

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 22, 2017

3:18 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Alaska Attorney General

Jahna Lindemuth - Anchorage

- CONFIRMATION (S) ADVANCED

HOUSE BILL NO. 104

"An Act relating to collecting information about civil litigation by the Alaska Judicial Council; repealing Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rules 511(c) and (e), Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED HB 104 OUT OF COMMITTEE

HOUSE BILL NO. 69

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c),

210(e), 601(b), and 603(a), Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 104

SHORT TITLE: REPEAL COLLECTION OF CIVIL LITIG. INFO

SPONSOR(s): JUDICIARY

02/03/17	(H)	READ THE FIRST TIME - REFERRALS
02/03/17	(H)	JUD
02/22/17	(H)	JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

JAHNA LINDEMUTH, Appointee
Alaska Attorney General
Alaska Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified as appointee to the position of Attorney General, Alaska Department of Law.

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 104 on behalf of the House Judiciary Standing Committee, sponsor by request, chaired by Representative Claman.

SUSANNE DiPETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 104, answered questions.

KEN JACOBUS, Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 104, spoke in support of the legislation.

SARAH BADTEN, Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 104, offered support for the legislation.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 3:18 p.m. Representatives Fansler, LeDoux, Eastman, and Claman were present at the call to order. Representatives Kreiss-Tomkins and Kopp arrived as the meeting was in progress.

CONFIRMATION HEARING(S):
Alaska Attorney General

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CHAIR CLAMAN announced that the first order of business would be the confirmation hearing regarding the governor's appointee, Jahna Lindemuth, to the position of Attorney General, Alaska Department of Law. He advised that members have received the appointee's application and resume, and the appointee is present and will testify.

CHAIR CLAMAN opened public testimony.

[3:19:23 PM](#)

JAHNA LINDEMUTH, Appointee, Alaska Attorney General, Alaska Department of Law, advised that she was born on Elmendorf Air Force Base [currently Joint Base Elmendorf-Richardson (JBER)] and raised in Anchorage, Alaska. She offered that she attended West High School, and Drew University in New Jersey, and returned to Alaska working in the field of social services for a few years before deciding to go to law school. She then attended the University of California, Berkeley, and graduated in 1997, Order of Coif, the top 10 percent of that law school. Upon her return to Alaska, she clerked for Justice Robert Eastaugh on the Alaska Supreme Court, and then joined the law firm of Bogle & Gates which became Dorsey & Whitney where she has spent her entire career. Attorney General Lindemuth explained she started as an associate and worked her way to managing partner of 8 to 18 attorneys in the firm's Anchorage office, and explained that the law firm is international having more than 500 attorneys.

ATTORNEY GENERAL LINDEMUTH advised that in 2015 she was involved with the Fairbanks Four pro bono case and spent more than 1,000 hours on pro bono work that year when the public service bug hit her. In October 2015, Alaska Supreme Court Justice Dana Fabe announced her retirement and Attorney General Lindemuth submitted her application. She explained that going through the Alaska Judicial Council process is fairly complicated and intense, taking approximately six months. The Alaska Judicial Council submitted her name on the short list of applicants, and subsequent her interview with Governor Bill Walker, Justice Susan M. Carney was appointed to the Alaska Supreme Court. In June 2016, she received word from the governor's office to meet with him, he asked her to be the attorney general, and she decided it would be an honor and a privilege to accept this position. She related that she has had no regrets and enjoys all of the people at the Department of Law working on all of the important issues for the state.

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REPRESENTATIVE REINBOLD expressed appreciation to Attorney General Lindemuth for the entire day she spent in Eagle River listening to Representative Reinbold's heart-felt concerns, and her advocacy toward abused women and children in particular. She stressed that the position of attorney general is one of the most important jobs in the state and this is the committee's opportunity to give the people of Alaska a light into Attorney General Lindemuth and what she believes is the role of attorney general. She turned to the fiscal crisis noting that Department of Law (DOL) has grown 40 percent in the last seven to eight years, and asked what Attorney General Lindemuth is doing to help the legislature close the fiscal gap.

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ATTORNEY GENERAL LINDEMUTH agreed the state is in a fiscal crisis and that she fully supports the legislature's efforts in trying to solve the budget concerns. She related, the big picture is that the department, over the last four years, has taken significant cuts "23 percent since 2014, and 28 percent since FY2012," and it also lost many positions. She related that she joined the department with fresh eyes and with her management experience met with all of the sections to really understand what the department is doing, what services it is providing, and whether it is providing the best services to the state. In looking at the budget, she stated, the department's

budget has been cut too far and it has cut into the bone, thereby, impacting core services such as, criminal prosecutions, child protection, pursuing state rights in fighting state sovereignty issues with the federal government, and collecting taxes and other types of revenues for the state. The department's general fund dollars are focused on those main issues, and as part of the governor's budget this year the department recommended a fairly flat budget to the governor and to this legislature. Recognizing that times are tough, she commented, the department's goal is to stay even and not suffer further cuts moving forward as its part for the fiscal certainty and budget. In the event this legislature does achieve fiscal certainty and the pieces of the pie are put together in how the state will move forward into the future fiscally, she said she would like to revisit the Department's budget to consider what is best for the state regarding cost benefit analysis on public safety issues and cost benefit analysis on pursuing other types of state resources.

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REPRESENTATIVE REINBOLD said the bottom line with regard to agency operations, including unrestricted general fund (UGF, designated general fund (DGF), other, and federal funds, Alaska is spending 7.5 billion. The Kaiser Family Foundation estimates that amount is approximately three times the national average, if the permanent fund is backed out, and according to the Department of Law's (DOL) figures, since 2008 the department has gone up 40 percent, and in the last ten years the state has gone down from roughly \$10 billion to \$1 billion with regard to revenues. She then acknowledged she was generalizing. She advised that she needs Attorney General Lindemuth to help the legislature reduce the budget. She paraphrased Senator Lisa Murkowski as follows: "Not only are we in a recession, but we're the number one, I believe she said, for unemployment." The decisions of Attorney General Lindemuth impacts the private sector and whether Alaska is a friendly place to do business. She asked Attorney General Lindemuth to consider the impacts on the private sector and economy with the department's decisions.

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ATTORNEY GENERAL LINDEMUTH responded that she views her role as the attorney for all Alaskans and that she seriously considers what is best for Alaskans and the state as a whole. She stressed that the department will continue making legal

decisions with that in mind and not focus solely on the private sector or the public sector.

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REPRESENTATIVE REINBOLD asked who she represents, what she sees as her role as attorney general, and the most important thing she does.

3:30:39 PM

ATTORNEY GENERAL LINDEMUTH referred to her role as attorney general and advised it falls into three buckets. She explained that, currently, the department has 455 filled positions and she is managing the largest law firm in Alaska with almost 300 attorneys, and paralegals and staff to support the attorneys. The second bucket is that being the top lawyer for the state, she is involved in the major legal decisions of the state. There is no doubt, she related that she has great attorneys helping her with expertise in various issues, and explained that a few of the issues rising up to her level are whether to take a course of action, initiate litigation, or settle a big case. Her staff briefs her and they usually collectively come to a decision. Although, when it comes down to it, "the buck stops here" and she is the one responsible for those legal decisions. She explained that with the third bucket, it is important to have a lawyer on the cabinet to offer advice on legal issues the state faces at that high policy cabinet level. She stressed that all of her roles are important and she certainly realizes the seriousness and import of the attorney general's role in those issues for all Alaskans.

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REPRESENTATIVE REINBOLD asked what Attorney General Lindemuth thinks about right-to-life, gay marriage, and "what will you do if, you know, an opinion comes out from the courts versus when you swear to uphold and ... not only uphold but defend the Constitution of the State of Alaska for right-to-life issues, for a marriage between one man and one woman. I know some lawyer, you know, federal, you know, basically decided to overrule us and our constitution, but I swear to uphold our constitution." She asked when push comes to shove, where she would lean and whether Attorney General Lindemuth would lean to defend and uphold Alaska's constitution or yield to the opinion of a lawyer.

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ATTORNEY GENERAL LINDEMUTH answered that the role of the top lawyer in the state is to focus on the rule of law on any particular issue. The Constitution of the State of Alaska and the Constitution of the United States are the most important guiding principles, and then there are the statutes this legislature passes. On any particular issue, the most important thing is to follow the law and uphold that rule of law, and noted that her opinion on any particular issue really doesn't matter because at the end of the day she follows the law.

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REPRESENTATIVE REINBOLD followed up that as the constitution clearly states, it is the supreme law of the land, and that she swears to uphold and defend the Constitution of the United States and the Constitution of the State of Alaska, and asked whether that will be her tallest order.

ATTORNEY GENERAL LINDEMUTH replied that that is the oath she took and she takes it seriously.

[3:34:49 PM](#)

REPRESENTATIVE EASTMAN surmised that Attorney General Lindemuth represents the executive branch, but she does not solely serve the executive branch, and that to a certain extent she is part of the interplay between all three branches of government. He offered a scenario of the judiciary branch overstepping its bounds and usurping the legislature's authority by legislating from the bench, and asked what her role would be as attorney general in that situation.

[3:35:59 PM](#)

ATTORNEY GENERAL LINDEMUTH explained that the attorney general needs to step in where the constitution is being violated, or on any particular issue. Again, she said, she represents the entire state and often that is the executive branch, and there are times the Department of Law (DOL) can be involved in defending and representing the court system. The Alaska Court System has its own attorneys advising on particular issues, and Legislative Legal and Research Services represents the legislative branch. Although, there may be times where the attorney general's office becomes involved in representation of a particular matter, she said.

ATTORNEY GENERAL LINDEMUTH, in response to Representative Eastman's scenario, advised that the issue would be first dealt with within the court system in the event a superior court judge made a decision that did not follow the rule of law, but rather was implementing policies, such as a "judicial activist type judge." Which, she continued, is why appellate courts are in place, to help review the issue and address those concern and the Alaska Supreme Court is there to help interpret the law, including the constitution and its principles. In the event the legislative branch believes the interpretation doesn't reflect the law it enacted or what the constitution reflects, the legislature has the ability to enact policy, laws, and statutes addressing its policy concerns in a particular case.

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REPRESENTATIVE EASTMAN offered a scenario where a judge overstepped its bounds, and "as an attorney one might expect Attorney General Lindemuth to give a certain amount of deference to the Alaska Supreme Court on any number of issues." As an attorney general, he asked whether there are things she would do if she believes an Alaska Supreme Court decision was decided improperly.

ATTORNEY GENERAL LINDEMUTH answered that obviously the attorney general's office participates in many court cases heard in the state's court system. Whether a party or not, if there are constitutional issues raised in a court case, the department is notified and has the ability to weigh in on the constitutionality of any particular statute. In the event the Alaska Supreme Court decided a case the department disagrees with and there are issues of federal constitutional law, it can decide whether to appeal to United States Supreme Court. Again, she reiterated, the Alaska Supreme Court is the constitutional interpreter of Alaska law as the final arbiter, and the department has to defer to it. The issue can then go back to the legislature and if it disagrees with the policy issues addressed in any particular case the legislature can change the policy, she pointed out.

[3:40:04 PM](#)

REPRESENTATIVE EASTMAN surmised that once the Alaska Supreme Court makes a decision, she will defer to that judgment.

ATTORNEY GENERAL LINDEMUTH reiterated, in the event it is an Alaska constitutional issue or an Alaskan law, the Alaska Supreme Court is the final arbiter of interpreting that law. In the event it is a federal constitutional issue, the United States Supreme Court could be the final arbiter, she said.

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REPRESENTATIVE KOPP commented that Attorney General Lindemuth certainly has the demeanor "we're looking for," and pointed out that the legislature has struggled over the years deciding whether to pass legislation to separate out the attorney general's office from the executive branch. He said his observation has been that the legislature gets frustrated when it passes legislation that possibly the executive branch "doesn't want to go to bat" to support the lawfully passed legislation. He related that, "We who support the whole definition of marriage as between a man and a woman, the fact that Attorney General Richards filed an amicus brief and Governor Walker let him do it, 'said, I'm stayin out of it, he can file a brief supporting the state's position on this issue which was in our constitution.'" Regardless of how it all plays out, he said, it gives the people of Alaska confidence when they see the attorney general looking at what the people want and the legislature passed, that the attorney general would argue it and go to bat for the people regardless of the attorney general's personal opinion. He said he anticipates Attorney General Lindemuth will face situations where she is on the hot seat deciding whether to advocate for what the legislature passed, or not. He warned that there can be political pressure by particular groups, and asked how Attorney General Lindemuth would approach those situations.

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ATTORNEY GENERAL LINDEMUTH related that having been in this position for six months it gives her some experience to speak from that she may not have had if only a month into the job. She expressed that she appreciates the role the Department of Law (DOL) plays in how legislation moves through the legislature, and that it tries to weigh in early when concerns are raised in a bill that may have constitutional issues. By doing so, when the bill gets to the end of the process and the legislation is passed, the department must write a letter to the governor as to whether the governor should sign it into law, and at that point the department can advise that it is constitutional and that the department has no concerns. She

explained that the process is in place for the legislature to pass constitutional laws which works and is a functional system. In the event a law passes, the department reviewed it, and the governor signed off, yet there is a lawsuit down the road, the department certainly should be defending the constitutionality of any validly passed legislation reflecting a policy decision by the legislature. Even if it is something she personally has issues with or would have decided differently, her role as attorney general is to defend the constitutionality of any validly passed legislation, she stated.

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REPRESENTATIVE KOPP noted that recently the Alaska Supreme Court struck down the parental notification initiative, with a vote of 4 to 1, and he strongly agrees with Chief Justice Craig Stowers' dissent. He then paraphrased Chief Justice Stowers as follows: "we've told the people of Alaska that there is no way they can pass any prolife legislation protecting the unborn." He acknowledged that he is picking extremely emotionally charged subjects or politically charged because he would like to know whether she is comfortable supporting a law and arguing for its merits in court.

ATTORNEY GENERAL LINDEMUTH said, "Absolutely, that's what we're here for." She continued that part of Representative Kopp's premise was that even though it might be difficult with this court, if there is a constitutional defense, the role of the attorney general is to defend the constitutionality of that statute.

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REPRESENTATIVE LEDOUX asked whether the role of the attorney general is to represent the governor or the people, and noted that she supports the idea of an elected attorney general because it makes clear that the attorney general's client is the electorate. She added that she always thought the governor called the shots as to what positions the attorney general takes, although Attorney General Craig Richards thought differently during his confirmation hearings. She asked Attorney General Lindemuth's philosophy as to how she would deal with something she thought was a winnable case for the people of Alaska and the governor thought differently - to whom is her obligation.

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ATTORNEY GENERAL LINDEMUTH said she does not tie those two things together in her mind. The attorney general in Alaska is appointed by the governor and serves at the pleasure of the governor, and she continued that she does not think of the governor as her client because her client is the people of Alaska. She said she wears different hats and represents different clients representing the people, such as all of the different departments of the state, the different boards, and the Board of Game, for example, is a client of the Department of Law (DOL). Oftentimes, there could be conflicts between clients, such that the Department of Natural Resources (DNR) and Department of Transportation (TRA) may look at something differently whether there is an easement through a property, for example, and different attorneys are appointed. The governor is just one of those clients, although the governor is the top elected official and as such with the vote of Alaskans he does make the final policy call when policy calls are to be made. As far as making the call on the law and what the law is, that is the role of the attorney general. Again, she said she approaches this job in a traditional framework after twenty years in private practice advising clients and explaining the legal framework of a particular issue. Since she is not elected and there are people who are elected, the policy with any particular issue should be made by elected officials. Again, she said, there are instances where there are no policy calls to be made and the attorney general is actually a more direct representative of the people. For instance, in the regulatory affairs world with the Regulatory Commission of Alaska (RCA), by statute and definition the department represents the people in those proceedings. Within any particular issue she has to look at who the client is and who is the final decision maker. Constitutional issues are the purview of the attorney general's office and validly passed legislation needs to be pursued in defense of that statute even if it is something the governor's office may not want to pursue.

ATTORNEY GENERAL LINDEMUTH related that it is a complicated issue and her role and experience in private practice led her to understand those issues. She noted that within her sub-specialties, she has been involved in fiduciary duty cases, different corporate government-type cases where a board has been challenged, an executive officer has been challenged, there have been fraud cases, and issues of self-dealing of any particular person or board who have been deemed to represent their people, shareholders, or government and the lawyer needs to advise they acted outside of their fiduciary duties, and such. The attorney

general does need to keep those things in mind and make certain the different representatives of the state are obeying their fiduciary duties as the attorney general advises the state and its different representatives, she explained.

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REPRESENTATIVE EASTMAN referred to the topic of immigration and sanctuary, and asked whether, as attorney general, she can decline to enforce laws she disagrees with without violating her oath.

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ATTORNEY GENERAL LINDEMUTH pointed out that that is a complicated question and she would need more context to answer. She opined that Representative Eastman was referring to Senator Lisa Murkowski's comments to the legislature this morning and questions asked about the Administrative Order received from the current administration yesterday. She advised that when she heard Senator Murkowski's comments, she immediately asked her folks to look at the order, evaluate whether there is something there the state needs to evaluate, whether it comports with the law, what the state will be asked to do, and whether it is legal. At this point she does not yet know the answer. She pointed out that Alaska needs to pay close attention when looking at directives from the federal government and determine whether it falls within the purview of the federal and state constitutions and the frameworks given. In that regard, the state can decide whether it objects to that prerogative or not, but she does not know what the final answer will be.

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REPRESENTATIVE EASTMAN offered the scenario of a law requiring the governor to present a balance budget to the legislature and the governor declines to do so. He asked, as attorney general, how she would approach the tension between her understanding of the law and her observation that the governor was not in compliance.

ATTORNEY GENERAL LINDEMUTH stated that is one of the positives of the attorney general being part of the governor's cabinet and being part of the close advisory group of the governor. In that regard, these concerns can be addressed early on and she can be part of a privileged conversation with the governor and offer advice on the issues he needs to address, and that her advice as

the top lawyer would be to X, Y, or Z, on whatever the issue was. She described a good process is when that kind of top legal advice is available for the administration while working through issues, thereby, having less problems going forward. Attorney General Lindemuth commented that the flip side of that is that she recently met some elected attorneys general and one fellow advised that within the two years of his tenure he had already sued his governor four times. She described, that is not a functional system and, possibly, that's not the best way to address concerns. She remarked that the soft advice behind the scenes is the best way to keep the administration on task and within the rule of law.

[3:56:04 PM](#)

REPRESENTATIVE EASTMAN reiterated his previous scenario wherein the attorney general viewed a law to say a certain thing and her advice the executive decided to not conform behavior to a statute. He asked whether she should wait for someone else to raise that kind of issue.

ATTORNEY GENERAL LINDEMUTH said it is hard to imagine where that would come up or how that would present itself, and it would be a difficult situation no matter what. The attorney general would have to evaluate the options at the time and how best to address it. She pointed out that in the event she thought the governor was going down a road she believed was contrary to law, she would take that seriously.

[3:56:56 PM](#)

REPRESENTATIVE LEDOUX turned to the idea of whether or not the state has an obligation to enforce federal laws, and noted it first came up in the marijuana legislation. In the event attorneys general have an obligation to support federal laws, the laws ignored by attorneys general of probably more than one-half of the states would have to be challenged. She opined there was a line of federal law stating that the federal government could not obligate a state to enforce a federal law, although, possibly at the loss of federal dollars. She described it as a separation of powers argument in that it wasn't unconstitutional to pass legislation in violation of federal law because one sovereign couldn't force another sovereign to do something. She asked whether she was correct.

[3:58:38 PM](#)

ATTORNEY GENERAL LINDEMUTH opined that the principle may not apply in every circumstance and it is necessary to evaluate any particular issue and decide whether the federal law is the controller and whether there is a way the state could be mandated to do something. She said it is a complicated area of law being evaluated, and she does not have the final answer on that.

[3:59:13 PM](#)

REPRESENTATIVE KOPP opined that the Alaska legislature passed possibly one or two laws directing the attorney general to not enforce a federal law that would further restrict firearms ownership.

REPRESENTATIVE LEDOUX responded that she was unsure whether the entire legislature passed it, but the House of Representatives did pass it.

REPRESENTATIVE KOPP determined that it is not unheard of for this body to be fairly prescriptive at times, and it may be something Attorney General Lindemuth could be faced with.

REPRESENTATIVE LEDOUX remarked that the law passed in the House of Representatives obligated the state to arrest federal agents if they did something in violation of Alaska's gun laws.

REPRESENTATIVE KOPP commented that gun rights is a fairly non-partisan issue in this state.

[4:00:30 PM](#)

REPRESENTATIVE REINBOLD noted that Attorney General Lindemuth is on the Criminal Justice Commission and asked whether she sees her role as shaping or enforcing policy. She said the commission gave specific recommendations of which she found appalling with regard to public safety, and that public safety is the legislature's most important mandate. She opined that there is a severe separation of powers issue with judges and the executive branch weighing in on law. The legislature "only gets to do two things here, write the law and budget," and she opined it was completely invaded with judges and the executive branch and there needs to be a "much bigger separation" of this body versus the executive branch versus the judicial branch.

ATTORNEY GENERAL LINDEMUTH answered that said she sees her primary role as enforcing the law as currently written, and

there would be a small policy role involved because she is a commissioner on the Alaska Criminal Justice Commission. As a commissioner, that is a subset of the role of attorney general as policy issues are addressed on the commission. She continued that when there are legal issues or changes to the law, especially those that the department is recommending, including amendments to Senate Bill 91, Criminal Justice Reform, that is certainly a policy issue the department is advocating so there is a small policy role there. She stressed that the primary role of attorney general is enforce and to be certain the laws of the State of Alaska are compiled with and followed.

4:02:51 PM

REPRESENTATIVE REINBOLD commented that some people reviewed the Criminal Justice Commission's recommendations as gospel, whereas she looked at the recommendations as a horror book. She asked whether there is a separation of powers issue, and further asked Attorney General Lindemuth to look at "the other side," and help the legislature make this law better by keeping victims in mind, and that, possible, the legislature went too far with this policy. She reiterated whether Attorney General Lindemuth sees public safety as one of the most important mandates in law as her role.

4:03:55 PM

ATTORNEY GENERAL LINDEMUTH stressed that public safety is one of the top priorities of the department and of Governor Walker's administration. She explained that the way laws are prosecuted within the State of Alaska, the department has primary prosecutorial responsibility which is a huge component of keeping the public safety.

MS. LINEMUTH turned to Representative Reinbold's original question and advised that the legislature has the sole power on legislation and that is not something that should be deferred to other areas. The Criminal Justice Commission made recommendations, and the legislature could then take those recommendations and determine what is best for the state when looking at the policy issues. She remarked that the commission's recommendations are certainly helpful, and the recent amendment recommendations for Senate Bill 91 do not go far enough in the department's viewpoint. She pointed out that both the Department of Law and the Department of Public Safety, with the support of Governor Walker, are advocating for

additional changes to the laws that go further than the recommendations of the commission.

[4:05:11 PM](#)

REPRESENTATIVE REINBOLD queried whether she would support the attorney general being elected by going through an intense vetting process from the public and truly representing the people of Alaska

ATTORNEY GENERAL LINDEMUTH related that in having looked at this, understanding that most other states have elected attorney general positions, she expressed that this state was blessed in being one of the last states to join the union, with a constitutional convention wherein the delegates could evaluate the results of the actions of every other state. Those delegates took a long hard look at how to put this state together, and the delegates taking politics out of the department was actually a good thing. She explained that to have an elected attorney general the state would have a fourth branch of government in a sense, and then adding in money and politics to the attorney general position complicates matters. The question then becomes, she pointed out, whether the corporations contributing money to the attorney general's campaign are being treated better in regulatory issues and criminal prosecution issues, and the like. She acknowledged there are pluses and minuses to both systems, but her personal opinion is that the delegates got it right and it is best the attorney general position be appointed.

[4:07:09 PM](#)

REPRESENTATIVE REINBOLD commented that she does not necessarily think its politics, it's the people vetting who they want in that position, and it's a decent idea to look at. She stated that companies don't vote - people vote, and the legislature could decide there would be no financial contribution, or whatever, or have tight restrictions such as those of the legislature.

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REPRESENTATIVE EASTMAN said the attorney general is the chief law enforcement official for Alaska, and asked whether she will permit law enforcement to break the law in order to enforce it, if not, what tools would she consider using to prevent that from taking place.

ATTORNEY GENERAL LINDEMUTH expressed that she does not believe law enforcement can or does break the law in enforcing the laws and, that it is not an issue that needs addressing. She commented, in the event there is any particular officer breaking the law, it would be dealt with in the legal processes in place.

[4:09:03 PM](#)

REPRESENTATIVE KOPP related that resource and resource protection is a big deal, and the Alaska Supreme Court ruled that a fishery cannot be managed from the ballot box. He asked whether she is comfortable defending that position.

ATTORNEY GENERAL LINDEMUTH stated that she is not familiar with the court case ...

REPRESENTATIVE KOPP explained that the state recently had a ballot initiative precluding setnetting in Cook Inlet wherein the group of fisherman who harvest fish in that manner would be prohibited, and the Alaska Supreme Court decided the fishery would not be managed in that manner. He remarked there is a lot of politics in fish in Alaska, and asked whether she feels strong enough to engage in the Alaska Supreme Court's decision.

[4:10:12 PM](#)

ATTORNEY GENERAL LINDEMUTH commented that Representative Kopp is returning to the theme previous heard. Again, if the Alaska Supreme Court has spoken on an issue of Alaska law, and whether some action can be taken by ballot initiative or whether a statute needs to be passed by the legislature in order to address some particular policy issue, the Department of Law (DOL) defers to the Alaska Supreme Court on that particular issue. She said she fully agrees with the importance of fish and wildlife issues in Alaska and the many legal issues involved in that particular endeavor. She advised that the department has at least one person fully dedicated to representing the Department of Fish & Game (ADF&G) and those issues. The Constitution of the State of Alaska has a provision addressing natural resources and fish and wildlife in Alaska and, she pointed out, it is important to maintain and defend those principles. She remarked that this includes the filing of litigation in early January against the federal government, both to the National Park Service and the fish and wildlife regulations that impacted the state's ability to manage its

resources, those issue are in the forefront of the Department's agenda.

CHAIR CLAMAN advised that each member can now ask one question because the members were asking the same questions just a little differently, and the answers were pretty much the same.

[4:12:36 PM](#)

REPRESENTATIVE EASTMAN referred to Article IX, Section 13, Constitution of the State of Alaska, which read as follows:

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void

REPRESENTATIVE EASTMAN commented that there have been occasions in recent years where the Alaska Supreme Court has endeavored to direct the legislature to fund programs the legislature chose not to fund. Considering that the constitution gives the authority to make expenditures exclusively to the legislative branch, he asked how the courts can be corrected from overstepping and impinging upon a responsibility solely given to another body of government.

[4:13:26 PM](#)

ATTORNEY GENERAL LINDEMUTH related that she is unfamiliar with what particular court case Representative Eastman was referring, but again, the constitutional principle that the legislature has the power of appropriation is fundamental. That is an issue the department keeps in mind when briefing constitutional issues, and it is aware of the constitutional provisions that govern. She explained that part of the process is making sure the issues are properly briefed to the courts to be certain Alaska has a good strong constitutional analysis so the courts can make the correct final decision on those particular issues. She noted, this includes pointing out when there is an unfunded mandate on any particular issue in the statutes, and then not appropriating the money to fund it.

[4:14:32 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted that Attorney General Lindemuth is the chief attorney in Alaska's largest law firm, and with particularly complex pieces of legislation and especially constitutionally complex pieces of legislation, the expertise that resides in the department and Legislative Legal and Research Services can't ably be found elsewhere. He asked Attorney General Lindemuth to speak to her perspective on the appropriateness of the collaboration between the two branches in advising or offering a perspective on crafting legislation and working with the legislative branch.

ATTORNEY GENERAL LINDEMUTH pointed out that the Department of Law (DOL) does just that on a daily basis. The legislature's counsel is Legislative Legal and Research Services, her department assigns an attorney to each bill moving through the House of Representatives and that attorney is available to offer legal analysis and comment while the bill moves through the legislative process. The reason being, she explained, is that the department does not want to get to the end of the process wherein a bill is passed that the department decides is unconstitutional, or that there's a problem. The department prefers to raise those issues early on so the legislative process works as efficiently and effectively as possible. In the event a legislator has questions on a piece of legislation, the department is certainly happy to be involved early on and, she noted that she put that offer of assistance out to legislators at the beginning of this session.

[4:17:08 PM](#)

REPRESENTATIVE REINBOLD asked whether she would be able to work with the current national administration.

[4:17:34 PM](#)

ATTORNEY GENERAL LINDEMUTH advised that working with any administration, including the federal administration, is an important part of being the attorney general. She predicted there could be issues wherein the department disagrees or agrees because there were issues it disagreed with during the past administration; therefore, an open dialogue is important. She said her philosophy is that issues need to be addressed early on with a fruitful discussion when there is an issue of disagreement so that litigation does not ensue. She is hopeful the incoming administration will be more favorable to Alaska on natural resources and the type of issues the state has been in litigation with over the recent years.

4:18:34 PM

REPRESENTATIVE REINBOLD encouraged Attorney General Lindemuth to try to work with this administration, and she asked her to try to purge political leanings out of the Department of Law (DOL). She noted that her constituents have "called me pretty regularly about concerns they have in your department, even a couple of lawyers that are concerned, and staff." She described "it is kind of hostile for some conservatives in the Department of Law (DOL)," and she asked her to try to make it a safe work environment for all political viewpoints.

4:19:31 PM

ATTORNEY GENERAL LINDEMUTH stressed that she was unaware of any particular issues of folks not feeling safe at the department and it would really concern her if that were true. She further stressed that she is definitely committed to having a safe workplace and that folk's feel their views are respected. Her personal view, she noted, is to hear all of the different viewpoints and thoughts so they are fully vetted before she actually makes a final decision.

REPRESENTATIVE REINBOLD commented that she has a constituent who recently quit, and someone who feels it is a hostile environment for their opinions. She stated that it is an issue and asked that Attorney General Lindemuth be aware because it has come to her attention too many times for her to not say something.

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on the confirmation of Attorney General Lindemuth.

4:21:30 PM

REPRESENTATIVE REINBOLD commented that one of the most progressive ideals of all time is the "inalienable God-given rights given to each American citizen." She opined that some of the modern progressives are progressing America far away from those most progressive ideals of all time and infringing on right-to-life, and many liberties. She asked that Attorney General Lindemuth not look to the modern progressives for wisdom, and to be grounded in the mandate of public safety and protection of these inalienable rights. She also asked that Attorney General Lindemuth keep in mind that some people are not working and are enjoying the fruits of the labor of those that

are working. She then asked that Attorney General Lindemuth not look so much to lawyers, but rather look to the wisdom of America's Founding Fathers and the principles that made America one of the most free and prosperous nation in the world. She thanked her for her service.

4:23:37 PM

REPRESENTATIVE KREISS-TOMKINS thanked Attorney General Lindemuth for being willing to serve, especially given the circumstances of the transition, and pointed out that public service can be significant in ways financial, professional, and otherwise. He commented that on a philosophical note he appreciated her answer to the relationship of the attorney general relative to the governor, which is the perspective he has followed. He noted that in other states, the attorney general often is speculated to be an aspiring governor, which seems messy. He noted that he appreciates the non-political nature of the office and that he has confidence Attorney General Lindemuth will continue that tradition in Alaska.

REPRESENTATIVE KOPP thanked Attorney General Lindemuth for being willing to do this job because her two predecessors paid a high price by nearly working themselves to death, and he is aware this position is of great personal sacrifice. The Department of Law (DOL) has been through a lot, in fact one of the department's attorneys, Brian Sullivan, was killed in Utqiagvik three years ago. District attorneys have a tough job in tough villages in remote spots and they need a good leader, and the legislature is counting on her to be that person, he said. Attorney General Lindemuth has a good heart for people, he opined, and he is appreciative that she is willing to be the attorney general.

4:26:09 PM

REPRESENTATIVE EASTMAN, in remembrance of Assistant District Attorney Brian Sullivan, advised that he worked directly for ADA Sullivan when he was in the Army at Fort Richardson, he was one of the folks encouraging him to become a lawyer and get involved in politics because he had been a former state legislator himself. He asked Attorney General Lindemuth to review the oath she took as attorney general because it closely reflects the perspective of his district. As a captain in the armed forces, there was no question that if he obeyed an unconstitutional order, no matter what happened to his commanding officers, it would fall on him personally. The defining issue in this

decision of approving a confirmation is the balance of powers between the three branches, and specifically what it means for an attorney general to take the oath of office.

[4:28:49 PM](#)

REPRESENTATIVE EASTMAN opined that he heard in her testimony an unwritten statement, "The Constitution of the United States and the Constitution of the State of Alaska as interpreted by the Alaska Supreme Court." He said he believes that language was deliberately left out when the Founding Fathers deliberated on checks between the various branches of government, and there was not a desire for the United States Supreme Court to be the final arbiter of the responsibilities of public officials. He then applauded his district on Election Day because "My district voted down every single judge. The voters in my district took the time, which is amazing to me in some respects, took the time to individually mark 'No' to every single judge, and there was [sic] over 20 on the ballot in my district." He commented that it reflects a level of dissatisfaction with tension between the branches of government, the ability of the people through a ballot measure to pass a law, such as parental notification. He continued that a part of that might be the process by which individuals are selected for service on the Alaska Supreme Court.

CHAIR CLAMAN stopped Representative Eastman and pointed out that while he understands concerns about court appointments, this hearing is not about a court appointment because it is the attorney general. He remarked that he is confused how court appointments have anything to do with the attorney general.

[4:31:23 PM](#)

REPRESENTATIVE EASTMAN related that his discussion is about the attorney general stating deference to the Alaska Supreme Court with little questioning. He said Attorney General Lindemuth resolved some of the tension between the branches by deferring, but the Founding Fathers did not intend for that tension to be resolved, which is sometimes messy. Deference is first toward the Constitution of the State of Alaska, and from there to resolve tensions that can be resolved and "if you can't, then you just can't." He said that his district and he have a fundamental philosophical difference with Attorney General Lindemuth and he will vote against her confirmation on this committee.

[4:33:11 PM](#)

CHAIR CLAMAN then explained the confirmation process to Representative Eastman in that the House Judiciary Standing Committee does not make a recommendation because it is simply making a decision to forward the name to the joint session of the Senate and House of Representatives, and whether he approves or does not approve, the opportunity to vote is during the joint session. He further explained that there is no vote in this committee as to whether he supports the nomination or does not support the nomination, and that Representative Eastman did articulate his views.

CHAIR CLAMAN noted that Attorney General Lindemuth, having never met Governor Walker before, applied for a seat on the Alaska Supreme Court. He explained that previously they had been involved in trial matters together, either on the same side or on opposite sides, and in that regard he wrote a letter to the governor strongly endorsing her appointment. He stressed that Attorney General Lindemuth, more than anything else, maintains the highest ethics in the profession and that he has the utmost confidence she will advocate on behalf of the state's interests in front of the Alaska Supreme Court. He then thanked Attorney General Lindemuth for her service, and said he appreciates the time they've gotten to know each other professionally.

[4:35:16 PM](#)

REPRESENTATIVE FANSLER said that the House Judiciary Standing Committee has reviewed the qualification of the governor's appointee and recommends that the name, Jahna Lindemuth, Attorney General, Alaska Department of Law, be forwarded to a joint session of the Senate and House of Representatives for consideration. This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

REPRESENTATIVE EASTMAN objected

CHAIR CLAMAN said objection noted.

HB 104-REPEAL COLLECTION OF CIVIL LITIG. INFO

[4:36:22 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 104, "An Act relating to collecting information

about civil litigation by the Alaska Judicial Council; repealing Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rules 511(c) and (e), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIR CLAMAN advised he would like to move HB 104 out of committee today, in part because Susanne DiPetro, Executive Director for the Alaska Judicial Council is available to testify today in person.

[4:36:59 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, read for the record as follows [original punctuation provided]:

For the record, my name is Lizzie Kubitz and I am staff to Chair Claman. Thank you for the opportunity to testify.

House Bill 104 eliminates the automatic reporting of information about civil case settlements currently required by law. The bill follows the advice of the Alaska Judicial Council, which has recommended that the legislature eliminate this requirement.

To give some historical context: In 1997, responding to public interest in tort reform and the work of the Governor's Advisory Task Force on Civil Justice, the legislature passed tort reform legislation. One part of the legislation responded to the Task Force's recommendation that the Alaska Judicial Council report on closed civil cases, using data from forms completed by attorneys and parties in the cases. Since then, pursuant to statute, the Judicial Council has collected data provided by attorneys and litigants and has produced three reports. However, much more often than not, attorneys and litigants have failed to comply with the reporting requirement.

In its most recent report from November 2011, included in your bill packets, the Alaska Judicial Council reports that from January 2001 through December 2010, 88,873 cases were resolved in the Alaska Court system that were subject to the reporting requirement. Because each case had at least two parties, the Council should have received 177,746 or more reports. However, the Council only received 23,257 reports.

This represents 13% of the Council's conservative estimate of the number of reports it should have received.

The low rate of reporting is the reason the Council has not issued a report since 2011. An analysis based on 13% of potentially available data would not be reliable. Eliminating the requirement has also received support from attorneys and civil litigants, as the reporting requirement is onerous for those who follow it and unenforceable for those who don't.

The Alaska Judicial Council lacks the authority and resources to enforce this outdated requirement and the Council renews its recommendation that the legislature eliminate it.

I'll now provide a brief sectional analysis of the bill.

Section One repeals Alaska Rules of Civil Procedure Rule 41(a)(3) and Alaska Rules of Appellate Procedure Rules 511(c) and (e).

Section Two repeals AS 09.68.130 which requires reporting of civil litigation information to the Alaska Judicial Council.

Section Three provides that per the Alaska Constitution, the Act will only take effect if section one of the Act receives the two-thirds majority vote of both bodies.

And finally, Section Four provides for an effective date.

Copies of Rule 41(a)(3), Rules 511 (c) and (e), and AS 09.68.130 have all been included in your bill packets.

Before I conclude, I'll mention for the record that Susanne DiPietro, the Executive Director of the Alaska Judicial Council, is present and available to answer questions.

Thank you for the opportunity to testify on House Bill 104.

[4:40:16 PM](#)

REPRESENTATIVE REINBOLD asked whether there has been push back with regard to this bill.

MS. KUBITZ advised that to her knowledge there has not been push back, and that this bill has received support from various attorneys. She pointed out that attorneys currently must take time out of their day to complete and file the form, and the client is usually billed for their time. Due to the fact the Alaska Judicial Council is receiving limited data, it doesn't see a purpose in continuing with this requirement, she advised.

[4:41:29 PM](#)

REPRESENTATIVE KOPP noted that while on the Alaska Judicial Council in 2007-2008, the information was seen as outdated and unutilized and no one was seeking or collating the information on the council.

[4:42:09 PM](#)

REPRESENTATIVE EASTMAN referred to page 1, line 10 of the bill, which read:

CONDITIONAL EFFECT. This Act takes effect only if sec. 1 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

REPRESENTATIVE EASTMAN advised that he is not familiar with this portion of the constitution, and asked whether it is Ms. Kubitz' understanding that the constitution does not permit the Alaska Supreme Court to make amendments to these rules, and that the prerogative belongs solely to the legislative branch.

[4:42:47 PM](#)

MS. KUBITZ turned to sec. 3, page 1, lines 8-12, which read as follows:

Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. This Act takes effect only if sec. 1 of this Act receives the two-thirds majority

vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

MS. KUBITZ explained that the Act takes effect only if the Act receives two-thirds of a majority vote of each house, required by art. IV, sec. 15, which read as follows:

Rule-Making Power

The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.[1][2]

[4:43:43 PM](#)

REPRESENTATIVE EASTMAN surmised that the Alaska Supreme Court cannot do anything without the legislature's action in this situation.

MS. KUBITZ deferred to Susanne DiPetro, Alaska Judicial Council.

[4:44:14 PM](#)

SUSANNE DiPETRO, Executive Director, Alaska Judicial Council, Alaska Court System, in response to Chair Claman, said she is a member of the Alaska Bar Association (ABA). In response to Representative Eastman, she advised that Alaska Rules of Civil Procedure 41(a)(3), and the Alaska Rules of Appellate Procedure 511(c) and (e) were promulgated in order to implement the statute the legislature passed. The court system has rule making ability, and the Alaska Supreme Court can change its rules. Although, she explained, these particular rules were promulgated in order to implement the statute which does not provide a mechanism for the certification. The rule requires certification of attorneys settling a case, and it is not part of the statute, it is part of the rules, she advised.

[4:45:35 PM](#)

MS. DiPETRO, in response to Representative Eastman question as to whether there is action the Alaska Supreme Court can take to amend Rule 41, she speculated that the court could amend the rule.

REPRESENTATIVE EASTMAN asked whether it declined to do so and that is the reason it is before the legislature.

MS. DiPETRO advised she was unsure she could answer the question except to say that it is customary for the legislature to do it in this manner when a rule and a statute travel together, or are attempting to implement the same purpose.

REPRESENTATIVE KOPP advised that this court rule is in response to the legislature's legislation. Naturally, he pointed out, the court would want the legislature to pass the bill to change the rule. He continued that the court would not be inclined to change a rule it adopted to a statute that the legislature passed, and the court would prefer the legislature go through the process of changing the rules.

[4:47:16 PM](#)

CHAIR CLAMAN agreed with Representative Kopp, and referred to Representative Eastman's comment about "activist judges." He explained that one could suggest that if there was a statute on the books and the court actively decided to repeal the authority to collect information, it would be considered "activist judges" by ignoring the intent of the legislature. Whereas, he explained, if the legislature both repeals the rule and repeals the statute collecting the information, there is no suggestion of activist judges and the legislature is acting in its role as the legislature. The bill combines both repealing the statute and repealing the rule requiring lawyers to provide the information asked for under the statute, he pointed out.

CHAIR CLAMAN opened public testimony on HB 104.

[4:48:52 PM](#)

KEN JACOBUS, Attorney, advised that he is representing himself and the Anchorage Bar Association.

[4:49:15 PM](#)

The committee took a brief at ease.

[4:49:24 PM](#)

MR. JACOBUS continued that he discussed this matter with the court rules attorney and was advised that the matter of

repealing the rules would be presented to the Appellate Rules Committee and to the Civil Rules Committee, it would then defer to the legislature because the rules are implementing the statute. Therefore, the ball is in the legislature's court. He commented that the legislature should look at the 2011 report, in which the data collected is not meaningful. Interestingly, he noted, the civil section of the attorney general's office has had civil attorneys performing work required to be reported because AS 09.68.130 does not provide an exception for the attorney general's office. Therefore, he said, either the attorney general's office is not reporting and disobeying the law, or it is reporting and wasting a lot of public money providing this worthless data which could be better spent enforcing the laws. He further commented that an experienced probate attorney in his office recently represented a civil case and was concerned she was in trouble because she did not know she was required to report, illustrating that some attorneys are not even aware of their duty to report. He described that this statute has many problems and needs to be repealed. He added that he personally reports and considers it an administrative expense, and that many attorneys bill their clients for the reporting time.

[4:53:08 PM](#)

SARAH BADTEN, Attorney, said she has been attorney in Anchorage for approximately ten years, practices contract enforcement, and has filled out the forms for ten years. She commented that reporting is a complete waste of time, waste of money, and that she bills her time, which is unfair. The purpose of the statute was to collect data based on tort reform, and to the extent that her reporting does anything, which it doesn't, she said she skews the data because she does not practice tort law. She opined that the focus should not be on the fact that people do not fill out the form, but rather on the completely unnecessary information on the form because no one is looking at this data. It is archaic and she strongly hopes to get it repealed this session, she said.

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 104.

[4:55:15 PM](#)

REPRESENTATIVE REINBOLD commented that she likes most repeal bills, and that she was thankful that she asked in the past that the legislature have an entire session on repeal as "there is a

lot of stuff that is not applicable any longer." She added that she does not object to Chair Claman bringing this forward as a committee bill.

4:56:04 PM

REPRESENTATIVE FANSLER moved to report HB 104, Version 30-LS0393\D, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 104 moved from the House Judiciary Standing Committee.

4:57:05 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:57 p.m.