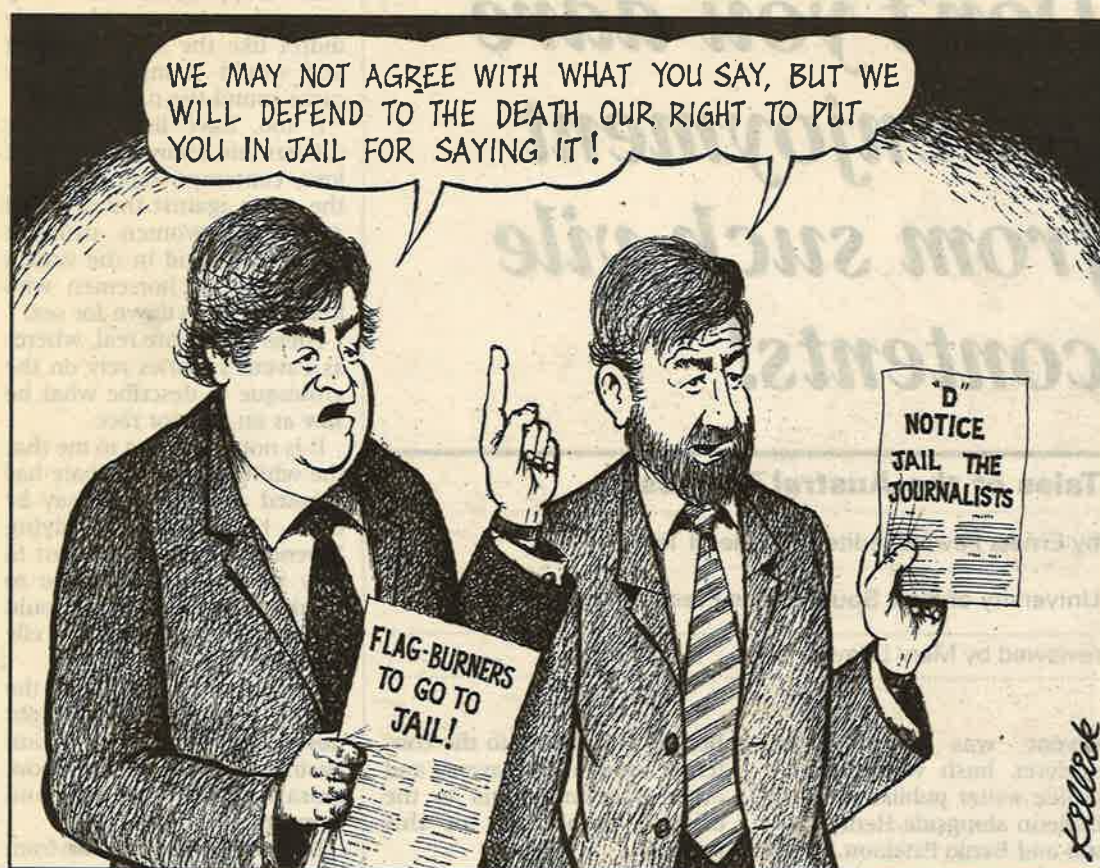


# review



## Speak out – and when you're sued just bite back

### SLAPPs: Getting Sued for Speaking Out

by George W. Pring and Penelope Canan

Temple University Press, Philadelphia, 279pp, \$US24.95

reviewed by Brian Martin

Since the 1970s, thousands of US citizens have been sued for activities that most of us take for granted.

They have written letters to government agencies about pollution, made complaints about their children's teachers, testified in opposition to a local real estate developments, reported the occurrence of sexual harassment, and circulated petitions, among other such actions.

Afterwards, they have been sued by interested parties: the companies causing the pollution, the children's teachers, real estate developers, etc. These legal actions for defamation, conspiracy, interference with business and various other charges are intimidating.

Many of the citizens have been scared into silence.

George Pring is a law professor and Penelope Canan a sociology professor at the University of Denver. In the early 1980s they realised that there was an epidemic of legal actions whose purpose was to intimidate citizens.

While these suits had little chance of success and few of them succeeded in court, they still worked for the filers since, even when they lost their cases, they scared their opponents and achieved their goals.

Pring and Canan investigated hundreds of these cases. They dubbed them Strategic Lawsuits Against Public Participation or SLAPPs, a brilliant acronym that soon became a common term.

The authors found a common thread: the targets were exercising their free speech to petition the government, an activity protected by the first amendment to the US Constitution. The petition clause of the first amendment is much less well known than the more familiar parts protecting freedom of speech, the press and assembly.

In 1984 Pring and Canan initiated the political litigation project at the University of Denver and began systematic investigation of SLAPPs.

They have carried out a

detailed study of 100 cases, interviewed numerous filers, targets and observers in some prominent cases, and tested their model of SLAPPs in hundreds of additional cases. They have advised targets, lawmakers and media, testified in cases and written many articles. They are the authorities on SLAPPs. This book is a summary of their experience, oriented to a wide readership.

**A**fter introductory chapters, including one covering legal precedents and argumentation, there are chapters on the five major types of SLAPPs: suits by real estate developers, suits by public officials (including police, teachers and politicians), suits against environmentalists, suits against opponents of 'locally unwanted land uses' (LULUs) and suits against those defending the rights of women, workers, consumers and others.

These chapters are filled with examples and analysis.

The final three chapters tell how to respond to SLAPPs. One chapter gives detailed advice for those subject to a SLAPP. A key point is recognising that a suit is indeed a SLAPP and naming it as such. The greatest mistake is to defend on the facts in the framework defined by the filer.

A SLAPP essentially takes a political or social issue in which the focus is on the behaviour of a company or individual and transforms it into a private legal issue in which the focus is on the behaviour of the person who spoke out.

By labelling such a suit as a SLAPP, the political dimension is highlighted.

Another chapter gives advice on suing the SLAPPER. This is the so-called SLAPP-back, for which the most useful charge is malicious prosecution. SLAPP-backs have proved an

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## Speak out – and be sued

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effective means to penalise SLAPPers and deter potential ones.

The final chapter tells about anti-SLAPP legislation, which has been enacted in a number of US states.

The book is oriented very much to the US situation. Aside from a mention of SLAPPs in other countries, including Australia, they focus entirely on US examples, laws and responses.

An especially significant aspect of this focus is Pring and Canan's orientation to the US constitutional right to petition the government, which

they use in defining SLAPPs and rely on for defending against them.

In Australia, without such a constitutional protection, it is more apparent that the law must be treated as an arena for social struggle. Pring and Canan could have broadened the analysis and advice for targets if they had focussed less on constitutional protections.

After all, the very prevalence of SLAPPs in the US is testimony that laws alone – in this case the constitution – are not enough to guarantee free speech. A struggle is required even with the most explicit laws. Pring and Canan men-

tion in passing (p119) that media coverage can be a potent tool for targets – a point that warrants extended discussion.

For all its US focus and orientation to legal strategies, this book is a vital resource for anyone with concerns about free speech and the law. Get it for your library, your law firm and for any group of citizens planning to speak out.

The frightening reality is the SLAPPs work in scaring most targets, who become less active than before. By becoming aware of the dynamics of SLAPPs, judges, lawyers and citizens can mount better defences against them.