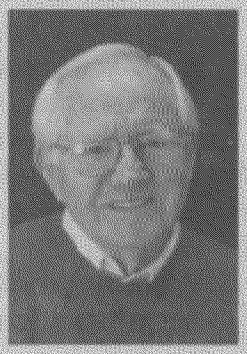
Protection from knowledge's heavy hand



Jason A. Lillegraven
Perspective

Few among us have been charged with 'Criminal trespass' through Wyoming statute (W.S. 6-3-303). Yet, as a person uncongenial to small mammals, I might knowingly choose to cross a fence into private lands with my bagpipe and serenade prairie dogs. Under Wyoming law, that trespass could be a misdemeanor punishable by my imprisonment for as much as six months — suffering a fine up to $750 — or both. The prairie dog town would cheer upon my conviction.

But since the 2015 General Session of Wyoming's Legislature, if I were to leave my bagpipe in the car and hop that same fenceline with a sampling jar to capture a liter of free-flowing air (intended to become "resource data" for chemical analysis by Wyoming's Department of Environmental Quality), things get more serious. Newly introduced Senate File 12 (now law under Wyoming Statute 6-3-414) could have me sent to jail for a full year or (following a previous conviction) lead to a fine up to $5,000, or both. Newly gained knowledge notwithstanding, my offense would have been "trespassing to unlawfully collect resource data or unlawfully collecting resource data."

Even though not offending with my bagpipe, my jail term under SF12 could be doubled beyond W.S. 6-3-303, and my fine could be multiplied by 6.67. In what sense had my (hypothetical) collection of resource data become a criminal offense (i.e., harming the community at large) warranting such markedly heightened punishment? SF12 offers no guidance toward answering that basic question, but it is identified as "AN ACT relating to crimes and offenses."

Oh, yes! Did I mention the existence of SF12's companion statute (introduced as SF80 and, come July 1, to be W.S. 40-26-101)? It is identified as "AN ACT relating to trade and commerce." That separately defined act is intended to reflect action under civil law (rather than criminal law). Both bills were signed into law by Wyoming's governor. Except for their contents that specify direct punishment (i.e., applying criminal law in SF12) opposed to financial redress via lawsuits (applying 'civil law' in SF80), the statutes are worded nearly identically. The titles for both acts are: "Trespass[ing] to unlawfully collect resource data; unlawful collection of resource data" [the '-ing' exists only in SF12]. There exist no differences whatever between the two acts in their statements of relevant offenses or any other circumstances. The stated "offenses" themselves are identical between the statutes.

Is it usual — or necessary — to have two separate new laws that state identical "offenses" and differ only in categorization into criminal or civil law? Is that kind of distinction — in the absence of difference — needed in Wyoming law? Why does SF12 make no reference to the very existence of SF80? Who would decide whether the gathering of new knowledge (gained by sampling for resource data) was criminally motivated or relevant to trade and commerce? Should Wyoming be known as a place in which the very gathering of knowledge (intended as resource data) is considered a criminal act requiring magnified penalties? Who might inappropriately take it upon himself to misconstrue a scientist's honest efforts toward fundamental, basic research as criminal gathering of resource data? Such uncertainties will discourage conduct of basic research within Wyoming's boundaries — and that would only be a loss to the state.

Yes, a person knowingly entering lands to which he is not authorized is illegal. Also, yes, with GPS technology self-locating is precise. But because land-use maps quickly become outdated, one must haunt county-courthouse records to learn gerrymandered boundaries. Most researchers are conscientious in honoring restricted lands, and their dedicated and labor-intensive activities in data-gathering hardly ever cause significant property damage.

Constitutional issues involving free speech and civil liberties almost surely will lead to overturn of these two statutes. Reading the wealth of analysis presented under the search heading 'Ag Gag Bill' within The Huffington Post, for example, yields profound and distressing parallels with SF12 and SF80.

But for now, I mainly question the intentions of those who wish to see new resource data (even if gathered under inadvertent trespass and involving no property damage) precluded from further evaluation, expunged from all files and databases, and precluded from consideration within any actions by regulatory agencies. Those antediluvian requirements are expressed in both laws, and they could make us look, far into the future, like buffoonish hicks. I favor an atmosphere that values new knowledge and welcomes its gathering by Wyoming's brightest students and professional members of our scientific community.

■ Jay Lillegraven seldom plays his bagpipe in Laramie.