

Geoffrey Rush's lawyer slams "gutter journalism" in Sydney defamation trial

By Linda Tenenbaum and Richard Phillips
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Tom Blackburn, senior counsel for Nationwide News, publisher of Sydney tabloid, the *Daily Telegraph* completed his closing submissions in the three-week Federal Court defamation trial last Thursday morning. He was followed by Bruce McClintock, senior counsel for Geoffrey Rush, and Sue Chrysanthou, also representing Rush, who presented their final submissions last Thursday and Friday.

Rush is suing Nationwide News and entertainment columnist Jason Moran over two *Daily Telegraph* articles and a poster published in late 2017. The newspaper claimed the award-winning actor had acted "inappropriately" towards an unnamed actress, later revealed to be Eryn Jean Norvill, who played Cordelia during the 2015–2016 Sydney Theatre Company (STC) production of *King Lear*.

Blackburn argued that the *Telegraph's* articles—headlined "King Leer," and "Star's Bard Behaviour"—were "balanced" and contained strong denials by Rush and his lawyers. He insisted that the articles did not imply that the Oscar winning actor was a pervert or sexual predator, or that he had engaged in "sexually inappropriate" behaviour.

Justice Michael Wigney intervened at one point, noting that although the articles contained Rush's denials, the newspaper's headlines, photos and puns undermined Blackburn's claims.

This argument might have "weight," Wigney noted, had it not been for the "King Leer" and "Star's Bard Behaviour" headlines. "Sub-editors can't help themselves with their bad puns. "Bad pun" is probably putting it in mild terms [but] they're very large puffs of smoke, suggesting there's a fire there underneath."

Opening the final submissions for Rush's legal team, Bruce McClintock quoted part of a 1931 speech by British Prime Minister Stanley Baldwin, denouncing newspaper publishers Lord Beaverbrook and Lord Rothermere.

Beaverbrook's and Rothermere's publications, Baldwin declared at the time, "are not newspapers in the ordinary sense but they are engines of propaganda for the constantly changing policies, desires, personal vices, personal likes and dislikes of the two men.

"Their methods are direct falsehoods, misrepresentation, half-truths, the alteration of the speaker's meaning by publishing a sentence apart from the context... What the proprietorship of these papers is aiming at is power, and power without responsibility—the prerogative of the harlot throughout the ages."

McClintock likened these methods and agenda to the "gutter

journalism" of *Daily Telegraph* tabloid's articles about Rush, he argued, were "reckless and cruel," driven by "malice" and with the "improper purpose" of "causing damage" to Rush, with "no evidence to support" their claims. This was "the most recklessly irresponsible journalism that has come before the [Federal] Court, or a court in this country," he declared.

The newspaper, McClintock continued, had been told by the STC not to publish, due to the effect it might have on Norvill, who was "fragile" and did not want her complaints aired. The allegations had also been strongly denied by Rush's lawyers, and by Rush himself, before they went to print.

"Did they [Nationwide News and its staff] care about the lives they smear and smash? Did they think about what they were doing? The answer is clearly no," McClintock said. One of the allegations made by the *Telegraph* was that Rush's conduct was so serious that the STC would never work with him again, a charge for which there was no evidence whatsoever.

"There is a serious problem in Australian journalism," McClintock said. "There is a propensity to take only one side. It is not objective, presenting all sides. Had the *Telegraph* put the actual claims being made and allowed Rush to answer them," matters would have been very different.

"But they don't do that. So their references to Rush's 'denials' are worthless. In fact, they probably make what is here even more defamatory" because the reader would assume there was something significant to deny.

"No reader comes to this," McClintock emphasised, "with a neutral frame of mind."

Rush's senior counsel made clear that the *Telegraph* had, very consciously, placed its allegations against the actor firmly in the context of #MeToo. Moran had written his articles as part of an ongoing series about the #MeToo campaign, with pointed references to the sexual impropriety allegations against Harvey Weinstein and Kevin Spacey in the US and Don Burke, a well-known TV personality in Australia.

"Why are they telling me what Mr Burke has been doing? Because readers would conclude that Mr Rush is doing the same thing," McClintock said.

Explaining the nature of "defamation," the senior counsel said that one had to imagine "concentric circles." At the centre was the person's immediate family, then close family and friends, then those who didn't know about the allegations, then those who had

doubts about them, and, finally, the people who actually believed them.

“The problem is that the person who has been defamed doesn’t know who those outside people are; he or she only knows those close in.”

Rush’s wife, actress Jane Menelaus, had testified on the witness stand that Rush had retreated into a “sort of solo world. Our approach to the world has changed. It will take us a very long time to get over it.” She also described the “terrible sense of dread” that now dogged her husband’s daily life.

“A substantial part of the harm caused by defamation is the reaction of the person being publicly defamed,” McClintock explained, and described how Rush feared that his children may no longer love him as they had before. Moreover, the internationally highly respected actor was now deeply concerned about taking to the stage again.

“One could easily imagine his justifiable fear of the whole thing being destroyed. Imagine him playing Lear, in the death scene with Cordelia, and someone in the audience calling out ‘Pervert!’” McClintock declared.

In her summation, lawyer Sue Chrysanthou rigorously worked through Eryn Jean Norvill’s allegations against the actor. The *Telegraph’s* “truth defence” rests entirely on the truth or otherwise of the actress’s written evidence and court testimony.

Chrysanthou directly accused Norvill of lying. The actress’s testimony, she said, was “rife with contradictions, inconsistencies and recent inventions made during re-examination.”

Chrysanthou rejected arguments by Tom Blackburn SC, who insisted that Norvill’s testimony be believed, because she was a “fundamentally honest witness” and had “no motive” to lie about Rush or to “seek publicity or anything else.”

On Friday, the final day of the trial, Blackburn went even further, insisting that Ms Norvill “didn’t want to make a splash; she was deeply affected; she didn’t want Mr Rush to know; there was no suggestion that she wanted money, fame or celebrity.”

At a certain point, however, and whatever her motivations, Ms Norvill did decide, quite late in the trial, that she would be the key witness for Nationwide News in its defence against Geoffrey Rush.

Chrysanthou had thoroughly reviewed Norvill’s claim that she could not challenge Rush over his alleged behaviour, because she was an “inexperienced novice” in the industry. “*Lear* was not her first production. She was not on the bottom rung and not a baby,” Chrysanthou insisted. “She was in her 30s.”

Developing this argument, Chrysanthou told the court. “It’s not our job to sit at this side of the bar table and speculate what’s going through her mind. It’s got nothing to do with anything. People lie... Your Honour needs to look at the evidence, which needs to be weighed against common sense.”

The *Telegraph’s* defence, she continued, should also be examined against the “sea of absent witnesses” from the STC’s production of *King Lear*, including stage manager Georgia Gilbert, cast members Helen Thomson and Jacek Koman, and numerous others involved in the play, including several younger actors, who could have been called to verify Norvill’s claims. No explanation was given by the *Telegraph’s* lawyers as to why these people were

not called, the lawyer observed.

Chrysanthou also systematically assessed Norvill’s allegations about Rush’s so-called inappropriate behaviour, including claims that he had deliberately touched her breast and lower back, lewdly mocked her in front of other actors and that she had been offended by text messages from him.

Some of these acts were “supposed to have occurred in front of 14 actors and director Neil Armfield” but no one else, except fellow actor Mark Winter, was called to corroborate this, Chrysanthou said.

Winter’s own evidence about this event, which was alleged to have occurred three years ago, was “unbelievable,” Chrysanthou added. As Justice Wigney had remarked, for Rush to have stroked Norvill’s left breast and then diagonally moved his hand across her torso, in the manner described by Winter, would have required the 67-year-old actor to perform an “impossible contortion.” As well, Chrysanthou pointed out that Winter’s statement had been prepared in consultation with Norvill’s solicitor.

Chrysanthou also criticised Norvill’s claims of a “generational gap” between the attitudes of younger people towards “inappropriate behaviour” and those of the older generation of actors, describing it as “rubbish.” She pointed out that Winter was about one year older than Norvill and had not even thought about Rush’s alleged lewd “Three Stooges-like” act—his alleged groping and cupping motions in the air, along with lip-licking, raised eyebrows and bulging eyes, above Cordelia’s dead, prostrate body during a rehearsal—at the time he allegedly witnessed it.

“And what about other young people involved in the production?” Other people were there who are supposed to have seen this and they laughed about it, Chrysanthou said. But why was no one called to give evidence about it?

Norvill’s evidence, Chrysanthou said, “makes no sense whatsoever. It makes no sense because it is a complete lie,” which was “fabricated and a self-serving invention.”

She asked Justice Wigney to not only find that the *Daily Telegraph* had failed to prove its case, but urged the Federal Court justice to “nail the lies” that had been told against Rush.

Justice Michael Wigney’s judgment on the defamation claims made on behalf of Geoffrey Rush by his legal team, will be brought down in the early part of next year.

The authors also recommend:

Geoffrey Rush defamation trial against Murdoch media begins in Sydney

[27 October 2018]

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

[6 November 2018]

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