

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 14, 2012

1:31 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION: MICHAEL C. GERAGHTY~ ATTORNEY GENERAL OF THE STATE OF ALASKA

- CONFIRMATION ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

MICHAEL GERAGHTY, Attorney General Designee
Department of Law (DOL)
Anchorage, AK

POSITION STATEMENT: Designee for the position of Attorney General of the State of Alaska.

ACTION NARRATIVE

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CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Coghill, McGuire, Paskvan, Wielechowski, and Chair French.

CONFIRMATION: Michael C. Geraghty, Attorney General of the State of Alaska

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CHAIR FRENCH announced the business before the committee would be a confirmation hearing for the Attorney General, Michael Geraghty. This is one of the more serious tasks that the committee undertakes and one of the more powerful individuals the governor will appoint. Alaska has an appointed attorney general not an elected one and every few years there is interest in changing the system. He said he entertained that idea until he discussed the idea with the late Tom Stewart "who affixed my mind on that subject and I haven't changed it since then."

He expressed hope that Mr. Geraghty would serve longer than the recent average of less than two years. He relayed that he provided a list of questions to the attorney general for the purpose eliciting interesting policy discussions. He welcomed Attorney General Geraghty.

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MICHAEL GERAGHTY, Attorney General Designee, noted that his professional credentials were provided earlier. He said he was born and raised in Fairbanks and learned the value of friendship, loyalty, and collaboration from his father. He carried that into his professional life and has practiced with the same law firm for 33 years. He expressed gratitude for the opportunity to represent the state.

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CHAIR FRENCH asked who he represents as attorney general.

ATTORNEY GENERAL GERAGHTY replied, "Technically, my role is to give the governor the best possible legal advice I can, and the best possible legal advice to the other executive agencies."

CHAIR FRENCH asked him to discuss the biggest challenge facing the Criminal Division, of the Department of Law (DOL), specifically addressing sex assault, sex abuse, whether prosecutions are increasing, and new ideas to combat this scourge of the state.

ATTORNEY GENERAL GERAGHTY said the biggest challenge is to keep good people in the job beyond five years and the Chair had good suggestions for reaching out to prosecutors to express appreciation for their work.

He described domestic violence and sexual assault as a scourge and embarrassment to society, and said he's truly impressed with the Choose Respect Initiative and the laser-like focus the

governor has brought to bear on the issue. He pledged to take this very seriously and noted referrals and prosecutions have increased in the last several years. He specifically mentioned Dillingham, Anchorage, and Bethel and suggested there was room for improvement in tracking domestic violence since it is often a component of a more serious crime.

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CHAIR FRENCH said this is an area on which he and the governor are in complete agreement. The entire committee appreciates the efforts the administration is putting into this area.

He asked him to discuss the single biggest challenge facing the Civil Division.

ATTORNEY GENERAL GERAGHTY said he wouldn't prioritize one area over another because they're all important. He mentioned the endangered species cases, the state federal relationship cases, and the Outer Continental Shelf oil and gas litigation and expressed appreciation that the division had excellent attorneys with expertise in these areas. He spoke of looking with fresh eyes to independently evaluate what and how things were being done, but that he didn't have any silver bullets.

He committed to reexamine what the department was doing in both the criminal and civil division to see if there were more effective ways to do business.

CHAIR FRENCH noted the recent state challenges under the Endangered Species Act that failed, and asked if he anticipated that more would be brought given that track record.

ATTORNEY GENERAL GERAGHTY said the short answer is yes. The Endangered Species Act relies on modeling that deprives Alaskans of their livelihoods. The Stellar sea lion is a good example and it definitely has to be appealed. He intended to keep fighting the fight and wouldn't be dissuaded from going ahead with cases that have merit.

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CHAIR FRENCH said recent news articles discussed an Alaska Department of Fish and Game (ADF&G) initiative that gave special hunting privileges to some private landowners. The Alaska Constitution provides that all state resources, including wildlife, are "reserved to the people for common use." He asked his thoughts on the constitution's provision of common use versus the provision of special hunting permits for landowners.

ATTORNEY GENERAL GERAGHTY cited the lottery permit to hunt bison in the Delta area and opined that it advances the state's goal under Article 8 when a private landowner opens his private property to hunting for a period of time. He described it as a win-win situation if the landowner can get a special permit in exchange for that.

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CHAIR FRENCH turned his attention to tribes and Native sovereignty. He relayed that at the 2012 Crime Summit Walt Monegan, the CEO of the Alaska Native Justice Center, brought up the difficult issue of providing justice to small rural communities and villages that aren't served by VPSOs, Troopers, or the court system. He suggested a pilot project to create tribal or community courts in these villages. He questioned his view of that idea and asked him to include in his answer recent cases involving Native sovereignty with respect to the state and civil court orders such as child support.

ATTORNEY GENERAL GERAGHTY said he intended to keep an open mind, but he would be conservative. The state has to respect that people are trying to do the right thing in their communities when there isn't a state presence, but it's also important to respect the due process rights afforded to citizens. He said the state typically has not given tribes criminal jurisdiction, but it certainly gives full faith and credit to a tribal court order in Indian Child Welfare Act (ICWA) proceedings. The Alaska Supreme Court affirmed that in the Tanana case. John v. Baker will continue to be the law of the land in limited narrow areas unless Congress changes that jurisdiction. He reiterated his intention to keep an open mind.

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SENATOR MCGUIRE asked how he used AG opinions in his private practice, and how he intended to use them as the Attorney General.

ATTORNEY GENERAL GERAGHTY replied his experience with them in private practice was limited, and he hadn't had occasion to issue one thus far. He said his general philosophy is to be conservative, and not-reactive, and he intends to be measured and deliberate in deciding whether to issue an opinion. He would be averse to using them unnecessarily as a vehicle for policy, but they are appropriate for providing guidance to citizens or companies seeking to do commerce in the state.

SENATOR MCGUIRE asked if he heard Chief Justice Walter Carpeneti's recent State of the Judiciary speech, and if he had any thoughts on presumptive sentencing.

ATTORNEY GENERAL GERAGHTY replied it was an excellent speech and he raised very legitimate issues about the lack of discretion judges are afforded under presumptive sentencing. He relayed that both the state and federal government enacted presumptive sentencing some 30-40 years ago as a backlash to lenient judges, but it puts a lot of people in prison that may not belong there. He said the speech resonated and he believes it's time to review presumptive sentencing.

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SENATOR MCGUIRE asked if he had considered getting involved with the national organizations for state attorneys general, and how he wanted to be remembered in for his time in service as Attorney General for the State of Alaska.

ATTORNEY GENERAL GERAGHTY said he attended the National Association of Attorneys General (NAG) meeting last week, and will host the summer meeting. He relayed that he met with Secretary Salazar (a former AG) and he hopes to continue to meet people at that level to find out how things are done in other jurisdictions and potentially do things better in the department. He wants to be remembered as a good father and a good husband and for having the best job possible as Attorney General.

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SENATOR PASKVAN conveyed his high regard and good wishes for a successful term in office. He asked him to discuss the Point Thomson legal issues, and more generally the duty that North Slope leaseholders have to actually explore, develop, and produce.

ATTORNEY GENERAL GERAGHTY said the Point Thomson case was argued shortly after he took the position and the die was fairly well cast. He said he agrees that the leases are contracts that should be enforced but the litigation has been ongoing for five years and isn't a slam dunk. He reviewed the older and newer leases and found they contain some loaded terms like reasonable and prudent operator and reasonable profit. He offered his belief that the Department of Natural Resources (DNR) has some leeway to influence development through the plan of development process, but otherwise Point Thomson could be an exception. He

said he was cautious but was willing to look at specific facts or circumstances that might be brought to his attention.

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SENATOR WIELECHOWSKI noted that the new leases have a specific provision that says there is a duty to produce when the companies can make a reasonable profit. He asked how he would define a "reasonable profit."

ATTORNEY GENERAL GERAGHTY replied he didn't know that he was qualified to opine about what a reasonable and prudent operator does, and he wasn't sure that any of the committee members were qualified to make the judgment either. Nevertheless, the leases are an enforceable agreement and he had no qualms about enforcing them in the proper circumstances. Point Thomson is a prime example.

SENATOR WIELECHOWSKI relayed that the old standard is a "reasonable and prudent operator" that considers both the lessee and lessor, whereas the newer leases specifically say there has to be production development when the companies can make a reasonable profit. He asked if he had any thoughts as to the meaning of "reasonable profit," and if he would hire experts to analyze a case that had facts about profit and high rates of return.

ATTORNEY GENERAL GERAGHTY replied he would go to the Division of Oil and Gas for the essentials and the Department of Revenue may have insights as well. Although he wouldn't rush to retain outside expertise, he would do so if it was prudent.

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SENATOR WIELECHOWSKI questioned whether it might be a better practice for DOL and DNR to write lease terms that are more easily understood by all parties so as to avoid future lengthy litigation.

ATTORNEY GENERAL GERAGHTY replied there are upsides and downsides to too much flexibility and too much specificity, but litigating to prosperity is not a good goal. To some extent, Point Thomson proves it's not sound policy.

SENATOR WIELECHOWSKI agreed that litigation is a last resort, but at some point the state has to act as a sovereign and demand the lessee fulfill the terms of the lease. On the North Slope 25 percent of the leases are sitting idle. Point Thomson, the largest undeveloped oil and gas reserve in North America, has

been sitting for 30 years through 23 plans of development. Sometimes litigation is necessary.

ATTORNEY GENERAL GERAGHTY agreed that the state waited long enough on Point Thomson, and added the caution that things are never as clear cut as one would like to think.

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CHAIR FRENCH said he and Senator Wielechowski have wondered if the same idea carries over to the North Slope in general. He urged him to think about whether there is a threshold upon which the state can rely to tell the industry it isn't developing its leases when it could make a reasonable profit here.

ATTORNEY GENERAL GERAGHTY responded that it's difficult to answer in the abstract, but he is cautionary.

CHAIR FRENCH urged him to think about whether the language in the leases that could be structured differently so as to form a better business relationship. It doesn't have to be a courtroom experience if it's structured right in the first place, he said.

ATTORNEY GENERAL GERAGHTY said fair enough.

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CHAIR FRENCH asked him to review for the record where he went to law school and other personal background.

ATTORNEY GENERAL GERAGHTY relayed that he graduated from the University of Santa Clara Law School in 1978, and he began practice with a firm that has offices in both Fairbanks and Anchorage. About 20 years ago they parted company.

CHAIR FRENCH asked what kinds of cases he did.

ATTORNEY GENERAL GERAGHTY listed examples of civil litigation and trial work, and said it taught him the value of open communication and avoiding litigation and trials.

CHAIR FRENCH asked if he'd done any criminal defense work.

ATTORNEY GENERAL GERAGHTY said not typically, but in the 90s he represented a Native corporation subsidiary that was indicted for a homicide on the North Slope.

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SENATOR COGHILL expressed concern that the DOL sometimes gets a little myopic when it represents other departments. He also expressed interest in closing any gaps in the privacy laws, particularly personal information that is stored in databases.

ATTORNEY GENERAL GERAGHTY said he takes the constitutional right to privacy very seriously. With regard to the first point, he said DOL tries to be perfect and isn't, but he'd like any specific concerns brought to his attention.

SENATOR WIELECHOWSKI thanked the attorney general for his prompt response when that his office contacted him regarding Transfer of Responsibilities Agreement (TORA) agreements. His constituents were very pleased.

ATTORNEY GENERAL GERAGHTY shared credit with his predecessor and invited other members of the committee to bring issues forward.

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CHAIR FRENCH asked if he would follow up on a question that was raised in a letter to Dan Sullivan when he was attorney general. The letter asked whether marine pilotage laws would apply in the new development areas in the Beaufort and Chukchi seas beyond the three mile limit.

ATTORNEY GENERAL GERAGHTY agreed to follow up.

CHAIR FRENCH found no further questions or comments and asked for a motion.

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SENATOR WIELECHOWSKI moved to forward the name Michael C. Geraghty to a joint session for consideration with the understanding that it does not reflect an intent by any of the members to vote for or against the confirmation of Mr. Geraghty.

CHAIR FRENCH announced that without objection, Mr. Geraghty's name would be forwarded.

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There being no further business to come before the committee, Chair French adjourned the meeting at 2:31 p.m.