

# #MeToo Backlash How to Help

Rebecca Roe

**US**

Crime + Justice Energy + Environment Extreme Weather Space + Science

LIVE TV

Edition ▾



# Cosby sues 7 accusers for defamation, seeks damages and retractions

By Ralph Ellis, CNN

🕒 Updated 6:49 PM ET, Mon December 14, 2015



## More from CNN



R. Kelly's girlfriend accuses him of controlling and...

## Story highlights

Counterclaim accuses seven women of making "malicious, opportunistic, and false and defamatory accusations"

More than 40 women have accused Bill Cosby of sexually assaulting them

# Pa. State Sen. Daylin Leach Sues Newspaper Alleging Reporter Was 'Colluding' With Sex Abuse Accuser

In the lawsuit, Leach accused reporter Angela Coulumbis of "colluding" with Cara Taylor to complain that alleged Leach coerced her to perform oral sex on him in 1991 when he was charged with sexual assault in a criminal case.

By **Max Mitchell** | October 02, 2019 at 01:51 PM



PENNSYLVANIA REAL-TIME NEWS

## Sen. Daylin Leach sues woman who alleged 1991 sexual misconduct claiming defamation

Updated Jan 30, 2019; Posted Jan 28, 2019



# Jameis Winston fires back, suing woman who accused him of rape

By **Greg Botelho**, CNN

🕒 Updated 9:05 AM ET, Sun May 10, 2015



## More from CNN



R. Kelly's girlfriend acc  
him of controlling and.

## Story highlights

Jameis Winston files counterclaim against Erica Kinsman, who had accused him of rape

His lawsuit claims Kinsman lied repeatedly and is motivated by "greed"

Kinsman's lawyer: Not answering questions, smearing people is "not going to fly"

NATIONAL

## As More College Students Say “Me Too,” Accused Men Are Suing For Defamation

More people are sharing their “Me Too” stories, but a backlash has been brewing at colleges across the country, with accused students filing defamation suits against women who say they were assaulted.

By Tyler Kingkade

Posted on December 5, 2017, at 11:26 a.m. ET



BuzzFeed News

“I’m hearing lawyers talk more about it as a strategy, even if they don’t use it,” said Brett Sokolow, a lawyer who runs the Association of Title IX Administrators. Young women sometimes ask to withdraw their sexual assault complaints, even when there is evidence to support them, Sokolow said, and schools sometimes learn that the accused is threatening a defamation suit as leverage.

“In a sharp backlash, these defamation suits threaten to nullify the progress of the last decade and a half. Civil discovery procedures may conceivably be initiated long before a criminal trial to frighten and embarrass the victim. Character evidence, the defense lawyer's greatest weapon for making the *victim* seem guilty, may be admissible in a civil trial when it would not be allowed in a criminal trial. Left to proliferate unfettered, these suits will serve as a new forcible deterrent to women who wish to file criminal complaints of sexual assault or rape.”

1990

## Protecting Rape Victims from Civil Suits by Their Attackers

Eric T. Cooperstein

## BACKLASH TOOL KIT

1. Statutory or court rule stay of all discovery while a criminal investigation pending.

## BACKLASH TOOL KIT

2. Criminal conviction is determinative of truth/falsity

# BACKLASH TOOL KIT

## 3. Expanding Privilege to Report

### **RCWA 4.24.510**

#### **4.24.510** Communication to government agency or self-regulatory organization-Immunity from civil liability

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

# BACKLASH TOOL KIT

## **O.R.S. § 31.150**

- (a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;
- (b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;
- (c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or
- (d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

# BACKLASH TOOL KIT

## **California § 47. Privileged publication or broadcast**

A privilege publication or broadcast is one made:

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision applies to and includes a complaint of sexual harassment by an employee, without malice, to an employer based upon credible evidence and communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment. This subdivision authorizes a current or former employer, or the employer's agent, to answer, without malice, whether or not the employer would rehire a current or former employee and whether the decision to not rehire is based upon the employer's determination that the former employee engaged in sexual harassment. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

# BACKLASH TOOL KIT

Add to the list of “protected expressive activity” or privilege

- Administrative Agencies such as Department of Health
- Title IX Authorities
- Professional Disciplinary Entities
- Mandated Reporters
- Report to Employer HR personnel

Saldivar v. Momah, 145 Wn.App. 365 186 P.3d 1117 (2008). Filing a private lawsuit for sexual assault is not immunized protected activity.

Olaes v. Nationwide Mutual Ins. Co., 135 Cal.App. 4<sup>th</sup> 1501 (2006).  
Employers internal investigation of sexual harassment is not protected  
petition.

Rogers v. Dupree, 340 Ga.App. 811, 799 S.E. 2d (2017). Video and demand letter sent to allege sexual harasser pre lawsuit filing or police report is not a constitutionally protected petition.

Mantell v. P & J Management Corp. (Mass 2013). Sexual harassment victims report to the Massachusetts Commission Against Discrimination is protected activity.

Schwern v. Plunkett, 845 F.3d 1241 (9th Cir. 2017) victims report to police resulting in perpetrators arrest was posted online. Anti-SLAPP motion granted because there was no evidence victim was the source of the online post.





## Key Provisions of Anti-SLAPP Statutes

- A quick hearing on the motion to dismiss – 30-60 days from filing.
- Limited, if any, discovery in advance of the hearing.
- The hearing is conducted on the pleadings.
- Attorneys fees and/or statutory penalties if defendant/survivor prevails.
- If the motion to dismiss is denied, defendant/survivor has an automatic right to appeal.

# A “SLAPP” IN THE FACE OF FREE SPEECH: PROTECTING SURVIVORS’ RIGHTS TO SPEAK UP IN THE “ME TOO” ERA

- No requirement of “petitioning”
- A report of sexual violence is presumed in the public interest
- Plaintiff/accused must show actual malice

Deaver v. Desai, 483 S.W. 3d 668 (Texas 2015). Website criticizing the author's ex-wife's attorney constituted a protected exercise of free speech.

Fun fact in the opinion:

“Scott also criticized the elected judiciary in this country, and he went so far as to likening the Texas Bar Association to a “cross between the Ku Klux Klan and a carnival barker.””

Brenner v. Hill, 2017 WL 5589175 (California). Online “blacklist” of photographers who had allegedly engaged in inappropriate sexual behavior with models, was protected activity under California anti-SLAPP statute.

Vander-Plas v. May, 2016 WL 5851913 (Tex. 2016). Law student's allegation of sexual harassment in a press release, against a political activist was protected.

Press release at issue:

Kristen has been the victim of sexual assault committed by Don May on at least two occasions. Don May is now using this lawsuit and the media to bring unwanted attention to the victim of his assault. Few had heard of these allegations before Don May sent out a press release. Why would he do it? The only rational explanation is that Don May wanted to publicly name and shame the victim of his sexual assault.

May's unverified pleading that it was false did not meet his burden of actual malice.