

**MINUTES**

**MONTANA SENATE  
52nd LEGISLATURE - 2nd SPECIAL SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By Chairman Yellowtail, on July 10, 1992, at 11:07 a.m.

**ROLL CALL**

**Members Present:**

Bill Yellowtail, Chairman (D)  
Steve Doherty, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Lorents Grosfield (R)  
John Harp (R)  
Judy Jacobson (D)  
Joseph Mazurek (D)  
Dick Pinsoneault (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** Mike Halligan (D), Joseph Mazurek (D)

**Staff Present:** Valencia Lane (Legislative Council)

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** Senator Doherty announced a reception for Judge Lympus following the hearing, sponsored by the Montana Bar Association, the Montana Defense Lawyers, and the Montana Trial Lawyers.

**HEARING ON SENATE RESOLUTION 1**

**Presentation and Opening Statement by Sponsor:**

Senator Bob Brown, District 2, presented SR 1 by which the Senate would concur in, confirm, and consent to the Governor's nomination and appointment of the Honorable Ted O. Lympus as District Judge, Eleventh Judicial District, Kalispell, Montana.

**Proponents' Testimony:**

Rick Bartos, Chief Legal Counsel to Governor Stephens, asked the Committee to confirm the appointment of Judge Lympus, replacing Judge Bart Erickson, who has moved to the federal district court.

Mr. Bartos told the Committee that Judge Lympus is a native of Montana, born in Missoula, and received his BA in Political Science from the University of Montana. Judge Lympus also attended the University of New Mexico and received his juris doctorate from the University of Montana in 1972. He is licensed to practice before the Montana Supreme Court, the U. S. District Court, and the U.S. Court of Appeals, Ninth Circuit. Judge Lympus also served four terms at Flathead County Attorney, and has been the recipient of the Burton K. Wheeler Memorial Scholarship and the Soroptomists National Human Rights Award. He has chaired the Montana Board of Crime Control, and served on its statewide task force. Judge Lympus is a member of the Governor's Criminal Justice Advisory Council, the Montana Trial Lawyers, and the National District Attorneys.

Mr. Bartos read from letters of support from the Flathead County DUI Task Force, and the former district superintendent of schools in Big Fork who now resides in Hamilton, MT (Exhibits #1 and #2).

Chief Justice of the Supreme Court, Gene Turnage, recommended the confirmation of Judge Lympus. He stated he has known the Judge for 20 years - after law school, during Judge Lympus' first three years as deputy county attorney in Lake County, and then in Kalispell. The Chief Justice submitted that Judge Lympus has excellent qualifications to serve in this capacity, that he hears cases with patience, and decides them with absolute fairness and impartiality.

Chairman Yellowtail welcomed Justice Karla Gray to the hearing.

Judge Lympus introduced his wife, Patsy, and his daughter, Renn, to the Committee. He explained that he has been serving in his position two and one-half months, and carrying a heavy caseload. He advised the Committee he is dedicated to fairness with litigants and the court, that he is generally conservative, and believes the trial court is not there to create law on its own, but to ensure those created by legislation. Judge Lympus further advised the Committee that he spent 16 years as a trail lawyer, that he has worked with tribal members, and believes he can continue in fairness there.

Russell Hill, Montana Trial Lawyers, read from a prepared statement in support of the confirmation (Exhibit #3).

Representative Betty Lou Kasten, District 28, told the Committee she serves on the Governor's Criminal Justice Advisory Council with Judge Lympus, and highly recommends his confirmation.

Senator Yellowtail introduced testimony from H. O. Anderson which was submitted to the Committee on July 9, 1992 (Exhibit #4).

**Opponents' Testimony:**

There were no opponents of SR 1.

**Questions From Committee Members:**

Senator Crippen asked Judge Lympus if he intended to pursue an active career on the bench, and run for re-election when the time comes. Judge Lympus replied that was his intention, and that, otherwise, he would not have terminated his position as Flathead County Attorney.

Senator Svrcek asked the Judge to characterize the difference between prosecutor and jurist focus toward the law. Judge Lympus replied he felt committed to the people of Montana, and to the accused to ensure a fair trial during his tenure as Flathead County Attorney, and that he would do the same as a judge. He further stated that, as a judge, he would not have the advocate mindset of a prosecutor, to ensure this fairness.

Senator Pineseault asked if Judge Lympus had argued before the Ninth Circuit. Judge Lympus replied he had defended prosecution of a defendant in a case in which he was not successful, and which is back in state court because the death sentence was reimposed by Judge Harkin of Missoula. He advised Senator Pineseault that the case was now winding its way through the process.

**Closing by Sponsor:**

Senator Brown made no closing comments.

**EXECUTIVE ACTION ON SENATE RESOLUTION 1**

**Motion:**

Senator Brown moved that the Committee adopt the Preliminary Report on SR 1. Senator Harp seconded the motion.

**Discussion:**

There was none.

**Amendments, Discussion, and Votes:**

There were none.

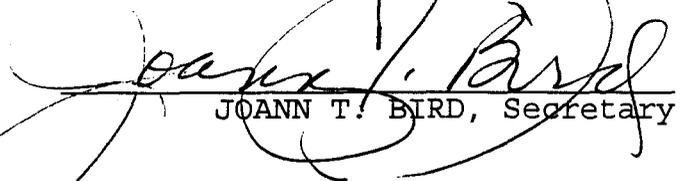
**Recommendation and Vote:**

The motion made by Senator Brown carried unanimously.

ADJOURNMENT

Adjournment At: 11:35 a.m.

  
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BILL YELLOWTAIL, Chairman

  
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JOANN T. BIRD, Secretary

BY/jtb

# PRELIMINARY

## SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
July 10 1992

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Resolution # 1 (first reading copy - White), respectfully report that Senate Resolution # 1 be adopted.

Signed

  
Bill Yellin, Chairman

*JA 7-10-92*  
Adm. Coord.

*[Signature]*  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
July 10, 1992

MR. PRESIDENT:

We, your committee on Judiciary, have had under consideration Senate Resolution No. 1 (first reading copy 1049220), respectfully report that Senate Resolution No. 1 be adopted

Signed: Wm Yellowtail  
E.H. Yellowtail, Chairman

PA 7-10-92  
And Signed  
7/10/92  
Sec. of Senate

ROLL CALL

JUDICIARY COMMITTEE

DATE 7/10/92

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR GROSFIELD	✓		
SENATOR HALLIGAN			⊕
SENATOR HARP	✓		
SENATOR JACOBSON	✓		
SENATOR MAZUREK			⊕
SENATOR PINSONEAULT	✓		
SENATOR RYE	✓		
SENATOR SVRCEK	✓		
SENATOR TOWE	✓		
SENATOR DOHERTY, VICE CHAIR	✓		
SENATOR YELLOWTAIL, CHAIR	✓		

Each day attach to minutes.

# Montana Trial Lawyers

## ASSOCIATION

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Wade Dahood  
 Director Emeritus  
 Monte D. Beck  
 Thomas J. Beers  
 Joe R. Bottomly  
 Michael D. Cok  
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July 10, 1992

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 Governor

Sen. Bill Yellowtail, Jr., Chair  
 Senate Judiciary Committee  
 Room 325, State Capitol  
 Helena, MT 59620

Dear Sen. Yellowtail:

The Montana Trial Lawyers Association supports the confirmation of Ted Lypus as district court judge. His extensive experience in courtroom litigation as a county attorney, his untiring efforts to seek justice for victims and wrongdoers alike, and his unquestioned respect for the jury make him a promising addition to Montana's bench.

I spoke to numerous members of MTLA this week about Ted Lypus, and without exception they admire his hard work, integrity, and candor. Some of them practiced with Ted Lypus in Kalispell before he became county attorney, when he was still doing public defender work. Others have served as prosecutors themselves. They describe Ted Lypus as an attorney active in the most complex, most difficult cases, one who never shifted the hardest work to his deputies. They recall multiple instances when, in the course of prosecuting a criminal case, he became convinced that a defendant was innocent of serious charges and told the jury so. And they believe Ted Lypus understands, as a judge who has actually practiced law before judges, the crucial role of opposing attorneys in our adversarial justice system.

The members of MTLA believe Ted Lypus is exceedingly qualified to serve as district judge, and they look forward to addressing him as Judge Lypus.

Respectfully,



Russell B. Hill  
 Executive Director

**7/10/92**

**Exhibits 1 and 2 were not transmitted with the minutes.**

SENATE JUDICIARY

EXHIBIT NO.

4

DATE 10 July 92

BILL NO.

SRJ

July 9, 1992

TO: SPECIAL SESSION OF THE MONTANA STATE LEGISLATURE

SUBJECT: CONFIRMATION OF TED LYMPUS AS 11th DISTRICT COURT JUDGE

I wish to go on record as being against this confirmation this close to an election.

Also being appointed Judge in the same area as he has represented as Flathead County Attorney for the past 18 years he could possibly have to preside over an issue in which he had to represent on one side or the other in the past. I see this as putting both the people and the Judge in jeopardy.

I believe that appointed judges should be chosen from out of the district they last worked in, at least until the next election where the people can decide.

I believe Ted Lympus is a very adept attorney and the fulfillment of many attorney's career is to become a judge. Had he been appointed to a position out of the 11th District, I would have no objection at all.



H. O. "ANDY" ANDERSON

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Whitefish, MT 59937

