



#MeToo Presentation Speaker Notes

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Hello and welcome! Today's presentation is about reporting on #MeToo issues (meaning sexual harassment, discrimination or abuse issues). This presentation will provide basic information about how to go about tackling #MeToo news stories on your school campus and in your community so that you can make more informed decisions as you investigate this topic. This presentation will also help you understand when you might have a problem that requires outside help. For those situations, you may want to keep contact information for the Student Press Law Center handy.

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The SPLC is an independent nonprofit organization founded nearly 50 years ago based in Washington DC. The center provides free legal help to student journalists and their advisors on a variety of media law issues.

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We're going to talk about reporting on #MeToo issues in this presentation, but we're ready to help you answer questions on pretty much any media law issue that comes up, including things like copyright law, access to public records and meetings, libel law, privacy law—pretty much anything that commercial news reporters have to deal with student journalists have to deal with as well. Make sure you bookmark the website in case you ever need help: splc.org.

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You can also use the legal hotline service to submit an email query or schedule a telephone call with a member of the legal team to get more specific information about your media law issue. The hotline service is free and open to all student journalists and those who work with them. As we like say: write the story — we've got your back.

OK, let's dive in. Before we begin, please note that this presentation on #MeToo reporting was originally designed as an interactive session with the audience. We usually presents these materials live, where student journalists and advisers can share

their experiences in #MeToo reporting and exchange advice for troubleshooting challenging situations. Without such collaborative input today, this presentation is a bit shorter. It has been adapted as a straightforward overview of the major issues that tend to crop up in #MeToo reporting. It is not a comprehensive take on this subject and every situation is different. So, we encourage you to reach out to the legal hotline for assistance with your particular circumstances.

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What is #MeToo? Broadly speaking, hashtag #MeToo is the name of a movement against sexual violence and sexual harassment, seeking to bring awareness to these issues in daily life, both personal and professional. The phrase “Me Too” has been around since 2006, attributed to sexual harassment survivor and activist Tarana Burke before the #MeToo movement gained momentum more recently a few years ago. You may have heard of other movements similar to #MeToo but are called something else, such as the Time’s Up movement against sexual harassment, which focuses more on workplace inequality in a range of industries. Hollywood celebrities started the Time’s Up movement in response to sexual abuse allegations against film producer Harvey Weinstein, who was sentenced to 23 years in prison for a criminal sexual act and rape.

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Weinstein’s conviction was made possible by the work of intrepid investigative reporters who exposed his wrongdoing. Those journalists provide insight into why and how this reporting is so complicated and sensitive. Here is a quote from Ronan Farrow, a journalist from *The New Yorker* whose work led to Weinstein’s conviction. It reads, “There was also this institutionalized elaborate set of mechanisms that were designed to shut down these allegations and keep them from becoming public, and at times, designed to forestall criminal action around these allegations.” This illustrates how difficult it can be to obtain information about #MeToo incidents.

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Meanwhile, journalist Jodi Kantor at *The New York Times* also reported on #MeToo issues and uncovered allegations of sexual abuse against Harvey Weinstein. Kantor said of this work, “What’s greatly complicated all of this is the internet because it used to be that when you published a local paper and it was in print, a limited number of people would see it. With everybody we name in the paper, that name is everywhere on the internet instantaneously.” This highlights how quickly a #MeToo story can travel to reach countless readers.

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And here is Megan Twohey, Kantor's reporting partner at *The New York Times*, whose impactful journalism exposed powerful sexual predators and launched greater recognition of the common sexual abuse faced primarily by women. In describing the interviews that she and Kantor conducted, Twohey said, "We listen to these allegations, and we take them very seriously, but then we set about applying a very rigorous process by which we seek to verify." It was important for them to make sure that every single line in their stories was accurate.

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I showed you these three quotes from Ronan Farrow, Jodi Kantor, and Megan Twohey to illustrate the fact that reporting on #MeToo issues is really difficult. It is a complex topic to research and write about. Even seasoned professionals ran into numerous obstacles. Sometimes, they weren't able to get the information they needed. They worried about not getting things right in a story that can be distributed far and wide. You are not alone if you find yourself facing challenges while pursuing these types of stories. You are more likely than not to encounter tricky situations. This is very advanced level reporting. And with so much at stake, even a small error can lead to dire consequences. I recommend you reach out to the Student Press Law Center while you are in the process of working on your #MeToo story, before it goes to print. Their legal team can work with you to help you avoid some of the most common problems.

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The rest of this presentation is divided into two parts. The first part looks at what information can student journalists who pursue a #MeToo story get. The second part then looks at what information can be published.

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Let's start with what information is available. For those of you reporting on #MeToo issues, here are the major sources you would probably want to explore.

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First, there are documents. Official published materials are the best for providing the most solid backing for your story. Keep in mind that in many instances, you will be working on a story about an incident that has not been reported, so official published materials would not be available for that incident.

But official published materials that are available include statistics published by the Department of Education, court records, open records made available by state law, and

school campus crime disclosures made possible by the Clery Act. Let's take a closer look at each one of these sources.

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The US Department of Education keeps track of sex discrimination cases currently under investigation at elementary, secondary, and post-secondary schools. To find these cases, visit the website listed here or do a Google search for "US Department of Education Title IX [nine] Investigations."

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The US Department of Education's webpage looks like this. These cases have been filtered for sex discrimination. Using the drop-down menus, you can sort the cases by state and by the type of sex discrimination, which includes sexual harassment and sexual violence. You can also check to see if there are any incidents on your campus by typing in your school's name in the Search box on the right.

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This webpage won't provide too many details about a #MeToo incident, but it's a good start for either determining or verifying if a #MeToo incident has occurred on your campus, plus the date when the investigation into the incident started.

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Out of all the official published materials available, court records are the gold standard. This is because of the fair reporting privilege. In most states, when the media publishes fair and accurate accounts of official public proceedings and reports, the media is protected from liability even if the information reported later turns out to be false, as long as the media attributed the information to these official public proceedings and reports, which include court records. When you are reporting on a #MeToo incident, check for filings in both criminal court and civil court. If you can locate the discovery documents of a civil case (meaning deposition transcripts or other documents like emails which have been shared between parties), you might get useful details about the incident.

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You can also seek information on a #MeToo incident through state open records law. State open records law varies state by state. But in general, a public body must make its records available upon request unless the records are explicitly exempted by statute. To figure out what type of information you can get under your state law...

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... check out the Open Government Guide from the Reporters Committee for Freedom of the Press. They have compiled what the open records law says in every single state. This is what the Open Government Guide looks like on the Reporters Committee for Freedom of the Press's website.

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What can you expect to get from state open records law? Again, the availability of information varies on a state-by-state basis. But in general, state open records law allows you to access police records, some personnel records, and internal investigations at public schools. If the incident was reported to law enforcement, police records should include a reasonable description of the incident, which can be included in your story with proper attribution. If the #MeToo incident you're reporting on involves a government employee, such as a public school teacher, personnel records might reveal details. Unfortunately, the availability of personnel disciplinary records varies widely as many states have exemptions to prevent their release. It doesn't hurt to check though. For a public school, you may be able to obtain information on an internal investigation through the school's Title IX [nine] office using state open records law. But when you make a request for such information, you might hear a school administrator or school official cite the FERPA excuse. What should you do if that happens?

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First, let's talk about FERPA. FERPA stands for the Family Educational Rights and Privacy Act. School officials commonly deny public records requests by citing FERPA. This federal law penalizes a school if it releases a student's educational records without the student's consent (or sometimes parental consent) if those records would identify the student. But FERPA's requirements are often misunderstood or abused by school officials. FERPA does not stop student journalists from publishing information about other students because FERPA's restrictions do not pertain to them. If you are working on a #MeToo story and the survivor is a student who is willing to collaborate with you, you can ask the survivor to request their own record. And for a crime of violence or non-forcible sex offense, if there is a finding of guilt, FERPA allows the school itself to disclose the name of the student involved and the final outcome of a campus disciplinary proceeding.

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The Clery Act is another way to get information. This federal law requires schools that receive federal funding to report campus crime information. This means that it applies to both public schools and private schools. Under the Clery Act, a school must keep a daily crime log that is updated every 48 hours, send timely notification of campus

emergencies, and publish an annual security report detailing every single Clery crime for the past three years. For school sex crime investigations, the Clery Act requires the final outcome be made available in a timely manner to both the accused and survivor. And if you want to interview them for your story, both parties are allowed to discuss their own experiences.

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Information is also available through other types of evidence. If you cannot find official published materials or want to make sure you are doing a thorough job in your reporting, you can seek evidence from sources involved in the incident itself. For example, you can interview witnesses who saw the incident first-hand. But you might not be able to find any witnesses because #MeToo incidents frequently only involve the accused and the survivor, and it is rare for a third-party observer to be present. Another source are family members or friends whom the survivor contacted contemporaneously. Shortly after the incident, the survivor might have reached out to someone to discuss what just happened. This person's recounting of the event would also serve to help confirm the incident. Finally, it is possible that the accused and the survivor exchanged text messages or emails or created some other paper trail that refers to the incident. If these materials exist, they would be important to obtain as support for the incident.

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Now that we have gone through the different types of information that you can possibly get for reporting a #MeToo story, what information can actually be published? Let's break up this question into two parts: covering a specific #MeToo incident versus covering the general topic of #MeToo. In both of these scenarios, the main legal concern is libel.

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As noted earlier in this presentation, if you are writing a story about a specific #MeToo incident, it can be really challenging to obtain verifiable evidence. Many of these incidents happen behind closed doors. Again, the best practice is to get officially published documents, but they might not be available. Without such backing, we are worried about libel.

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So, what is libel? Libel is the publication of a false statement that seriously harms someone's reputation. When a journalist's work causes harm, there can be serious consequences. Libel lawsuits can eat up a lot of time, money, and other resources for a media organization.

For a libel claim to be successful, the following four elements must be established: 1) publication, 2) identification, 3) harm, and 4) fault. Let's briefly discuss each one.

1) The first element is publication. A statement is published if it is communicated to someone other than the person whom the statement is about. If you reprint or rebroadcast a libelous statement made by someone else, you can also subject your publication to a libel lawsuit.

2) The second element is identification. A statement identifies a person if it is shown that the statement is "of and concerning" that person. In stories about #MeToo incidents, the most obvious example would be identification of the accused. But it can also be identification of those involved in the process of investigating the incident, such as a Title IX [nine] officer or campus court officials who a party claims mishandled the case. Remember that even if you do not explicitly name a person in your article, identification can still occur when a statement includes enough descriptors of a person.

3) The third element is harm. A statement is harmful if it seriously shames, ridicules, disgraces, or injures a person's reputation or causes others to do so. Some statements by their very nature raise red flags, and you must proceed with caution. One example of a statement that could cause significant harm to a person's reputation if extra care is not taken is a statement regarding improper sexual conduct, which is central to #MeToo reporting. So, before your #MeToo story goes to print, reach out to the Student Press Law Center.

4) The fourth and final element is fault. For a reporter to be at fault in publishing a statement, the person suing must prove that the reporter either did something they should not have done or that they failed to do something that they should have done. In other words, a reporter probably would not legally be at fault if they did everything that a reasonable reporter should have done to verify the information before publishing it, including talking to all sides, obtaining all relevant documents, and taking accurate notes.

So, a successful libel claim would have to establish all four of these elements: publication, identification, harm, and fault. The good news is that there are several defenses to libel. Truth is an absolute defense to a libel claim, which is why it is important to ensure your story is factually accurate. As discussed earlier in this presentation, journalists can also be protected from liability when they publish fair and accurate accounts of official public proceedings and reports, even if it turns out later that

the information is false. That is why citing official published documents in a #MeToo story is the best practice.

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Remember, when writing a #MeToo story, be careful about libelous statements about the accused and libelous statements about those in charge of investigating the case. What about using anonymous sources? Survivors may understandably be hesitant to give their name on the record. Having their identity out there might expose them to further threats or harm. Using an anonymous source might be appropriate for a #MeToo story because of the sensitivity of the subject. But if you decide to use an anonymous source in your #MeToo story, be aware of the potential pitfalls that can arise. First, anonymous sources — if they insist on remaining anonymous no matter what — are of little value in defending you against a libel lawsuit. Second, relying heavily on anonymous sources can undermine the credibility of a story. The general rule is to only promise anonymity when absolutely necessary and after you discuss the decision with your editor and publication adviser if you have one. It's also a good time to contact the Student Press Law Center or another legal adviser who can help you identify some of the issues to consider and to review legal protections that might be available should you be ordered to reveal your source's identity. When using anonymous sources, make sure not to inadvertently identify the source whom you promised anonymity through descriptors. And if you have a publication adviser, do not tell them who an anonymous source is because advisers are not afforded the same protections as student journalists. Also, it is a good idea to establish a clear staff policy regarding the use of anonymous sources, particularly for #MeToo stories, from the get go.

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If you've completed comprehensive research for your #MeToo story but you just don't have enough verifiable evidence to publish a story about a specific incident, one possible solution is to publish a story on the general issue of #MeToo on your campus. Again, the main legal concern here is libel.

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Remember, one requirement of a successful libel lawsuit is identification. If you are writing a general story on #MeToo without mentioning details of a specific incident, libel can still occur without listing names. Be careful not to include descriptions that could lead to the identification of a person. What about group libel? While an individual can be defamed, groups cannot be defamed. But if a statement about a group can reasonably be interpreted to refer to a specific individual within the group or a few individuals within the group, then they may be able to claim that their reputation has been damaged. For

example, if your article states that the “accused is in the school’s Music Department,” and the Music Department is small enough — say under 25 members — *each* person in the music department who is not involved in the #MeToo case might nevertheless be able to claim that their reputations have been damaged by association since people are now looking at them as the possible suspect. Although you should be careful about not making identifying statements, it is also important that your story includes enough details to prevent it from being misleading. If you are covering the issue of #MeToo without referencing a specific incident, SPLC recommends including only basic information on what happened and how the school is handling the issue. If you feel uncertain about how to approach #MeToo reporting, get in touch with the Student Press Law Center for guidance.

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Reporting on #MeToo issues can make profound change, as we saw in the work of Farrow, Kantor and Twohey, but it must be done carefully. Now of course we haven’t covered everything in this short presentation — just some of the big things to be aware of. You may have more questions. As noted earlier, the Student Press Law Center website at splc.org has many free resources on student press law issues. If you are uncertain about something, please do not hesitate to reach out to talk with a member of the legal team using the free legal hotline. Thank you for taking the time to watch this presentation. We hope you found it helpful and wish you the best of luck on your #MeToo story.