

DEFAMATION LAW

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0.1 BRIEF INTRODUCTION

12:00 - 12:04

1. Welcome

Welcome to Defamation Law with Full Circle Kink

2. Introductions

Introduce Tornus: pronouns

Want to share a little about my journey

Almost a decade ago: discovered a friend's history

Spent a long time in an unsuccessful accountability process

Horrified by amount of harm and community's inability to respond

That launched me into consent & accountability work

Full of righteous fury, going to save the world

It's been a decade, and I'm still full of righteous fury

But I've learned this is harder than it looks

Building the communities we want to be part of will take deep skill

That's why I'm here today—to share one specific set of skills with you

3. Thank Bruce

Our legal advisor is Bruce Johnson from Davis Wright Tremain

Nationally known defamation expert

Could not have done it without his generous assistance

4. Handouts

Class has extensive supporting materials with additional details

Printable PDF (page numbers on screen)

Mobile-friendly follow-along guide

0.2 IMPORTANT DISCLAIMERS

12:04 - 12:06

1. Gonna start with disclaimers

We do these as part of our consent ethos
We wouldn't do kink without explaining the risks
And agreeing about what would and wouldn't happen
Same thing: this is a class about dangerous areas of the law
You need to understand the risks
You need to understand what we can and can't offer you

2. We are not lawyers

We've done extensive research and believe this class is accurate
But we are not lawyers
We have no formal training or credentials that are relevant to defamation law.

3. This is not legal advice

This is not legal advice
Going to explain the law and give advice about activism
Only person who can give legal advice is your lawyer

Most important advice I can give you: get a lawyer

4. Accountability work is risky

Activism is risky and we can't eliminate the risk
You have to accept the risk if you do this work

5. We disclaim all liability

We're providing this class because we think it's valuable
Disclaim all liability and responsibility
By continuing, you agree to accept all liability and responsibility

6. Content warning

We've tried to make this class as accessible as possible
But it's about an upsetting topic
We've tried to approach it gently
No graphic discussion of sexual abuse
Hypothetical examples involve yoga instructors injuring people
But might still be triggering
Please think about self care

0.3 WHY THIS CLASS?

12:06 - 12:10

1. Why this class?

Let's start at the beginning: why is a kink organization teaching defamation law?
And why are you taking it?

Probably here because you do consent work and worried about defamation
Your fears are well-founded

2. Let me give you a concrete example

Got a phone call while working on this class

Gonna share the contents of that call with permission

- Person was sexually assaulted by an event organizer
- Went to the police, was re-traumatized
- Published a piece on social media
- Got sued
- Discovery was horrible
- Process ended in bankruptcy

3. So that's the problem

Our community is getting better about consent
But the predators and abusers are fighting back

Defamation lawsuits have become one of the biggest threats to consent culture
Hard to win, but very effective at silencing survivors
If you do any kind of consent activism, you're at risk

4. So let's do something about it

This isn't a class about how the world is terrible
It's a class about how to make the world better

Today's class is in three parts

1. Defamation Law
 - Chapter One: Understanding the Law
 - Chapter Two: Lawsuits
2. Risk-Aware Activism
 - Chapter Three: Responding to Threats
 - Chapter Four: Call Outs
 - Chapter Five: Consent is a Team Sport

5. Together, we can win this fight

Together, we can stand up to the predators and abusers
And build the consent-forward world we all want to live in
Let's do this

1.1 UNDERSTANDING THE LAW

12:10 - 12:11

1. Let's start at the beginning

What is defamation and how does defamation law work?

Along the way, we'll cover some basic legal principles

2. We'll follow Alex through their journey.

You may remember them from Basic Nerve Safety

We'll follow along as they learn about defamation the hard way

By the end of the class, they'll be a bad-ass veteran activist

- Who practices Risk-Aware Activism

1.2 ALEX MEETS MORGAN THE MALEVOLENT

12:11 - 12:14

1. Alex takes up yoga

You may remember our imaginary friend Alex
They had a pretty rough time in our Nerve Safety class
So they decide to slow down: move to the Midwest and take up yoga
They love yoga and become an instructor

Alex has concerns

Over time they become active in their local yoga community
They see some very good instructors
And some instructors who are teaching dangerous practices
They see students getting injured

Noticing Morgan

In particular, they are concerned about Morgan the Malevolent
Two of Morgan's students reach out to share stories
Alex talks to Morgan about it, but Morgan blows them off

They call Morgan out

One day they get pissed off and call Morgan out of Facebook
Lots of people share similar experiences
They feel good about what they did

Alex gets a nasty letter

A few days later, Alex gets a nasty letter from Morgan's lawyer
Alex has defamed Morgan
Morgan will sue them if they don't make a public apology
Yikes! What now?

2. Alex gets a lawyer

Alex gets a lawyer
Smart move, Alex!

Alex has questions

Alex is scared and angry and confused.
And they have a ton of questions:

- What is defamation?
- Can they go to jail for this?
- Doesn't the first amendment guarantee free speech?

1.3 BASIC LEGAL PRINCIPLES

12:14 - 12:16

1. Let's look at some basic legal principles

Let's start with a couple of basic legal concepts

2. Civil vs criminal law

Alex asked if they can go to jail for this

They can't because defamation is civil law, not criminal law

Two kinds of law: civil and criminal

Bank robbery is a crime, covered by criminal law

- Criminal law covers things the government doesn't let you do
- The police arrest you
- The court case is the government versus you
- If you lose, you might go to jail
- Standard of proof is beyond reasonable doubt

Defamation is covered by civil law

- Civil law covers compensation for harm one person causes another
- Police are not involved
- It's Morgan vs Alex in court
- If Alex loses, they might have to pay Morgan damages
- Standard of proof is preponderance of evidence

3. Terminology: Plaintiff and defendant

Morgan is the plaintiff: the person who brings a civil suit

Alex is the defendant: the person who is being sued or prosecuted

4. Terminology: Torts

Terminology time: a tort is the basis for a civil action

If you injure someone in a car action, that's an injury tort

5. Statute of limitations

Puts a limit on when you can be prosecuted or sued

Generally the more serious the offense, the longer the statute of limitations

For defamation, typically between one and three years

- In Washington, it's two years

Discovery exception

In some cases, the timer starts when you discover the defamation

1.4 WHAT IS TRUTH?

12:16 - 12:19

1. Slow down, take a deep breath

Lawyer explains that Alex won't go to prison

You can't defame people

The first amendment has limits

If you harm Morgan by making false statements, they can sue for defamation

But Alex told the truth! Morgan really is dangerous!

Problem 1: Alex was careless about details

Ex: spoke to two of Morgan's students, but said "a bunch of students"

Problem 2: Some problematic quotes

They also quoted some pretty dubious claims about Morgan

But that's true! They accurately reported what someone said

You would think so, but you'd be wrong

Look, it's complicated

1.5 ELEMENT #1: FALSEHOOD

12:19 - 12:26

1. What is defamation?

Defamation is false speech that harms another person
Covers both slander and libel

Defamation has three elements. To win a suit, Morgan has to prove all three:

- Falsehood: what Alex said was false
- Fault: Alex was at fault when they said it
- Harm: Morgan was harmed by what Alex said

2. Falsehood

We'll start with element #1, falsehood

Falsehood is the heart of defamation: by definition, truth is not defamatory
The details are complicated

To be false, a statement has to be verifiable

- Morgan is a felon is a verifiable statement that might be false
- Morgan is a jerk is not a verifiable statement and cannot be false

3. Substantial truth

Generally, a statement is not considered false if it is substantially true

The impact is true, even if the details are not exactly true

Example: saying someone had a life-size Lego sculpture of Ayn Rand in their bedroom, but actually made of Mega Bloks

Be careful here

4. Hyperbole

Hyperbolic statements are so extreme they are understood to be rhetorical, not factual.

"Morgan can injure a student just by looking at them"

5. Quoting a defamatory statement

Question:

- Chris makes a false statement about Morgan
- Alex accurately reports Chris' false statement
- Is Alex's statement false for the purpose of defamation?

Surprise! Yes, it is

If you aren't certain about the factual accuracy of something, safer to link to it

1.5 ELEMENT #1: FALSEHOOD *CONTINUED*

12:19 - 12:26

6. Believe survivors?

Foundational principle of consent work:

- “Believe survivors and amplify their voices”

Turns out that isn’t a foundational principle of the US legal system

How do you ethically and prudently navigate that contradiction?

7. Side note: fair & neutral report privilege

Not super relevant to us—details are in the handout

Neutral report privilege: protects media when quoting prominent sources

Fair report privilege: protects quoting official government proceedings including court records

8. Pure opinion

Very important, will talk about it in detail later

Pure opinions are not defamatory

“I think Morgan is an unsafe teacher”

One quick note for now: can’t say “it is my opinion that Morgan is a felon”

1.6 MISTAKES WERE MADE

12:26 - 12:27

1. But surely Alex wasn't at fault?

OK, so maybe Alex exaggerated a few things

But element two is fault, and Alex wasn't at fault!

They did a good thing by calling out a dangerous instructor

Since defamation needs all 3 elements, are they off the hook?

Well, maybe they were at fault

Once again, the law is complicated

"Fault" doesn't mean what you think it means

1.7 ELEMENT #2: FAULT

12:27 - 12:31

1. Element #2 is fault

Civilian definition: you did something bad

Legal definition: you were careless, or maybe reckless

2. There are two levels of fault

Negligence: you should have known what you said was false

Actual malice: you knew it was false and said it anyway
or you acted with reckless disregard for the truth

Much easier to prove negligence than actual malice

So Alex's lawyer will argue for actual malice standard, not just negligence

So what level of fault does Morgan have to prove?

Apologies: this is gonna get complicated

Depends on the situation

3. Public & private figures

Starting point is what kind of person Morgan is

Public figure: well-known, life is of public interest: major celebrity

- Standard is actual malice.

Private figure: normal person, with an expectation of privacy

- Standard is negligence unless certain conditions are met

Limited purpose public figures

- Private figure who has voluntarily waded into a debate
- Here's where it gets complicated
- For subject of the debate only, subject to the actual malice standard.

Is Morgan a limited purpose public figure as a yoga instructor? Probably not

Is Alex a limited purpose public figure as a yoga safety activist? Maybe

4. Terminology: Privilege

Doesn't mean what you think

Legal term for protection that applies to a statement

Two kinds:

- Absolute privilege: cannot be defamatory. Truth is an absolute privilege
- Qualified privilege: actual malice standard even if private citizen

Key strategy: arguing that Alex's statements had qualified privilege

1.8 WE CONCEDE ELEMENT THREE

12:31 - 12:32

1. Alex clearly harmed Morgan

Element three is harm, which is clearly present

Alex said Morgan was dangerous

Morgan lost half their teaching gigs

Alex clearly harmed Morgan

So we won't fight this one

But if we lose the case, we will fight about the amount

1.9 ELEMENT #3: HARM

12:32 - 12:36

1. Element #3 is harm

Legal term: specific harm suffered (though can be emotional harm)

Example: Alex says Morgan has three eyes

- Falsehood: obviously false
- Fault: Alex obviously knows it's false
- Harm: Probably not

You will fight hard on falsehood and fault, but harm may be tough

Harm ultimately translates to damages

Damages are court-ordered compensation

- Past harm (lost a teaching gig)
- Future harm (likely to lose future gigs)
- Punitive damages (punishment, not recompense. Rare)

2. Per se defamation

Certain specific kinds of defamation assume harm: no proof required

Including:

- Committed a crime
- Immoral or disreputable sexual conduct
- Unprofessional conduct that could harm others

1.10 RELATED LAWS

12:36 - 12:40

1. You may occasionally run into other torts

In general, defamation-type issues will result in defamation cases

But you may occasionally encounter a few other torts

These are all fairly rare

False light

Doesn't require falsehood: misleading presentation is enough

Example: illustrating a story about accidents with a photo of Morgan

Publication of private facts

Also doesn't require falsehood

Published information that was:

- private,
- previously not publicly known,
- highly offensive, and
- not of legitimate public interest

Consent violations are likely of legitimate public interest in #metoo era

But we don't have definitive precedent

2. Blackmail and extortion

Extortion is a serious crime

Obtaining something of value via coercion

- Demanding protection fees
- Threatening to out someone if they make a consent allegation
- Threatening to expose someone's consent violation if they keep teaching

Blackmail is a specific kind of extortion, usually covered by the same law

Be careful about extortion: either party could stumble into it

So did Morgan commit extortion when they threatened to sue Alex?

No: litigation privilege protects statements that are related to litigation

So "I will sue you unless you issue an apology" is protected

1.11 PREPARE FOR BATTLE

12:40 - 12:42

1. Alex doesn't have any great options

Good intentions, but poor wording, and pulled in some questionable content

On the one hand, a lawsuit is a bad option

Outcome of a court case is uncertain

Certain to be expensive and unpleasant

On the other hand, Morgan's demands are unreasonable

They want a public apology and retraction

They want the names of their accusers

Alex tells Morgan to fuck right off

They don't feel like they have a choice

They tell Morgan to fuck right off and prepare for a suit

2.1 YOU'VE BEEN SERVED

12:42 - 12:43

1. Alex gets served

A week later, when Alex is making dinner, their doorbell rings
A nice person is at the door with a big envelope for them

The envelope does not contain a present from their aunt
It contains legal documents that initiate a lawsuit
The person is a process server
Alex has been served with a lawsuit

2.2 WHAT HAPPENS DURING A LAWSUIT

12:43 - 12:45

1. Starting a lawsuit

In this section, we're going to follow Alex through a lawsuit

Let's talk about how lawsuits work

The details will vary from state to state, and from case to case

But here's a rough outline of the beginning of a lawsuit

Filing a complaint

- Filed at the courthouse
- Lays out the basis of the lawsuit

Service

- In Washington and some other states, formal process server

Response

- Deadline can be very short (20 days in Washington)
- Critically important to get a lawyer and respond promptly

2. Jurisdiction

Important early question: where does the case get heard?

Often obvious, but sometimes not, especially online

Determines what laws apply

2.3 AVOIDING A TRIAL

12:45 - 12:48

1. About trials

Trials are terrible: cost is \$10,000 or possibly much more

Time can be months to years

Enormous stress, collateral damage

2. Can you avoid a trial?

Can you avoid a trial?

Many cases don't actually go to trial, which is generally best all around

Four common options:

Settlement

Formal process for ending a lawsuit

Mediation

Might be court-ordered

Anti-SLAPP legislation

We'll get to in a bit

Various technical maneuvers

Your lawyer can advise you about

3. A short rant about justice

Do trials produce justice? Meh

If you can afford justice, you have a fair shot at it

But you'll still be out a huge amount of money

If you can't afford justice, you probably won't get it

2.4 MAKING DISCOVERIES

12:48 - 12:51

1. It takes a year to get to trial

Alex knows all about trials from watching TV

Very exciting: surprise revelations, shouting and pointing fingers

That's exactly how it isn't going to go

Alex is surprised to discover that it takes more than a year to get to trial

The year is long and grueling, with numerous legal maneuvers

Alex gets deposed

During that time, they are deposed and have to answer a lot of questions

Becomes clear that Alex was consequentially careless

Also, Morgan's lawyer isn't very nice

Deposition is mildly traumatic

Morgan gets deposed

Their lawyer makes Morgan disclose past incidents

Becomes clear that Morgan has negligently injured people

2.5 DISCOVERY

12:51 - 12:54

1. Most of the action happens before the trial

Alex's experience is not uncommon: this can drag on forever
By trial, probably have a good idea how it's gonna go

2. Discovery

Most important pre-trial part
Can reveal super important information
All kinds of information can potentially be subpoenaed

Discovery tends to be damaging

Expect the other side to dig for damaging information
Expect them to find some

Protection against discovery

If it doesn't exist, they can't discover it
Many corporations have automatic email deletion for this reason
Be careful what you put in writing or email
Voice conversations are much safer

3. Openness versus safety

Legal perspective: secrecy is safest
Moral perspective: being open and transparent may be more ethical
How do we balance those two things?

4. Discovery can be used as a weapon

Entirely possible they will seek profoundly inappropriate information
Cases where they sought extensive info on sexual history
Cases where they sought photos of defendant having sex
Purely for the purpose of humiliating the defendant

Sometimes trial can be traumatic

Shouldn't be, but it sometimes is

2.6 ALEX GOES TO COURT

12:54 - 12:56

1. The trial finally comes around

After more than a year, just a couple of days in the courtroom
Alex has to testify about some awkward things

Morgan takes the fifth

Morgan takes the fifth and refuses to testify
Ultimately the court rules in Alex's favor

It's a pretty hollow victory

Alex is vindicated and doesn't have to pay damages
But still out an enormous amount of money

2.7 IN THE COURTROOM

12:56 - 1:03

1. Trial

Typically 1 day - 2 weeks

Judgment

Lays out findings and damages

Appeal

Only if something was mishandled

2. Advice: Criminal prosecution

Morgan taking the fifth isn't that unusual

Aware of cases where exactly that happened

Or other revelations: one plaintiff had extra-marital affair

Important information can be discovered and put in the public record

People can be compelled to testify / produce evidence

That information can be used against people

In some cases, can support criminal charges

2.8 RECOVERING YOUR COSTS

1:03 - 1:06

1. What are your options?

Recovering costs

Usually not possible

Punitive damages

Hard. Not possible in WA.

Malicious prosecution

Hard.

Insurance

Your insurance might cover defamation

Be careful: it likely doesn't cover "intentional" defamation

2. Segue to SLAPPs

2.9 SLAPPS AND ANTI-SLAPP LEGISLATION

1:06 - 1:16

1. History lesson

This is one of my favorite parts of the class

A while ago, companies began to notice a problem
“People are saying there are rats in our hamburgers”
Option 1: use beef instead of rat
Option 2: sue them
They went with option 2

Sound familiar? Different sociopath, same decision tree

Became an increasing problem

2. But people did something about it!

Noticed the problem and took action
Named it SLAPP: Strategic Lawsuit Against Public Participation

Anti-SLAPP legislation levels the playing field

Intended to short-circuit frivolous lawsuits
For a suit that has no chance of succeeding:

- Halts discovery
- Ends the lawsuit
- Recover legal expenses

It's cheap, fast, and effective
Great tool if it's applicable to your situation

Caveats:

- Not available in all states
- But it is in WA (thank you, Bruce!)
- Suit must have no chance of succeeding

3. I love this for two reasons

1: It's a powerful tool against abusive lawsuits

2: It's a great story
People noticed a problem with abusive lawsuits and took action
That's what we're doing today

3.1 ALEX PLANS AHEAD

1:16 - 1:17

1. That was exciting

That was a rough ride

What seemed like a pretty simple call out turned into a major ordeal

They spend time reflecting and decide two things:

- They care about this work and they want to double down on it
- But they want to be more risk-aware in future

So they meet with their lawyer proactively to figure that out

3.2 RESPONDING TO THREATS

1:17 - 1:18

1. Let's transition to Risk-Aware Activism

We've talked about what the law says

Now let's talk about how to navigate that terrain

We call that Risk-Aware Activism, in reference to RACK

In the kink world, we do a lot of things that have some risk

For example: suspension bondage

RACK and Risk-Aware Activism share 3 pillars

Understand the risk

Suspension: have to understand how common & severe nerve injuries are

Activism: you have to understand the risks associated with defamation suits

Manage your risk

Suspension: know how to detect and respond to early nerve damage

Activism: know how to craft safer statements

Know your risk profile

Suspension: some people take a lot of risk, surgeons take much less

Activism: some people are OK getting outed and sued, some aren't

2. Let's start with how to respond to threats

If you do this work, you're likely to receive threats

Can be scary and confusing

It's helpful to make a plan before it happens

3.3 ALEX RECEIVES A LETTER

1:18 - 1:21

1. Alex gets threatened

Soon after the lawsuit, they notice that Chris the Callous is causing injuries

They talk to a few people injured by Chris

Soon after, they get a nasty email from Chris:

“Any further contact with my students will be considered harassment and I will have my lawyer file suit against you.”

So what now? Is Alex about to go through another lawsuit?

They talk to their lawyer: Chris doesn't have a leg to stand on

So Alex tells Chris to fuck right off and cuts off contact

3.4 ASSESSING LEGAL THREATS

1:21 - 1:25

1. What should you do if someone threatens you?

Remember: if you're not sure, see a lawyer

I get legal threats from time to time, have developed a system for assessing

Here's what I look at

1: How specific is the threat?

The more specific, the more likely it is to be actionable

- "You might want to get yourself a lawyer"
- "If you tell anyone about Saturday, I will sue you"
- Lawyer: "You did a, b, c, you must do d, e, f by Thursday" or else

2: Assess your legal situation

Have you said things you shouldn't have?

Take a hard, objective look at what you said

From a legal perspective, not a moral one

3: Assess the strategic situation

Cold, hard reality: finances

Reputation

Trauma

Legal name in public records

Discovery: what facts might come out during trial

Weigh those three things and decide what to do

I feel comfortable blowing off casual nonsense

If it's serious or I'm not sure, I see a lawyer

3.5 CUT OFF CONTACT

1:25 - 1:29

1. Avoid litigious people

If it's a serious threat, get a lawyer and do what they say

If you're not sure, ask a lawyer

In many cases, it's best to immediately and permanently cut off all contact

This is standard procedure in the corporate world

Because you threatened to sue me, I am unable to have any further contact with you except through counsel. If you need to communicate with me, your lawyer may ask me for my lawyer's contact information.

Why?

Be crystal clear about what's happening here

A bully is trying to intimidate you

"You might want to watch your back" is a pseudo-deniable threat of physical violence

"You might want to get a lawyer" is a pseudo-deniable threat of legal violence

Remember how bad lawsuits are?

This person is threatening to do that to you

Don't put up with it

Do you really have the right to not talk to abusive people?

Yes you do

2. Corollary: cut off anyone who threatens other people

Litigious bullies are dangerous to be around

Protect yourself and your community by showing them the door

Yes, you have the right to do that

We'll return to this topic in module 5

3.6 IF SOMEONE SUES YOU

1:29 - 1:32

1. Worst case: someone actually sues you

Our advice is very simple: immediately get a lawyer and do what they say

Move quickly: the response deadline can be short

- In Washington, you only have 20 days

What if you can't afford a lawyer?

You're in a tough spot and we are sorry we don't have good advice

There is a profound injustice here—we see it but can't fix it

2. Let your lawyer do the talking

"My lawyer has advised me not to comment on pending litigation"

Don't talk about lawsuits—seriously, just don't

Why not?

Because it's critically important to pick a strategy and stay on message

Seemingly innocent offhand remarks can undermine your strategy

4.1 ALEX WRITES ANOTHER LETTER

1:32 - 1:33

1. Alex keeps going

Alex keeps digging into what's going on with Chris
It becomes clear that Chris is another problem instructor
They're lazy and careless and push people too hard
And their students are getting injured

Alex decides they want to do something about it. But what?
They decide they want Chris to stop teaching
Chris doesn't have their own studio, so cut them off
Alex is going to write a letter to all the studio owners

So they meet with their lawyer again
Come up with best practices for making statements that:

- Are fair and accurate
- Are effective
- Create as little legal risk as possible

4.2 STATEMENTS

1:33 - 1:40

1. Intro

Statements are a very powerful tool
But they are intrinsically high risk
Let's look at strategies for managing that risk

2. Don't make a call out

Does it really have to be a public call out?
You can often achieve your goals through private conversations
Much less chance of retaliation
Private is safer than public
Voice is safer than written

3. Tell the truth

This is the most important thing
It's a moral imperative and also your strongest defense
Understate, don't exaggerate

4. Be fair and reasonable

Obviously, also a moral imperative
And it makes your writing more persuasive, which is the point
And it's a better look in court
And this is a really powerful tool for finding and fixing weak parts

5. Use pure opinion

This isn't magic, but it's a powerful tool
But there's a tradeoff: may be less informative and less persuasive

Pure opinions are not verifiable facts, so they can't be defamatory
You can't turn a fact into an opinion by saying "it is my opinion that..."

1. Make a value judgment, not a factual statement

We are firing Morgan because we feel they do not meet our safety standards.

2. Emphasize the uncertainty

We are firing Morgan because we lack confidence in their safety practices.

3. Focus on the response, not the incident

We are firing Morgan because they did not respond appropriately to Blair's injury.

4.2 STATEMENTS *CONTINUED*

1:33 - 1:40

6. Pre-publication review

This is really important and should be standard practice
We always do this

Go through your statement looking for anything that could possibly be challenged

- Protects you against falsehood

In the process, document your basis for everything

- Protects you against fault

Much better to have a lawyer do it
But you can do it yourself if you must

Corollary

A single carefully prepared statement is much safer

Off the cuff remarks are dangerous

Say it once and be done

You don't have to do something every time someone is wrong on the internet

5.1 CONSENT IS A TEAM SPORT

1:40 - 1:41

1. We all want the same thing

We want to be part of vibrant, safe, consent-forward communities
So how do we get there?

Here's one plan:

- We all sit back and watch
- As a few brave survivors and activists confront the predators
- And deal with whatever retaliation comes their way

That's a terrible plan and it hasn't worked
So we need a different plan

2. Community-level problem that needs a community-level solution

The rest of this class will focus on three strategies that can help get us there
These are simple, concrete, and don't require great effort or bravery

Focus is on defamation, but this is part of a larger consent strategy

5.2 PUNCHING BACK

1:41 - 1:42

1. Chris strikes back

Local venues cut Chris off

They're horrified, plus they don't want the liability

For a while, the matter seems to be settled

But Alex hears from a student that Chris is defaming them

They're furious and want to strike back

Let's sue them!

But they start to have second thoughts

They've been working on a yoga instructor code of conduct

It says you can't use defamation lawsuits to silence critics

But this is different! Right?

5.3 DON'T USE DEFAMATION SUITS

1:42 - 1:44

1. Let's talk about the Hague Conventions

An interesting thing happened at The Hague in 1899 and 1907
A bunch of countries create the Hague Conventions / rules of war
Among other things, they banned the use of poison gas during war

Why? Aren't there times when it would be useful during a just war?
There is no viable treaty that only allows them in good situations
The only viable treaty prohibits them completely
Some weapons are especially horrific or harmful

We give up a tiny bit of good in exchange for eliminating a lot of harm

2. So let's talk about defamation lawsuits

The first version of this class had guidelines for ethical lawsuits
Based on further experience, I'm walking those back

I now believe we should treat defamation lawsuits like poison gas
New norm: we don't use defamation lawsuits and we punish those who do

Are there ever cases when defamation suits can do good?
Yes, but they're rare compared to the abuse
And even good suits cause a lot of collateral damage

So how do we do this?
Obviously we can't change the law
But we can take action within our communities

If you're a venue owner or producer, don't hire people who use them
If you're a student, don't take classes from them
We'll get into the details in just a minute

5.4 EVERYTHING IN ITS PLACE

1:44 - 1:47

1. Things are going OK-ish

Making progress

But everything always turns into a Facebook flame war

And retaliation is a real problem

Midwest Yoga Exchange is born

It's a closed group for yoga studios

Discuss insurance, equipment, and instructors

Advantages

Centralizes all the discussions

Discussion is more open and more productive

Keeps things private from bad actors, reduces retaliation

Also: Common Interest Privilege

5.5 USE COMMON INTEREST

1:47 - 1:49

1. Already in use

Powerful tool for certain kinds of work
Several kink groups are already using this

What is it?

Protects conversations that are:

- Restricted to a closed group
- That shares a compelling common interest
- And are in service of that common interest

Grants qualified privilege to those conversations
(So abusers have to prove actual malice, not just negligence)

Consider using this when appropriate
Never applies to public discussion or call out

5.6 NO MORE SHADOWS

1:49 - 1:51

1. Midwest Yoga Exchange is going great

Helping to improve quality of instruction

But Alex isn't done yet
Still struggling with 2 problems

1: Takes too long to identify dangerous instructors
Especially if they hide behind defamation suits

2: New students don't know who's safe
MYE is a closed group

2. Can you separate the worst actors from everyone else?

Maybe Alex can kill 2 birds with 1 stone

Simple set of screening questions for studios and students

Needs to be:

- Short
- Simple
- Objective

Can't ask if you've ever had an injured student
Can't ask if your injury rate is > 2.5 per 1,000 hours
Can't ask if you were reckless

Here's one question

Have you ever used a defamation suit?
That seems clearly wrong
And violates students' right to give informed consent

But what else?
Alex and some friends sit down to figure it out

5.7 NO MORE SECRETS

1:51 - 1:56

1. This final section is about a disclosure questionnaire

Short, simple set of questions with clear answers

That surface important information about educators / leaders / play partners

Why is that important?

Reason 1: because it matters

If you're hiring a kink educator, you want them to be ethical and good

You need to make an informed decision about whether they are

If they've been convicted of rape, you need to know that information

Maybe it's OK, but you need to make an informed decision

Reason 2: informed consent

Students have a reasonable expectation that instructors are good & ethical

If there are serious doubts, they have a right to that info

So they can make an informed decision and give informed consent

Reason 3: safety

Current system relies on survivors speaking up, often at great risk

By surfacing some information, this reduces the need for that

Reduces direct confrontation, keeps everyone safer

Reason 4: due diligence for business

All too often: venues make decisions based on critically incomplete information

Hiring Morgan: we don't care about their crazy lying ex

- Internet shows up for a chat

First thought: you kinda had it coming

Second thought: this could have been prevented

2. So let's take a look

It's broken into 3 sections

There are subtleties and nuances that are covered in the handout

3. 1: Crimes

The criminal justice system is a complicated topic

Many harmful actions don't result in convictions

Many convicted people are innocent or rehabilitated

For this to work, the questions need to have clear, objective answers

These are not automatically disqualifying, but they are relevant

These questions aren't perfect, but they are much better than nothing

5.7 NO MORE SECRETS *CONTINUED*

1:51 - 1:56

4. 2: Accountability

Happens all the time

- Educator does a bad thing
- Venue bans them
- Venue is afraid to discuss publicly
- Educator keeps teaching elsewhere

Just because a venue banned you doesn't mean you're disqualified
But it's a conversation we need to have

5. 3: Defamation suits

Why are defamation suits on here?

I think by now you know the answer

I want to flag something interesting about these questions
They weren't designed with any specific person in mind
But they catch most of the really bad actors I know of

This is not a guaranteed way to flag every harmful person
And it's far from perfect
But it will alert you to many of the worst actors

This is very new and still rolling out
But I'm excited about it

6.1 CONCLUSION

1:56 - 2:02

1. Thank you for your time

I know this has been a lot of technical information
And a lot of hard topics
I appreciate your time and attention

2. I want to talk briefly about Full Circle Kink

We're a Seattle-based kink education group
All kinds of topics, but especially bondage and deep technical dives
Perhaps you'd like some of our other classes

We teach as an act of service to our community
All our class materials are free: please steal them

3. So here we are

I hope you're feeling a couple of things right now:

- Better informed and equipped to navigate this terrain
- A little bit outraged
- And a little bit energized to make the world a better place

That's really the most important thing I hope you take from this
Together, we have to power to make the world a better place

I look forward to fighting the good fight with you