

**MINUTES OF THE
SENATE JUDICIAL CONFIRMATION COMMITTEE**
Wednesday, November 1, 2006 – 1:00 p.m. – Room W140 House Building

Members Present:

Sen. D. Chris Buttars, Chair
Sen. Patrice M. Arent
Sen. Mike Dmitrich
Sen. Lyle W. Hillyard
Sen. David L. Thomas
Sen. Michael G. Waddoups

Staff Present:

Ms. M. Gay Taylor, General Counsel
Mr. Jerry D. Howe, Policy Analyst
Ms. Brooke Ollerton, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Buttars called the meeting to order at 1:05 p.m. and committee members and staff introduced themselves.

2. Interview of the Following Candidates

A. Mr. Robert P. Faust

Mr. Robert Faust was placed under oath.

MOTION: Sen. Dmitrich moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Mr. Faust. The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Sen. Dmitrich moved to open the meeting. The motion passed unanimously.

Mr. Faust introduced his wife. He offered a personal statement and outlined his educational background and career history.

Sen. Waddoups asked Mr. Faust if he had engaged in conduct that could be considered a felony or that would warrant judicial discipline. Mr. Faust replied that he had not.

Sen. Thomas asked Mr. Faust to explain his view of the judiciary branch's role vis a vis the other branches of government. Mr. Faust said he had no interest in creating law and would apply the facts before him to established law.

Chair Buttars asked for Mr. Faust's view on the conflict between the courts and the Legislature over mandatory sentencing. He said he believed that the greatest potential abuse of mandatory sentencing guidelines lies in the discretion a prosecutor has to bring charges.

Sen. Arent asked Mr. Faust why he is interested in becoming a judge.

Mr. Faust responded that he was interested in helping people through the law and had been impressed with the good judges can do at critical times in people's lives.

Sen. Waddoups asked if it was appropriate to distinguish certain classes of individuals for preferential treatment under the law. Mr. Faust said that he believed it was appropriate under limited circumstances and that the law currently does so for children and individuals with disabilities.

MOTION: Sen. Arent moved to recommend to the full Senate the confirmation of Mr. Robert P. Faust as a judge in the Third Judicial District. The motion passed unanimously.

B. Ms. Kate Toomey

MOTION: Sen. Hillyard moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Ms. Toomey. The motion passed unanimously.

MOTION: Sen. Hillyard moved to open the meeting. The motion passed unanimously.

Ms. Toomey was placed under oath. She introduced her husband and spoke about her educational background and professional experience.

Sen. Thomas asked Ms. Toomey to explain her judicial philosophy and the relationship between the judiciary and the other branches of government. She explained that it is the Legislature's duty to make the law and the judiciary's duty to apply it. Sen. Thomas asked when it would be appropriate for the courts to use their equitable powers. Ms. Toomey replied that it would be appropriate when the evidence justifies it, within fairly narrow parameters.

Sen. Waddoups asked if Ms. Toomey had engaged in conduct which, if committed as a judge, would violate the code of judicial conduct or be grounds for judicial discipline. Ms. Toomey explained that she has made political contributions and that she has practiced law, which would violate the cannons if she were a judge, but that she has not engaged in activity that would be a discredit to the judiciary.

Chair Buttars asked if she had any personal biases that would cloud her judgement when considering a case. Ms. Toomey said she did not and if she found herself in such a position, she would recuse herself.

MOTION: Sen. Arent move to recommend to the full Senate the confirmation of Ms. Kate Toomey to the position of judge in the Third Judicial District. The motion passed unanimously.

C. Ms. Suchada P. Bazzelle

MOTION: Sen. Dmitrich moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Ms. Bazzelle. The motion passed unanimously.

MOTION: Sen. Arent moved to open the meeting. The motion passed unanimously.

Ms. Suchada P. Bazzelle was placed under oath. She introduced her husband and offered a personal statement. She outlined her background and talked about her experience with the juvenile court.

MOTION: Sen. Hillyard moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Ms. Bazzelle. The motion passed unanimously.

MOTION: Sen. Arent moved to open the meeting. The motion passed unanimously with Sen. Hillyard absent for the vote.

Chair Buttars asked if Ms. Bazzelle was biased with respect to the gender of the parent who is awarded custody in child custody cases. Ms. Bazzelle said she did not have a gender bias.

Sen. Thomas asked what Ms. Bazzelle believed to be the role of the parent in the juvenile process and what it meant to seek the best interest of the child.

Ms. Bazzelle responded that generally children are best served by staying with their natural parents. As a judge, however, she would advocate for the law, rather than advocating solely for the child, as she has done as a guardian ad litem.

Mr. Wayne Searle, attorney, was placed under oath. He expressed concern over Ms. Bazzelle's professional background because he believed that her appointment created a systemic bias. He also expressed displeasure with the outcome of *T.Y. v. State (State ex rel. S.Y.)*, 66 P.3d 601 (Utah ct. App. 2003), on which Ms. Bazzelle served as guardian ad litem.

Sen. Waddoups asked Ms. Bazzelle if she had engaged in conduct which, if committed while a judge would violate the code of judicial conduct or be grounds for judicial discipline. Ms. Bazzelle replied that she had not.

MOTION: Sen. Hillyard moved to continue the meeting on November 14, 2006 at 11:30 a.m. and suggested that committee members contact staff with any requests for information. The motion passed unanimously.

3. Other Items / Adjourn

MOTION: Sen. Waddoups moved to adjourn. The motion passed unanimously.