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# Taking journalism and trauma seriously: the importance of the AZ case

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## **Abstract**

*The case of an award-winning photographer who sued her newspaper over the post-traumatic stress disorder (PTSD) she suffered is historic because it was the first of its kind in Australia. Such lawsuits are rare if not unprecedented, even in the United States. The plaintiff's lawsuit was unsuccessful but has sparked debate among commentators about the legal tests applied in actions brought by media workers. The case of AZ vs The Age has focused attention on the complex interrelationship between a media organisation's duty of care for its employees and the extent to which it is possible for them to take account of the emotional makeup, circumstances and background of individual photographers and journalists. The case has prompted at least some media companies to extend training and improve support for their employees covering traumatic events, according to the Dart Centre Asia-Pacific.*

## **Introduction**

Crime, disasters, death and grief have been news staples for hundreds of years, yet it is only in the past two decades or so that the potential impact on journalists and photographers of witnessing such events has become a topic of public discussion. If that seems paradoxical, consider the following: the academic literature about the impact of traumatic events on journalists and photographers is also a relatively recent development. Overall it shows that the great majority of journalists and photographers will be exposed to traumatic events during their work and that a minority will be significantly affected (Smith, Newman & Drevo, 2009). A proportion of those surveyed, ranging from 4 per cent of journalists in general to 29 per cent of war correspondents (Smith et al., 2009; Feinstein, 2006, pp. 29-30), will suffer from post-traumatic stress disorder (PTSD). A recent study of 394 journalists, most of whom were American, found a rate of 19 per cent suffering from PTSD (Drevo, 2016). Yet in the United States, according to the Dart Center for Journalism and Trauma, it appears no journalists or photographers have brought to trial a lawsuit for occupational PTSD against their employer, despite the country's reputation for litigation (Shapiro, 2016). The first lawsuit brought by a journalist or photographer in Australia against their news organisation for suffering PTSD in the workplace occurred only in 2012. To round

out this chain of paradoxes, the case received scant coverage by the news media despite being the first of its kind and concerning one of their own (AAP, 2012; Caldwell, 2012; Deery, 2012; Overington, 2011)<sup>1</sup>.

The purpose of this article is to document the case in Australia of *AZ vs The Age* and to analyse its place in the growing awareness of the importance of media organisations developing trauma-aware newsrooms.

## Literature review

The impact that experiencing or witnessing traumatic events may have on people has been known about, or at least intuited, for centuries, but formal study of the phenomenon is much more recent. Post-traumatic stress disorder was included in the American Psychiatric Association's official manual of mental disorders in 1980 (Herman, 1992, pp. 27-28). The disorder is characterised by 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, pp. 271-272). Judith Herman's path-finding work, *Trauma and recovery*, was published in 1992 and, as she wrote, the study of psychological trauma had a curious history of "episodic amnesia". Attention to the issue has oscillated between periods of intense activity and periods of inertia. This is because: "The conflict between the will to deny horrible events and the will to proclaim them aloud is the central dialectic of psychological trauma" (Herman, 1992, p. 7). It is also because the study of psychological trauma brings people ineluctably into contact with human vulnerability and human capacity for evil. When people witness natural disasters it is straightforward for them to sympathise with the victims, but when people create the traumatic event, those who bear witness are caught in a bind between victim and perpetrator: "It is morally impossible to remain neutral in this conflict" (Herman, 1992, p. 7). It may seem a natural human impulse to sympathise with the victim, but in practice it is hard because the victim demands we take on the burden of their pain and do something about it. The perpetrator demands the opposite, writes Herman, and they usually are in a position of power and authority. Speaking out against them demands not only will but courage (Herman, 1992, p. 8).

Jonathan Shay focused on one of the three periods of intense activity of study about psychological trauma identified by Herman (p. 9) – the Vietnam War – and showed their longevity in human history by comparing the psychological trauma suffered by American veterans of the Vietnam War with events made famous in Homer's *Iliad*. In his 1994 book *Achilles in Vietnam*, Shay argues that in the first five chapters of the epic poem Achilles displays strikingly similar symptoms to the soldiers suffering from post-traumatic stress disorder that he had been treating as a psychiatrist:

Agamémnon, Achilles' commander, betrays "what's right" by wrongfully seizing his prize of honor; indignant rage shrinks Achilles' social and moral horizon until he cares about no one but a small group of combat-proven comrades; his closest friend in that circle, his second-in-command and foster brother, Pátroklos, dies in battle; profound grief and suicidal longing take hold of Achilles; he feels that he is already dead; he is tortured by guilt and the conviction that he should have died rather than his friend; he goes berserk and commits atrocities against the living and the dead. This *is* the story of Achilles in the *Iliad*, not some metaphoric translation of it. (Shay, 1994, pp. xx-xxi)

Shay's interpretation has influenced scholars of the *Iliad* such as Caroline Alexander, who in *The war that killed Achilles* shows the poem's central theme to be not the glory of war, as many earlier commentators and translators believed, but its tragic futility: "The conclusion of the *Iliad* makes

clear that Achilles will die in a war that holds no meaning for him whatsoever” (Alexander, 2009, p. 225).

The study of PTSD and treatment for it among combat veterans as well as other groups in society that have suffered, such as women who have been raped and children who have been abused, has advanced substantially in the past two decades, as Herman surveys in a 2015 afterword to *Trauma and recovery*. The current *Diagnostic and statistical manual of mental disorders* (DSM) explicitly recognises that a person’s occupation may increase the risk of traumatic exposure, and singles out police officers, firefighters and emergency medical personnel (American Psychiatric Association, 2013, p. 276). Since the early 1990s, there has also been growing awareness of the impact on journalists and photographers reporting on traumatic events, after many years of ignorance or avoidance of discussing journalists’ experiences of witnessing trauma (Castles, 2002). One of the earliest studies was published in 1992 in *Australian Studies in Journalism*. Its author, Nic Place, interviewed journalists who had covered two mass shootings that had occurred in Melbourne in the space of four months in 1987. In one, Julian Knight killed seven innocent people, while in the other Frank Vitkovic killed eight before committing suicide. The need for media companies to acknowledge their responsibility for journalists, perhaps by providing counselling, was explored (Place, 1992). Roger Simpson and James Boggs’ 1999 monograph was an early empirical study, as indicated by its title: *An exploratory study of traumatic stress among newspaper journalists*. The frequency and severity of PTSD among those working in the news media has been charted, whether in newspapers (Simpson & Boggs, 1999) or in television (Dworznik, 2011). Valuable work has been done to demonstrate that it is not only war correspondents who can suffer PTSD but also those local reporters who cover car collisions or drownings or fires or rapes (Simpson & Coté, 2006) or even those sitting behind a desk in a newsroom (Feinstein et al., 2014; Lower, 1999). The prevailing culture in newsrooms has been examined, showing that many 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 (Lyal, 2012). The resilience of most journalists in recovering from their experiences has been documented, and some studies have asserted the possibility of post-traumatic growth as well as or alongside post-traumatic stress (McMahon, 2016a). *Shooting the picture* (Anderson & Young, 2016), a history of press photography in Australia published in 2016 that drew on lengthy interviews with photographers, underscored how common it is for photographers to be exposed to traumatic events. Where journalists can gather stories in a range of ways, photographers have to be where news is breaking. Like police, firefighters and paramedics, photographers are first responders (Hight & Smyth, 2003, pp. 30-35) – sometimes they arrive ahead of the emergency service workers – and a theme threaded through this book is how photographers cope with seeing things that “you can’t un-see”, as Jason South of *The Age* says about the destruction wrought in Banda Aceh by the 2004 tsunami. Some of the 60 photographers interviewed for *Shooting the picture*, especially the older ones, are reluctant to discuss the impact of witnessing many traumatic events and don’t believe they have been affected, but the majority are more open and more self-aware. Their experiences provide valuable context for understanding the AZ case, which is briefly discussed in Faye Anderson and Sally Young’s history of press photography (p. 63).

## **Responsibility of newsroom managers for journalists covering traumatic events**

The role played by newsroom managers and editors in supporting (or not) their journalists in the field is the focus of Randal Beam and Meg Spratt, who in 2007 analysed results of the “American journalist” survey. For the first time since the survey began in 1971 it included questions about journalists’ exposure to trauma (Beam & Spratt, 2009 p. 426). The two main conclusions

drawn were, first, that the majority of journalists are resilient and enter their vocation knowing that it may expose them to trauma and, second, that management support is important in helping journalists cope effectively with trauma. This includes creating an environment in which journalists feel they can talk openly about emotional distress they experience after covering traumatic events, and that their candour will not jeopardise their standing in the newsroom (Beam & Spratt, 2009, pp. 432-433). Journalists' and photographers' lived experience of covering traumatic events can be gleaned from the number of mental health claims lodged with workers' compensation authorities in Australia. Between 2000 and 2010, 135 such claims were made, resulting in time off work averaging 26.4 weeks and compensation totalling \$4.2 million (Lyall, 2012, pp. 32-33).

What is curious, given this level of impact on media workers, is how until the AZ case was heard in 2012 no other journalist or photographer in Australia had brought a lawsuit against their employer for negligence in dealing with their PTSD. Apart from the number of mental health claims, though, there were warning signs for news organisations. In December 2006, two years after the Boxing Day tsunami, Kimina Lyall's account of the disaster that killed nearly 230,000 people and her reaction to it was published. Then the South-East Asian correspondent for *The Australian*, Lyall was at Koh Phra Thong Island, off the west coast of Thailand, where she and her partner were building a home, when the tsunami struck. She was on ground high enough to escape the giant waves but her partner was closer to the beach and narrowly escaped becoming one of the 8212 fatalities in Thailand (Lyall, 2006 p. xv). Most journalists arriving at a news event have one priority – getting the story – but Lyall had two. Simultaneously, she was a victim of the tsunami and a journalist covering the biggest news event of her 15-year career. She felt overwhelmed by the twin imperatives of news-gathering and caring for her partner. Apart from her news coverage, Lyall wrote two powerful features about the impact of the event, on herself and on the small community at Koh Phra Thong Island (Lyall, 2006, p. 264), but she found the cumulative effect of covering traumatic events such as the 1996 Port Arthur massacre and the 2002 Bali bombings as well as the tsunami too much, as she later wrote:

I suffered an emotional breakdown that made me incapable of performing any kind of work for months, and then left me stripped of my desire to intrude on and write about other people's lives. I left journalism, my heart broken. (Lyall, 2012, p. 33)

Lyall does not explicitly discuss in *Out of the blue* what kind of support her newsroom managers provided, but her silence on the subject is suggestive in itself. Later, in a chapter for a book about Australian journalism, she writes that she had not been prepared for the reality of covering traumatic events, by colleagues, managers or educators, but she likes to hope that with advanced knowledge and support in situ she might still be in journalism (Lyall, 2012, p. 33). In the interests of transparency I should say that I was one of her educators, albeit in the early 1990s when understanding of the impact of trauma on journalists was undeveloped. In her memoir Lyall does mention, however, a colleague flown in to help in the tsunami's aftermath insisting that she fly home (Lyall, 2006, p. 222). She also mentions a female editor who offered crucial words of advice when Lyall felt self-indulgent for writing about herself when "nothing really bad happened to me". To which the editor replied, "Why don't you write about those feelings, then", before adding, "Remember Kimina, you were there, and you can write" (Lyall, 2006, p. 216). Lyall found, like others before and since, that the act of writing about cataclysmic events is not only an intrinsically important act of public communication, but also helps the writer make for themselves at least some sense of chaotic, seemingly incomprehensible, events.

It is uncommon, even in a famously litigious country like the US, for journalists and photographers to sue their employers for failing to support those suffering PTSD. Bruce Shapiro, since 2006 the executive director of the Dart Center for Journalism and Trauma, says that "to my knowledge no occupational PTSD case brought by a news professional has gone to trial" (Shapiro, 2016). Little if any research has been done into why that might be. Shapiro says:

It may be true that cases are settled before they go to court. It may be that journalists just aren't bringing the cases. Or it may be that "deep-pockets" media companies are dealing proactively with potential liabilities and heading off cases before they start. (Shapiro, 2016)

It is possible that workers' compensation programs are dealing with claims as they are (mostly) in Australia, but in the US, according to Shapiro, workers' compensation law and legal precedent on occupational PTSD vary greatly from state to state, making it difficult to gain a clear picture of trends. The Dart Center, which since 2009 has been based at Columbia University's School of Journalism, keeps a watching brief on lawsuits and has reported on one in Switzerland that was settled just before it was due to go to trial in 2008. Carl Just had reported for magazines for more than two decades, covering atrocities in Lebanon and the Balkans, the plight of refugees in Africa and the wars in Afghanistan and Iraq. He began having nightmares, flashbacks and panic attacks, and was finally diagnosed with PTSD. He was made redundant by Ringier reportedly after his editors refused to meet Just's therapist. The Swiss-based publishing company agreed to settle the lawsuit for an undisclosed sum, though they have said publicly that they did as much as they could to help Just (A PTSD lawsuit first?, 2008).

In 2010 in Los Angeles a jury awarded a radio journalist, Patricia Nazario, \$US39,000 in damages after it found police used unreasonable force against her as she covered a pro-immigration rally in MacArthur Park in 2007. Attorneys for Nazario, a reporter for KPCC 89.3 FM, a National Public Radio affiliate, said that after the police used batons to knock her down during the rally she suffered PTSD and "has trouble focusing and sleeping" (Stoltze, 2010). Attorneys for the city of Los Angeles, however, said claims of PTSD by Nazario and a television camerawoman at the rally were not proven (KPCC Wire Services, 2010). The camerawoman with Fox11, Patti Ballaz, had suffered physical injuries that left her unable to return to work since the rally on May Day 2007 and the jury awarded her \$US1.5 million in damages. Ballaz's attorney had shown the jury photographs of her injuries, on her chest and one of her feet. The city's major, Antonio Villaraigosa, and chief of police, William Bratton, had found fault with the actions of police during the rally (KPCC Wire Services, 2010). What can be deduced from the case is that, first, it turned on actions by the police rather than any inaction by the news organisations and, second, the television camerawoman's inability to return to work owing to her physical injuries was the spur for the high damages amount, whereas the journalist, Patricia Nazario, was able to recover from whatever PTSD she suffered and return to work, according to the resume on her website, <http://patricianazario.com/resume/>.

The question of a news organisation's responsibility for its employees was raised in a lawsuit brought in 2010 by an experienced local newspaper journalist, Sheila Ingram, against her employer, Gannett Company Inc., for rejecting her claim for long-term disability that she claimed stemmed partly from occupational PTSD but mainly from experience of trauma earlier in her personal life. Ingram worked at the *Pensacola News Journal* between 1983 and 2005. As with many reporters on local newspapers, she did a range of assignments. Soon after Hurricane Katrina in August 2005 she applied for short-term disability benefits from Gannett. In early 2006 she became eligible to apply for long-term disability benefits from the company, which she did, saying she had suffered from PTSD and depression for the past three decades, and that her condition had been aggravated by covering Hurricane Ivan in 2004 and Hurricane Katrina the following year. She had sought treatment for her condition from both a psychologist and a psychiatrist, during which she disclosed how earlier events in her life had made her vulnerable to mental illness. These included years of childhood sexual abuse by an uncle and witnessing the death of a man during a tornado that destroyed her hometown in 1973 when she was a teenager (Rodgers, 2010, p. 3). Gannett's insurance company, Aetna, rejected her claim; it did not dispute that Ingram had a medically determinable sickness but disputed that it rendered her unable to perform her duties. The judge in the case, Magistrate Casey Rodgers, found that even though Ingram's doctors ar-

gued she might suffer panic attacks and flashbacks if she returned to the newspaper, no one could point to Ingram ever experiencing panic attacks and flashbacks at work, let alone them impeding her ability to do her job. To the contrary, the judge found that Ingram by her own account was a capable and accomplished journalist who had been given merit increases throughout her career. He denied the plaintiff's claim (Rodgers, 2010, p. 19).

The Ingram case is not primarily an occupational PTSD case but one about a disability claim with an insurance company. Occupational PTSD formed part of Ingram's supporting evidence for her claim, but neither she nor her lawyers nor the judge appeared to have a good understanding of the issue. Implicit in the judge's decision was a downplaying of earlier experiences that may have meant Ingram was less able to cope with reporting traumatic events and the cumulative effect of witnessing trauma. Both of these issues have been the subject of studies (see, for example, Backholm & Björkqvist, 2010; 2012; Marais & Stuart, 2005; Pyevich et al., 2003). The idea that a journalist arrives in a newsroom an emotional tabula rasa is surely naïve and unrealistic but, that said, it is not at all clear how exactly a news organisation can be held accountable for employees who by experience or temperament are vulnerable to PTSD. Second, the adverse findings that the judge drew against the plaintiff because of her journalistic competence fail to recognise either the extent to which a dedicated employee may strive to succeed despite the cost to their mental health or the newsroom culture which prizes resilience and a can-do attitude in overcoming obstacles to get the story. In one respect, though, the judge's finding was stunningly ignorant. He relied on the Department of Labor definition of a reporter, columnist/commentator or editorial writer and said "none of the definitions include reporting tragic or emotionally charged events" (Rodgers, 2010, p. 20), which makes you wonder if he has ever watched an evening news bulletin or read a newspaper. Looking no further than a disaster that was central to the case, what was Hurricane Katrina if not a "tragic or emotionally charged event"? He also appeared to misunderstand newsroom culture: when major news events break, everyone reverts to being a reporter (Lyll, 2012, p. 29). For example, when the worst bushfires in Australian history occurred in Victoria in February 2009, all available journalists and photographers were immediately sent out to the scene. This included Gabriella Coslovich, then a senior arts writer at *The Age*, who went to Marysville with photographer Justin McManus and filed news for several days (Coslovich, 2009; Sillitoe, 2011).

## **The case of AZ v *The Age***

In 2012 a Walkley award-winning photographer sued *The Age*, the newspaper she had begun working for nearly three decades earlier in 1984. Known in the Supreme Court case only as AZ, the photographer sued for negligence, arguing that the newspaper had done too 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 in this section draws primarily on the 114-page judgement in the case, handed down by Justice Kate McMillan in September 2013 (McMillan, 2013).

Like the 60 photographers interviewed for *Shooting the picture*, AZ photographed numerous traumatic events during her career alongside shots of celebrities, garden shows, animals and the like. The former included dead bodies of children as well as adults, car collisions, natural disasters, grieving parents, rape victims and those suffering terminal illnesses. She was working on the picture desk during the 9/11 terrorist attacks and to a lesser degree the 2002 Bali bombings, which meant she was spared witnessing these horrific events for herself but needed to view thousands of photographs sent in by colleagues, including many deemed too confronting for publication. In her personal life AZ had experienced trauma; one of her brothers died in an industrial accident, in 1985, while another died a few years later of an AIDS-related illness. Her long-term partner suffered from bi-polar disorder. In addition, she was the primary income earner (McMillan, 2013, pp. 16-18).

Her problems at work began to arise in 2003 when in the lead-up to the first anniversary of the Bali bombings she was asked to be part of a team preparing stories about families who had lost loved ones there. She was assigned between 10 and 16 families, some of whom lived outside Melbourne. The interviews were difficult and distressing; AZ often found the still-grieving interviewees looking at her for extended periods while the journalists, heads down, took notes. She took to placing her camera bag a distance away from the interview so she could retreat to it and, in the guise of retrieving something from the bag, pull out a handkerchief to wipe away her tears. She worked with several different journalists on these jobs; generally, at the end of the day she and the journalist would share a meal together and talk about the interviews, but one of the journalists would go and sit in his car immediately after the interview, leaving AZ with the family to finish taking photos. He would not talk to her and would retreat to his hotel room, leaving her alone. By the time she completed her photos for the anniversary series she was beginning to experience flashbacks and nightmares about the bombings, especially about young people who had died in them. 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, Dr Caroline Manuel, 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 (McMillan, 2013, pp. 18-47).

AZ's claim was that the newsroom culture at *The Age* discouraged anyone from discussing their emotional response to stories they covered; anyone who did was considered weak. 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 program in place, that there was no advice 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 led in court that by 2003 there was sufficient knowledge of trauma, from academic studies and from programs 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 (McMillan, 2013 pp. 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 reported there was an occupational health and safety hazard owing to the "personal distress associated with witnessing confronting news stories" and recommended the introduction of a peer support program and that the newspaper's health centre include psychological issues in its incident reporting system. *The Age* did not implement Caple's recommendations (McMillan, 2013, pp. 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" (McMillan, 2013, p. 91); that she did not raise concerns about the Bali assignment until after the second Bali bombings occurred in October 2005; that there is 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 argued that it 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 limbs of argument need to be made out: first, that the injury or in this case psychiatric harm was foreseeable and, second, that the employer breached their duty. The judge agreed with *The Age's* arguments and dismissed the photographer's claim (McMillan, 2013, p. 114).

## **Discussion of the AZ case**

The AZ case, like that of Sheila Ingram mentioned earlier, raises issues about the duties news organisations have towards their employees. Like Ingram, AZ's claim was rejected by the court, and neither case was appealed. It is not argued here that the judge in the AZ case erred, though there are aspects of the judgement in particular and the law in general that are open to question. The precedent that Justice McMillan relied on was a 2005 case, *Koehler v Cerebos (Australia) Ltd*. It concerned Ms Koehler, who was a sales representative for Cerebos, a manufacturer of gravies, stocks and sauces. Her position was made redundant and she was then offered three days a week work setting up product displays at supermarkets. She immediately complained that the duties were too demanding to be completed in three days a week but her concerns, expressed on several occasions, were disregarded. After five months she resigned and consulted a doctor, complaining of aches and pains from lifting cartons of the products. The doctor diagnosed a stress condition; it developed into depression and she sued the company. The case went to trial and on appeal eventually went to the High Court, which rejected her case. More importantly for the consideration of occupational PTSD claims, the court redrew the grounds on which such cases could be brought. The court placed less weight on the issue of whether psychiatric injury in the workplace could be foreseen by the employer and greater weight on the sanctity of the contract initially entered into by employer and employee. That is, where employees sign on to perform certain duties at work that is the primary obligation in the contract, according to the justices:

First, the employer engaging an employee to perform stated duties is entitled to assume, in the absence of evident signs warning of the possibility of psychiatric injury, that the employee considers that he or she is able to do the job. Implying some qualification upon what otherwise is expressly stipulated by the contract would contradict basic principle. Secondly, seeking to qualify the operation of the contract as a result of information the employer later acquires about the vulnerability of the employee to psychiatric harm would be no less contradictory of basic principle. The obligations of the parties are fixed at the time of the contract unless and until they are varied. (quoted in Handford, 2015, pp. 164-165)

The weight placed on the contract between employer and employee muffled the great variety of work done in society in which some jobs are demonstrably more stressful than others. This has been debated in legal judgements since, with the then Chief Justice of the New South Wales Supreme Court, James Spigelman, arguing in a 2007 case concerning a police officer's stress claim that the kind of exposure to human suffering inherent in front-line police work was "of a completely different order" to that decided upon in *Koehler v Cerebos*. When the police officer's case was appealed to the High Court, however, it was unsuccessful. Chief Justice Murray Gleeson commented that the causes and circumstances of workplace stress were so various that "to single out any occupation and treat it as intrinsically dangerous in this respect is unwarranted" (Knoester, 2013, p. 42). It is certainly neater to try and push all workplace stress down the funnel of contractual obligations, but it has the effect of squeezing a good deal of human experience into an unnaturally tight place. Similarly, in a 2007 case brought by a paramedic who claimed he was suffering PTSD and obsessive compulsive disorder after 15 years working in the Queensland ambulance service, the judge said:

Special difficulties may attend the proof of negligent infliction of psychiatric injury. In such cases, the risk of injury may be less apparent than in cases of physical

injury. Whether a risk is perceptible at all may in the end depend on the vagaries and ambiguities of human expression and comprehension. (cited in McMillan, 2013, p. 7)

At one level this may well be true, but it is not particularly helpful. Just because a broken psyche is harder to diagnose and treat than a broken limb does not absolve us of the need to do so. This is an urgent issue given the human suffering wreaked by mental illness, as well as its cost to society. To cite two alarming statistics: a US Department of Veterans Affairs study in 2016 showed that each day 20 war veterans committed suicide (Shane & Kime, 2016), and the US federal government spends \$3 billion annually on PTSD treatment for veterans (Morris, 2015, p. 1).

It is precisely because the workings of the human psyche are complicated that more studies are needed in this field. In the AZ case, the judge decided that AZ's condition was less foreseeable by her employer because she had not spent the bulk of her career covering emergencies or crime or war (McMillan, 2013, p. 92). This seems to misunderstand the operation of newsrooms in Australia, where most photographers cover disasters and crime at various stages of their career (Anderson & Young, 2016). It also misunderstands the impact of cumulative psychological harm (Backholm & Björkqvist, 2010; Marais & Stuart, 2005; Pyevich et al., 2003). The judge rejected the testimony about cumulative stress of a trauma expert, Professor Gary Embleton, who provided evidence on behalf of the plaintiff. She said: "There is no warning in the relevant literature that any exposure to grief or trauma stories creates a risk of psychological harm by reason of accumulation" (McMillan, 2013, p. 93). The cumulative effect of witnessing traumatic events has been underscored by a recent development in communication in which technology companies such as Facebook, Google and Microsoft employ people to moderate the millions of images and videos being uploaded to the internet every day, to provide at least some level of protection for those engaged in online searches and social media. Such work magnifies the stress that even newspaper pictorial editors face; moderating images and videos is all these employees do, and they are required to view child pornography, bestiality, rape, torture and murder (North, 2017). The current edition of the *DSM* implicitly recognises the impact of this new kind of work when it lists one of the criteria for PTSD as work-related exposure to "electronic media, television, movies, or pictures" of death, serious injury or sexual violence (American Psychological Association, 2013, p. 271). In any case, the law will be forced to come to terms with this development as a former Microsoft employee is suing the company for PTSD that he claims was caused by the moderating he did as part of the company's Online Safety Team (North, 2017).

A more complicated issue to disentangle is the relationship between an individual's personal history, their performance in the workplace and how this impinges on their employer's duty to provide a safe workplace. In the AZ case, the judge placed weight on how AZ had not disclosed her PTSD symptoms to her employer or even her doctors until 2005, well after the anniversary series interviews, and so asked how could her employer be expected to help her? This seems a reasonable conclusion to draw except that it downplays or misunderstands the complicated ways in which PTSD manifests itself. It is not as simple as saying that traumatic event A will always immediately trigger trauma symptom B. It is not clear exactly what undid AZ, but it is worth noting that one of her treating psychiatrists, Dr Nerida Crewdson, diagnosed PTSD relatively late in the train of events, in October 2005, when she saw AZ just days after the second Bali bombing. She found that this event triggered a re-traumatising of AZ, who began having "dreams pertaining to the original explosions, and some of that was linked with the loss of her brother who had died in an explosion" (McMillan, 2013, p. 42). The complexity of the ways that memory functions in traumatic situations is gradually advancing. For instance, as Herman notes, for several years the veracity of adults who repressed and then recovered memories of childhood abuse was questioned but "recent advances in neurobiology have documented the effects of trauma on the brain that cause 'repressed memories'" (Herman, 2015, p. 256).

## Conclusion

The significance of the AZ case should not be underestimated for two reasons: first, it reminds us afresh that in complicated matters such as the interrelationship between the personal and the professional in the workplace a lawsuit is a blunt instrument, if not the wrong tool altogether, except that – and this is the second reason for the case’s importance – it appears to have had a galvanising effect on media companies in Australia (Merritt, 2013). The Dart Center’s local arm, Dart Centre Asia-Pacific (DCAP), has experienced a marked increase in demand for its training programs since the AZ case, according to DCAP managing director Cait McMahon (McMahon, 2016b). Whether this is because more media companies have begun hearing Dart’s message about the importance of building what it terms “trauma-aware newsrooms” or because they fear further lawsuits or indeed for other reasons that have not been publicly aired is unclear. In any case it may be moot. What is most important is that a growing number of media companies and their journalists are beginning to recognise several essential points: first, that whatever challenges legacy media companies face to their business model they will continue to need to report disasters, crime, grief and the like; second, that witnessing traumatic events may have psychological consequences on journalists; third, that any impact is likely to be intensified if journalists and their managers try to ignore it; fourth, that journalists who witness traumatic events with their senses and emotions open are more likely to be able to convey to their audiences emotional as well as factual truth; and, fifth, that the majority of journalists are resilient (Novak & Davidson, 2013). With good support systems in place, they will successfully absorb the impact of traumatic events and be able, even willing, to continue their work. Sadly, the damage has been done to AZ, but that underscores the importance of media companies having in place strong systems to support and advise their journalists in doing their jobs.

## Note

1. A search yielded four items published in the mainstream news media about the case: a diary item in the Media section of *The Australian*; a report from news agency Australian Associated Press that was published in *The Australian* but not elsewhere; a 214-word report published by news.com.au and a 3-minute 40-second item on ABC radio’s *PM* program. In her testimony to the court, AZ said she had been fearful that her “name was going to be plastered all over” the media (McMillan, 2013, p. 4) but it did not happen, perhaps because the judge granted her request for anonymity, and perhaps because the media was squeamish about covering a case that called into question the industry’s heroically stoic self-image.

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