Approved: January 23, 2003
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Vratil at 9:30 a.m. on January 21, 2003 in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Jerry Ann Donaldson, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Janet Schalansky, Secretary of SRS
Paul Degener, Topeka
Senator Derek Schmidt
Mike Kautsch, KU Professor, Law
Policy Program
Edward Seaton, Publisher of the Manhattan Mercury
Murrel Bland, Editor/Publisher-Wyandotte West
Nick Tomasic, Wyandotte County District Attorney
Jerry Palmer, Topeka Attorney

Others attending: see attached list

Chairman Vratil called the Committee's attention to two handouts that were given to the members. The first was a memorandum from Senator Goodwin, as a member of the Kansas Sentencing Commission, outlining the proposed alternative sentencing policy for nonviolent offenders. (Attachment 1) The second was an article that Chairman Vratil furnished by William E. Quick, KBA Corporate Statute Review Committee, entitled "Pending Changes to the Kansas General Corporation Code" from the January 2003 issue of *The Journal*. (Attachment 2)

The Chairman called for bill introductions. Kyle Smith, Kansas Bureau of Investigation, requested introduction of two bills. The first bill would update the Kansas Offender Registration Act relating to changing the term 'resident' to 'person' as non-residents who have been convicted of the predicate offenses, and in order to comply with the Campus Sex Crimes Prevention Act. (Attachment 3) Senator Schmidt moved to introduce the bill, Senator Umbarger seconded, and the motion carried.

The second bill Mr. Smith requested on behalf of several criminal justice organizations, including the Criminal Justice Coordinating Council, that would update the board overseeing law enforcement communications which is currently called ASTRA. (Attachment 4) Senator O'Connor moved to introduce the bill, Senator Goodwin seconded, and the motion carried.

SB 16 - Application requirements for drivers' licenses and identification cards
Chairman Vratil reopened the hearing on **SB 16** continued from the January 16 meeting. Conferee Janet Schalansky testified in favor of the proposed legislation and its relationship to the Child Support Enforcement (CSE) Program. Secretary Schalansky spoke about the many changes in Kansas' child support laws and procedures during the past seven years in order to keep the CSE Program in compliance with Title IV-D, especially with the requirements flowing from federal welfare reform legislation. She stated that one final change in Kansas law needed to be made in order to assure that we remain in compliance and avoid the loss of IV-D federal funding, and that change would be to clearly require all applicants for a driver's license to furnish their social security number on their driver's license application. She said it would not be necessary to display the social security number on the face of the license itself, just on the application to receive a driver's license. She was sincerely concerned with regard to losing federal funding if Kansas was sanctioned by the U.S. Department of Health and Human Services. (Attachment 5)

Ms. Schalansky included a copy of a letter addressed to Chairman Vratil, dated January 14, 2003 with her written testimony from the Department of Health & Human Services, Region VII, in Kansas City. Chairman Vratil questioned Ms. Schalansky about this correspondence which he had not received, but her department had without being formally copied on the letter. He also clarified that this proposed legislation contains a provision requiring a licensed applicant to submit their social security number on the license application and that information is confidential. He questioned that what he heard her testify was that provision would bring Kansas into compliance with the federal requirements, and Secretary Schalansky agreed.

Committee discussion included concerns expressed about the confidentiality issue regarding the social security numbers, and who all would have access to that confidential information. Chairman Vratil referred Committee members to SB 16, page 2, line 4 through line 6, in which an applicant shall submit the applicant's social security number, which shall remain confidential. He reiterated that only the DVM would have access to that information and no one else. He asked if any member of the Committee disagreed with that interpretation of that sentence because he wanted it in the record as legislative history on this bill. Vice Chairman Pugh said he disagreed because he didn't believe that anything once it is submitted in this way would be confidential. Chairman Vratil stated that it was the intent of this Committee in considering this bill that the social security number would confidential information limited solely to the Division of Motor Vehicles, and he intended to express that same intent on the Senate floor if this bill comes to the Senate floor for vote.

Committee discussion continued, with question being asked of Sheila Walker, Division of Motor Vehicles, if they shared information with law enforcement agencies. With consent of the Chairman, Ms. Walker responded that under the Open Records Act and specifically by law, law enforcement does have access to Motor Vehicle records. She preferred that the Committee address the issue of confidentiality.

Conferee Degener testified in opposition to **SB 16**. He stated that he was opposed to this bill primarily because it calls for applicants to provide their social security number. He urged the Committee not to let social security numbers be used in an attempt to establish a national identification card, but also to help stop identity theft in this country. (Attachment 6)

After brief discussion, Chairman Vratil closed the hearing on **SB 16**.

SB 3 - Repealing the criminal defamation statute

Chairman Vratil opened the hearing on **SB 3**. Senator Schmidt testified in support of repealing the criminal defamation law, K.S.A. 21-4004, copy of which he attached to his written testimony. (Attachment 7) He pointed out that violation of this criminal law was a Class A misdemeanor, punishable by up to one year incarceration in the county jail and/or a fine up to $2,500 which in essence the law makes certain lies a crime in Kansas. He gave detailed history of the current law, and said this law was bad public policy for our state when it may be applied to political speech directed at public officials. Senator Schmidt stated that in his view that those whose false words defame public figures and others in a manner that properly subjects them to legal punishment should be at risk of civil liability, not at risk of criminal prosecution.

Committee discussion included clarification between criminal and civil penalties. Senator Oleen told the Committee that the statute came into being in 1969 and then there were some changes in lessening the penalties. She asked the Research Staff to furnish the members with a copy of the Federalization of State Defamation Law as information.

Conferee Kautsch testified in support of **SB 3**. In his detailed written testimony (Attachment 8), Mr Kautsch pointed out that the statute 21-4004 rather than explicitly requiring proof that damage to reputation included a demonstrable, actual loss, calls only for a showing that defamation of someone was "tending" to subject him or her to hatred or other kinds of social rejection. He said that the proposal for repeal of 21-4004 comes at a time when criminal defamation statues are on the wane, and such statutes are on the books in less than half the states. He noted that criminal defamation is falling into disfavor outside the United States, and that the United Nations has issued a call for their member states to" review their

defamation laws to ensure that they do not restrict the right to freedom of expression and to bring them into line with their international obligations."

Conferee Seaton testified in support of **SB 3**, and spoke from a journalist position on this issue. He stated that while journalists must be responsible for their reporting, sending them to jail for what they write, especially about a public official, is an egregious violation of freedom of the speech. He said that criminal punishment for political speech defies both U.S. and international standards and sets a terrible precedent for the rest of the world. (Attachment 9)

Chairman Vratil announced that the hearing on **SB 3** would be continued at the next meeting.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is January 22, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues., Jan. 21, 2003

NAME	REPRESENTING
Jamie Corkhill	SRS
Candy Shively	SRS
Janet Schalansky	
Jerri Freed	Dental Board
Whitney Damron	KS Bar Assn.
Mark Stafford	KBHA
Jack Lewis	KSC
Sandra Walker	KDOR - DMV
Arlene Garcia	
Marianne Deagle	SRS
Craig Smith	Pinegar, Smith & Associates
Melissa Wangemann	Sec of State
Fariba Pourarya	SOS.
Trista Urzydlo	KS Bar Assn.
Alan Anderson	KDOR - Veludo
Marsha Strahm	CWA of Ks.
Melissa L. Ness	Connections Unlimited, Inc.
Michelle Peterson	Kansas Governmental Consulting
Paul Degener	Concerned Citizen

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues, Jan 21, 2003

NAME	REPRESENTING
Tom Whitaker	Ks Motor Carriers Assn
Ron Sieber	Foulston Siefkin Law firm
Jeff Bo Horton	KS Sheriffs Assn
Jerry Palmer	No Organization
Ami Hyten	JUDICIAL BRANCH
Kathy Olsen	Ks Bankers Assn.
Erik Sartorius	City of Overland Park
Trisha Ruiz	Kansas Advisory Committee on Hispanic Affairs
Duane Albert	KDOR
Chuck Stones	Ks Bankers Assn
Christina Collins	KMS
Kyle Smith	KBI

TO: SENATOR JOHN VRATIL
Chairman, Senate Judiciary Committee
FROM: SENATOR GRETA GOODWIN
Kansas Sentencing Commission Member
Sub-Committee member of the Drug Treatment of Drug Offenders Policy
DATED: JANUARY 7, 2003

The prison population, bulging to 99% of capacity, is nearing 9,000 and is expected to continue growing for at least the next decade. With the state in the present fiscal crisis, the Kansas Sentencing Commission appointed a sub-committee to study and recommend the best approach to this critical situation. Sub-committee members who have worked for the past two years on the solution are: Paul Morrison, District Attorney, Chairman; Mark Mitchell/Annie Grevas, Community Corrections; Rick Kittel, Board of Indigents' Defense Services; Irving Shaw, Private Defense Attorney; Honorable Robert Lewis, Kansas Court of Appeals; and myself representing the Kansas Senate.

MEMORANDUM OUTLINING THE PROPOSED ALTERNATIVE SENTENCING POLICY FOR NONVIOLENT OFFENDERS

An alternative sentencing policy for nonviolent offenders convicted of drug possession will be introduced during the upcoming session. The Sentencing Commission is taking the approach and proposing this policy to lawmakers as the best way to open prison space without sacrificing public safety.

The new policy would relieve prison overcrowding and would make available drug treatment programs that have been discontinued due to the budget constraints of corrections. This policy would apply only to simple drug possession; those convicted of drug manufacturing, trafficking, or intent to sell would not be eligible. Since comprehensive treatment options need to be developed, the proposed implementation of the policy would be phased in beginning July 1, 2003. Once implemented, the policy is projected to save 400-600 prison beds and other social costs to the state. It is estimated the implemented policy should cost considerable less than the present annual per-inmate operating cost of $21,000, and the prospective funding sources could include federal Byrne grants, a .5 increase in the alcohol tax, perhaps a small percentage of the Asset and Forfeiture Fund, and/or an increase in probation fees. Current funding is not available for treatment programs, and should the programs not be funded, the plan will not be successful.

Our subcommittee has held two meetings with present providers of mental health and/or drug treatment centers. They have given us valuable input as to the present services in place in our state and those additional services needed to be developed. Our subcommittee is of the opinion that immediate legislation action must be taken, with the options being: (1) to build additional prison capacity or (2) alter sentencing laws in a manner that would significantly reduce the growth in the number of inmates entering or returning to prison. Should the legislature chose to go with option (1) the present prison capacity could be expanded at the ElDorado Correctional Facility by constructing two additional cellhouses. Each of these additional cellhouses would contain 128 cells and house a total of from 128 to 256 inmates, depending upon the custody level of the inmates housed. The cost of construction is estimated at $7.1 million per cellhouse, for a total of $14.4 million for two. Annual operating costs for the two cellhouses, excluding one-time startup costs, are estimated to run between $5.2 and $7.2 million, also dependent upon the custody level of the inmates housed.

Senate Judiciary
1-21-03
Attachment 1-1

Pending Changes to the Kansas General Corporation Code

By William E. Quick, KBA Corporate Statute Review Committee

The 2003 session of the Kansas legislature is expected to consider and pass broad-ranging amendments to the Kansas General Corporation Code (K.S.A. §17-6001 *et seq.*) as a result of the work of a special KBA committee. Chaired by Topeka attorney Robert Alderson, the committee was first convened on May 25, 2001, to review developments in corporate law since the last major Kansas statutory revision in 1988. A dozen Kansas lawyers contributed to the work of the committee, with staff assistance from KBA Legislative Counsel Paul Davis. The group included representatives from private practice, law school faculty and the office of the Secretary of State.

The committee's initial considerations included (1) the scope of review to be undertaken, (2) the determination of appropriate precedent to follow as a guide in revising and updating the existing text, (3) the basis for and extent of any deviation from the selected precedent, and (4) harmonizing the Kansas corporate code with the State's other business-related statutes.

In addressing these considerations, the committee first determined that any proposed revisions to the Kansas corporate code should be principally based on bringing Kansas statutes into substantial compliance with the current text of the General Corporation Law of Delaware. The committee largely rejected language based on the Model Business Corporation Act or the statutes of other jurisdictions. The committee believed that Kansas' past adherence to Delaware corporate law, coupled with the wealth of evolving Delaware and derivative case law precedent and legal commentary, presented a stable platform for the Kansas corporate community that should not be undermined by introducing a hodgepodge of disparate provisions from a number of sources. The committee also recognized that Kansas' existing corporate case law was decided under the Delaware model.

Based on the decision to defer to the Delaware precedent, the committee next determined its scope of review to be a comprehensive assessment of current differences between the Kansas and Delaware laws. After discussion of the possibility of proposing improvements to or advancements beyond the current Delaware law, the committee opted for the stability and certainty of substantially following the Delaware code. The committee agreed that deviation from the Delaware language would cast uncertainty onto the Kansas code's meaning. Ultimately, the committee determined its task was to bring the Kansas corporate code current with the latest Delaware corporate laws, excepting deviations justified on the basis of public policy concerns or changes that improved the flow, clarity and consistency of the language in the Kansas code.

The committee determined that, in the interest of not becoming bogged down in the review process, and to increase the likelihood of passage of the proposed revisions by the Kansas legislature, it would focus only on the Kansas General Corporation Code, and would defer proposal of changes to other Kansas business statutes for future committees. Another committee began work on the professional corporation laws, and the product of that committee is also expected to be introduced in the 2003 legislature. Attention was paid, however, to making sure that changes to the Kansas corporate code complimented existing provisions in the other Kansas business statutes.

The committee divided the review of articles and sections of the Kansas General Corporation Code among subcommittees for consideration and subsequent recommendation of revisions to the committee as a whole. Following meetings of the subcommittees, proposals were circulated among the entire committee for review and comment. After an exchange of initial comments on an individual basis, the committee reconvened in September, 2001, for a formal review of each proposed change within the context of all the other proposals. Following extensive discussion the committee sent the subcommittees back to prepare revised language based on the decisions of the committee, and a comprehensive proposal for a revised Kansas corporate code was then compiled, reviewed and edited by the committee members, and forwarded to the KBA Legislative Committee for consideration. The Legislative Committee reviewed that proposal, and with the exception of its rejection of one proposed change to K.S.A. §17-6518 on public policy grounds (the proposed change would have allowed for stockholder action by less than unanimous written consent in lieu of a meeting), approved the corporation laws study com

William E. Quick *focuses on the practice area of Corporate Law with the firm of Polsinelli Shalton &Welte in their Kansas City, Mo., office. He has focused his practice in corporate law and business transactions. He has principally been evolved in numerous matters for clients in such industries as telecommunications, e-commerce, insurance, health care, entertainment and petroleum. He also represents nonprofit entities and associations.*

He is a graduate of Iowa State University, with a B.S. in Civil Engineering, and the University of Michigan School of Law. Quick was also at the Universiteit Leiden, Faculty of Law, Leiden, The Netherlands.

Quick is a member of the Corporate Statute Review Committee of the Kansas Bar Association. He is also a member of the Kansas City Metropolitan Bar Association's Technology and Corporate committees. He is a member of the Missouri, Johnson County, and American Bar Associations.

and advanced it to the Board of Governors for consideration. The Board of Governors reviewed the corporate code study committee's proposal, as modified by the KBA Legislative Committee, and approved the modified proposal. The modified proposal was then submitted to the Kansas Revisor of Statutes Office, which prepared legislation designated as House Bill 3022 in anticipation of action by the 2002 Kansas legislature.

Unfortunately, House Bill 3022 did not reach the Kansas House and Senate Judiciary Committees with sufficient time for consideration in the 2002 legislative session. As a result, review and action on House Bill 3022 was postponed until the 2003 legislative session. The corporation laws study committee reconvened in September, 2002, to consider changes to the Delaware corporate laws since the committee last met, and several additional minor revisions were proposed to be added to House Bill 3022 to bring the proposed changes current with existing Delaware statutes. The bill will be reintroduced in the 2003 legislative session and will consequently be assigned a new bill number. It is anticipated that the Kansas legislature will act upon the bill, as amended, with the proposed changes to take effect either July 1, 2003, or January 1, 2004.

Listed below are some of the matters contemplated in House Bill 3022:

- Use of electronic communication, electronic signatures and tendering of documents and instruments "in writing or by electronic transmission."
- Provision for corporate action through "any authorized officer" as opposed to specifically designated officers.
- Clarification in the description of acts to be taken or procedures to be followed based on actual corporate practices.
- The addition of two new sections to Article 65 pertaining to (a) the appointment of vote inspectors for stockholder meetings conducted by public and widely held corporations, and (b) consent by stockholders to the receipt of notice by electronic transmission.
- Contemplation of mergers and consolidations with entities other than corporations.
- Defining the term "facts" as used throughout the Kansas corporate code.
- Revisions to the voting threshold requirements for nonstock (nonprofit) corporations. (There was some discussion among the committee members regarding the creation of a separate Nonprofit Corporations Act, independent of the Kansas corporate code. Action on this concept was deferred for future consideration, with current efforts to clarify the application of the present Kansas corporation laws to nonprofit corporations).
- Substantial revisions to K.S.A. §17-6712 regarding stockholder appraisal rights.
- Allowing a parent corporation to subtract the amount of equity owned in a subsidiary entity that is reported on the subsidiary entity's annual report, prior to the calculation of the applicable Kansas franchise tax for the parent corporation.
- Certain additional substantive changes mirroring those adopted in Delaware.
- Adoption of consistent usage of terms within the Kansas General Corporation Code, and the correction of typographical errors.

A more detailed analysis of the Kansas corporate code revisions will be forthcoming in a separate article to be published immediately following adoption by the Kansas legislature of the 2003 legislative session bill that succeeds House Bill 3022. You may access a copy of House Bill 3022 on the State of Kansas internet site located at www.kslegislature.org/bills/2002/3022.

2-2

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Bill Request
Offender Registration Improvements
Kyle G. Smith
Before the Senate Judiciary Committee
January 21, 2003

Chairman Vratil and members of the Committee,

On behalf of the KBI, I am hear today to request this committee introduce legislation that would update the Kansas Offender Registration Act.

These changes would clarify vague areas of the act that would help the public, offenders and the authorities in carrying out the provisions of the act. Further, failure to make these updates could jeopardize eligibility of Kansas agencies for federal grants. These changes would:

Amend K.S.A. 22-4902 to change the term 'resident' to 'person', as non-residents who have been convicted of the predicate offenses, such as students or military personnel in Kansas, are now required to register.

In order to comply with the Campus Sex Crimes Prevention Act, clarify additional notification duties under that act to offenders enrolled or employed on university campuses.

Clarify that failure by an offender to give update registration when they've moved, etc. or to comply with the Campus Sex Crimes Act, is also a violation of the act, just as failure to originally register.

Thank you and I would be happy to answer any questions.

1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785)296-8200 F.

Senate Judiciary
1-21-03
Attachment 3-1

Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Bill Request
ASTRA Board Update
Kyle G. Smith
Before the Senate Judiciary Committee
January 21, 2003

Chairman Vratil and members of the Committee,

On behalf of several criminal justice organizations, including the Criminal Justice Coordinating Council, I am hear today to request this committee introduce legislation that would update the board overseeing law enforcement communications.

Currently called the ASTRA board and consisting of only law enforcement representatives, the changes are needed as communications have evolved from the teletype system just for cops to the computerized KCJIS system which includes the judiciary, prosecutors, Juvenile Justice Administration, etc. The antiquated language needs to be updated and representatives from these additional members added. A draft that has been approved by the agencies involved is attached.

Thank you and I would be happy to answer any questions.

1620 S.W. Tyler / Topeka, Kansas 66612-1837 / (785)296-8200

Senate Judiciary
1-21-03
Attachment 4-1

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570

for additional information, contact:

Office of Budget
Lois Weeks, Acting Director

Office of Planning and Policy Coordination
Marianne Deagle, Director

phone: 785.296.3271 ***fax:*** 785.296.4685

Senate Judiciary Committee, Room 123-S
January 16, 2003 at 9:30 a.m.

Senate Bill No. 16
Drivers' Licenses and Other Identification Cards

Integrated Service Delivery
Janet Schalansky, Secretary
785.296.3271

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary Committee, Room 123-S
January 16, 2003 at 9:30 a.m.

Senate Bill No. 16
Drivers' Licenses and Other Identification Cards

Mr. Chairman and members of the committee, thank you for providing this opportunity for me to speak with you today concerning S.B. 16 and the Child Support Enforcement Program.

During the past seven years, Kansas has made many changes in its child support laws and procedures to keep the CSE Program in compliance with Title IV-D, especially with the requirements flowing from federal welfare reform legislation. Today, one final change in Kansas law is needed to assure that we remain in compliance and avoid the loss of IV-D federal funding. That change in Kansas law is to clearly require all applicants for a driver's license to furnish their social security number on their driver's license application. It is not necessary to display the social security number on the face of the license itself, just on the application to receive a driver's license.

We have been advised by the U.S. Department of Health and Human Services that existing Kansas law does not fully meet the federal requirement set out in 42 U.S.C. 666(a)(13), sometimes referred to as Section 466(a)(13) of the Social Security Act. The relevant portion of the federal statute states:

> [E]ach state must have in effect laws requiring...that the social security number of...any applicant for a...driver's license...be recorded on the application....

I regret to say that we are on the knife-edge of being sanctioned by HHS. If HHS formally finds the Kansas IV-D state plan out of compliance, all Title IV-D federal fundingwill be denied until the State comes into compliance. According to federal calculations, as stated in the attachment, that loss would total over $31 million per year, an average of nearly $8 million per quarter. Additionally, Temporary Assistance for Needy Families (TANF) block grant funding is at risk. TANF federal fiscal year 2002 funding was $101 million.

In February 2002, the Government Accounting Office issued a report

(#GAO-02-239) that listed Kansas as one of six states not requiring SSNs on ALL driver's license applications. Because HHS is charged with responsibility for insuring that Congressional mandates are followed by the states, this report forced HHS to take action. Although HHS representatives have expressed their desire to resolve the driver's license issue amicably, they have been clear and firm in stating that Kansas is at serious risk of being found out of compliance.

Last year, when the Senate passed S.B. 559 on its merits, a bill very similar to the measure being considered today, we were very hopeful that a crisis with HHS would be averted. We were naturally quite disappointed when that bill failed to pass the House in the closing days of the 2002 Session.

Our next step was to request an exemption from HHS, on the basis that our existing driver's license laws and procedures were substantially similar to those mandated and that it would not be cost-effective to require Kansas to strictly comply with the requirement. We believed our application had a good chance of approval, as all applicants for commercial licenses must submit their social security numbers and all applicants who wish to use their SSN as their driver's license number are already furnishing SSNs to the Division of Vehicles. We were both surprised and disappointed when HHS denied our application for exemption. Had it been possible to appeal that decision, we would have done so, as we believe that our application had merit. Federal law specifically prohibits such appeals.

Shortly after federal welfare reform laws were enacted in 1996, the federal Office of Child Support Enforcement adopted a special procedure to give states one final opportunity to meet state plan requirements before the flow of federal money would be cut off. This procedure, set forth in Action Transmittal #OCSE-AT-97-05, dated April 28, 1997, requires HHS to send states a "Notice of Intent" announcing that HHS intends to find the state plan out of compliance and to withhold all federal funding for the IV-D program. Any State receiving a Notice of Intent is permitted to initiate an appeal at that point, which postpones actual imposition of sanctions and allows the State to present its arguments against sanctions, but it is the final step before the loss of federal funds.

HHS issued the notice of intent to Kansas October 28, 2002.

We are pursuing administrative hearing rights with HHS concerning the Notice of Intent. As long as HHS continues to prefer compliance over sanctions and does not set the matter for hearing before the end of the 2003 Session, we are hopeful that the formal declaration of noncompliance will be held in abeyance. If the amendment to K.S.A. 8-240(b)(1) of S.B. 16 is enacted, the proposed sanction by

HHS becomes moot. If the Legislature fails to enact the amendment to K.S.A. 8-240(b)(1), however, the odds are *against* Kansas prevailing in its appeal. The loss of these critically needed federal funds will become a reality.

The fiscal problems associated with losing more than $31 million of funding would be staggering. The hardships that many families would suffer due to the curtailment or elimination of our child support "safety net," CSE's services to families struggling to become and remain independent of public assistance, would be equally devastating and discouraging.

I urge you to reaffirm the action taken by the Senate in 2002 and report today's bill favorably for passage.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families
Region VII

Room 276, Federal Office Building
601 East 12th Street
Kansas City, Missouri 64106

January 14, 2003

The Honorable John Vratil
Chairperson, Senate Judiciary Committee
Kansas State House
300 SW 10th Avenue, Room 120 S
Topeka, Kansas 55512-1504

Dear Senator Vratil:

The purpose of this letter is to call your attention to a serious matter involving the State's Child Support Enforcement (CSE) program. Kansas is not in compliance with Section 466 (a) (13) of the Social Security Act (the Act). This section is titled "Recording of Social Security Numbers in Certain Family Matters." "The State must have in effect laws requiring procedures for the collection and recording of social security numbers of any applicant for a driver's license." A formal Notice of Intent (NOI), subject to an opportunity for a pre-decision hearing, to disapprove the Kansas IV-D plan was issued on 10/28/02.

Following the pre-decision hearing requested by the State, should the Department of Health and Human Services conclude that Kansas does not have an approved State plan, and that further federal payments under Title IV-D of the Act will not be made until State IV-D plan amendments are submitted and approved. Additionally, the State's Temporary Assistance for Needy Families (TANF) block grant under Title IV-A of the Act may also be at risk. Section 402 (a) (2) of the ACT provides that the chief executive officer of a State must certify that the State will operate a child support program under an approved IV-D plan as a condition of eligibility for a TANF block grant under Title IV-A of the Act.

The suspension of all Federal funding for the CSE program, as well as the TANF block grant, would seriously affect the State's ability to serve this population. According to the most recent expenditure reports for Federal fiscal year 2002, the Federal share of expenditures for the IV-D program, including estimated incentive payments, were $31,091,535 and authorized TANF funds were $101,931,061. Unless immediate action is taken, continuation of Federal funding is in jeopardy.

I urge you to take the necessary legislative steps to insure that Kansas comes into compliance with their IV-D State plan. If you have any questions concerning this issue, please contact Gary Allen at (816) 426-3981, ext. 164 or Sherri Larkins at (816) 426-3981, ext. 167.

Sincerely,

Linda K. Lewis
Regional Administrator

W. Paul Degener
518 NW 56th St.
Topeka, KS 66617
(785) 246-0215

SUBJECT: Opposition to Senate Bill 16, Drivers Licenses

Mr. Chairman and members of the committee, I thank you for allowing me to appear before this committee.

I am in opposition to this bill primarily because of the provisions of Section 1, subparagraph (b), line 4, page 2, which calls for applicants to provide their social security number.

Time and again we are cautioned to avoid providing our social security number as a deterrent against identity theft. At the present time my social security number is on my military identification card, every doctor I see has my social security number, the hospital has my social security number and every bank I deal with has my social security number. The state of Kansas already has my social security number as a result of my annual tax return. I feel that enough is enough.

Looking into the future however, I have another fear. For years now the federal government has been attempting to establish a national identification card, and there has been talk of using the drivers license as the vehicle to meet this end. It has also been reported that the social security number would be used for this purpose.

This bill stipulates that our social security number would remain confidential. If it is to remain confidential, I question why it is needed in the first place. My big concern however is that sometime down the line, the federal government is either going to offer the state federal money or threaten to withhold federal money if the state does not implement a national ID card with the social security number. Too many times I have heard legislators urge that a bill be passed to avoid losing federal dollars. Please do not let our state laws be driven by unconstitutional federal money.

I would urge you to eliminate any reference to the social security number in this bill.

Senate Judiciary
1-21-03
Attachment 6-1

Capitol Office
State Capitol, Room 143-N
Topeka, Kansas 66612
(785) 296-7398

District Office
304 North Sixth Street
P.O. Box 747
Independence, Kansas 67301
(620) 331-1800

Senator Derek Schmidt
15th District

Committee Assignments
Agriculture (Chairman)
Judiciary
Reapportionment
Natural Resources
Elections and Local Government
Legislative Post Audit

Message Only (800) 432-3924
During Session

Testimony of Senator Derek Schmidt
Before the Senate Judiciary Committee
Supporting Senate Bill 3
Repealing K.S.A. 21-4004
January 21, 2003

Mr. Chairman, thank you for scheduling today's hearing on Senate Bill 3, which would repeal the Kansas Criminal Defamation law.

I approach this subject of criminal defamation as one who has experienced the First Amendment's speech clause from many perspectives. I have worked as a journalist. I have served as a prosecutor. I now am an elected public figure who, like the members of this committee, is subject to regular public criticism – some fair, some not, some factual, some false.

I was surprised and disappointed to learn this past summer that Kansas has a criminal defamation law on the books. K.S.A. 21-4004 makes it a crime to:

> "communicat[e] to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule, tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends."

A copy of K.S.A. 21-4004 is attached to my testimony. Violation of this criminal law is a Class A misdemeanor, punishable by up to one year incarceration in the county jail and/or a fine up to $2,500.

In short, this law makes certain lies a crime in Kansas.

The statute was amended by the Kansas Legislature in 1993 and again in 1995 after a lengthy legal battle in federal court over its constitutionality. Those amendments attempted to make the statute comply on its face with the high constitutional requirements established by the United States Supreme Court in *New York Times v. Sullivan* when defamation of a public official or public figure is alleged.

I am not here to question the current statute's constitutional sufficiency – that is a matter that soon will be decided by Kansas appellate courts in reviewing a recent conviction under this statute in the District Court of Wyandotte County.

Senate Judiciary
1-21-03
Attachment 7-1

My belief is that the very existence of a criminal defamation statute – particularly one, such as ours, that may be applied to political speech directed at public officials -- is bad public policy for our state.

There are lies that may properly be punished by government. For example, K.S.A. 21-4005, which establishes the crime of maliciously circulating false rumors concerning financial status, makes lying about another person's or business's financial status a crime. There is a long tradition in American jurisprudence of permitting government to police commercial speech directed at private parties.

But government should not be given power to punish political lies directed at government officials. Political speech should enjoy the highest level of protection not only as a matter of constitutional law but as a matter of public policy.

And make no mistake about it – the Kansas criminal defamation statute, although it applies both to defamatory statements directed against private individuals and to those against government officials, is commonly used as a tool to punish speech directed at public persons. During the 1990s, it was used by the District Attorney of Shawnee County to attempt to punish speech that defamed a Topeka City Council member and a Topeka police officer. This year, it was used by the District Attorney of Wyandotte County to attempt to punish speech that defamed the mayor of Kansas City.

My view is that those whose false words defame public figures and others in a manner that properly subjects them to legal punishment should be at risk of civil liability, not at risk of criminal prosecution. In other words, the appropriate remedy for government officials or others who are victims of false and defamatory statements should be to sue the liars, not to ask the local prosecutor (and the taxpayers) to have the liars locked up.

The very concept of a criminal defamation law -- through which the state may use its police power to investigate possible violations, its prosecution power to accuse, and its power of incarceration to punish citizens because of their criticism of public officials -- is contrary to fundamental American notions of liberty.

That is why American foreign policy for many years has consistently insisted that regimes around the world repeal their criminal defamation laws:

- As recently as October, the United States again urged member states of the Organization for Security and Cooperation in Europe (OSCE) – which includes many former Soviet bloc countries – "to repeal criminal defamation laws, and to instead use only civil laws, as appropriate." (*Statement on Follow-up to the Warsaw Human Dimension Implementation Meeting, delivered by U.S. Ambassador Stephan M. Minikes to the OSCE Special Permanent Council, October 4, 2002.*)

- The United States Helsinki Commission, an independent federal agency composed of federal legislators and foreign policy officials to monitor implementation of human rights agreements in Europe, also has consistently urged European countries to adopt "across-the-board repeal of criminal penalties for free speech," including repeal of criminal defamation laws. (*Helsinki Commission News, statement of Senator Ben Nighthorse Campbell, chairman, and Representative Christopher H. Smith, co-chairman, June 18, 2002.*)

Here in Kansas, we should practice what America preaches. That is what Senate Bill 3 is all about.

As long as this law remains on the books, Kansas will remain in the undesirable company of repressive governments, military regimes and communist-bloc holdovers. Countries with active criminal defamation laws include Angola, Albania, Bangladesh, China, Zimbabwe, Guatemala, Mozambique, Belarus, Brazil, Mexico, Panama and Chile. Although our procedural law provides citizens much more protection than is afforded in these regimes, that cannot alter the fact that our substantive law on criminal defamation – the law which actually penalizes speech, including political speech – is essentially the same as theirs. This is not an association Kansas should maintain.

Defenders of this law will argue that some lies are so outrageous, so hateful, so harmful to the public official who is the subject of the lie -- and, therefore, to the public dialogue at large -- that the criminal law must prohibit them. But I would respond that no Kansan should ever be prosecuted by the government for expressing his or her political views, no matter how repugnant, irresponsible or outright false-in-fact those views may be.

The controversy over this law is yet another installment in the ages-old conflict between the desire of governments to maintain order and the right of citizens to freely criticize their government without fear of reprisal. I would remind the committee of the advice another Kansan gave decades ago when confronted with this same conflict in his own time:

> You tell me that law is above freedom of utterance. And I reply that you can have no wise laws nor free entertainment of wise laws unless there is free expression of the wisdom of the people – and, alas, their folly with it. But if there is freedom, folly will die of its own poison, and the wisdom will survive. *(Editorial "To an Anxious Friend," published in The Emporia Gazette, July 27, 1922.)*

William Allen White won a Pulitzer Prize for these courageous and eloquent words defending the freedom of Kansans to speak their minds about their government without fear of government retribution. That is the heritage our public policy should embrace.

I urge this committee to recommend repeal of the Kansas criminal defamation statute to the full Senate.

-- 30 --

4. Any party to private conversation may waive right of privacy and consent to electronic interception and recording; nonconsenting party cannot challenge; conviction under 65-4127b. State v. Roudybush, 235 K. 834, 844, 686 P.2d 100 (1984).

5. Willful violation of penal statute exclusion in personal injury insurance policy controls on duty to defend issue. MGM, Inc. v. Liberty Mut. Ins. Co., 253 K. 198, 203, 855 P.2d 77 (1993).

21-4003. Denial of civil rights. (a) Denial of civil rights is denying to another, on account of the race, color, ancestry, national origin or religion of such other:

(1) The full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof;

(2) the full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire; of any establishment which is engaged in selling food or beverage to the public for consumption upon the premises; or of any place of recreation, amusement, exhibition or entertainment which is open to members of the public;

(3) the full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;

(4) the full and equal use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public; or

(5) the full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas.

(b) Denial of civil rights is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-4003; L. 1992, ch. 239, § 186; L. 1993, ch. 291, § 134; July 1.

Source or prior law:
21-2424, 21-2461.

Law Review and Bar Journal References:
Discrimination against Indians, Jerry L. Bean, 20 K.L.R. 468, 475, 484 (1972).

CASE ANNOTATIONS

1. Statute does not apply to ordained minister's refusal, on religious beliefs, to perform a wedding ceremony. State v. Barclay, 238 K. 148, 153, 708 P.2d 972 (1985).

2. State not liable for segregation in city's schools. Brown v. Board of Educ. of Topeka, 892 F.2d 851, 888 (1989).

21-4004. Criminal defamation. (a) Criminal defamation is communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends.

(b) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal defamation if it is found that such matter was true.

(c) Criminal defamation is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-4004; L. 1992, ch. 239, § 187; L. 1993, ch. 291, § 135; L. 1995, ch. 251, § 14; July 1.

Source or prior law:
21-2401, 21-2403, 21-2404, 21-2405, 21-2406.

Law Review and Bar Journal References:
"Federalization of State Defamation Law," 15 W.L.J. 290, 291 (1976).

CASE ANNOTATIONS

1. Whether criminal defamation statute is constitutionally overbroad examined. Phelps v. Hamilton, 828 F.Supp. 831, 836, 845 (1993).

2. Cited in determination of attorney fees in challenge to constitutionality of criminal defamation statute. Phelps v. Hamilton, 845 F.Supp. 1465, 1468 (1994).

21-4005. Maliciously circulating false rumors concerning financial status. (a) Maliciously circulating false rumors concerning financial status is maliciously and without probable cause circulating or causing to be circulated any false rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state, or making any statement or circulating or assisting in circulating any false rumor or report for the purpose of injuring the financial standing of any bank, financial or business institution or of any individual in this state.

(b) Maliciously circulating false rumors concerning financial status is a class A nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-4005; L. 1992, ch. 239, § 188; L. 1993, ch. 291, § 136; July 1.

7-4

1/21/03

From Mike Kautsch

Re Proposed Repeal of Criminal Defamation Statute

With the hope that they might be of some use in framing issues for legislative deliberation, I offer the following thoughts on the basis of research concerning the law and policy related to criminal defamation.

Ever since our nation was founded, there has been growing doubt that defamation should be punished as a crime. Those who oppose criminal defamation statutes believe that such laws are absolutely contrary to the values of a democratic society. To the opponents, criminal defamation statutes intolerably chill debate about matters of public concern and unjustifiably suppress criticism of government. In the view of opponents, criminal defamation statutes no longer achieve a legitimate government interest, if such laws ever did.

Two interests that the government of Kansas seeks to achieve through the state's criminal defamation statute, 21-4004, appear to be implicit in the statutory language. First, the statute is concerned with defamation that tends to deprive a living person of "the benefits of public confidence and social acceptance." The implication is that the government of Kansas has assumed an interest in protecting the personal reputation of every person living in the state. The statutory language makes clear that a second concern is to protect the memory of the dead from vilification--at least to the extent that such vilification may tend to "scandalize or provoke relatives and friends" of the decedent. The concern with provocation of relatives and friends might signify that the state has assumed an interest in deterring vigilante-style attacks on the vilifiers of the dead.

Now that repeal of 21-4004 has been proposed, the time has come to scrutinize the government interest in using the criminal courts to protect personal reputations and to deter breaches of the peace.

If the statute is indeed supposed to deter breaches of the peace, it is vulnerable to the same criticism that historically has been voiced against other criminal defamation laws in other states. As one First Amendment scholar wrote 40 years ago, "'[U]nder modern conditions, when the rule of law is generally accepted as a substitute for private physical measures, it can hardly be urged that the maintenance of peace requires a criminal prosecution for private defamation.'" (*See* Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L.J. 877, 924 (1963), as quoted in Garrison v. Louisiana, 379 U.S. 64, 69 (1964).) Also, consider how reporters for the American Law Institute once explained the absence of a criminal defamation statute from a draft model penal code. They said: "'It goes without saying that penal sanctions cannot be justified merely by the fact that defamation is evil or damaging to a person in ways that entitle him to maintain a civil suit. Usually we reserve the criminal law for harmful behavior which exceptionally disturbs the community's sense of security.... It seems evident that personal calumny falls in neither of these classes in the US.A., that it is therefore inappropriate for penal control, and that this probably accounts for the paucity of prosecutions and the near desuetude of private criminal libel legislation in this country....'" (*See* Model Penal Code, Tent. Draft No. 13, 1961, s. 250.7, Comments, at 44, as quoted in Garrison v. Louisiana, 379 U.S. 64, 69-70 (1964).)

Senate Judiciary
1-21-03
Attachment 8-1

Apart from concern about keeping the peace, if 21-4004 is taken at face value and without question, it may seem to be basically desirable as a means of protecting reputations. A private person who holds a good reputation wants to protect it and might appreciate a state effort to bring the criminal code to bear against a defamer. However, 21-4004 is not available only to protect the reputations of private individuals. The statute also can be invoked by government authorities. There is nothing to prevent a powerful figure, such as public official who enjoys the prestige and privilege of a government position, from invoking the statute and influencing prosecutions. As a result, 21-4004 is vulnerable to the criticism that it is indistinguishable from the sedition laws that long have been considered an anathema in our democracy.

Liability for the written form of defamation that became known as libel originally was considered in England to be "a protection of the reputation or inviolability of government and the ruling class, including feudal lords, monarchs and the church. 'Prosecutions for seditious libel and proceedings by the House of Commons and the House of Lords against publishers for breach of parliamentary privilege were major vehicles of suppression during the eighteenth century.'" (*See* Cox and Callaghan, *To Be or Not to Be, Malice is the Question: An Analysis of Nebraska's Fair Report Privilege from a Press Perspective*, Creighton Law Review (December, 2002), referring to Telnikoff v. Matusevitch, 702 A. 2nd 230 (Md. 1997), which cites Bogen, *The Origins of Freedom of Speech and Press*, 42 Md. L. Rev. at 443-444).) In the United States, the Sedition Act of 1798, authorized a fine or imprisonment "'if any person shall write, print utter or publish...any false, scandalous and malicious writing or writings against the government....' Although the Sedition Act was never tested in [the U.S. Supreme] Court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by Act of Congress on the ground that it was unconstitutional." (*See* New York Times v. Sullivan, 378 U.S. 254, 273-276 (1964).)

Since then, evidence has mounted that public officials or political figures connected with government have been the frequent beneficiaries of criminal defamation laws. A legal scholar, reporting in 1956 on the results of a study of criminal defamation statutes, wrote that: "[H]alf the cases from 1920 on can be classified as basically political.... Commonest among the political cases were those in which prosecutions were filed against an unsuccessful political candidate or his supporters for statements made during a campaign, now ended, concerning his now successful opponent. Of the same sort were prosecutions of persons, who feeling aggrieved, made disagreeable statements about persons firmly entrenched in public office or power. One may suspect that in such cases the law was being used by the successful personage or his friends as a means of punishing their less potent enemies." (*See* Robert A. Leflar, *The Social Utility of the Criminal Law of Defamation* , 34 Texas L. Rev. 984, 985-86 (1956), quoted by the Reporters Committee for Freedom of the Press, *Brief for Amicus Curiae in Support of Appellant*, in Ivey v. State of Alabama, 821 So.2d 937 (Alabama S. Ct. 2001).) In Kansas, the two most recent criminal defamation cases both occurred in a political context. In Wyandotte County, the persons complaining of criminal defamation were a mayor and a judge (under 21-4004) and, in the City of Merriam, they were a current and a former member of the city council (under an ordinance modeled after 21-4004). (See Reporters Committee for Freedom of the Press, News Media Update, *Jury Finds Editor, Publisher and Newspaper Guilty of Criminal Libel* (July 19, 2002), and Boylan, *Charges Won't be Refiled Against 6 Who had been Accused of Criminal Defamation* (August 9, 2002).

As long as persons in government can invoke a criminal defamation statute such as 21-4004, its potential for chilling political expression must be considered. As was argued in a recent Alabama criminal defamation case, "The fact that those holding political power have access to prosecutorial authority makes criminal defamation an especially dangerous political weapon. It invites uneven

application of the law depending on the momentary sways in political power and places political also-rans at the mercy of election victors." (*See* the Reporters Committee for Freedom of the Press, *Brief for Amicus Curiae in Support of Appellant*, in Ivey v. State of Alabama, 821 So.2d 937 (Alabama S. Ct. 2001).) The problematic nature of criminal defamation laws moved the California legislature to repeal its criminal slander statute and to find "that every person has the right to speak out, to poke fun, and to stir up controversy without fear of criminal prosecution. The Legislature finds and declares that the continued existence of vague laws on the books is an invitation to their unconstitutional use, at the peril of civil liberties." (*See* 1991 Cal. Stat. 186 § 1, quoted by the Reporters Committee for Freedom of the Press, *Brief for Amicus Curiae in Support of Appellant*, in Ivey v. State of Alabama, 821 So.2d 937 (Alabama S. Ct. 2001).)

To be sure, 21-4004 does not contain the kinds of flaws found in criminal defamation laws in some other states. For example, unlike some state statutes, 21-4004 includes a requirement that "actual malice"--basically knowing or reckless disregard of the truth--be proven before criminal liability may be imposed for defamation. The U.S. Supreme Court has ruled that a criminal defamation statute can be constitutional if it has an actual malice requirement. Thus, a statute that imposes criminal liability only on one who utters a calculated falsehood may be defended as a matter of constitutional law. (*See* Garrison v. Louisiana, 379 U.S. 64, 74 (1964).) Yet, even if a criminal defamation statute requires proof of actual malice, it still may be viewed as the equivalent of a seditious libel law and be subject to serious question. For example, Supreme Court Justice Hugo Black doubted "that requiring proof that statements were 'malicious' or 'defamatory' will really create any substantial hurdle to block public officials from punishing those who criticize the way they conduct their office." And as Justice Black's colleague on the Court, William O. Douglas, wrote: "If 'reckless disregard of the truth' is the basis of seditious libel, that nebulous standard could be easily met." (*See* concurring opinions by justices Black and Douglas in Garrison v. Louisiana, 379 U.S. 64, 79-83 (1964).)

Moreover, a criminal defamation statute also might be subject to question, at least as a matter of public policy, if it fails to require proof of actual damage to one's reputation. The Kansas statute, 21-4004, rather than explicitly requiring proof that damage to reputation included a demonstrable, actual loss, calls only for a showing that defamation of someone was "tending" to subject him or her to hatred or other kinds of social rejection.

Requiring proof of damages in defamation cases has been a concern of the U.S. Supreme Court since the Court first considered how a state civil defamation law could operate like a seditious libel law. (*See* Kane, *Malice Lies, and Videotape: Revisiting New York Times v. Sullivan in the Modern Age of Political Campaigns*, Rutgers Law Journal (Spring 1999).) Requiring proof of actual damage is one way to prevent a defamation law from resembling a seditious libel law. Now, as a result of U.S. Supreme Court rulings, a civil defamation plaintiff usually must show that false, defamatory statements caused "actual injury or special damages." (*See* Hudson, *Defamation and the First Amendment*, First Amendment Center at http://www.freedomforum.org/packages/first/defamationandfirstamendment/index.htm.)

Kansas has a long and distinctive tradition of commitment to freedom of expression. (See Coleman v. MacLennan, 78 Kan. 711 (1908), cited in New York Times v. Sullivan, 376 U.S. 254, 280 (1964).) In light of that tradition, the proposal for repeal of the Kansas criminal defamation statute, 21-4004, reflects concern that 21-4004 has the oppressive quality of a seditious libel law. The proposal for repeal also reflects a view that the remedy for false utterances is rebuttal in the marketplace of ideas and information. As was written by Judge Learned Hand, [The First Amendment] presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and

always will be, folly; but we have staked upon it our all." (See United States v. Associated PRess, 52 F.Supp. 362, 372 (D.C.S.D.N.Y. 1943).)

The proposal for repeal of 21-4004 comes at a time when criminal defamation statutes are on the wane. Such statutes are on the books in less than half the states. Some of the statutes have been overturned by court rulings, and then repealed. Several states never enacted a criminal defamation statute. (*See* the Reporters Committee for Freedom of the Press, ***Brief for Amicus Curiae in Support of Appellant***, in Ivey v. State of Alabama, 821 So.2d 937 (Alabama S. Ct. 2001).)

As Kansas considers proposed repeal of 21-4004, it is noteworthy that criminal defamation is falling into disfavor outside the United States. The United Nations has issued a call for all member states to "review their defamation laws to ensure that they do not restrict the right to freedom of expression and to bring them into line with their international obligations." Included in the U.N. call was this statement: "At a minimum, defamation laws should comply with the following standards: the repeal of criminal defamation laws...; the State...should be prevented from bringing defamation actions; defamation laws should reflect the importance of open debate about matters of public concern and the principle that public figures are required to accept a greater degree of criticism than private citizens...." (See United Nations, Press Release, (1 December 2000) at http://193.194.138.1990/hurricane/.../EFE58839B169CC09C12569AB002D02C0?open document.)

My name is Edward Seaton. I am Editor in Chief of The Manhattan Mercury. I want to speak about Senate Bill 3 from my perspective of 30 years defending free expression here in the United States and around the world, including as president of the national organization of America's daily newspaper editors, the American Society of Newspaper Editors, and as president of the Western Hemisphere's leading press organization, the Inter American Press Association.

While journalists must be responsible for their reporting, sending them to jail for what they write, especially about a public official, is an egregious violation of freedom of the speech. To be guilty of a crime for writing in a newspaper has no place in a democracy. Criminal punishment for political speech is a relic of an era when it was instituted as an alternative to public dueling to the death over inflammatory articles. It defies both U.S. and international standards and sets a terrible precedent for the rest of the world.

Around the world, criminal defamation laws are the preferred instruments of repressive governments to silence criticism and stifle public debate. They are the hallmark of closed societies throughout the world. A society cannot be free if it criminalizes insulting government officials and institutions. If what is written is unpleasant or unfounded, the remedy should be to redress the harm caused to the reputation of the claimant, not to punish the defendant. That is why we have civil courts to resolve such matters. Victims of defamation can — and do — recover damages through civil law suits.

At last count, there were 118 journalists in prison worldwide — many of them imprisoned for criminal defamation. Those of us who believe in democracy and campaign for free expression are frequently in the position of urging other countries to repeal their criminal defamation laws. The principal argument made to these governments is that enlightened societies simply do not imprison people for what they write. In societies governed by the rule of law rather than the whims of political strongmen, attacks on public officials are not met by arresting journalists.

The recent prosecution in Wyandotte county under our criminal defamation law resulted in the first conviction on such a charge in the United States since 1974. It was an international embarrassment, and it provides legal justification to repressive governments that wield their criminal defamation statutes as a means of suppressing dissent and chilling unflattering reporting.

The Kansas Criminal Defamation Law has brought ridicule to our state. It has been severely criticized by nearly every international freedom of expression organization. These include the International Press Institute, the Inter American Press Association, the Committee to Protect Journalists, Reporters Committee on Freedom of the Press as well as by major newspapers from The New York Times to the Los Angeles Times. One critic said by modern standards "Kansas has become a Third World country."

While those of us who are Kansas journalists know this is not the case, the Kansas Criminal Defamation Law contradicts internationally accepted standards, including the Universal Declaration of Human Rights and the American Convention on Human Rights. It has no place in a democracy. It should be repealed.

Senate Judiciary
1-21-03
Attachment 9-1