

Yael Stone, Geoffrey Rush and the risky maths of defamation

As Rush stands accused afresh, each side (and the media) must calculate what to throw at their fight.

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ACTORS Yael Stone AND Geoffrey Rush

When Eryn Jean Norvill walked out of the Federal Court, having been subjected to a hammering by Geoffrey Rush's barristers in their quest to destroy her credibility, it felt as if a pivotal moment in Australia's version of the Me Too moment had arrived. The mysterious [Witness X](#), who had promised to drop a second bucket on Rush, was excluded from his defamation case, leaving a big question mark dangling as the judge called time and commenced his deliberations.

Now, we are in the eye of the storm as the growing deluge of accusations against high-profile men meets the uniquely harsh defensive line of Australian defamation law. Rush stands accused, afresh.

Twitter was the place to be yesterday. You could almost hear the cogs turning in 1000 journalistic brains, after the *New York Times* [dropped its bombshell](#): Australian actress Yael Stone, in an extensive and deeply researched interview, gave chapter and verse on what she said was her experience of serial sexual harassment by Rush in 2010-2011 when he was a theatre god and she an ingenue. Rush said the claims "are incorrect and in some instances have been taken completely out of context". First, there was a tense pause. A few random retweets of the article, as editors nervously wondered whether they should sit back and wait or jump in so as not to miss the party.

Then, when the ABC followed on with the announcement that it would be running an interview with Stone last night, all bets were off. The media piled on like a tsunami, forgetting their legal fears in the rush to not miss one of the year's biggest stories. For Rush, presumably, it felt like a witch-burning. Just like last time.

The legal risk — of being sued for defamation — has been the primary determinant of the media's decision whether or not to publish the backlog of Me Too stories on which every publisher has been sitting for at least a year now. Rush's decision to sue (and, to a lesser extent that of Craig McLachlan) sent a deep chill down everyone's backbones and just about shut down the planned long roll-out of scandals.

But the Rush trial may have been the turning point. Not that it changed anything in legal or practical terms, but the spectacle of a parade of theatre luminaries lining up to defend Rush's reputation left an unpleasant taste. In doing so, there was the implication that Norvill must be a liar; their defences, coupled with some commentary from barristers and judge during submissions, betrayed a sense that men of a certain age still don't get it.

The media, reflecting public mores as it always eventually does, may have picked up on the feeling that this legal system we have is not serving. More importantly, that giving in to its inbuilt protectionist bias for the reputations of defamation plaintiffs may be a shirking of the responsibilities of a free press. Do we get to defamation law reform, which we desperately need, faster or slower if the media refuses to take a risk? (Slower, the answer is slower).

In any event, when it's the hardly radical *New York Times* and ABC who are the ones biting the bullet and saying to Rush, come and sue us if you dare, then clearly something has shifted in a fundamental way.

The legal risk to them is the same as always: their only viable defence to a defamation suit is truth, and to prove that they will be reliant on Stone. It's high stakes when Rush has established his willingness to litigate.

For Rush, a tough strategic question looms. There's the exorbitant cost and incalculable stress; but also, now that a second actress has come forward with a story rich with detail and not dissimilar to the story of the first, he has to wonder if this is all worth it. That's not to say anything about the truth or falsity of what's been alleged. It's just calculation.

The most compelling aspect of this new revelation, though, is Stone's careful exposition of what it's like to be the victim of the alleged wrong. As she explained her "dark nights of the soul", she put the complainant's risk equation, transcending the media's financial risk (which she shares) of being sued, in clear terms:

... it's become clear that it's in the public interest I talk about these matters. Whenever women, particularly, speak about issues like this, their career generally suffers. I've factored that into my calculations and if that happens I think it's worth it.

Here is the heart of the problem, and the failure of the legal system to provide a fair means for allegations of sexual wrongs in the dark to be brought to light. Because our defamation law is broken, and we've created no adequate avenue for complainants to speak without fear of retribution, they feel no choice but to go public.

As a result, the only way that someone like Stone feels she can seek justice is by a medium which denies it to Rush.