.

7 However, if you read the act within the context of  
8 the history and the normal operating procedures and  
9 delegations of the Office of Attorney General, we believe that  
10 the First Deputy has the inherent authority, within limits, to  
11 exercise the legal authority he is exercising, which is not  
12 radically different than the authority that First Deputies may  
13 have exercised in certain situations in the past.

14 Now, if I had my preference and could write the  
15 perfect law, if that's possible, then I would have a whole  
16 section in the Administrative Code of 1929 and in the  
17 Commonwealth Attorneys Act and any other part of the State  
18 legislative corpus which deals with office holders that would  
19 set out all these scenarios. A former client of mine,  
20 President of Shippensburg University, used to like to talk  
21 about teachable moments. This may be a teachable moment for  
22 all of us, that perhaps we need to take a look at the  
23 Commonwealth Attorneys Act eventually when this is all over  
24 and look and see if there's a need to make some revisions to  
25 it.

1                   SENATOR YAW: Well, respectfully, I might disagree  
2 with you, that I think that the act is very clear that in the  
3 way that it's written and it specifically refers to the  
4 Attorney General taking action throughout, and I'm going to  
5 talk about that in a minute, is the act contemplates that the  
6 Attorney General will be a person in office qualified to hold  
7 that office in all respects. And as a result of that, I don't  
8 disagree with you that in a normal course of events the person  
9 can decide, you know, to whatever all of you, appointed  
10 whatever deputies, because they have the power to hire the  
11 necessary people to help them do the job. But I also think  
12 that the way that the act is written, it's written to some  
13 extent assuming that there is not one other employee, not  
14 anybody other than the Attorney General, that person must be  
15 able to act in all respects, and that's my concern about this.  
16 In this case, we have a situation where the person at the top  
17 can't act in the full capacity that's required of that job. I  
18 mean, quite honestly, three of the four of you in your job as  
19 First Deputy, you go to court. Well, the Attorney General, in  
20 this particular situation that we find ourselves in, cannot go  
21 to court and can't represent the various agencies involved.

22                   I know that there's a couple of other provisions  
23 that talk about "the" Attorney General, and you mentioned  
24 there's distinctions between Attorney General and the Office  
25 of Attorney General. My feeling is, I think it's very clear

1 when the act says "the Attorney General," they mean "the"  
2 Attorney General, not "the Office of." And I can tell you --  
3 you can look this up or take my word for it, there are many,  
4 many places in the act in, for example, in Section 204, where  
5 it talks about -- one section says "Before the Attorney  
6 General shall render any opinion interpreting any  
7 appropriation act, or any act authorizing the expenditure of  
8 money, he shall notify the Departments of the Auditor  
9 General..." and so forth. Now that specifically--

10 MR. MULLE: Right.

11 SENATOR YAW: --and this legislation was written  
12 at a time when perhaps a better term rather than "he" should  
13 have been used, but nevertheless, it specifically refers to  
14 that person. And there are other places in that same section  
15 that says, "The Commonwealth agency may revise a rule or  
16 regulation to meet the objections of the Attorney General and  
17 submit the revised version for his review." I mean, it  
18 doesn't say "the Office review," or "the Office of."

19 Now, I fully agree that the Attorney General  
20 cannot look into all these things personally. They delegate  
21 it. It's the same way as a senior partner in a law firm would  
22 do. I assume that you have people that do research and  
23 writing for you and they do all kinds of things. But  
24 something goes out from your division, it goes out under your  
25 name. And that's the way I interpret the Commonwealth

1 Attorneys Act when it says "the Attorney General." A lot of  
2 other people could be involved, but the person who is signing  
3 their name to the bottom line is the Attorney General.

4 There's one other provision too under the  
5 Commonwealth Attorneys Act. This causes me some concern.  
6 It's membership on agencies, Section 207. It says, "The  
7 Attorney General shall serve as a member of the Board of  
8 Pardons and he, or his designated deputy, shall serve as a  
9 member of the Joint Committee on Documents, the Hazardous  
10 Substances Transportation Board," and other ones. I think  
11 it's significant, here it says the Attorney General shall  
12 serve as a member of the Board of Pardons, and designees can  
13 serve in the other capacities. I mean, who is serving on the  
14 Board of Pardons now? Anybody?

15 MR. CHERBA: The Attorney General is.

16 SENATOR YAW: So, the Attorney General is still  
17 serving on the Board of Pardons?

18 MR. BEEMER: (Indicating in the affirmative.)

19 SENATOR YAW: Okay. I would like to talk about  
20 your memo, and I fully understand the last part of your memo  
21 you talked about press releases, giving the implication that  
22 somehow the Attorney General was involved in them. I have a  
23 press release here that was issued yesterday. Are you aware  
24 of it?

25 MR. BEEMER: I don't know if I'm aware of the

1 specific press release.

2 SENATOR YAW: Well, it's from the Office of  
3 Attorney General, and it starts off, "Attorney General  
4 Kathleen G. Kane today announced a settlement with a  
5 for-profit education company accused of using high-pressured  
6 recruitment practices and misrepresenting the numbers of its  
7 graduates who obtained employment in their field of study."  
8 You didn't know about that?

9 MR. DONAHUE: Yes, I did. It's one of my cases.  
10 Yes.

11 SENATOR YAW: It's one of your cases? Were you  
12 aware of this press release?

13 MR. DONAHUE: Yes.

14 SENATOR YAW: Because it appears to say exactly  
15 what you were concerned about.

16 MR. DONAHUE: Well, it says she announces. It  
17 doesn't say that she approved or initiated. That's  
18 specifically--

19 SENATOR YAW: Well, you were concerned in your  
20 memo, it said about the implication that arises out of the  
21 Attorney General doing anything in the process.

22 MR. CHERBA: Got to be careful, right.

23 SENATOR YAW: Now, I mean, and that was yesterday.  
24 There was one on the 16th which also said, the Attorney  
25 General "today announced the filing of a legal action against

1 a midstate home improvement contractor...." Once again, I  
2 mean, that didn't concern you?

3 MR. BEEMER: As I stated earlier, I believe it  
4 absolutely did and does concern us, primarily because it opens  
5 the door to people externally claiming that she had a role in  
6 the decisionmaking or other process that she may not have had.  
7 And so that was the purpose behind putting it in the memo.  
8 You know, one of the difficulties in -- may not necessarily  
9 have authority over the communication section of the office,  
10 because that is not necessarily an inherently legal function,  
11 and so therefore there might be a disconnect, which is why,  
12 you know, with Senator Wiley's question I put the caveat on  
13 it, direct legal actions we have not had -- Kathleen Kane has  
14 not inserted herself, to our knowledge, in direct legal  
15 actions, but that type of thing that you've just described  
16 creates at least the appearance of a potential issue that  
17 we're concerned about and, you know, we feel that we may have  
18 to address at some point when it gets raised by, you know,  
19 parties to these actions.

20 SENATOR YAW: Yes. And as you said, I mean, you  
21 face, I understand that, a number of, probably -- how many  
22 active cases does the Attorney General's Office have?

23 MR. MULLE: Thousands.

24 MR. BEEMER: Thousands and thousands.

25 SENATOR YAW: Thousands and thousands of cases,



1 and you probably have, is it fair to say, thousands of  
2 investigations also?

3 MR. DONAHUE: Yes.

4 MR. BEEMER: I think that's fair, yes, at any one  
5 time.

6 SENATOR YAW: So, I mean, of those thousands of  
7 people that are out there, you've got thousands of creative  
8 defense attorneys, and I venture to say you're probably going  
9 to hear about some of these things, if you haven't already.  
10 My understanding is some of these issues have already been  
11 raised in court actions. I'm not sure. Can you confirm that?

12 MR. BEEMER: I can confirm that Mr. Donahue has  
13 already spoken to a couple. I know there are several times in  
14 the Criminal Division--

15 MR. CHERBA: Correct.

16 MR. BEEMER: --some of which we can't discuss  
17 publicly here. But there are also, I mean, I can tell you  
18 that, without getting into specifics, we were made aware of  
19 the fact that in a county in western Pennsylvania in a  
20 criminal matter a judge from the bench asked the defense  
21 attorney if he was going to challenge the authority of the  
22 Attorney General to act. And I don't expect that to be  
23 something that doesn't occur regularly coming down the road  
24 because this whole situation is additive in the sense that  
25 there may not have been a whole lot of problems on October 22

1 because it was the first day, but as we get further and  
2 further into this, we're going to be faced with dealing with  
3 more and more actions where we're going to be litigating these  
4 issues until -- if and until it ultimately gets decided  
5 definitively by a court of last jurisdiction.

6 SENATOR YAW: And quite honestly, there was a  
7 sitting district attorney who sat here the other day, and you  
8 may have seen that, and said that they understood why defense  
9 attorneys were probably going to raise as many of these issues  
10 as possible, and that is because otherwise, somewhere you're  
11 going to face it again because they're going to be accused of  
12 being ineffective counsel.

13 MR. CHERBA: Correct.

14 MR. DONAHUE: Right.

15 SENATOR YAW: So, I mean, this whole thing has a  
16 snowballing and ugly effect and long term it could affect--

17 MR. BEEMER: It does, and we have some -- you  
18 happened to have a panel here of three of, we have a  
19 remarkably diverse and outstanding group of local district  
20 attorneys elected throughout this Commonwealth, and one of our  
21 most serious charges in the Criminal Division is to accept  
22 referrals for cases that are conflict cases. And many times  
23 the conflict cases are cases that are particularly problematic  
24 for one reason or another. Oftentimes they may even be high  
25 profile matters. And so we have, you know, we're concerned

1 and constantly reaching out to the District Attorneys  
2 Association to try to allay them of any concerns about, boy,  
3 if we refer a case to the Attorney General's Office, you know,  
4 and we have a very serious matter here, do we want them to  
5 have to address some of these things in court? So we're  
6 constantly trying to work with them and understand all of the  
7 concerns that were raised last week by that three-member  
8 group, and I think are probably in some respects shared by a  
9 lot of the other 67 elected district attorneys around the  
10 State. And they've been nothing but wonderful and supportive  
11 to us in understanding where we're at and what we have to do,  
12 and we're going to continue to try to work through that  
13 because accepting conflict referrals is an enormous part of  
14 what our Criminal Division does. It's certainly not the only  
15 part, because we have many matters from which we have original  
16 jurisdiction, but it's a very important aspect of what we do.

17 MR. CHERBA: Right.

18 SENATOR YAW: And my specific concern is what  
19 happens -- you're facing, those issues which defense counsel  
20 are going to raise, whether it's the authority to even  
21 prosecute the case, or whatever it might be, we could be  
22 looking at, it could be years down the road until some of  
23 these things are resolved, on top of everything else that  
24 you're trying to do.

25 MR. BEEMER: I believe that to be a fair

1 statement. That's correct.

2 SENATOR YAW: Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN GORDNER: We'll have round two. Just let  
5 me go back to something Mr. Donahue said in regard to, and I  
6 guess a couple of you said, in regard to the interaction with  
7 Kathleen Kane with each of you in regard to matters since  
8 October 22. We have the four Deputy Attorneys General here.  
9 I'm going to start with you, Mr. Cherba. You're the Executive  
10 Deputy Attorney General for the Criminal Law Division. Can  
11 you tell me what sort of contact you have had with Kathleen  
12 Kane on a weekly basis since October 22 in regard to the  
13 matters that you deal with in the Criminal Law Division?

14 MR. CHERBA: Since the 22nd I've had personal  
15 and--

16 MR. BEEMER: Could we have just a quick  
17 opportunity to discuss this?

18 CHAIRMAN GORDNER: Sure. Just make sure your  
19 microphones are off.

20 (Witnesses conferring.)

21 CHAIRMAN GORDNER: Yes.

22 MR. BEEMER: Chairman, if that question is to be  
23 asked, if we could only respectfully request that the answers  
24 be limited to not of the content of the contact.

25 CHAIRMAN GORDNER: I'm fine with that. I guess

1 what I'm getting at, you know, we have a certain charge here.  
2 Part of it is to find out the functionality of the Attorney  
3 General's Office.

4 MR. CHERBA: Correct.

5 CHAIRMAN GORDNER: And whether Kathleen Kane can  
6 effectively operate as Attorney General with a suspended law  
7 license.

8 MR. CHERBA: Yes.

9 CHAIRMAN GORDNER: She had a public statement  
10 saying that 98 percent of what she does is administrative.  
11 I've heard certainly differing opinions, so I've got three  
12 major division chairs and the First Deputy here, so I've heard  
13 that she has not interfered with the divisions in regard to  
14 legal matters, which is encouraging. But I guess I'm  
15 interested in since October 22, what sort of interaction, and  
16 I'm not asking for specific interaction, but what sort of  
17 interaction she has had in regard to your division since  
18 October 22?

19 MR. CHERBA: I've had personal contact with her,  
20 and telephonic contact, and e-mail contact.

21 CHAIRMAN GORDNER: Okay. Mr. Donahue?

22 MR. DONAHUE: I've had one communication with her  
23 assistant.

24 CHAIRMAN GORDNER: Mr. Mulle?

25 MR. MULLE: I've had very few communications with

1 her, electronically or otherwise.

2 CHAIRMAN GORDNER: Okay. Mr. Beemer?

3 MR. BEEMER: I've had limited tele -- electronic  
4 communication with her.

5 CHAIRMAN GORDNER: Mr. Wiley. Senator Wiley,  
6 sorry.

7 SENATOR WILEY: Thank you, Mr. Chairman.

8 I just have one question. You spoke of the  
9 concern of the appearance from outside parties. But do you  
10 feel confident that the actions of the office remain valid?  
11 Do you still feel that the integrity of the office is still on  
12 solid ground?

13 MR. BEEMER: I do. I believe this presents  
14 enormous challenges that we are dealing with, but as I believe  
15 Mr. Donahue so aptly stated earlier, all we can do is operate  
16 with the hand we've been dealt, so to speak, and we believe  
17 that to read otherwise in certain circumstances would have  
18 created a result via the Supreme Court order that would have  
19 effectively crippled the functioning of one of the most  
20 important State agencies in government. So, while we are  
21 extremely concerned about the impact that this has on our  
22 office, which is profound and extraordinary, really, because  
23 so much of what we do is tasked with, I mean, that memo is  
24 just a very small portion of what we have had to do to try to  
25 institute as many safeguards and procedures as we could to

1 deal with this.

2 So, but having said that, we feel that the actions  
3 and the authority that the office has taken since October 22  
4 are valid and that the office will continue to operate the way  
5 that it had prior to October 22, with some obvious differences  
6 that we've discussed here today. And we almost have to  
7 believe that and push forward in that regard, and we will  
8 continue to do so.

9 SENATOR WILEY: Gentlemen, I not only appreciate  
10 your testimony today, but also appreciate you working under  
11 the difficult circumstances that you have been, and we  
12 appreciate your feedback and your input, and it has been very  
13 valuable for me to get the information that you have presented  
14 today, and I appreciate that. Thank you.

15 Thank you, Mr. Chairman.

16 MR. CHERBA: Thank you, Senator.

17 CHAIRMAN GORDNER: Senator Schwank, followed by  
18 Senator Baker.

19 SENATOR SCHWANK: Thank you. And I, too,  
20 understand the kind of position that you're in and I do  
21 appreciate not only your service here today, but everything  
22 that you have done for us. As a citizen of the Commonwealth,  
23 I want to express that.

24 A line of questioning that I've heard earlier I  
25 think went to the terms of a vacancy in the office. Do you

1 believe that the office is vacant?

2 MR. BEEMER: That, sort of, I guess, speaks to the  
3 ultimate question for all of you. I mean, I don't think  
4 there's any question that the head of the office is legally  
5 disabled from performing a variety of functions, many of which  
6 we have discussed here today. I don't think that's really a  
7 subject for debate, which is why we took the actions that we  
8 took, because I didn't think that there was any reasonable  
9 legal mind that would differ with regard that there was going  
10 to be a very dramatic impact on what had to take place in the  
11 office. As to that specific issue, I don't think -- I do not  
12 feel comfortable speaking to that. If any of the panel--

13 SENATOR SCHWANK: Well, based on what the action  
14 that the Supreme Court did, to me, and tell me if I'm  
15 incorrect in thinking this, they did not remove the Attorney  
16 General from the office. They suspended her law license.  
17 Now, you have been functioning, you have continued to function  
18 as the office. So would you -- would that -- would you say  
19 that has created a vacancy in the office?

20 MR. BEEMER: I can't answer that question only  
21 because I think that's ultimately a legal conclusion that is  
22 not best for people in our position to draw other than to say  
23 that it has changed, certainly, the way the office functions  
24 and operates, and changed it in a way that is unprecedented.  
25 I don't think there's any -- I've been unable to locate, and I



1 have looked long and hard, not just in this Commonwealth, but  
2 around the United States, for anything close or similar to  
3 this, and we struck out. We were not able to find anything.  
4 And so we're in unchartered water, and all I can tell you is  
5 that we have the benefit of 800 incredible people that do all  
6 the work and--

7 SENATOR SCHWANK: They're doing their job.

8 MR. BEEMER: --and do all the labor, doing their  
9 job every day, and they have made it, you know, for the four  
10 of us and the other people in higher positions in the office,  
11 have made it possible in, you know, circumstances that nobody  
12 whoever came to that office ever thought we would find our  
13 ourselves in.

14 SENATOR SCHWANK: I appreciate that answer. I  
15 understand that was a difficult one to take on. But in terms  
16 of function, what I'm hearing you say is that office is  
17 functioning. Those employees, including you, are doing your  
18 jobs. Correct?

19 MR. BEEMER: Absolutely.

20 SENATOR SCHWANK: And you're still getting cases  
21 referred from district attorneys? You're still taking on the  
22 work that you have always taken on?

23 MR. BEEMER: We are taking what is referred to us.  
24 I mean, I can't sit here and say there hasn't been or won't be  
25 an impact. It's not as though in three to four weeks' time we

1 really have any appreciable way of knowing whether or not  
2 there's going to be a dramatic drop-off or whether or not as a  
3 whole, you know, the District Attorneys Association or the  
4 individual district attorneys are going to have reluctance or  
5 reticence about sending us matters. You know, so we're, I  
6 think, doing the best in a bad situation is the best way I can  
7 put it.

8 MR. CHERBA: Senator, if I may, a couple of times  
9 today the panel has referred to the Supreme Court's order, and  
10 certainly the Supreme Court doesn't need me to carry their  
11 water, but I think it was clear in their order, in Justice  
12 Saylor's order, that the issue of removing the Attorney  
13 General was not properly before that court.

14 SENATOR SCHWANK: Thank you.

15 CHAIRMAN GORDNER: Senator Baker, followed by  
16 Senator Haywood.

17 SENATOR BAKER: I guess I'd like to just make a  
18 couple of comments. So we've outlined today that the Attorney  
19 General can't make a legal decision. She can't review  
20 privileged documents. She can't participate in privileged  
21 conversations. She can't perform any law-related activities,  
22 even with a supervising attorney. She can't represent the  
23 Commonwealth. There is a concern that she can't discipline,  
24 hire, fire attorneys. And so what are the significant parts  
25 of the job that she can do? And is it fair to say that the

1 Office of Attorney General has been significantly impacted and  
2 impeded?

3 And I think it has to go on the record that all of  
4 you have demonstrated a commitment and a willingness to put  
5 the extra work in to ensuring that the operation is  
6 functioning, albeit severely wounded. And so, you know, we  
7 are looking at what effect this has for an Attorney General  
8 not to have a valid law license, for whatever period of time  
9 that may be. And I realize it's unchartered water, but  
10 clearly, you are impacted, you are impeded, and you are  
11 wounded by where we are. If you'd like to comment on that.

12 MR. BEEMER: I think that there's two aspects of  
13 it that are significant and profound. One is the external  
14 issues that we have to deal with, and that is, you know, as  
15 we've already discussed, having to deal with the myriad of  
16 legal challenges that come along with what could be construed  
17 as, you know, reasonable interpretations. Senator Yaw has  
18 already gone through some of the issues that we will have to  
19 face externally that takes up hours, days of resources, that  
20 we would otherwise be devoting in other ways.

21 Internally, we have to deal with the constant  
22 concern that we are protecting all of our employees from any  
23 claim that they are in any way engaging in or aiding someone  
24 in being involved in the unauthorized practice of law. And  
25 that's a constant, you know, it requires constant vigilance.

1 So when you push the two together, it's a real issue -- I  
2 mean, it's a real problem. That's different than whether or  
3 not we feel that we can carry on and be legally successful in  
4 doing so, because I think all four of us, you know, with some  
5 degree of unanimity, because of how amazing the people are  
6 underneath us, we believe that that will happen and trust that  
7 that will happen. But the confluence of the external and the  
8 internal problems is really significant. And I don't -- it's  
9 hard to overstate the issue.

10 SENATOR BAKER: Well, and I think it's difficult  
11 for all of us who are listening and hearing this. It's a  
12 suspended license and it's less than a month into it. Is it a  
13 suspended license for a month? Six months? A year? And  
14 clearly, what could happen moving forward are the things that  
15 we're trying to assess in terms of how we function and how  
16 this office functions without the chief law enforcement  
17 officer with a suspended license.

18 MR. BEEMER: And I think it's fair to say that we  
19 hope that internally, as time goes on, we will be able to  
20 refine and deal with all the issues and make it work better.  
21 But as I explained earlier, externally, this is only going to  
22 be additive. I mean, as time goes on, the volume of things  
23 that we have to deal with is going to go up, up, up like this  
24 (indicating). And, you know, none of us like to think about  
25 where that crescendo is going to top off. You know, when we

1 hit an apex.

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

3 MR. MULLE: (Indicating in the affirmative.)

4 SENATOR BAKER: It could have serious consequences  
5 for the Commonwealth.

6 I thank you for your comments. Thank you, Mr.  
7 Chairman.

8 CHAIRMAN GORDNER: Senator Haywood, followed by  
9 Senator Yaw.

10 SENATOR HAYWOOD: Thank you. Thank you for your  
11 testimony, and obviously more so for what you are doing and  
12 particularly have done in the last couple of months. It seems  
13 phenomenal.

14 My question is limited to Mr. Mulle. I think you  
15 mentioned something about past experience with First Deputies  
16 having to take over responsibility, and I maybe didn't hear  
17 clearly, but could you share any of your experiences where  
18 First Deputies have had to take over significant management?  
19 I just wanted to -- I heard something about that and I just  
20 wanted to see if there was more that you had to say on that  
21 topic.

22 MR. MULLE: I don't have personal knowledge of an  
23 extended absence where a First Deputy has had to make the kind  
24 of significant commitment that our First Deputy has in this  
25 instance, but there have been situations, and I'm sorry I

1 can't come up with dates off the top of my head, where the  
2 Attorney General, for one reason or another, is out of the  
3 country or unavailable and provision has been made for the  
4 First Deputy to step in and exercise a level of control. You  
5 know, the Commonwealth Attorneys Act does provide that the  
6 structure, the form, and the operation of the office is  
7 largely based on the Attorney General's desire, even the  
8 duties of the First Deputy in absence actually taking over.  
9 So with appropriate delegations, be they oral or written,  
10 appropriate policies, appropriate procedures and protocols,  
11 provisions have been made over the years for various actions  
12 at various levels that do not require direct regular input by  
13 the Attorney General.

14 SENATOR HAYWOOD: Thank you.

15 Now my second question is kind of speculative, but  
16 the rising external threat, is there a way that you could  
17 share what might be a worst-case scenario in how that might be  
18 managed?

19 MR. BEEMER: Yes. I would view a worst-case  
20 scenario, and one that gives me personally quite a bit of  
21 heartburn, if we had a criminal case in a county involving a  
22 serious violent offender and we charged that individual, and  
23 for reasons of prior record or the nature of the offense, that  
24 person got a very high bail because they would be a danger to  
25 the community if they were released, and a defense attorney

1 filed a motion to dismiss the case based on the lack of  
2 jurisdiction of the Attorney General's Office to investigate  
3 and/or prosecute the matter, and one of the many hundreds of  
4 Common Pleas judges we have in this Commonwealth found that  
5 that motion was valid and dismissed the case, that person  
6 would be released, even if it was in the short term, until we  
7 could address that issue. That is what I like to call -- I  
8 mean, what I would call a sort of nuclear scenario. We pray  
9 that does not happen, but it's one that we have to vigilantly  
10 guard against all over the Commonwealth and that we're going  
11 to have to deal with, and we recognize that. And as we've  
12 discussed before, and I, you know, we would hope that would  
13 not happen, but that's an example of a situation where we  
14 would -- we could potentially have public safety adversely  
15 affected if somebody took the position and a judge took the  
16 position that the defense's motion held water.

17 SENATOR HAYWOOD: Thank you very much for much  
18 more than your testimony, thank you for your service.

19 Thank you, Mr. Chairman.

20 CHAIRMAN GORDNER: Senator Yaw.

21 SENATOR YAW: Thank you, Mr. Chairman.

22 I guess this is more of a statement than anything.  
23 In 1978, the citizens of Pennsylvania decided that we should  
24 have an elected Attorney General. And anybody who runs for  
25 elected office, including the Office of Attorney General, runs

1 on some kind of a philosophy, whether it's -- I mean, drugs or  
2 child abuse or human trafficking or something, something that  
3 they tell the voters out there that they're going to  
4 emphasize. If you elect me, I'm going to do this, this, this,  
5 and this, or this is what I'm going to do. Now, what has been  
6 done in light of this current situation by you guys is -- it's  
7 great. But the difference is, you don't owe that same  
8 responsibility to the voters that the Attorney General does or  
9 did when that person runs for office. You're committed public  
10 servants. I understand that. You're doing your job the best  
11 that you can see fit, but the engineer for this train is not  
12 there, and that's, I think, the issue that we're all wrestling  
13 with. So, but thank you for your service.

14 MR. BEEMER: Thank you, Senator.

15 CHAIRMAN GORDNER: Thank you.

16 I have one or two more questions, and then I think  
17 we're done. As part of the subpoena duces tecum that we sent  
18 to Kathleen Kane that she responded to last Friday, we asked  
19 her for "A description of any duties or functions the Attorney  
20 General has delegated to other employees of the Office of  
21 Attorney General which cannot be performed or effectuated due  
22 to the suspension of the Attorney General's law license." She  
23 attached two documents, and two documents only. One was a  
24 letter to you, Mr. Cherba--

25 MR. CHERBA: Yes, sir.



1 CHAIRMAN GORDNER: --as it relates to wiretaps, et  
2 cetera.

3 MR. CHERBA: That's correct.

4 CHAIRMAN GORDNER: And one to you, Mr. Beemer, as  
5 it relates to the same issue.

6 MR. BEEMER: (Indicating in the affirmative.)

7 CHAIRMAN GORDNER: Those were the only two  
8 documents that she provided to us in regard to delegation. I  
9 may have asked earlier, I just want to ask again, are you  
10 aware of any other documents that she has out there as it  
11 relates to delegation of duties or responsibilities?

12 MR. CHERBA: Other than the initial delegation to  
13 me when she came into office, again, under the Wiretap Act and  
14 some other duties that I have.

15 CHAIRMAN GORDNER: Okay.

16 MR. CHERBA: For instance, I sit as the  
17 administrative law judge for the office for firearms appeals  
18 hearings.

19 CHAIRMAN GORDNER: That was a delegation that she  
20 made when she assumed office?

21 MR. CHERBA: That would have been prior to the  
22 21st, yes.

23 CHAIRMAN GORDNER: All the other responsibilities,  
24 and there's lots of them that you've described today, are ones  
25 that you have assumed?

1 MR. BEEMER: I believe that's--

2 CHAIRMAN GORDNER: Since October 22.

3 MR. BEEMER: I would not use the word "assumed."

4 CHAIRMAN GORDNER: What word would you use?

5 MR. BEEMER: Carrying out.

6 CHAIRMAN GORDNER: Okay.

7 MR. MULLE: Executing.

8 MR. BEEMER: Executing. Thank you, Mr. Mulle.

9 Let the record reflect Mr. Mulle bailed me out.

10 CHAIRMAN GORDNER: I join, again, the entire  
11 committee in thanking you for participating in this hearing.  
12 You provided a lot of information to us. I'm going to have  
13 some concluding remarks and process. I'm going to dismiss the  
14 panel.

15 MR. CHERBA: Thank you.

16 MR. MULLE: Thank you.

17 MR. BEEMER: Thank you, Senators.

18 CHAIRMAN GORDNER: All right, in regard to, we're  
19 not going to do a press gaggle afterwards, as we've done after  
20 a couple of them. What I'm going to tell you is, first of  
21 all, I personally want to thank the Members of this committee.  
22 They have been incredibly responsible and participatory in a  
23 variety of meetings, discussions, hearings, and it really  
24 speaks well of the Members of this committee. We do not have  
25 any plans for any further hearings. As you know, the

1 President pro tem gave us a deadline of issuing a report by  
2 next Wednesday, which is November 25. At this point, we plan  
3 on meeting that direction from the President pro tem.

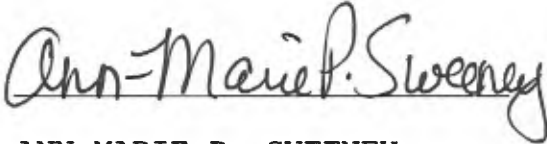
4 I can tell you that over the next three or four  
5 days the committee will be meeting and discussing what we have  
6 learned in regard to documents that have been provided to us  
7 from the first hearing with the DAs, with the second hearing  
8 yesterday from the constitutional and legal ethics experts,  
9 and today from this panel of Deputy Attorneys General in  
10 reaching the decision that we have been tasked with. And,  
11 again, we plan at this point to meet the deadline of next  
12 Wednesday, November 25.

13 At this point, I'll have the hearing called in  
14 recess until the call of the Chair.

15 (Whereupon, the proceedings were recessed at 2:55  
16 p.m.)

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