



Defending # I BelieveHer

In the aftermath of the recent acquittal of four defendants for an assortment of criminal charges related to rape and sexual violence in Belfast, lawyers for Mr. Jackson from the firm KRW Law asserted that persons using the hashtag #IBelieveHer would be subject to action for defamation and that the firm would aggressively pursue individuals using the hashtag. Moreover, the firm's representatives used slightly Orwellian language to describe their approach stating that they were "monitoring everything", and that thousands (likely a preponderance of women) would have their social media accounts monitored and reviewed for defamation in pursuit of their client's interests. The basis for this threatened legal action was the asserted view that the hashtags undermined the jury's decision. The response promptly ensued in a hashtag revival with #suemepaddy garnering thousands of retweets and bringing greater attention to the case than perhaps Mr. Jackson's legal representatives intended.

However, this aggressive assertion of defamation and the attempt to limit public expression on a highly controversial trial raises serious human rights issues, including the right to freedom of expression, the rights of human rights defenders to critique judicial outcomes, and for any legitimate criticism to be made of trial processes and the protection of victims during trial. As we know all too well in Northern Ireland, jury trials can be controversial and are not insulated from criticism. Notably some of the lawyers seeking out social media users for using or retweeting hashtags have been vocal in their critiques of trial outcomes in other cases, though not specifically in any cases alleging sexual crime. It may be worth reminding the firm in question (and other lawyers), self-described as a human-rights focused legal enterprise, that in fact there is a large body of relevant international human rights law on freedom of expression.

Notably, the European Human Rights Convention jurisprudence is worth revisiting here. Freedom of expression is protected by Article 10 of the European Convention. The operative assumption of Article 10 is that in a democratic and open society freedom of expression (even of views we disagree with or find repugnant) is valued, and contributes to the advancement of robust and tolerant democracies. Article 10 has some limitations; specifically, that freedom of expression (here the freedom to use a hashtag to express a point of view on victim solidarity, fairness of trial, treatment of women under law) can be limited. Those limitations are expressed broadly as "formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society" (Article 10(2)). A clear threshold question is whether any court would entertain the selective invocation of reputational harm given the widespread use of a generic hashtag #IBelieveHer.

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As I explore further below, #IBelieveHer captures a bundle of expression on a wide range of legal and cultural issues, and imputing defamatory motive to any individual retweet is like searching for a proverbial needle in a haystack. It would stretch any reasonable interpretation of existing jurisprudence on 'democratic necessity' to argue that going after civil society, activists or citizens' viewpoint on a highly controversial trial would serve the interests of a democratic, open and tolerant society. In terms of the protection offered by Article 10 to reputation, it should be noted that the jurisprudence of the European Court is narrow. For example, in the case of *Axel Springer AG v. Germany*, judgment (Grand Chamber) of 7 February 2012, §§ 83-84 the Court has stated:

In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life ... The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions ...

While these individuals were formally acquitted of criminal offences, there is little doubt that a sizeable portion of the public (evidenced by public demonstrations, commentary and the actions of their employers) found the broad contours of the group behaviour to be ethically and otherwise repugnant. The jurisprudence of the European Court would suggest little tolerance for limiting the right to full and unequivocal freedom of expression in such contexts.

It is worth reflecting that #IBelieveHer captures a broad and deep scope of public opinion which is powerfully connected to another hashtag movement #MeToo. Women are increasingly telling their stories of sexual violence and harassment, the tolerance of hyper-masculine behaviour, the retaliation that women experience when they reveal sexual violence, and the tendency to 'victim' blame in the prosecution of crimes involving sexual violence. As a feminist human rights scholar, I have long documented the profound barriers women experience in courts globally and locally in having the law protect them as victims when they experience sexual violence. Law does violence to women, compounding the physical and emotional harms women experience from sexual harm. Masculinity pervades our courts, legal process, legal rules, the legal profession, and the judicial



branch (not least because so few women sit as judges). To say #IBelieveHer means I believe the victim. To say #IBelieveHer may say this has happened to #metoo. It also says that I believe all of these things about how women experience violence and how the legal system treats them when they report it. I defy lawyers to come after the hashtag, not least because they may have to prove that all of these things said about court, judges, lawyers and legal rules when women experience sexual violence are also not true.

Social Media, Sexist Hate Speech and the Law

The recent high-profile rape trial in Belfast has sparked debate around a multitude of issues, from how we treat complainants during cross-examination, to the role of rape myths in jury trials, to the appropriateness of holding public hearings. While much of the debate has focused on what occurred within the court room, the trial has also shone a spotlight on the role social media can play in relation to such high-profile cases. The implications of social media have been felt by those directly connected to the trial. For example, following the announcement of a not guilty verdict, Paddy Jackson's solicitor criticised the 'vile commentary expressed on social media', which he claimed had 'polluted the sphere of public discourse and raised real concerns about the integrity of the trial process'. The verdict was also followed by a PSNI announcement that it would be investigating the sharing of the complainant's identity on social media, as well as an announcement that the Attorney General would be investigating online comments made by a juror. The potential for social media to challenge the integrity of a trial and the protection offered to complainants is obviously an issue of serious concern. However, another phenomenon which was highlighted by the trial was the use of social media as a means of publishing hate speech.

Throughout the trial and following the verdict, many women who used social media to discuss the trial faced harassment and verbal abuse. In addition to these specific incidents of harassment, social media was used as a platform for expressing misogynistic vitriol about the complainant, those who spoke out in her support, those who criticised the conduct of the trial, and even those who highlighted broader issues within the criminal justice system's treatment of sexual offences. This may be unpleasant, but it is certainly not unusual. In 2013, a campaign led by *Women, Action and the Media* and the *Everyday Sexism Project* drew widespread attention to the use of social media as a platform for promoting violence against women. In 2015, an online survey conducted by the Youth Department of the Council of Europe found that 83% of respondents had encountered hate speech online, with women identified as one of the most targeted groups.

The implications of online hate speech can be severe. In addition to allowing women to be harassed with impunity, repeated exposure to violent misogynistic online content can increase acceptance of rape myths and in extreme cases result in violence. Insults and violent language have also been shown to be one of the most pervasive means of spreading discriminatory attitudes. Gendered hate speech can silence, marginalise and exclude women from exercising their freedom of expression, as acknowledged by the Council of Europe's No Hate Speech Movement. The Council noted that like freedom of expression, equality between women and men is an integral part of fundamental rights and of any true democracy. If we are to effectively combat gender-based discrimination and sexism, then gender equality and freedom of expression must be seen as intertwined, rather than as opposing rights.

So, what can be done? Within Northern Ireland, hate speech is prohibited under the Public Order (Northern Ireland) Order 1987. This Order explicitly prohibits 'stirring up hatred' or 'arousing fear' by using threatening, abusive or insulting words or behaviour, playing recordings of visual images or sounds which are threatening, abusive or insulting, or displaying written material which either intends to stir up hatred or arouse fear, or which, having regard to all the circumstances, is likely to have that effect.

While it seems that such legislation might have an important role to play in combatting online hate speech against women, it currently excludes gender from the list of grounds for protection, which includes religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) and ethnic or national origins. Yet, the types of language and behaviour used to incite hatred against women share similarities to those used against individuals within those groups. The words and actions contain the inference that the targeted individual is inferior, and so is the group to which they belong. As such, they reinforce and recreate positions of inequality, and increase the sense of vulnerability and victimization within the group.

In light of the prevalence of sexist hate speech, and the serious implications of it going unchecked, it is arguable that it is time to revisit the list of protected groups. Such a move would be in keeping with broader discussions happening around the UK and Europe, and would potentially help Northern Ireland build a culture of greater equality.

Rachel Killean

The Criminal Justice System and Lessons from the Belfast Rape Trial

The issues around the recent Belfast rape case have been well rehearsed; the unavoidable media saturation kept it well on the agenda of too many workplace coffee breaks or social media rants. This article will not rehash those conversations. Our purpose is to give an insight into the intention of those of us who have taken action in response and what changes we are calling for. We organised a rally outside the court on the day after the judgement was delivered and around 800 people participated. Regardless of the verdict in the case, people felt appalled, and in many cases re-traumatised, by the legal process and needed some way of expressing this. We had heard things said by legal professionals that we felt surely had no place in a court of law. Sexist tropes, stereotypes and outdated caricatures of fallen women trying to avoid shame are all sadly a part of our culture. We may have to roll our eyes or call it out when we encounter it in our social circles, but to see those same myths and stereotypes being put to work in a state institution was truly shocking. My own personal motivation for wanting to speak out in the aftermath of this case came from the fear that what had been laid bare by the media was likely to put off future victims of rape from reporting and seeking justice. We already have a serious problem with under-reporting in this country, which could be as high as 83% if it falls in line with the figure identified for England and Wales through the 2016/17 Crime Survey. It is no surprise that so few people choose to seek justice when they are raped – the most recent statistics released by the PSNI paint a dismal picture when it comes to prosecution and conviction rates. Last year only 5% of the almost 900 rapes reported to the police resulted in a charge or a summons and only 1.8% of those reported ended in a conviction.

Women talk to each other about these experiences. We know what our friends and family members have been through with nothing to show for it. I have the utmost respect for any victim of rape who chooses to face what many describe as a secondary trauma in order to bring a rapist to justice, and post-Belfast rape trial it worries me that there will be far more who are forced to suffer in silence unless we seize this moment to bring about change. As we organised our public rally we formulated a series of demands, the first of which addressed the most pressing issue – the criminal justice system. When it came to writing this particular demand we did not have much in the way of solutions. It was mainly intended to be a statement of fact, for which the evidence base is our collective experience:

Our criminal justice system is not fit for purpose when it comes to dealing with sexual crimes. Victims are re-traumatised and are treated like they are on trial. The system is designed to defend the rights of the accused with little regard for the victim.

Our simple message to everyone involved in the prosecution of rape in this country was ‘we see you, and this is not good enough’. In the weeks since that day we’ve been pleasantly surprised to find that this message has been heard. The authorities in the Republic of Ireland were the first to react with the Irish Justice Minister announcing a review of rape trials in light of concerns raised by the Belfast trial and guided by recommendations made in a recent report by the Irish Rape Crisis Network. A week later came the announcement of a review in Northern Ireland led by retired judge Sir John Gillen who will report to the Criminal Justice Board in January 2019. The review does intend to look at ‘those changes that may require legislation’ but there is also a clear intention to focus on ‘those changes that may be introduced fairly quickly into the actual process itself’ in light of our current legislative black hole in which many good intentions are currently languishing. These announcements are a positive development; whether or not we can claim them as a victory for our campaign remains to be seen. Will a departmental review led by a retired judge have enough independence from the system to be able to see it through the eyes of those it is meant to serve, or will ‘the master’s tools’ prove ineffective in this regard? Victims groups like Nexus, Women’s Aid and Victim Support were among the first to meet with Judge Gillen but already the narrative of more protections for the accused is stealing the limelight. This is particularly galling given that when reporting restrictions were lifted on the recent case we got a glimpse of just how much protection is already afforded to those in the dock under our current system, such as the withholding of evidence that could “indicate bad character”. Contrast this with the recent conviction of Bill Cosby in the United States, which depended on evidence from other women who accused him of similar crimes; something that would most likely not have been admissible in a similar case in a UK court.

In the coming months we intend to engage with the review, knowing that we are not legal experts but that we have created a platform for those ordinary people who have been failed by legal experts time and time again. We want to see our claim that ‘victims are treated like they are on trial’ and ‘the system is designed to defend the rights of the accused with little regard for the victim’ properly interrogated. There are many ideas on the table from other jurisdictions – mandatory training directed by judges for all jurors in rape trials so that they can identify rape myths, legal representation for claimants who currently have none and occupy only the status of a witness to a crime, or even the recently adopted Icelandic approach of requiring the accused to prove that they obtained consent. All of these deserve attention and without exploring every possibility all we will get is more tinkering around the edges of this recurring nightmare.

After recent discussions with a colleague whose work has required her observe rape cases over many years, she left me with the depressing assessment that it is virtually impossible to get a successful rape conviction in this country where the key dispute is over whether or not the sexual encounter was consensual. I am inclined to agree and can think of multiple scenarios where it seems highly unlikely that a jury could convict ‘beyond reasonable doubt’ in light of the prevalence of the myths and stereotypes about women, sex and consent. However, it is usually at moments like this that the greatest catalysts for change are born. In the cultural momentum created by the #metoo movement, as people become more accustomed to believing victims of sexual assault, it seems that our criminal justice system still has a lot of catching up to do.

PSNI Statement

Detective Chief Superintendent Paula Hilman, Head of PSNI's Public Protection Branch said:

"There is no room in society for the tolerance of sexual crime.

Anyone can be the victim of this type of crime - at any time, in any circumstance. We understand how difficult it can be for someone to report a rape and commend those who take the difficult step in reporting their ordeal to police.

If you choose to speak to police, you will be listened to, respected, treated sensitively and have your report thoroughly investigated. You will also be signposted to support services such as Nexus and Victim Support.

If a person feels they cannot formally report a sexual assault or rape at the time, they can also self-refer to the Rowan Sexual Assault Referral Centre in Antrim where they will get the medical support they need.

Sexual assault or rape is extremely traumatic and life-changing. I understand that sometimes it might take time for people to build up the courage to report it to us. There is no time limit to reporting a serious sexual assault or rape. You can, at a future date, make a decision to have the matter progressed by police.

However, telling someone early may help with the investigative process and allow early access to support and medical services.

As a police service, it is our job to keep people safe, to investigate allegations of crime and bring offenders before the courts.

We are committed to investigating sexual crime robustly and thoroughly - and where applicable, bringing perpetrators to justice

We have a dedicated Rape Crime Unit which sits within the PSNI's Public Protection Branch. Its officers are methodical and professional - committed to investigating all reports of sexual crime tirelessly and impartially.

We diligently follow all investigative lines of enquiry, including those that point away from the accused. Our experienced detectives support victims and work closely with support organisations to bring cases before the courts.

While cases of rape are challenging to prove, due to the central issue of consent, it should not deter people from coming forward. Every victim has the right to have their voice heard.

"We work in close partnership with the Public Prosecution Service and other partners to get the best outcome and support for victims and we will continue to do so.

We must also maintain and improve the quality of rape investigations and we will strive to do this going forward. Specialist interviewers will always strive to adhere to 'best evidence' guidelines and anyone who is a victim of sexual crime will be entitled to provide their evidence through this means.

This is just one avenue of investigative enquiry pursued by police as part of the overall case strategy, where all reasonable lines of enquiry are considered and progressed.

Increased reporting to and engagement with police allows us to raise awareness and spread the message that sexual assault is wrong and has no place in society.

Recently there has been much debate and discussion around the issue of sexual assault and it is important to continue to have constructive conversations in public arenas and challenge the myths and stereotypes surrounding sexual crime - and in particular, victim-blaming.

We can only do this if victims continue to have the confidence to make reports to police and at the same time, if we collectively challenge the tolerance of sexual crime in society.



Chief Superintendant Paula Hilman

We are continually working to improve - and always striving to do and be better. Currently, we are in the process of developing a rape scrutiny panel together with our colleagues in the PPS.

We are never complacent and any learning or feedback that can help us improve and develop our service is always welcomed.

Research with victims is also being undertaken to find out why injured parties withdraw from police investigations. By doing this, we hope to understand better what we can do to support and encourage them to progress an investigation through the criminal justice system.

We know through research that rape and serious sexual assault are under-reported crimes, but at the same time, sexual crime reporting has been rising year on year.

The increase in the number of reported rapes demonstrates that people have more confidence to come forward to police and report them. However, this must be considered in the context that rape is an extremely impactful and violent crime and ultimately any rape is one too many.

In Northern Ireland, in the January / February period of this year, we saw a 22.5% increase in reports to the Rape Crime Unit, in comparison to the same reporting period last year.

We will continue to work hard to improve outcomes in rape cases and will work closely with our PPS colleagues to do so. However, we can only improve clearance rates if victims continue to report and put their confidence in us and expect no less than the very best service.

However the outcome rate remains disappointing and there are many reasons why the outcome rate is only 5.3%. For example, in just under half of reports, the injured party has decided personally that they do not wish to progress an investigation through the criminal justice system.

In some cases, the Public Prosecution Service has directed 'no prosecution' as the investigation did not pass the evidential test. It also includes some cases which have been heard in court and where a 'not guilty' verdict has been found by the jury.

We also welcome the announcement in April of the review of arrangements to deliver justice in serious sexual offence cases and will work with Sir John Gillen and the Advisory Panel to assist them as part of the Review."

Dympna McVeigh; Corporate Communications Officer; PSNI

Civil Liberties Diary - March/April

6th March

The Northern Ireland Human Rights Commission has published a new report that has found evidence of discrimination against members of the Travelling community by public authorities. The report has identified systematic concerns and has made several recommendations. The report was compiled from written and oral evidence that was gathered from members of the Travelling community.

9th March

More than 130 MPs and Peers have signed a letter calling for women to have access to abortion in Northern Ireland rather than having to travel to England. The letter was spearheaded by Labour MP Stella Creasy and Amnesty Northern Ireland's campaign manager, Grainne Teggart. Ms Teggart has highlighted the significance of senior level cross-party support for the letter.

26th March

The Department of Justice has announced the introduction of the Domestic Violence and Abuse Disclosure Scheme (DVADS) which allows women and men to discover if their partner has a history of violence. The scheme comes four years after it was introduced in England and Wales and has been credited with saving thousands of lives.

29th March

A bill to legalise same sex marriage in Northern Ireland has passed the first hurdle in the House of Commons. The

Marriage (Same Sex Couples) (Northern Ireland) Bill was brought before the House of Commons by Labour MP Conor McGinn. An identically titled bill brought before the House of Lords by Conservative Peer Lord Hayward has also passed its first parliamentary stage.

30th March

Thousands of protesters have staged rallies across Ireland to demand reform of the justice system in dealing with sexual offences cases. The protests have followed highly publicised court cases that many have felt highlighted the inadequacies of the justice system when dealing with sexual offences cases. Protesters have called for an overhaul of the justice system which they believe is no longer fit for purpose and which re-traumatise victims of sexual assault.

5th April

There has been a sharp increase in the number of rapes reported to the police in Northern Ireland. Statistics provided by the PSNI show an increase of 20% in the reporting of rapes in the 12 months ending in February 2018. However, the figures also show that only 5.3 % of reported rapes resulted in a charge or summons. That was down from 8.6 per cent the previous year.

17th April

Victim Support NI (VS-NI) has called for the criminal justice authorities in Northern Ireland to review how the system handles sexual violence cases. VS-NI has written to both the justice department and the Lord Chief Justice setting out a number of

reasons for overhaul. The letter has been supported by Nexus NI, Women's Aid Federation and the Men's Advisory Project.

24th April

Helen Whitters, a mother of a teenager killed by a rubber bullet in 1981 has called for all files on her son Paul's death to be published. Her son (15) was killed in 1981 by a rubber bullet used by an RUC Officer in Derry and his files has been closed at the National Archives at Kew until 2059. However, the Pat Finucane Centre has discovered that other files at Kew relating to plastic bullet deaths are to remain closed for 84 years until 2071.

25th April

An independent review into how the criminal justice system in NI handles cases of serious sexual offences is launched. The review, commissioned by the Criminal Justice Board, will be led by retired appeal court judge Sir John Gillen.

Compiled by Sinead Burns from various newspapers

Just News

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