

COMMONWEALTH OF PENNSYLVANIA
SPECIAL COMMITTEE ON SENATE ADDRESS

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

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VOLUME I - Pages 1-49

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

Monday
November 9, 2015
1:00 p.m.

SEN. JOHN GORDNER, CHAIRMAN

MEMBERS OF SPECIAL COMMITTEE ON SENATE ADDRESS

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

Also Present:

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

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

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WITNESS:

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Hon. David R. Heckler, District Attorney,
Bucks County

5

Hon. John T. Adams, District Attorney,
Berks County

6

Hon. Lisa Lazzari-Strasiser, District Attorney,
Somerset County

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1 CHAIRMAN GORDNER: Good afternoon. I'd like to
2 call the public hearing of the Special Committee on Senate
3 Address to order. We have six of the seven Members of the
4 committee here before you. I am the Chair, John Gordner. To
5 my far left we have Senator Judy -- I'm sorry, he was leaning
6 back there. To my far left we have Senator Art Haywood, we
7 have Senator Judy Schwank. Next to me we have Senator Sean
8 Wiley. To my right we have Senator Gene Yaw. And to the far
9 right we have Senator Lisa Baker.

10 We have a panel of district attorneys here with us
11 today. We have, on my left, the Honorable John T. Adams from
12 Berks County. In the middle we have the Honorable David
13 Heckler from Bucks County. And on the right we have the
14 Honorable Lisa Lazzari-Strasiser of Somerset County. All
15 elected district attorneys from 3 of our 67 counties. So we
16 want to thank you for being a part of the panel.

17 I'm going to ask you if you would stand to be
18 sworn in, please.

19 (Whereupon, Hon. JOHN T. ADAMS, Hon. DAVID W.
20 HECKLER, and Hon. LISA LAZZARI-STRASISER, were
 duly sworn.)

21 CHAIRMAN GORDNER: This is the first hearing that
22 this committee is having as a public hearing in regard to the
23 charge that we got from the President pro tem, and we have
24 asked this panel of district attorneys to come before us
25 today. Obviously, you, on a weekly basis, have relations with

1 the Attorney General's Office in regard to prosecution, in
2 regard to conflict referrals, and we'd like to hear from you
3 in regard to the relationship of that as it currently exists.
4 So whichever one of you wants to start.

5 Maybe I could just ask, we did ask for a
6 bipartisan group. If I'm correct, Mr. Adams, you're a
7 Democratic district attorney?

8 MR. ADAMS: That is correct.

9 CHAIRMAN GORDNER: Mr. Heckler, you are a
10 Republican district attorney?

11 MR. HECKLER: I am.

12 CHAIRMAN GORDNER: And Ms. Lazzari-Strasiser, you
13 are a Democratic district attorney?

14 MS. LAZZARI-STRASISER: That's correct.

15 CHAIRMAN GORDNER: So I'll turn it over to whoever
16 wants to take the lead, just to give us some testimony. I
17 know you have some written testimony that you submitted. You
18 can stand by that or you can just give some oral testimony.
19 We do have a stenographer taking the information.

20 So I'll turn it over to the panel. If you could
21 make sure that your microphone is on. You need to push the
22 button. Mr. Heckler, you should reasonably know.

23 MR. HECKLER: There we go. I do see a green
24 light.

25 CHAIRMAN GORDNER: Excellent.

1 MR. HECKLER: I assume -- I don't think I had the
2 privilege of serving with any of you gentlemen, but if you
3 know me, maybe there may be a time to hit the red light. But
4 hopefully that hasn't come yet.

5 At any event, to take up perhaps the first matter
6 you mentioned, Mr. Chairman, which is addressed in our
7 prepared testimony, the issue has been raised that there has
8 been some difficulty with regard to referral of conflict cases
9 to the Attorney General. Frankly, I have not experienced that
10 situation, and I've been in office both before the existing
11 administration and obviously since. I think there has been
12 some comment made, some of our colleagues have offered some
13 thoughts on that or had some negative experience. I won't
14 speak for my colleagues here. I think as we note in our
15 prepared testimony, frankly, our perception is that -- or at
16 least I'll speak for myself, my perception is that that is
17 more a function of philosophy, perhaps a slightly different
18 philosophy on the part of those who are administrators below
19 the Attorney General, and certainly decisions made in good
20 faith and not -- with considerable basis in law and thought.

21 I would be happy, depending on how fulsome a
22 record you wish to build, to discourse on this at greater
23 length. I have sort of a unique perspective because a long
24 time ago I was counsel to the District Attorneys Association
25 in the years immediately before the enactment of the

1 Commonwealth Attorneys Act when the present referral regime,
2 of course, went into statute and came about. And one of my
3 jobs was to help district attorneys deal with those matters
4 before there was a statutory structure, and folks really sort
5 of worked out their own arrangements. But I have to tell you
6 that if my wife were here she would tell you that if you asked
7 me what time it is, there's a decent chance you will get a bit
8 of the history of timekeeping over the centuries, perhaps the
9 movement of the planets, and I'm not sure that that's
10 pertinent to your very serious issues that you have before
11 you.

12 So I will volunteer myself, if you wish to ask
13 questions later on. If you even, I'd be happy to speak with
14 your counsel separately to just provide sort of historical
15 background, but I'm going to unusually restrain myself as to
16 that, at least from certainly from the Bucks County
17 perspective, that has not been -- there hasn't been a change
18 and they've taken the referrals that--we try and be sparing--
19 they take the referrals that we've sent them under both
20 administrations.

21 CHAIRMAN GORDNER: Okay. I'll defer to Berks
22 County or Somerset County, if they have any information they
23 would like to give from your perspective.

24 MR. ADAMS: Well, with respect to the referral
25 issue, we have not had any issues. The cases that I have

1 referred to -- let me put my mike on there. The cases that
2 our office has referred to the Office of Attorney General have
3 been accepted. I don't think they've ever declined. When I
4 initially came into office, which was under a prior
5 administration, frankly, I had to forward about 75 cases
6 because I was, in my prior life, I was defense counsel.

7 You know, we're aware, though, that there's been
8 some issues in some other counties as to actual referrals, but
9 again, from the perspective of Berks County, our referrals
10 have always been--that we've requested--have been approved.

11 MS. LAZZARI-STRASISER: With regard to Somerset
12 County, I'm just finishing up my first term. I have only had
13 a reason or a case that had a conflict on one occasion, and it
14 was accepted, but it was a glaring conflict. I was the
15 defense attorney through the public defender's office in the
16 adjacent county for this new case, so clearly as a prosecutor
17 I would have had information that a prosecutor should not have
18 had.

19 I do have to say that in the sense that there were
20 cases that I ultimately did not ask for a referral on, where I
21 wanted to consult, I was unable to reach the Attorney
22 General's Office in those matters. And in the end I just
23 decided that unless the defense raised the issue, that I would
24 accept the prosecution and continue through the case whether,
25 you know, the conflict was never raised.

1 CHAIRMAN GORDNER: Was that a recent incident, or
2 did that happen previously?

3 MS. LAZZARI-STRASISER: It was within the last 12
4 months, on two occasions.

5 CHAIRMAN GORDNER: Okay. Let me ask, and we're
6 going to leave Members, and then there's some other testimony
7 that you may want to give as well. We'll have Members asking
8 questions and then go back. Just in my paper in the last
9 week, there was a jury that was being selected in Union County
10 and being prosecuted by the Attorney General's Office, and
11 Christopher Jones is the Senior Deputy Attorney General who is
12 prosecuting this case involving child pornography. And during
13 the jury pool process, the Deputy Attorney General asked the
14 potential jurors if they were aware of Kathleen Kane's legal
15 woes, and elicited responses from the pool of 30 jurors as to
16 whether they were aware of her issues or not, and then to
17 determine whether that would allow them to be stricken as
18 jurors. It was noted in the newspaper that this was now
19 common practice by any of the Deputy Attorneys General that
20 were prosecuting cases in any counties since her law license
21 has been suspended.

22 Has any one of you been aware of or ran into that
23 situation that has arisen in the last week or two in the jury
24 process, or is it too fresh?

25 MS. LAZZARI-STRASISER: Not in Somerset County, we

1 have not.

2 MR. HECKLER: This is the first I've heard of
3 that.

4 MR. ADAMS: Same here. I've not heard of that.
5 They have not had any trials in my county in the past 60 to 90
6 days, so I have not heard of it.

7 CHAIRMAN GORDNER: Okay. And again, it may be
8 just fresh as a result of it. This just happened to be a jury
9 pool selection on Monday, October 26. So it would have been
10 just shortly after that, but apparently, according to the
11 newspaper and according to the Attorney General's Office, that
12 is now standard questioning that they're going to be doing in
13 the jury selection process around the State.

14 MS. LAZZARI-STRASISER: I believe there was
15 reported that, and it was my impression that the defense
16 counsel during trial made comment to the jury about what
17 they're calling the K-factor, or something to that extent.
18 And are you also asking about that?

19 CHAIRMAN GORDNER: Sure.

20 MS. LAZZARI-STRASISER: I mean, that's surely
21 going to be common practice, I would think.

22 MR. ADAMS: Yes.

23 MS. LAZZARI-STRASISER: Any defense attorney that
24 wouldn't raise it would certainly be considered, or could be
25 considered ineffective because of the prejudice.

1 CHAIRMAN GORDNER: Can you elaborate on that? So
2 during any trial that you would be involved in, or your office
3 would be involved with, that during the, what, closing
4 argument process, or opening argument, or motions?

5 MS. LAZZARI-STRASISER: I actually thought it was
6 reported as there was -- it was live testimony. There was
7 either an agent of the Attorney General's Office testifying
8 and the comment was made, or the question on cross-examination
9 was presented by the defense attorney with regard to who his
10 boss was. Was he operating under Kathleen Kane? And it
11 elicited kind of a smirk response within the jury box and the
12 judge called for a recess and counsel were addressed in
13 chambers over it. And that surely jeopardizes the process of
14 objectivity and unbiased decisionmaking in the jury box.

15 CHAIRMAN GORDNER: Okay. If there's more
16 information on that specific case, if you are able to go back
17 and even in contact with your State District Attorneys
18 Association and provide information to myself that I could
19 then distribute to the committee, I would appreciate that.

20 Let's have a couple of questions from the
21 committee. I'll recognize Senator Wiley, and then Senator
22 Baker.

23 SENATOR WILEY: Thank you, Mr. Chairman.

24 Ms. Lazzari-Strasiser -- first of all, thank all
25 of you for joining us today. We really appreciate your

1 testimony.

2 Specific to your concern as far as your lack of
3 response from the Attorney General's Office when you were
4 requesting some consultation.

5 MS. LAZZARI-STRASISER: Yes.

6 SENATOR WILEY: You said that happened within the
7 last 12 months?

8 MS. LAZZARI-STRASISER: Yes.

9 SENATOR WILEY: Was that prior to October 21?

10 MS. LAZZARI-STRASISER: Yes.

11 SENATOR WILEY: Okay. Just note, October 21 was
12 when the Attorney General's law license was suspended. I'm
13 really focused on the impact that it has on your specific
14 offices. I know that we had requested that information from
15 each of you. Again, we're very focused on identifying the
16 answer to one particular question in this committee, and that
17 is: Can an individual with a suspended law license perform
18 the duties of Attorney General in this Commonwealth? That's a
19 large task that we have in front of us. But I'm really intent
20 to hear some of the specifics, if there are any specifics of
21 the process -- if there's any specifics of the process and
22 duties of your office that have been impacted by this. And it
23 doesn't appear that there are any specifics, is that correct?
24 Any of you?

25 MR. ADAMS: Well, I think the -- whether or not my

1 particular office has been impacted by the suspension of her
2 law license I would say is somewhat inconsequential. I'm not
3 going -- I'm going to go out of my way not to refer a case to
4 the Office of Attorney General. That's been my practice for
5 years, unless it's a clear conflict where we can't handle the
6 case, but otherwise, we're going to handle the case. So as to
7 our direct impact in that manner, I don't -- from our
8 perspective in Berks County, I see no impact because while we
9 work together with their agents in some of our drug fighting
10 efforts, her direct loss of license hasn't impacted us in
11 Berks County.

12 MR. HECKLER: And I would certainly say the same
13 is true of Bucks, and my philosophy is very much the same as
14 John's. I am loathe to refer cases, frankly, in many cases
15 I've perceived that my resources are at least as substantial
16 as those of the Attorney General's for a lot of purposes and I
17 hate to be sticking them with things that we can do. I would
18 not -- I am not surprised to learn that those who are trying
19 cases for the Attorney General would be attempting to screen a
20 jury in advance, just to revert to that question.

21 We do -- in one of the cases we referred involves
22 a very successful investigation by the Office of Attorney
23 General. The case is now awaiting trial in Bucks County,
24 with, however, with an out-of-county judge, but virtually the
25 entire judiciary and I disqualified ourselves, and the

1 Attorney General's Office, of course, that's been going on for
2 9 months or a year, they've done a very nice job with it. I'm
3 sure that that question would be asked simply because the
4 defense -- whether it's meritorious or not, you can certainly
5 see the defense counsel attempting to pooh-pooh the case
6 that's being brought against his or her client with sort of a,
7 "Well, the AG put you up to this and, you know, she's kicking
8 up sand," or whatever. It's some reflection on her troubles
9 when, I think, in fact, a reasonable juror would not conclude
10 that, but that's what voir dire is for, to weed those out.

11 MS. LAZZARI-STRASISER: I have maybe a different
12 perspective because I come from a rural, smaller county, and
13 if you want, I believe that I've had a direct impact. Just
14 this morning on my way here my chief detective called me and
15 asked -- we have a joint task force, a joint drug task force
16 that's currently operating through the Attorney General's
17 Office, and their question is what do we do? Do we suspend
18 that investigation? Do we wait for the outcome, whatever
19 decision is made? And I really had to say that's something
20 we'll have to address when I get back to the office. So there
21 is a direct impact considering the ripple effect of the
22 ability to ultimately prosecute those cases where you are
23 utilizing the Attorney General funds and resources.

24 I failed to say that we have discussed this and
25 the DA Association and we are very grateful that this

1 committee has been impaneled. This is far-reaching. None of
2 us took the oath of our offices without the seriousness of
3 operating with integrity and, more important, lawfully. So I
4 just wanted to extend my thanks. This is something that's,
5 like I said, will have a tremendous ripple effect across the
6 State.

7 SENATOR WILEY: Well, thank you, and it's a
8 testament to the three of you that, from what I understand, we
9 reached out to the District Attorneys Association and you were
10 selected and suggested that you come before this committee.
11 So, that's a testament to your hard work and dedication, so I
12 thank you for your testimony.

13 CHAIRMAN GORDNER: I'm going to call on Senator
14 Baker next. I just need to follow up, and I apologize if
15 she's going to ask the same thing, but just because -- you
16 just now have indicated that there is great concern, I guess,
17 among your State association, as well as you individually, in
18 regard to, for instance, the task force. The task force
19 process, drug task force process has been very successful for
20 many years, including during the past 3 years, but it is
21 normally a joint effort, and it's often a multi-county
22 effort--

23 MS. LAZZARI-STRASISER: Yes.

24 CHAIRMAN GORDNER: --in regard to this process,
25 and it's normally a long effort. Usually there are months and

1 months and months and months of investigations and processes
2 and drug buys until you get ready to make the big
3 announcement. And usually it's not 1 or 2 people, often it's
4 7, 8, 9, 10 people. So the net is wide. So just, again, to
5 follow up, can you again express your concern with the current
6 status? Does it directly relate to the Attorney General
7 having a suspended law license and being uncertain, or what's
8 your concern?

9 MS. LAZZARI-STRASISER: We're certainly not here
10 to answer that question of whether or not she's able to
11 practice on a suspended license. That's the decision that you
12 folks, unfortunately, have to make. But the question that I
13 am being presented as the elected DA for Somerset County is,
14 do we have continued authority and the designation, the oaths
15 that were signed, is it still lawful? Are we still able --
16 because I only have jurisdiction in Somerset County. That
17 grants me jurisdiction to cross county lines, if that's where
18 the investigation leads. So that's the ultimate question. Do
19 I still have the lawful authority to operate that?

20 CHAIRMAN GORDNER: And again, never been DA, never
21 worked in a DA's office, I'm an attorney, but are there
22 documents specifically related to the drug task force--

23 MS. LAZZARI-STRASISER: Yes.

24 CHAIRMAN GORDNER: --that are signed by the
25 Attorney General?

1 MS. LAZZARI-STRASISER: Yes.

2 CHAIRMAN GORDNER: Yes. Have you had instances
3 since October 21 of any documents, or have they all
4 pre-dated--

5 MS. LAZZARI-STRASISER: No, pre-dated.

6 CHAIRMAN GORDNER: --October 21.

7 MS. LAZZARI-STRASISER: Yes, sir.

8 CHAIRMAN GORDNER: Thanks.

9 I'm sorry, Senator Baker, and then Senator
10 Schwank.

11 SENATOR BAKER: Good afternoon. You all operate
12 as your chief law enforcement officer for your individual
13 counties. You are required, under Pennsylvania statute, to be
14 licensed attorneys, and my question would be, if your license
15 were suspended, do you believe that you could stay on the job
16 and continue to effectively do the duties? I know that you
17 have administrative duties, some counties are larger than
18 others where it's more administrative, but you do sign all
19 sorts of warrants, wiretaps, and the like. So my very basic
20 question, if put, as the chief law enforcement officer for
21 your county, if you had a suspended license, could you, in
22 fact, do the duties and serve your community?

23 MR. HECKLER: I certainly don't believe so. And
24 I've thought about this. Actually, I thought about it just in
25 terms of the Attorney General's situation before I learned

1 that we were being asked to make a presentation to you folks.
2 Even the most ministerial things that I do, and I am more
3 removed both by virtue of age, you know, when I first left the
4 bench and was elected I made sure I tried one jury trial to
5 prove I could still do it, but I have people who are better at
6 it than me and I'm not in court hardly at all. So you could
7 say what I do is administrative, but virtually every part of
8 it is based on the fact that I'm a lawyer, that I have legal
9 experience on making legal judgments.

10 I was thinking about the stupidest, most
11 time-wasting ministerial thing I do is the various interstate
12 compacts for the rendition of witnesses and defendants who may
13 be in custody elsewhere require multiple documents to be
14 signed in the original by the prosecuting officer for the
15 jurisdiction that's demanding those people. So I get this
16 stack of papers that, at least in Bucks County, somebody in
17 the sheriff's office has prepared. My people have checked it
18 over. I will read the name on it and we've set up procedures
19 to make sure that I'm not asking for somebody who isn't listed
20 on the trial list, but I'm just signing my name. Doot, doot,
21 doot, doot, doot. Even that, I'm required to do it because
22 I'm the elected--

23 SENATOR BAKER: So you don't delegate that
24 authority to another individual to handle?

25 MR. HECKLER: Frankly, it's never been so

1 burdensome that I've looked into whether I could, but I'm at
2 least given to understand that I can't. Now, I've never taken
3 it up with Seth Williams, I can't imagine that he or Mr.
4 Zappala sign all the documents that are required for those
5 counties to have a flow, the necessary flow of people, but I
6 sign them individually as the chief prosecuting officer. And
7 even something as ministerial as that, I am accountable. I'm
8 at least responsible to have set up procedures that make sure,
9 in fact, this person is the person that we need, that there's
10 probable cause to proceed against this person if he's being
11 rendered as a defendant, or if he's being rendered as a
12 witness--or she--that we, in fact, need that person in order
13 to prosecute the case. That's all legal judgment.

14 Budgeting, the bane of many district attorneys.
15 In fact, over the years I think probably more district
16 attorneys have become judges because they hated dealing with
17 the county commissioners over budgets than any other reason.
18 And, you would think, what does that got to do with the law?
19 Well, I have an administrator who puts the budget together
20 who's very good at dealing with the county budgeting people,
21 but my input into it, my ultimate control over it, is based on
22 the needs of my office to do what are purely legal functions.
23 Who's a good prosecutor? Who do I want to keep versus maybe
24 let go? Who do I want to reward with more money? All of that
25 is based on my life's experience as prosecutor, as a judge, as

1 a lawyer. So I would be hard-pressed to think of one single
2 thing that I could do.

3 And the other factor, and I don't want to
4 filibuster here, but the other factor that occurred to me, and
5 I'm sure your counsel has looked at this, you'll hear other
6 testimony about it, but I would be very concerned about the
7 position I was putting my people in. Now, you can imagine,
8 I'm an even rarer duck than the average prosecutor because
9 many of the people in my office tried cases before me for 11
10 years before I gave up a perfectly good judgeship and became
11 DA, as I point out to them. I'm the boss. There is a
12 specific provision of the Rules of Professional Conduct,
13 5.4(d)(3), that says, "A lawyer shall not practice with or in
14 the form of a professional corporation or association
15 authorized to practice law for profit, if: a nonlawyer has the
16 right to direct or control the professional judgment of a
17 lawyer."

18 SENATOR BAKER: Do you believe that you could use
19 your title as district attorney if you had a suspended law
20 license?

21 MR. HECKLER: No.

22 CHAIRMAN GORDNER: Yeah, and let me -- let's get
23 opinions from the other two members. If you can, I think the
24 question was geared towards if you, as district attorney, and
25 you had a suspended law license, could you effectively operate

1 your office as district attorney? So if we can keep to within
2 that question so that we're not getting opinions, maybe
3 personal opinions, as to things in the AG's office, unless it
4 is directly related to your operation as district attorney.

5 So I think that was the question.

6 MR. HECKLER: No.

7 CHAIRMAN GORDNER: So if the other DAs, again,
8 just I think the question was, if you as a DA--

9 SENATOR BAKER: Acting as the chief law
10 enforcement officer.

11 MR. HECKLER: I do not believe that I could give
12 direction to my people who would be in court, who would be
13 doing the work of the office.

14 CHAIRMAN GORDNER: Okay. So I'd like to hear
15 responses from the other two DAs in regard to that question.
16 And if -- yeah, in regard to that question.

17 MS. LAZZARI-STRASISER: Unlike my colleagues, I
18 come from, like I said, a rural county. I'm in the courtroom
19 every day. So from my perspective, could I perform the job
20 for which I was elected to do in Somerset County as the
21 district attorney? I could not.

22 MR. ADAMS: From my perspective in Berks County,
23 and I come from a rather large office, I have approximately 95
24 employees. I rarely go to court, but every day the vast
25 majority of my function, I am practicing law.

1 And as I prepared for today's hearing and kind of
2 went through the average day that or the average week that I
3 would have as a chief law enforcement officer in Berks County,
4 almost every function and everything that I do involves what I
5 consider the practice of law, and I could not run the office,
6 I could not function as the district attorney, because
7 everything that I'm doing, from charging decisions, from
8 decisions on investigations, from decisions on whether or not
9 we will take a case to a grand jury, decisions on wiretap. I
10 have to designate people, I have to sign off on wiretaps.
11 Charging decisions. Every day we're making charging
12 decisions. Every day I'm working with my assistants on plea
13 negotiations. Not a day goes by and not a decision goes by
14 that is not directly related to me being a lawyer.

15 CHAIRMAN GORDNER: District Attorney
16 Lazzari-Strasiser, did you answer, as well?

17 MS. LAZZARI-STRASISER: I did.

18 CHAIRMAN GORDNER: Okay, I'm sorry.

19 All right, Senator Baker, do you have further
20 questions? Okay, thank you.

21 Senator Schwank, and then Senator Yaw.

22 SENATOR SCHWANK: Thank you. And thank you all
23 for testifying today.

24 I'm listening to you're discussing the things
25 that you do in your offices, and I admire the work that you

1 do, but a lot of what you're saying, if I'm hearing this
2 correctly, is that this is based on knowledge that you've
3 gained over the years: your legal training, of course, and
4 your many years of practice, perhaps, and then your years in
5 the office, you know, as many as that may be. But would you,
6 if you had a temporarily suspended license, would you be able
7 to function as a district attorney?

8 And then a second part to that would be, you're
9 talking about how you function as a district attorney. As an
10 Attorney General, could you answer that same question? Do you
11 believe that you could function if you were in that role as
12 Attorney General with a suspended license?

13 MR. HECKLER: Well, I'll jump in. Frankly, if I
14 were in either position, I suspect, and let's say it was
15 temporary. Let's say I let my CLEs lapse and I had 30 days
16 and then, by gosh, I would be in good standing again. The
17 simple answer is, I believe, I would ask for a leave of
18 absence so that there was no question that my people were
19 running the office. That raises separate philosophical
20 questions about, you know, should I draw salary during that
21 time? I'm the elected official, should I continue with the
22 mandate, although I'm not capable of doing the job? But I
23 think in that situation, frankly, I'd try and look to the
24 Supreme Court or some -- one of the disciplinary committees,
25 somebody, look for precedent, but I think probably you might

1 not need to hear from us if there were much precedent on this
2 subject, because I would have grave misgivings.

3 John said it very well: Every decision,
4 everything that we do is based upon what I consider to be the
5 practice of law. Now, the other issue that we get to is, what
6 is the practice of law? That is, you folks are going to be
7 coming to grips with that. You know, God bless you.

8 It kind of makes me grumpy because, as you may
9 know, I was once a Member of the Senate and I find what was
10 going to be my crowning achievement, and I thought when I left
11 it was, was Senate Bill No. 1, the lobbyist regulation law,
12 which got passed just before I left, or just after I left,
13 actually, and was subsequently overturned by the Supreme Court
14 in Gmerek because they said the legislature had intruded upon
15 their right to regulate the practice of law. So they defined
16 even lobbying, when it's done by a lawyer, as something that
17 you folks didn't have the right to regulate. That was
18 exclusively them. Now, since, I think my friend Jeff Piccola
19 figured out a way around that, and you've since enacted
20 similar legislation. But so far as I know, Gmerek is the last
21 expression of that, and it is extremely broad. You're using
22 your knowledge of the law, your experience to advise people.

23 Obviously, when you go into court, that's
24 practicing law for sure, but the things that we do in
25 supervising our people who do go into court who are the direct

1 mouthpieces, if you will, for the Commonwealth, it's all based
2 on the fact that we're lawyers, the fact that we've been
3 lawyers, the fact that we have legal knowledge as opposed to
4 any other kind of knowledge.

5 CHAIRMAN GORDNER: Go ahead.

6 MR. ADAMS: I think the question, Senator Schwank,
7 is, would I be able to function? Not me. I'm involved every
8 day. I'm at the scene of crimes, I'm giving advice to police.
9 I have a constant -- constantly, I'm involved in decisions
10 that are being made in my office. And, typically, most
11 decisions of anything of any magnitude are approved by me
12 and/or I'm involved in the discussions with my staff as to
13 those decisions on how a case would be handled and--

14 SENATOR SCHWANK: And you're using your license to
15 make those decisions?

16 MR. ADAMS: Yes, I am using my license.

17 SENATOR SCHWANK: That's what I'm trying to get
18 at.

19 MR. ADAMS: Yes. And I could not function in any
20 -- I would be totally ineffective and basically I would be on
21 a permanent vacation if I didn't have a law license. My golf
22 game might get better, but that's about it. I'm not going to
23 be able to do my job. You know, as a district attorney, we
24 get phone calls in the middle of the night. We respond to
25 crime scenes. We need to be in touch with law enforcement at

1 all times when needed, because they are seeking our advice.

2 You know, while the Attorney General may be
3 insulated a little more because of how vast and how large the
4 office is, ultimately everyone reports to the boss. And in
5 our profession, we are making legal decisions each and every
6 day, and those are being made not only by my assistant
7 district attorneys, my detectives, but ultimately by myself.

8 CHAIRMAN GORDNER: District Attorney
9 Lazzari-Strasiser?

10 MS. LAZZARI-STRASISER: This just stuck in my
11 head, Attorney Heckler said is it a philosophical question
12 when you address can you -- can we, can I, can these two
13 gentlemen practice in their capacity as district attorney, and
14 you want us to step into the shoes of the Attorney General? I
15 think what I do in my county is far different than what the
16 Attorney General does, just because of size, number of people.

17 My understanding is that the Attorney General is
18 not precluded from appearing in court, but it's a choice based
19 on how the organization has to be run by an administrator.
20 But the bottom line, and it almost leads you in a circle,
21 because all weekend I'm thinking who -- I mean, I have,
22 there's two full-time attorneys, including myself, and I have
23 four part-time attorneys with a wealth of knowledge and a
24 tremendous amount of experience in the courtroom and out, but
25 guess who gets called when something goes wrong when one of

1 them make a decision? They don't get called by the President
2 Judge. I get called by President Judge. So I can't separate
3 my practice of law from theirs. They are acting under my
4 appointment. So if I am not licensed to practice law, if I
5 cannot practice, I still question, how do they do that in my
6 office? Where does the authority come from?

7 SENATOR SCHWANK: Just one more follow-up.

8 CHAIRMAN GORDNER: Sure.

9 SENATOR SCHWANK: Thank you, Senator Gordner.

10 Just so I'm clear, it's not just about your
11 management style or how you delegate or not delegate, and
12 depending upon the size of your staff, I can understand that.
13 But is there a legal impediment to you functioning as a
14 district attorney without or with a suspended law license?

15 MR. ADAMS: Well, let me -- we have some statutory
16 functions which require, and I think you're going to have to
17 ultimately make this decision, but we have some statutory
18 functions, for instance, in the wiretap area where we need to
19 sign approvals, sign documents, and/or we can designate
20 people, but we, by statute, are the only person who has the
21 authority to do certain things under the Wiretap Act. So
22 there are certain qualifications in our positions as an
23 Attorney General, as a district attorney which require us to
24 sign the appropriate documents for certain investigations.
25 Grand jury is another matter, where I will file a submission,

1 I will sign the submission. So there are some statutory
2 requirements where I believe that I am practicing law.

3 SENATOR SCHWANK: Thank you.

4 MR. HECKLER: If I may, as long as I retain the
5 authority to hire and fire the people who work for my office,
6 I am in charge. I'm controlling their practice of law. So
7 again, if confronted with that situation, it seems to me the
8 only thing I could do is get myself completely out of the
9 picture. But the problem is, I'm the person who got elected.
10 I am the carrier of the mandate. And you can have, you know,
11 if I fall over today, there are people who could take on my
12 functions--first assistant, and so forth--for a period of
13 time, but the mandate only comes from the voters, and in order
14 to get elected to either of those positions, you have to be a
15 lawyer.

16 SENATOR SCHWANK: Thank you.

17 CHAIRMAN GORDNER: Senator Yaw, followed by
18 Senator Haywood.

19 SENATOR YAW: Thank you, Mr. Chairman.

20 We've talked around this a little bit, but I'd
21 just like you to confirm, each of you is a currently licensed
22 attorney, correct?

23 MR. HECKLER: (Indicating in the affirmative.)

24 MR. ADAMS: (Indicating in the affirmative.)

25 MS. LAZZARI-STRASISER: Yes, sir.

1 SENATOR YAW: I assumed that, kind of, but nobody
2 asked you, are you?

3 MS. LAZZARI-STRASISER: Yes.

4 MR. HECKLER: Yes. And I am smiling because one
5 of my assistants, in speaking with me, said, now, you're
6 caught up on your CLEs and everything, right? You're in good
7 standing? So, yes.

8 MR. ADAMS: Yes, I am, also.

9 SENATOR YAW: You've all said, you know, you were
10 elected by the voters. Prior to the time when you were sworn
11 in, you had to meet certain requirements. I don't know
12 whether there's an age requirement for district attorney. Is
13 there anything, you know, to be sworn in, is there anything
14 that said that you had to have a license to practice law and
15 be in good standing?

16 MS. LAZZARI-STRASISER: A member of the Bar.
17 Pennsylvania Bar.

18 SENATOR YAW: It says you have to be a member of
19 the Bar?

20 MS. LAZZARI-STRASISER: Yes. So am I a member of
21 the Bar if my license is suspended? That's exactly the
22 question why we're here.

23 SENATOR YAW: Well, I guess that's my question to
24 you. Would you have qualified to be sworn in at the time if
25 you had been elected but on the date of swearing in you had a

1 suspended license?

2 MR. HECKLER: I don't believe so. But, again,
3 it's sort of one of those which came first, the chicken or the
4 egg? The Supreme Court decides, or I think has the ultimate
5 authority as to what constitutes the practice of law; or given
6 the Constitution and the role of this panel, you have the
7 ability to decide that.

8 SENATOR YAW: If I understand what I think all of
9 you have said, that if you're supervising attorneys, from
10 their perspective, you have to be an attorney, and you have to
11 be an attorney in good standing. I mean, that's the bottom
12 line.

13 MR. HECKLER: That's my understanding.

14 SENATOR YAW: One of the issues that's come up,
15 and I'm not sure there's an immediate answer to this, but one
16 of the questions is, if you look at the Attorney General's
17 Office, that all power emanates from the Attorney General to
18 all the deputies, and that if the Attorney General doesn't
19 have the power to exercise all of the rights and privileges
20 and duties of the office, then perhaps none of the deputies do
21 either. That's an issue which I know you raised, is the
22 defense counsel is going to raise, probably they're going to
23 have to raise that issue that whoever is prosecuting their
24 case doesn't have, you know, any legal authority to prosecute
25 them. I don't know who they are. They're just people out

1 there. And the reason for that is that otherwise it's going
2 to be considered ineffective assistance of counsel. Whether
3 the individual defense attorney may believe that or not,
4 probably to protect themselves, they're going to -- that's
5 going to be an issue that's going to be raised in every case,
6 I would think, that the Attorney General is prosecuting.

7 I don't know how many you have, Mr. Adams, how
8 many cases that the Attorney General's Office, or each one of
9 you individually, but the cases from your county, it would
10 seem to me, are going to be affected by that particular
11 defense.

12 MR. ADAMS: Well, absolutely. We have a number of
13 cases that the Attorney General is prosecuting because of a
14 conflict, and that is an issue that ultimately I believe our
15 Supreme Court may have to answer that very question when that
16 challenge makes it to that court, because you're correct.
17 It's a good point, Senator Yaw.

18 SENATOR YAW: All right, thank you.

19 Thank you, Mr. Chairman.

20 CHAIRMAN GORDNER: Senator Haywood, and then we'll
21 find out if there's a second round of questions.

22 Senator Haywood.

23 SENATOR HAYWOOD: Thank you.

24 Thank you for your testimony. I've got a number
25 follow-up questions. With respect to the staff attorney who

1 is concerned about the validity of the drug task force
2 agreement, was the Attorney General a participant in the
3 actual task force investigation?

4 MS. LAZZARI-STRASISER: No, sir. Not directly.

5 SENATOR HAYWOOD: And agreements that were -- I'm
6 sure there's hundreds of agreements that the Attorney General
7 may have signed?

8 MS. LAZZARI-STRASISER: Statewide, I would assume.

9 SENATOR HAYWOOD: Or even prior Attorneys
10 General--

11 MS. LAZZARI-STRASISER: Yes.

12 SENATOR HAYWOOD: --prior to this one. So when an
13 Attorney General loses an election and there's a new Attorney
14 General, is there some issue with respect to the agreement
15 that a prior Attorney General has signed, in terms of it
16 continuing to be in effect?

17 MS. LAZZARI-STRASISER: The agreements for the
18 task force have a certain life to them. There's a start date
19 and an end date, and there has to be some action for them to
20 continue based on the progression of the investigation. So,
21 they don't continue indefinitely, which I think would cure any
22 issue with a new elect coming into office, and it would play
23 out in our separate counties, as well. When I took office, I
24 didn't necessarily -- all of the policy and procedures that
25 were in place didn't fail because a new DA came in. I mean, I

1 certainly had the ability and did change some of those
2 policies and procedures, but I don't think -- it's a legal
3 attack on their lawfulness.

4 SENATOR HAYWOOD: So, I'm trying to get a better
5 understanding of how the license or lack of license of the
6 Attorney General would have an impact on these multi-county
7 investigations. For the concern that was raised by the staff
8 person, I'm just trying to get a better understanding of how
9 the--

10 MS. LAZZARI-STRASISER: Well, because I only have
11 jurisdiction in Somerset County.

12 SENATOR HAYWOOD: Yes.

13 MS. LAZZARI-STRASISER: So, my investigations
14 without the joint task force would be limited to Somerset
15 County, and we all know that drugs cross -- they don't have
16 any boundaries. I mean, they don't stay within counties, for
17 particular reasons. So what it does is enables us to
18 collaborate with other agencies, with other law enforcement,
19 share information, and my task force detectives are sworn in
20 to that task force so that they're allowed to cross
21 jurisdictions, and they have conferred that jurisdiction by
22 the Attorney General.

23 SENATOR HAYWOOD: And since that has happened
24 already, can you just help me understand what the impact of
25 the Attorney General having a license or not today has on--

1 MS. LAZZARI-STRASISER: Well, it's the same thing
2 as when we ultimately prosecute, what will we be facing in the
3 courtroom? Will there be a challenge to that authority? And
4 certainly, the integrity of the office itself.

5 SENATOR HAYWOOD: Okay, a future challenge is a
6 concern.

7 MS. LAZZARI-STRASISER: Yes.

8 SENATOR HAYWOOD: I just want to make sure it's
9 present versus future. So that's one question.

10 Now, let's say the Attorney General or even one
11 of the DAs has, unfortunately, some kind of a car accident or
12 something where you're not in a position to serve for some
13 period of time. Do you have some kind of procedure that would
14 allow the office to continue to function?

15 MR. HECKLER: The law and the applicable rules,
16 where it's relevant, provide that the first assistant district
17 attorney has the authority to act. The difficulty, and that
18 sort of gets to the question that Senator Yaw was raising, we
19 know what happens if I keel over today. The Bucks County
20 District Attorney's Office will keep ticking along, and there
21 will be legal authority for that. It's why I would feel if my
22 license to practice was brought into question, that I would
23 need at least to seek, again, subject to other issues, seek a
24 leave of absence. I don't believe that any of the provisions,
25 again, heaven forfend if something happens to the Attorney

1 General, she's gone, car accident or something, there are
2 legal provisions for her successors to go ahead and do the
3 business of the office.

4 The problem that you folks are wrestling with is
5 what happens when she doesn't have a law license but she's
6 still very much alive there, able to hire and fire people?
7 And that's the difficulty.

8 SENATOR HAYWOOD: Okay, so, you know, we don't
9 really know what she's doing in the office. So we want to be
10 careful about what she is or is not doing, because we don't
11 really know, we don't have information with respect to what
12 she is or is not doing.

13 MR. HECKLER: Um-hum.

14 SENATOR HAYWOOD: I think that's what we're
15 looking more narrowly at the question of, can this person
16 remain in the position? So, let me just go maybe to the
17 designation. I think one of the DAs mentioned that for
18 wiretapping is normally something you could do, but I also
19 thought I heard, and maybe I didn't, that you could designate
20 someone to perform that function. Is that the case? Because
21 I got to tell you, I'm really trying to understand, in part,
22 what it is that can be permissibly delegated or designated, so
23 I can see kind of what's in the box and what's not. So is
24 wiretapping one of the things that could be designated or
25 delegated?

1 MR. ADAMS: There is provisions that must be taken
2 care of to designate other people. And that designation comes
3 from either the Attorney General or the district attorney.
4 However, those designations would have--should have--preceded
5 her suspension. I don't know if that took place. But
6 clearly, statutorily we can delegate that authority. However,
7 the district attorney can and the Attorney General can.

8 SENATOR HAYWOOD: Does that also apply to the
9 other features of the list you mentioned, which was the
10 function of charging? Is the charging function one that can
11 also be delegated or designated?

12 MR. HECKLER: Informations can be signed by the
13 first assistant if the district attorney, for instance, is
14 unable to do so. But the same issue arises: If I've lost my
15 authority, how would I delegate somebody else?

16 SENATOR HAYWOOD: That's timing, I understand, as
17 to when the delegation is made. Plea negotiation was another
18 item that was mentioned. Is that a function that could be
19 either designated or delegated?

20 MR. ADAMS: Well, absolutely, yes, it could be.
21 There's no statutory authority for plea negotiations, so that
22 could be delegated.

23 SENATOR HAYWOOD: Investigations was another item
24 that was mentioned as one. Is that also one that could be
25 designated or delegated?

1 MR. HECKLER: There isn't a defined specific role
2 in investigations, except to the extent that the investigators
3 derive their authority to act from the district attorney. And
4 just as my colleague from Somerset County described how things
5 work in multi-county or joint Federal investigations within
6 the county, like we have 50-some municipalities, I designate
7 certain police officers to be special county detectives or to
8 have countywide jurisdiction, generally for drug
9 investigations, although now we're doing it for DUI sweeps as
10 well. They derive -- certainly, if my ticket to practice got
11 pulled, their chiefs would be very much concerned. Well, you
12 know, you can't just go out normally, the Municipal Police
13 Officers Jurisdiction Act controls when a police officer has
14 jurisdiction outside of the confines of their township or
15 borough. If their authority derives from me, what happens if
16 my authority is called into question?

17 So as to investigations, depending upon the
18 particular type of investigation, that could present a
19 problem, because I'm not sure that I could delegate--except to
20 the extent that somebody succeeded me--I don't know that I
21 could delegate the authority to appoint special investigators.
22 I just don't know the answer to that.

23 SENATOR HAYWOOD: So, that would be good to follow
24 up.

25 And one last question, following this train. The

1 last item that was mentioned was grand juries. Is that an
2 activity, in terms of leadership, that could be designated or
3 delegated?

4 MR. ADAMS: I believe it could be.

5 MR. HECKLER: Yes, I believe the first assistant
6 could authorize the submission of cases to the grand jury, my
7 understanding.

8 SENATOR HAYWOOD: Thank you very much, Mr.
9 Chairman. And thank you to the panel.

10 CHAIRMAN GORDNER: Thank you. We have some
11 follow-up questions. I'll just say, sort of in interim here,
12 obviously, there's been a number of questions that have been
13 specifically asked to you as district attorneys in what you
14 can do as district attorneys. There have been some questions
15 that are more opinion-based questions. So, ultimately, we'll
16 have to weigh the answers to those based upon what you
17 factually are able to do or legally able to do and in your
18 opinions on some other issues, as well.

19 So we'll go to a second round of questions.

20 Senator Wiley is deferring to the end, so we'll go
21 to Senator Baker, followed by Senator Schwank.

22 SENATOR BAKER: Thank you. I just want to follow
23 up on the point that both the Attorney General and district
24 attorneys must be lawyers. You've established that. A
25 suspended lawyer, throughout that suspension, is not an

1 attorney, not a lawyer. So can you lawfully serve once
2 suspended? Yes or no?

3 MR. HECKLER: Not in my opinion. I haven't had to
4 confront that issue, but again, what I'd look to is to get
5 some guidance from the Supreme Court, who pulled my license to
6 begin with, as to what that actually means, what the practice
7 of law is.

8 SENATOR BAKER: Just asking for a "yes" or "no."

9 MR. HECKLER: No, if I can't be a lawyer.

10 MR. ADAMS: I would agree. I could not. And I
11 think that ultimately when we initially took the oath of
12 office, I'm not certain that that oath could be given if we
13 were not qualified, and I am certain that it would be
14 challenged if it was given to us.

15 MS. LAZZARI-STRASISER: I agree.

16 SENATOR BAKER: You have occasion to send
17 documentation to the Attorney General's Office in the course
18 of doing business. Do you believe that correspondence is
19 privileged in the dealings with that office, and do you have
20 any concerns about the review of the office utilizing a
21 suspended license of an attorney would have any impact on the
22 protected status of documents or communications that you would
23 have with the Attorney General's Office?

24 MS. LAZZARI-STRASISER: Well, back to the circle,
25 if she has -- if the Attorney General has a suspended license

1 to practice law, she should not be reading the communication
2 if it's asking for a legal decision.

3 SENATOR BAKER: Do you have any concern then that
4 the documentation or the interchanges could potentially not be
5 protected in this process?

6 MS. LAZZARI-STRASISER: Certainly.

7 MR. HECKLER: Hadn't thought about it. My
8 communication is pretty limited.

9 MR. ADAMS: I have very limited communications
10 also. There merely would be a conflict letter. Every now and
11 then we get correspondence on certain cases of which they are
12 the prosecutor, which are not conflict cases, but they may
13 have jurisdiction. For example, depending if it's insurance
14 fraud where they have, potentially, original jurisdiction and
15 we get correspondence from their office. Although, I'm not
16 certain if I have any issues with that.

17 SENATOR BAKER: Thank you.

18 CHAIRMAN GORDNER: A question in the interim going
19 back, and I appreciate a number of questions that Senator
20 Haywood asked. In regard to a multi-county drug task force,
21 are those generally ongoing, or do they need to be renewed
22 from time to time? Or if they were approved 10 years ago, are
23 they still fine today?

24 MS. LAZZARI-STRASISER: No, they have limited
25 life. They are designated for a particular period of time.

1 You have a budget that's set forth and you have the county
2 designations that would be part of that joint task force.
3 It's not just, hey, the counties surrounding you if it
4 develops, it's identified, it's targeted. Statistics have to
5 be submitted even to get that joint task force designation.

6 CHAIRMAN GORDNER: And there's a written document
7 that's prepared?

8 MS. LAZZARI-STRASISER: Yes.

9 CHAIRMAN GORDNER: And it's signed off by the
10 Attorney General's Office?

11 MS. LAZZARI-STRASISER: Yes, and my office, and we
12 have to sign secrecy oaths.

13 CHAIRMAN GORDNER: Is that a public document then,
14 or it's a private document?

15 MS. LAZZARI-STRASISER: Private.

16 CHAIRMAN GORDNER: It's a confidential document.

17 MS. LAZZARI-STRASISER: Yes.

18 CHAIRMAN GORDNER: Okay. Then I'm probably not
19 going to get what I was going to ask for.

20 MS. LAZZARI-STRASISER: Probably not.

21 CHAIRMAN GORDNER: Well, then, let me ask you
22 this. Let's say you have a drug task force that is expiring
23 on the last day of November of 2015 and you want to
24 reauthorize it or start with a new document as of December,
25 and you forward that to the Attorney General's Office for

1 approval. Do you know offhand, is that normally signed by the
2 Attorney General, or how is it signed?

3 MS. LAZZARI-STRASISER: The joint task force -- it
4 doesn't come from my request. It is something that's
5 identified through the Attorney General's Office as warranted
6 or needed, given the particular circumstances in those
7 counties. So I wouldn't send the request. It would come from
8 them.

9 CHAIRMAN GORDNER: Okay, but it is a written
10 document that has signatures--

11 MS. LAZZARI-STRASISER: Yes.

12 CHAIRMAN GORDNER: --and approvals and
13 authorizations?

14 MS. LAZZARI-STRASISER: Yes.

15 CHAIRMAN GORDNER: And, obviously, they last for a
16 while, so there's authorizations that are currently going on
17 that have been issued beforehand but they're ongoing?

18 MS. LAZZARI-STRASISER: Yes.

19 CHAIRMAN GORDNER: All right.

20 Senator Schwank.

21 SENATOR SCHWANK: Thank you. You made mention
22 earlier in the testimony about cases being compromised, you
23 know, as a result of publicity or something of that nature,
24 you know, regarding the office, or the district attorney's
25 office. But one thing that's bothered me a little bit is

1 that, for example, you would go out on an extended medical
2 leave. Would that mean that your office would should down or
3 that your cases would be compromised?

4 MR. HECKLER: Well, no. There are specific
5 provisions for that for the disability of the district
6 attorney. And if it's a matter of simply not being there, of
7 illness or whatever, that's one issue.

8 SENATOR SCHWANK: Okay.

9 MR. HECKLER: And my office would get along, I
10 think at this point, I'm trying to extract myself, get my
11 successor in there, so it would do just fine. The issue,
12 however, with the compromise of cases is that you have at
13 least the public perception of something being wrong and that
14 being an issue that has to be dealt with, particularly with
15 jurors. I'm not sure that you can't, you know, you're liable
16 to have a defense attorney who if you've got a high profile DA
17 argues, hey, this is another notch in his pistol grips, or
18 whatever. People are free, particularly in defense, to make
19 all kinds of arguments and you deal with them, and voir dire
20 is one of the places you deal with them to just make sure the
21 jury is going to be fair-minded about things.

22 MS. LAZZARI-STRASISER: We brought the issue up,
23 pardon me, before you got here today, about analyzing the
24 suspension as a physical incapacity. You can't compare the
25 two. You would still have, even though your physical

1 incapacity, you would still have a license to practice law.
2 And you are not able to lawfully delegate or perform your
3 duties because of your physical incapacity. That's not the
4 case here. That's not what's happened.

5 So I appreciate Senator Haywood, because we did
6 have that discussion this morning, but you can only go so far
7 in the analogy, and then the two separate.

8 MR. ADAMS: And I think what we're trying to
9 convey to this panel is that there is difference if we had a
10 disability or if we were incapacitated, we would not be in the
11 office, but it's incapacity versus suspension, and I think
12 there are some statutory mandates if we are incapacitated. I
13 don't think we've ever had to deal with the issue of versus
14 suspension.

15 SENATOR SCHWANK: Thank you.

16 CHAIRMAN GORDNER: Senator Yaw, followed by
17 Senator Haywood.

18 SENATOR YAW: Thank you. I've listened to this
19 panel, and it's been a great panel, from my perspective,
20 because we have three different ways, I don't know whether the
21 DAs Association or who picked you, but we have Somerset
22 County, where you're a real hands-on, you're in court
23 virtually every day; we have Bucks County, where you're
24 basically an administrator, and then we have Adams County
25 where you do both--

1 MR. ADAMS: Berks County.

2 SENATOR YAW: Or, I'm sorry, Berks County.

3 MR. HECKLER: Adams from Berks.

4 SENATOR YAW: So you're kind of a hybrid. So we
5 have an across-the-board perspective of how you operate your
6 office. A friend of mine who is a district attorney said the
7 district attorney is the best office in the county because you
8 can do basically whatever you want, and that's kind of what I
9 get out of this, is that you can run this office however you
10 want. If you choose to be strictly an administrator, that's
11 fine. That's your choice. You want to run a hybrid office,
12 that's your choice, or if you want to be in court every day,
13 that's also your choice.

14 But what I've gathered out of what you said, and
15 you can disagree with me, because this is kind of what I've
16 gathered out of this, is that you can run the office any way
17 you want, as far as your court appearances and what you do.
18 But the bottom line is, you have to have the legal ability to
19 do all of the functions of your job. And Mr. Heckler, even if
20 you don't like to go to court, the bottom line is, you have to
21 be able to go to court to do all the functions of your job.

22 MR. HECKLER: Absolutely. And let me correct
23 that, I love court and being in court. However, and actually,
24 the death knell for me was the enterprise that Senator Baker
25 was very -- in fact, I remember sitting where you are, the

1 task force. I tried my first case, assigned myself another,
2 that turned into a plea, and then the Governor appointed me to
3 chair the Task Force on Child Abuse, and after that we spent a
4 year lobbying the results of that, and that pretty well put
5 paid to my -- I've actually threatened going back. So I enjoy
6 it, but I've got, frankly, people who are better than me to
7 try the big cases, and, you know, what's the DA doing trying
8 little cases? So, again, it's the dynamic of the office, but
9 you have it right, so far as I'm concerned.

10 SENATOR YAW: All right, thank you.

11 Thank you, Mr. Chairman.

12 CHAIRMAN GORDNER: Senator Haywood, followed by
13 Senator Wiley.

14 SENATOR HAYWOOD: Thank you. I wanted to follow
15 up a little bit more with the disability and why the
16 disability framework doesn't apply. And I heard what you said
17 about disability, but I guess I didn't comprehend it. What
18 would you say is the authority that a disabled lawyer has that
19 is higher than the authority that a suspended lawyer has?

20 MR. HECKLER: I don't know that I'd put it higher.
21 It would depend on the extent of your disability. If you're
22 in a coma, then we have a process of succession. So, the
23 first assistant essentially becomes the district attorney and
24 makes the decisions. If you have both of your legs broken and
25 you can't get in to work, but you can communicate with your

1 first assistant and others, if your intellect is not impaired,
2 you may very well be able to keep on doing things, even though
3 you're not around to sign documents and do sort of mechanical
4 things. You may still very much be in charge.

5 The dilemma, again, I don't know, if you read
6 Gmerek, I'm not sure what the practice of law means in all of
7 its aspects, but when you say that somebody can no longer
8 practice law, they're still walking, talking, able to hire and
9 fire, which is a very huge issue if you work for them, but
10 they don't, as we describe it, as we perceive it, everything
11 we do with regard to our office involves our being lawyers.
12 So, somebody has artificially said that this person who is
13 still elected is walking, talking, hiring and firing, doesn't
14 have the -- is not a lawyer. It's a conundrum, but it's a
15 whole different situation from somebody either being flat in a
16 coma or maybe unable to come to work but able to communicate
17 with their subordinates and be more or less in charge of
18 what's going on.

19 SENATOR HAYWOOD: Thank you.

20 CHAIRMAN GORDNER: Senator Wiley.

21 SENATOR WILEY: Thank you, Mr. Chairman.

22 Thank you again for your testimony today. We
23 truly appreciate your input. It's very valuable to us in
24 getting your perspective. I just have a couple of quick
25 comments. The task that this committee is to wrangle with

1 really comes down to what the Attorney General can do with a
2 suspended law license or what she cannot do with a suspended
3 law license. And what we're finding, at least what I'm
4 finding, and in some of Senator Haywood's testimony, is that a
5 large percentage of what is done by you or by the Attorney
6 General is administrative in nature, and a large percentage of
7 what you do can be delegated to a subordinate.

8 Where I get caught up in is having, once an
9 individual is suspended, has a suspended license, they do not
10 lose their experiences. They do not lose their knowledge of
11 the legal system. They do not lose their managerial
12 expertise. So, the administrative component of what we're
13 looking at is not jeopardized, in my opinion, at least from
14 what I've heard today, does not seem to be jeopardized by the
15 suspension of a license.

16 So, again, this is the first of many conversations
17 that we will be having and wrangling with this issue, but from
18 what I understand, and from your testimony today, and I
19 really, truly appreciate you giving us a perspective from the
20 district attorney's perspective, that the impact on your
21 offices to date since October 21 has not been significant, if
22 at all. And a lot of what we heard today, rightly so, was
23 "should" and "could" do this. So, it allows us a perspective,
24 it allows us some information to bring back, but I think that
25 we have a lot of work to do and we have a large task to

1 uphold.

2 So, I appreciate your testimony and I appreciate
3 the information, and thank you, Mr. Chairman.

4 CHAIRMAN GORDNER: All right, as Chair of the
5 committee, I want to thank the three of you for testifying
6 today and giving us a lot of good information. I appreciate
7 that very much.

8 To the viewing audience and those that are here,
9 you can see that we do have a Website that is up and running.
10 There is an e-mail process that if there's something useful
11 that you think that we should have, you can e-mail us that
12 information.

13 This is our first hearing. It is not anticipated
14 to be our last hearing. At this point, it is hopeful that we
15 will have our second hearing next week. We will let you know
16 specifically what day and time. It will probably be in this
17 room as well, but stay tuned for that.

18 With that, I will call this meeting to recess to
19 the call of the Chair.

20 (Whereupon, the proceedings were recessed at 2:19
21 p.m.)

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

Ann-Marie P. Sweeney

ANN-MARIE P. SWEENEY
Chief Official Reporter
Senate of Pennsylvania

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EXHIBITS

TESTIMONY BEFORE THE PENNSYLVANIA SENATE SPECIAL COMMITTEE ON SENATE ADDRESS

November 9, 2015

District Attorney David Heckler, Bucks County

District Attorney John Adams, Berks County

District Attorney Lisa Lazzari-Strasiser, Somerset County

Good Afternoon, and thank you for inviting us to speak with you. We very much appreciate the confidence you have in us to speak to you today about very serious issues regarding the Attorney General. This is a bipartisan undertaking, and we too are a bipartisan panel.

At the outset, we want to be clear that we are here neither to pass judgment on the ultimate question before you regarding the Attorney General nor to even recommend how you should go about considering the different facts you will hear. Instead, we want simply to be factual and to provide you with the information that you need.

You have asked us to address two issues. First, you have asked us to discuss the process by which we refer cases to the Attorney General's Office when there is an actual or apparent conflict of interest. By way of background, the Commonwealth Attorney's Act provides a procedure for referring such cases to the Attorney General's Office, and the Office then determines whether to accept the referral. We have heard from some of our colleagues that the Office has taken a more narrow interpretation of what constitutes a conflict of interest. There is nothing untoward or unethical about these determinations, which are typically made by staff. They are interpretations of the law, no doubt made in good faith. But the decisions have left some of our colleagues in situations where their offices must handle a case that, in their opinion, is better suited to be handled by a different office. We believe there is a legislative solution, which should be incorporated in any bill to reauthorize the Commonwealth Attorney's Act, that would allow for referral to a neighboring county or other county when referral to the Attorney General's Office is declined.

Second, you have also asked us to discuss what we as elected district attorneys do professionally that, in our determination, requires a law license. We hope to provide you the specific details about the tasks and obligations of our jobs that we believe require a law license, and by contrast what would not require a license. We represent different counties of different sizes with different issues. Therefore, we will speak from our perspective as elected district attorneys of our own counties and offer our thoughts as they would pertain to our own practice of law. Ultimately, we leave it to you to make any determinations and conclusions based on what you hear from us and others.

At the end of today, we hope that we will have been helpful in providing the information you need. That is our only interest here. We thank you again for the confidence you have placed in us in asking us to speak with you today.