

Judge rejects push by Daily Telegraph to amend its defence in Geoffrey Rush defamation suit

By Linda Tenenbaum
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In a lengthy and thoroughly documented judgement, Justice Michael Wigney ruled today that he would not allow the *Daily Telegraph's* sudden, eleventh hour attempt to amend its defence against the Federal Court defamation action brought by multi-award winning Australian actor, Geoffrey Rush. The tabloid's publisher, the Rupert Murdoch-owned Nationwide News, sought to add a new witness, a woman referred to by Justice Wigney as "Witness X" to its case on the tenth day of the projected 13-day trial.

On November 30 and December 1 last year, the *Telegraph* published two editions and a billboard poster, which appeared in shopping centres around the country, alleging that the well-known actor had behaved in a sexually inappropriate manner towards his co-star—Eryn Jean Norvill, who played the role of Cordelia, Lear's youngest daughter—in a Sydney Theatre Company (STC) production of Shakespeare's *King Lear* in 2015–16. Grossly sensationalising its claims, the *Telegraph* had headlined the articles "King Leer" and "Bard Behaviour."

No action was taken against Rush over Norvill's claims, and he strenuously denied them. The following week he launched a legal suit, accusing the newspaper of defaming him as a "sexual predator" and a "pervert."

Last Friday November 3, Justice Wigney imposed an interim non-publication order on the identity of "Witness X." The *Telegraph* had already advanced amendments to its defence in several pre-trial hearings, and Justice Wigney sharply warned that the presence of an entirely new, and previously unheard of witness, would "egregiously prejudice Mr Rush and his family."

Tom Blackburn SC, representing the *Telegraph*, told Justice Wigney that mediation efforts had been made between the two contending parties over the previous weekend, October 28–29, and into Monday, and that he had made the amended application on Tuesday, October 31 because the settlement discussions had broken down.

Blackburn said that communication by Ms Norvill's solicitor, Leon Zwier had only been initiated on the previous Friday morning, October 27, and that it "took us by surprise." The newly discovered "Witness X" had indicated she might give evidence, Blackburn declared, which would corroborate that of Ms Norvill.

In a scathing assessment, Justice Wigney declared in court last Friday that it had "become apparent" that what had taken place was not a mediation, not an attempt to resolve the dispute, "but a communication of a third party to the proceeding." The Respondent (Nationwide News) was not present. "How can it be a mediation if the Respondent is not even there.... I have never heard of one like this!"

Later, demonstrably irritated, Justice Wigney said, "Let's cut to the chase. At the close of the Applicant's case the trial would be over, but for this." If he allowed "Witness X" to testify, he declared, the case would have to stand adjourned, part-heard, until April 2019.

Witness X could not now testify in the current hearing, and any further hearing would include an "entirely new set of allegations and an entirely new set of witnesses." It would also require Rush to be recalled to give evidence again.

Justice Wigney added this would affect Mr Rush "economically and commercially," and impact on his and his family's health.

This was not just about money, Justice Wigney insisted, but about "people and lives." "There are no winners in this," he added.

At one point, the Judge reiterated to Blackburn a damning critique he had made, during the pre-hearing sessions, of the *Telegraph's* conduct of its case. "That the Respondents were quick to publish but slow to defend," Wigney said, "now finds its reflection in finding some way to defend, and comes up on the fly.

"Having published a shadow of a story, they now want permission to run a new and different case," he said, and then declared, "It will be the delinquencies of journalism that cause this court to vacate a hearing, and it has nothing to do with Ms X."

Counsel for Rush pointed out that the Respondent "didn't have a story, when it first published, in relation to either Ms Norvill or Ms X. But Mr Blackburn invites you [Justice Wigney] to speculate or hypothesise or expose Mr Rush to this.... Who has ever been allowed to restart a case where the context would be extremely prejudicial to the Applicant?"

Justice Wigney had emphasised, from the start of the hearings that, given the nature of Rush's profession, and the *Telegraph's* potential damage to it, the matter had to be heard in a timely manner. Reacting to Blackburn's acknowledgment that the situation was "undesirable," Wigney responded: "To say it's undesirable is one of the biggest understatements I have ever heard. This is extraordinary."

Days earlier, on Tuesday October 30, Norvill, the *Telegraph's* key witness, mounted the witness stand to testify about the *Telegraph's* allegations. She was examined first by Blackburn and then cross-examined by Bruce McClintock, SC, Rush's lawyer.

Norvill, aged 34, had not contacted the *Telegraph* about her allegations; she had refused to speak to its celebrity journalist, Jonathon Moran, the author of the offending articles, and had made clear to the STC that she wanted the allegations to remain confidential. It was only as the trial was getting underway that she finally agreed to act as a witness for Nationwide News.

Introducing Norvill, Blackburn said she was a talented, hardworking actress, with “a solid record of achievement behind her.” “She had great respect for Geoffrey Rush” and his ability to reach the “dizzying heights” of the acting profession.

From 2008, evidence was presented that she and Rush had developed a professional and social relationship and by early 2014, the two were involved in an ongoing friendship and communication, via Viber and WhatsApp, involving flirtatious word play and pet names, including, at times, overtly sexual references. Both enjoyed creative play, jokes and clowning, and appreciated these qualities in each other. Rush wrote a glowing reference for Norvill that assisted her in gaining a visa to visit the US, for which she expressed her gratitude.

Nationwide News’ defence has rested on proving three main incidents, which Norvill has alleged took place during rehearsals or preview performances of King Lear, actually occurred.

In the final scene of the play, Act 5 Scene 3, arguably the most dramatic in all of Shakespeare, Rush, as Lear, was instructed by director Neil Armfield to carry Norvill, (acting as his dead daughter Cordelia) onto the stage and lay her on her back, as he howled in agony over her dead body, then touched her gently on her face and along her arms.

According to Norvill, in a preview performance in front of an audience, Rush contrived to place his right hand under her right armpit, move it over the top part of her right breast and then diagonally across her torso, for 8 to 10 seconds.

While the entire cast was on stage during that scene, and would have been able to see Rush’s alleged actions, as would the audience, no other witness corroborated Norvill’s evidence, including highly experienced actresses Robyn Nevin and Helen Buday, and well-known Australian director Neil Armfield. Under cross-examination, she accused them of being “complicit” for “enabling” Rush’s behaviour.

Only one witness, actor Mr Mark Winter, said he saw something unusual. However, his evidence was different to that of Ms Norvill, who had been taken through her testimony on this particular movement in considerable detail. Winter claimed that he saw Rush briefly place his hand on Norvill’s *left* breast, using a “cupping” motion.

On another occasion, during a rehearsal, while Norvill was lying “dead” on the stage, with her eyes closed, she alleged she heard tittering and laughter. Opening her eyes, she claimed she saw Rush clowning over her body, cupping his hands to simulate her breasts, raising his eyebrows, bulging his eyes and licking his lips. Again, Mark Winter was the only witness, describing the event as “Three Stooges-like.”

Ms Norvill also raised that, while mounted on a chair, just off-stage and out of view, in preparation for falling into Mr Rush’s arms in a “Pieta-like” position, before being carried and then laid on the stage, Mr Rush touched her skin with two or three fingers on the small of her back, under her shirt, tracing the line of her jeans, also for a few seconds. She testified that no-one was back stage at the time who could have witnessed it.

On another occasion, as she was standing on the chair, she alleged Rush rubbed her back in what she described as a “comforting” manner, with his hand on top of her shirt. She said that this time, she very quietly whispered, “Stop it, Geoffrey.”

Ms Norvill alluded to several other incidents that she claimed had distressed, embarrassed, shamed or confused her, including, but not

limited to, Rush allegedly standing close to her, whispering in her ear, and, after attending another play in which Norvill was acting, following her into the women’s toilet.

Except for when he allegedly touched the small of her back, Norvill declared that she didn’t ask Rush to stop any of this behaviour, because it would have destroyed the “loving” relationship between them on stage, and imported tension to it. She insisted that she was putting the “health of the show” and Geoffrey Rush’s key role in it, before her own.

Rush had testified that he had needed to imagine his own daughter’s death every time he played this scene, in order to be able to portray the extent of Lear’s grief.

In other words, while Norvill said she had placed her commitment to her scenes with Rush above all else, she was implying that Rush, himself, was prepared to break the tension and extreme emotion required in this critical scene, in front of an audience, defy the director’s instructions, and break out of character, in order to touch Ms Norvill’s right breast.

Such an act would call into question Rush’s professionalism, dedication to his art and the intense preparation he brought to every role. According to the testimony of several character witnesses, including two-time Oscar nominee, Judy Davis, director Neil Armfield and long-standing leading Australian actress, Robyn Nevin, it was precisely these qualities that characterised the actor’s approach, not only to his own roles, but to those of his fellow actors.

Questioned further on this issue by Blackburn, Norvill said: “There were many reasons I didn’t [speak to Rush about any of this]. I was at the bottom of the rung, he was at the top. I have to say that I wanted to be part of his world. If I spoke or reprimanded him I would jeopardise that relationship...”

“No-one else had a problem with it; I felt quashed about my ability to do something about it.”

Before the trial began, Norvill had signed a statement, prepared by her solicitor, on August 18, 2018, outlining what had happened to her in the course of her engagement in the play. She was asked, under cross-examination by McClintock, whether it was accurate and complete, and she testified that it was.

McClintock’s penetrating questions, however, revealed many discrepancies, contradictions and omissions in Norvill’s evidence, which led her to make a number of significant concessions: Rush did not follow her to the women’s toilet; she never asked him to stop his alleged behaviour; she agreed that other alleged incidents or acts, involving either her, Rush or both, simply did not happen.

Almost as extraordinary, however, as some of the claims, counter-claims and evidence advanced during this trial over the past three weeks, has been the lack of coverage, or at best, perfunctory reporting of the contradictions, inconsistencies and concessions made in the course of Norvill’s testimony. In general, she has been portrayed as the victim of Rush’s alleged “perversions,” and as yet another #MeToo survivor.

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