

# Rush judgment a crushing blow for Me Too

The Rush case points to a deeper problem and a systemic misunderstanding about the issues that drive complicity in sexual harassment and assault cases.



The bare facts of Geoffrey Rush’s vindication are these: In Federal Court yesterday Justice Michael Wigney found in Rush’s favour on all counts. He found that *The Daily Telegraph*, in two front-page articles in 2017, defamed Rush by suggesting he was a pervert, sexual predator and perpetrator of sexual assault on the young actress Eryn Jean Norvill, during a Sydney Theatre Company run of *King Lear*.

The *Tele*’s only defence — that the allegations against Rush were all true — comprehensively failed. The judge believed Rush’s flat denials of any misconduct, and disbelieved Norvill altogether.

Because of the *Tele*’s conduct — “recklessly irresponsible, sensationalist journalism of the very worst kind” — Rush won a general damages verdict of a stunning \$850,000, to be added to by “economic” damages for lost income, yet to be decided. It will be in the millions.

[The 158-page judgment](#) has ramifications that go way beyond the law of defamation. This case arose at a pivotal moment for the Me Too movement in Australia, and its ending will reverberate deeply.

Rather than retell the whole story, I'll focus on [one of the numerous allegations](#), which perfectly illustrates the contextual aspects of this case and the underlying problem which it hasn't helped to fix. Norvill alleged that, during a rehearsal of the final scene when her character has died and Rush's character is grieving over her corpse, Rush "hovered his hands over [her] torso and pretended to caress or stroke her upper torso", then made a gesture "which simulated him groping and fondling [her] breasts". The director Neil Armfield and much of the cast were present.

Rush denied the incident; Armfield and the senior actors Robyn Nevin and Helen Buday denied that they saw Rush doing anything untoward. The judge concluded that it didn't happen.

There's no point second-guessing a judge's assessment of contested facts based on contradictory verbal testimony. The judge saw the witnesses in the box, observed their demeanour and was far better placed than any armchair critic to decide who was the most credible and reliable witness. So I'm not getting into that.

However, the judge went on to analyse an aspect of Norvill's evidence in a way which can be fairly questioned. Norvill said that, in effect, "everyone in the rehearsal room was 'complicit' in, or even 'enabled', Mr Rush's conduct." For those with an understanding of the dynamics of sexual harassment, here we enter depressingly familiar territory.

Norvill didn't complain when Rush mock-groped her. In explaining why not, she said that she "was at the bottom of the rung in terms of hierarchy"; "his power was intimidating"; "I would jeopardise that relationship"; and, critically: **"Everyone else didn't seem to have a problem about it, you know, so I was looking at a room that was complicit"**. My director didn't seem to have a problem with it, so I felt quashed, in terms of my ability to find allies."

In his judgment, Wigney bolded the same sentence I have. He quoted more of Norvill's evidence: "There are bullies, and sexual predators, and sexual harassment happens in my workplace, and it happens often; and it happened in that room, to me; and, I believe, people knew about it, but didn't know what to say ... they were frightened."

For the judge, this didn't make sense. "Ms Norvill appeared to be saying that Ms Nevin, Ms Buday and Mr Armfield knew about the behaviour of Mr Rush ... but chose to do nothing about it." He rejected this.

To the suggestion that the three theatre elders might have had different ideas about inappropriate behaviour than the younger generation of actors, the judge was dismissive: "each of them was a highly-qualified, experienced, accomplished and well-respected, if not revered, figure in theatre circles. No question was raised about their character or integrity. Nor could it have been." It was ridiculous to suggest that any of them was "frightened" of Rush, or would not have spoken up if they saw

misconduct. Armfield had worked with Rush for many years. Rush described him as his “artistic brother”. That he might be unwilling to confront Rush was “fanciful”.

The only other witness was an actor who vaguely recalled the incident but whose evidence the judge rejected, noting that this actor thought Rush to be an “exemplary company leader”. How could he hold that belief, the judge reasoned, if he had seen Rush behave the way Norvill alleged?

The killer blow came last: “Ms Norvill’s apparent willingness to cast such aspersions [of complicity and enablement] on Ms Nevin, Ms Buday and Mr Armfield ... did not reflect well on her credibility and reliability as a witness. It displayed a propensity to exaggerate and embellish.”

As I said, the judge was entitled to disbelieve Norvill, and to believe Rush’s denials. He was entitled to dismiss, as he did, the significance of the fact that Norvill was an unwilling witness who had not wanted to be involved and had nothing to gain but everything to lose. Rush is entitled to the benefit of his victory; we must accept the verdict.

It is nevertheless emblematic of how far we have yet to travel, that we are still having conversations that question the existence of complicity and enablement as powerful contributing factors to the comfort that powerful men feel to continue perpetrating sexual harassment and worse against women and men who lie beneath them in the pecking order. That’s precisely how the status quo is preserved. The judgment, constructed within the limitations of the legal system, betrayed little understanding of how this works.

We have a deep systemic problem when a young woman’s complaint that she has been a victim of serious sexual abuse falls to be determined, on the balance of probabilities, by a system created and dominated by middle-aged men, in the trial of a defamation case between her alleged perpetrator and a newspaper publisher.

That was the wrong context and the wrong forum. Eryn Jean Norvill lost, in the hugest possible way, in a game which, no matter the outcome, she never stood to win.

This case has done lethal damage to Me Too; that’s the fault of *The Daily Telegraph*, for publishing a story it could not stack up. It deserves its crushing loss. Rush has been vindicated, and good luck to him. Norvill is the collateral victim of a broken system