

Sexual Assaults and Defamation Litigation - An Emerging Trend

By: Jack Greiner on January 22, 2020 on graydon.law

I saw [an interesting piece in The New York Times](#) earlier this month. The gist of it is that women and men are increasingly using defamation suits to address allegations or denials of sexual assault.

In many cases, the scenario plays out like this. A woman accuses a man of sexual assault, but past the statute of limitations for the offense. The man denies the allegation, thereby explicitly or implicitly calling the woman a liar. The woman then proceeds to file a defamation claim. There's no statute of limitations problem because the limitations period for the defamation doesn't begin to run until the statement is made. This not only provides the woman with an opportunity to recover damages for the defamation, it effectively re-opens the sexual assault case, since the truth of the allegation will be at issue.

According to the New York Times article, eight women have reached settlements with Bill Cosby in the last year.

Some men are using the defamation as an offensive tactic by bringing defamation suits against women who accuse them of sexual assault. The article notes that Johnny Depp sued his ex-wife Amber Heard when she accused him of domestic abuse.

The United States Supreme Court issued a decision in 1990 that no doubt assists the plaintiffs in these cases. In [Milkovich v. Lorain Journal](#), the Court ruled that a statement couched as an opinion could support a defamation claim if it was subject to being proven "verifiably false." That is, even if one were to lead off a comment with "in my opinion" the comment could be actionable if the plaintiff could demonstrate the substance of the statement was false. The Milkovich case concerned a comment by a sports columnist who

led off his column on a high school wrestling controversy by opining that a high school coach and an athletic director lied at an inquiry into the event. In the Court's view, whether a person lied is a verifiable fact. It pointed to the fact that perjury is a crime and trials take place wherein that very question is proven.

Defamation plaintiffs who seek to hold a defendant liable for labeling them a liar can point to Milkovich.

But defendants are not without hope. If the statement denying the sexual assault allegation is made in a court filing, the defendant will almost certainly be protected by the privilege that protects in court statements. The law recognizes that a party should be able to defend oneself in a trial without worrying that the very defense will lead to a defamation suit. Those accused of sexual assault in a lawsuit are well advised to limit their comments to court filings. But extra-judicial comments made in a press conference or an op-ed don't get that same level of protection.

And for those allegations that aren't made in the context of a lawsuit, the accused should very carefully weigh the risks of a public denial. Is denying the non-actionable allegation worth risking a defamation suit that opens the can of worms? A no comment may be in order.