The trials of the centuries: Murder and the media in South Africa

ABSTRACT

Several important critical perspectives on media coverage of the Pistorius trial emerge in comparison to the most famous murder trial in South Africa in the first half of the twentieth century. In both cases, a well-known sports star shoots a young woman under circumstances that cause speculation and conjecture. The trials led to huge public interest and crowded courtrooms. While there are many points of comparison between the cases, in this article we do not discuss what the comparison reveals about the legal intricacies of the Pistorius case, or on the current state of the sub judice laws, or on the effect of the live broadcast (matters to which we plan to return), but rather on the different ways in which the legal protagonists and media framed the accused and other major figures in the two cases. We find that in the earlier trial the media, after the trial, played the role of criticizing the ways in which the jury and the judge had understood the events, while in the Pistorius trial the media overwhelmingly followed a framing narrative produced by the police and the prosecution, neglecting their watchdog function.

There has been a public interest taken in this trial quite unprecedented in the annals of South Africa.

(Judge President of the Transvaal, Justice De Waal 1935)
FRAMING COETZEE AND PISTORIUS

‘Framing’ is a key concept in contemporary media analysis and deals with the ways in which media consciously or unconsciously include or omit elements from their reporting and resort to explanatory schemas that resonate with audiences (Scheufele 1999; Scheufele and Tewksbury 2007). As Scheufele and Tewksbury point out, framing differs in crucial aspects from older notions of agenda-setting and priming, and the colloquial connotation gives it added cogency in examining trials. In both of these cases, of course, the media may be both following and resisting the agendas set by the prosecution, defence and judges. In our analysis we show how differently events transpired in the two trials.

INTRODUCTION – THE COETZEE MURDER TRIAL

Before examining the differences between media reactions systematically, a brief account of the earlier trial is necessary given that there is no thorough account in print. (Benjamin Bennett’s account in Too Late for Tears [1948] is no longer readily available and raises few of what seem to us to be the most salient issues, while Coetzee’s own later confession was in Afrikaans and in a very limited edition [Coetzee and De Winter 1954].) What should be stressed, however, is that this was the most sensational and widely followed murder trial of its epoch and probably of the twentieth century as the Judge President’s remark above suggests. In our account of what follows we draw freely on the press coverage of the Star, the Rand Daily Mail, the Sunday Times and the Burger, as well as on the trial transcripts (Rex v Jacobus Hendrik Coetzee, 1935).

On 1 February 1935, the body of a young white woman was found next to the railway line near the 16th mile post on the Pretoria–Pietersburg main road. One of the first detectives on the scene was Jacobus Hendrik (Koos) Coetzee, a Detective Sergeant in the Railway Police. Early newspaper reports called for help in identifying her and there was a response to the Rand Daily Mail call. That Sunday, 7 February, the Sunday Times, clearly with good links to the police, said that they knew the murder was almost certainly related to the fact that the woman was heavily pregnant (and had in fact gone into labour as she was dying, with the baby dying). While some might have seen this as a tragic suicide, the police by this time knew better. A farmer from the farm Leeuwkoppies, some 3 km from the Northam Railway Station in the Rustenburg District, Mr Van den Bergh, had come forward to identify the young woman as Gertruida Opperman, who had lived with his family to help his invalid wife cope with a young family. She had gone, a few days before she would have the baby, to Pretoria to confront the man she had said was the father of the child with his responsibilities.

A letter Van den Bergh had received from Opperman written from the waiting room in Pretoria station where she had spent much of the Sunday, 31 January, waiting for the man revealed the shocking news: the man for whom she was waiting was none other than Coetzee, one of the first policemen on the scene of the crime. Early news reports identified Coetzee as a rugby international but he was in fact a well-known provincial player for Transvaal, who came close to selection for the 1933 Springbok matches against the touring Wallabies. At the time, he was engaged to the daughter of Colonel Cilliers, the head of the Railway Police, and living on the property of his future in-laws.

Within weeks, an enquiry before a magistrate determined that Coetzee should stand trial for the murder of Opperman, and the case was heard in
May 1935 before the Judge President, Justice de Waal. The Attorney General of the Transvaal prosecuted, and Mr De Villiers appeared for Coetzee.

Much could be said about both the preliminary inquest and the trial and the efficiency of the criminal justice system. Some 100 witnesses passed through the courts in the nine days the trial took, ranging from tracking to ballistics to handwriting experts, in addition to Coetzee himself. This is in stark contrast to the Pistorius trial, which took 49 days to hear from 41 witnesses over seven months. There were also Grand Guignol moments to rival anything in the Pistorius trial – notably when the doctor brought the skull of Opperman to court in a biscuit tin to show evidence of the passage of the bullet.

What transpired was shocking: all the evidence showed Coetzee had left a dinner party where he had taken his fiancée to meet friends, driven his father-in-law’s car to the station, picked up Opperman, taken her to this isolated spot, assaulted her (there were signs of a furious struggle), then shot her and, it appears, tried to leave her body on the railway tracks to be dismembered, but she crawled away to die next to the tracks.

While Benjamin Bennett’s account in *Too Late for Tears* focuses on Coetzee’s completely implausible attempt to provide an alibi, we wish to focus on other issues: the narrative invoked by Coetzee’s defence; the gender politics of the judgement; the legal status of the death penalty on a murder conviction that changed as the trial neared its conclusion; and the media reaction to the judgement and sentence.

Coetzee’s defence involved a complicated two-step approach. On the one hand, he had to deny meeting a woman whom he had planned to meet, according to a letter he had sent, and to whom he had sent a messenger to tell her he would see her later; on the other he had to say that he had no reason to see himself as the guilty father. To do the latter, he relied on circumstantial evidence. By Van den Bergh’s own evidence, Coetzee had come to visit the family at the farm in July 1934 and secretly stayed the night in Opperman’s room until Van den Bergh, after getting up at night, saw that Coetzee’s motorcycle had not left the property, and discovered them in Opperman’s bedroom by breaking through the window. As Opperman was nearing the end of her pregnancy in February 1935, it seemed she was already pregnant when Coetzee had slept with her in July 1934.

The defence raised the suspicion that the real father was Van den Bergh. De Villiers’ cross-examination of Van den Bergh focused on how often he got up at night. When he questioned the largely invalid wife he asked her pointedly whether Van den Bergh had started getting up more at night during the past fifteen months (the period that Opperman had lodged with the family). The inference appeared to be that, if Coetzee was not the father of the child, why would he have any need to kill Opperman?

As the circumstantial evidence against Coetzee was so heavy, this line of questioning, even if it did not put Coetzee out of the picture, deliberately or not offered some kind of rationale for the murder: it seems that Opperman was, in effect, trying to blackmail Coetzee to get him to take financial and perhaps even marital responsibility for a child that was not his. This defence narrative clearly resonated with the court. Opperman had given Van den Bergh a letter testifying to his good conduct towards her – a letter Van den Bergh said he requested given that a young single pregnant woman leaving his employ might cause scandal – but even this letter was regarded suspiciously by the Judge President. By the end of the trial, the Attorney General had to warn the
What does one make of this narrative, reading the court documents and news reports of the time? The letter that Opperman wrote to Van den Bergh from Pretoria station hours before her murder is strangely familiar, opening ‘Outjie’, a friendly diminutive and scarcely a term for a distant employer, and ending, ‘Jou Verlangende’, or Longing for you, or She who longs for you, with two x marks. Moreover, she had addressed the letter to herself but told Van den Bergh to open it, which also suggests a kind of secrecy about their relationship.

On the other hand, Van den Bergh himself handed the letter over to the police without being forced to, and it may well be that he was not the father. Coetzee had met Opperman briefly in May; Opperman may well have had sexual relationships with another man. The jury, as the prosecution had reminded them, were there to judge a murder trial, not a paternity suit, and they duly found Coetzee guilty, but the paternity issue shaped what happened next.

THE END OF THE MANDATORY DEATH PENALTY

When the jury came to make their decision of guilty, they became the first jury in the country to consider a new legal aspect of the jury’s duty in murder cases because of a law that had come into effect a few days before the judgement.

During the early months of 1935, Parliament had debated new legislation about the death penalty. Smuts, then Minister of Justice, argued that the old law under which any murder conviction resulted in a mandatory death penalty made for bad law for two reasons: there were endless appeals to the Governor General for clemency, many of them successful, and cases where judges felt the death penalty was too harsh were twisted into culpable homicide verdicts instead. In the end, an amendment in Parliament by the MP for Queenstown, Mr Douglass, was accepted. He proposed that juries be allowed to recommend mitigating circumstances to the judge to be taken into account in sentencing, and this was accepted.

Coetzee’s jury was the first ever to apply the new law and consider whether there were any mitigating circumstances. They replied that in their view there were: that Coetzee had reacted violently because of being unfairly saddled with paternity for the child. While the defence narrative had not assisted Coetzee to escape a murder conviction, it had clearly succeeded in allowing him to escape the death penalty. The jury essentially accepted Coetzee as a fallible hero rather than a barbarous butcher. In one breath, they discarded his alibi as nonsense; in the next they said, yes, we can see why he was driven to lie and kill her.

There were a number of extraordinary aspects of this finding. Contrary to standard procedure, the jury raised the issue of the new law themselves, rather than the judge instructing them to consider it or De Villiers arguing for it to be applied. They must have read about it in the newspapers as they came back part way through their deliberations and asked the judge whether they could apply it.

The Judge President granted their request and seems to have been nonplussed when they found mitigating circumstances in the face of Coetzee blankly denying the crime at all. He asked the lawyers whether Coetzee should not have to explain himself to the court and accept responsibility
before mitigating circumstances could be found but was swayed by De Villiers’ argument that the jury’s recommendation was independent of Coetzee’s plea. It begs the question then on what evidence the recommendation was made and on what evidence the judge would base his discretion to accept it. Nonetheless, De Waal did take the jury’s recommendation into account and sentenced Coetzee to life imprisonment with hard labour.

De Waal’s comments in his sentencing were as extraordinary as the process that preceded it, resulting in some of the adverse media commentary. He put his own interpretation on what had happened on the fateful night, assuming that Coetzee had taken Opperman on a drive to try to persuade her to desist and then to the railway siding on the road from Pretoria to Pietersburg, where he assumed she had gone willingly with Coetzee but where he murdered her when she refused to comply.

He then said:

It is painful in the extreme for me to have to pass sentence on you. I have seen you on the sporting fields, I have admired your manly appearance. Your heroic demeanour throughout this terrible fortnight has been the wonder of the Court. It is with infinite pity therefore, that your life it should now be broken by the sentence I am about to pronounce, but in passing sentence I cannot lose sight of the fact that I have a duty to the public, whose servant I am.

(Rex v Jacobus Hendrik Coetzee, 1935)

Coetzee eventually served twelve years and was released in 1947.

FRAMING COETZEE

During the Coetzee preliminary inquest and trial, and between the inquest and trial, the press observed the subjudice rules scrupulously. After the judgement, however, there was an unprecedented wave of criticism of the sentence, led by a powerful editorial in The Star (Anon. 1935). In the case of Coetzee, the judge seemed, as The Star’s critical editorial pointed out, to vacillate between portraying the actions as being those of a cold-hearted ‘butcher’ and seeing Coetzee as having an admirably manly demeanour throughout his ordeal in court.

The Judge President also provided what must be seen as a fairly generous view of what had happened on the night of the murder. He reckoned that Coetzee took Opperman for a drive to try to persuade her to change her mind and only when she refused did he become violent. A more plausible account is surely that Coetzee, armed with a pistol, which he later used on Opperman, forced her at gunpoint to go through the fence, hoping to knock her out and leave her on the railway line without having to use the gun and leave the evidence of murder. Her resistance meant that he had to use the gun after all.

Coetzee’s demeanour in court is also open to a very different interpretation from the judge’s admiration of it as ‘heroic’. A modern psychological reading might be far more unsparing of his apparent indifference to the brutal violence he had inflicted and the two lives he had taken and read in it signs of narcissism and sociopathic selfishness.

The other framing of Coetzee’s behaviour was provided by his defence counsel who presented him as the victim of a blackmail plot saddling him with responsibility for a child that was not his. This counter-narrative was to prove crucial by the time the nine-men, all-male jury (Coetzee had elected for
a trial by jury rather than judge and assessors), came to reach their conclusion. The defence narrative seems to have resonated with the all-male jury: there but for the grace of God, go I. On the one hand, there was the 28-year-old rugby star and detective, engaged to the boss’s daughter, driving his father-in-law’s expensive sedan; on the other, the poor but attractive woman from the wrong side of the tracks who had, it seemed, seduced and tricked him.

Framed like this, Coetzee emerged as a man trapped by a moment of weakness and a very brief affair and the jury seems to have accepted what might be seen as an early version of the plot of Fatal Attraction, with the blame not going to the man but to the woman who made him do it. (This was certainly his later view of it, as the title of his confession, invoking Christ draining the bitter cup to the lees, suggests.) The vociferous criticism the judgement drew from newspaper editorials and letters to the paper showed that the public at large did not share this framing uncritically, and The Star editorial, in particular, pointed to the inherent contradictions in De Waal’s own comments and descriptions of the case.

The media here played the corrective role of disputing and correcting the framing of those who participated in the judgement and the sentencing. This seems to us an admirable role, particularly given the importance of this trial as the first test case of the new law, and the general conclusion shared across the press was that if future cases were to follow this precedent it should herald the end of the death penalty in South Africa. The Pistorius case would show a very different role being played by the media.

FRAMING PISTORIUS

It is beyond the scope of this article to explain the deeper reasons of how the best-known South African after Nelson Mandela, the hero of the 2012 London Olympics, the Blade Runner, turned into an object of such suspicion and hostility, though we find the cultural analysis Jonny Steinberg proposes of South Africa’s love–hate relationship with our symbolic heroes persuasive (Steinberg 2013). Our purpose here is primarily to examine the mechanisms by which this happened and to look at some of the most palpable effects.

Certain framing narratives emerged as explanatory schema early on: the death was seen as an example of family violence or gender-based violence in South Africa; Pistorius was seen as the archetypal gun-happy white South African; there was a more general suspicion of celebrity and wealth; Pistorius seemed to fit into the template of prominent sportsmen (O J Simpson, Hansie Cronje, Lance Armstrong, Tiger Woods) who had revealed a dark side of violence, drug use and gambling.

THE ROLE OF THE POLICE

There were clearly two incompatible ways of framing the Pistorius incident: as a tragic accident, or as deliberate murder. The tragic accident narrative seemed to be dismissed on the day of the incident itself when Brigadier Denise Beukes gave the first police news conference. Wiener and Bateman quote her:

We can confirm that there was a shooting incident this morning at the home of well-known Paralympic athlete Oscar Pistorius. At this stage we can confirm a young woman, a thirty-year-old woman, did die on the scene of gunshot wounds. A 26-year-old male has been arrested and charged with murder … We have also taken cognisance of media reports
during the course of the morning of an alleged break-in or that the young lady was allegedly mistaken to be a burglar. We’re not sure where this report came from; it definitely didn’t come from the South African Police Service. Our detectives have been on the scene; our forensic investigators have been on the scene and the investigation is on-going.

(Wiener and Bateman 2014)

Wiener makes the following remark immediately after the quote: ‘Her comments took most journalists by surprise and, for the first time, the story began to shift’ (Wiener and Bateman 2014: 96). She then remarks at the fact that journalists who were gathered for the briefing were surprised that Beukes was willing to take questions and continues to say the following: ‘Then, without skipping a beat, Beukes dropped another sound bite that would fuel speculation surrounding a potential motive. She was asked whether or not eyewitnesses had been interviewed.

There are witnesses that have been interviewed ... We’re talking about neighbours that had heard things earlier in the evening and when the shooting took place. I can confirm that there has previously been incidents at the home of Oscar Pistorius. I’m not going to elaborate on that, just that there have been previous incidents ... of allegations of a domestic nature.’

Beukes’ statement is a clear indication that the police seem to have made up their minds early. While it might have been correct to say that the police found no record of a break-in, the rejection of the claim that there was a mistake was at best premature and amounted to rejecting Pistorius’ version from the outset and before the evidence had been fully canvassed.

The claims of earlier overheard quarrels and ‘allegations of a domestic nature’ turned out to be false or flimsy – the only record was of a woman attending a party at Pistorius’ house who had been forced to leave and then tried to charge him with assault after being ejected. Nothing came of that case – the Director of Public Prosecutions declined to prosecute on the grounds that Pistorius did not have any intention to assault the woman. Shortly thereafter Pistorius instituted a lawsuit against her for giving false information to the police and against the police for unlawful arrest.

Thus it was surely improper for the police to frame Pistorius, from the outset, as somebody involved with domestic violence and quarrels. (The police of course may have been and may remain the first victims of their own framing and tunnel vision.) Nonetheless, the mere suggestion of prior domestic violence was enough for the frame to take hold, as can be seen in the following quote:

As a woman, mother of daughters, and feminist, I seethed with repugnance and outrage hearing that he’d shot Reeva Steenkamp four times, that he had a history of abusive incidents against women. As a person with a disability myself – in fact, a congenital limb reduction like Pistorius – I fear the links that may be made between disability and temperament. I can imagine speculation about Pistorius’ grim history of abusing women being attributed to some kind of character flaw that parallels what the world takes to be the flaw we call disability.

(Garland-Thomson 2013)
And while we agree with Leslie Swartz’s assessment that Pistorius’ disability has not really been properly assessed, his citation of Garland-Thomson without any demurral shows the power of this frame in affecting even academic articles (Swartz 2013).

The way in which the police press conference changed media assumptions was shrewdly assessed in a post-mortem by Rebecca Davis that reflects on how the media narrative changed:

Police Spokeswoman Brigadier Denise Beukes gave a press conference outside the gates of Pistorius’s Silver Woods estate.

‘The SA Police Service were just as surprised this morning to hear on the radio that allegations had been made that the deceased had been perceived to be a burglar,’ Beukes said. ‘We were very surprised and those allegations did not come from us.’

It was enough to make me change my tune instantly. In discussion with my colleagues, we agreed. There was every sign that this story would be bigger than SONA. It’s a regrettable state of affairs, but that’s the way it goes: World-Famous South African Athlete In Tragic Shooting Mistake would never make headlines the way that World-Famous South African Athlete Charged With Murder would.

(Davis 2014b)

THE ROLE OF THE PROSECUTION

The police framing of the events was continued by the prosecution, before and during the trial, where Gerrie Nel and Andrea Johnson mingled with media people regularly in court.

The media’s closeness to the prosecution was demonstrated and exacerbated by the constant leaks to the media from ‘unnamed state sources’ (Basson and Steenkamp 2013; Parker 2013; Anon. 2013). Linking the reports to ‘state sources close to the investigation’ as Nick Parker did added an air of legitimacy to them, but upon closer inspection many of the leaks were in fact utterly inaccurate or downright misleading, contributing to the widespread misinformation of the public.

For example, during bail the papers were awash with reports of testosterone found with needles next to Pistorius’ bed and the bloodied cricket bat (Basson and Steenkamp 2013; Newell 2013; Parker 2013). The clear suggestion was that Pistorius had battered Steenkamp to death in a drug-fuelled rage. Basson actually explicitly refers to the bat as the ‘central piece of evidence’ in the case and describes Steenkamp’s skull as ‘crushed’. He also suggests that one of the possibilities is that Pistorius used it to break down the door while Steenkamp was hiding from him – clearly setting up a narrative in which Pistorius hunted her down, which was quickly repeated in other publications.

However, in the bail proceedings the evidence of testosterone use was very quickly discarded when it became apparent that the police had not tested the substance they were referring to, which was in fact a perfectly legal herbal remedy. Furthermore, it was patently obvious that Steenkamp had been shot, not battered to death. The cricket bat was hardly the ‘key piece of evidence’ in this case. Nonetheless, the image of Pistorius hunting her down and beating her to death in a drug-fuelled rage had already been embedded in popular imagination, feeding a framing narrative of athletes behaving badly because of drugs.
When the trial began, the state started by trying to establish the framing of events as a domestic dispute or, more dramatically, gender-based violence. By this time, it seems that the media had bought into the state version as they gave short shrift to the defence case and repeatedly focused on the state’s evidence of the so-called ‘ear-witnesses’ – neighbours of Pistorius who testified as to what they heard on the night Steenkamp was killed.

This evidence was always going to be the pivot-point for the state’s murder case. The argument they would use to try and convince the court was that if neighbours as far away as 177 metres could hear Steenkamp screaming, then Pistorius certainly must have heard her screaming. If he heard her screaming before firing the fatal shots then he knew it was Steenkamp behind the door but fired anyway. The only reasonable inference would be that he intended to kill her.

It is therefore unsurprising that the state opened their case with this critical testimony. In total they put five ear-witnesses on the stand, all of whom claimed to hear loud bangs and the hysterical screams of a woman. Michelle Burger was the first witness for the state. Described as ‘a star witness for the prosecution’, she reported hearing the bloodcurdling screams of a woman, terrified for her life, intermingled with three cries of help by a man (Smith 2014e).

However, this testimony was problematic. Why would Pistorius be screaming for help three times before premeditatedly murdering his girlfriend? Furthermore, Burger said she heard the screams immediately after the gunshots too whereas Steenkamp’s injuries would in all probability have been too severe for her to scream after being shot. What is clear though is that from the first witness the media already displayed a tendency of giving more emphasis to the state’s case or at the least not subjecting the state’s case to major scrutiny or analysis.

When Barry Roux for the defence put it to the witnesses in cross-examination that it was Pistorius they heard screaming and he sounds like a woman when screaming, the press had a field day. Incredulous headlines instantly abounded (Davis 2014a; Anon. 2014a; Newcomb 2014). This media bias meant that very little attention was paid to the neighbours the state chose not to call as witnesses – Pistorius’ immediate neighbours on either side of his house. When they eventually testified for the defence that they only heard the high-pitched screams of a man that night, the press was too preoccupied with a demi-drama playing out in the courtroom between Pistorius and a friend of Reeva Steenkamp. Kim Meyers claimed that Pistorius said to her in a sinister tone, ‘How can you sleep at night?’ This was apparently more newsworthy than a fatal flaw having been revealed with regard to the state’s murder case.

Oscar’s attorney Brian Webber dismissed the allegation as ‘grossly untrue’. A source within the defence team told us that they were annoyed that on a day when their witnesses had made significant strides on countering the state’s neighbours’ testimony, the media focus was only on the alleged incident between Meyers and Oscar. There was very little reporting on what the neighbours had told the court.

(Wiener and Bateman 2014)

In fact, the state’s own second witness had already laid the groundwork in her testimony to undermine this part of their case. When Estelle van der Merwe took to the stand she recounted hearing what she thought was a woman
screaming, but when her husband went to check he came back and told her it was Pistorius. Most of the coverage of this part of the trial just glibly glossed over this critical piece of evidence, choosing to give preference to the more sensational testimony of other neighbours and the incredulity that it could have been Pistorius screaming ‘like a woman’.

Ultimately, the defence conclusively showed that it must have been Pistorius who all the neighbours heard screaming. In their closing Heads of Argument they painstakingly trawled through phone records, security logs and the testimony of neighbours to construct an object chronology of events (Defence Heads of Arguments at paragraphs 93–356). It conclusively demonstrated that at the time certain neighbours claimed to hear Steenkamp screaming she had been already fatally wounded. It was physically impossible for her to scream at that time. As the only other person in the house that night was Pistorius, it had to have been him the neighbours heard screaming:

Human beings are fallible and they depend on memories which failed over time. Thankfully as it shall be clear from the chronology of the events, this court is in a fortunate position in that it has objective evidence in the form of technology which is more reliable than human perception and human memory and against which all other evidence can be tested’ … The timelines as set out in the chronology of events tip the scales in favour of the accused’s version in general. 

(S v Pistorius [2014] at 3298 and 3322)

As the trial progressed so too did the inaccuracy of reporting, still fuelled by misleading state leaks. For example, days before the trial began papers reported that police officers were flying, in a last minute dash, to Apple headquarters in the United States to help them unlock Pistorius’ phone. The clear implication, in places explicitly stated, was that Pistorius was refusing to cooperate with the police and give his pin code (Laing 2014; Patta 2014; Smith 2014c; Webb 2014). Clearly the expectation was that his phone would reveal something damning.

However, Pistorius had handed the phones, and pin codes for them, over to the police as requested soon after the incident. The code in question that he did not remember is a code generated when syncing a phone with a computer. Without this code the police could not install their software onto Pistorius’ device in order to download the data to present as evidence in court. They could, nonetheless, scroll through the phone and see the data themselves.

If the data on that phone were so critical to their case, as reports beggars, it begs belief that the police were so lackadaisical in retrieving it. The last minute dash to the Apple headquarters was not due to Pistorius’ obstinacy; it was in fact a result of bungled police paperwork. An application for international mutual legal assistance had to be lodged with the US embassy in Pretoria before the manufacturers of the phone could assist:

But this is where the process had hit a horrible wobble. The official application lay on someone’s desk, somewhere between the National Prosecuting Authority and the SAPS, for several months. From May 2013 until December that year, the process stalled. It was only towards the end of the year, with the trial just months away, that top police management realised there was a problem … By this stage the National
Police Commissioner and the Minister of Police Nathi Mthethwa were apparently raging at the lack of answers and were angry that the process had not been done more efficiently.

(Wiener and Bateman 2014)

When the messages pulled from Pistorius’ cell phone were eventually presented at trial the media pounced, giving much more coverage to the State’s argument than to the defence rebuttal. The state tried to argue that the messages showed that Pistorius was jealous, possessive and abusive towards Steenkamp, and four text messages taken from his cell phone proved it. In one in particular Steenkamp had said ‘sometimes I’m scared of you’. This was an instant headline in almost every newspaper and was often reported as proof of an abusive relationship (‘I’m scared of you sometimes – Reeva’, 2014; Fourie 2014; Anon. 2014b; ‘Reeva Steenkamp message to Oscar Pistorius: “I’m scared of you”’, 2014; Anon. 2014b; ‘Reeva told Oscar Pistorius: “I’m scared of you sometimes”’, 2014; Smith 2014a).

What was not reported with as much vigour was the fact that these were the only four messages indicating any arguments among over 1700 positive and loving messages between the couple. Furthermore, the messages used by the State had been taken out of the context of the broader exchange in which they appeared. The state had not shown the messages immediately following the arguments, presented by the defence in cross-examination, which indicated that the disagreements had been amicably resolved.

In fact, the image of Pistorius as having good conflict resolution skills, not displaying a propensity towards violence and being in a loving and healthy relationship with Steenkamp, was not only supported by Steenkamp’s best friend Samantha Greyvenstein in her affidavit to the court (Wiener and Bateman 2014) but also by the psychiatrists appointed by Advocate Nel himself to evaluate Pistorius (Du Plessis et al. 2014a). These facts received little to no coverage.

In the end Judge Masipa took a common sense approach to the text message evidence:

In my view, none of this evidence from the state or the defence proves anything. Normal relationships are dynamic and unpredictable most of the times, while human beings are fickle. Neither the evidence of a loving relationship, nor of a relationship turned sour, can assist this court to determine whether the accused had the requisite intention to kill the deceased. For that reason this court refrains from making inferences one way or the other in this regard.

(S v Pistorius [2014] at 3304–3305)

A final framing device by the prosecution, here also aided by media leaks and pre-trial publicity, was the portrayal of Pistorius as gun happy and irresponsible with weapons. For example, Sky News found footage of him at a shooting range sounding ecstatic at the power of his weapon, which was eventually shown in court during the trial. Furthermore, the prosecution got additional gun charges attached to the murder trial, despite the fact that the charges officially happened in a different jurisdiction and thus should have been tried by a different court. They argued it was for convenience, as it entailed many of the same witnesses, but by joining the charges they managed to usher in evidence of Pistorius’ so-called bad character with weapons to the murder
trial, something that could just as plausibly be used to explain the tragic accident narrative as the deliberate murder narrative.

What the trial established, in fact, was the extent to which Pistorius’ gun-toting ways were normal in his circle. He was painted as a reckless aberration, but many of his friends used guns in the same way. For example, it was Darren Fresco who passed a loaded gun to Pistorius in a busy coffee shop and who had been walking around with it ‘one up’ in his pants. The framing of Pistorius as an aberration may thus have prevented a crucial and more relevant perspective from emerging: the ways in which a white South African heritage of gun ownership and fears of criminal violence shape forms of white masculinity here.

The powerful framing of this as a murder case and biased representations of court procedure went hand in hand. The most obvious example of this was the way in which certain allegations made in court were taken as the final truth. In particular, what Prosecutor Gerrie Nel said in court tended to be automatically accepted, without subjecting it to analysis and displaying the counter-arguments and evidence put forward by the defence with equal emphasis. So during Nel’s cross-examination of Pistorius when he said ‘Mr Pistorius I put it to you that you are a liar’, the next headline in the *Sunday Times* read: ‘Oscar is a liar’ (with the is underlined in red) (Swart and Mbele 2014).

This is complete misrepresentation of the way a court engages with the evidence and argument presented. Simply because a lawyer says something is so does not mean the judge believes it is so. A judge has to consider each contention in the light of all the other evidence presented throughout the trial before deciding whether to accept it. She is not an empty vessel waiting to be filled with the wisdom of lawyers.

**POLITICAL INTERVENTIONS**

The framing of the case as domestic violence or gender-based violence, which arguably began with Beukes’ misleading statement, led to a politicization of the case and the intervention of the ANC Women’s League, who were a constant presence throughout the trial. At Steenkamp’s cremation, Nelson Mandela Bay Deputy Mayor and Women’s League Provincial Secretary Nancy Sihlwayi told the press that she was there to support Steenkamp’s family. “The city is in grief, a little angel is no more,” she told reporters before remarking that Oscar should not receive bail and that he “must die in jail” (Wiener and Bateman 2014). The tone of Sihlwayi’s comments on Pistorius was echoed by Lulu Xingwana, Minister of Women, Children and Persons with Disabilities, in an interview with the Australian Broadcasting Corporation: ‘Young Afrikaner men are brought up in the Calvinist religion believing that they own a woman, they own a child, they own everything and therefore they can take that life because they own it’ (the Minister and the Presidency subsequently apologized). Here representatives of the ruling party show public disregard for due process rights and the presumption of innocence and this before a trial has even happened and any evidence has been engaged with. The state framing of the case, picked up by the press, had clearly gathered a momentum and helped shape a self-reinforcing narrative.

The ANC Women’s League representatives took their seats next to Steenkamp’s family in court, and in view of the cameras day in and day out of the trial, and displayed their anti-violence-against-women placards, irrespective of what the evidence being presented in the courtroom suggested about any domestic violence between Steenkamp and Pistorius.
Perhaps because of the Women’s League’s interest, and also because of international attention, the government became involved in unusual ways. They were constantly at pains to show that Pistorius was being treated ‘like anyone else’, even when that meant treating him more harshly than any other accused person (no other accused, for example, has to be paraded past the world’s cameras to get into the court room but the state refused to let Pistorius enter court through the back door). Zuma spoke about the verdict and sentencing in an interview before the sentence had been even delivered (Smith 2014d). The Commissioner of Correctional Services personally attended the sentencing hearing to give evidence – something quite unprecedented.

This government intervention in response to framing continued long after the trial and sentencing as shown by the very unusual action of the Minister of Justice and Correctional Services, Michael Masutha, who in August 2015 reacted to a petition by the Progressive Women’s Movement who did not want Pistorius to be released after only ten months of serving his sentence (a fairly routine decision, as many commentators pointed out), as they alleged that it sent a wrong message about abuse against women during August, Women’s Month. The Minister even timed his statement to coincide with what would have been Steenkamp’s 32nd birthday. Here the power of the framing continues: the women’s group (closely allied to the women’s group appearing in court) refuses to accept the judicial ruling that this was an accident and not anything to do with abuse of women, and the Minister, though he denied that the reasons for his decision were linked to the petition, reinforced this framing, thereby undermining judicial independence and confidence in legal procedures. Unsurprisingly, most serious legal commentators were dismayed by this development.

**FRAMING DEMEANOUR**

A deeper issue that this comparison raises but cannot resolve is the issue of how our culture establishes and values manliness and masculine power, and what continuities and discontinuities there are with the South Africa of 1935. In the earlier trial, the Judge President praised Coetzee’s ‘heroic demeanour’ in court. When Pistorius broke down in tears or vomited at photos of Steenkamp’s dead body, this was not treated as the sign of his compassion or shock, but with what was often an almost sadistic pleasure at the way in which Nel had forced this reaction from him. Comedians or public intellectuals had a field day imitating Pistorius’ shaken reactions. It seems here Pistorius was damned if he did or he did not – imagine the reaction had he managed a Coetzee-like detachment.

The etymology of the word demeanour contains in it the original sense of threat and power, originally over animals that can be led. Coetzee’s culture, at least in court, praised the rugby player who would not be broken or shamed, who remained threatening; our culture seems to have rejoiced in seeing the Blade Runner no longer a cyborg threat but, as the revealing expression suggests, cut down to size. Many of the jokes or comic treatments of Pistorius, at the trial or after, suggest a profound uneasiness about his handicap, something we cannot explore further here but which demands future analysis.

**FRAMING JUDGE MASIPA**

In the Coetzee case, the press criticisms of the Judge President pointed to his contradictions and what might be described as his blind spots. Much of the
criticism was also directly or indirectly levelled at the jury. In the Pistorius case, the framing of the case as murder and Pistorius as murderer meant that the verdict produced a moment of cognitive and emotional shock for most of the media and public concerned. Instead of this leading to a re-consideration of the frames they had been applying all along, however, the power of the frame continued.

Early reporting on the case had praised Judge Masipa’s skills and experience and cast her as a no-nonsense matriarch who was well poised to hand down stiff punishment, particularly to perpetrators of violence against women (Chibba 2015). There was even an official denial that this reputation was why she had been assigned the case, showing that even before the trial began the framing of the case as a domestic violence matter was well established.

Some of the adverse reactions to Judge Masipa’s role reflected ignorance of the criminal justice procedure. As the trial progressed, reports began to appear casting her as ‘sympathetic’ to Pistorius, sowing the seeds of the eventual theory that she gave him ‘special treatment’ (Smith 2014b). This was most evident during Nel’s bruising cross-examination of Pistorius. At one point the Judge interjected and asked Mr Pistorius whether he was able to continue or whether he needed a break to compose himself. This was instantly interpreted as sympathy for him (SBS 2014).

Whether or not she sympathized with him only Judge Masipa knows, but her interjection was almost certainly less about sympathy than about closing the door for potential avenues for appeal later down the road. If she had not interjected to ensure Pistorius was in the right state of mind to be able to follow questions, his legal team could have later appealed any verdict by arguing that Pistorius’ testimony was unreliable as he was badgered or emotionally unfit while delivering it. As in so many other instances during the coverage of the trial, this legal nuance was missed in reporting.

When Pistorius was acquitted of murder, the strong framing of the events in the media over many months meant that it was difficult for many of the protagonists involved and for the public at large to accept that it was not the State who lost the case, or the defence that won. Instantly, opinion towards her hardened:

A survey by research company ROi Africashowed that after Thursday, the first day of her judgment, 70.45% of South Africans on social media who spoke about the case suddenly became negative towards her. Only 28.64% posted positive comments and a small percentage remained neutral. Some were also threatening.

(Du Plessis et al. 2014)

Instead, the framing now continued with implacable logic: the Judge had bungled the verdict.

Whereas she began the trial as a South African matriarch, a symbol of South African pride, the second black female judge appointed after Apartheid, she ended the trial a ‘former tea girl’ from Soweto (Brunt 2014), a condescending put-down that did violence to the legacy of brilliance and courage that her career represents.

It seemed that overnight everyone had become a criminal law expert and felt completely comfortable to slate Judge Masipa’s understanding and handling of the law. While the cavalier haste and ignorance of many of the comments need further treatment, the framing revealed underlying race,
class and gender biases. Retired Zimbabwean Judge and frequent participant on the 24 hour Oscar channel, Chris Greenland was quoted as saying that Judge Masipa and her assessors were possibly too ‘unsophisticated’ to hear the trial (Van der Leek 2014). James Grant made it clear in a retweet of a comment from a former student that he thought her verdict was academically a fail, another version of the assumption that natives are children, and not very bright children at that. Hell may have no fury like a woman scorned, but Twitter and the blogosphere clearly have no fury like commentators whose superior assumptions and recommendations are not followed by the ‘unsophisticated’ ‘tea girl from Soweto’ who would fail Professor Grant’s assignments.

FRAMING POWER
How powerful was the framing effect? A count of reports would suggest a large majority of media bought the sensational murder plot and discounted the less dramatic tragic accident version. Modern media critics have criticized the tendency to what has become called ‘churnalism’ or the recycling of public relations releases. Here something rather more alarming occurred – the investment of journalists in a form of groupthink.

There were clearly other conscious or unconscious motives at play. Cynically, the Pistorius trial was good for business, with massive public interest. For the first time, South Africa felt the power of what critical observers in the United States have called Tabloid Justice (Fox and Van Sickel 2001). But, more alarmingly, many members of the legal profession, public intellectuals, and large sections of the media failed to recognize how much a prisoner of their own framing they had become.

CONCLUSION
This article is part of a larger project examining the historical reporting of murder trials in South African media. As such, it omits detailed commentary on many closely imbricated issues such as the state of the subjudice rule in the age of the Internet, the ways in which social media and instant news complicate the task of reporting, the complexities of issues such as intent, ways in which prosecution and defence alike see a media strategy as part of their role. Nonetheless, we have demonstrated how two highly publicized trials, nearly 80 years apart, show a disturbing trend. In the earlier trial, the framing and bias that result in Coetze not getting the death penalty emerge from unconscious or partly conscious gender and class assumptions on the part of jury and judge. The critical but respectful reactions from the leader writers of the day show that they see their role as reframing the case to highlight Coetze’s brutality and calculation and to argue that, if the death penalty is not applied in his case, it never should be again.

In the Pistorius case, the framing of the case, and the protagonist, by police and prosecution was largely, if not universally, accepted by the media and by the public. When the independent judge showed that she did not find this framing persuasive, the framers simply reframed her rather than examining their own assumptions. As media critics and legal observers, we need to point out that our own modern assumptions, whether about domestic violence, the way in which sportsmen behave, or racial stereotypes, need quiet, sustained, judicious and self-critical appraisal rather than the hasty self-assurance all too often forthcoming during the Pistorius trial.
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