

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 28, 2007

1:35 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Lindsey Holmes

**COMMITTEE CALENDAR**

Confirmation Hearing - Talis Colberg, Attorney General Appointee  
CONFIRMATION ADVANCED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

Talis Colberg, Attorney General Appointee  
Department of Law  
Juneau, AK

**POSITION STATEMENT:** Confirmation Appointee

**ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:35:21 PM](#). Present at the call to order were Senator Huggins, Senator Therriault, Senator McGuire, and Chair French. Senator Wielechowski arrived shortly thereafter. Representative Lindsey Holmes was also in attendance.

**Confirmation Hearing - Talis Colberg, Attorney General**

CHAIR FRENCH announced the business before the committee is the confirmation hearing for Talis Colberg as Attorney General of the State of Alaska. He stated that of the confirmations that the legislature considers, he judges this to be among the most important. Forty-four states elect their attorney general; Alaska has a better system and the confirmation process is a vital part. It's necessary that legislators uphold the gatekeeper function in order for the system to work. Therefore confirmation designates come before the people's representatives so that they can make a reasoned judgment about their qualifications.

CHAIR FRENCH advised Attorney General Designee Colberg that he had been contacted by email, telephone, and in person by individuals who know him personally and professionally. A large majority of the comments have been positive. It appears that he is well respected and liked in his community. The dominant quality that comes through is his thoughtfulness.

CHAIR FRENCH noted that the list of questions that he sent last Friday has been distributed to the other committee members who probably have questions of their own. He said he hopes to get through his list in about 30 minutes to give other members sufficient time to pursue their own areas of interest.

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TALIS COLBERG, Attorney General Designee, introduced himself and provided the committee with some personal information, including where he was born, where he grew up, the various cities and towns that he's lived in, where he went to school, his accomplishments while a child and a young adult. He explained that he had attended Pacific Lutheran University in Tacoma Washington, graduating in three years with a degree in Oriental history. He attended Pepperdine University School of Law in Malibu, California. He was not on law review and had no particular distinction in terms of honors, but he was in moot court to the extent that it was required in his classes and he did provide legal aid to poor people doing taxes.

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ATTORNEY GENERAL COLBERG said that after law school he worked for Kopperud & Hefferan in Wasilla in a very general practice. His only real trial experience was as a participant with Mr. Kopperud. That included a variety of cases including appellate work. His practice became focused in 1985 when Travelers Insurance Company hired him as their workers' compensation

representative. He became staff council and ran the Anchorage property casualty office. For a brief time he worked in the staff council office in Seattle and for a time his activities expanded to include other property casualty defense work for institutional clients.

ATTORNEY GENERAL COLBERG relayed that he returned to Palmer, his hometown, and established his private practice and has been there for the past 15 years. He has continued to focus on workers' compensation, but now he represents injured workers rather than institutions. Although he did some divorce work, his primary practice had been administrative in front of the Workers' Compensation Board. Thus no Alaska Supreme Court cases or Ninth Circuit Court of Appeals cases are associated with him. The main distinction between what he's done in the last 15 years compared to the first 7 years is that he has been representing individual Alaskans in their day-to-day needs. He's had about 2,000 clients in that time and he understands their concerns about how slow the system is, how expensive it is, and how hard it is to pay for it.

ATTORNEY GENERAL COLBERG said this practice has been much more rewarding than representing the institutions. He said he's also been involved in the community in a number of ways. He's worked for the University of Alaska Matsu as an adjunct faculty member mostly teaching Eastern and Western Civilization. In 1999 he received an award for outstanding teaching. Also, he's been involved in local government serving twice on the Matsu Borough Assembly. Both times he was elected by substantial margins and he feels he knows how to work with people and address their concerns and needs as an elected official. In addition he has pursued his passion for history working as a graduate student at the University of Alaska Fairbanks in the Northern Studies program. He's at the dissertation stage.

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SENATOR WIELECHOWSKI joined the hearing.

Responding to a question about publications, Mr. Colberg said he has nothing formal but he has been preparing class texts through Penguin Publishing assembling classic writings. As a graduate student he has written research papers on circumpolar health issues associated with Alaska and all the northern regions. Those are becoming more relevant to what he would be doing as attorney general, he said. Also he's been writing on issues of comparative histories in northern areas between Quebec, Scandinavia, Alaska, and the Soviet Union. In terms of

comprehensive papers he's done a survey of Alaska history, a survey of Alaska Territorial Politics, and a survey of the origins of Native and non Native affairs in Alaska. All of the foregoing that used to be a hobby could be beneficial to the job, he stated. He noted that he received a membership in the Phi Kappa Phi academic fraternity related to those studies.

ATTORNEY GENERAL COLBERG noted that the state's largest daily newspaper introduced him to the state as an outsider. He believes that the only way it applies to him is that he may be an outsider to certain circles in the largest urban area of the state. They don't know who he is, but in terms of comparing him to his predecessors he said he would point out that at 48 years of age he is among the three oldest people ever appointed to be attorney general in the state; he has practiced law longer than all but three of his predecessors; he has been involved in law practice in the state for 23 years; he has been involved teaching in the state university system for 15 years; he has participated in local government for 6 years; and he has participated as a student in the state university system for the past 4 years. Although he wasn't well known statewide before his appointment, he said that is arguably true of a number of his predecessors.

ATTORNEY GENERAL COLBERG concluded his introductory statement saying this is a job in which he has an interest; he's been involved in the state his entire life and he looks forward to making use of what he's learned to achieve the ends of the governor.

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CHAIR FRENCH asked Mr. Colberg to work through the questions he been given, beginning with the U.S. Supreme Court Justice he admires the most.

ATTORNEY GENERAL COLBERG responded that in his view it comes down to a tie in terms of the two who would have meant the most to him. John Jay was the first and certainly there's some value to that. [John] Rutledge and [Oliver] Ellsworth were Chief Justices both of whom served very briefly. Then there was [John] Marshall who established the idea that the power of the Supreme Court is the final say on matters and some deference ought to be given to the final word on court jurisdiction being the end of the matter. Justice Taney was forever tarred by the Dred Scott decision, but he had a lot of reaffirmation for what Marshall had established. It was under his tenure that Marbury v. Madison was reaffirmed.

Chief Justice Charles Evans Hughes came later and would be a favorite because he straddled the difficult New Deal, which came into play during his tenure even though he was a Hoover judge. He exhibited a willingness to be open minded and he was part of the "switch in time to save nine" that avoided Franklin Roosevelt's effort to add six judges in order to get his way. A lot in Chief Justice Hughes background suggests he was conservative and "I consider myself to be someone who is partial to conservatives," he stated. At the same time he was progressive on race matters. He described him as a nice combination of conservative and progressive.

ATTORNEY GENERAL COLBERG said he also admires Chief Justice Rehnquist because of his appreciation for history and the law. To a great extent what he knows about the chief justices is from the books he wrote. One was about the Supreme Court itself and the other outlines the history of different judicial crises in the U.S. and how they were handled.

ATTORNEY GENERAL COLBERG said with regard to which U.S. Supreme Court Justice he admires the most it's a tie between Chief Justice Hughes and Chief Justice Rehnquist.

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CHAIR FRENCH asked which U.S. president he admires most.

ATTORNEY GENERAL COLBERG replied that a lot have noteworthy virtues, which makes selecting a favorite problematic. Washington was the first in history to have total power that he gave up willingly. That wasn't an easy thing to do and it became the pattern citizens have come to expect over time. John Adams did a lot to continue that tradition. Jefferson had an effervescent brilliance but he had nasty streaks. The next six were accomplished and he would argue that John Quincy Adams was probably the best prepared to be president because he knew the first six personally and they guided him. Andrew Jackson did a great deal to make people feel that the American democracy was for the common person. He was not an aristocrat. The next few presidents - Martin Van Buren, William Henry Harrison, John Tyler, James Polk, Zachary Taylor, Millard Fillmore, Franklin Pierce, James Buchanan-are sort of eclipsed because they come between Jackson and Lincoln. All but Harrison, who only lasted about a month, contributed stability of the republic.

Lincoln would be one of his two favorites, he said because he had a natural gift and was able to transcend his lack of formal

education. He had the gift to command attention and ideas and he probably would have eclipsed people in any event.

The presidents following Lincoln are eclipsed much the same as those before Lincoln. Andrew Johnson is underestimated because he put a great deal of his personal life on the line for joining the North when everyone he knew was on the Confederate side. But Ulysses S. Grant, Rutherford B. Hayes, James Garfield, Chester Arthur, Grover Cleveland—twice, Benjamin Harrison, and William McKinley are all shadowed by Theodore Roosevelt. Roosevelt had incredible energy and Woodrow Wilson was thoughtful and contributed a lot. In more recent times people tend to be more judgmental but Herbert Hoover, much like Jimmy Carter, was someone who wasn't in the right element for his training.

ATTORNEY GENERAL COLBERG said his other favorite is Ronald Reagan. He has always been an inspiration and not just because he had a gift for communicating his ideas in a pleasant and thoughtful way. He's a favorite because he's half Latvian and his great grandparents died in a concentration camp in Siberia. His mother was a refugee from Eastern Europe and his family always wanted to see a president who understood Communism. Ronald Reagan was always able to effectively communicate his views on Communism in a very meaningful way.

ATTORNEY GENERAL COLBERG said his two favorites would be President Lincoln and President Reagan.

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CHAIR FRENCH asked what he sees the primary mission of the attorney general to be.

ATTORNEY GENERAL COLBERG stated that when you look at the statute governing what the attorney general is supposed to do you can see when it can be contentious. As attorney general he would represent the State of Alaska, the governor, and elected officials, and he would advise the legislature. In a political context it's not difficult to see that it could become a problem at times. Ultimately the mission of the attorney general is to serve the best needs of the people of Alaska and advise the governor accordingly. The mission becomes difficult when one decides how to pursue that. Ultimately the safest course of action is to look at what might be the correct answer to questions as opposed to what might be popular. That may account for the fact that the tenures of attorneys general in the state are fairly short. Discounting the two longest tenures the

average is about 1.6 years. More than likely the high turnover comes from trying to serve many masters, he stated.

CHAIR FRENCH elicited questions from the committee.

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SENATOR WIELECHOWSKI asked how he would reconcile conflicts between the best interest of the people and what the governor might want to do.

ATTORNEY GENERAL COLBERG answered that the recent contentious issue regarding a Board of Regents member is a good example of how that issue can arise. He explained that the governor sent a letter asking a regent to resign and that indicates that the governor is looking for a way to bring the issue to a conclusion, but he and his staff are advising caution about that. Clearly if you were looking for a result-driven conclusion it would be natural to just terminate the discussion rather than following a lengthier course of action. He described it as a case of trying to do the right thing and said he believes the governor is appreciative of that.

SENATOR WIELECHOWSKI referenced the opinion that was issued on removing a regent. The question in that opinion was whether the governor has the power to remove a University of Alaska regent without cause. He then asked if the governor doesn't have cause if someone has 92 indictments, has allegedly misused the state seal, and has missed a number of regent meetings.

ATTORNEY GENERAL COLBERG replied the premise of the system is that a person is innocent until proven guilty and an indictment is not a finding. Cause is being interpreted as proven guilty, he stated.

SENATOR THERRIault said there isn't any proof for the federal indictments, but he would think that misuse of the university seal for personal gain and a lack of fulfillment of the function of the position could be addressed on the state level by the governor and potentially the legislature.

ATTORNEY GENERAL COLBERG responded that he believes there would be room to create a mechanism for a hearing process to establish those things, but to act without going through the process would be open to question.

SENATOR THERRIault asked if part of his advice to the governor was that the potential power of the governor is unclear in the

constitution and not clarified in statute and it's likely to be opposed by the university. And avoiding the quagmire is advisable if that's at all possible.

ATTORNEY GENERAL COLBERG replied that he believes that's a fair assessment.

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SENATOR McGUIRE said she disagrees with his legal opinion on this matter and noted that it is contrary to the legal opinion from the legislative legal division. Her personal opinion is that the governor handling the situation would have been in the public's best interest and a more appropriate legal action. She asked what process he went through to determine that opinion. Did he have conversations with the governor and receive instructions that he might use now or in the future?

ATTORNEY GENERAL COLBERG replied that he didn't receive any pre-instruction. He arrived at the decision working with staff that was familiar with that area of the law and they relied on previous similar opinions to reach the conclusions. The normal process is that when a question is presented the deputy from the appropriate division is asked to bring forward the person most familiar with that area. Discussions ensue and an opinion is put together and delivered.

SENATOR McGUIRE asked how he views his job and the distinction between his relationship with the public and his relationship with the governor in light of past behavior by a former attorney general who sometimes appeared to be serving at the then governor's right hand.

ATTORNEY GENERAL COLBERG explained that although he and the current governor are from the same borough, he didn't know her socially before his appointment. She would have known him from his service on the assembly when she was mayor of an adjacent town, but he hasn't been her personal advisor or lawyer. He believes she appointed him because she knows enough about him to know he's trustworthy, not because he's been active in her political activities or campaigns.

SENATOR McGUIRE asked if he would feel comfortable saying no if the governor asked him to perform a task related to a resource development company that he felt was outside the scope of his duty as attorney general for the state.

ATTORNEY GENERAL COLBERG replied he feels he has the ability to say no if the governor asked him to do something he didn't feel comfortable doing.

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SENATOR WIELECHOWSKI asked if knowing that a university regent allegedly misused the state seal and missed state meetings rises to the level of just cause and gives her the ability to dismiss the regent.

ATTORNEY GENERAL COLBERG replied there isn't a hearing process currently in place to make such an assessment, although one could be created. Clearly there are issues that look to be overwhelmingly conclusive, but the definition of cause isn't a preponderance of allegations, he stated.

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CHAIR FRENCH offered the view that sometimes there has to be some definition short of a guilty verdict at trial. When the evidence is strong, irrespective of the guilty or innocent verdict, there are times that the state has to take action and protect itself. This is one of those instances, he said.

SENATOR HUGGINS highlighted the words trust, honesty, and integrity and said what he likes about Mr. Colberg is that he doesn't see a lot of lawyer in him. He has lawyer capabilities and he's a good man, he said.

SENATOR THERRIAULT observed that as attorney general Mr. Colberg wouldn't be in court arguing cases on a day-to-day basis and he questioned if he had the expertise to weigh in on particular issues.

ATTORNEY GENERAL COLBERG responded there's a reason the line of people is sitting behind him today. He explained he spends a good part of every day delegating things to get an answer and he gets to see the things that are of the most concern to the people who are asking questions on a day-to-day basis. He agreed it's not possible for him to become the attorney in all cases and he doesn't know of an instance where someone has claimed to be an expert on all fields.

Noting that the civil division has 13 subcategories, he explained that it's not uncommon to hire outside counsel to get expertise in even more specialized areas. It's a matter of trying to be the communication point between the Department of Law, the Governor and the Legislature and whoever else is

seeking issues that are at the top of their screen on a given day, he said.

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CHAIR FRENCH remarked that's a nice segue to question 6, which is about the civil division. He asked if he has had time to meet the section chiefs, what he sees as the biggest challenge facing that division, and what plans he has developed to take action.

ATTORNEY GENERAL COLBERG answered that in some ways he'd lump the civil and criminal divisions together. Department of Law salaries are an increasing issue that doesn't seem to be on the legislature's immediate screen. He cautioned that there is a real gap between the DOL salaries and parallel positions in municipalities in this and other states. It's clear that the DOL is lagging roughly \$10,000 behind on 3 and 5 year positions and probably further than that on 10 year positions when compared to boroughs. For private jobs it's more problematic to give a definitive answer because of the variety of compensation packages.

He pointed out that the civil division has only 14 positions; 12 are filled and 2 are in a state of change because of the state's lack of competitiveness. Also from a pure economic point of view, state service becomes less attractive once a person has experience so they have high turnover. The beginning positions in both the civil and criminal divisions are not such a big problem, but there's a disproportionate number of 5-year employees to 20-year employees leaving compared to attorney general offices in other states.

ATTORNEY GENERAL COLBERG said that leads to the secondary issue of mentoring people to carry on the job. As more 20-year employees approach retirement, the question is who will replace those experienced workers when there are fewer and fewer people to train the new folks. What's needed is a comprehensive review of the salary structure for both divisions and that should address the retention and mentoring of the mid-level attorneys and getting people interested in a career path rather than just using it as a training ground.

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Responding to an earlier question, Attorney General Colberg said he hadn't met with all the division heads, but he had met a number of people some of whom said they'd never met an attorney general before. Of the 13 criminal divisions statewide, he's met

Mr. Svobodny and Mr. Gardner in the Juneau office, Mr. O'Bryant in the Fairbanks office, and Mr. Kalytiak in the Palmer office.

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CHAIR FRENCH referenced question 10 and asked if prosecutions of sex abuse and sex assault are increasing and if he and members of the department have plans to take action on this extremely important public safety issue.

ATTORNEY GENERAL COLBERG replied statistics are more difficult to get a hold of than he imagined, but he does have the total number of reported assaults for adults and minors. With regard to the prosecution numbers, he said he has a chart from 1997-2006. A fairly comprehensive number of referrals on sex assault for adult cases ranged statewide from about 289 in 1997 to 351 in 2002. It's not clear that there has been an overall statewide increase and the numbers are down from the peak in 2002. Last year there were 321 cases and 323 cases the year before. It's a fairly steady range that would probably average out to about 320 per year. Those cases suggest a slight decline if population increases are taken into consideration.

Sexual assaults on minors are down by almost one third statewide. He said these statistics don't take into account the demographic divisions within the state which points to a completely different story. Last year, he said, Bethel had more sexual assaults than the entire city of Anchorage. What is apparent from that snapshot is that while statewide it doesn't appear to be a burgeoning problem, it may very well be an extremely serious problem disproportionate to Bush Alaska. Prosecution levels suggest that in the last ten years it is averaging a 75 percent conviction rate for adults and closer to 82 percent for children in the last five years. The last two-year statistics are not useful because the numbers may be skewed since some of the cases may not be resolved yet.

Ultimately he said he thinks there is a very serious problem in Bush Alaska. The government services and prosecutions have a very complex relationship and relating back to the issue of retention, he said that here it is slightly different. It is extremely problematic to keep people in places like Bethel and he must make deals for people to stay out there for two years. It is difficult to even get any response to some of the Bush attorney positions. So, there is a disproportionate need as well as a service problem even with the apparatus in place and funding. A solution has to do a lot with addressing the problem early on which gets to education and alcohol and drug abuse

issues. He said that problems come with isolation, the absence of law enforcement authority on the spot, the ability to follow through with a response in a timely and effective manner.

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CHAIR FRENCH noted that last year the legislature provided funding for six new superior court judges. He asked if there would be an increase in either civil or criminal attorneys in response to those new judges. Some representatives from the DOL have opined that they are chasing judges and they don't have enough state attorneys to fill the court rooms.

ATTORNEY GENERAL COLBERG replied that may be reality and not just anecdotal. It appears that with those six new judges there were only two new attorneys in the Palmer office, which is one of the fastest growing areas of the state. There is one criminal division office assistant in addition to those two attorneys. It doesn't appear that there was a corresponding statewide increase in the number of attorneys to match the increase in judges.

CHAIR FRENCH asked if he anticipates asking for more positions to compensate for the new judgeships.

ATTORNEY GENERAL COLBERG replied part of what's in the process is looking at the overall state budget. He doesn't want to get in front of what may be a budget decision.

SENATOR WIELECHOWSKI asked if the state needs to change the way it selects and retains judges.

ATTORNEY GENERAL COLBERG clarified that he has no difficulty with any of the sitting judges. Part of his graduate work was a review of the selection system, which is generically called the Missouri system as opposed to elected systems or a combination of systems. One of the most interesting books he read suggested that when analyzing the quality of judges - their training, background, and effectiveness - there is little statistically measurable difference between the type of judge selected under our system and judges selected under other systems.

ATTORNEY GENERAL COLBERG observed that the only time anyone has an encounter with a judge outside the legal system is on a retention ballot and this state has 30-40 percent of the people voting "no" without distinguishing between anyone. He thinks this might stem from a frustration of not knowing who the people are. One of the benefits of the elected system is that people do have some reason to know something about who their judges are.

The downside of our system is that if someone really wants to take a shot at a judge and be clever about it, they can organize at the last minute to hurt a judge - like in the Rabinowitz case. Our system makes it problematic for a judge to defend himself on short notice and they can be quite vulnerable to a concerted effort to remove them. He can see arguments for both sides even though they are not all that different.

SENATOR WIELECHOWSKI asked if he is advocating change in selection of judges.

ATTORNEY GENERAL COLBERG replied no.

SENATOR WIELECHOWSKI asked if he thinks Alaska Supreme Court judges are too activist.

ATTORNEY GENERAL COLBERG replied it would be inappropriate for him to comment on the issue.

SENATOR WIELECHOWSKI asked if he disagrees with any decisions they have made in the last 10 years.

ATTORNEY GENERAL COLBERG replied probably, but he doesn't think it appropriate to comment. "I have a lot of respect for the court," he said.

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CHAIR FRENCH went to question 12 on the power of taxation - the no surrender clause in the Alaska Constitution. He thinks the proposed contract last year violated that constitutional provision. It is a difficult position because the producers make a compelling argument that they need some form of tax stability. In his view, they just can't get to it through Alaska's constitution. He asked his view and rationale on the matter.

ATTORNEY GENERAL COLBERG replied that he read Attorney General Marcus' opinion (May 2006) about Article 9, Sections 1 and 4. He said the cases they seem to be relying on are from other states. Washington and Arizona are very prominent in the citations. Ultimately, he thinks future legislatures would always retain the right to change their view on things. The federal contracts clause was the crucial component. While there would be a remedy for the party that felt it was damaged because they had relied on this commitment, he doesn't think they could guarantee anyone that the legislature could not be unbound by a subsequent legislature. In the context of a contract there could be real damages issues - especially over a three or four-decade period.

He could see how Attorney General Marcus got to the point where he thought he could defend it.

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SENATOR THERRIAULT said in the Governor's press conference today, Marty Rutherford indicated AGIA would have a possible tax exemption or tax credit offered between an open season and when gas actually flows - for a period of ten years.

ATTORNEY GENERAL COLBERG responded that there will always be a question of binding a future legislature. The shorter the time period, the less problematic it becomes.

SENATOR THERRIAULT asked if he could he make the case of impacting the investment decision within this time period if he had to justify it in court. But once you get past that, it's completely unsupportable, he added.

ATTORNEY GENERAL COLBERG replied that he wouldn't say it's completely unsupportable. Attorney General Marcus laid out the argument for why he could support it, but it does have a lot of speculative aspects.

SENATOR THERRIAULT asked if he had been actively involved in shaping the language on this provision.

ATTORNEY GENERAL COLBERG replied he was not personally involved. The Department of Law's Oil and Gas Section was involved along with outside counsel. He said he is not an expert in that area.

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CHAIR FRENCH turned to the next question and said you filed a notice with the TAPS owners that the state may opt out of the 1985 and 1986 settlement agreements. He asked if negotiations had begun and what are the financial implications of this step.

ATTORNEY GENERAL COLBERG replied the answer has three parts. First he did not just walk in and decide to do it without talking to someone. This action was taken because it is in the best interest of the state. The department has ongoing litigation with the FERC about what is the proper tariff. The difference ranges from \$1.96/barrel to \$5/barrel; probably the right answer is somewhere between the two. Approximately \$80 million to \$100 million per year is in question. To not move to renegotiate would leave this on a year-by-year basis as an ongoing battle until 2011. The department believed the best approach would be to give notice that it would like to

renegotiate which opens a two-year window. Negotiations haven't started; they are waiting for the conclusion of the FERC decision regarding the proper tariff. He expects that will probably be in May. That decision will be a starting point.

CHAIR FRENCH asked what the timeline is for go or no go.

ATTORNEY GENERAL COLBERG replied that has to be done within the next two years - 24 months from January.

SENATOR THERRIAULT asked if the current structure stays in place until replaced.

ATTORNEY GENERAL COLBERG couldn't say for sure.

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SENATOR WIELECHOWSKI said the constitution talks about getting the maximum benefit for Alaskans for its resources and asked what that means with regard to oil and gas.

ATTORNEY GENERAL COLBERG replied that depends on the particular resource and accessibility and whether there is a desire to develop it. For example, he is trying to get the best tariff rate possible with the FERC.

SENATOR WIELECHOWSKI said for example, there's sometimes an issue of whether or not royalty gas can be used as low-cost gas for Alaskans or whether it has to be sold for the maximum profit. He asked if he has an opinion on that.

ATTORNEY GENERAL COLBERG said he likes having that option. There's a great argument for Southcentral Alaska using royalty gas.

SENATOR WIELECHOWSKI said there is a big issue with the natural gas supply and increase in price in Southcentral. He asked if he intends to take an active role by intervening in RCA and other types of cases to protect Alaska consumers.

ATTORNEY GENERAL COLBERG responded protecting consumers is part of his statutory duty. In the RCA cases, the department is effectively doing that by looking at tying gas rates to Enstar in Louisiana.

SENATOR WIELECHOWSKI asked if he has given any thought to disallowing the use of Henry Hub or placing caps on the rates that can be charged.

ATTORNEY GENERAL COLBERG replied he hasn't personally considered price caps. However, it is a concern and people are looking at it, he said.

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CHAIR FRENCH said tribes and tribal sovereignty in Alaska is a contentious area. He asked what his department approach would be.

ATTORNEY GENERAL COLBERG replied this is perhaps the most complicated and persistent topic. It comes from geography, isolation and federal neglect. When the Organic Act was finished in 1884 it wasn't like others that had a process for kicking in self-government. It was purposely deleted and basically a few federal officials were appointed to oversee an area. With the gold rushes, the federal government decided that something should be done with the increasing non-Native population. The premise, which was somewhat racially motivated, was that Native people didn't want a form of government involvement.

Thus, a dual system developed and in 1906 Alaska got an elected non-voting delegate to Congress. The second Organic Act of 1912 finally allowed some self-government, but with unusual limitations compared to other states. Alaska wasn't allowed to have counties for instance. It had small enclaves of municipal governments, a territorial government with severe limitations on taxation, and certain rule-making powers in the legislative arena largely representing only the non-Native portions of the state. In the meantime the Native areas were kind of starting to drift into a separate system so that by the time of the New Deal with the Indian Reorganization Acts in 1934 and 1936, about 70 tribes were established. They were given certain rights and certain government opportunities and a dual education system through the Bureau of Indian Affairs (BIA). That arrangement persisted until statehood. Alaska didn't really have boroughs until 1963 or 1964. By the time Alaska had some sense of statewide government, it had two governments that didn't mesh.

ATTORNEY GENERAL COLBERG relayed that outside of Metlakatla, Alaska doesn't have the traditional reservation system. It has tribes and federal recognition of certain rights that aren't on track with state government. It has the absence of Indian Territory in the Venetie case. It's confusing. Ultimately the solution is to figure out a way to encourage people to participate from all parts of the state. In the long term, he

thinks a change in population will provide less reason for friction.

A book called "The Western Paradox" wrestled with the nature of frontier population compositions, he said. It made two broad classifications: people who are trying to be adventurers/exploiters or people who want to be settlers. Alaska can be classified as an exploited state where people came, made their fortunes and left, but Alaska Natives already consider this their home. He thinks that more people will begin to see Alaska as a destination and this will be the beginning of a more common ground. If confirmed, he wants to make this the focus of his interest.

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SENATOR WIELECHOWSKI asked what he thinks about rural preference for subsistence.

ATTORNEY GENERAL COLBERG replied the state has always taken the position that there is a rural preference; just how that is established is what has clouded the issue. There is no magic solution, he said, but there has to be a way to work it out. He mentioned that he was chair of the Alaska Humanities Forum Board, Alaska's branch of the National Endowment for the Humanities. One of the nicest features of its many programs was the Rose Urban Rural Exchange where Railbelt school children could live in villages for two weeks at a time and Native children could likewise live with urban families. It was an eye-opener because a lot of people in the Railbelt don't venture beyond the road system. It's hard for them to sometimes realize that life is comparatively difficult in some parts of Alaska. The program fosters more of an appreciation of why this is such a sensitive issue for Native Alaskans. On the other hand, he said, many people come to live in Alaska because it is an opportunity to hunt and fish and they don't like the idea that somehow enclaves will be created that are off limits for what they perceive to be racial reasons.

SENATOR THERRIAULT pointed out that the Alaska Supreme Court ruled rural preference to be unconstitutional under the state constitution. He asked him if he really meant to say "rural preference."

ATTORNEY GENERAL COLBERG apologized for misspeaking and clarified that he meant to say "subsistence preference."

SENATOR THERRIAULT asked if he spoke with either Mr. Popley or others on certain concerns the legislature had been tracking for a number of years with regard to tribal status and if there are in fact tribes. Former Senator Halford cautioned him to watch out for peoples' access to health care or other services that are only offered through a tribal entity. If that tribal entity isn't subject to Alaska's laws, then the citizens of the state can only avail themselves of services that are available to the general public through a mechanism by which they potentially have to shed their state constitutional rights in order to get those services. Some entities have attempted to separate themselves from the state through the cloak of tribalism. We need to be mindful of that because we are all Alaska citizens and constitutional protections should be available to everyone equally.

ATTORNEY GENERAL COLBERG responded that he had met with Mr. Popely and he is aware that this is a thorny issue. His most recent encounter was through the Rural Justice Commission that deals in particular with the Indian Child Welfare Act. It is applicable in states that have reservations. Absent reservations the commission worked on a Memorandum of Understanding (MOU) with tribes trying to address these issues. There is no solution yet.

[3:01:02 PM](#)

SENATOR McGUIRE noted that he wasn't on Law Review, but if he was today and was writing a comment on the Venetie case, what would his brief summation be. Would he agree with the Supreme Court of the United States or with the Ninth Circuit? She also asked what legacy he would like to leave.

ATTORNEY GENERAL COLBERG replied he wouldn't want to be remembered only for his answer to her first question. He said the Venetie conclusion that there was no Indian country is appropriate in that Alaska really doesn't have the same structure as the other states. Creating Indian country would open another set of problems that wouldn't resolve much. The concern he had about answering this question is that he didn't want it to appear that he is insensitive to the motivations behind that lawsuit in the first place. "The people in those villages - many of them feel very aggrieved for often things that may have happened long before they were around and there [are] a lot of reasons for them to feel that way."

ATTORNEY GENERAL COLBERG summarized that he supported the Supreme Court decision on the Venetie case, but that doesn't

mean there weren't legitimate motivations behind Natives trying to assert claims for their heritage.

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SENATOR HUGGINS moved to forward Attorney General Colberg's name to the full body for consideration. There were no objections and it was so ordered.

CHAIR FRENCH stated that signing the letter does not reflect intent by any of the members to vote for or against the attorney general designee in any further sessions. There being no further business to come before the committee, he adjourned the meeting at 3:05:16 PM.