

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
JANUARY 29, 1979

The regular meeting was called to order by Chairman Scully at 8 a.m. in room 436 of the Capitol Building on Monday, January 29, 1979. All members were present, however Representative Day came in later.

Bills scheduled for hearing were:
House Bills 345, 352, 355, 368, 369,

389, and 390.

HOUSE BILL NO. 355:

Representative Hurwitz, chief sponsor of the bill stated that the bill would require a claimant to first permit an alleged libel to be corrected before claiming punitive damages. We can call this a retroactive bill. The Montana Press Association is supporting this bill. The statute was designed to give the publisher a chance to retract before he was sued. This bill would change the existing section to read before he can file suit he must ask for a retraction. It is difficult to establish damages by means of libel.

JACK RAMIREZ:

House District #64. I want to expand a little bit on this bill. It gives the right to get punitive damages. I just wanted to mention a fact, that punitive damages are solely meant to punish the defendant. The Supreme Court has indicated there should be some restriction on punitive damages. I think punitive damages are abused so there is a justifiable reason for limiting an action. We are trying to balance the right of a free press against an individual.

MIKE MELOY:

Montana Press Association. I don't want to spend a great deal of time. There are two things I want to comment upon. This bill is not necessarily to help the newspapers. With the recent Supreme Court decision this statute has been rendered unconstitutional. He then went on to discuss the newspaper and the retraction. The second point, I have had several newspapers who have contacted me about a story that they might run and I have advised them that there is no mechanism for large damages so they should not print it. Weeklys will not be publishing things they should be publishing. This doesn't prevent anybody from suing but you have to notify the newspaper and give them the chance to retract it. He went on at some length in this same vein.

RON SAMPLE:

Independent Record. When I came to the newspaper they had a policy that they would settle law suits out of court, under no circumstances. They would have to sue us. This bill would put us back in the business of printing news. Without this we are back to the threat of minor suits hanging over our heads. He went on in a similar manner for a few minutes and stated he was in full support of the bill.

BILL MERRICK: Montana Broadcasters. I support the bill. We have a lot of small newspapers in the state and we also have a lot of small radio stations and we feel we are in the same boat with these print media. He stated his feelings about the bill in a similar fashion.

ROB BURNS: Television State Bureau. They asked me to stand in back of this bill. We do, in fact, support the bill.

REPRESENTATIVE HURWITZ: I just urge that you pass this bill.

REPRESENTATIVE KEMMIS: What does it take to establish a prima facie case before a judge.

MR. MELOY: I think you have to show that the libel was made maliciously without future knowledge of what the consequences would be.

Representative Scully explained to the committee how this would work.

MR. MELOY: In a libel action the damages are punitive damages. What this bill would do would be to permit the newspaper to know that the thing could be retracted before they were sued. He went on and explained how an actual case might work.

REPRESENTATIVE KEMMIS: I don't see the difference here between what we are doing and what the Supreme Court has already said is unconstitutional.

MR. MELOY: What this bill says is that if you are going to sue for punitive damages you have to ask for a retraction first.

There was no further discussion and the hearing closed on House Bill 355.

HOUSE BILL NO. 389: Representative Keedy said that this bill would remove the amount of recovery a person is entitled to in a civil action against the parents of a minor child. The present law specifies a ceiling, for the liability of parents for and destruction of property. This bill would shift the burden of loss to the shoulders where it belongs. In addition to court costs reasonable attorneys fees would be set by the court.

There were no questions, no discussion and the hearing closed on HB 389.

HOUSE BILL NO. 369: Representative Teague will carry this bill for the committee because the chief sponsor Representative H. Robbins could not be here. On the third page are the few changes the Department of Revenue are asking for. He outlined a few of the things in the bill and then said that he would turn it over to someone from the Department of Revenue.

BRUCE MCGINNIS: Chief Counsel, Department of Revenue.
These changes are to correct a situation in reference to collecting income tax. He went through the body of the bill and explained it. In discussing the method of notifying the person he said it could be done by mail as they have a limited staff and could not deliver personally, and this bill would allow that. Another change, they have to serve a levy every payday. This would allow them to have continuing service. This would allow so much more efficiency in collection of delinquent income tax.

REPRESENTATIVE LORY: Shouldn't this be by registered mail?

MR. MCGINNIS: Usually this is not sent to the taxpayer, it is a bank or the employer. They do go by certified mail.

REPRESENTATIVE KEMMIS: I do see in section 50-33-11 until we come to the new material, is there another section that gives the Department authority to levy against wages.

MR. MCGINNIS: There is another section that says we can levy on wages.

There was some further general discussion and no further questions, the hearing

closed on House Bill No. 369.

HOUSE BILL NO. 345: Representative Vincent. I have a summary of the legislation I want to pass out. He explained the bill briefly and some of the changes that were part of it.

Representative Scully asked if Mr. Vincent knew if this was the only bill on open meetings in the house. Representative Vincent said he did not know for sure. (copy of testimony attached)

Mr. Vincent, when questioned about how a meeting might be closed, if a meeting is closed there has to be some way that the meeting was properly closed. Page 2 refers to the presiding officer. This overall intent is to help assure that the open meeting law is adhered to.

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MIKE MELOY:

Montana Press Association and Lee Newspapers. My clients are interested

in this open meeting law because they are the ones that get closed out of a meeting. He gave examples. The first section talks about notice. In other words a meeting could be held without giving any notice to the public and it would violate the statute of the constitution. He gave an example of a case. This new section is taken directly from Judge Bennett's opinion providing that reasonable notice be given. He mentioned times that might not be covered by the open meeting law. As he continued on through the bill and ended, he said these are the changes. They are not monumental, but they are fairly comprehensive.

FRED LARKIN:

President of MBA. There are a lot of ambiguous terms in here. Sometimes

the leader is not interpreting the law properly. We respect the right of individual privacy but we also respect the right of the public to know.

BILL MERRICK:

Montana Broadcasters Association.
We support this bill.

BILL RELER:

KBOZ, Bozeman. In our small community this open meeting law has been abused.

I would like to go on record as supporting this bill.

ROB BURNS:

Television State Bureau. We think this bill will clear up the section

for the public right to know.

LES LOBLE:

Montana-Dakota Utilities. I would just like to make some remarks about

the bill. I want to give you some examples, not on the bill but on the statutes when decisions may be declared void. It must be commenced within 30 days. He went on and elaborated. I think you should consider the part of the present law that is not before you before you deal with this. When you combine the existing elements of this bill with the existing law you have the elements for abuse. I think this legislation has very wide reaching effects. I would like to see an amendment to the bill.

WAYNE BUCHANAN:

Montana School Board Association.

We have consistently taken the position of the public's right to know. He gave a copy of his testimony. (attached)

CHAD SMITH:

This is a lawyers relief act. I can find so many technical errors in this

bill. There is litigation pending at the present time. I don't believe that this legislation is beneficial to the public. About the section on reasonable notice, I can't find anything more ambiguous than that. He gave examples of what people might think constitutes

reasonable notice. He then went through the bill and took it apart. The Attorney General has already written an opinion on this. Especially what the law already provides, and this is totally inconsistent. The idea of a closed meeting and it should not be recorded because you defeat the idea of a closed meeting. It is to protect the privacy of an individual. The last sentence is unnecessary and the second sentence is totally unworkable. He gave several examples of cases that might deserve privacy in a school. He went on and talked about inconsistency if we have two different statutes dealing with how the meeting will be closed. I do not remember reading a bill that has more ambiguities built into it and we respectfully ask that you not pass this bill.

MR. VINCENT:

I don't think I want to take up the committee's time on these things.

I think some of the points make light of the open meeting and the public's right to know. I am upset that that tactic was taken. He answered a few of the points Mr. Smith had made and read the opinion written by Judge Bennett. I know that the legislative process in the most open in the state and we function quite well. We have to keep everything in perspective. I think the opponents are over-reacting to cases that have already happened. There have been abuses and this bill is an attempt to close some of the loopholes. I think the right of privacy has been abused. The bill states that the right to privacy has to be asserted by the individual. This bill makes it that the business of the public is conducted in the public. I would like to request of the committee that any questions be referred to Mr. Meloy if they are of a legalistic nature.

REPRESENTATIVE CONROY:

On page 3, line 18, why the words "in camera" inserted.

MR. MELOY:

public inspection.

That means in chambers and are in closed meeting and not available for

MR. CONROY:

make that decision.

I have problems with section five. I don't understand why the board can't

MR. MELOY:

individual doesn't know. That section represents what ought to be done. This section would at least let the individual know so that the meeting can be open or closed.

REPRESENTATIVE IVERSON:

Asked about personnel problems that might come up on a school board.

REPRESENTATIVE LORY:

What are agents of the agencies.

MR. MELOY:

Line 20, section 2, the reason for that change was to conform that

section to section 4. It won't hurt the bill if you take that language out. He added that that language was added to conform in section 2 with section 3. The reason for subsection 4 is to make it clear you cannot avoid the open meeting law by appointing someone to do their deliberating for them.

There was general discussion about rights of boards and the minutes of a meeting and a closed meeting, and Mr. Meloy said that the minutes in a closed meeting must also be kept closed.

Representative Kemmis stated that there are two distinct sections that talk about the right of privacy, page 2 and page 3 that seem to address the same topic and I wonder why subsection 2 was not amended to include that section. Mr. Meloy said that could be incorporated very easily.

Representative Kemmis asked Chad Smith several questions about his testimony. Mr. Smith said that in some cases the board had to take responsibility to close a meeting.

Representative Keedy asked Mr. Smith If the public's right to be informed of meetings of public bodies and agencies how is that going to be possible unless the public is aware a meeting is taking place. Mr. Smith said that he did not know what reasonable notice is and that it must be defined. Let's set up a simple uniform notice provision.

Representative Keedy asked what is the intent of the new section on page 3. Some general discussion followed this and there were no further questions and the hearing closed on House Bill 345.

HOUSE BILL NO. 368:

Representative Dussault, as the sponsor of the bill a reporter may not be forced to disclose any information obtained or prepared or the source of that information disclosed if the information was gathered, received, or processed in the course of his employment. In 1977 the statute was amended. She talked of the recent decision by the Montana Supreme Court. That protection does not extend to the reporter. She explained what the Supreme Court had said and explained the bill. This bill would clarify the coverage of the reporters confidence act.

MIKE MELOY:

Press Association. I believe that Representative Dussault has explained the bill and what it will do very well. He discussed the Rector case in Eureka. The judge in this case decided that it only applied to the newspaper reporter but not the agency. The distinction there is a

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very carefully drawn one. He went on and talked of the reporter and the agency and the point of distinction.

RON SEMPLE: Independent Record. At any time that a newspaper does not check anonymous sources there is a conflict of the credibility of the source. He went on to talk about the credibility of the sources. The access to judgment has been cut off from reporters, the only thing the newspaper management has is his experience and judgment. You should afford the same shield protection as you do to the reporter.

BILL MERRICK: Montana Broadcasters. We have a different situation than you find in the press. But, if a newsman has confidential sources he can't reveal them at all. He went on to say that Senator Stan Stevens, a broadcaster is in full support of the bill.

FRED LARK: MBA. I beleive that it is imperative that we have this protection. He talked about the regulations they had to adhere to, the federal as well as the state. We are talking about being a professional broadcast journalist and how you are going to inform the public.

ROB BURNS: Television Bureau. We support this bill.

Representative Kemmis asked about the change at the top of page 2. Could they be asking to waive this testimony by offering to produce. There was some discussion about this aspect.

Representative Daily said that in his mind House Bill 345 and 368 seemed to be in conflict and wanted them explained and what the contrast was. After this was done and there was no further discussion the hearing closed on House Bill 368.

HOUSE BILL NO. 390: Representative Teague, this is a simple little bill. He mentioned a case in New Yourk as the reason for this bill. I feel there is a limit that should be placed on some of these freedoms. I believe in freedom of the press but I want to make one point before I go on. I believe the judges discretion should be brought into it and decide if the evidence is of an absolute nature.

REPRESENTATIVE CURTISS: I have a copy of a statement made by Carl Rieckmann, the publisher of the Tobacco Valley News at Eureka. The statement pertains to both HB's 389 and 390. (copy attached)

RON SEMPLE: OPPONENT

Independent Record. The intent of the bill is to pursue justice. Some things I can't tell you about newspapers. We live and die in many cases on confidential sources. He went on and told about some cases, police cases and confidential sources that sometimes helped in breaking a case. In some police cases I think that should include enlisting the press. If you do pass this bill will you please give some thought to the prison reform because a lot of us will be going to be there. He elaborated some on why he felt this to be true.

MIKE MELOY:

Lee Newspapers. What you have before you was a section of law first passed in 1942. It was passed before most states considered protecting reporters. In many cases most of the evidence uncovered in major cases was by newspaper reporters. These sections do not apply to criminal proceedings. If you make this a civil shield law you would be making it meaningless. Maybe we can participate with amendments. He explained his feeling on this further.

HUGH VAN SWEARINGEN:

Associated Press. He discussed the 6th amendment to the Constitution, and the danger that might be involved.

FRED LARK:

KXLO, Lewistown. We oppose this bill. We cannot have gestapo tactics in private business. We supply everything with the exception of confidential sources.

ROB BURNS:

TV Bureau. I oppose this bill.

BILL REIER:

KBOZ. If we have to expose the source the information won't be there. The public has a right to know and if you deny us that source you will lose. We have a responsibility to provide you with all the information we can.

REPRESENTATIVE TEAGUE:

We have to protect the person behind bars. There was discussion about possible amendments and Chairman Scully suggested that Mr. Teague contact Mr. Meloy about them.

CHAIRMAN SCULLY:

I have a comment I want to make. What about the individual. You protect the press and the reporter. What about the individual that is directly involved. He asked rather pointed questions which noone could answer.

Discussion about the reporter and his information. Mr. Semple said there is a system of checks and balances among the media. One reporter and the competition against another reporter.

REPRESENTATIVE KEEDY:

I have a question that does relate directly to the bill. What is the distinction between the right of a private individual and a public official. Mr. Semple said that the right to privacy does exist when you are dealing with private individuals. Some further discussion on this.

No further questions and no further discussion and the hearing closed on

House Bill No. 390.

HOUSE BILL NO. 352:

Representative Kessler, sponsor of the bill said that this bill would clear up some abuses. We have a large number of people who register out of the county to save license fees. What this act calls for is an issuance of a sticker for the county on the plate. I have an amendment to designate the place. The upper left hand corner.

REPRESENTATIVE LORY:

Is it possible to use the title to remove all personalized plates.

Amid much laughter Mr. Scully said "no, they could not".

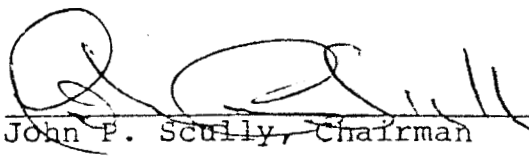
There was no further discussion and no questions and the hearing closed


on House Bill No. 352.

Mr. Scully gave the committee his ground rules for the large hearing to be held the following day on House Joint Resolution No. 15.

He also said that on Wednesday they would have action on the open meeting bill and the shield bills.

The meeting adjourned at 10:35 a.m. and went into executive session on several bills pending.


John P. Scully, Chairman


Mary Ellen Connelly,
Secretary