Britain's Guardian newspaper registers concern at collapse of high-profile rape cases

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9 January 2018

The collapse of three legal cases in the UK last month highlights the threat to due process resulting from the #MeToo campaign of accusations of rape and sexual assault.

The breakdown of the three cases involved allegations proven to be false, or significant evidence that was not disclosed by the police. Yet events that confirm the fundamental importance of the presumption of innocence have been met with undisguised antipathy from those sections of the media most closely involved with the #MeToo campaign.

On December 21, Samuel Armstrong, the 24-year-old assistant of Conservative MP for South Thanet Craig Mackinlay, was found not guilty of two counts of rape and other offences after a two-week trial. He was accused of attacking a woman in Mackinlay's Westminster office after what he insisted was consensual sex.

The case collapsed because police withheld vital evidence from Armstrong's lawyers until just eight days before the trial began, including phone and medical records his accuser wanted hidden so that she would get "more leeway to hide certain aspects and mould what comes out." Hours after the encounter, she sent a text message to her boyfriend that read, "Keeping you in the loop. I've given it to Harry Cole who works for the Sun [newspaper]. It will either be in the Mail on Sunday or the Sun front page on Monday." A later message read, "The media already knew so this is my way of controlling it to ensure I get a sympathetic writer."

On December 19, Isaac Itiary, a 25-year-old father of two, was released after being charged with statutory rape of a girl under 16. The police released texts withheld for months just two days before a trial was due to begin, showing that the girl had routinely lied about her age to many people resulting in Itiary believing he was having sex with a 19-year-old.

On December 14, the trial of 22-year-old University of Sussex student Liam Allan on six counts of rape and six counts of sexual assault collapsed when records of 40,000 texts sent by his accuser, and concealed by the police as being "too personal" proved she had asked him for sex before and after the alleged rape and fantasised about rough sex. A key text, sent to a female friend on September 3, 2015 during a discussion of the sex she had with Allan, read, "It wasn't against my will or anything."

On December 20, after Allan and Itiary had been cleared, the *Guardian* sought to confine the issues raised by the three cases to what it politely referred to as a failure of "process" by the police, which it insisted "must not be an excuse to fan the flame of misogyny." It offered no explanation as to why the police were so anxious to conceal evidence in these cases. Yet this is clearly related to changes in the legal system bound up with the concept of "victim's justice," championed above all by the 1997-2010 Labour government.

Police officers are now trained to automatically believe the claims of the accuser and even to refer to her as the "victim" rather than the "complainant" when investigating rape allegations. The present policy of the College of Policing is, "At the point when someone makes an allegation of crime, the police should believe the account given and a crime report should be completed."

This obligation has its origins in a police special notice from 2000, dealing with rape investigations that stated, "It is the policy of the MPS [Metropolitan Police Service] to accept allegations made by the victim in the first instance as being truthful. An allegation will only be considered as falling short of a substantiated allegation after a full and thorough investigation."

In a 2014 report on police crime reporting, Her Majesty's Inspectorate of Constabulary recommended, "The presumption that the victim should always be believed should be institutionalised."

Leading barristers have pointed out that this terminology would, at least at present, not be accepted in a court of law, given its highly biased and prejudicial character. But the *Guardian* does not want to explore such issues. Why this is so was made clear in a comment by human rights barrister Charlotte Proudman in December.

She asserted, "The microscopic reporting of collapsed rape trials is part of a broader backlash against the Harvey Weinstein allegations and the #MeToo movement, which exposed endemic sexual harassment and even rape."

Proudman went on to complain, "[T]he reporting on cases such as these, with a focus on *a few text messages out of 40,000*, may leave future victims less likely to come forward… [It] sends a message to women that your allegation of *rape*

might not be believed if you claim that a sexual encounter was consensual and later report rape; it might not be believed if you have ever discussed rape fantasies; and that your sexual preferences will be made public. This contrasts with the law, which says a woman can withdraw her consent to sexual intercourse at any time." [Emphasis added.]

She adds, "A report in July this year concluded that the police did not properly disclose evidence in four out of 10 crown court cases, resulting in delays and collapsed trials. Rather than investigating disclosure in all serious criminal cases, one well-rehearsed story emerges: complainants in rape trials often lie or are slightly unhinged—the clichéd woman in the attic of Gothic fiction—and so, defendants should be granted anonymity."

These are extraordinary statements.

Proudman makes clear that the "few texts" she considers prejudicial includes one in which the accuser admits that the supposed rape was consensual sex. In effect, she is arguing that the right to withdraw consent must be retroactive—extended even after the woman concerned has continued to repeatedly ask for sex with the accused!

Her claim that the reporting of police failures to disclose evidence in rape cases is media bias because it is isolated from the broader problem of police disclosure is disingenuous, as is her dismissal of demands for those accused of rape to be granted anonymity along with those alleging rape.

When it comes to rape, Proudman herself emphasises its terrible and damaging character, which is why accusers are given anonymity. Yet it is also the case that being accused of rape is devastating so that anonymity was for many years also extended to the accused.

It was the 1976 Labour government that first introduced anonymity in rape cases for both complainants and defendants. This was repealed by the Conservative government under Margaret Thatcher in 1988 as part of a law and order agenda—insisting that the right to name the accused assisted the police by encouraging others with accusations to come forward. The Tories opened the floodgates for trial by media of those accused of rape. This is the line now taken by the *Guardian* et al.

The precept of innocent until proven guilty beyond a reasonable doubt at trial was further undermined by the Blair Labour government with its Sexual Offences Act 2003, requiring defendants accused of rape to prove that they acted in a "reasonable" manner in the lead-up to sex.

In 2010, due to demands by the Liberal Democrats in their coalition negotiations with the Conservatives, David Cameron's government announced plans to legislate to protect the anonymity of those accused of rape. This was opposed by a cross-party group of MPs led by Labour. In response, the government first said it would dilute the plans so that men would remain anonymous only until being charged, before Justice Secretary Ken Clarke dropped a pledge for a free vote on the issue.

Proudman suggests that she is opposing demands that would make rape a special case in law regarding the vexed question of anonymity. However, a far more egregious breach of legal norms is being advocated by the #MeToo lobby. There is no presumption in any other area of law that the accuser must be believed because such a demand is inherently prejudicial and undemocratic. A police investigation and any resulting legal process are supposed to establish the facts from the available evidence.

Another article by Marisa Bate, a former columnist for the *Guardian* and its sister Sunday title *Observer*, was published by the *Pool*. She wrote, "After millions of women came forward and said #MeToo, the sheer numbers resulted in the beginnings of a culture shift where the default is not to doubt, but to listen and to believe. Believing women has become political. In many ways, believing women has always been a feminist act of solidarity, but now—post Weinstein—it was not just confined to fringe groups. It's become a global chorus of support, with voices from the epicentre of power and culture."

Here is the reactionary core of the argument of the #MeToo crowd. Abandoning essential legal principles meant to prevent miscarriages of justice, society—including the police and the courts—is urged to adopt a position of "believing women" in an echo of already established "feminist act of solidarity." And this legal nightmare must not brook at such trivialities as proof that some women lie. For this would be in defiance of a new "global chorus" in which the principal voices come from within "the epicentre of power and culture."

What is being defended here are not the "rights of women"—women have the right to equality before the law and to due process—but a media-driven witch-hunt in which unsubstantiated accusations in the press, on Twitter or Facebook can be made without fear of challenge. In the process careers are destroyed and lives lost, even as the "backlash" strengthens the political right thanks to the disgraceful role played by feminists and other supposed "progressives."