

How attorneys are using #MeToo to defend their clients accused of sexual assault

By Anna Orso, Staff Writer

Khan's lawyer, Norman Pattis, a criminal defense attorney based in New Haven, Conn., said they asked potential jurors about the movement without actually saying the words "#MeToo." This strategy, he said, allowed for jurors to show their hand based on how they answered the question.



Ari Goldstein (left) former president of Temple University's Alpha Epsilon Pi fraternity, leaves the Criminal Justice Center with his attorney, Perry de Marco Sr., after a preliminary hearing last week.

After Ari Goldstein's hearing last week on sexual assault charges, his attorney said the accuser had ulterior motives — that it is simply a case of "#MeToo gone wild."

"The atmosphere of #MeToo," attorney Perry de Marco Sr. said in an interview Tuesday, "has infected this case."

The point of #MeToo, the movement that originated on social media and has brought down dozens of powerful men accused of everything from workplace harassment to rape, started as a sort of cultural workaround to a failing in the legal system — a way to call out men who had committed sexual misdeeds but who might never

be prosecuted.

But what about the men who are prosecuted? Some are now using the name of that very movement to launch their own defenses — in the courtroom and outside it — in a way that calls back to earlier defense strategies implying that accusers are just out for attention.

During a preliminary hearing in Goldstein's case last week, the accuser, a Temple University student, testified that during a February encounter, she "kept saying no" while Goldstein, a former Temple fraternity president, allegedly pinned her to his couch, dug his knee into her thigh, and pushed her to perform oral sex on him against her will. Municipal Court Judge Lydia Y. Kirkland held Goldstein, of Wrightstown, Bucks County, for trial on charges of attempted rape, indecent assault, and simple assault.

District Attorney Larry Krasner was critical of de Marco in an interview Tuesday, saying the defense attorney has named the accuser publicly, an "unacceptable" move that is "exactly why sexual assault victims do not come forward." The Inquirer and Daily News do not identify victims of alleged sex crimes without their permission.

"His efforts to make what is frankly a commonly known situation a reality — that women are disbelieved — into some kind of a trial issue," he said, "is outside of normal thought and outside the rules of evidence."

De Marco said he may not mention the #MeToo movement by name during trial but said he'd work to pick jurors who are sympathetic to a man facing sexual misconduct allegations during a time when he says "a

man doesn't even know how to talk to a woman anymore."

"There are more jurors who will see this the way I see it," he said, "rather than the way the #MeToo people see it."

The movement has been invoked by defense attorneys elsewhere. In January, a man accused of sex trafficking asked a federal judge in Chicago for a delay in his case, saying he couldn't get an impartial jury while the #MeToo movement was grabbing daily headlines. In June, a Georgia defense attorney argued that prosecutors only tried a case against a pediatrician accused of groping due to political pressure mounting as a result of #MeToo. The man was found not guilty of two counts of sexual battery.

Zak Goldstein, a Philadelphia-based criminal defense attorney who has represented clients accused of sexual misconduct, said the biggest way #MeToo could be used by defense attorneys is during jury selection to try to seat people who "are still going to have an open mind."

"There's tension between 'believe the victim' and the criminal system," he said, "where given the consequences of years in jail, the defendant [should be] presumed innocent." He is no relation to Ari Goldstein.

Potential jury pools could

be asked about their feelings related to #MeToo by both sides. Just last week, prosecutors trying a sexual assault case involving ex-University of Tennessee athletes asked potential jurors about the movement, including their attitudes about celebrities accused of sexual harassment.

In March, a jury acquitted a suspended Yale University student accused of sexually assaulting a fellow student after his attorneys worked to discredit the woman's account.

Jurors said after that trial that #MeToo didn't factor into their decision. But attorneys for defendant Saifullah Khan asked about it during jury selection. Khan's lawyer, Norman Pattis, a criminal defense attorney based in New Haven, Conn., said they asked potential jurors about the movement without actually saying the words "#MeToo." This strategy, he said, allowed for jurors to show their hand based on how they answered the question.

For example, if a juror responded that he or she had heard about the #MeToo movement and were shocked by the volume of crimes that had been committed, that would be a red flag for defense attorneys trying to seat jurors who see #MeToo as a flood of allegations, not proven crimes.

Pattis said that beyond jury selection, de Marco might not

even be allowed by a judge to talk about #MeToo in the courtroom, saying, "It's not a crime or exculpatory to be involved with #MeToo."

In April, attorneys asked potential jurors about their knowledge of #MeToo while picking a jury for the retrial of Bill Cosby. Although all the jurors selected said they'd heard about #MeToo, they said they could put aside their knowledge to come to a fair decision in the case.

Cosby's defense team didn't invoke #MeToo often during the trial itself, but it did attempt to paint Cosby's accuser, former Temple employee Andrea Constand, as a con artist who was only out for money. During closing arguments, defense attorney Kathleen Bliss compared the #MeToo movement to lynchings, witch hunts, and McCarthyism.

"It was stunning the things that woman was saying," said Dolores M. Troiani, a lawyer who represented Constand. But, she said, "it was another miscalculation. Nobody wanted to hear the things that she was saying."

Cosby, 81, was found guilty and is scheduled to be sentenced in September. Legal scholars have picked apart the case, speculating on what implications it might have for other sexual misconduct cases in the #MeToo era.



Bill Cosby leaves the Montgomery County Courthouse after being found guilty on all three counts of aggravated indecent assault in April.

Of course, Goldstein, 21, isn't a celebrity or the target of dozens of accusations. Pattis said that no matter the defendant, the landscape for men charged with sexual assault has shifted.

"The presence of the #MeToo movement has changed how sexual contact between men and women is perceived," he said. "This is no longer 2015." ■