

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on April 21, 1993, at 10:30 a.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Steve Doherty, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Chet Blaylock (D)  
Sen. Bob Brown (R)  
Sen. Bruce Crippen (R)  
Sen. Eve Franklin (D)  
Sen. Lorents Grosfield (R)  
Sen. Mike Halligan (D)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

**Members Excused:** NONE

**Members Absent:** NONE

**Staff Present:** Valencia Lane, Legislative Council  
Rebecca Court, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: SR 11  
Executive Action: SR 11

#### **HEARING ON SR 11**

##### **Opening Statement by Sponsor:**

Senator Gage, District 5, told the Committee his first recollection of Jim Nelson was at a school board meeting. Senator Gage told the Committee there had been a problem with a youngster in school and Mr. Nelson was on the other side of the issue with the youngster's parents. Senator Gage said he brought this to the Committee's attention because legislators understand adversity and opposite positions and have respect for those people with different views. Senator Gage said he had worked with Mr. Nelson over a number of years on several issues,

including scholarship trusts, Indian Affairs, and drug problems in their community. Senator Gage told the Committee they had been successful in getting a lot of things done in their community, primarily because of Mr. Nelson's effort. Senator Gage commented that a man once said, "no success in life can compensate for failure in the home." Senator Gage recognized that Mr. Nelson does not have failure in his home which speaks exceptionally highly for him.

**Introduction by the Governor:**

Governor Marc Racicot told the Committee that Jim Nelson is the Glacier County Attorney and has held that occupation for a long period of time. Governor Racicot commented that Mr. Nelson has been associated with the Democratic party, unlike himself or Senator Gage, which he said should say something about Mr. Nelson. Governor Racicot said he has known Mr. Nelson for 16 years and has been involved with him because of the duties in the Attorney General's Office. Mr. Nelson was an honor student, both in undergraduate and law school. Mr. Nelson worked for the United States Securities and Exchange Commission, has had a private practice throughout his legal career, and has represented civil litigants, both as a plaintiff lawyer and a defense lawyer. Governor Racicot said he knows Mr. Nelson's family the reputation he has within his community. Mr. Nelson is qualified by reason of experience, education, training, and the fact that he is a fine character in every regard. Governor Racicot stated that there was no hesitation in making the recommendation to the Committee and the Senate. Glacier County sits in a part of Montana that has been, on occasion, a difficult part of the state to carry out the duties of Glacier County Attorney. Glacier County is located partially in the confines of the Blackfeet Reservation and involves a great deal of other problems confronted by Canada. As a consequence, there are special requirements, considerations, and problems that have been confronted by a person occupying the position of Glacier County Attorney. Governor Racicot told the Committee controversy was something that was not unknown to Jim Nelson. Mr. Nelson dealt with controversies dispassionately, carefully and sensibly as Glacier County Attorney. Governor Racicot recommended Mr. Nelson for the nomination to become the next Associate Justice of the Montana Supreme Court.

**Introduction by the Nominee:**

James Crider Nelson, told the Committee that 19 years ago he was sworn in as an attorney in the State of Montana and has been a student of the law since that time. Mr. Nelson said he has been the county attorney for 14 years and has had a private practice during that time. Mr. Nelson told the Committee he has been involved with practically every phase of the law that a lawyer could be associated with. Mr. Nelson served on the Montana Board Oil and Gas Conservation for 10 years and was Chairman for the board for four years. Mr. Nelson was appointed to the State

Gambling Advisory Council. Mr. Nelson said he looked forward to the new challenge of serving on the Montana Supreme Court. Mr. Nelson commented that he looked forward to using his skills of analysis and fairness to discharge his duties faithfully as a judge. Mr. Nelson asked the Committee to consider his nomination favorably.

**Proponents' Testimony:**

Chief Justice Jean Turnage read from prepared testimony.  
(Exhibit #1)

Jim Mockler, Judicial Nomination Commission, told the Committee that there were 21 applicants for the position of Associate Justice for the Montana Supreme Court. Mr. Mockler said the Judicial Nomination Commission recommended Mr. Nelson for that position and feels the Governor made an outstanding choice.

Dee Rickman, Executive Secretary for the Montana Board of Oil and Gas Conservation, read from prepared testimony. (Exhibit #2)

Don Garrity read from prepared testimony. (Exhibit #3)

**Opponents' Testimony:**

Representative Gervais, District 9, told the Committee that he heard about Jim Nelson's nomination a couple days ago. Rep. Gervais said he had no problems with Mr. Nelson's qualifications. Rep. Gervais said Mr. Nelson's qualifications fit the Montana Supreme Court very well due to his record as an Indian fighter in the areas of jurisdiction, tribal employment, cross deputization, and education. Rep. Gervais told the Committee that he did not have time to obtain any documentation. Regarding indian cases, Mr. Nelson would fit very well because it is known what the conclusion would be because it is the general consensus of the Montana Supreme Court.

**Questions From Committee Members and Responses:**

Senator Blaylock asked Mr. Nelson about the exclusionary rule. Mr. Nelson told the Committee the purpose of an exclusionary rule is to protect defendants' constitutional rights by deterring unlawful police searches, seizures, and law enforcement procedures. Mr. Nelson said that, in 14 years as a county attorney, he has never lost a case because a defendants constitutional rights were violated. If a defendants rights were not protected to the fullest extent, the case would not go forward. Mr. Nelson said he did not want to see the exclusionary rule diminished or broadened.

Senator Crippen asked Mr. Nelson about Indian jurisdictions. Mr. Nelson said that as the County Attorney, he is often at odds with the tribe on questions of jurisdiction; however, that does not mean that as a judge, that he would take a position where the

result was predetermined. Mr. Nelson said as a Justice for the Supreme Court, he would review the factual records before the court and apply the appropriate legal principals to the case. Mr. Nelson said he has made a special effort in his practice to deal with people fairly.

Senator Crippen asked Rep. Gervais to comment on Mr. Nelson's statement. Rep. Gervais told the Committee that he was a former Councilman of the Black Feet Tribe and a former member of the Law and Order Commission. Rep. Gervais said the tribe requested cross deputization because of cutbacks in law enforcement and the judicial system on the reservations. The Tribe thought they would receive cooperation from the county since a number of non-Indians live on the reservation. Mr. Nelson consistently went against the tribe when it came to jurisdiction issues. Rep. Gervais said the county has received money from drug busts on the reservation, yet Blackfeet Tribal enforcement and the court system did not receive a share of that money. Mr. Nelson was the only county attorney that testified against the retrocession bill during the last session. Rep. Gervais said another concern was that the State will not negotiate in good faith with the tribes throughout Montana.

Senator Crippen asked Rep. Gervais if he felt Mr. Nelson would be fair to both sides on every issue. Rep. Gervais said a nominee's record should be looked at regarding all issues and then make a determination should be made.

Senator Doherty asked Mr. Nelson about Indian welfare. Mr. Nelson said when the County Attorney's office becomes involved in any sort of juvenile issue where an Indian child or children are involved, immediate notice is given to the Indian Child Welfare coordinator and the tribal court on the Blackfeet reservation. When the Blackfeet tribal court intervenes, the case is turned over to them. Mr. Nelson said there had been no problems with the Indian Child Welfare Act, and the county is on good terms with the Indian Child Welfare Act Coordinator on the reservation.

Senator Doherty asked Mr. Nelson if he recalled any disputes on jurisdiction between the District Court and Tribal Court. Mr. Nelson said no.

Senator Doherty asked Mr. Nelson if he recalled any appeals that have gone from the District Court to the Supreme Court involving Child Welfare Act cases with the Glacier County Attorney's Office. Mr. Nelson said no.

Senator Doherty asked Mr. Nelson about the Montana Constitution. Mr. Nelson said the Montana Constitution provides greater rights to individuals, more so than the United States Constitution. Mr. Nelson said the Montana Constitution is the law of Montana and he would follow the Constitution.

Senator Halligan asked Mr. Nelson about misconduct by attorneys. Mr. Nelson said if any attorney was engaged in ethical violations he would strongly recommend the attorney be sanctioned.

Senator Rye asked Mr. Nelson to comment on Rep. Gervais's statement. Mr. Nelson said the main impediment to cross deputization was a matter of insurance. Insurance would not overinsure cross deputized officers who had not been trained by the Montana Law Enforcement Academy. Mr. Nelson said the reason for not having cross deputization had nothing of a racial overtone, but was a matter of insurance.

Mr. Nelson told the Committee there are three border crossings in Montana. When the Custom Service or Border Patrol apprehends someone involved in a drug transaction, they call the Glacier County Sheriffs office to take charge and prosecute the individual. The money received through forfeitures of automobiles and money is placed in the County drug fund. The fund is used for educational purposes throughout the county and state. Mr. Nelson said federal law provides that the money is to be used for education and training, therefore it can not be handed over to another government.

Mr. Nelson told the Committee he did testify against the retrocession bill last session because it was not a good piece of legislation. Mr. Nelson said the bill did not protect personal safety or give Indians and non-Indians, on the Flathead reservation, an opportunity for good law enforcement. However, the retrocession bill which was passed this session took care of a lot of those concerns.

Senator Bartlett asked Mr. Mockler about women being appointed to judicial offices. Mr. Mockler told the Committee the Judicial Nomination Commission does not solicit people to apply for the judicial nominations. Mr. Mockler said there was one women, out of 21 applicants, that applied for the Supreme Court position.

Senator Bartlett told the Committee she hoped there would be confirmation and nomination hearings for women who are under represented in Montana's Judicial system.

**Closing by Sponsor:**

Senator Gage thanked the Committee for the hearing.

**EXECUTIVE ACTION ON SR 11**

**Motion:**

Senator Brown moved SR 11 BE ADOPTED.

**Discussion:**

Senator Doherty told the Committee he had been involved with


cases on the other side of Mr. Nelson. Senator Doherty said Mr. Nelson had been very upfront and straightforward at all times. Senator Doherty told the Committee he would be very happy to support Jim Nelson's nomination.

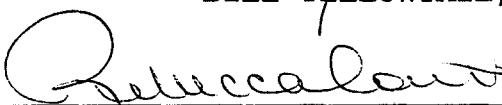
Vote:

The Be Adopted motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:28 a.m.

  
BILL YELLOWTAIL, Chair

  
REBECCA COURT, Secretary

BY/rc

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 4-21-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Resolution No. 11 (first reading copy -- white), respectfully report that Senate Resolution No. 11 be adopted.

Signed: Wm Yellowtail  
Senator William "Bill" Yellowtail, Chair



THE SUPREME COURT OF MONTANA

J.A. TURNAGE  
CHIEF JUSTICE



JUSTICE BUILDING  
215 NORTH SANDERS  
HELENA, MONTANA 59620-3001  
TELEPHONE (406) 444-5490

April 19, 1993

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 4-21-93  
BILL NO. SR11

Honorable Senator Bill Yellowtail, Chairman  
Honorable Senators, Members  
Senate Committee on the Judiciary  
Capitol Building  
Helena, MT 59620

Dear Chairman and Members of the Senate Committee on the Judiciary:

It is indeed a privilege to appear before the Senate Judiciary Committee in support of the confirmation of James C. Nelson, appointed by Governor Racicot as a Justice of the Montana Supreme Court to fill the vacancy created by the retirement of the Honorable R. C. McDonough. James C. Nelson will be a most welcome and able member of the Montana Supreme Court.

Since his admission to the State Bar of Montana on December 4, 1974, he has carried on a most successful and broad-based practice of law, both as a county attorney in the prosecution of criminal matters and as a private attorney in a wide variety of civil and general practice cases.

He maintained an excellent academic record at the University of Idaho, where he obtained his Bachelor of Science degree, and at the National Law Center, George Washington University, where he obtained his Juris Doctorate degree.

During his years of practice, he was recognized by being awarded the highest rating, AV, by a highly respected national law directory.

James C. Nelson was elected Glacier County Attorney in November 1978 and has been reelected to four successive four-year terms to that office which he presently holds. This acceptance by the citizens of Glacier County and the overwhelming letters of support he received when he applied for appointment verify his abilities to serve with distinction as a Justice of the Montana Supreme Court.

I respectfully recommend that the Committee confirm the appointment of James C. Nelson as a Justice of the Montana Supreme Court.

Respectfully,

A handwritten signature in dark ink, appearing to read "J.A. Turnage".  
J. A. Turnage  
Chief Justice

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 2  
DATE 4-21-93  
BILL NO. SR 11

STATEMENT TO THE SENATE JUDICIARY COMMITTEE

BY: Dee Rickman, Executive Secretary  
Montana Board of Oil & Gas Conservation

SUBJECT: Confirmation hearing for Supreme Court appointment  
of James C. Nelson.

DATE: April 21, 1993

Mr. Chairman, members of the committee, my name is Dee Rickman. I am the executive secretary for the Montana Board of Oil and Gas Conservation. It is indeed a pleasure and an honor for me to support the confirmation of Governor Racicot's appointment of Jim Nelson to the Montana Supreme Court.

I have known and worked with Mr. Nelson since 1982 when he was first appointed to the Board of Oil and Gas Conservation by Governor Schwinden. Jim has served continuously on the Board for the past 11 years, fulfilling the qualification requirements of a landowner member and an attorney. He was appointed as chairman by both Governor Schwinden and again by Governor Stephens.

During the years that Jim was chairman, the Board was involved in a project that has resulted in significant changes in our regulatory operations. The 1987 Legislature passed a bill requiring the preparation of a programmatic environmental impact statement on oil and gas drilling and production in Montana. The study was a collaborative effort conducted under the auspices of the Governor's office and adopted by the Board on December 31, 1989. The outgrowth of that effort has resulted in significant changes to the board's rules and operating procedures. Obviously this was a very controversial endeavor, certainly not embraced by everyone. It required clear thinking, good judgment, and a careful interpretation and balance of the oil and gas conservation laws and the Montana Environmental Policy Act. Jim's steady leadership throughout this process proved to be invaluable. While many people were involved in the project, I believe Jim personally deserves a great deal of credit for the successful completion of that effort.

During the course of our everyday business, Jim has presided over and participated in numerous contested case hearings brought before the Board. Altogether, the Board has issued over 900 orders over the past 11 years. Again Jim's leadership ability, and technical competence in interpreting the law fairly have been a tremendous asset to the board and have gained him the respect of not only the oil and gas operators in Montana but also the land and mineral owners and the environmental community. While I know the demands on Jim's time in other areas of his professional career were great, he has always given freely of his time and expertise to our board and staff and we will surely miss him. I urge your confirmation of Mr. Nelson's appointment to the Supreme Court and I thank you for the opportunity to speak on his behalf.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 4-21-93  
BILL NO. SB11 <sup>W</sup>

Mr. Chairman, members of the Committee:

My name is Don Garrity. I am a lawyer and I live and practice in Helena. With enthusiasm and without qualification, I ask you to confirm the appointment of Jim Nelson to the Montana Supreme Court.

I have known Jim Nelson since July of 1982, when he was appointed to fill a vacancy on the Montana Board of Oil and Gas Conservation.

My association with Jim over these past 11 years has convinced me that he possesses in abundance the qualities which I consider essential for an appellate judge. He is both intelligent and scholarly without a trace of intellectual arrogance. He is an experienced trial lawyer in both the civil and criminal areas of the law. Jim is a hard worker with high principles and unquestioned integrity. He is moderate and even-handed and would bring no hidden agenda to the Court.

I am honored to request your confirmation of his appointment.

DATE 4-21-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 11

Name	Representing	Bill No.	Check One	
			Support	Oppose
Jean Turnage	Sup. Court			
JOHN DELANO				
Don Daily	Self		✓	
Lee Rickman	Self			
Jim Mockler	Judicial Nomination Commission		✓	
Bob Zeman	H.D. 9			✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY