

**MINUTES OF THE
SENATE JUDICIAL CONFIRMATION COMMITTEE**
Friday, November 7, 2008 – 11:00 a.m. – Room C450 State Capitol

Members Present:

Sen. Gregory S. Bell, Chair
Sen. D. Chris Butters
Sen. Mike Dmitrich
Sen. Lyle W. Hillyard
Sen. Michael G. Waddoups

Staff Present:

Mr. John L. Fellows, General Counsel
Mr. Jerry D. Howe, Policy Analyst
Ms. Amanda K. Majers, 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 Bell called the meeting to order at 11:12 a.m. The Committee introduced themselves to the candidates and the audience.

2. Interview of Mr. Marvin D. Bagley

The candidate introduced himself and his family.

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

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

Mr. Bagley gave a background of his life, schooling, and professional career. He told the Committee that being a judge is the purest form of legal practice and one he would like to experience because a judge is only beholden to the law. He explained his qualifications to be a judge through his experience as a litigator in both private and public practice. Mr. Bagley stated his judicial philosophy is to always be prepared, to do his own legal research, to apply the law and not make the law, and to be courteous to litigants.

Mr. Bagley was placed under oath by Mr. Howe.

Sen. Hillyard asked Mr. Bagley how he and his family will deal with the necessity a judge faces of scaling down social events due to possible conflicts of interest that would occur in a small community.

Mr. Bagley stated that he and his family are well prepared for that situation and will socialize more with family.

Sen. Hillyard asked how Mr. Bagley would feel about upholding the death penalty.

Mr. Bagley answered that he will uphold the law regardless of the circumstance.

Sen. Waddoups inquired about Mr. Bagley's financial background and its current status.

Mr. Bagley explained his financial status.

Mr. Waddoups asked if there is anything in Mr. Bagley's background that could become an embarrassment to the judiciary.

Mr. Bagley stated that there was not.

Chair Bell congratulated Mr. Bagley on his resume and inquired how he would handle a novel constitutional issue.

Mr. Bagley explained that he would first look to statutory law then, if the Legislature has not spoken on the issue, he would look to common law or the United States Supreme Court. He also stated that he has no hidden agenda and no wish to legislate from the bench.

Chair Bell stated that the vast majority of comments received about Mr. Bagley were high in praise, but asked how he would respond to the comments of him being rigid and not able to be objective.

Mr. Bagley responded that he often aggressively defended his clients, which could explain the negative comments, but he resolved that in his move from advocate to judge he would be more objective to both sides.

Chair Bell asked Mr. Bagley if he will be able to control his judicial temperament.

Mr. Bagley stated that he believes he will be able to exercise restraint.

Sen. Buttars inquired what Mr. Bagley's character weaknesses are.

Mr. Bagley answered that there is the perception that he is aloof, but his friends have not described him that way. He stated that his weaknesses in legal practice would be in oil and gas.

Sen. Hillyard suggested that, when Mr. Bagley becomes a judge, he be more accommodating and sensitive to processes that will control court costs like pretrials and summary judgements.

Sen. Buttars reiterated the need for summary judgements.

Mr. Bagley stated that he is a proponent of summary judgements.

Sen. Dmitrich counseled Mr. Bagley that he feels a judge must still be active in the community, especially in a rural community.

MOTION: Sen. Dmitrich moved to recommend to the full Senate the confirmation of Mr. Bagley as a judge in the Sixth District Court. The motion passed unanimously.

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

3. Interview of Mr. Robert K. Hilder

The candidate introduced himself and his family.

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

Judge Hilder was placed under oath by Mr. Howe.

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

Judge Hilder expressed appreciation for the judicial nominating process. He stated that he grew up in Sydney, Australia and has lived in the United States for 31 years. He gave a detailed background of his personal and professional life. Judge Hilder stated that he has been a judge for thirteen years and presided over approximately 500 trial cases. He commented that he has approached the bench with good will and extensive study.

Sen. Buttars inquired about a case concerning Ms. Nadine Gilmore.

Judge Hilder reviewed the case for the Committee.

Sen. Buttars asked Judge Hilder how he reached his ruling in the University of Utah gun case.

Judge Hilder explained the case and told the Committee the facts on which he made the ruling in that case.

Sen. Waddoups inquired whether there is anything in Judge Hilder's background, if it were widely known, that would bring embarrassment to the judiciary or the state of Utah.

Judge Hilder stated that there is not.

Sen. Waddoups inquired about a sexual assault case that Judge Hilder presided over and asked about the facts that brought him to his ruling.

Judge Hilder stated that guilt could not be proven beyond a reasonable doubt in that case. He reviewed his notes from the case with the Committee.

Mr. Gordon Strachan was sworn in by Mr. Howe. He spoke in favor of the Committee recommending Judge Hilder to be confirmed as a judge on the Court of Appeals.

Mr. Paul Boyden, Deputy District Attorney, was sworn in by Mr. Howe. Mr. Boyden spoke in favor of the Committee recommending Judge Hilder to be confirmed as a judge on the Court of Appeals. Mr. Boyden related his involvement with the University of Utah gun case and stated that he believes Judge Hilder applied responsible judicial action in that case. He further expressed that Judge Hilder has a tremendous work ethic and is fair, intelligent, and willing to make improvements in the judicial process.

Ms. Lohra Miller, District Attorney Salt Lake County, spoke in favor of the Committee recommending the appointment of Judge Hilder as a judge on the Court of Appeals. She expressed her admiration of Judge Hilder's efforts to improve the judicial system. She stated that he is a great problem solver and will have a lot to offer to the appellate bench.

Sen. Buttars requested a five minute break and the chair approved the request.

Ms. Charlotte Miller, Utah State Bar, was sworn in by Mr. Howe. She spoke in favor of recommending Judge Hilder as a judge on the Court of Appeals.

Mr. David Turner spoke against Judge Hilder's appointment to the Court of Appeals and provided testimony to the Committee concerning the *Pochynok v. Turner* divorce case, over which Judge Hilder presided, involving Mr. Turner's daughter, Natalie Turner.

Ms. Kimberly Newton was sworn in by Mr. Howe. She gave testimony, under the order of subpoena, concerning the *Pochynok v. Turner* case and spoke against the recommendation to appoint Judge Hilder to the Court of Appeals.

Judge Hilder responded to the testimony given about his rulings and gave a closing statement.

4. Other Items / Adjourn

MOTION: Sen. Buttars moved to continue the interview of Judge Robert K. Hilder at 9:00 a.m. on Wednesday, November 12, 2008. The motion passed unanimously.

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

Chair Bell adjourned the meeting at 4:17 p.m.