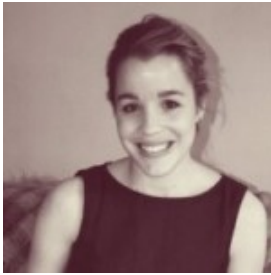


Open Justice and Pistorius' Pandora's Box



*South African contempt of court rules are being tested as one of the country's biggest trials ever has just begun to be broadcast. LSE MSc student and lawyer **Anri Van Der Spuy** argues that existing rules might not be appropriate for the new media environment and discusses the implications.*

Blade Gunner?

03:00 — 3 shots. Screams. Silence. 03:10 — 3 more shots.

Blade Runner Pistorius 'murders lover'.

Oscar's bloody Valentine!

This random sample of headlines, from British and South African newspapers following the arrest of Oscar Pistorius for the murder of Reeva Steenkamp are but an indication of the nature of media coverage that can be expected this week when Pistorius' criminal trial starts^[1] in the North Gauteng High Court, Pretoria.

After a ruling last week allowed full radio and partial television broadcasting of the trial (subject to certain conditions), the time has come to brace ourselves for the opening of a Pistorius box of stories, sensationalism, speculation, and strife. While the ruling **may be viewed** as a victory for open justice in South Africa, one cannot help to wonder whether the country's judiciary will be able to protect the administration of justice and Pistorius' right to a fair trial during the unprecedented barrage of real-time and 24-hour-a-day media coverage that is about to commence.

Contempt of court provisions, designed to safeguard judicial systems, have in recent years been **somewhat diluted** in South Africa. For a publication to be considered contemptuous, a 'real risk' of 'demonstrable and substantial prejudice' to the administration of justice needs to be proven. While this test is similar to the one required in England and Wales by the Contempt of Court Act 1981, there is a substantial difference between the two countries in that South Africa's criminal trials are decided by judges and not juries. Assuming that judges are less susceptible to potential media influence, **some have argued** that contempt of court (and specifically *sub judice*) rules may thus be redundant in the country.

While the UK has taken various steps to **update its contempt of court rules** to accommodate the challenges posed by 'modern media', South Africa's equivalent provisions are yet to be tested. Pistorius' case will no doubt put the spotlight on the adequacy and relevance of these provisions in relation to challenges like the inevitable live-tweeting of court proceedings; the extent of intermediary or re-publisher responsibility (e.g. for retweets); the potential influence that media coverage may have on involved parties; the cumulative effect of prejudicial coverage that is perpetually available online; and the ways in which prejudicial online coverage could potentially be monitored and/ or removed if found to be prejudicial.

There appears to be little consensus as to what potential risk this level of media access and coverage may pose to Pistorius' constitutionally-guaranteed right to a fair trial. According to **Media Tenor SA**, a South African media analysis institute, there has already been an 'unprecedented' level of negative coverage about Pistorius. Arguing that the Paralympic athlete is being subjected to a 'trial by media', Theresa Lotter, the institute's managing director, says that the use of this controversial term is supported by the finding that the case is 'heavily weighted towards the perception of guilt'. She explains that '[m]ore media space, for example, has been given to Oscar's history with firearms, his violent outbursts, his womanising and his predilection towards **porn**, than

any factors which may support his account of the night' of Steenkamp's death. The research, however, only evaluated the reporting of six South African television news programmes in 2013 – in other words, the extensive and continuous coverage of the case on 'newer' platforms like Twitter, blogs and news websites; and the immense interest taken by international media, were not considered.

Perhaps more worrying is the fact that many people in South Africa (and the rest of the world) are likely to rely on media portrayals of the Pistorius case to form an opinion of South Africa's judicial, prosecuting and police systems. Incorrect and biased portrayals of South African law could have an impact on citizens' perceptions of and trust in the law. Following the OJ Simpson criminal case (a case that has been highlighted *ad nauseam* when referring to Pistorius' case), for example, research^[ii] indicated that the extensive media coverage of the case had harmed confidence in the US' criminal justice system and resulted in a loss of respect for both lawyers and media in the country. This is scarcely something that a fledgling democracy like South Africa can afford.

With local and foreign journalists flocking to the North Gauteng High Court, the media and the law are about to collide in the court of public opinion. Now is the time for the media to again remind themselves of the tight rope they walk in maintaining the careful balance between the right to a fair trial and that of press freedom.

This article gives the views of the authors, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

^[i] Unless Pistorius decides to appeal the media access granted last week, in which case it may be months before his criminal trial would start.

^[ii] Alexander, S.L. 2003. *Covering the courts: A handbook for journalists*. Second Edition.

Maryland: Rowman & Littlefield Publishers: ix.

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