

## Working with the Media

BY: Carolyn Raphaely

Senior Journalist, Wits Justice Project.

I'm going to tell you something you never learnt in law school: That understanding the media, managing the media and working with the media is in your interest and a critical tool in the armory of a successful human rights lawyer. Sometimes extraordinary circumstances - like dealing with gross human rights abuses – demand extraordinary responses. So, you may even need to know how, and when, to leak a story.

As a human rights lawyer, it's necessary to use all means at your disposal to win your case. And in many cases, the only way of exposing miscarriages of justice is through the media. It's an obvious channel to influence public opinion.

### ST ALBANS

Take the collaboration between attorney Egon Oswald and myself, for example. Not so long ago, at the end of 2011, when most people still thought SA was “the darling” of the international human rights community, I attended the Parliamentary Portfolio Committee hearings on torture.

Sitting in the parliamentary chamber, my ears pricked up when I heard Judith Cohen of the SA Human Rights Commission tell the Committee she was concerned about the details of her presentation because there were school children in the gallery. After the gallery was cleared, Cohen described in graphic detail how Bradley McCallum, an inmate of Port Elizabeth's St Albans prison, was raped by a warder with a baton, beaten, attacked by dogs, shocked, trampled on and tortured.

McCallum was left with a dislocated jaw, bleeding head-wounds, no front teeth, a skew arm and regular flashbacks which continue until today.

Some of you may know about McCallum's case and that his rape was part of a prison-wide orgy of mass-beatings, assault and torture by about 50-60 warders and prison officials in retribution for the murder of a fellow-warder. During a subsequent week-long search for knives, the prison became a battle-field. Many inmates were left with bruises, blunt force contusions, dog-bites and broken limbs; they'd been electrocuted with shock-shields and psychologically traumatised.

Cohen detailed horrific evidence about the incident which McCallum, represented by Egon Oswald, submitted as a complaint to the UN Human Rights Committee (UNHRC) in Geneva. In 2010, McCallum won his case – Bradley McCallum vs SA - and SA was found to have

contravened its international treaty obligations in terms of the International Convention on Civil and Political Rights (ICCPR) and the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Not to mention our own Constitution.

SA was instructed to investigate McCallum's claims, prosecute those responsible and provide a remedy and information about measures taken, within 180 days. It took the State more than a year (till October 2011) to finally issue a media statement and to publish the findings.

I couldn't believe what I was hearing...Not only because I was horrified by what had happened, or that this was post-apartheid democratic SA and none of these things were meant to happen, but because I knew NOTHING about the matter. It had received NO press and I'd never heard of Oswald, a former commercial lawyer operating a one-man practice from the back of an old house in Port Elizabeth.

I tracked down Oswald that very afternoon, and booked myself on a plane to PE to go and interview him. At the time, Oswald had hit a brick wall with the case. But he understood the power of the press and I think he thought I was going to be a kind of silver bullet...He'd already instituted a civil damages claim (in 2008) against the Minister of Correctional Services on behalf of 231 inmates but it was becoming clear the State would not accept culpability, and that he was going to be forced to fight the case in court.

He told me afterwards that he agreed to meet me because he could hear on the phone that we shared the same outrage about the matter and both felt equally passionate about exposing what had happened.

I think a shared passion and trust is KEY to a relationship between a lawyer and a journalist. In the best case scenario, a journalist and lawyer will share a common goal of justice but will play different roles in wanting to achieve the same end. It's a unique relationship which both parties must recognise works on a quid pro quo basis.

Oswald never agreed to see me because he was Mr Nice Guy - though he is that too. He told me upfront that the St Albans claim was more than just a simple damages claim. He wanted the abuses brought to light, for the individual perpetrators to be held accountable and for the system to be reformed so that such atrocities would never happen again.

## WITS JUSTICE PROJECT

I'm in a very unique position as a journalist with the Wits Justice Project (WJP) . We investigate miscarriages of justice and human rights abuses related to the criminal justice system – including issues like torture, wrongful convictions and prison conditions - and we write about our findings. We bring together a rare combination of investigative reporting and advocacy, legal assistance and education. I suppose you could call it a kind of human rights journalism.

Our biggest privilege is that we aren't bound by the same newsroom deadlines as regular journalists. As a result, when the first two of the 231 St Albans litigants case was heard - - I was able to spend many hours in the PE High Court listening to their grueling testimonies, and those of other torture survivor witnesses.

Apart from very limited local coverage, I was the only journalist covering what was a huge and very important story. Though the claim was dismissed last year, I'd like to think that the stories I wrote, the talks and radio interviews raised awareness of torture and the fact that not much had changed behind bars since the bad old days. I'd also like to believe that the media exposure contributed in some way to the passing of the Prevention and Combating of Torture Act in 2013. It's true that many a great case has been lost in court but won in the media and the court of public opinion.

Generally speaking, in commercial matters, divorce or bankruptcy cases, lawyers and journalists' interests are often not aligned and publicity is not in the client's interest. In the human rights space though, the lawyer, victim and journalists interests often do coincide. Publicity IS often in the clients' interests as they want their misery brought to light. In addition, the press has skills and resources that lawyers can't marshal - like contacts, access to unpublished information not necessarily available to a legal team, and investigative skills.

However, one of the major problems with our investigative work is that it involves more than just reporting on the facts. It often includes trying to finding pro bono legal assistance for the people whose stories we're telling. This is extremely difficult, and sometimes impossible, because in my view, human rights lawyers generally don't find criminal work sexy, and criminal lawyers don't find human rights work sexy.

#### THEMBEKILE MOLAUDZI

Take the case of THEMBEKILE MOLAUDZI - whose conviction was overturned by the Constitutional Court in 2015, with the assistance of the WJP. Thembekile spent eleven years in jail for a crime he did not commit after being sentenced and convicted to life on four charges - including murder and robbery.

His nightmare began when eight men were rounded-up and arrested following the 2002 murder of policeman. During a bungled police investigation characterised by incompetence, no gun residue was found, there were no witnesses, no independent corroboration, no fingerprints, no identification during two pointing out sessions and no tangible evidence linking him to the crime.

Before Thembekile's warder phoned to tell me he believed Thembekile had been wrongfully convicted, Thembekile had tried unsuccessfully for eight years to obtain his trial transcripts in order to appeal his case. Neither Legal Aid, nor

a private attorney, was able to help him. I spent two months knocking on doors, nagging, begging and pleading in my search for his transcripts.

Just when I thought I'd hit a brick wall, I had a breakthrough late one night in a Woolworths garage shop of all places when I recognised a very prominent legal person paying for his milk. Because I was desperate I accosted him and asked his advice. Probably just to get rid of me, he said I should write to Lawyers for Human Rights (LHR) Director Jakob van Garderen and say that he had told me to ask Van Garderen to help me.

I think shameless name-dropping opened doors and Van Garderen roped in a para-legal to assist. Judge Monica Leeuw, now North-West Judge President, who sentenced Thembekile initially, finally agreed to have the records re-transcribed after many requests for help. Two weeks later, Thembekile was in a position to appeal his conviction. Sadly, LHR was unable to assist any further because, I was told, they didn't have the resources, and didn't take on criminal work.

With the "help" of Legal Aid lawyers, Thembekile's case was subsequently dismissed by a full bench of the NW High Court, and then by the Supreme Court. Since Legal Aid was no longer willing to assist, Thembekile filed a Constitutional Court application for leave to appeal his sentence and conviction with the help of a fellow-inmate law student. This application was also dismissed on the grounds that "it didn't raise any Constitutional issue and had no reasonable prospect of success."

As a result of serendipity and an unexpected twist of fate, Thembekile made legal history the next year when the Con Court overturned its own judgement for the first time, in the interests of justice, and his sentence and conviction were set aside. I never wrote anything about this case for three years - probably a big mistake. I also made another mistake of listening to lawyers who cautioned me about the sub judice rule – a lawyer's knee-jerk response when they don't want to talk and a red flag for journalists

When I finally did write about Thembekile's case, I decided to focus on the human drama rather than the complicated legal arguments. Telling stories that affect readers' hearts rather than minds can be a powerful means of communicating a message that is greater than the individual.

It's a way of dealing with the "empathy deficit" and wide-spread belief that prisoners deserve what they get, and should rot in hell. I was completely taken aback by the interest and unexpected response the story evoked. It spun off about 20 other stories in the press, online, on tv and on radio. And the publicity served to educate an ignorant and disbelieving public not only about the fallibility of the justice system and wrongful convictions but other systemic issues like prison conditions and unequal access to justice.

Obviously, the media isn't always able to deliver, nor in the way a lawyer wants. And there's no fail-safe recipe for success. The relationship between a lawyer and a journalist is

complicated, delicate and fraught with potential ethical dilemmas and conflicts of interest. For example, lawyers may have a need to control a story and journalists need editorial independence. A lawyer will also need to know that facts will be reported accurately and publication won't give rise to new claims, or derail their case.

Even so, it's essential for all of you to recognise that a journalist CAN BE your most effective secret weapon and that sound relationships with the press can help to harness the might of the media to bring about change. But most importantly, the media can serve to deliver justice when the justice system fails.

ENDS