

JUDICIARY COMMITTEE

January 17, 1977

The regularly scheduled meeting of the House Judiciary was called to order by Chairman Scully at 8:00 A. M., Monday, January 17th, in Room 436 of the Capitol Building, Helena, Montana.

All members present with the exception of Representatives Dussault, Roth, and Teague, excused.

Scheduled for hearing were House Bills #116, 117, and 121.

Chairman Scully announced that House Bill #121 was cancelled and would be heard at a later date.

THE HEARING OPENED ON HOUSE BILL #116, introducing testimony was: REPRESENTATIVE BRADLEY, Chief Sponsor, District #77. She said there were several proposed amendments that she felt might be necessary. This bill is to extend reporter's privilege to information obtained for communication to the public.

She mentioned several examples of cases where the reporter was cited for contempt for failing to disclose the source of the information. She continued and explained the reporters shield law, who gets the privilege, what kinds are protected and how the privilege will be established. If reporters are required to disclose their source, they will dry up and the public will lose their right to know. In section 1, it broadens it somewhat. This bill is not really for news media, it is for the benefit of the public and the public's right to know. There is a growing tendency to subpoena journalists. She told of a case with the Great Falls Tribune and an attorney who had written a letter to the paper, in which parts of the letter were published and the supreme court said the rest of the information must be disclosed. The reporter was subsequently subpoenaed. The court ruled that he gave up his privilege by divulging some of the information. The privilege is not waived if part of that information is printed. We will have problems in this state if investigative reporters lose their privilege because the public will lose their right to know.

PROPONENT PHIL STROPE: I was the attorney that defended the newsman. It brought into focus the rights that we think we have. Our 43 and 73 statutes were held to be insufficient. He quoted Will Rogers, "we only know what we read in the newspapers." The public has a right to know and you have to protect him, the reporter, on the remainder of the material or his source of information will dry up, and the public will not know.

PROPONENT RON SEMPLE, Montana Press Association: I feel the bill makes the intent more clear. This bill is not designed to protect

the public, right to know, but to protect the reporter. A reporter has to protect his source or he will not have any source. We ask that you strengthen and clarify the law. Let us take a step forward and make a good law better. (attached statement)

PROPONENT SAM GILLULY, Montana Press Association. Bill Janes planned to be here, but could not make it. He strongly supports our position. He presented the committee with a copy of prepared testimony. (attached)

REPRESENTATIVE BRADLEY, in closing commented that sometimes the privilege will be abused, but we cannot start accusing and cause an invasion of their duties and rights. But, that situation can work both ways, which side do you trust the most.

There was general discussion whether this also applied to cable TV and community antenna service.

REPRESENTATIVE DAY asked if this bill would exempt a reporter from a civil action in anything that would be printed in the paper.

It was decided that it does, but that they were trying to get to the truth and if the story is not true the source is not privileged. There was discussion about sources and protecting sources.

REPRESENTATIVE RAMIREZ, commented that in a civil action there are other things involved, and REPRESENTATIVE MELOY, one of the sponsors of the bill, said the defense in those cases is truth. It seems to me that if he had something he could rely upon he would not abuse it.

CHAIRMAN SCULLY, said we don't have any sanction for someone who abuses it. The reason libel doesn't work is because you can't prove damages. He then asked of Meloy, would you be willing to go along with a criminal provision rather than a civil?

REPRESENTATIVE MELOY: The law must protect the source. This bill only relates to information the reporter has.

MR. SEMPLE: I don't know of any reporter that has made a career of misinformation. They do not last in the industry.

CHAIRMAN SCULLY: The case law has eroded that.

REPRESENTATIVE MELOY: Statute is the law now.

The comment was made that this bill is a significant step in the right direction.

REPRESENTATIVE CONROY, asked if reporters have a code of ethics. Mr Semple: It is sort of an unwritten law, no actual code, as such. I would not want to define what objectivity is. We are very careful of this kind of thing.

REPRESENTATIVE CONROY, told of a case in Billings concerning his wife

and a newspaper story about leases on the Crow Indian Reservation, which was untrue. At no time did the reporter talk to his wife or appeal to them for any information.

There was discussion about similar instances on the part of other members of the committee.

REPRESENTATIVE BRADLEY, wondered if the reporter only has the privilege as long as he doesn't disclose his information.

MR. GILLULY: journalism is a rough draft of history.

REPRESENTATIVE BRADLEY, mentioned a case in 1972, an incident on illegal gambling in Silver Bow County, where the sheriff thought the reporter should aid in the enforcement of the laws of the state.

REPRESENTATIVE DUSSAULT: If I understand correctly, the intent of this amendment is to protect, if part has been disclosed.

REPRESENTATIVE RAMIREZ: Are we making a constitutional decision or a policy decision?

REPRESENTATIVE BRADLEY: It is a privilege and not an absolute right.

REPRESENTATIVE MELOY: The existing statute protects the source.

REPRESENTATIVE RAMIREZ: Are you expanding this somewhat beyond the source? If you take something out of context, aren't you sacrificing some degree of reliability?

REPRESENTATIVE DAY: It seems to me they put some facts in and some facts out.

REPRESENTATIVE ROTH: It seems to me, newspapers must police themselves.

MR SEMPLE: None of us has any kind of stake in misinforming the public. We all make mistakes in the pursuit of truth.

Hearing closed on House Bill #116.

HEARING OPENED ON HOUSE BILL #117.

REPRESENTATIVE BRAND, Chief Sponsor, District #28. Explained that this bill gives the veto power to the legislature. It will create a legislative interim policy committee to control the exercise of quasi-legislative powers by the executive branch of state government when the legislature is not in session. It is an amendment to the constitution.

PROPONENT CHAD SMITH, representing Montana Hospital Association. This is a very important piece of legislation. It gives to the people of Montana the right to control between sessions of the legislature. The enactment of legislation has gotten out of control. I think this is a very necessary piece of legislation. It sets up a legislative

interim policy committee. I think this is a basic protection.

OPPONENT ROBERT LOHN, Staff Attorney, Governor's Office. There are three branches of government:

1. The executive, elected at large by the people,
2. The legislative branch, elected from various districts and,
3. The judiciary, generally elected from a nonpolitical process.

I would caution you not to throw this away lightly, the power to approve or disapprove a state agency. The power to determine the validity is a court function. A group by appointment or an elected body. This places no strictures on the committee but the legal power would be in the ability to disapprove a rule just because they don't like it. This is having a minority committee making fundamentally basic decisions.

OPPONENT JOY BRUCH, League of Women Voters: We speak in opposition to this bill. We support a legislative system representative of all citizens, and this bill conflicts with that concept. She read a statement prepared by the League and presented copies to the committee. (copy attached)

OPPONENT BOB COCHRAN, Department of Revenue: We have literally hundreds of statutes dealing with our department. To us rules and regulations are an everyday event. We have backed down on some statutes. We are attempting to do it in an equitable fashion. Notice especially section 5(a) line 16. We have some great concern about the rules and regulations of this bill.

REPRESENTATIVE BRAND: Each one of us as individuals are probably closer to the people than anybody in the state. If we are responsible for some of the things done by the executive branch, we should have a body, an interim committee, we can depend on those people for information and guidance.

CHAD SMITH: Rules and regulations are laws. If it is a proper implementation it is enforced by law. I think this bill has every merit. I think the people need the right to review.

REPRESENTATIVE LORY: Since we already have the one committee what was the reason for combining them?

REPRESENTATIVE BRAND: With that one committee you can handle all the things you want.

REPRESENTATIVE KEYSER: Why is it so bad to let it go before a legislative board?

MR COCHRAN: I am not speaking in terms of the amount of them. I am speaking only of the physical aspect of it.

REPRESENTATIVE RAMIREZ: What of the separation of power? When this rule making authority was originally given they violated the separation of powers.

MR. LOHN: We would like determination of the validity of the law.

CHAIRMAN SCULLY asked who are the staff people involved in this. Some of the staff people were mentioned. Lt. Governor Schqienden, Judy Carlso, etc.

CHAIRMAN SCULLY then asked how many staff people were allocated and Mr. Lohn said five or six plus one attorney.

CHAIRMAN SCULLY asked Bob Cochran, Department of Revenue representative; When has the governor's office intervened in their regulation? How much money was appropriated?

Mr. Cochran: 600 million dollars.

CHAIRMAN SCULLY: How many new attorneys and how much staff to oversee the administrative agencies and how much for that review.

MR. LONG: The legislature determined by statute that a convict could be paroled for good time, but would not explain what was meant by good time. Before the administrative procedures act. This is just an example, of course.

There followed a very heated discussion about district and state representation, the various boards, the position of the administrative versus the judiciary, etc.

Hearing closed on House Bill #117.

Rep. John Scully, Chairman

Mary Ellen Connelly, Secretary

The Independent Record

P. O. BOX 4249

HELENA, MONTANA 59601

(406) 442-7190

My name is Ronald Semple. I am publisher of the Helena Independent Record and I am chairman of the Freedom of Information Committee of the Montana Press Association.

I am grateful for this opportunity to testify in favor of the proposed changes to Montana's Shield Law (House Bill # 116).

The proposed changes in the Shield Law strengthen it and make its intent clearer.

The new, stronger law will make it easier for reporters and editors to do their job of informing the people.

This law is not designed to protect reporters and editors but rather it is designed to protect the people's right-to-know by permitting reporters and editors to gather information in the only way that may be open to them.

It is worth remembering that the source of the information that ultimately led to the resignation of a president of the United States came from a person who would not reveal his identity to even the reporters involved.

A reporter who cannot protect his sources will soon have no sources.

The Montana legislature, in its wisdom, passed a Shield Law which prohibits anyone from interfering with essential news-gathering processes. We ask now that the legislature again exercise that wisdom and strengthen and clarify that Shield Law.

Montana's Capital City Newspaper

We recognize that those who would oppose a Shield Law--as well as the strengthening of it--have a strong argument when they contend that no one should be free from the obligation of giving testimony in the pursuit of justice.

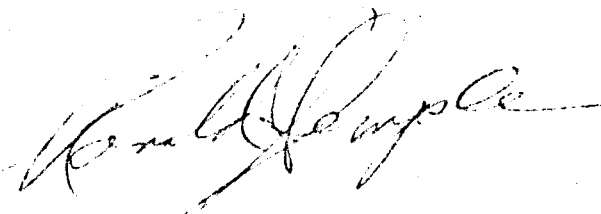
But we in the press agree that the public's right-to-know is collectively more important to society than any individual reporter's obligation to testify in court or anywhere else.

Reporters in recent years have given elequent confirmation to that contention by choosing to go to jail rather than reveal either the sources of their information or additional information which never saw print. I have no doubt that priests, attorneys, physicians and others who have a special relationship with those with whom they deal would also risk jail before they would betray confidences.

But Montana law does protect reporters, priests, attorneys, physicians and others. We should be proud of that, especially when a considerable number of our sister states are not so clear sighted.

Let us take a small step further and make a good law better.

Thank you.

A handwritten signature in cursive script, appearing to read "Ronald Semple", written in dark ink.

Bill James

Montana Press Association and

Montana Advertising Services, Inc.

1976-77 OFFICERS

PRESIDENT:
DEAN NEITZ, PHILIPSBURG MAIL
ANACONDA LEADER

FIRST VICE PRESIDENT:
GEORGE REMINGTON, BILLINGS
GAZETTE

SECOND VICE PRESIDENT:
JAMES L. RETTIG,
BIG SANDY MOUNTAINEER

THIRD VICE PRESIDENT:
LOUISE RASMUSSEN, ROUNDUP
RECORD-TRIBUNE-WINNETT TIMES

SECRETARY-MANAGER
SAM GILLULY

MONTANA ADVERTISING
SERVICES, INC.

PRESIDENT: FRANK J. BURKE,
GLENDALE RANGER-REVIEW

VICE PRESIDENT: FRED ROACH,
TERRY TRIBUNE

SECRETARY: LARRY BOWLER,
DANIELS COUNTY LEADER

January 17, 1977

Mr. Chairman:

My name is Sam Gilluly and I am Secretary-Manager of the Montana Press Association. The Association is composed of 65 weekly and semi-weekly and 11 daily newspapers in Montana.

The Association wishes to endorse HB 116. It does so because the bill authorizes an improved shield and protection for newsmen, thus providing more open government. As has been pointed out, the newsman's privilege is not for his benefit, but is given to him solely for the benefit of the public's right to know. The newsman is simply a surrogate, acting for the public.

If sources and information are not protected, in the end it will be the public that is the loser. Any news reporter, in any of the media, would tell you that he secures a considerable portion of his news from "tips" from confidential sources. And the reason that these sources are open to him is because the informants feel secure in the knowledge the reporter will keep a confidence.

The alternative, of course, is that a reporter could go to jail if he refuses to expose his source of information. In certain cases, or in some states where there is no protection such as the Montana "shield" law, the reporter does go to jail. This happens many times every year.

No doubt others here will tell you that the principle of the shield law has strong grounding in both the United States and the Montana Constitutions.

The law as amended will clarify some problems that reporters have had in Montana because it will eliminate the threat of jail for them specifically by the new language in lines 7 to 16 on Page 2 of the introduced bill.

The Montana Press Association respectfully urges your support of HB 116.

League of Women Voters of Montana

HB 117 Legislative Interim Policy Committee 1977

The League of Women Voters of Montana speaks in opposition to HB 117. We support a legislative system representative of all citizens, and this bill conflicts with that concept.

A decision made by the Supreme Court affirmed that a legislative committee should not be delegated the power to control the quasi-legislative powers of the executive branch during the interim. That power belongs to the entire legislative body. The committee could make a decision in direct opposition to what the legislature as a whole would decide, or a decision which goes against the opinion of the majority of our citizens. This is not good representation, and not in the best interest of the well-being and needs of the people of Montana.

During the past interim, the League has followed the oversight committees - the Code Committee and the Finance Committee - the creation of these committees was a step in the right direction. I followed the Code Committee so I can speak more knowledgeably about them. They were not only able to act as a "watchdog" in the rule-making area, with avenues available to them to keep the agencies aware of what the Legislature expected, but they were able to see problems with the rule-making process, and draft legislation they thought could better the process - however, the entire legislature still has the final say, and this is the way it should be. In our opinion, to allow a committee to serve as a "mini-legislature" is carrying the "watchdogging" too far.

Therefore, we urge you to vote against HB 117.