

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 13, 2009

1:37 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Gene Therriault

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

CONFIRMATION HEARING

Attorney General

WAYNE ANTHONY ROSS - Anchorage
- NAME ADVANCED

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 49(JUD) AM

"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 156

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 54

"An Act making sales of and offers to sell certain energy resources by a refiner at prices that are exorbitant or excessive an unlawful act or practice under the Alaska Unfair Trade Practices and Consumer Protection Act."

MOVED CSSB 54(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 54

SHORT TITLE: PRICE GOUGING INVOLVING ENERGY RESOURCES
SPONSOR(s): SENATOR(s) WIELECHOWSKI, ELLIS, FRENCH

01/21/09 (S) PREFILE RELEASED 1/16/09
01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) ENE, RES, JUD
02/12/09 (S) ENE AT 11:00 AM BUTROVICH 205
02/12/09 (S) Heard & Held
02/12/09 (S) MINUTE(ENE)
03/13/09 (S) ENE AT 11:00 AM BUTROVICH 205
03/13/09 (S) Moved CSSB 54(ENE) Out of Committee
03/13/09 (S) MINUTE(ENE)
03/16/09 (S) ENE RPT CS 1DP 3NR SAME TITLE
03/16/09 (S) DP: WIELECHOWSKI
03/16/09 (S) NR: MCGUIRE, KOOKESH, STEDMAN
03/16/09 (S) FIN REFERRAL ADDED AFTER JUD
03/18/09 (S) RES AT 3:30 PM BUTROVICH 205
03/18/09 (S) Heard & Held
03/18/09 (S) MINUTE(RES)
03/27/09 (S) RES AT 3:30 PM BUTROVICH 205
03/27/09 (S) Moved CSSB 54(RES) Out of Committee
03/27/09 (S) MINUTE(RES)
03/30/09 (S) RES RPT CS 2DP 2NR 1AM NEW TITLE
03/30/09 (S) DP: WIELECHOWSKI, FRENCH
03/30/09 (S) NR: MCGUIRE, STEVENS
03/30/09 (S) AM: HUGGINS
04/03/09 (S) JUD AT 1:30 PM BELTZ 211
04/03/09 (S) EMINENT DOMAIN: RECREATIONAL STRUCTURES
04/10/09 (S) JUD AT 1:30 PM BELTZ 211
04/10/09 (S) Heard & Held
04/10/09 (S) MINUTE(JUD)

WITNESS REGISTER

WAYNE ANTHONY ROSS, Attorney General Appointee
Anchorage, AK

POSITION STATEMENT: Testified as Appointee to the position of
Attorney General.

ACTION NARRATIVE

1:37:52 PM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing
Committee meeting to order at 1:37 p.m. Present at the call to
order were Senators Wielechowski, Therriault and French.

Confirmation - Wayne Anthony Ross - Attorney General

1:38:00 PM

CHAIR FRENCH announced the continuation of the confirmation hearing for Wayne Anthony Ross to the position of Attorney General for the State of Alaska. He explained that he would pose questions on a number of topics, but he didn't intend to replot any ground that had been covered in this committee's previous hearing or by the House Judiciary Committee.

CHAIR FRENCH asked Mr. Ross what years he put his name forward to be a judge.

WAYNE ANTHONY ROSS, Appointee, Attorney General, replied it was probably three or four years ago; once for a position on the state supreme court and once for the court of appeals.

CHAIR FRENCH asked him to comment on the overall ratings he received in the two bar polls. He noted that one was a 2.9 and the other was a 2.8, which is just short of acceptable.

1:40:45 PM

MR. ROSS related that he was told that his application generated the highest number of positive comments and the highest number of negative comments of any applicant. He said he doesn't know what that means, but he's practiced law for 40 years and he wasn't there to win a popularity contest. He was there to represent his clients. When you take public positions on issues the people who disagree with you remember that, he said. I'm not surprised, he added.

CHAIR FRENCH asked if [Alaska Supreme Court Justice] Robert Eastaugh is a conservative.

MR. ROSS replied he thought so when they first met many years ago. "Some of his decisions - I wouldn't think that he is anymore," he added.

CHAIR FRENCH asked if [former Alaska Supreme Court Justice] Daniel A. Moore was a conservative.

MR. ROSS replied, "I thought he was."

1:42:38 PM

CHAIR FRENCH said you wrote a letter in 1993 to the "Bar Rag" and referred to homosexuals as degenerates. He asked, "Do you still hue to that view Mr. Ross? Are homosexuals degenerates?"

MR. ROSS replied:

My job is to be the Attorney General for the State of Alaska and represent all Alaskans. My personal opinions in that regard have no place ... and I decline to state my opinion. I represent all Alaskans. Years ago I didn't represent all Alaskans. There's a difference.

CHAIR FRENCH said this is an opportunity to disavow that view and asked if he is declining the opportunity.

MR. ROSS replied:

I represent all Alaskans and I intend to represent all Alaskans. My personal opinion means nothing. I think I said last week that I don't like lima beans and if I represented the United Vegetable Growers, I probably wouldn't come out and say I don't like lima beans because I have clients. I have a client that's all the people of the state of Alaska and that's who I'm going to be representing. It doesn't matter what their sexual orientation is.

[1:44:00 PM](#)

SENATOR WIELECHOWSKI asked if it's appropriate for an attorney general to refer to a group of people as degenerates or immoral.

MR. ROSS replied, "No, that's why I have the attorney general's hat on. No I don't."

SENATOR WIELECHOWSKI asked if he still adheres to the statement he made years ago when he said homosexuals were degenerates and immoral.

MR. ROSS replied, "I was not attorney general at that time."

SENATOR WIELECHOWSKI said, "That's not the question I asked you. I just asked you a simple question whether or not you still adhere to that position."

MR. ROSS replied:

I thought I answered that with Senator French. My answer was it's not appropriate for the attorney general to label Alaskans one way or another unless they're criminals. And I'm not going to answer that question. I represent all Alaskans.

SENATOR WIELECHOWSKI said, "I'm asking if you still adhere to that position."

[1:44:52 PM](#)

MR. ROSS responded that he took the oath as attorney general and he isn't going to say what his personal opinions are.

SENATOR WIELECHOWSKI asked if he is refusing to answer the question.

MR. ROSS replied that's correct, but it doesn't mean we can't be friends.

SENATOR WIELECHOWSKI replied it doesn't mean that, but I'm trying to evaluate your qualifications for the position. "When you call a group of people degenerates, I'm curious to know whether you still adhere to that viewpoint. And by your reluctance to answer the question I take it that's a yes."

MR. ROSS responded you can take it however you want but I took an oath that says I represent all Alaskans and that's what I intend to do.

[1:45:32 PM](#)

SENATOR THERRIAULT said if as attorney general he would take steps to protect the legal or constitutional rights of gays and lesbians as Alaska citizens.

MR. ROSS replied he absolutely would.

SENATOR WIELECHOWSKI asked if he would take steps to uphold the rights of a group of people he considers to be degenerates and immoral.

MR. ROSS said, "Absolutely."

SENATOR WIELECHOWSKI asked if he's telling the committee that as attorney general he would defend a group of people he considers to be degenerates.

MR. ROSS replied, "If the law gives certain people rights, that's my job."

[1:46:29 PM](#)

CHAIR FRENCH highlighted the 2/10/09 letter that Mr. Ross wrote and sent to all Senate members in response to the Senate passing a contempt resolution regarding the witnesses who did not

respond when they were subpoenaed. He asked Mr. Ross if he had a copy of the letter.

MR. ROSS said yes he did have a copy. He continued:

You did get the letter - I'm glad that you got it because I never got a response to it. So I'm glad to see that you got it and I'm happy to discuss it.

CHAIR FRENCH asked Mr. Ross to elaborate on the statement he made in paragraph two of his 2/10/09 letter. He read:

But some legislators chose to hire Steve Branchflower to handle that investigation and, as you are aware, [speaking to all the members of the Senate] he subpoenaed a number of state employees to give testimony on the issue.

MR. ROSS replied, "No, I think that's fairly clear. That's my understanding of what took place."

CHAIR FRENCH asked if he is aware of the error in that sentence.

MR. ROSS said no.

CHAIR FRENCH asked, "You are not aware that Mr. Branchflower did not have subpoena powers?"

MR. ROSS replied:

Yes, but he acted through the legislature in my opinion, and he wanted people to come - sure. That's a wordsmith there. Remember, the only information I have is what I read in the paper so if there's errors you may have to attribute it to the papers.

CHAIR FRENCH asked if he represented a client in this matter.

MR. ROSS replied he did.

CHAIR FRENCH asked, "You did not attend the Senate Judiciary Committee hearings when the subpoenas were issued?"

MR. ROSS replied he did not.

CHAIR FRENCH asked, "You did not follow that matter closely?"

MR. ROSS replied, "No, I heard about it after that whole thing took place - I got involved later."

CHAIR FRENCH asked if it was an intentional error to suggest that Mr. Branchflower subpoenaed anybody.

MR. ROSS replied:

I don't know that it's intentionally an error at all. ...As I understand it, the subpoena came out and the people were supposed to come talk to Mr. Branchflower. If they were supposed to appear in front of this committee, that's something else again. But if there was an error, you got the letter on the tenth of February 2009; it's now the thirteenth of April. You had over 60 days to correct that error on my part. You didn't bother even to answer, so it's a little tough to come after me in the middle of a hearing for confirmation when you could have corrected my errors a long time ago.

1:49:36 PM

CHAIR FRENCH responded, "I guess I see it differently. I didn't ask for this letter. You sent it to all the members of the Senate. You didn't address it to me sir. Did you?"

MR. ROSS replied, "I believe the original letter came directly to you and I asked you to distribute it to all the members of the Senate and your office refused."

CHAIR FRENCH asked, "Yes or no, is my name on this letter?"

MR. ROSS replied, "I think it says 'Senator.' Your name is not specifically on that letter. Whether your name is on another copy of the letter I don't know, but it's not on this copy."

1:50:02 PM

CHAIR FRENCH asked if he is aware of the error in the following sentence that's at the bottom of page 2:

The Senate should not have ordered and paid for an investigation by outside counsel for what appeared to be political purposes.

MR. ROSS said no, but I'm willing to be educated.

CHAIR FRENCH asked if he is aware that the Senate did not begin the investigation.

MR. ROSS replied I didn't say the Senate began the investigation.

CHAIR FRENCH asked if he's aware that the Senate neither ordered nor paid for an investigation.

MR. ROSS replied, "It's my understanding that that you appropriated \$100,000 for an investigation and you directed Mr. Branchflower to do it."

CHAIR FRENCH said that is your second error; it was the Legislative Council that ordered the investigation. That committee is composed of members from both bodies.

MR. ROSS said, "Good."

[1:51:54 PM](#)

CHAIR FRENCH stated:

You cite several cases in your letter - Moss v. State, Taylor v. District Court, 4th Judicial District, Stadler v. State. I took the time to read those cases and I found that they are all about criminal contempt coming from a court and I'm curious about why you chose that as an analogy given that we are the legislature and not a court. Can you comment on that?

MR. ROSS replied:

Yes, you found those people in contempt and it was more of a criminal contempt than a civil contempt. A civil contempt is a contempt that you impose in an effort to coerce people to do something. And they can purge themselves from contempt by doing what you direct them to do. A criminal contempt is the contempt in which you seek to punish them for something they did in the past. They don't have any method of purging themselves from that criminal contempt. So it's quite clear that your finding - you weren't attempting to coerce them to do something. You were attempting to punish them even if it be a punishment of just being found to be in contempt of the legislature. The criminal aspects just seemed a lot more appropriate than any civil contempt.

CHAIR FRENCH clarified that his question was not about the legal technicalities of whether it was civil or criminal. He said my question was why you chose to analogize Senate powers to a court because the analogy is more appropriate to the powers of Congress. "We're a legislative body. You understand the difference of course and I'm asking why you didn't look up cases relating to Congress's power of contempt."

MR. ROSS responded, "I represented an individual - a state employee who should have never been involved in a battle..."

CHAIR FRENCH asked Mr. Ross to answer the question about Congress's power of contempt.

MR. ROSS responded:

If you're not interested in my answer that's fine. If you want my answer I'll give it. But your question was why did I look up certain cases and not look up other cases. I was prepared to answer that question if you have an interest in hearing it. If you don't, that's fine.

CHAIR FRENCH asked Mr. Ross to proceed.

MR. ROSS continued:

One of the reasons I did that was because I represented a state employee who found herself in a battle between ... the executive and the legislative branches of government. State employees should be allowed to do their job. They shouldn't be caught up in battles - the power battles between one branch of government and another. And this employee did not get decent legal advice from the state in my opinion, and found herself caught in the middle. I could have spent many hours running up attorney's fees bill, but it was simple to cite the cases I did to show that the procedures used by the legislature to find these people in contempt were improper. I could have cited a lot more - run up more bills, but it's not fair to put that employee to even greater expense that she was.

[1:55:42 PM](#)

SENATOR WIELECHOWSKI asked if he believes the legislature has the authority to subpoenas witnesses to testify before it.

MR. ROSS said yes.

SENATOR WIELECHOWSKI asked if he believes that the Senate or House has the ability to hold a witness in contempt if they don't appear in response to a subpoena.

MR. ROSS said yes.

SENATOR WIELECHOWSKI asked if he advised the witness in this particular case not to adhere to the subpoena.

MR. ROSS replied that falls under attorney client privilege.

SENATOR WIELECHOWSKI asked who paid his legal fees in this case.

MR. ROSS replied it was the employee.

SENATOR WIELECHOWSKI asked if it was Ivy Frye.

MR. ROSS answered yes.

[1:56:23 PM](#)

CHAIR FRENCH said the third paragraph of your letter references a memorandum from the attorney general, which indicated that a legal issue existed as to the validity of the subpoenas. He asked Mr. Ross if he had seen a copy of that memorandum.

MR. ROSS replied he recalls he did see a copy.

CHAIR FRENCH asked, "Are you aware that your letter was the first public indication that I had that there was such a memorandum?"

MR. ROSS replied, "No; I'm surprised you didn't see it. I saw it. You're on the inside; you should have seen it. It was kind of a less than clear memorandum."

[1:57:05 PM](#)

CHAIR FRENCH said, "In the memorandum the attorney general offered an opinion about the legality of the subpoenas." He asked if that is correct.

MR. ROSS replied that's his recollection, but it's been a while since he looked at it. "I don't know that it was a real strong opinion," he added.

CHAIR FRENCH asked if he agreed with the opinion.

MR. ROSS replied:

I thought it was not much of an opinion. The whole thing was handled very badly Senator. It was handled badly by the legislature; it was handled badly by the governor's office. Had I been the attorney general we could have resolved this thing a lot sooner in my

opinion, and without the state employees being caught in the middle.

CHAIR FRENCH asked Mr. Ross to give a yes or no answer as to whether the subpoenas were legal.

MR. ROSS replied:

At the time I wasn't sure. It's my understanding that the courts have indicated that they probably were. But I would not have probably even gotten to that issue. I think that issue was really irrelevant. It just seems a shame that the parties couldn't have worked together towards resolving a matter rather than getting involved in litigation between branches.

CHAIR FRENCH said:

Mr. Ross, I have very specific and clear memories of that and very specific and clear memories of overture after overture to resolve this, and having been rebuffed over and over by the individuals and issue. So if you're suggesting that other individuals could have handled themselves better, I completely agree with you.

[1:58:46 PM](#)

SENATOR THERRIAULT asked Mr. Ross if he would agree that with regard to the power of the legislature to issue subpoenas, it is a clearer issue if the subpoena is to compel somebody to come before a committee to testify.

MR. ROSS said he didn't understand the question.

SENATOR THERRIAULT restated that the subpoenas were for people to make themselves available to an investigator that the legislature had hired.

CHAIR FRENCH called a point of order in the question. "That's not true," he said. As a matter of keeping the record clear, the subpoenas commanded the attendance of a witness before the committee, Senator French said. The individuals could have complied with the subpoena by meeting with Mr. Branchflower, so there was an avenue out of appearing in front of the committee. The committee has no other legal authority, he said.

SENATOR THERRIAULT said he agrees, but it was a strange issue. He continued:

State employees previously had been given the option to talk to the investigator and that would satisfy the subpoenas. And some - other than your client - state employees were unclear, and so were their private attorneys, on just exactly what they were being asked to do and what their legal rights as individuals would be if, in fact, they complied. I know I talked to a separate state employee that was unsure of what his rights would be with regard to if he answered questions of the investigator. Would they be public?

It's my understanding that certainly in the criminal side, there is a lengthy set of rules that tell a person that if they respond to a subpoena or when they respond to a subpoena - how they're going to be treated, what's going to happen to the information, is it confidential, is it on the Internet that afternoon. And it would seem to me like there was a lot of uncertainty. I'm wondering if you discussed that with your client - without violating attorney client confidentiality - whether some of that entered into your thought process and the advice that you gave to your client.

2:01:16 PM

MR. ROSS said he told his client it was a goat rope as to who had legal responsibility and who didn't and who had authority and who didn't. She should not have been put in that position and had he been attorney general that wouldn't have happened. He continued:

I would have done my very best to see to it that the legislature wasn't put in the position where their rights were challenged. I would have done my best to see to it that the state employees were not put in the position where they were caught in the middle. It was handled very badly by a number of sides and that's all I'm going to say. I'm not going to plow old ground and criticize my predecessor.

SENATOR THERRIAULT said a previous attorney general holds the same opinion. The entire matter should have been handled so as to turn down the volume and get to the truth rather than the way it played out.

2:02:29 PM

CHAIR FRENCH recognized Senator Linda Menard had joined the committee.

CHAIR FRENCH asked Mr. Ross if he would like to comment on some of the statements that have been made and emails that have been sent regarding his attitude towards women.

MR. ROSS said no; he's enjoyed the confirmation process. He continued:

Winston Churchill said 'Nothing's more exhilarating than to get shot at and missed.' But there was a letter from the lady named Burton that really made me angry. I sent the legislature a letter that outlines my position on women. It's old fashioned. My father told me that there is no greater honor that a man could have than if a dad lets that man take his daughter out on a date. And there's no greater harm that you can do than to breach the trust that that dad's put in you when you take his daughter out.

Women are very special to me. The comments made by Ms. Burton were outrageous and they were nothing but lies - if in fact she wrote that letter. I don't know if she did. I don't know who she is. The letter was unsigned. I've been married to the same wonderful woman for almost 41 years. If I ever raised any of those kinds of comments to my wife, there'd be Hell to pay because she wouldn't put up with it. ... I open the doors for women, I tip my hat to them, I stand up when they come in the room and if that makes me a dinosaur so be it. But that's the way I treat women and not the way that letter implies. Comments like that - had they been made to me would have stirred my wrath and to allege that I made such comments really stirs my wrath.

[2:05:52 PM](#)

CHAIR FRENCH said I thought it was important to give you an opportunity to respond.

MR. ROSS said, "Thank you; I appreciate that very much."

SENATOR WIELECHOWSKI asked, "If an attorney general candidate had made comments like Ms. Burton is alleging, do you believe that would disqualify that person from sitting as attorney general."

MR. ROSS replied it would raise a question about appropriateness.

SENATOR WIELECHOWSKI said, "So if it were to come out that those statements were true, then do you believe that that would disqualify you from being attorney general?"

MR. ROSS replied,

Those statements were made allegedly in 1991. ... I ran for governor in 1998; I ran for governor in 2002. Such statements certainly should have raised questions as to whether or not a person should be governor. They were never mentioned by Ms. Burton. They only were raised now when Governor Palin put my name forward and it appears, from what I've read in the paper at least, that Ms. Burton has some disagreements with the governor not with me. And so I think you have to ask yourself why someone would come out from the shadows and attack somebody through lies. And those are lies.

[2:07:30 PM](#)

CHAIR FRENCH clarified that all the emails his office received are unsigned. That includes emails in support and in opposition to the appointment. This is not uncommon, he said.

MR. ROSS responded, "That's why I didn't accuse Ms. Burton of lying because I don't know if she signed it or somebody else sent an email over her statement. But if she went and signed it, I'll call her a liar."

SENATOR THERRIAULT asked Senator French if he or his staff had been in touch with Ms. Burton to find out about the statement. The email says that Ms. Burton was outside the meeting room and she was listening in. He said he was struck by the fact that she has quotation marks around the statement that Mr. Ross made.

MR. ROSS said, "I didn't make that statement."

SENATOR THERRIAULT responded but the suggestion is that you did. He said he wonders if Ms. Burton jotted herself a note or if she is paraphrasing. That particular statement has gotten a life of its own and he'd like to know how she can be so certain.

CHAIR FRENCH said he has had no contact with Ms. Burton and the question he was asking Mr. Ross was intended to be more global with respect to his view on women. He noted that although he isn't interested in getting into any particular allegation, Ms. Burton isn't the only woman who has written his office expressing the view that Mr. Ross has a bad or unusual attitude

toward women. "That's why I wanted to give Mr. Ross the opportunity to respond. And I think what he said today is that he's protective of women -- chivalrous even, and old fashioned," Senator French said.

MR. ROSS said that's a good summary.

[2:10:36 PM](#)

CHAIR FRENCH asked Mr. Ross if he thinks it's acceptable behavior to dump buckets of water on women.

MR. ROSS responded it's absolutely not okay to dump buckets of water on protesters.

CHAIR FRENCH asked if he represented Mr. Webster on a charge akin to dumping water on women.

MR. ROSS said he did represent Mr. Webster.

CHAIR FRENCH asked if he represented Mr. Webster for free.

MR. ROSS replied he didn't intend to do it for free, but it ended up that way.

CHAIR FRENCH noted that the newspaper said he volunteered to represent Mr. Webster and asked if that's inaccurate.

MR. ROSS replied, "No, that's correct."

CHAIR FRENCH said, "So you walked into it thinking you weren't going to get much out of it in the way of recompense."

MR. ROSS said yes.

[2:11:51 PM](#)

CHAIR FRENCH said, "You believed that he needed a defense."

MR. ROSS said yes.

CHAIR FRENCH told Mr. Ross that he would recite the facts of the case as reported in the newspaper after which Mr. Ross could comment.

MR. ROSS responded that he could tell the committee what the facts of the case were.

CHAIR FRENCH said thanks, but he'd prefer to recite the facts.

MR. ROSS said, "I was there though."

CHAIR FRENCH responded, "You weren't there when the assault happened."

MR. ROSS said, "I saw the movie."

CHAIR FRENCH clarified that he'd ask the question and Mr. Ross would have an opportunity to respond. He read the following:

During the buildup to the war in March of 2003 a handful of war protestors stood at the Soldotna Y intersection holding a variety of signs...including peace signs, a U.S. flag, and sometimes they had pictures of U.S. servicemen and women. The protestors included pacifists, Quakers, a local doctor, and an Air Force wife.

Mr. Webster lived about seven-tenths of a mile away and frequently drove through that intersection. Around March 22 he drove past the protestors and threatened to douse them. Two days later on March 24 he threw water on two women holding signs at the Y. Both women were soaked and the signs became unreadable. Soldotna police, contacted by the demonstrators, warned Mr. Webster not to do it again. The protestors declined to press charges saying they knew that Mr. Webster was under stress.

Mr. Webster returned a week later and was verbally confrontational with the two women and more physical with one of the men present, a man named Daniel Funk, and threatened to beat Mr. Funk up. Then, in the final confrontation Mr. Webster returned a day or two later riding in the bed of a truck and dumps two buckets of water on the protestors. The assault is videotaped and Mr. Webster distributes that videotaped assault. The video was set to music and as the water showers the sign holders, someone is singing "God Bless the USA."

[2:13:42 PM](#)

CHAIR FRENCH asked if the foregoing facts are accurate.

MR. ROSS replied they sound fairly accurate.

CHAIR FRENCH asked Mr. Ross to tell the committee why he felt compelled to represent Mr. Webster.

MR. ROSS explained:

Mr. Webster was the father of a Marine who was fighting in - if I recall - Iraq. I was the father of a Marine that was fighting in Iraq and I felt that while I did not agree with Mr. Webster's actions, I felt I could understand his reasons for them and that he was entitled to a defense and why not a defense from another Marine's father.

CHAIR FRENCH asked if he's saying he did not agree with Mr. Webster's actions.

MR. ROSS replied, "I did not agree with his actions, no."

CHAIR FRENCH asked if his statements to the press to the contrary were simply that he was acting as Mr. Webster's lawyer.

MR. ROSS said, "Yes sir." He added that the agreement was that Mr. Webster would pay expenses, but that didn't happen. "I think he stiffed me for about \$800," he said.

CHAIR FRENCH noted that then Attorney General Renkes said, "We're fighting the war to protect the freedoms we have here in this country. People don't have the right to harass people expressing their opinions lawfully." Senator French asked Mr. Ross if he would have issued that statement had he been attorney general at the time.

MR. ROSS replied, "Not if I was Mr. Webster's attorney."

CHAIR FRENCH repeated the question.

MR. ROSS replied, "Probably not."

CHAIR FRENCH asked if he would have pressed charges had he been attorney general at the time.

MR. ROSS said yes. The police treated Mr. Webster fairly in that they simply had a chat with him the first time. "Mr. Webster didn't benefit from the chat the police had so the police had, in my opinion, no alternative but to prosecute," he said.

[2:16:07 PM](#)

CHAIR FRENCH asked if he agrees that the protesters declined to press charges.

MR. ROSS answered yes.

CHAIR FRENCH said, "They turned the other cheek."

MR. ROSS replied, "The first time."

CHAIR FRENCH asked how many times you should turn your cheek.

MR. ROSS replied, "I don't think that's the prerogative of the attorney general to answer that question."

[2:16:36 PM](#)

SENATOR WIELECHOWSKI said you stated that Mr. Webster was harassed.

MR. ROSS responded that's correct; Mr. Webster had encountered the protesters in downtown Kenai and he objected to their signs. The protestors then moved away from downtown and relocated at an intersection that Mr. Webster passed every day. "There was some indication that the signs indicated that Marines were killing innocent women and children. It was arguable then that perhaps ... that they were targeting Mr. Webster after he had protested what they were doing initially," he said.

SENATOR WIELECHOWSKI noted that Mr. Ross has stressed adherence to the constitution and asked if he as attorney general would file harassment charges against protesters that he disagreed with.

MR. ROSS said no; it's his opinion that the protesters were cruel, but they were entitled to do what they did. "Mr. Webster reacted and what he did he was not legally entitled to do. So there's a difference between using good judgment and being cruel and violating the law," he said.

[2:18:24 PM](#)

SENATOR THERRIAULT said my personal view is that Mr. Webster's behavior was abhorrent. He could and should have taken a different action. Having taken the action that he did, I think it's your opinion that Mr. Webster needed legal representation in the system. He asked if that's correct.

MR. ROSS replied, "He needed legal representation and surprisingly even though he had videotaped the whole thing I beat two out of five charges, which I thought was kind of a miracle and pretty good job."

SENATOR THERRIAULT related:

I'm hard pressed sometimes in our budgeting process to appropriate money to the Public Defender's Office to defend rapists [and] child molesters, but in our system everybody has to have representation so I guess I don't fault you for offering that representation. And I'm glad to hear you say that if you had been the attorney general and if you had reviewed that fact pattern, you would have been okay with pressing the charges. That he crossed the line. He was then in violation of their constitutional rights. Is that correct?

[2:19:57 PM](#)

MR. ROSS responded he wouldn't have been okay, but he would have prosecuted. Mr. Webster was warned the first time and the police didn't have to do that. When he was prosecuted the next time he had a right to a defense. "If Marine Corps dads can't stick together at least to make the system work there's something wrong," Mr. Ross added.

CHAIR FRENCH said Mr. Ross you say you did a good job for Mr. Webster and helped him beat two of the charges.

MR. ROSS added that it was two of five charges.

CHAIR FRENCH pointed out that the July 9, 2003 ADN reported that until Mr. Webster linked up with Mr. Ross he was going to plead guilty to a harassment charge. Had he pled guilty to harassment he would have faced a maximum 90 days in jail, but he was convicted of charges that had him facing 18 months jail time. "So I guess I disagree with your analysis of the efficacy of your representation," Senator French said.

MR. ROSS responded, "He didn't spend any time in jail and I don't know of any plea offer that was given him that he didn't take. And he was charged with violating the civil rights of the protestors so I think he was satisfied." He added that the judge in the case was subsequently removed.

CHAIR FRENCH asked why he brings that up.

MR. ROSS replied, "Because I thought I did a pretty good job in view of the fact that the judge was later found to be pretty close to in cahoots with the prosecutors."

CHAIR FRENCH asked if he is suggesting that the rulings the judge made against him were unethical.

MR. ROSS replied, "Improper."

CHAIR FRENCH asked if he filed an appeal.

MR. ROSS said no; he thought he and his client were satisfied with what took place.

SENATOR WIELECHOWSKI asked if it's true that he does not stand up when judges enter the room.

MR. ROSS replied, "That's absolute falsehood. I'm one of the few guys that does now-a-days and ... if I'm going to be seated during cross examination I always ask the court if I have permission to be seated."

SENATOR WIELECHOWSKI related that he read that in the "Bar Rag."

MR. ROSS replied he's read that too and it's poetic license.

[2:23:24 PM](#)

CHAIR FRENCH asked Mr. Ross which day he was hired as attorney general by the governor.

MR. ROSS replied he started March 31.

CHAIR FRENCH asked Mr. Ross if he's aware of the recent effort to seat a senator for the Juneau District B seat.

MR. ROSS asked if he's talking about the one the governor's been involved in.

CHAIR FRENCH said yes.

MR. ROSS said he's read the paper and is aware of the effort.

CHAIR FRENCH asked if he's had a role in the legal aspects of that vacancy.

MR. ROSS responded:

I think I read the paper and I think I looked at the '87 opinion and I may have talked to one of the attorneys that's handling it, but I haven't had really much time to do anything of a legal nature. I've been

doing a dancing bear act in this building for two weeks.

CHAIR FRENCH highlighted that someone advised the governor that there was a legal basis for asking the 19 remaining senators vote to seat the appointee. He asked Mr. Ross if he had a role in developing that legal opinion.

MR. ROSS replied he did not have a role, but he agrees with it. "I think it should be open and above board."

CHAIR FRENCH said his question is whether the 19 remaining Senators all should vote.

MR. ROSS said no; the law indicates that the members of the same party as the predecessor should vote on the replacement.

[2:25:22 PM](#)

SENATOR THERRIAULT asked who would vote to confirm the governor's nomination if the Senate had only one Democrat and that person resigned to take a different job.

MR. ROSS answered it would probably be the members of the same party

SENATOR THERRIAULT said there would be no Democrat left and that points out the problems with the existing statutes.

MR. ROSS said there appear to have been some conflicts in past processes.

[2:26:36 PM](#)

SENATOR WIELECHOWSKI said when you ran for governor you issued a position paper saying you wanted to cut the permanent fund dividend and use the money for government spending.

MR. ROSS responded that is not correct.

SENATOR WIELECHOWSKI pointed out that, "You said reducing our permanent fund dividend is a difficult decision for all of us. This position paper says this is the personal commitment all Alaskans must now make to restore our state prosperity."

MR. ROSS clarified that he adhered to the Cremona Plan, which called for putting all state revenue into a super permanent fund. A certain amount would be allocated for state expenditures and for a dividend so that you would know each year how much

money was available. But too much water is under the bridge to do that now, he said.

SENATOR WIELECHOWSKI asked if he has the same position on the permanent fund today.

MR. ROSS answered these are different times and the state government is too large. It might no longer be economically feasible.

SENATOR WIELECHOWSKI noted that former Attorney General Renkes handed down an important opinion in 2003. He asked Mr. Ross if he recalls the dispute associated with the following:

The attorney general determined that unrealized gains or losses from investment of the fund principal should be accounted for in the principal and that only realized gains or losses should become an element to be accounted for annually in determining net income of the fund.

[2:29:41 PM](#)

MR. ROSS responded "I have no idea what you're talking about."

SENATOR WIELECHOWSKI said there is a question as to whether or not it is constitutional to pay out permanent fund dividends when the fund didn't make any money. "At some point in time I imagine you're going to be called on to issue that opinion and it will impact whether...Alaskans get their dividends or not." It's an important issue to all Alaskans and I'm interested if you have an opinion, Senator Wielechowski said.

MR. ROSS answered, "I don't; and I'm encouraged to hear you say at some time I'll be called upon to give that opinion because to give that opinion I have to get confirmed so that could be an indication of the way you'd vote."

[2:31:12 PM](#)

SENATOR WIELECHOWSKI referenced an ADN article from 3/26/03 regarding a dispute over a letter Mr. Ross had written and asked if he recalls the following:

In a letter to incumbent Mayor George Wuerch, Ross told the mayor he would not support him because Wuerch refused to help a friend get into the Anchorage Fire Department.

MR. ROSS answered he doesn't recall writing the letter, but it's possible. He does recall a man not getting into the fire

department and he did have a case of 7 or 8 men who didn't get in.

SENATOR WIELECHOWSKI asked Mr. Ross if that is something he would have done.

MR. ROSS responded he doesn't recall that; George Wuerch is a friend and fellow Marine.

SENATOR WIELECHOWSKI asked Mr. Ross if he believes that Roe v. Wade should be overturned.

MR. ROSS said, "Yes."

SENATOR WIELECHOWSKI asked if he has plans to file a lawsuit to overturn Roe v. Wade.

MR. ROSS "No; been there done that. It's not my job as AG."

SENATOR WIELECHOWSKI asked if as attorney general he would prosecute individuals in a case where an abortion clinic was bombed.

MR. ROSS answered, "Absolutely; follow the law."

[2:33:28 PM](#)

SENATOR WIELECHOWSKI noted that former Attorney General Colberg issued an opinion that he believed that gay partners of public employees should receive benefits. Do you agree or disagree with that opinion and as attorney general would you have issued a similar opinion, Senator Wielechowski asked.

MR. ROSS answered he would follow the law; that is the attorney general's obligation.

[2:34:21 PM](#)

SENATOR WIELECHOWSKI asked Mr. Ross if he knows about the Real ID Act.

MR. ROSS replied he's heard of it.

SENATOR WIELECHOWSKI explained that it's a federal law that requires each state to have a national driver's license and last year Alaska passed a law prohibiting state dollars from being used to implement that federal law.

MR. ROSS surmised that the reason was that it was an unfunded mandate.

SENATOR WIELECHOWSKI said that was one argument and asked if he supports attempts to implement the Real ID Act here in Alaska.

MR. ROSS responded he does not have a position on that issue.

SENATOR WIELECHOWSKI asked if he has a position on right-to-work legislation.

MR. ROSS responded, "I have no position of right-to-work legislation; I do believe people should not be forced to do things that they don't want to do."

SENATOR WIELECHOWSKI asked if as attorney general he would attempt to implement any laws to enact right-to-work legislation.

MR. ROSS responded he does not view that as the attorney general's job.

[2:35:50 PM](#)

SENATOR THERRIAULT asked whose job it is to direct Department of Law resources on a high profile issue such as that.

MR. ROSS replied, "I would think the legislature or the governor. Of course it would be my job if we were on the receiving end of some litigation, but to go out tilting at windmills just to find battles to get involved in, that's not my job."

SENATOR THERRIAULT commented that the questions asked what he intends to do as attorney general and it seems that on a lot of those issues he would take whatever position the governor directs him to take.

MR. ROSS responded he would give advice to the legislature and the governor, but it would be a governor's or legislature's decision.

SENATOR THERRIAULT said a lot of people jump to the conclusion that the attorney general is the one who will file charges and argue all the court cases, but it's his assumption that the attorney general doesn't do that. Rather, he said he looks at the attorney general as the manager of the state's law firm. He

asked Mr. Ross the degree to which he might interject himself into daily litigation.

[2:37:48 PM](#)

MR. ROSS responded he's just beginning to see how the department works, but he ascribes to Teddy Roosevelt's philosophy. That is that a good executive hires the best people possible and then stands back and allows them to do their job. Thus far it looks like the Department of Law is a well-oiled machine. He continued:

I see the greater oil that's needed to make the machinery work better to be in the criminal justice section than in the civil section. ... The criminal section seems to be working well except that I am aware of problems in the district attorney's office in Anchorage and I've heard rumors of problems in Fairbanks. So I intend to visit all of those departments and talk to the individual people and see what we can do to improve the system. But the biggest difficulty in the job is I love to go to court and I probably won't be going to court too much anymore.

[2:39:56 PM](#)

SENATOR THERRIAULT said so you aren't coming to this appointment with the preconceived notion that you are going to restructure the Department of Law.

MR. ROSS responded that's correct.

SENATOR WIELECHOWSKI asked Mr. Ross if he has decided where his office will be based.

MR. ROSS replied it will be in Anchorage and he will make frequent trips to Juneau, particularly during the legislative session.

[2:40:38 PM](#)

CHAIR FRENCH thanked Mr. Ross for his patience and asked for a motion to forward his name.

At ease from [2:40:55 PM](#) to [2:41:16 PM](#)

SENATOR THERRIAULT moved to forward the name Wayne Anthony Ross to the full legislature for consideration and stated that the vote in committee is not an indication of how any member intends to vote on the confirmation.

CHAIR FRENCH found no objection and announced that the name Wayne Anthony Ross will be forwarded to a session of the joint body for a confirmation vote in the near future.

At ease 2:41:53 PM.

SB 54-PRICE GOUGING INVOLVING ENERGY RESOURCES

2:46:02 PM

CHAIR FRENCH announced the consideration of the CS for SB 54. [Before the committee was CSSB 54(RES).] He recapped that the committee recently received an overview of the bill and had a debate on its plusses and minuses. In response to the discussion and working with Senator Wielechowski's office, an amendment has been drafted.

CHAIR FRENCH moved Amendment 1, labeled 26-LS0209\W.2.

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: CSSB 54(RES)

Page 1, line 2:

Delete "**exorbitant or excessive**"

Insert "**unconscionable**"

Page 1, lines 11 - 12:

Delete "exorbitant or excessive"

Insert "unconscionable"

Page 2, line 25:

Delete "exorbitant or excessive"

Insert "unconscionable"

2:46:44 PM

CHAIR FRENCH found no objection and announced Amendment 1 is adopted. He explained that the amendment is in response to testimony from Assistant Attorney General Ed Sniffen. He will be in charge of prosecuting these cases and his view is that the work "unconscionable" is a more customary term.

SENATOR THERRIAULT moved to report SB 54 from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 54(JUD) moved from the Senate Judiciary Standing Committee.

#

2:47:45 PM

There being no further business to come before the committee,
Chair French adjourned the meeting at 2:47 pm.