

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**

Thursday, August 13, 2009 – 9:00 a.m. – Room 415 State Capitol

Members Present:

Judge Jon M. Memmott, Chair
Mr. Roger Tew, Vice-Chair
Sen. Peter C. Knudson
Sen. John L. Valentine
Rep. Sheryl L. Allen
Rep. Ronda Rudd Menlove
Ms. Lisa Watts Baskin
Mr. Byron L. Harward
Mr. Kirk Jowers
Mr. John T. Nielsen
Dr. Michael Petersen

Members Absent:

Rep. Brian S. King
Sen. Scott D. McCoy
Mr. Robin L. Riggs

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
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 Memmott called the meeting to order at 9:05 a.m

MOTION: Ms. Watts Baskin moved to approve the minutes of the June 11, 2009 meeting with corrections. She asked that the misspelling of Mr. Mark Field, Capital Litigation Staff Attorney, Administrative Office of the Courts, be corrected from "Feild" to "Field" and that "affect" be changed to "effect" on the second page, fourth paragraph, fifth line down of the minutes. The motion passed unanimously, with Sen. Knudson and Sen. Valentine absent for the vote.

2. Death Penalty and Post-Conviction Amendments

Mr. Michael Zimmerman, Snell and Wilmer, outlined his and Mr. Troy Booher's presentation and explained their opposition to the proposed post-conviction constitutional amendment, S.J.R. 14, "Joint Resolution - Challenging the Legality of a Conviction or Sentence," which was distributed by staff at the meeting.

Mr. Troy Booher, Snell and Wilmer, distributed and discussed his and Mr. Zimmerman's memorandum regarding the attorney general's proposed amendment to the Utah Constitution. Mr. Booher asserted the proposed constitutional amendment would disrupt the balance of power between the Legislature and the courts, because it would transfer the constitutionally protected common law writ of habeas corpus from the judiciary to the Legislature. He also contended the proposed constitutional amendment would not solve the problem of delays in death penalty cases, because the delays are not caused by the Utah Supreme Court's exercise of its constitutionally protected common law authority to disregard the Post-Conviction Remedies Act, the statutory act which S.J.R. 14 would compel the court to adhere to in post-conviction appeals. Mr. Booher advocated that no constitutional amendment be recommended by the Commission to the Legislature, but he provided alternative language that he stated would have the least amount of unintended consequences if the Commission decides to recommend a constitutional amendment.

Mr. Zimmerman and Mr. Booher answered questions from the Commission.

Mr. Monroe Freedman, National Right to Counsel Committee, discussed "Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel - Report of the National Right to Counsel Committee," which was published by the Constitution Project. He stated that the delay in death penalty post-conviction cases comes from the underfunding of defense services and gave examples of the effect of incompetent counsel in death penalty cases.

Mr. Richard Mauro, Chair, Utah Association of Criminal Defense Lawyers, distributed and discussed a memorandum regarding his comments on S.J.R 14. He stated that delays in death penalty cases occur because defense attorneys are ethically obligated to raise issues to completely vet their client's case. He also advocated for the appropriation of money to provide for competent counsel and investigation resources in death penalty cases.

Mr. Mauro and Mr. Freedman answered questions from the Commission.

Mr. Kent Hart, Executive Director, Utah Association of Criminal Defense Lawyers, distributed and discussed his memorandum regarding S.J.R 14. He stated that the courts are not the source of the delay in death penalty cases. He discussed the consequences of including a statute of limitations for post-conviction appeals in the constitution. He reiterated the argument for adequate funding for death penalty defense counsel and investigation resources.

Mr. Hart, Mr. Mauro, and Mr. Freedman answered questions from the Commission.

3. Discussion of Alternative Solutions

This agenda item has been postponed.

4. Other Business / Adjourn

MOTION: Mr. Nielsen moved to adjourn the meeting. The motion passed unanimously.

Chair Memmott adjourned the meeting at 11:31 a.m.