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New FOL bill passed by Senate Subcommittee

Legislation that would give the government sweeping new powers to deny citizens access to records under the Federal Freedom of Information Act has passed the Senate Subcommittee on the Constitution by a 3-1 vote.

The dissenter was Sen. Patrick J. Leahy (D.-Vt.), who fought unsuccessfully during a final drafting session December 14 to delay reporting out FOIA legislation until after the upcoming holiday congressional recess. Voting for the measure, which combined elements of two bills, S. 1730 and S. 1751, were subcommittee chairman Orrin G. Hatch (R.-Utah), Dennis DeConcini (D.-Ariz.) and Strom Thurmond, (R-S.C.).

Reaction to the vote from press representatives was swift and highly unfavorable. Several said the final form of the bill indicated to them that extensive consultations between media groups and the subcommittee staff since introduction of the two bills had been to no avail in promoting any compromise with proponents of drastic FOIA reforms.

"The way this bill came out is a major setback for openness," said Art Sackler, general counsel of the National News-

paper Association. "It's the government pulling a kind of vanishing act. There's an awful lot that has been available up until now that won't be under this bill."

Sackler gave short shrift to Sen. Hatch's statement during the mark-up hearing that the press had had full opportunity to present its views during public hearings and discussions with subcommittee staff. "That's true," said Sackler. "We testified, and a number of us talked with (staff), but as far as I can see, we didn't move them on much of anything . . . They talked to us, but they certainly didn't take anything we had to say very seriously."

Charles Rowe, chairman of the American Newspaper Publishers Association's FOIA Working Group, called the subcommittee vote "disappointing" and vowed to "fight hard against the significant revisions . . . which would result if this bill became law." Rowe is the editor of the *Fredericksburg (Va.) Free Lance-Star*.

The bill reported out by the subcommittee draws from amendments introduced by Sen. Hatch (S. 1730) as well as a draft bill put forward by the Reagan

Administration.

The final bill contains broad new exemptions from FOIA disclosure requirements, particularly in two areas of trade secrets and law enforcement records. The Administration also favors broad exemptions for the intelligence agencies, such as CIA, the National Security Agency and the Defense Intelligence Agency, but did not deal with the intelligence agencies in its bill. The bill reported out of Hatch's committee contains no language directly broadening the current exemption for national security secrets.

The bill does contain some changes endorsed by press representatives, including a provision for expedited access for FOIA requests expected to "benefit the general public," a provision directing agencies to set up uniform fee schedules and another providing for reduced fees, or fee waivers, when an agency determines release of the information would benefit the public more than it would benefit any private interest of the requester.

"I can't say we didn't get something" from the discussions with subcommittee members and staff, said Richard Schmidt counsel for the American Society of Newspaper Editors. "But we sure didn't get very much."

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