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Trauma in the newsroom: Lessons on the importance of Australia's YZ case

A landmark ruling by an Australian court has put news media companies on notice they face potential findings of negligence and subsequent compensation claims if they fail to exercise a reasonable duty of care to journalists who cover traumatic events. Drawing on legal doctrinal methodology, we look at the successful case and compare it to an earlier unsuccessful case at the same newspaper where journalists sought damages from their employer for injury caused by their work. The case before the Victorian County Court in 2019 was the first to recognise the risk of psychological damage on those who report on traumatic events. The court ruled that journalist YZ, who worked at one of Australia's oldest metropolitan daily newspapers, The Age, be awarded A\$180,000 for psychological injury suffered while working between 2003 and 2013. YZ had reported on 32 murders and many more cases as a court reporter. She covered what were colloquially called Melbourne's gangland wars, was threatened by one of its notorious figures and found it increasingly difficult to report on events involving the death of children, such as the case of a four-year-old who was murdered by her father by being thrown from a bridge in 2009. The court's ruling – and ratification of the decision at appeal – was in stark contrast to the case from the same newspaper, in 2012, which did not uphold the claim of a news photographer. Apart from the intrinsic importance of the cases, it is relevant for journalism educators who are charged with preparing the next generation of journalists, many of whom will cover traumatic events. Educators and others have been urging cultural change in newsrooms for

years but this ruling shows that it may well be now required by law. This paper asks: Can educators find sufficient space in a crowded curriculum to prepare students?

Keywords: trauma, journalists, occupational post-traumatic stress disorder, PTSD, newspapers, journalism practice, journalism education

Introduction

In 2020, Facebook agreed to a US\$52 million settlement for thousands of content moderators because their job exposed them to hour upon hour of viewing disturbing material (Marantz 2020: 22; Newton 2020). As Steven Levy writes in *Facebook: The inside story*: 'The presence of all that stomach-churning content was an uncomfortable fact for Facebook, which preferred to keep its armies of scrubbers out of sight' (Levy 2020: 445). The experience (and financial recognition) of the issue for content moderators at Facebook stands in stark contrast to the experience of journalists and news media workers who have long been exposed to unedited footage and interviews of terrorism, crime and accidents to ensure the public is not affronted by the reality of what can be a traumatising world.

It is only in the past three decades or so that the potential impact on journalists and photographers of witnessing traumatic events, and moderating online content for news outlets, has become a topic of research. It is even more recently that journalists have begun bringing claims against their employers for occupational PTSD, and it was only in 2020 that a successful claim was brought. To the best of the authors' knowledge, the case central to this paper is the first successful one of its kind in Australia, the United Kingdom or the United States. This is also the considered view of Bree Knoester, the lawyer who acted for YZ and before that, for AZ in her unsuccessful claim for occupational PTSD.

This paper uses legal doctrinal methodology to describe and analyse the YZ and AZ legal cases to focus on the implications on the long overdue recognition by a court of occupational PTSD in newsrooms. In the expert opinion of Bruce Shapiro, the executive director, Dart Centre for Journalism and Trauma based at Columbia University Graduate School of Journalism, YZ is unquestionably a historic case, not just for Australia but for journalists and news organisations worldwide:

It is the first judgment on record anywhere in which a major news organisation has been found liable for a journalist's avoidable, work-related psychological injury. The judgment's rigorous analysis has found its way on to the desks of news executives and attorneys across the globe, and has sped a growing industry consensus that news organisations have significant responsibility for the psychological safety of trauma-exposed staff, just as they do for those facing physical risk (Shapiro, personal communication, 28 January 2021).

Whether the decision at the County Court in Victoria, Australia, in 2019 will spur media companies to take more seriously occupational PTSD is an open question and a vexed one but, in the first instance, it is necessary to document the case of a journalist working for *The Age* newspaper (known in court as YZ to protect her identity) who successfully sued her employer for occupational PTSD and won damages of A\$180,000. The case confirms that media companies have a duty of care to their journalists to protect them against the foreseeable risk of mental injury. The questions we ask about the case are as follows:

1. How did the plaintiff, YZ, succeed where the plaintiff in an earlier case in Australia, known as AZ, did not?
2. What are the implications of the court decision for the news media industry?

We seek to answer these questions primarily by analysing the two court cases and to a lesser extent by drawing on news media articles about the cases, as well as the academic literature.

Trauma and journalism

The impact that experiencing or witnessing traumatic events may have on people has been long understood even if PTSD was only included in the American Psychiatric Association's official manual of mental disorders in 1980 (Herman 1992: 27-28). The disorder features recurrent, distressing memories of or dreams about the traumatic event, hyper-arousal, emotional numbness, sharp alterations in mood and avoidance of places or events that trigger memories of the traumatic event (American Psychiatric Association 2013: 271-272). The manual recognises that a person's occupation may increase the risk of traumatic exposure and singles out police officers, firefighters and emergency medical personnel (ibid: 276). There has been growing awareness of the impact on journalists and

photographers reporting on traumatic events, after many years of ignorance or avoidance of discussing journalists' experience of witnessing trauma (Castles 2002). Journalists have been 'hidden first responders': commonly, they arrive at car crashes, crimes or bushfires at the same time as paramedics, police and firefighters, or soon after, or, occasionally, before. Where it is well understood that journalists write 'the first rough draft of history', in the words of the former publisher of the *Washington Post*, Phil Graham, the implications of that memorable phrase are less well understood (Shafer 2010). That is, to write the first draft of history journalists need to be on the scene to observe and report, and what they see and hear and, for that matter, smell, is the raw reality of horrible events. What effect witnessing such events has on journalists themselves rarely forms the first rough draft of history. For every emotive cry of 'Oh, the humanity' as the German passenger airship, the *Hindenburg*, crashed in front of a radio announcer's eyes in 1937 (*National Geographic* 2015), there are hundreds of reports written in the formal language and institutional voice of standard daily journalism. It is illuminating that the *Wikipedia* (2020) entry for the Hindenburg disaster radio announcer, Herbert Morrison, lists ten instances of his phrase 'Oh, the humanity' in popular culture, most of which are intended as humorous. Morrison is actually witnessing the deaths of 35 people as the Zeppelin explodes into flames. His voice cracks, he falters as he hears the people on the ground screaming for their friends aboard and he is then unable to go on, saying: 'This is the worst thing I've ever witnessed.' Morrison's broadcast is celebrated in media history and analysed in the academic literature but far less has been written about the effect this experience had on Morrison (Miller 2003: 60-61).

As part of their duties, though, journalists are commonly required to seek out traumatic events (Derienzo 2016; Ricketson 2017). Even when journalists are in news roles that do not on the surface appear to be specifically related to trauma (such as sports reporters or fashion writers) the nature of breaking news means that such journalists can be thrust into bearing witness to a traumatic event, as Herbert Morrison was; his usual work was as an announcer on live musical programmes. However, there is a human cost of bringing crimes, disasters and other traumatic events and issues to the attention of the world at large. Studies have found that the prevalence of PTSD is higher among journalists than the general population, with up to 33 per cent of journalists reportedly suf-

fering from probable PTSD (Aoki et al. 2013: 380; Backholm and Björkqvist 2012; Dworzniak 2011; Hatanaka et al. 2010; Newman, Simpson and Handschuh 2003; Pyevich, Newman and Daleiden 2003; Weidmann, Fehm and Fydrich 2008).

Research has found that journalists and other media workers, such as video editors, are also vulnerable to PTSD through vicarious exposure to trauma. Their vulnerability may arise in interviewing victims of crime or, in the case of court reporters, listening to the testimony of distressed survivors of violence (Barnes 2016) or by viewing unedited videos or photo files through the news desk (Feinstein, Audet and Waknine 2014; Weidmann and Papsdorf 2010). Attending at the scene of a traumatic event can be predictive of negative outcomes for the journalist (Hatanaka et al. 2010). The frequency with which traumatic events are experienced has been found a major risk factor for journalists (Newman, Simpson and Handschuh 2003). Despite this and a range of other research work over the past three decades, the preparation of journalists for reporting traumatic events is patchy and underdeveloped. Worse, young graduates fresh out of journalism programmes may well find themselves exposed to covering crimes or flying off into conflict zones (Wake 2016). Programmes to prepare, support and debrief other first responders, such as paramedics, police and firefighters, or those whose work brings them into contact with human suffering, such as social work, nursing, psychology, psychiatry, mental health, disability or aged care, are common (Quitangon and Evces 2016; Dorfman, 2007; Barnes 2016).

Journalists will immerse themselves in investigations for extended periods about, say, child sexual abuse, or attend months-long murder trials without the kind of thorough-going professional practice or regulation around self-care such as that which has been incorporated within other professions. Where the work of first responders such as police, paramedics or firefighters requires them to take direct action to solve a problem, journalists can feel powerless to alleviate human suffering at a traumatic event. Offsetting this sense is the beneficial effect for journalists of having the ability and training to express themselves about what they are witnessing on behalf of the general public (McMahon 2016; Lyall 2012: 217). Complicating this picture further is that exemplary coverage of traumatic events may well be rewarded, as even a cursory viewing of the list of winners for Australia's most prestigious prize, the Walkley

awards, shows (see <https://www.walkleys.com/awards/walkley-winners-archive/>). Historically, the prevailing culture in newsrooms has been that journalists are reluctant to express vulnerability when witnessing trauma, partly because the bigger the traumatic event the bigger the news event, and partly because journalists worry they will not be given these sought-after assignments if they complain (Lyall 2012).

The case of AZ vs *The Age*

The YZ case was preceded by the case of a Walkley award-winning photographer who had been working for 28 years at *The Age*, one of the leading metropolitan newspapers in Australia. It is necessary to outline the case in detail as it was the first of its kind in Australia (Ricketson 2017), and because the experiences of the plaintiff are similar in many ways to those of the plaintiff in the later case. But the judges in the two cases reached diametrically opposed conclusions. The photographer, known in the Supreme Court case only as AZ to protect her identity, sued for negligence, arguing that the newspaper had done little to prevent her suffering PTSD from her duties and claiming between \$700,000 and \$1 million in loss of earnings (Deery 2012; Caldwell 2012). Information about the case is drawn primarily from the judgment handed down by Justice Kate McMillan in September 2013 (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335) which was reported and discussed in an article in the *Australian Journalism Review* (Ricketson 2017). AZ's experience was a common one in that she photographed numerous traumatic events during her career alongside many other assignments that were not at all traumatic. In her personal life, AZ had experienced trauma; one brother died in an industrial accident while another died of an AIDS-related illness. Her long-term partner suffered from bi-polar disorder. She was the primary income earner (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335 at 16-18).

Her problems at work began in 2003 when she was asked to contribute to a series of reports commemorating the first anniversary of the Bali bombings. This meant photographing between 10 and 16 families who had lost loved ones in the bombings. AZ found it a difficult, distressing assignment; often the still-grieving interviewees would be looking at her for extended periods while the journalists, heads down, took notes. At the end of the day she and the journalist would share a meal together and talk about the interviews, but she worked

with several journalists on the assignment and one of them would go and sit in his car straight after the interview, leaving AZ with the family to finish taking photographs. He would retreat to his hotel room, leaving her alone. By the time she completed her photographs for the anniversary series she was beginning to experience flashbacks and nightmares about the bombings. She experienced panic attacks and began drinking to excess. In early 2004, the journalist who had retreated to his hotel room after the anniversary interviews committed suicide. In December 2004, AZ refused an assignment to travel to Aceh to cover the Boxing Day tsunami. Early the following year she took sick leave and began seeing a psychiatrist who diagnosed her as suffering from depression.

In April 2005, AZ met her direct line supervisor at *The Age* to tell her about the problems she was experiencing at work. The supervisor, Louise Graham, offered to move her to *The Sunday Age*, where unfortunately one of her first assignments was to attend an interview with a family whose son had shot a policeman and then killed himself. AZ found the job distressing and later that year, during another period of leave, she was offered a voluntary redundancy from the newspaper. She accepted the need for it as by this time she felt unable to do her job, but it was not until 2008 that her employment with *The Age* was terminated. Between 2005 and 2012 her physical and mental health deteriorated; she began to self-harm. She saw several doctors who all diagnosed her as suffering from PTSD (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335 at 18-47).

AZ claimed the newsroom culture at *The Age* discouraged anyone from discussing their emotional response to stories they covered. To refuse an assignment was regarded as unprofessional. Her claim stated that she had received no trauma-awareness training, that there was no peer-support programme in place, that no advice was given before photographers and journalists embarked on difficult stories, that there was no monitoring of their state of mind during these jobs and no follow-up afterwards. Evidence was provided in court that by 2003 there was sufficient knowledge of trauma, from academic studies and from programmes implemented in at least some other news organisations, such as the BBC, that *The Age* should have been doing more to safeguard its employees' health and safety when covering traumatic events (AZ (a person under a disability who sues by her litigation guardian BZ) v.

The Age (2013) VSC 335 at 47-55).

In addition, 15 months before the anniversary series, *The Age* had commissioned an international expert to report on the workplace's safety, including the psychological impact of the work required of journalists and photographers. In October 2002, associate professor David Caple recommended the introduction of a peer-support programme and that the newspaper's health centre include psychological issues in its incident reporting system. *The Age* did not implement Caple's recommendations (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335 at 55-57).

The Age rejected the plaintiff's claim, on several grounds: that AZ had not been exposed to covering traumatic events 'such as would sensitise her to psychiatric injury' (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335 at 91); that she did not raise concerns about the Bali assignment until after the second Bali bombings occurred in October 2005; that there was no evidence any measure taken by the defendant would have been likely to protect the plaintiff from injury; that there was little agreement among experts about the preferred model of support for employees, but that in any case the newspaper (it argued) had in place adequate measures to support the plaintiff. The plaintiff's claim of negligence had been brought under common law. Employers have a duty to take reasonable care for the safety of their employees, including prevention of psychiatric harm. For an action to succeed, two arguments need to be made: first, that the injury or in this case psychiatric harm was foreseeable and, second, that the employer breached its duty. The judge agreed with *The Age's* arguments and dismissed the photographer's claim (AZ (a person under a disability who sues by her litigation guardian BZ) v. *The Age* (2013) VSC 335 at 114).

The case of YZ vs *The Age*

In 2019, a journalist who had worked for *The Age* from 2003 to 2013 sued the newspaper for negligence, on the same grounds as AZ. Their careers at the newspaper overlapped but only for a couple of years, as AZ had begun taking extended periods of leave in 2005. Material in this section draws on the judgement in the Victorian County Court by Justice Chris O'Neill. From 2003 to 2009 YZ reported on crime, covering at least 32 murders and other serious crimes. She reported on some of the key figures in Melbourne's notorious 'gangland wars',

such as Carl Williams and Mick Gatto, which she found 'pretty frightening' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 13). She found even more difficult attending crime scenes where she saw dead bodies, some of them badly mutilated, and was required to find relatives and friends of the deceased to interview. Particularly difficult was reporting on the deaths of children such as the 16-month-old girl who was murdered by her father with a spear gun (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 9).

The cumulative effect of witnessing so much trauma eventually became too much for YZ to bear in 2009. On 29 January YZ attended a crime scene where four-year-old Darcey Freeman was thrown by her father from the 58-metre-high West Gate bridge into the Yarra River below. YZ witnessed the ambulance officers, visibly distressed after they administered CPR to the girl. After spending several hours reporting from the scene, in a state of shock, YZ returned to the office and said to the news desk: 'I'm done. I can't do this anymore. I have had enough of death and destruction' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 12).

As a result of the concerns she expressed, YZ was transferred to the sports desk where she reported on sport until April the following year when the newspaper's deputy editor, Mark Baker, asked her to take up a role covering the Supreme Court. YZ declined, saying she had had her 'fair share of death and destruction' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 14) but Baker persisted. YZ declined again but was told 'it was going to happen' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 15) and was offered a pay rise and a date to begin at the court. She eventually accepted.

She found reporting on crime in the Supreme Court equally harrowing. Not only was she required to report on numerous murders but the methodical laying out of evidence could be highly distressing. In one trial, CCTV cameras had recorded close-up footage of Carl Williams's head after he had been bashed to death with a metal pole by a fellow inmate in prison. YZ was also required to cover the trial of Darcey Freeman's father, Arthur, which included the police video of Darcey's six-year-old brother recounting how he pleaded with his father not to throw her off the bridge as Darcey could not swim. Jurors and journalists were in tears watching this, YZ testified. The judge offered

the jurors counselling (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 16). YZ had previously sought support through the Employee Assistance Program (EAP) provided by *The Age* but found she had to wait too long for appointments and that the counsellor, while helpful, did not understand the nature of journalism or the demands of the newsroom. She began seeing a psychologist and then a psychiatrist but was also drinking heavily at times and unable to concentrate on her work. As Justice O'Neill commented, the plaintiff's testimony in court about her exposure to trauma was chilling:

She was regularly distressed and unable to go on. That reaction was no doubt as a result of the PTSD. Neither this brief summary of the evidence, nor a reading of the transcript, properly reflects YZ's description of the trauma she observed and wrote about, nor its impact upon her (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 19).

In her statement of claim, YZ argued that *The Age*:

- had no system in place to enable her to deal with the trauma of her work;
- failed to provide support and training in covering traumatic events, including from qualified peers;
- did not intervene when she and others complained;
- transferred her to court reporting after she had complained of being unable to cope with trauma experienced from previous crime reporting.

For its part, *The Age* contested whether the journalist was actually suffering from PTSD. It argued that even if a peer-support programme had been in place it would not have made a material difference to the journalist's experience. *The Age* denied it knew or should have known there was a foreseeable risk of psychological injury to its journalists while at the same time arguing that the plaintiff knew 'by reason of her work she was at high risk of foreseeable injury' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 6).

Justice O'Neill found in favour of YZ; he accepted her evidence that she had been exposed to a 'wide range of disturbing and graphic traumatic events' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 87). He found her symptoms of PTSD had emerged

over time, but accepted that 'she suffered over the years, a range of very significant and disabling symptoms' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 87) including depression, anxiety, panic attacks, broken sleep, nightmares and flashbacks. 'I accept that while it is possible she may return to journalism, she would not be able to work in the field of crime or court reporting' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 87). The judge found YZ received no training in how to deal with the trauma of the incidents she was required to report on. The PTSD, anxiety and depression she experienced stemmed directly from her work for *The Age*.

The employer could have foreseen the risk of psychological injury and could have prevented it but did not, Judge O'Neill found. Therefore, *The Age* had breached its duty of care to its employee. He found that to fulfil its duty of care, *The Age* should have:

- trained the journalist, both at the outset and on a continuing basis;
- trained editors and senior managers to identify symptoms that may indicate psychological injury;
- implemented a formal peer support programme involving journalists and others trained in such work, on the ground that journalists are best placed to understand the stresses of the newsrooms and their support is more likely to be accepted by other journalists who historically have been wary of counselling;
- provided instructions about how to conduct 'intrusions' (that is, interviews with grieving relatives) and debriefing afterwards for those who wanted it;
- expanded the Employee Assistance Program, to avoid delays for journalists seeking appointments;
- changed the culture at *The Age* so editors could encourage journalists to talk openly about the difficulties of being exposed to traumatic events, and feel able to report symptoms of stress, anxiety and depression to their managers;
- ensured journalists knew they had the option to move to another area in the newsroom, where reasonably practicable, if they felt the trauma associated with the work became too much (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 2019 at 70-71).

One of the newspaper's own witnesses, the editorial training manager, Colin McKinnon, gave evidence of his frustration at being unable to persuade management to implement a suitable training and support programme. Judge O'Neill found him a convincing witness. Further, Justice O'Neill found there was sufficient evidence the reporter had complained to several editors and human resources managers about the level of trauma she was being exposed to and the impact it was having, yet adequate training and support were not provided. The judge was also satisfied that the reporter's injury was worsened by being 'persuaded' to transfer to the court reporter role from sport in 2010 after she repeatedly refused the transfer:

It must have been obvious to management at *The Age* that something was wrong, more than an isolated emotional reaction to a traumatic story, but a clear indication of the emergence of an underlying psychological disorder. She should never have been requested, let alone persuaded, to undertake work as a court reporter given her complaints to *The Age* after the Darcey Freeman incident (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 50).

The plaintiff asked for \$250,000 in 'pain and suffering damages' while the defence argued damages should be no more than \$50,000. In the judgement handed down on 22 February 2019, YZ was awarded \$180,000 in damages.

Appeal of the decision in the YZ case

The ruling in the YZ case was a landmark as it was the first time a journalist had won a case for occupational PTSD in Australia. The case received little coverage in the mainstream Australian news media except a report on the national broadcaster, the ABC's legal affairs programme (Edraki and Carrick 2019), a media-focused online publisher *Crikey* (Watkins 2019) and *news.com* (Smith 2019). This reinforced the comment of Ricketson in his article about the AZ case that this may have stemmed from the judge granting the journalist anonymity, and also 'perhaps because the media was squeamish about covering a case that called into question the industry's heroically stoic self-image' (Ricketson 2017: 186). The case was, however, discussed in the *Conversation*, the global online website whose articles are written by academics and edited by journalists (Ricketson and Wake 2019).

The Age lodged an appeal that was heard by the Victorian Supreme Court of Appeal on 30 October 2019. The newspaper argued that it had not breached its duty of care to its employee and it challenged the judge's formulation of an employer's duty of care, arguing that it was too vague and did not take into account 'the need to respect the autonomy and privacy of employees' (*The Age Company Limited v. YZ* (a pseudonym) (2019) VSCA 313 at 27). The three appeal court justices upheld part of the appeal but also upheld Justice O'Neill's core finding that YZ suffered from PTSD and that *The Age* had failed in its duty of care to her. The appeal court justices distinguished between YZ's experiences before and after she told the news desk in 2009 that she had 'had enough of death and destruction'. They were not persuaded that *The Age* had breached its duty of care in the period YZ was reporting on crime but were persuaded that once she had made her views clearly known and a year later had been assigned to court reporting against her wishes that the risk of psychological injury was foreseeable and the newspaper had breached its duty of care. Because the damages awarded in the original judgement did not distinguish between these two periods, the appeal court justices referred the matter back to the county court for further consideration of the appropriate amount of damages.

In March 2020, the parties settled the matter out of court. In September 2020, the online news website *Crikey.com.au* published an article written by Dean Yates, a former journalist with the international news agency Reuters, who had been diagnosed with occupational PTSD and who had then headed Reuters' mental health and wellbeing strategy until earlier that year. For it, he interviewed both YZ and a spokesperson for *The Age*. The former said the five days of cross-examination in the trial 'nearly broke me. During the county court trial I was forced to relive a lot of the trauma I'd been exposed to' (Yates 2020). She said she had pursued her case because she wanted to change the way media organisations treated journalists who are repeatedly exposed to trauma so that other journalists did not have to suffer as she had. *The Age* spokesperson said the newspaper and its parent company, the Nine Entertainment Company, took 'the mental welfare of its employees seriously and has a range of support and training measures in place to ensure the wellbeing of our people', including its Employee Assistance Program and training provided by the Asia-Pacific arm of the Dart Centre for Journalism and Trauma (ibid).

Table 1: Summary of the judge's main findings in the YZ decision

YZ suffered from post-traumatic stress disorder (PTSD) as a result of the reporting work she did.
The nature of journalistic work meant the risk of psychological injury was foreseeable.
YZ made it clear to her employer that she could no longer report on traumatic events and needed to move to another role.
<i>The Age</i> persuaded YZ against her will to return to reporting on traumatic events.
The judge rejected the contradictions in the defendant's arguments. <i>The Age</i> did not accept it could foresee the risk of psychological injury but argued YZ should have been able to.
The judge found convincing the evidence of the newspaper's former training editor who testified about his frustration at being unable to introduce a properly resourced trauma-awareness programme.

Discussion of the YZ case

The decisions in the YZ case are of international significance, even if that seems to be belied by the muted response to it in the Australian news media and the broader public. In effect, the decision puts media companies on notice that a core part of their business – reporting on crime, disasters and other traumatic events – exposes them to legal risk from the journalists who do that work. As the Dart Center's Bruce Shapiro wrote:

The last several years have seen significant growth in trauma-support efforts in major newsrooms. While the reasons for this far-reaching culture change are complex, one motivation is clearly companies' fear of liability, as a growing and well-publicized consensus of research illuminates the cost of occupational PTSD, burnout and other psychological injury among news professionals. YZ made those fears real and sent ripples far beyond the Victoria courts (Shapiro, personal communication, 28 January 2021).

The Age spokesperson quoted above said the newspaper took seriously its employees' mental health and wellbeing, but that claim flies in the face of the judgments in the County Court and the Supreme Court of Appeal. Equally important, there was no public acknowledgement by *The Age* that it had failed in its duty of care to YZ, nor any public commitment to improve its processes in future. The newspaper's refusal to acknowledge that it lost the appeal suggests it did not accept the court's decision but

the spokesperson did not say that, nor did the newspaper appeal the decision further. No representative of the newspaper contacted YZ after the case to apologise to her, although 'plenty of colleagues I worked with got in touch after reading the county court decision to express their disgust at the way I'd been treated' (see Yates 2020). Further, the newspaper's lawyers had subpoenaed YZ's Employee Assistance Program counselling records to use in their cross-examination of her even though 'Age management had constantly assured staff [they] were completely confidential sessions' (ibid). If the case had involved another company, other than *The Age*, it may well have found itself featured in the newspaper itself. However, the company acted to protect its commercial interests rather than uphold its masthead values of being 'Independent. Always'. It is possible that inside *The Age* the implications of the court judgments have been digested and programmes to support journalists improved. It is also possible other media organisations are improving their employee wellbeing programmes but at the time of writing this paper there has been no public evidence of this. Even assuming there was the will to do so, it is highly unlikely substantial resources would be devoted to employee wellbeing and training because of the threat posed to the viability of the media's business model by the global digital behemoths Google and Facebook (Australian Competition and Consumer Commission 2019). Therefore, news organisations leave themselves open to further action from traumatised staff.

If putting the media companies on notice is the most important implication of the judgments in the YZ case, there are other less obvious implications that merit discussion. First, the two judgments delineate more clearly what kind of reporting work is most likely to damage a journalist's mental health. In the AZ case, Justice McMillan was not satisfied the photographer had been exposed to sufficient traumatic events to significantly increase the likelihood of psychological injury. It is possible to agree in general with that finding while noting the judge did not appreciate the extent to which general photographers (like AZ) as distinct from war photographers are exposed to traumatic events. Even more than journalists, photographers are first responders who must be on the scene of an event to do their job. Journalists may well be on the scene but can gather news in a range of ways, including by phone, email and, sometimes in a war zone, from a hotel room (Anderson and Young 2016). In the YZ case, Justice O'Neill, in contrast to Jus-

tice McMillan, was more willing to accept the potential for psychological injury created by reporting traumatic events. As mentioned earlier, he found YZ's testimony about her experience 'chilling'. It is certainly clear cut that YZ was exposed regularly to traumatic events as she reported on crime between 2003 and 2009 and that was her primary role; AZ, on the other hand, was exposed to traumatic events amid a wide range of photographic duties. Does that mean she was not exposed to enough traumatic events to damage her psychologically? That is a fine judgement and depends on other elements which we will come to.

Before that, it needs to be noted the Supreme Court of Appeal judges acknowledged YZ had been exposed to a substantial amount and level of traumatic events but they were not persuaded *The Age* had breached its duty of care in the 2003 to 2009 period. After she complained about being done with 'death and destruction' and was assigned against her wishes to court reporting, the risk of psychological injury was foreseeable and the newspaper had breached its duty of care. As the appeal court judges put it: 'The issue became whether to transfer an employee to a traumatic environment, rather than a failure to transfer an employee away from a traumatic environment' (*The Age Company Limited v. YZ (a pseudonym) (2019) VSCA 313* at 48, emphasis added). A clear implication of this for journalists is that their legal standing is bolstered once they express their concerns clearly to their editors and direct line managers. The problem is the culture in newsrooms mitigates against journalists speaking freely about their experience of work, especially their emotional experience, as was acknowledged in both the trial judgment and the appeal (*YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148* at 62-63; *The Age Company Limited v. YZ (a pseudonym) (2019) VSCA 313* at 49) from the testimony of two journalists as well as YZ. Liz Minchin needed to take a period of leave because her mental health was suffering at work but found few in the newsroom willing or able to discuss 'depression and anxiety' (*YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148* at 52), while it took six months for the news desk to act on concerns raised by Adrian Lowe about difficulties he experienced covering courts (*YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148* at 46).

What is alarming about the court's finding about the newsroom's culture is that it concerns a newspaper long regarded as committed to high-quality journalism (Nolan 2014: 12-14).

Moreover, the events occurred in the last decade rather than in the distant past when young journalists were routinely sent out to do intrusive interviews with grieving relatives as a way of 'bleeding' them (Oakham 2004). Equally alarming is evidence of the extent to which these attitudes still held sway in contemporary newsrooms. YZ testified that as a crime reporter she worked in a 'blokey environment' where the implicit message was to 'toughen up, princess' rather than to express any qualms or seek help (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 42).

In this context, it is worth noting that when YZ returned to the newsroom after attending the scene of Darcey Freeman's murder – a day that she later described as the worst of her life – she still managed to finish and file her story for the paper (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 12). When a colleague of YZ, Lara O'Toole, confronted the deputy editor, Mark Baker, about YZ's difficulties she testified that he was unsympathetic, saying journalists are 'meant to be tough and hardy' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 52). An inability to reflect on the impact of covering traumatic events was also exhibited in the newsroom. YZ testified that after she wrote a feature article for the newspaper's weekend edition about Arthur Freeman's murder trial, the editor of *The Saturday Age*, Steve Foley, told her he was not going to publish it because he could no longer read anything about this 'awful' trial, to which she replied: 'Well, try sitting through every single day of the trial having covered it [Darcey's murder] when it happened' (YZ (a pseudonym) v. The Age Company Limited (2019) VCC 148 at 47).

Coming back to the point raised earlier about other elements that come into play when assessing the impact of covering traumatic events, not all journalists are the same, either by temperament or background. Some journalists are untroubled by reporting traumatic events while others may be distressed by what they witness but are resilient and able to continue such work. Dr Cait McMahon, managing director of the Dart Centre Asia Pacific, provided expert evidence at both the AZ and YZ trials. The likelihood that journalists could do the important work of reporting traumatic events was increased significantly, she testified, when news organisations had in place well-resourced programmes to prepare journalists beforehand, to support them while on assignment and to help them debrief afterwards (The Age Company

Limited v. YZ (a pseudonym) (2019) VSCA 313 at 25-26). That said, some journalists may struggle when exposed to traumatic events, because of mental health issues experienced earlier in life or in the present day. Historically, the law in this area has struggled to account for the difference between physical and mental injuries in the workplace and to find a balance between safeguarding an employee's privacy and protecting them from psychological injury, as was evident in Justice McMillan's judgement in the AZ case (Ricketson 2017: 185). In the Supreme Court appeal judgement for the YZ case, the judges revisited the 2016 case of *State of New South Wales v. Briggs* that concerned a police officer who sued his employer for negligence over occupational PTSD caused by his witnessing of traumatic events. The police officer was successful in his claim but lost the case on appeal. One of the appeal court judges, Justice Ruth McColl, accepted that issues of an employee's privacy and autonomy were important but 'so too is the proper discharge of an employer's duty to avoid foreseeable harm' (The Age Company Limited v. YZ (a pseudonym) (2019) VSCA 313 at 34). She continued:

The solicitude the 'employer' must exhibit concerns an actual, or potential workplace injury. The fact that it entails a worker's mental health does not immunise it from the employer's responsibility to discharge the relevant duty of care. Nor, with respect, should it be characterised as an intrusion into an employee's private life (The Age Company Limited v. YZ (a pseudonym) (2019) VSCA 313 at 34).

Having made these points, Justice McColl agreed with the decision of the other two appeal court judges to uphold the state of New South Wales' appeal.

Conclusion

The decision in the case of YZ v. *The Age* to award damages to journalist YZ for suffering occupational PTSD is important for a number of reasons: it is the first of its kind in Australia and could have implications for employers not just in Australia but in other countries with similar legal systems. Whether the YZ case opens the door for similar cases brought by journalists at other news media outlets remains to be seen just as it is not clear yet whether media companies have been jolted into improving their training and support programmes or whether most companies' financial difficulties, aggravated by the impact of Covid-19 in 2020 and beyond, will constrain their ability to improve such programmes.

What is most important from this case, is that media companies and their journalists are now in no doubt that they must adopt a multi-faceted approach to psychological well-being of all who work in the news space including, but not only, the journalists, photographers, editors and online comment moderators.

News outlets must firstly acknowledge the need and value of reporting on trauma-including events such as disasters, crime, grief and the like; second, that witnessing traumatic events does have psychological consequences on journalists; third that any impact will intensify if journalists and managers try to ignore it; fourth that journalism educators have a key role to play in preparing a new generation of trauma-informed journalists who are open to peer support; and, fifth, that most journalists are resilient.

The importance of educators in this space is increasingly being recognised with scholars noting the need to ensure journalism graduates not only have the news skills when entering the profession but also the skills to manage trauma (Hill 2020). The World Journalism Education Congress syndicate on journalism and trauma made three broad recommendations on curriculum when it met in Paris in 2019: 'implement classroom training that incorporates theory and practice; provide essential literature, contacts, networks, and resources to students; and promote normalization of reactions to trauma in journalism work' (Hill 2020: 66-67). Further, a group of 60 international educators have formed a Journalism Education and Trauma Research Group (JETREG) to address what they say is a 'lack of knowledge, lack of resources and lack of reading materials as barriers to inclusion of trauma literacy in journalism curricula' (Ogunyemi 2021).

The literature shows that, with good support systems in place, journalists will successfully absorb the impact of traumatic events and be able, willing even, to continue their work. That's important because we need journalists to do the work that sadly must also expose them to deeply traumatic events such as the aftermath of the 2004 Boxing Day tsunami or clerical child sexual abuse. Sadly, serious, perhaps irrevocable damage has been done to many journalists, including YZ and AZ, but that underscores the importance for media companies to have in place strong systems to support and advise their journalists to do their job – a job that benefits not just the companies but society as well.

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