

Another #MeToo trial collapses in Australia

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On December 2, the Australian Capital Territory (ACT) Director of Public Prosecutions (DPP) Shane Drumgold announced that all sexual assault charges against ex-Liberal Party parliamentary staffer Bruce Lehrmann arising from rape allegations by his co-worker, former Liberal Party media adviser, Brittany Higgins, would be dropped. A new trial scheduled for February 20 would not proceed. Drumgold cited an “unacceptable risk to the life of the complainant [Ms Higgins]” arising from mental health concerns.

This is the latest in a series of #MeToo-style criminal trials based on sexual assault allegations to have ended ignominiously without conviction. These include not guilty verdicts in the trials of actors John Jarratt and Craig McLachlan. In another legal proceeding, internationally-acclaimed actor Geoffrey Rush won a defamation action and \$2.9 million compensation against Murdoch’s *Daily Telegraph*. Despite these decisions, none of these actors has worked again.

The dropping of the charges against Lehrmann has provoked furious recriminations between the ACT police and the DPP, threatening to further embroil the Liberal Party, which was in government at the time of the alleged March 2019 incident, and possibly the current Labor government. Both the police and the DPP have called for a judicial inquiry into the case.

Higgins moved to sue the federal government and her former direct employers, the then Morrison Liberal-National government’s Defence Industry Minister Linda Reynolds and Employment Minister Michaelia Cash, for \$3 million in compensation.

If the case were heard in a civil court, Higgins would have been compelled to substantiate her sexual assault claims. This morning, it was reported that the Commonwealth had agreed to an unspecified settlement on the basis of the untested allegations.

Lehrmann, who insisted that no sexual intercourse at all had occurred on the night in question, is considering “legal remedies” in civil courts and possible defamation action against some media outlets.

The charges arose after Higgins alleged that on March 23, 2019, two months before the 2019 federal election, she had been raped in Reynolds’ parliamentary office after an alcohol-fuelled night out with Lehrmann and others from the office. She informed the police a week later on April 1, but then two weeks later told police she would not proceed.

Almost two years later, on February 5, 2021 Higgins informed police she was reactivating the complaint, but only after she had secured an interview with Channel 10 “The Project” host Lisa Wilkinson. Despite warnings from the police that media exposures could jeopardise the investigation and the case, Higgins refused to do an evidence-in-chief interview with the police until the Wilkinson show was aired on February 15. The police interview then proceeded on February 24.

The character of the Wilkinson interview and coverage by the media was that Higgins’ allegations must be accepted as good coin. Despite the fact that Higgins had made no formal complaint to police, no charges had been laid, and the alleged assailant had not even been informed that he was being accused or had been interviewed by police, Wilkinson and Higgins effectively revealed his identity during the show and his name was soon leaked to the media.

Then began a concerted and intensive campaign to promote Higgins as one whose “courage in calling out sexual assault” had spearheaded the exposure of the purported culture in Parliament House of “bullying, sexual harassment and sexual assault.” The presumption of innocence and due process were jettisoned by the media, the political establishment and the middle-class layers mobilised by this case who demanded the rights of the accused be dispensed with.

On March 5, 2021, before any investigation by the police as to the veracity of Higgins’ allegations, the Liberal-Coalition government, supported by the Labor Party and the Greens, announced an inquiry by Sex Discrimination Commissioner Kate Jenkins into the “workplace culture at Parliament House and how it responds to issues of sexual harassment and discrimination.” Prime Minister Scott Morrison offered Higgins a public apology.

On March 15, Higgins addressed a “March4Justice” protest held on the forecourt of Parliament House. She told the assembled media personalities, MPs and well-heeled notaries: “I was raped inside Parliament House by a colleague... I watched as people hid behind throwaway phrases like ‘due process’ and ‘presumption of innocence,’ while failing to acknowledge how the justice system is notoriously stacked against victims of sexual crimes.”

The next day, on March 16—as Higgins subsequently admitted during cross examination at Lehrmann’s October 2022 trial—she agreed to a \$325,000 book publishing deal, brokered by Peter FitzSimon, author and husband of Lisa Wilkinson. No charges had been laid and the police investigation was not only incomplete but barely begun. Higgins also later admitted that before her February police interview she had penned a number of chapters for the book.

The assumption clearly existed that the court trial was a mere formality, as the book deal would be worth little without a conviction.

Lehrmann’s trial was scheduled to commence on June 27, but ACT Chief Justice Lucy McCallum delayed it by more than three months due to a prejudicial speech delivered by Wilkinson at the annual Logies television award night. Despite being instructed by DPP Drumgold not to mention the upcoming trial against Lehrmann in her award acceptance speech (she won a Logie for her coverage on “The Project” of the Higgins allegations), Wilkinson did just that. She hailed Higgins for her “courage,” “bravery” and “changing the national conversation” around allegations of sexual abuse.

McCallum concurred with Lehrmann’s defence barrister, Steve Whybrow, who argued “contempt of court” and that the trial should

be delayed as a result of the speech. McCallum said it had “obliterated” the “distinction between an untested allegation and the fact of guilt.” The “implicit premise” of Wilkinson’s speech, the judge added, was to endorse the “credibility of the complainant,” whose story she herself had publicised.

The trial proper opened on October 4, 2022 and took 12 days of evidence including that of Higgins. Lehrmann opted not to take the stand, as was his legal right, in line with the presumption of innocence and the requirement for the prosecution to prove guilt in any criminal trial. On October 27, McCallum declared a mistrial, citing juror misconduct after it was discovered that a juror had undertaken their own research and brought a report to the jury room on sexual assault.

In aborting the trial, McCallum instructed all involved not to make public comments because a new trial was to be held. Higgins, however, walked from the courtroom and conducted a doorstep press conference on the courthouse steps in which she declared that it was “clear who has been on trial.”

Higgins stated: “I was required to tell the truth under oath for over a week in the witness stand; I was cross-examined at length... He was afforded the choice of staying silent in court, head down in a notebook, completely detached. He never faced one question in court about his story and the criminal charges. My life has been publicly scrutinised, open for the world to see. His was not.”

Predictably, Lehrmann’s defence barrister referred her remarks to the police on the basis that they would prejudice any future trial, raising doubts that one could proceed at all.

Further questions

Murdoch’s flagship publication, the *Australian*, last week reported, based on briefing notes from senior Australian Federal Police (AFP) officers, that major differences had existed between the AFP and the DPP over whether charges should be laid against Lehrmann or whether there was sufficient evidence to proceed to a trial at all.

That underscores the very real questions raised in the course of the past two years surrounding the case and the role of the media and political establishment in demanding that Lehrmann be prosecuted.

The *Australian* article stated: “The briefing, dated June 9, 2021, states that ‘there is limited corroborative evidence of sexual intercourse taking place or consent being withdrawn or not provided... Detective Inspector Marcus Boorman, the investigation manager assigned to the case, states: “Investigators at this juncture have a number of concerns regarding inconsistencies in disclosures and other evidence obtained during the investigation. In light of the issues identified, serious concerns exist as to whether there is sufficient - evidence to prove the alleged offence”.”

The article continued: “The executive briefing lists a series of concerns by senior police, including that Ms Higgins had repeatedly refused to provide her original mobile phone; had deliberately deleted messages from a second phone; had lied about seeking medical attention after the incident; and had joked about wanting ‘a sex scandal’ a month before the incident. Some became issues at the trial.”

The newspaper also reported that senior AFP officers “believe that Ms Higgins is at risk of self-harm should this matter progress to prosecution.”

Higgins’ speech outside the court, in line with the premise of the #MeToo movement, served to undermine the very basic legal principle that it is the prosecution, and therefore the accuser, who must prove guilt, not the reverse, that the accused must prove innocence. That the accuser, whose allegations could result in the

incarceration of an accused for years and possibly decades, is required to prove the accusation and submit to cross examination is entirely appropriate.

The presumption of innocence until guilt is proven beyond a reasonable doubt, due process and the right to silence were all subject to unrelenting assault by the media and the proponents of #MeToo. This was replaced by the “woman must be believed,” which is not only an attack on the rights of Lehrmann and all men in general, but on the rights of all.

Dispensing with the notion of innocent until proven guilty assumes the accused guilty. The jettisoning of the requirement of evidence and proof to establish guilt “beyond a reasonable doubt” overturns centuries of legal norms. As Catholic University of America law professor Kenneth Pennington noted, this principle (innocent until proven guilty) “summarized the procedural rights that every human being should have no matter what the person’s status, religion, or citizenship.” It “protected defendants from being coerced to give testimony and to incriminate themselves. It granted them the absolute right to be summoned, to have their case heard in an open court, to have legal counsel, to have their sentence pronounced publicly, and to present evidence in their defence.”

As the WSWS has pointed out: “If the promoters of the #MeToo campaign had been present at the trial of Tom Robinson in Harper Lee’s famous 1960 novel, *To Kill a Mockingbird*, they would have denounced Atticus Finch, the accused African-American man’s lawyer as a “rape apologist.”

The evisceration of these basic rights not only provide the opportunity for coerced confessions and wrongful convictions but promote divisions along the lines of gender. The basic divisions in society are that of class—between the capitalist class and the working class. The right of working-class women in work, and more broadly, not only do not rate a mention by the layers surrounding #MeToo but are dismissed and ignored.

The collapse of the Lehrmann trial may be a further blow to the #MeToo crusade, but its proponents are just as likely to seize on another case, as they did with Higgins’ allegations, to seek to revive their reactionary efforts.



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