

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, June 19, 2002 – 10:00 a.m. – Room 403 State Capitol

**Members Present:**

Sen. David L. Gladwell, Senate Chair  
Sen. D. Edgar Allen  
Sen. Millie M. Peterson  
Sen. Michael G. Waddoups  
Rep. Patrice M. Arent  
Rep. Chad E. Bennion  
Rep. Ron Bigelow  
Rep. Katherine M. Bryson  
Rep. Greg J. Curtis  
Rep. James A. Ferrin  
Rep. Ben C. Ferry  
Rep. Eric Hutchings  
Rep. Mike Thompson  
Rep. A. Lamont Tyler

**Members Absent:**

Sen. Terry R. Spencer  
Rep. Scott Daniels  
Rep. Neal B. Hendrickson  
Rep. David Ure  
Rep. Glenn L. Way

**Staff Present:**

Mr. Jerry D. Howe, Research Analyst  
Ms. Esther D. Chelsea-McCarty, Associate General Counsel  
Ms. Glenda S. Whitney, Legislative Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us.imaging/history.asp> or by contacting the committee secretary, Glenda Whitney, at 538-1032.

**1. Call to Order and Committee Business**

Chair Gladwell called the meeting to order at 10:15 a.m. He noted that Rep. Daniels, Rep. Hendrickson, and Rep. Way asked to be excused from the meeting.

**MOTION:** Rep. Bigelow moved to approve the minutes of the June 19, 2002 meeting. The motion passed unanimously, with Rep. Arent, Rep. Bennion, and Rep. Curtis absent for the vote.

**2. Report on DUI Collection and DUI Related Data Elements**

Mr. Howe briefed the Judiciary Interim Committee on H.B. 18, "Court Records of Driving Under the Influence Cases." He said H.B. 18 passed during the 2002 General Session and required the maintenance of necessary data elements to allow for the proper sentencing under the law.

Mr. Richard Schwermer, Administrative Office of the Courts, distributed a handout "H.B. 18, Required Data Elements," and said the courts have added some data elements to the electronic portion of their case management system so that the data will be accessible at sentencing. The court administrator's office, he said, has met with the Governor's DUI Council to establish reliable data elements that can be used for research, and to help answer public policy questions. Mr. Schwermer referred the Committee to a list of data elements that the court implemented on May 6, 2002 for review. He noted that he would not be reporting on the substance of the data elements, although if the Committee is interested, he would provide substantive comment on each of the data elements at a subsequent meeting.

Rep. Tyler explained that DUI related offenses which occur in Justice Courts are not included in the accessible data discussed by Mr. Schwermer. All data needs to be available when sentencing on subsequent DUI offenses and without Justice Court data this cannot happen. He explained that the governor has agreed to place this issue on a Special Session agenda so that this oversight can be corrected. Again, Rep. Tyler stressed the importance that Justice Courts report the same data elements to a central data base.

### **3. Unauthorized Practice of Law**

Ms. Chelsea-McCarty explained that the Judiciary Interim Committee recommended a bill which was passed by the Legislature during the 2000 General Session which inadvertently repealed the unauthorized practice of law. Providing for a new statute regulating the practice of law has proven difficult for the Legislature.

Justice Michael Wilkins, Utah Supreme Court, presented a power point presentation that placed the regulation of law in a legal, practical, and historical context. He explained that a task force has been created to study attorney regulation, that the task force has met, and will continue to meet gathering facts and discussing all of the issues that need to be resolved before a recommendation is adopted by the Supreme Court and is brought to the Legislature for its consideration. After his presentation, Justice Wilkins responded to a myriad of questions.

Rep. Arent said she serves on this committee with Justice Wilkins and she indicated the enormous amount of work that has been dedicated to this effort. She complimented Justice Wilkins for his dedication to this issue and commented on his efforts.

Rep. Curtis questioned if there would be any real value in the Legislature attempting to draw a bright line test as to what constitutes the practice of law because the practice of law is so difficult to determine. He identified real estate agents as an example, who draw up legally binding contracts when using the real estate purchase contract addendum forms. Justice Wilkins explained that there is value in regulating the practice of law even if it is difficult. What will prove to be the most effective and reliable regulation is yet to be determined, he said, whether by statute, court rule, or court cases, yet it is nonetheless an important concept worthy of our best efforts.

Rep. Curtis explained that the Supreme Court is responsible to regulate the practice of law, but questioned whether the Legislature or the Court should define the practice of law. Justice Wilkins explained that it makes some sense for the court to define the practice of law, although the court has not done a complete job to date because it only answers when it is asked a specific question. Yet, it may make some sense to define the practice of law. Such a rule would certainly facilitate other types of solutions to needs that are not currently being met, he said.

Rep. Bigelow questioned the use of internet services on the law. Justice Wilkins explained that an individual is entitled to buy a book and practice law for yourself on your own behalf. But if you buy that book and sit down and charge your neighbors to do it, that is the practice of law.

Rep. Bigelow also questioned whether attorneys can be objective in crafting a definition for the unlawful practice of law. Justice Wilkins said the report currently underway is an analysis requested by the Supreme Court. The five members of the Supreme Court do not view themselves in the business of making sure that lawyers make more money, so whatever issues people have about lawyers protecting the profession through regulation are inaccurate.

Rep. Thompson expressed concern with Section 78-9-101(3) and said this is confusing to him as an attorney. He questioned what other states have done insofar as allowing paralegals to practice law. Justice Wilkins responded that most paralegals are very competent to practice in a narrow area of the law. But the overall legal analysis of whether a particular case involves, for example equal protection issues, or if the case involves other legal issues, should be done by an attorney. Once the legal analysis has been completed, and the case is placed in its proper legal context, paralegals are usually highly competent in one area of the law, but they do not have the professional experience or credentials to decide which case falls within any legal context.

Mr. John Nielsen, representing the bar, distributed "H.B. 2003, Unauthorized Practice of Law Amendments," which is similar to the statute that was inadvertently repealed. He was told by bar counsel that it is a good statute. Currently, he said, there are about 20 investigations and cases pending that involve the unauthorized practice of law. He said the bar takes the role of protecting the consumer seriously and views the Unauthorized Practice of Law statute as a consumer protection statute. He said there is a sunset date on the bill of May 1, 2003 and the bar is hopeful that the legislature will either extend the sunset date or provide some similar language.

Rep. Stephen H. Urquhart said we have an outstanding judicial system for those who can afford it. A lot of tax dollars support our current justice system which benefits primarily the top 15 percent of the population and legal aid assists the lowest 15 percent. He expressed concern for the other 70 percent of the population. Consumer protection statues are sufficient to protect the population and so it appears that the driving force behind an unauthorized practice of law statute is turf. The State should put as much effort in finding ways to provide people with affordable legal assistance, especially in the area of family law, as it has put in the current effort to protect against the unauthorized practice of law.

#### **4. Other Business / Adjournment**

**MOTION:** Sen. Peterson moved to adjourn the meeting. The motion passed unanimously, with Rep. Curtis absent for the vote. Chair Gladwell adjourned the meeting at 12:09 p.m.