

The Sharp Citizen: Applying the Lessons Learned from Joseph Weston to the Criminal Libel Outlook of the Future

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Criminal libel laws in the United States have been falling by the wayside. Criticisms for the laws include that there are civil remedies for libel available and that many state criminal libel laws are considered overbroad and, therefore, risk chilling free speech. However, with the rise of the Internet, some states that still have criminal libel statutes on the books are now resorting to the laws to address seemingly libelous speech on the medium. Precedent, specifically Arkansas' experience with editor and publisher Joseph H. Weston, affirms that criminal libel is not necessarily the best path to take in these cases.

This paper will examine the legal history of criminal libel, analyze the criminal libel law that existed in Arkansas until 2005 and the role Joseph H. Weston played in the law's downfall. Weston published a newspaper in the 1970s called "The Sharp Citizen" in which he regularly made defamatory remarks about Arkansas public officials. Though convicted of criminal libel in 1974, the state Supreme Court struck down the conviction, declaring Arkansas' criminal libel law unconstitutional because it did not allow for truth as a defense or call for proof of malice as is required under civil libel law in the case of false statements about public officials. Using Weston's case as a model, this paper will also consider the implications for state criminal libel laws in the future, including the use and possible rebirth of criminal libel in the context of the Internet.

Historical Perspective

"Libel...is notoriously difficult of exact definition."¹

Do criminal libel laws serve a legitimate purpose today? The notion of states arresting U.S. citizens for expressing themselves seems to counter the long-embraced philosophy hailed by Justice William Brennan of open, uninhibited, robust debate.² In tracing the history of criminal libel, it is clear that the original purposes of the laws were to (1) punish those who committed seditious libel and (2) to prevent violence such as duels. The notorious English Star Chamber "punished libelers to preserve peace and to protect the kingdom."³ Data indicate that 17 states still have criminal libel

¹ State of Arkansas v. Joseph H. Weston, 255 Ark. 567, 569 (1973).

² New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

³ Edward L. Carter, Outlaw Speech on the Internet: Examining the Link Between Unique Characteristics of Online Media and Criminal Libel Prosecutions, 21 Santa Clara Computer & High Tech. L.J. 289, 293 (2005).

statutes on the books.⁴ While some are dormant, a few are still active and are being used with increasing frequency.⁵

As early as 1735, U.S. citizens began challenging the validity of criminal libel laws. The John Peter Zenger case was one of the first examples of jury nullification – the power of a jury to simply ignore the law and return a verdict according to their own conscience. Clearly, their own consciences told them the law was unjust; that it was incongruous to punish someone for printing or uttering truthful criticisms about the government. Zenger had printed many negative comments and critiques of New York Colonial Governor William Cosby.⁶

However, criminal libel laws remained intact and grew. Decades after Zenger, near the turn of the 19th century and during John Adams' presidency, the U.S. passed the Sedition Act in an attempt to quell criticism of the government. Many pro-Jeffersonian newspaper editors who had been critical of President Adams were convicted under the act. Thomas Jefferson was soon elected president and he pardoned those who had been convicted. The Sedition Act was allowed to expire in 1801. Some historians blame Adams' attempt to silence his detractors as one of the main reasons he lost the campaign to Jefferson.⁷

States began to develop their own specific criminal libel laws shortly thereafter. And those laws went largely unchallenged until *Near v. Minnesota* in 1931. Jay Near and Howard Guilford published "The Saturday Press," in which they attacked city officials, charging them with corruption. The state of Minnesota sought to stop the publication by using a statute that was basically a gag law, enjoining publications that were "lewd and lascivious" or "malicious, scandalous and defamatory."⁸ The U.S. Supreme Court held, in a 5-4 decision, the statute unconstitutional and rejected the use of prior restraints on publications except in extraordinary circumstances.⁹

The momentous 1964 case of *New York Times v. Sullivan* marked the next great challenge to seditious libel. Although criminal libel laws were not declared unconstitutional, the Supreme Court added an extra condition that made it more difficult for public officials to successfully bring a criminal libel action. The added element of proving "actual malice" meant even false statements of fact would be protected unless the public official could prove the statements were made with knowledge that they were false or with reckless disregard for the truth. The decision in *New York Times* was quickly followed later that year in *Garrison v. Louisiana* in which the Supreme Court held truth to be an absolute defense to criminal libel.¹⁰ Then, two years later, in *Ashton v. Kentucky*, the Supreme Court said the Kentucky state criminal

⁴ Bill Kenworthy & Beth Chesterman, Criminal-libel Statutes, State by State, 2006, available at <http://www.firstamendmentcenter.org/analysis.aspx?id=17263> (last visited on Mar. 20, 2011).

⁵ Carter, *supra* note 3.

⁶ *Key Figures in the Trial of John Peter Zenger*, available at <http://law2.umkc.edu/faculty/projects/ftrials/zenger/keyfigures.html> (last visited on Mar. 19, 2011).

⁷ Don R. Pember & Clay Calvert, *Mass Media Law*, 49 (17th ed. 2011).

⁸ *Near v. State of Minnesota Ex Rel. Olson*, 283 U.S. 697, 702 (1931).

⁹ *Id.* at 712.

¹⁰ *Garrison v. Louisiana*, 379 U.S. 64 (1964).

libel statute was unclear, vague and overbroad.¹¹ After those three key decisions, the prevailing view on criminal libel was that it was not valid unless there was an actual malice requirement for public officials or if the laws were truly there to prevent violence/breach of the peace.

Despite the impression that criminal libel has fallen out of favor, scholars report a recent uptick in the number of criminal libel cases. In one article roughly one-third of criminal libel cases filed between 1995-2005 involved Internet speech.¹² This has spurred a reexamination of criminal libel laws—their relevance and appropriateness.

In Colorado, for example, Thomas Mink, an English major at the University of Northern Colorado, published a satirical newsletter called “The Howling Pig.” In the first issue published in the fall of 2003, he altered a photograph of a professor, Junius Peake, to make him look like Gene Simmons of the rock group KISS and named him “Junius Puke,” describing him as “editor in chief” of “The Howling Pig,” but Mink did state that Peake was “an outstanding member of the community.”¹³ Peake complained to the Greeley, Colorado, police who then seized Mink’s computer during their investigation. Under the Colorado criminal libel law, statements that “impeach the honesty, integrity, virtue, or reputation or expose the natural defects of one who is alive” are prohibited.¹⁴ Though it was threatened, Mink was never actually charged with criminal libel. Regardless, Mink requested the law’s constitutionality be examined. In 2007, the federal district court declined that request for the reason that Mink was never charged under the law.¹⁵ In light of *ACLU v. Reno*, however, doubt is cast on the validity of criminal libel actions based on Internet speech. In that case, the Supreme Court, in a 9-0 vote, struck down portions of the Communications Decency Act and likened the Internet to print media, providing full First Amendment protection, unlike broadcast media.¹⁶ The Court’s position, granting Internet speech the highest level of protection, should generate reservations regarding criminal libel actions on the Internet.

In order to assess the legitimacy of such laws and their possible resurgence, the experience of the State of Arkansas, specifically the legal issues surrounding Joseph H. Weston and his publication “The Sharp Citizen” will be explored.

The Criminal Libel Landscape in Arkansas

Arkansas enacted a criminal libel law in 1869. Arkansas Code Annotated section 5-15-105 made it a crime to “utter certain types of slander, including that which injures credit or business standing... section 5-15-101 provides that slander

¹¹ *Ashton v. Kentucky*, 384 U.S. 195 (1996).

¹² Carter, *supra* note 3.

¹³ Ken Paulson, *Jailed for Speech: Criminal Libel Is an Old – and Bad – Idea*, available at <http://www.firstamendmentcenter.org/commentary.aspx?id=12468> (last visited on Jan. 27, 2011).

¹⁴ Colo. Rev. Stat. § 18-13-105

¹⁵ A. Matthew Deal, *Supreme Court Denies Prosecutor’s Appeal in Student’s Suit over Criminal Libel Probe*, available at <http://www.splc.org/news/newsflash.asp?id=1672> (last visited on Mar. 19, 2011).

¹⁶ *Reno v. ACLU*, 521 U.S. 844, 851 (1997).

shall be a felony, with punishments of six months to three years in prison and fines of \$50 to \$3,000, or both.”¹⁷

Since the 1960s, a handful of criminal libel cases made it to the Arkansas Supreme Court before the state’s case against Joseph Weston. In 1964, the same year of the decisions in *New York Times v. Sullivan* and *Garrison v. Louisiana*, the case *Howard v. Ward*; *Howard v. Rhine* was heard in the Arkansas Supreme Court. An attorney, W.B. Howard, was accused by another attorney, Lee Ward, of criminal libel. L.V. Rhine was Ward’s co-counsel. The charge was tied to a motion to dismiss in a divorce case to which all three attorneys were a party. The motion and two letters attached to it accused the husband in the divorce case of sex perversion and said that he had abandoned his children. The letters were sent to the husband’s Commanding Officer. Attorneys Ward and Rhine suggested the charges were false and were criminally libelous. The Court ruled that the material – the motion and the letters - was relevant to the case and privileged. They did not directly address the law of criminal libel itself.¹⁸ Of the handful of cases to go before the Arkansas Supreme Court, three dealt with the libeling of private figures. The remaining two cases were Joseph Weston’s, which dealt with the libeling of public officials.

In a notable and interesting Arkansas criminal libel account, James McDougal of Clinton-Whitewater fame, threatened to bring a criminal libel action against Iowa Rep. Jim Leach in 1994 for statements made regarding the Whitewater controversy.¹⁹ On CNN’s “Larry King Live,” McDougal said Leach “made two statements that... in Arkansas are criminal libel, and he’ll be hearing about them sooner or later.”²⁰ No action appears to have been filed, probably because an attorney told McDougal that his action had little chance of prevailing in post-Weston Arkansas.

Two years before the criminal libel statute was officially repealed by the General Assembly, a 2003 criminal libel lawsuit emerged from a case that began when State Trooper Sammy Koons pulled over police officer Ozell Craft for speeding in West Memphis as he was rushing his wife to the hospital. Craft believed Koons’ conduct during the stop had been improper and fueled by racism. Craft filed a complaint with Edmondson Police Chief James Rainey who then filed a complaint with Don Melton of the Arkansas State Police. Koons responded by filing an arrest affidavit for Rainey and Craft, saying they had both lied about the episode and that it harmed his career. Rainey and Craft surrendered themselves to the police, were charged and released.²¹ It is not clear why Koons did not try to resolve the issue using civil court and it appears as though the case never moved forward. Prosecuting attorney Fletcher Long believed at that time that Arkansas’ criminal libel law was suspect.²²

¹⁷ *Superior Federal Bank v. Jones & Mackey Construction Company, L.L.C., and George Mackey*, 93 Ark. App. 317, 330 (2005).

¹⁸ *Howard v. Ward*; *Howard v. Rhine*, 238 Ark. 514 (1964).

¹⁹ Philadelphia Daily News, *Libel Suit Threatened*, (LexisNexis, News, Newspapers).

²⁰ *Id.* at 7.

²¹ Stephen Deere, *State Trooper Sues Edmondson Chief, Officer Under Shaky Slander Law*, Arkansas Democrat-Gazette, Nov. 17, 2003, p. 1.

²² *Id.*

If the primary purpose of criminal libel laws is to prevent a breach of the peace, the Arkansas cases mentioned above would not fall into that category. It is clear the intent of the cases was to punish or threaten people for critical speech uttered or written. The Sedition Act expired in 1801, before its constitutionality could be tested, but is the potential resurgence of criminal libel not just an extension of the Sedition Act and a reversal of the long-established precedent set in *Near v. Minnesota*?

In 2005, Arkansas' criminal libel law was officially repealed. Yet, it took Joseph Weston and "The Sharp Citizen" to instigate the long process of the law's downfall.

Joseph H. Weston

"We have never in the State of Arkansas had a cancer eating at our vitals like Joseph Weston."

-Gerald Pearson, Prosecuting Attorney from Jonesboro, Arkansas²³

Joseph H. Weston had some interesting and defined views of the world. Born in 1911, he wrote not only about politics, corruption in government and local gossip, but on Mormonism and claimed at one point to be a Jehovah's Witness. He started a publication called "The Sharp Citizen" in 1972 and published it on and off through 1978. Calling himself "Editor Weston," Weston created the majority of the content, using a typewriter for the stories but handwriting the headlines with felt-tip pen. Typical content usually included several salacious stories about local, state and sometimes national politicians, business and public officials, the odd poem or two and many times, a religious message. The first issue, published July 19, 1972, contained in the masthead the statement: "A hill-billy newspaper with a hill-billy editor, proudly serving the hill-billy counties of Arkansas & Missouri" and the headline, "Truths from Arkansas that are stranger than fiction!"²⁴ Merchants could purchase advertising for about \$3 a week. Weston claimed a circulation of 20,000.²⁵ Stories such as "Governor Bumblers bloop a big one by hitching his cart to the pooped-out star of John Eldon Miller 'Lizard of Izard'"²⁶ and, "Immoral and promiscuous sex scandal continues in Batesville"²⁷ are characteristic of the paper's content.

Joel Gambill, Ph.D., Associate Professor and Chair Emeritus of the Arkansas State University Department of Journalism, interviewed Weston in 1972, around the time of Weston's arraignment and preliminary hearing in his first criminal libel case. Gambill described him as "very gracious, but very opinionated."²⁸ Gambill observed that Weston had strong beliefs about politicians. He wasn't particularly partisan or ideological, but "if someone wanted him to run a story about crooked politicians, he

²³ Ginger Shiras, *Editor Convicted of Libel Charge, Gets Fine, Term*, Arkansas Gazette, Sept. 6, 1974.

²⁴ Joseph Weston, *The Sharp Citizen*, July 19, 1972.

²⁵ Joel Gambill, *Arkansas Editor Accused of Criminal Libel*, Grassroots Editor, Nov.-Dec. 1972, p.11.

²⁶ Joseph Weston, *The Sharp Citizen*, March 14, 1973, p.1.

²⁷ *Id.* at 12.

²⁸ Joel Gambill, Personal Interview, 2011.

would run it. All you had to do was bring it to him or he would write it. But, the stipulation was that you had to take 500 or 1,000 copies of his paper.”²⁹

It was an interesting time, made for characters like Weston. The U.S. was coming out of Vietnam. Political corruption was rampant. Gambill said that in looking back on that particular era in Arkansas history, he was struck by something James Earl Franks, then-owner of the Stone County Leader newspaper, told him about Weston. (Franks had also written stories about people in Stone County and the Mountain View area who were frequently targets of Weston’s publication.) Franks’ observation was that in many instances there was real corruption. There was some truth to what Weston wrote. “There were a lot of county officials who were tried, charged, some of them convicted...he was just outrageous about it and his tactics” bothered many reporters.³⁰ He would create insulting or silly names for some of the objects of his critique. For example, Weston often referred to a banker from Cave City as “The Bastard Tyrant of Sharp County.” He would use the name “Bumpsy” or “Bumplers” to signify Governor Dale Bumpers. These and other outrageous techniques meant others did not consider him a credible, “real” journalist in the profession. Arkansas journalist and newspaper columnist, John Robert Starr, actually refused a request by the Associated Press to write a story about Weston. Starr said Weston had absolutely no integrity or reliability as a news gatherer and Starr was afraid out-of-state and national publications wanted to make Weston a First Amendment hero. Roy Reed, a cohort of Starr’s and a reporter for the *New York Times*, came to Arkansas to do a feature story on Weston:

“I did a lighthearted feature about this colorful character. I thought I did a pretty fair job of capturing the flavor of his outrageousness, things that he would say about people and the enemies that he made. The tone of this was lighthearted. I refused to take it seriously... Bob (Starr) was annoyed with me and my story in which I had refused to take this menace to society with due seriousness. That would be about the next to last serious conversation I had with Bob.”³¹

Reed’s feature story’s opening paragraph described Weston as “...a one-man terrorist band. His weapon is a weekly newspaper, and he runs it on the creed that all the outrage he can muster is fit to print.”³² Reed went on to write that “The Sharp Citizen” was “raw, primitive, boisterous, indignant, sometimes eloquent, sometimes preposterous and always entertaining.”³³

Many people in the state hoped Weston would just quietly “go away.”³⁴ That did not happen for many years. His personal life was as curious as his professional life. He divorced his first wife and married a stepdaughter in the hopes of producing a

²⁹ *Id.*

³⁰ *Id.*

³¹ Harri Baker interview with Roy Reed for the *Gazette Project*, May 31, 2000, p.18.

³² Roy Reed, *Ozark Editor’s Attacks Arouse Fear and Anger*, *New York Times*, Dec. 11, 1972, para. 1.

³³ *Id.* at para. 6.

³⁴ Joel Gambill, Personal Interview, 2011.

son.³⁵ In 1974, Benjamin Freepress Weston was born. Joseph Weston, his former wife and second wife continued to live together in the same house near Cave City; the two women helping with the paper and raising children.³⁶

In April 1974, the tables turned. Weston asked Prosecuting Attorney Lee A. Munson for a criminal libel warrant for the arrest of state Senator Jim Caldwell of Rogers for statements he made about Weston that were published in an “Arkansas Democrat” story.³⁷ It seems paradoxical that Weston fought so vehemently against his own criminal libel accusations, pronounced the unconstitutionality of the law, yet used it on someone else. That was Joseph Weston – unexplainable and incongruent.

In addition to publishing “The Sharp Citizen”, Weston ran for governor of Arkansas twice on the Republican ticket. Members of the state Republican Party seemed annoyed and exasperated by Weston and tried vigorously to get him off the ballot. When that failed, they proceeded to distance themselves from him. Weston claimed he ran because “we need someone to heal the wounds of the party instead of just wounding the heels.”³⁸ He lost the nomination in 1974, but received 18% of the vote.³⁹ In 1976, he again lost in the primary, but received just over 40% of the vote.⁴⁰

Because criminal libel has been used in the past as a weapon to silence critics of government, it was a natural to use against Weston, who admitted to having a “hellacious” impact on politics and government in the state of Arkansas.⁴¹

The stories that caused the principal legal troubles for Weston were published in November 30, 1973, and September 19, 1977, issues of “The Sharp Citizen.” Roy Reed referred to him as

“...a totally reckless editor... He would denounce this or that political figure and say outrageous things. Eventually, somebody brought a criminal libel charge against him... Civil libel...is the usual way of getting at a newspaper man. This was criminal libel. He was represented by Ted Boswell, the Saline County political figure of some substance, former candidate for governor, liberal. Ted took the view that criminal libel was unconstitutional because it was, I can't remember the legal term, to make a statement on free speech. If somebody had a problem, they needed to sue in civil court, but to use the criminal laws to hush up a newspaper editor was wrong.”⁴²

In the 1973 issue in question, Weston was accused of defaming Larson Dickey, Sr., deceased, and Larson Dickey, Jr. Weston claimed he had received letters showing that Larson Dickey, Jr. and the county judge of Sharp County, Les Anderson, were working to have “The Sharp Citizen” shut down. Weston wrote that the men had to get someone else to pen the paperwork because they could not read or write and that

³⁵ Reed, *supra* note 31, para. 5.

³⁶ *Id.*

³⁷ *Weston Request Refused for a Libel Warrant Against GOP Chairman*, publication unclear, April 9, 1974.

³⁸ Congressional Quarterly Weekly Report, May 18, 1974, p. 1294.

³⁹ State of Arkansas, Secretary of State, Primary Election Returns, 1974

⁴⁰ State of Arkansas, Secretary of State, General Election Returns, 1976.

⁴¹ Reed, *supra* note 31, para. 6.

⁴² Baker, *supra* note 30, pp. 17-18

the cost of running advertising against Weston's publication would be "greater than Junior Dickey could lay his hands on, even if he ran his still (the one he inherited from his father) every night for a month."⁴³ The prosecuting attorney for Sharp County filed charges against Weston. Weston fled but continued to publish "The Sharp Citizen" using a banner on the front page stating "Edited in Exile." He evaded law enforcement for about a month, even staging a few press conferences in Little Rock "taunting law enforcement officers who never managed to effect his arrest before he slipped back into hiding."⁴⁴ The law finally caught up with Weston in a Sherwood hotel room and he was arrested.

The charges against Weston were dismissed on June 12, 1973. Circuit Judge H.B. Britt said Weston was entitled to First Amendment protection.⁴⁵ The state appealed the case. In November 1973, the Supreme Court of Arkansas reversed the decision, refuting Boswell's argument that the definition for criminal libel was unconstitutionally vague and noting that cases such as *New York Times v. Sullivan* were not relevant and failed to even mention Garrison.⁴⁶ The case was remanded for further proceedings. In September of 1974, he was convicted. A jury of nine men and three women debated for an hour and 15 minutes. Overall, during Weston's newspaper career, he was charged with four counts of criminal libel in Clay County and three in Sharp County.

In 1975, Weston appealed one of the criminal libel convictions handed down from the Clay County Circuit Court. His punishment included a \$4,000 fine and three months in prison. The article that originated the controversy accused Liddell Jones, the Sheriff of Clay County and a Governor Dale Bumpers appointee, of drug trafficking and making threats of violence to witnesses of the death of an inmate named Street Shaw. The headline read: "Sharp Citizen Makes a Mistake In Reporting Story of Corning and Discovers that Narcotics Racket Flourishes in Clay County and Corning Under Direction of Sheriff Liddell Jones..."⁴⁷ Mary Shaw, Street's widow, testified in circuit court that she had spoken to Weston and she told him exactly what Weston included in the article. Similarities can be drawn between this situation and the one in *Near v. Minnesota*. Weston was, in essence, being punished by the state for a shocking, scandalous and defamatory story, but hardly the "extraordinary circumstance" the court in *Near* spoke of which would have legally permitted a prior restraint.

The Arkansas Supreme Court reversed the conviction. Citing *Garrison* and *New York Times*, Justice LeRoy Autrey wrote in the opinion that the Arkansas criminal libel statute was in violation of the First and 14th Amendments in that it did not compel the libelous statement to be false or made with actual malice and that it was too vague. This was the decision that rang the death knell for criminal libel in Arkansas. The court recognized that many of these criminal libel cases were more akin to seditious

⁴³ State v. Weston, *supra* note 1, pp. 568-569.

⁴⁴ Reed, *supra* note 31, para. 31, 32.

⁴⁵ New York Times, June 13, 1973, p. 16, col. 1.

⁴⁶ State v. Weston, *supra* note 1.

⁴⁷ Joseph H. Weston v. State of Arkansas, 258 Ark. 707, 708 (1975).

libel and they were uncomfortable letting such charges stand. It took the Arkansas State Legislature until 2005 to officially repeal the criminal libel statute. But, Weston's case was the last nail in the Arkansas criminal libel coffin.

Weston had a few more run-ins with the law subsequent to the landmark libel case. He found himself in trouble for perjury in 1977. In an article appearing in "The Sharp Citizen," he asserted the existence of a prostitution ring and drug trafficking in Independence County. During the grand jury proceeding, Weston distinctly declared the grand jury was simply a tool being used by corrupt officials to silence him and his paper. The grand jury returned a four-count indictment against Weston for perjury. In 1979, at the Arkansas Supreme Court, the justices, sitting en banc, deemed Weston's brief was highly partisan and did not accurately state why he sought relief. Justice John Purtle wrote a dissent, stating, "Although appellant may have been viewed as a pusillanimous polecat by some people, he may have been nevertheless exercising his rights as guaranteed by the Constitution... I would reverse and return this case to the lower court for a fresh start from the beginning."⁴⁸ In 1982, after the statute of limitations had run, he brought a civil rights claim that was not restricted by a statute of limitations. It was remanded for further proceedings.⁴⁹ The case was to make it all the way to the U.S. Supreme Court. In the lawsuit, Weston asked for \$39 million "against Independence County, the state Supreme Court, the Mormon Church and several public officials."⁵⁰ The U.S. Supreme Court never heard the case. Weston died in a Veteran's Administration hospital in Poplar Bluff, Missouri, on November 15, 1983, before a final resolution could be brought in the matter.

Are the Ghosts of Criminal Libel Emerging from the Grave?

The Media Law Resource Center reported 77 "actual or threatened criminal libel prosecutions between 1965 and 2002."⁵¹ In 2008, 13 criminal libel cases were filed in states with criminal libel laws still on the books, the majority of those cases being tied in some way to the Internet.⁵² These state courts seem unwilling to invalidate their criminal libel statutes, "assuming the legislation they passed is constitutional" and "deference to state government in the federal court system" means

⁴⁸ Joseph H. Weston v. State of Arkansas, 265 Ark. 58, 67 (1979).

⁴⁹ Joseph H. Weston, Appellant, v. Ann Bachman; Nancy Brokaw; Jean Hall, Jackie Hall; John Norman Harkey; Circuit Judge Andrew G. Ponder; Leroy Blankenship, Attorney; Circuit Judge H. A. Taylor; Robert Dudley, Associate Justice of Arkansas Supreme Court; Veda M. Gordon, Foreman of Grand Jury; R. Ford Wilkinson; Dr. Robert McChesney; Dr. J. Lynn Mellor; Independence County; Attorney General Steve Clark, as respondent to suits against Arkansas; Conley Byrd; George Smith; Frank Holt; Darrell Hickman; Stephen A. Matthews; Richard H. Wootton; Richard A. Cobb; State of Arkansas; Little Rock, Arkansas, Stake of Church of Jesus Christ of Latter-day Saints; John I. Purtle; Richard Mays; and John Stroud, Appellees, 682 F.2d 202 (1982).

⁵⁰ United Press International, *Funeral Services for Joseph H. Weston*, Nov. 17, 1983.

⁵¹ Scott Michels, *Craigslist Rant Ends in Rare Criminal Charges*, available at <http://abcnews.go.com/TheLaw/story?id=6370213&page=1> (last visited on Feb. 25, 2011).

⁵² *Id.*

the statutes remain untouched.⁵³ Many of the cases also dealt with criticisms of public officials. Why the plaintiffs chose not to use civil libel is unclear. One could assume that perhaps they do not want the expense of attorney fees or that they know the defendant(s) have no funds for damage awards, both philosophically unconvincing reasons to bring criminal charges.

In the aforementioned Mink case, the Student Press Law Center and the Silha Center for the Study of Media Ethics and Law filed an amici curiae brief with the U.S. Court of Appeals for the 10th Circuit. Within the brief, they presented several compelling arguments in the interest of “preserving the right of speakers to be free from criminal investigation motivated by the content of their speech”⁵⁴ and contended that allowing criminal libel actions gives “a green light to police and prosecutors who use these statutes to intimidate speakers... who have exercised their constitutional right to criticize government employees.”⁵⁵ Similar SLAPP suits (Strategic Lawsuits Against Public Participation) are often used by corporations and government officials, targeting individuals or groups who speak unfavorably about issues of public concern in opposition to the corporation or official. While most defendants in SLAPP suits prevail in court, they lose in the public debate battle, as their speech is chilled while the action progresses through the court system. States are introducing new laws to shield people from SLAPP suits. Many times, SLAPPs are just criminal libel lawsuits in disguise. The brief also cites a 2003 study by the Media Law Resource Center that showed of the 11 pending criminal libel cases between 2002-2004, seven were focused on those who commented critically on the government rather than being cases seeking compensation for private individuals who are looking for damages due to harm caused.⁵⁶ Because of that finding, the brief asserted, “criminal libel is nothing more than seditious libel given a thin veneer of constitutionality by the purported inclusion of private libels, so as to deflect a viewpoint discrimination claim.”⁵⁷ In addition, the brief mentions the Model Penal Code, which was drafted in 1962 to assist state legislatures with formulating consistent and uniform criminal laws. The Code notes, “Usually we reserve the criminal law for harmful behavior which exceptionally disturbs the community’s sense of security... Personal calumny falls in neither of these classes in the U.S.A., that is it is therefore inappropriate for penal control...” which “probably accounts for the paucity of prosecutions and near desuetude of private criminal libel legislation in this country.”⁵⁸

⁵³ Stacey Laskin, *Absence of Malice? Criminal Libel Statutes Still Threaten Free Speech*, The News Media and the Law, p. 27, available at <http://www.rcfp.org/newsitems/index.php?i=7210&fmt=print> (last visited on Mar. 19, 2011).

⁵⁴ Amici Brief for Appellants in *Mink v. Buck*, No. 04-1496 (10th Cir. Nov. 11, 2004).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Model Penal Code, Tent. Draft No. 13, 1961, s 250.7, Comments, at 44, cited in *Garrison v. Louisiana*, 379 U.S. at 69-70.

Recommendations and Conclusion

So what is Mr. Weston's legacy? What should we have learned from the outcome of his criminal libel affairs? Regardless of what people thought about Weston, the use of criminal libel charges to punish him for his tactics seems incongruous to the country's long-embraced philosophy of uninhibited and unfettered debate, of marketplace of ideas freedom and openness. Although he did not do the journalism profession any favors on the credibility front, Weston and "The Sharp Citizen" stand for the proposition that using criminal laws to stop discourse regarding self-government processes is untenable. The arguments that might be made successfully for the existence of criminal libel laws for private citizens become weak, flawed and insupportable regarding public officials. Was Joseph Weston advocating or inciting a breach of the peace? Did the student in *Mink* promote violent behavior? The answer to both questions is a resounding "no." In both situations, public officials were the target of criticism, ridicule or mockery – in no way encouraging people to riot or protest and in no way exhibiting behavior that should be met with a prison sentence and the expending of state resources to curb or punish the miscreants. To revive criminal libel laws as a means of punishing speech regarding public officials is tantamount to reviving the English Star Chamber and once again welcoming laws that penalize seditious libel.

Further examination and analysis needs to take place regarding criminal libel laws as they relate to the Internet. The questions that need to be addressed: (1) How can we afford the highest level of First Amendment protection to this medium and yet increase the use of criminal libel laws there? And (2) Why are civil libel laws not seen as sufficient? The elevated level of protection should translate into fewer criminal libel cases; not more. While we may not agree with speakers or their tactics, the mere offensiveness of the speech does not make it a criminal act.