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INTRODUCTION

In early 2003, the MLRC BULLETIN examined criminal defamation (libel and slander) laws in the United States.¹ The BULLETIN explored the history of these provisions, analyzed recent threatened and actual prosecutions, and compiled all applicable statutes.

That BULLETIN found that 19 American jurisdictions still have statutes criminalizing statements that harm reputation.² The BULLETIN also surveyed related statutes that apply in certain specific circumstances – statements about banks, police officers, or in political campaigns, for example.

The BULLETIN also found 77 threatened or actual prosecutions for criminal defamation from 1965 to 2002. Of these cases, 21 (27.8 percent) were dropped by prosecutors; 14 (18 percent) ended with motions to dismiss being granted by either a trial or appellate court; three (3.9 percent) ended with plea bargains, 25 (32.4 percent) ended with convictions; one case (1.3 percent) ended with an appeals court overturning a conviction; the results in 13 cases (16.8 percent) were unknown.

This BULLETIN is an update to with developments from 2002 through the end of 2004. It details new developments in general criminal defamation statutes, including one successful and several unsuccessful efforts to repeal these provisions, appeals of criminal defamation prosecutions that were pending in 2002, and several new prosecutions since then. It also details new developments regarding police and election libel statutes, including a complete listing of all jurisdictions with laws providing for penalties for false statements in the context of political campaigns.

Finally, this BULLETIN looks at some recent developments regarding criminal defamation laws outside the United States. In many of these countries, criminal defamation laws are a serious threat to press freedom; thus it is gratifying to see that several nations have recently repealed such laws, and that several international tribunals have formally condemned them.

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¹ See 2003 MLRC BULLETIN No. 1 (March 2003).

² These 19 jurisdictions are Colorado (see Colo. Rev. Stat. § 18-13-105); Florida (see Fla. Stat. § 836.01-836.11); Idaho (see Idaho Code § 18-4801-18-4809); Kansas (see Kan. Stat. § 21-4004); Louisiana (see La. Rev. Stat. § 14:47); Michigan (see Mich. Comp. Laws § 750.370); Minnesota (see Minn. Stat. § 609.765); Montana (see Mont. Code § 13-35-234); New Hampshire (see N. H. Rev. Stat. § 644:11); New Mexico (see N.M. Stat. § 30-11-1); North Carolina (see N.C. Gen. Stat. § 14-47); North Dakota (see N.D. Cent. Code § 12.1-15-01); Oklahoma (see Okla. Stat. tit. 21 §§ 771-781); Puerto Rico (see P.R. Laws, tit. 33, §§ 4101-4104); Utah (see Utah Code § 76-9-404); Virginia (see Va. Code § 18.2-417); Virgin Islands (see 14 V.I. Code § 1172); Washington (Wash. Rev. Code 9.58.010 and § 9.58.110); and Wisconsin (Wis. Stats § 942.01).
A. GENERAL CRIMINAL LIBEL DEVELOPMENTS

There have been developments regarding general criminal defamation statutes in seven jurisdictions.

This includes 11 threatened and actual prosecutions. Three of these ended without charges being filed, and two ended when courts granted motions to dismiss the charges (one of these dismissals is being appealed). A trial is pending in one case. There was a guilty plea in one other case, and there were two convictions (both of which were appealed; one of the convictions was upheld, while the other appeal is still pending). The results in two cases are unknown.

Three of these cases involved media entities as defendants: two in Kansas, and one threatened prosecution in Colorado.

There were also cases in two Native American tribal courts. Both of these ended when the charges were dismissed.

There have been six cases challenging the constitutionality of criminal defamation provisions since 2002. One of these ended with a ruling that the statutes were unconstitutional, one ended with a ruling finding the statute unconstitutional as applied, one ended with a court upholding the statute, one was voluntarily dismissed by the plaintiffs, and two cases – both appeals of dismissals – are pending.

Arkansas

Arkansas v. Craft: Result unknown (charges probably dropped 2003)

Edmondson, Ark. police officer Ozell Craft was stopped by Arkansas state trooper Sammy Koons while Craft was rushing his wife to the hospital in August 2003. Craft complained about the stop and Koon’s alleged uncourteous behavior to his supervisor, police chief James Rainey, who filed a formal complaint in a letter to the state police director. Koons then filed affidavits at the St. Francis County Court charging Craft and Rainey with criminal slander based on the letter. The result of the case is unknown, although the charges were probably dropped (the prosecutor was reported to be looking into constitutionality of the prosecution).

Colorado


In Dec. 2003, Greely, Colo. police officers executed a search warrant at the home of Thomas Mink, a college student who operates the “Howling Pig” website, which satirizes and ridicules
administrators, faculty, and staff at the University of Northern Colorado. The officers told Mink that they were investigating charges of “felony criminal libel,” based on a complaint by a UNC professor.

Mink, with the assistance of the ACLU, filed his own suit in federal court in January, alleging civil rights violations and seeking an injunction against any further investigation or prosecution. (Briefs and documents from the case are available on the Colorado ACLU web site, www.aclu-co.org.)

Chief Judge Lewis Babcock issued a temporary restraining order on Jan. 9, 2004 and the criminal investigation was dropped. The court then ruled in September that Mink’s request for a preliminary injunction was moot.

On Oct. 27, 2004 Judge Babcock ruled on several motions in the case. He held that the local District Attorney and his deputies were immune from suit, and that Mink lacked standing for his remaining claims, since the D.A. had assured Mink that no charges would be brought against him. Thus Babcock dismissed the case entirely. Mink v. Salazar, No. 04-CV-23, 2004 WL 2430092 (D. Colo. Oct. 26, 2004). Mink has appealed to the 10th Circuit. No. 04-1496 (10th Cir. filed Nov. 26, 2004).


In August 2000, Priscilla and Fleet White, Jr. asked Boulder, Colorado, police to investigate The (Boulder) Daily Camera for allegedly violating Colorado’s criminal libel statute by publishing an article on Feb. 25, 2000 in which a California woman theorized that Jon Benet had been killed during a party focused on child sexual performances. The woman claimed that she had been the victim of such activity as a girl. The article led Boulder police to investigate the woman’s claims, but found them to have no merit.

The Whites sought prosecution of the newspapers that published the story, the reporters that wrote the stories, and individuals who discussed the story on various web sites, claiming that the articles implicated them in the death. Fleet White was with Jon Benet’s father when he discovered her body.

The White’s complaint led to an investigation by police and the Boulder County District Attorney’s office. In Sept. 2000 the office, citing a conflict of interest, requested that a special prosecutor be appointed. A special prosecutor was assigned, but the case was eventually dismissed. But it was revived in November 2000 when Boulder County District Court Chief Judge Roxanne Bailin appointed a new special prosecutor: El Paso County District Attorney Jeanne Smith.

Whites filed suit against Smith in February 2003, demanding action in the investigation. The suit was filed in anticipation of the expiration of the three-year statute of limitations for criminal libel. See White v. Smith, No. 2003CV000207 (Colo. Dist. Ct., Boulder County filed Feb. 2, 2003);


David Temple Stephenson was arrested March 10, 2004 on various charges, including five counts of criminal libel. The criminal libel charges allege that Stephenson sent disparaging letters on government stationary and created disparaging web postings about 14 people he has grudges against. Hearings in the case were held on June 23 and Oct. 18, but a jury trial originally scheduled for mid-November has been re-scheduled to begin Jan. 31, 2005.

Kansas

2003 Kansas Senate Bill 3


In July 2002, the publisher and editor of a small political newspaper, The New Observer, were convicted by a jury of multiple counts of criminal defamation under Kan. Stat. § 21-4004 for articles falsely alleging that the Mayor of Kansas City – who was then running for reelection – and her husband, a judge, lived outside the county in violation of the law. Kansas v. Carson, No. 01-CR-301 (Kansas Dist. Ct. Wyandotte County jury verdict July 17, 2002).

After the defendants’ motion for a new trial based on alleged juror misconduct was dismissed, the publisher and editor were both ordered to pay $3,500 in fines, and sentenced to one year unsupervised probation; the sentences were suspended pending appeal.

The conviction was affirmed by the Kansas Court of Appeals. Kansas v. Carson, No. 90,690


On March 13, 2003, criminal defamation charges were filed against Larry Hiatt, publisher of the weekly Baxter Springs News in Baxter Springs, Kansas; newspaper columnist Ron Thomas; and city council candidate Charles How, Jr. The charges stemmed from a column and political advertisement in the March 11, 2003 edition of the newspaper which criticized Baxter Springs City Clerk Donna Wixon. The criminal defamation charges were brought under a city ordinance which adopted the Uniform Public Offense Code for Kansas Cities, which includes a municipal criminal defamation provision with the same language as Kan. Stat. Ann. § 21-4004.3

The charges were dropped in June 2003 after the local prosecutor, who recused himself, was unable to find a substitute to prosecute the case. See City of Baxter Springs v. Hiatt, No. 03-CR000909 (Kan. Municipal Ct., Baxter Springs dismissed June 2003).

Hiatt and the other criminal defendants then filed civil cases against the city challenging the ordinance on constitutional grounds. The municipal defendants have filed motions to dismiss. How v. City of Baxter Springs, No. 04-2256 (D. Kansas filed June 3, 2004), and Thomas v. City of Baxter Springs, No. 04-2257 (D. Kansas filed June 3, 2004).

Kansas v. Meixelsperger, No. 03CR00744 (Kansas Dist. Ct., Johnson County plea accepted Dec. 29, 2003).

In March 2003, Johnson County, Kansas prosecutors filed criminal defamation charges against Wesley Meixelsperger for allegedly posting a page about his estranged wife on a web site featuring sexually explicit personal advertisements. The page included false information about his wife, and photographs of a woman that visitors were led to believe was Meixelsperger’s wife, but was not.

Prosecutors originally agreed to allow Meixelsperger to enter a diversion program which would lead to the eventual dismissal of the charge, but balked after a woman he was dating admitted that she had written letters that the program required Meixelsperger to write to his estranged wife and three sons. In December 2003, Meixelsperger plead guilty to the criminal defamation charge

3. Approximately 250 Kansas municipalities have adopted the Code in some form. MLRC is specifically aware of 52 Kansas municipalities that have adopted the Code’s municipal criminal libel provision. We are also aware of similar municipal libel provisions in one municipality in Colorado, one in Oregon, ten in Utah, and 18 in Washington state.
and was sentenced to one year probation. He also had to rewrite the letters, this time in his own handwriting, and submit them to the judge.

**Minnesota**

*Minnesota v. Morse*, No. ______ (Minn. Dist. Ct., Hennepin County filed July 2004).

In July 2004, Stephen S. Morse was charged with five counts of criminal defamation and one count of distribution and exhibition of obscene materials, after he allegedly transposed pictures of the faces of his mother-in-law’s sister, three sisters-in-law and a family friend onto pornographic images, then posted the resulting pictures on the Internet. The domain name of the web site was registered to a “D. Cooper” at Morse’s home address, and a search of Morse’s home found a computer containing images identical to those on the web site. The result of the case is unknown.


On Oct. 26, 2004, the Taxpayers League of Minnesota began running a radio advertisement opposing a proposed extension of a half-percent local sales tax and criticizing St. Cloud, Minn. Mayor John Ellenbecker, who supported the measure. Ellenbecker claimed that the ads implied that city officials were “engaging in some sort of criminal activity.” He said that he and the city would not pursue a civil action against the group, and the *St. Cloud Times* reported on Oct. 27 that Mayor Ellenbecker “wouldn’t rule out seeking a criminal investigation.” There have been no further reports.

**Montana**

**Amendments to Mont. Stat. 45-8-212**

The Montana criminal libel statute was amended in 1997, after the state Supreme Court down the statute as facially unconstitutional because it did not expressly provide for truth as an absolute defense. *State v. Helfrich*, 922 P. 2d 1159, 1162 (Mon. 1996).


**Puerto Rico**

**Law 149 of June 18, 2004 (repealing P.R. Laws Ann. tit. 33, §§ 4101-4104).**

Puerto Rico has enacted a new penal code that is effective May 2005. The new code does not contain any criminal defamation provisions, and will supercede the current provisions.

The mayor of the town of Yauco, P.R. was accused of criminal libel under P.R. Laws Ann. tit. 33, §§ 4101-4104, for expressions regarding a political adversary which implicated the latter in criminal activity. The Puerto Rico trial court denied the defendant’s motion for dismissal of charges, and he appealed. The appeals court dismissed the case, because the complainant was held to be a public figure, consistent with De Jesus Mangual v. Rotger Sabat, 317 F.3d 45, infra. Pueblo v. Nazario Gonzalez, KLCE0300744, 2003 WL 23317679 (P.R. T.C.A.. Sept. 15, 2003). The Commonwealth initially requested certiorari, but then requested that the Puerto Rico Supreme Court dismiss the case. No. J4CR200300014 (P.R. dismissed 2004).


In March 1999, Obed Betancourt, a full time reporter for El Vocero de Puerto Rico, was summoned with a complaint for criminal libel under P.R. Laws Ann. tit. 33, §§ 4101-4104, based on several articles he had written on police corruption. Betancourt and the newspaper filed suit in federal court requesting a declaratory judgment, arguing that the criminal libel statute was facially invalid.

On August 4, 1999, Federal District Court Judge Juan M. Pérez Giménez ordered that the Secretary could not prosecute Betancourt even if probable cause was found against him. Notwithstanding the order, a probable cause hearing was held before a Commonwealth judge. Probable cause was not found, and the commonwealth’s charges were dismissed on August 12, 1999. Judge Pérez Giménez subsequently dismissed the federal case as moot. El Vocero de P.R. v. Fuentes-Agostini, Civil No. 99-1272 (D.P.R. dismissed Sept. 15, 1999).

Reporting on the criminal libel proceedings against Betancourt led to another threat of criminal libel a few months later. El Vocero reporter Tomás de Jesus Mangual, who covered the Betancourt case, wrote articles stating that the criminal charges against Betancourt were part of a conspiracy by the complaining police officer and other corrupt police officers to silence Betancourt. Although the officer wrote a letter to the Justice Secretary stating that these articles were defamatory and threatened to file criminal charges against Mangual, he was never summoned or otherwise informed of any criminal charges or proceedings against him.

Mangual then filed a federal lawsuit seeking a declaratory judgment that P.R. Laws Ann. tit. 33, §§ 4101-4104 is unconstitutional. The case was dismissed by the district court, de Jesus Mangual v. Fuentes Agostini, 203 F. Supp. 2d 78, 30 Media L. Rep. 1909 (D.P.R. 2002), but the First Circuit reversed and directed the district court to hold the statute unconstitutional and issue an

The appeals court held that the statute was unconstitutional because it lacked the required standards on actual malice and truth, and could simply not be interpreted to comply with the constitutional standards. But it was unclear the ruling held the statute invalid “on its face” or only as applied to statements regarding public figures.

On remand, the federal district court in Puerto Rico entered a declaratory judgment that the statute was unconstitutional as applied to public figures, but refused to grant the plaintiffs’ motion for summary judgment, which argued that the statute was entirely unconstitutional. *de Jesus-Mangual v. Fuentes Agostini*, Civil No. 99-2049 (D.P.R. declaratory judgment Oct. 29, 2003). Another appeal to the First Circuit followed, in which the appeals court ordered the district court to rule on the summary judgment motion. *de Jesus-Mangual v. Rodriguez*, 383 F.3d 1, 32 Media L. Rep. 2255 (1st Cir. Sept. 2, 2004).

Following the second remand, the district court granted a defense motion to extend discovery. *de Jesus-Mangual v. Fuentes Agostini*, Civil No. 99-2049 (D.P.R. order Oct. 4, 2004). Plaintiffs moved for reconsideration of the extension, which was denied. *de Jesus-Mangual v. Fuentes Agostini*, Civil No. 99-2049 (D.P.R. order Nov. 8, 2004). In response, the plaintiffs moved for voluntary dismissal, saying in court papers that

Given the above-referred developments, plaintiffs have concluded that no redeeming value exists in further claiming for the speedy redress of their constitutional rights of freedom of the press. It is their understanding that, after waiting for so many years for an adjudication on the merits, a determination requiring them to submit to depositions at this stage of the proceedings is fundamentally unfair and justifies giving up their quest.

As such, plaintiffs hereby announce their decision to cease in pursuing the instant case, instead of submitting to what they understand as an unjustified additional delay.


This leaves the statute in force, at least as applied to statements regarding private figures, until the new Penal Code becomes effective in May 2005.4

4. See p. 8, supra.
Virginia


Ned Cary was employed as a maintenance technician at Anheuser Busch from 1980 to 1992, when he was fired for refusing to take a drug test, citing religious reasons. He has been involved in litigation with the company ever since. In January 2004, Cary began picketing outside of the company's plant in Williamsburg, Va., showing up between one and three times a week.

Cary was ticketed by a policeman for criminal defamation while picketing the plant on Oct. 19, for a sign that he placed in his car window that named a company official as a “Negro Nazi.” The ticket referenced Va. Code § 18.2-417, entitled “Slander & Libel.” Cary was found guilty and fined $100 (the statute allows for a fine of up to $500). An appeal is scheduled to be heard on January 19, 2005.

Washington

A bill to repeal a statute making it a misdemeanor to make a statement to a third party falsely charging a woman over age 12 with unchastity, or exposing her to hatred, contempt or ridicule, did not pass. *See* S.B. 5000, 58th Wash. Leg. (2003-04) (to repeal Wash. Rev. Code § 9.58.110).

Native American Tribes

*In addition to the cases in the various statute jurisdictions noted above, there have two cases in which Native American tribes have brought criminal defamation charges against tribal members.*

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6. The statute provides that “Any person who shall falsely utter and speak, or falsely write and publish, of and concerning any female of chaste character, any words derogatory of such female's character for virtue and chastity, or imputing to such female acts not virtuous and chaste, or who shall falsely utter and speak, or falsely write and publish, of and concerning another person, any words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace or shall use grossly insulting language to any female of good character or reputation, shall be guilty of a Class 3 misdemeanor. The defendant shall be entitled to prove upon trial in mitigation of the punishment, the provocation which induced the libelous or slanderous words, or any other fact or circumstance tending to disprove malice, or lessen the criminality of the offense.” Va. Code § 18.2-417
It important to note that tribal criminal courts have jurisdiction over tribal members only. Also, the First Amendment’s free speech provisions apply to tribal governments only by virtue of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-03. According to the Native American Journalists Association, only 64 of the 554 federally-recognized tribes have adopted their own press freedom laws.

**Citizen Potawatomi Nation v. Melot** *(Citizen Potawatomi Nation Tribal District Court, dismissed June 12, 2003).*

In December 2002, seven members of the Citizen Potawatomi Nation in Shawnee, Okla., were charged with criminal libel charges for statements allegedly slandering their tribal chairman.

The charges stemmed from a political advertisement posted on the Internet in May that accused tribal Chairman John Barrett of “underhanded” politics for allegedly sabotaging a fellow member’s candidacy for vice chairman of the tribe. Barrett prevented the ad, which was endorsed by four members of tribe’s grievance committee, from being published in the tribe-published newspaper, *HowNiKan*, and then won an injunction from the tribal court to prevent it from appearing in any other publications.

Originally, the seven were charged under a newer version of the tribe’s criminal libel statute, which had gone into effect in November 2002, which provides for banishment from the tribe but would have barred a jury trial in the case. But in February 2003 the charges were amended to cite the tribal statute in effect at the time of the alleged crime, under which the defendants faced jail sentences if convicted.

Citizen Potawatomi Nation District Court Judge Phil Lujan dismissed the charges June 5, and also sealed the case file.

The tribe’s business committee responded by firing the tribe’s attorney general and authorizing the committee’s vice chairman to hire a special prosecutor to refile the charges and pursue the case. According to postings by one of the defendants on a Indian-oriented web bulletin board, the tribe was unable to find a special prosecutor to take the case.

**Walker River Paiute Indian Tribe v. Hicks** *(Walker River Tribal Court dismissed Feb. 9, 2004).*

In 2003, tribal member Patty Hicks sent an e-mail to fellow members of the Walker River Paiute Indian Tribe questioning to use of federal funds for improvement of the Weber Dam on the tribe’s reservation in Nevada.

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7. “It is undisputed that Indian tribes have power to enforce their criminal laws against tribe members.” *U.S. v. Weaselhead*, 156 F.3d 818, 821 (8th Cir. 1998). See also *U.S. v. Wheeler*, 435 U.S. 313, 328 (1978) (“the power to punish offenses against tribal law committed by Tribe members, which was part of the Navajos’ primeval sovereignty, has never been taken away from them”).

8. This statute provides in relevant part that “No Indian tribe in exercising powers of self-government shall - make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press.” 25 U.S.C. § 1302.
The e-mail called for the recall of two tribal council members, and criticized tribal Water Resource Coordinator Elveda Martinez, stating that “every one of her projects have been flops and couldn’t be finished... As far as I am concerned, she should be in prison for raping our tribe.”

Hicks was charged under the tribe’s criminal defamation statute, based on a complaint filed by Martinez.

Hicks argued for dismissal of the charge, citing the Indian Civil Rights Act. The court granted her motion.

B. OTHER CRIMINAL SPEECH DEVELOPMENTS

False Reports of Police Misconduct

Cal. Penal Code § 148.6

Two recent court decisions have come to different conclusions on the constitutionality of Cal. Penal Code § 148.6, which makes false reports of misconduct by a peace officer a misdemeanor. The statute was upheld under the First Amendment in 2002 by the California Supreme Court, which analyzed the statute under R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) and concluded that

Section 148.6 proscribes only constitutionally unprotected speech—knowingly false statements of fact. Moreover, it does not apply to all accusations of misconduct against peace officers but only to complaints filed with a law enforcement agency in a way that legally obligates the agency to investigate the complaint. The circumstance that it covers only those persons—peace officers—who will be the subject of the mandatory investigation does not render it unconstitutional.


But a federal court ruled in July 2004 that the statute was unconstitutional. The federal court undertook its own analysis of the statute under R.A.V. and found that the speech restricted by the statute did have constitutional protection; that the statute addressed the speech itself, not its “secondary effects;” and that suppression of speech may have been the main purpose behind the law. Thus the court concluded that, “despite the California Supreme Court's contrary view in Stanistreet, the court concludes as a matter of law ... that Section 148.6 is facially unconstitutional.” Hamilton v. San Bernadino, 325 F. Supp.2d 1087, 1095 (C.D. Cal. July 7, 2004).
Cal. Civil Code § 47.5  

Similar confusion exists regarding the validity of Cal. Civil Code § 47.5, which allows police officers to file *civil* libel suits against someone who makes false charges of misconduct against them.


Two federal district courts have held that the statute is unconstitutional, but these decisions were both reversed on jurisdictional grounds. *See Haddad v. Wall*, 107 F. Supp.2d 1230 (C.D. Cal. 2000), *vacated*, Civil No. 00-56522, 2002 WL 31320295 (9th Cir. Oct 16, 2002) (vacating interlocutory order as beyond subject matter jurisdiction of the court before trial); *and Gritchen v. Collier*, 73 F. Supp.2d 1148 (C.D. Cal.1999) (finding § 47.5 unconstitutional), *rev’d*, 254 F.3d 807 (9th Cir. 2001) (dismissing case because officer was not state actor when threatening suit, thus removing federal jurisdiction).

**Election Law Statutes**

**Statutes**

The 2003 BULLETIN focused on general criminal defamation statutes, but also noted related statutes that apply to false statements in the context of political campaigns. The BULLETIN did not list all such statutes, however.

In all, 19 states have “election libel” statutes, which generally prohibit false statements about candidates in the context of campaigns for executive or legislative office. In some of these states, an elections commission is charged with enforcing these provisions, often as a civil rather than as a criminal matter.

**Alaska:** Alaska Stat. § 15.13.095 covers false statements only in telephone polling and calls to convince. The penalty is damages to the opposing candidate(s).

California: Cal. Elec. Code § 18351 applies only to candidate’s statements that election officials may distribute under California law, and provides for a maximum fine of $1,000 against a candidate who “knowingly makes a false statement of a material fact in a candidate's statement ... with the intent to mislead the voters.”

Colorado: Colo. Rev. Stat. § 1-13-109 makes it a class 2 misdemeanor for any person to knowingly make, publish or circulate “any false statement designed to affect the vote on any issue submitted to the electors at any election or relating to any candidate for election to public office,” with a penalty of three to 12 months imprisonment and/or a fine of $250 - $1,000.

In 2001, Colorado Attorney General Ken Salazar proposed amending the statute to make the this "knowing" offense a class 1 misdemeanor punishable by six to 18 months imprisonment and/or $500-5,000 fine, and to create an additional offense, applicable to those who recklessly make false statements concerning candidates or issues, as a class 2 misdemeanor punishable by three to 12 months imprisonment and/or $250-1,000 fine. A bill to enact this change, and to make both provisions applicable to broadcasts, was passed by the Colorado Senate in 2003. See S.B. 03-014 (Colo. Leg. 2003). At the same time that he made his legislative proposal, Salazar concluded that it was imprudent to prosecute a group named Colorado Association of Taxpayers that had distributed allegedly false statements against a State Senate candidate, since it would be difficult to prove knowing falsity.

Florida: Violation of Fla. Stat. § 104.271 is punishable by a civil fine of up to $5,000. Making false charges under the provision is a felony, and the offender is barred from holding office.

Louisiana: Violation of La. Rev. Stat. § 18:1463 is punishable by fine up to $500 and/or six months imprisonment. The prior election libel provision was held unconstitutional in State v. Burgess, 543 So. 2d 1332 (La. 1989).

Massachusetts: Mass. Gen. Laws ch. 56, § 42 make election libel punishable by fine up to $1,000 and/or six months imprisonment.


Minnesota: Minn. Stat. § 211B.06 creates a gross misdemeanor for libel in campaign material or advertisements, and a misdemeanor for libels in letters to the editor. The penalty for a gross misdemeanor is up to one year imprisonment and/or $3,000 fine; the misdemeanor penalty is up to 90 days and/or $1,000. The current statute was held unconstitutional in Minnesota v. Prinzing, No. ______ (Minn. Dist. Ct., Freeborn County March 2004) (unpublished) (see infra); the prior statute was found unconstitutionally overbroad in State v. Jude, 554 N.W. 2d 750 (Minn. Ct. App. 1996).

bond of $500 for each instance found credible. Penalty upon conviction is up to six months imprisonment and/or $1,000 fine; upon acquittal, accuser must pay costs of prosecution.

Montana: Mont. Code § 13-35-234, which made political criminal libel a crime, was repealed in 2001. See 2001 Mont. Laws ch. 401 § 18. Mont. Code § 13-37-131, which creates a civil action for misrepresentation of a candidate’s voting record that is enforced by a Political Practices Commission, remains in effect, although a recent effort to expand the law to statements about a candidate’s background and qualifications was unsuccessful. See S.B. 452, 58th Mont. Leg. (2003). There have been two recent cases under the civil provision (see infra).

Nevada: Violations by public officials of Nev. Rev. Stat. § 294a.345, the election libel statute, are punishable by a civil fine of up to $5,000 for a first violation, $10,000 for the second, and $25,000 for the third. A bill to repeal this provision passed the state Assembly but died in the Senate in 2003. See A.B. 127, 72nd Nev. Leg.(2003). The statute is also being challenged in federal court in Nevada Press Association v. Nevada Commission on Ethics, Civil No. CV-S-02-1195 (D. Nev. filed Sept. 12, 2002), which was stayed while the legislature was considering A.B. 127. Another challenge to the constitutionality of the commission was settled with the agency intact. Mahan v. Nevada State Comm’n on Ethics, Civil No. CV-S-98-1663 (D. Nev. settled March 10, 2003). Another provision, Nev. Rev. Stat. § 294a.290, creates a voluntary code of conduct for candidates including a pledge of truthfulness; there is no penalty for violations. Nev. Rev. Stat. § 294A.345 provides that the state Ethics Commission can levy civil fines of up to $5,000 for the publication of each knowingly false statement about a candidate.

New Hampshire: New Hampshire does not have a election libel statute. A bill which would have made publishing a false statement about a political candidate a felony was defeated in the New Hampshire Senate in February 2003. See S.B. 30, 158th N.H. Gen’l Ct. (2003-04).

North Carolina: Under N.C. Gen. Stat. § 163-274(8), election libel is a misdemeanor punishable by a fine up to $1,000 and up to 30 days imprisonment.

North Dakota: N.D. Cent. Code § 16.1-10-04 creates a misdemeanor offense punishable by up to 45 days imprisonment and/or a fine at the court’s discretion.


Oregon: Or. Rev. Stat. § 260.532 allows an aggrieved party to file a civil action to recover economic and non-economic damages of up to $2,500, plus reasonable attorney fees. The judge may also remove the offending public official from office if violation is found to have reversed the election result. Court jurisdiction over election statements was upheld in In re Fadeley, 310 Or. 548, 802 P.2d 31 (Or. 1990).
**Tennessee:** Tenn. Code § 2-19-142 creates a misdemeanor punishable by up to 30 days imprisonment and/or a $50 fine.

**Utah:** Violation of Utah Code § 20a-11-1103 is punishable by fine of up to $750.

**Washington:** In addition to allowing a fine of up to $10,000, Wash. Rev. Code § 42.17.530 also allows for removal from office of offenders found to have reversed an election by violating the statute. The state’s prior statute was held unconstitutional in *State ex. rel. Public Disclosure Comm’n v. 119 Vote No! Committee*, 135 Wash.2d 618 (1998).

**West Virginia:** W. Va. Code § 3-8-119(c) creates a misdemeanor punishable by fine of up to $10,000 and/or up to one year imprisonment.

**Wisconsin:** Violations of Wis. Stat. § 12.05 are punishable by fine up to $1,000 and/or six months imprisonment.

**Prosecutions**

**Colorado: Complaint by Mac Williams** (Col. complaint made Nov. 16, 2004; no charges filed)

On Nov. 16, 2004, unsuccessful Mesa County Commission candidate Mac Williams sued the commission and the Grand Junction, Colo. *Daily Sentinel* over statements made about him at a commission meeting on Oct. 4, and the newspaper’s story and editorial on the meeting.

Williams, apparently a local gadfly and serial litigator, had sued the commission in an effort to reverse its approval of a neighbor’s plans to build a second home on that neighbor’s property. At their Oct. 4 meeting, the commissioners lambasted Williams, who was not present at the meeting, with Commissioner Tillie Bishop criticizing Williams’ lawsuit and related a freedom of information request as “another frivolous, time consuming request.” Bishop added that Williams’ prior lawsuits and document requests had cost the county $60,500.

The newspaper reported on the meeting in a news article published on Oct. 5. The following day, the paper published an editorial titled, “Mac’s costly efforts cannot be ignored,” which criticized William’s repeated lawsuits and freedom of information requests.

In his suit against the commission and the newspaper, Williams alleged that the statements at the meeting and in the newspaper constituted libel and slander, had caused him emotional distress, and caused him to lose the election. (He received only 11 percent of the vote.)

He also forwarded the complaint to the local district attorney, asking for criminal charges against the commissioners and the newspaper. It appears that William’s request to the D.A. did not cite a specific law, but implicated Colorado’s election statute, Colo. Rev. Stat. § 1-13-109.

The local district attorney recused himself from considering Williams’ complaint, and
requested that the Colorado Attorney General consider the issue. In a Nov. 24 letter to Williams, Senior Assistant Attorney General Terrance A. Gillespie said that no charges were warranted, concluding that the statements made in the meeting and in the newspaper article and editorial were opinion, and also that there was no evidence of actual malice, which is required by the election law statute.


In 2001, then-state senator Grace Schwab and the manager of the Northbridge Mall in Albert Lea, Minn. altered a sign that Malcolm Prinzing had posted on land that he rented near the shopping mall. The sign, which opposed a local school referendum, was altered by removing several letters; the letters were later returned to Prinzing by the police.

Prinzing claimed that he complained to Freeborn County Attorney Craig Nelson, but that Nelson ignored the complaint of alleged theft. Nelson claimed that he told Prinzing to make his complaint to the police, which he would then pursue, but that no police report was ever filed.

As Schwab campaigned for re-election in late 2002, Prinzing put up a new sign calling Schwab a thief and urging that she be defeated for re-election.

Local Republican officials complained that the new sign violated Minnesota’s election libel statute, Minn. Stat. chap. 211B. In response to these complaints, County Attorney Nelson sent Prinzing a letter asking that the sign be removed at least 14 days before the election, since it did not include an indicator of its sponsor. (Minnesota’s campaign disclosure provision, Minn. Stat. Ann. § 211B.04, requires campaign materials distributed with 14 days of an election to include a disclaimer stating the sponsorship of the material.)

Prinzing responded by posting additional signs against Schwab on other properties that he and his company own. He also filed a civil suit against Schwab for alleged damages caused when she altered the original sign. The damages claim of the suit included damage to the letters, and $800 for towing a banner about Schwab from Prinzing’s private plane, which he claimed was necessary because of the letter removal. Schwab responded with counterclaims for civil libel and slander, and sought a temporary restraining order against the sign. The order was denied on First Amendment grounds.

In September 2003, county attorney Nelson filed charges against Prinzing under the election statute, on the grounds that the signs were false political and campaign materials. He also filed charges under the disclosure provision, since the signs were displayed within 14 days of the election without the required disclaimer. He also filed charges against the corporation under a provision of the statute barring corporate involvement in political campaigns.

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10. This is not the only instance in which Prinzing has gotten into confrontations regarding his signs. In July 2001, a Minnesota district court judge ordered the removal of three large, red “X”es that Prinzing had placed on top of a sign advertising the sex shop which he owns. And in January 2003 he was criticized for a sign outside the sex shop, which is located adjacent to a church; the sign offered a discount for clergy.
After both local judges recused themselves, in September 2003 Steele County Judge Joe Buetel dismissed the charges against the company and the charge based on the disclaimer provision. The disclaimer charge was dismissed on the grounds that the provision violated the First Amendment, in line with *McIntyre v. Ohio Elections Comm.* 514 U.S. 334, 23 Media L. Rep. 2377 (1995) (holding similar Ohio statute unconstitutional).

After forcing prosecutor Nelson to recuse himself since he would be a material witness, in March 2004 Judge Buetel dismissed the remaining charge – distributing false campaign information – on the grounds that the statute, Minn. Stat. § 211B.16, ran afoul of the separation of powers provision of the Minnesota constitution, since it required the county attorney to exercise both executive and judicial functions. The decision is unpublished.

Finally, in Sept. 2004 Prinzing’s civil suit against Schwab ended with a jury awarding Schwab $150,000 on her libel counterclaim.


While running for Gallatin County Auditor, Jennifer Blossom made a number of charges against incumbent Joyce Schmidt. After Blossom won the election in 2002, Schmidt’s husband filed election libel charges against the victor. The Commissioner found there was no “clear and convincing evidence” that Blossom made her statements with actual malice. The decision is available at http://www.state.mt.us/cpp/2recentdecisions/campaignfinance.asp.

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11. The statute provided that elected officials who violated the campaign provisions could be removed from office for serious violations; the court apparently found that removal of elected officials was an executive function. The statute was amended in 2004 to remove the provision allowing for the removal of elected officials, and to specifically allow county attorneys (local prosecutors) to prosecute any violations of the statute. See 2004 Minn. Laws c. 277, § 5 (repealing Minn. Stat. § 211B.16 (1) and (2), and adding Minn. Stat. § 211B.16(3)).
C. INTERNATIONAL CRIMINAL LIBEL DEVELOPMENTS

A full review of recent developments of criminal defamation laws outside of the United States is beyond the scope of this report. But some recent notable developments that MLRC is aware of include:

**International Tribunals**


In the Costa Rica case, the court ordered the annulment of a reporter’s conviction for defaming a diplomat, holding that the Costa Rican trial court had wrongly forced the reporter to prove the truth of statements that originally appeared in another publication. The court’s opinion emphasized that public officials and public figures must be more open to criticism than private individuals. In a concurring opinion, the president of the Inter-American Court strongly questioned whether defamation should ever be criminalized.

In *Canese*, which involved the criminal defamation conviction in Paraguay of a presidential candidate, the court held that the Paraguayan courts had improperly failed to consider whether the allegedly defamatory statements were made on an issue of public concern, and that criminal punishment was an excessive and disproportionate penalty where the defendant had made the challenged statements during an electoral campaign and on an issue of public concern.

Rulings of the Inter-American Court of Human Rights apply and interpret the American Convention on Human Rights. Twenty-one nations in South and Central America and the Caribbean have agreed to be bound by the court’s rulings. This does not mean that all the member nations will necessarily conform their laws to the court’s ruling, but it does mean that they can expect the court to apply its holding to their actions in future cases.


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12. These nations are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Uruguay, and Venezuela.
The editor, Victor Ivan Majuwana Kankanamge of the weekly newspaper *Ravaya*, alleged that he was indicted without having the opportunity to contest the charges against him. The Committee called upon the Sri Lankan government to compensate Ivan and to publish the Committee’s judgment within 90 days.

As noted *infra*, Sri Lanka repealed the country’s criminal defamation laws in 2002. Ivan filed his complaint with the Human Rights Committee in 1999.

The Commission investigates and rules upon alleged instances of human rights violations under the Universal Declaration of Human Rights and its subsidiary documents, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two optional protocols. The first of the protocols to the International Covenant on Civil and Political Rights provides for petition to the Human Rights Committee for alleged violations of these documents, and rulings by the committee on these petitions.

The Universal Declaration of Human Rights is a statement of principles adopted by the United Nations in 1948. The subsidiary documents were adopted by the UN in 1966: as of June 2004, the International Covenant on Economic, Social and Cultural Rights had been ratified by 149 nations; and the International Covenant on Civil and Political Rights had been ratified by 152 nations. Of the countries that have ratified the International Covenant on Civil and Political Rights, 104, including Sri Lanka, have ratified the protocol regarding Human Rights Committee review.

**Individual Countries**

**Central African Republic:** On Nov. 25, 2004, the parliament of the Central African Republic passed a law ending prison terms for press offenses, including criminal libel.

The vote came in response to protests over the case of *Le Citoyen* editor Maka Gbaosskotto, who was arrested in July 2004 and held for one month after an associate of CAR President Francois Bozize accused him of libel. Gbaosskotto was eventually sentenced to a one-year suspended prison term and fined 500,000 CFA francs (~$1,000). In response, the press organized a protest movement for reforms of the country’s press laws, which included newspapers’ refusing to publish for seven days in July and, since October, refusing to publish on Fridays until the laws were reformed.

**Chile:** In 2003, the House of Deputies approved a bill proposed by President Ricardo Lagos to remove all *desacato* provisions from Chile's laws. But the House also approved another bill that would allow civil and criminal charges to be brought against journalists who invade the privacy of a public or private figure and his or her family. The Chilean legislature passed a law in 2001 repealing some of the nation’s defamation statutes.

**Gambia:** In October 2004, Gambia repealed a law allowing the Media Commission to shut down newspapers and fine or imprison individual journalists. But in December the government adopted a new law that allows journalists found guilty of libel to be jailed for up six months for the first offense, and at least three years for multiple offenses. Newspaper and radio station owners are
required to post a 500,000 dalasi (~$16,600) bond, with their homes as collateral that could be taken if they are convicted of libel. The Gambia Press Union has vowed to challenge the new law in court.

On Dec. 17, Deyda Hydara, managing editor and co-owner of the independent newspaper *The Point* a correspondent for Agence France-Presse, and also an outspoken opponent of the new law, was killed after being shot three times in the head by unidentified assailants.


**Grenada:** In January 2004, the Privy Council\(^\text{13}\) rejected a constitutional challenge to Grenada’s criminal defamation statute. At issue was a letter to the editor published in a weekly newspaper *Grenada Today*. The letter criticized Grenada’s Prime Minister Keith Mitchell and stated “During the election campaign you spent million of dollars to bribe people to vote for you and your party, disregarding what the law says governing the electoral process.” The newspaper published the letter twice and after the second printing its editor was arrested for libeling the Prime Minister. The Council found that the prosecution did not violate Grenada’ constitutional free speech guarantees (analogous to Article 10 of the European Convention on Human Rights) because under the statute the government would be required to prove 1) falsity and 2) that publication was not for the public benefit. (The Council declined to impose the additional requirement that the prosecution prove knowledge of falsity). The Council also noted that despite its rare application “criminal libel, in one form or another, is to be found in the law of many democratic societies, such as England, Canada and Australia. It can accordingly be regarded as a justifiable part of the law of the democratic society in Grenada.” *Worme v. Commissioner of Police of Grenada* [2004] UKPC 8 (Jan. 29, 2004), available at [http://www.privy-council.org.uk/files/other/worme-final%20(8).rtf](http://www.privy-council.org.uk/files/other/worme-final%20(8).rtf).

**India:** On Dec. 17, the India Supreme Court heard argument in a case brought by editor of *The Hindu* newspaper challenging validity of Section 499 of the Indian Penal Code, the country’s criminal libel statute. The case argues that the provision inhibits reporting of public affairs.

**Mexico:** In May 2004, amendments to the Chiapas state’s penal code went into effect that made defamation and libel felonies, raise minimum penalties from two to three years imprisonment and maximum penalties from five to nine years, and impose heavier fines.

**Sierra Leone:** In comments at a Dec. 15, 2004 workshop on running a newspaper, U.S. Ambassador Thomas Hull said that the Sierra Leone’s reliance on criminal libel in place of failed civil libel provisions was misguided. He argued for repeal of the criminal libel laws, saying that any journalist convicted under the statutes is regarded as a martyr for press freedom.

**South Korea:** In September 2004, South Korean President Roh Moo-hyun announced his intention

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13. The Privy Council sits in London and serves as the final appellate court for ten nations of the former British Commonwealth: Antigua and Barbuda, Bahamas, Barbados, Belize, Grenada, Jamaica, St. Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Tuvalu. Judges are drawn from the House of Lords and other UK appellate courts.
to repeal the National Security Law, which provides for jailing of journalists who praise or openly express sympathy towards anti-state groups, or fail to notify authorities about anti-state crimes.

**Sri Lanka:** Sri Lanka’s parliament voted unanimously on June 18, 2002, to repeal the country’s criminal defamation laws. The action came after the United Nations Human Rights Committee held that a prosecution under the statute violated Article 19 of the Universal Declaration of Human Rights (see supra).

**Venezuela:** In July 2003, the Venezuela Supreme Court’s Constitutional Chamber dismissed an appeal challenging various provisions of Venezuelan Penal Code including the desacato provisions which criminalize expressions that offend public officials and state institutions; and criminal defamation and slander provisions. On Dec. 2, 2004, the National Assembly approved legislation that increased the penalties for criminal defamation and broadened the types of government officials covered by desacato provisions. Five days later, President Hugo Chávez Frías signed another law imposing several restrictions on broadcasters, including a provision that television and radio broadcasters that disseminate messages that “promote, defend, or incite breaches of public order” or “are contrary to the security of the Nation” may be suspended for up to 72 hours for the first offense, and for up to five years for any subsequent infractions within the next five years.

**Zimbabwe:** Zimbabwe President Robert Mugabe has proposed amending the nation’s notoriously draconian press laws to impose a 20-year prison term on those who “publish or communicate a falsehood” that damages the interests of the country or confidence in its government. The law would apply to people both inside and outside of Zimbabwe. The law has proceeded towards passage before March elections, despite organized opposition and a parliamentary report calling parts of the bill “unconstitutional.”