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THE MEDIA TRIAL OF JACOB ZUMA: ETHICAL JOURNALISM IN THE NEW SOUTH AFRICA.

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Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts, Applied Ethics for Professionals, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree
or examination in any other university.

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Lauren Utting

Day of Wednesday 18 May 2011

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Introduction

For a period of five years, my person has been subjected to all types of allegations and innuendo, paraded through the media and other corridors of influence without these allegations having being tested. I have thereby been denied my constitutional right to reply and defend myself. (Zuma: 2005)

Never before can it be said has the South African Media faced as many challenges as it has in the last few years, surprisingly so, given that South Africa is now much more firmly entrenched in achieving and properly actualising a new democratic dispensation than it was just a few years ago. As constitutional freedoms become more fully realized and protected it also seems that this newfound realization of a constitutionally free society is also having its fair share of government curtailment as well and none more so than the institution of the free press. Current proposals for media tribunals and the *Protection of Information Act* have seen the ideal of a free and unhindered press come under massive criticism from government and public institutions for what they perceive as the media having enjoyed too much freedom at the cost of turning into some kind of unaccountable force hell-bent on destroying the lives of those who fall prey to its reporting. Of course, media backlash has been anything but muted. Major international news agencies have seriously condemned what they see as a flagrant abuse of power by the ruling party to seriously undermine a democratic cornerstone and the valuable traditions of the fourth estate, especially that of watchdog to government policy and

management. However it is important when considering this debate to focus on the most notable incident that fueled the current trend by the ANC towards considering restricting the scope of the Media, and that has to be, without a doubt, the 'media trial' of Jacob Zuma.

After Zuma's acquittal of rape in 2007, and in the run up to the national election in 2009, he became the most reviled man in South African politics, which did not stop the ANC from achieving yet another landmark victory. Despite the massive amount of negative media coverage arising, in part, from the 783 charges of corruption against him, Zuma was still voted in as the country's leader. Just after his acquittal by the NPA, Zuma issued the following landmark statement, which unbeknownst to media organizations and the public at large at the time was perhaps a portent of things to come, "my quarrel with the NPA was on the methods and motives of the investigation. The probe was supported by a vicious media campaign designed to find me guilty in the court of public opinion."(Zuma: 2009 *Remarks by ANC President Jacob Zuma after the formal withdrawal of charges by the Durban High Court*)

This was a harsh indictment especially since a few months previously Jacob Zuma responded to what he perceived as misrepresentations in the media by saying,

> …It would be a contradiction if we say we believe in democracy, but refuse to allow people space to tell us what they think…We who believe in this view should be ready to defend it through engagement and persuasion, not through denying others a platform to state their views.
> (Sapa, Zuma Clarifies Media Misrepresentations: 2008)

So where did it all go wrong? Of course, the media are not actually able to physically or literally put someone on trial, for all legal cases are handled by the courts. Rather we can see it as a metaphorical claim to describe what Jacob Zuma and his ANC supporters saw as unfair treatment by the media. What Jacob Zuma was insinuating firstly was, either that the media were determined to present him as guilty and unfit for office by making sure that only one side of the story was portrayed, irrespective of how the case and subsequent decision might play itself out in the courthouses. Secondly, that there may have been the belief that the media are such a powerful institution, rightfully or unjustly so, that any kind of negative reporting would have the same impact on his political career as if the outcome of the trial found him guilty.

If it were that the media were acting unscrupulously and unethically, it creates a platform to seriously consider whether steps need to be taken to bring the media under control and in line with more stringent legal and ethical rules. The danger here is that a free press is the cornerstone of any democratic society and needs to be able to hold its leaders accountable. It's expected to provide the public with a multiplicity of varied viewpoints, news stories and opinions so that they become adequately informed and have the freedom to make their own choices. "Because the mass media present themselves as neutral reporters of the facts, they have a special responsibility 'for presenting all sides of an issue'- a responsibility that may in principle, be enforced."
(Kelley and Donway, 1990. p.94)

The main claim I will be arguing for is ***that the media did not unfairly report on Jacob Zuma during the run up to the 2009 national election and that the media coverage he received was reasonably in line with accepted and ethical journalistic practice.*** Further to that, I will show the wide scope of journalism that is crucial for the media to maintain their independent role and therefore hold public figures like Jacob Zuma accountable for their actions. What will become evident though, through my analysis of the case, is that even though I propose we can make a very clear case against his claim, it does however show that certain ethical tensions exist between ethical journalism and the business of the media particularly when these have a tendency to impact on the various rights of the individual.

In order to do this I will first clearly identify the various unfairness claims Jacob Zuma and the ANC have leveled against the media in this respect and then the primary ones I will be concerned with here. I will present two hard cases representative of this kind of unfairness charge but also because they were the two primary cases Jacob Zuma brought before the courts in defense of his claim. Further to that, I will then examine the role and mandate of media operations. Even though we are concerned with the ethical aspects of the case and not the legal ones per se, it is crucial to have a better understanding of these in order to show that the ethical constraints about media practice are strongly supported by and centered primarily by its function and procedures. It is an industry strongly governed by ethical principles, and a more nuanced appraisal of its strategic objectives does in turn lead to a better understanding of why and how ethical journalism is imperative in ensuring the media fulfills its obligation towards the public whilst also

protecting its own interests. From this, I will then critically examine both cases and their relevance to and support for the argument that is presented here.

The critical core of why this particular case and an analysis of media ethics at large is so important is that the media are no longer considered neutral observers in the political process; rather, they are now seen as a major player with the ability to make or break any political campaign or career. In a democratic society, this is particularly crucial when the media are expected to be acting as a watchdog over the democratic process by holding government officials to account and protecting the rights of the citizenry and the right to liberty.

1.1 Jacob Zuma vs. the Media.

Critical public debate about the status of ethical journalistic practice is crucial right now in South Africa's political adolescence. If left unchecked, the fervor with which allegations are being thrown around in the public domain could potentially undermine the integrity both the media and Jacob Zuma need to have in the public eye in order to fulfill their respective roles.

We need to first be aware of what kind of key factors have been at the heart of this debate that would prompt a very serious consideration of the case and why it is so significant. From a general standpoint, the issue of whether there was unfair reporting about Jacob

Zuma by the media is a multifaceted one and has played itself out extensively in the public domain through a variety of angles and views.

Some of these have included general criticisms that the media is unfairly biased towards stories that have public appeal, can guarantee the sale of publications, or increase readership. The danger here is that these can be the sorts of stories where public figures are named and shamed consistently or where only 'sexy' or controversial aspects of their public and private life are covered extensively by the media at the cost of more important and relevant public news. It also includes the socio-economic makeup of media conglomerates, journalists, editors, affiliates, which may have affected what stories, are deemed newsworthy, and which are not. The danger exists that the media can promote only one view or angle of a story and thus have some sort of effect on its outcome in the public domain or shape public opinion dramatically. The term 'media' is itself incredibly broad and can include everything from radio and television, newspapers, magazines and reader style digests to online blogging and media websites. It is important to note that criticism leveled against 'the media' at this time by Zuma and his followers through articles, press releases and on the pro Zuma website (http://friendsofjz.co.za) was a general voice of discontent and not always geared at one particular arm of its operation. While the two hard cases presented are specifically within the traditional form of newspaper reporting, Zizi Kodwa (spokesperson for the ANC) speaks of the 'mass media' and so does Jacob Zuma. When the term 'media' is used here we can take it to mean all sorts of media forms, not just newspapers, and such a general criticism has lead me to analyse this case from a general media standpoint.

At the forefront of Zuma's 'trial by media' claim are the allegations of unfair treatment and unethical journalism, characterised by two distinct effects that they may have had on him. Firstly, a negative effect on him as a political figure and secondly one in his personal capacity. I have isolated these allegations of unfair media treatment to include primarily two major defining features. First is that the reporting had actual or potential consequences for him as a politician, both as an aspirant president and as head of the ANC. Secondly, are the effects for him in his personal capacity, as an individual or 'person,' by damaging his reputation or character. There is often an overlap between the two as the personal lives of public figures are often indivisible from the positions they hold in society, especially if these are political in nature. In this way, the media speculation over his personal life was unfair and unethical because it was produced in a bid to draw negative correlations between those activities and his ambitions as president so that he appears unfit for public office. The specifics of this can be further separated into numerous charges of 'unfairness' and in fact all of these have formed the basis of his claim in some way or another. They are as follows,

1.2 The Unfairness Allegations

1. *Reporting into his private life or commentary on it was unwarranted or unfair as it was unrelated to the case at hand, (in this case, the arms deal) or the methods or printing of it was unscrupulous and unnecessary.*

While this centers on Jacob Zuma personally as an individual, it could also have very real consequences for him both politically and personally because it was an assessment of his character as an individual and his behavior as well. This could potentially affect his personal reputation but also his political one, owing to the position he holds in society and public service. In order for him to hold the most esteemed political position he cannot appear to be conducting himself in a way that is at odds with the image he needs to represent nor can the actions in his personal life be deemed as improper or illegal with respect to this position either.

Recently Dali Tambo (son of Oliver Tambo) was quoted in the *Mail and Guardian* in this respect as saying, that the Zuma he remembered,

> Bore little resemblance to the cartoonish and libidinous man the press were presenting. You'll always have the media caricaturing politicians and I guess that's part of their job but it's unfortunate that it ignores a very noble personal history. He has spent his entire life fighting for the liberation of his people. We view him as an honorable man. **(**Keepile, 2010**)**

This claim also relates to depictions of him in the media by cartoonists like Jonathon Shapiro[1] that make him look like a buffoon or silly and ludicrous so that the consistent parody of him in this way has a detrimental effect on his reputation and integrity, especially as he is revered among his followers and party compatriots. Within this vein are also the depictions of Zuma that make him appear dishonest, conniving and a

[1] Hereafter to be referred to as his pseudonym 'Zapiro.'

calculative politician and individual so that it could become almost impossible for some members of the public to see him as anything other than this. This could dramatically impede or compromise his ability to hold public office. In this regard a political supporter of his is noted as saying, "For seven years, these newspapers and many others surrendered their pages to editorial and caricature to construct the criminal cases against Jacob Zuma and project him as "evil", "corrupt" and "unfit to lead". (Munusamy, 2009)

2. *Media reporting was characterized by a different set of standards for each political party which saw them as anti ANC and therefore anti Zuma as he was head of the ANC.*

This charge has been frequently leveled against newspapers and radio stations that were accused of having 'an agenda,' in other words, that they were politically biased from the outset.

> In an era where societal transformation needs to be at the center of the national agenda, the fourth estate was more than happy to peddle lies, distortions and blatant misinformation, for as long as the end result had a negative impact on the ruling party. Examples of incidents where the media rode a wave of lies and distortions are abound… On the other hand, the opposition was given free room to get away unquestioned. Is it not the media's duty to interrogate these questions? In a developmental state, the media should strive to inform and educate the electorate, instead of adopting narrow political interests." (Stone, 2009)

While we have identified this as one such unfairness claim, the proposed idea that the media have an 'agenda,' political or otherwise, is not one we will be concerned with here. It raises all sorts of possibilities such as political conspiracy that cannot easily be proven,

given that it would require an assessment of all available evidence in this regard that would lead the argument away from the main concern I wish to address here.

3. *The media assumed a position of opposition regardless of whoever is in power (no political agenda) so that it is anti-whoever may be in power, which in this case was the ANC and therefore it can follow, also anti-Zuma.*

This point relates to the 'watchdog' role of the media, so called, which requires holding politicians, government policies, departments or structures accountable which may occur through warranted reactionary and critical reportage that may be perceived as anti-ANC. This is pursued when it is to be seen that the government or any political institution, having any effect on national or public interest, is in contravention of best practice either legally or ethically. In respect of the ANC their claim is that this was abused so that the media took it upon themselves to become the 'official opposition' when this is not their intended role.

> ...the media realized that the opposition parties were too weak to take on the ANC, and in the process adopted the role of being the official opposition.

> However noble the underlying sentiments might be (i.e. to promote a balance of power) it remains undesirable for the media to advocate and promote partisan opinions, without giving the electorate a broad range of competing ideas, thus empowering them to decide for themselves. (Stone, *Ibid*.)

The ANC may have misunderstood this as the media touting itself as the official opposition regardless, however in order for them to hold public figures and political policy up for scrutiny it means that criticism is not necessarily unwarranted but may

invariably follow. Whether this was performed unscrupulously, or in a one- sided fashion, is part of the claim I will be testing because it directly relates to one of if not the primary key role of the media and that is the satisfaction of the public interest. This however needs to be analysed from an ethical viewpoint to make sure that it is not being satisfied unethically or at the cost of an individual.

4. *Media Conglomerates and the Commercial interests of news agencies create a conflict of interest so that news coverage cannot be relied upon to be free and fair. The media have financial interests that have to be satisfied and this could mean that the pursuit of truth can be better understood as 'the pursuit of truth not where it leads us but how it sells newspapers.'*

The ANC have accused Media organisations and publishing houses of primarily satisfying their own commercial interests with the result that reporters and journalists are under pressure to meet financial targets and therefore careful reporting is not their main concern. Reporting may have been characterized as lazy or disinterested and merely echoed the sentiments of the National Prosecuting authority where the media adopted a laissez faire attitude without being 'even handed.'

Competitiveness also forms a part of this claim; that newspapers competing against each other for market share can often resort to unethical and illegal means of gathering news or overstepping issues of journalistic conduct either through conflicting interests or through what they publish.

While this is a critical and very valid criticism, its reach is so far ranging that while I may allude to it briefly in other parts of the paper, I will not address it directly as one of the unfairness allegations with which I will be concerned.

5. *Content or reporting was not objective and truthful but was instead based on falsehoods or characterised by commentary, editorializing, and not the hard-facts of the case.*

a) The Media were actively and conscientiously printing stories that had no basis in fact; they may even have printed lies in a bid to undermine him for no other reason other than one of maliciousness and ill intent. (Note that this point is distinct from no. 2 as it concerns an agenda towards Zuma as an individual as distinct from one that is anti-ANC) The reporting on Zuma was handled in a salacious or titillating way so that only 'sexy' or controversial aspects of his personal life were laid bare in order to sell more newspapers. Inferring guilt was more appealing to readers because it implied scandal or conspiracy. Note that I wish to make this point distinct from the criticism around commentary or editorializing as the publication of 'scandal' (which implies journalism based on nice to know sentiment) often occurs without being firmly substantiated (sometimes done in a bid to move publications through catchy headlines). However, it is not in the same vein as opinion based on fact or a fair and reasonable summation of a story.

b) Reportage of Zuma included or was defined by, opinion or editorializing that is unethical or even unacceptable as the media are meant to be neutral or objective

> observers. Opinion implies that the unfair treatment of Jacob Zuma was carried out under the guise of political and personal scrutiny and that this subjective summation of the facts either cannot be trusted, or is unreliable.

Point b) of this allegation I will analyse as it also forms the basis of two hard cases Zuma brought before the courts, namely those against the Guardian newspaper and Zapiro, political cartoonist for the *Mail and Guardian* newspaper. It also primarily highlights the tension and misunderstanding between the ANC government and the role of the media. This often leads to a cry of 'foul' by media critics and is a very real basis for Zuma's defamation claims from his point of view. To make a point of this criticism Zizi Kodwa has been noted as saying;

> On a daily basis, we have been at the mercy of a media establishment that seriously suffers from embedded journalism. Daily we have to deal with illogical observations by so-called "experts" as well as journalists and editors, who are clearly grafted into the mainstream media not for their competence, but for the "correct" views that they advance, all in the name of independent and objective journalism… (Kodwa, 2006)

The primary unfairness allegations I will be addressing, while they are listed as a set of distinct considerations, form part of the same broad unfairness claim and are both interrelated and overlapping too.

In summary the criticism was that, media coverage about Jacob Zuma in the run up to the 2009 election was unethical, defamatory and ultimately unjustly critical of him personally

(an infringement on his dignity) which had an overlap into his political career either explicitly or implicitly. In the first instance he was accused on the charge of rape and secondly of having a generally corrupt relationship by abusing his position for financial gain. If the media are to hold the government (in this case the ANC) accountable for wrongdoing or actions that are illegal or unacceptable, they will need to report on these actions and especially those of the individuals who have the largest claim or interest in this wrongdoing. The media can do this by reporting on the individual's political or personal behavior where this has a direct impact on their ability for public office. This can however, inevitably or invariably, result in a negative claim of defamation by a figure if he/she feels that the collection, publication or reporting was done in a way that infringed upon their dignity because it was perhaps untrue, false or wantonly malicious.

To discern the validity of this claim we must critically analyse what kind of reporting is protected legally and while it may be legal, may or may not have ethical considerations as well. In this way, I will be addressing these unfairness claims and then their practical application. The practical effect of these is evident in the public domain through the two hard cases brought against *The Guardian* newspaper (see Appendix (B) p.66) and Zapiro (see Appendix (A) pg.62) of the *Mail and Guardian.*

Zizi Kodwa, national spokesperson of the ANC youth league, sheds light on these allegations and unfair treatment of the media when he says, "The media has, over a protracted period, persecuted Jacob Zuma for his alleged involvement in the arms deal, subjecting him to all manner of humiliation and severely compromising his dignity." (Van Hoorn, 2008)

The media's defense against these allegations of unfair treatment has generally taken a number of forms. Predominantly, they have responded by saying that the public has a right to any information about a political figure, personal or otherwise, that could compromise his ability, both ethically and officially, to hold public office (especially as president) as in the case of the rape trial and that of the arms deal. Secondly, the media have a duty to act as a kind of watchdog if they believe there is a significant cover up of such information; this has generally been thought to be the case with the arms deal. Further to that, is also the perception that the ruling party has a suspicion and distrust of the media due to ignorance about its role within a democracy and the types and forms of journalism that are, and can be, protected by the Constitution under the title 'Freedom of Expression' and then 'Freedom of the Press.' In summary, the media also believe the ANC government often confuses solid, objective reporting of the facts as a veiled guilty verdict when in fact the case being reported on, is in a fair and reasonable manner. There is also similar confusion or suspicion over the role of symbolic reference, artistic representation and caricature in political satire as evidenced by ANC reaction to Zapiro's cartoons.

Speaking on the cartoon of Zuma about to rape a depiction of the justice system (see Appendix (A) p.62), Zapiro commented,

> It has become general knowledge that justice is represented by a woman with scales of justice and a blindfold. It's a figure that we understand to be justice. The ANC, the ANCYL, SACP, and Cosatu -- they know that, as every reader knows that. They do understand, but they *pretend* not to know that… (Van Hoorn, *ibid.*)

2. What does it mean to be 'fair' exactly?

Jacob Zuma and the ANC's predominant case against the media were essentially defined by a claim of unfairness. I have principally outlined how this pertains to the case at hand, but in order to give a fair appraisal, we need to understand what essentially a claim of unfairness can mean from the point of view of the recipient. One also needs to be aware that such a claim has a very serious ethical basis and henceforth makes evident why the practice of ethical journalism, while not principally codified, is nonetheless an integral and fundamental part of maintaining the value and integrity of its practice. Because journalism should, and does adhere to such a strict moral code, the public can and should feel compelled to place their trust in the media's ability to serve its best interests.

Fairness according to the *Encyclopedia of Ethics* is:

> Achieving the right balance of interests without regard to one's own feelings and without showing favour to any side in a conflict. Fairness implies impartiality or lack of bias. To be fair is to favour neither side. To be fair to someone is to gather all the relevant facts, consider only circumstances relevant to the decision at hand, and not to be swayed by prejudice or irrelevances.
>
> (S. Terkel & R. Duval, 1999. p. 89)

Within journalism, fairness is also known as the 'even handed' approach so that a report that can be seen as balanced looks at all angles of a story, not just factually, but also at what sorts of words or descriptions are used. Tone and even precisely, semantics can imply certain meanings or can convey innuendos whether explicitly or implicitly. It also concerns the perspective conveyed whether deliberately or subconsciously. What is important to note though is that, as J.H Retief (2002, p.84) makes clear, fairness is not the automatic and painstaking assignment of a 50/50 approach- it is also weighed against mitigating interests. He quotes Hausman (1992, 55) who gives a theoretical example where there are numerous political parties who all have varying representations in Parliament so that Party A has none, Party B has ten, Party C fifty, Party D sixty and Party E one hundred. Does this mean that you give all five parties reactions equal coverage around the same proposal? Obviously not. This does not mean that any report is now automatically unfair or not seen as being even handed; rather it takes into account members with the greatest interest in the issue at hand.

This does not imply however that an abundance of news coverage be seen as excessive or that it necessarily undermines the rights of the individual. Plausibly, neither Jacob Zuma nor the ANC, can claim he was tried by the media on one hand by an over publicizing of material. Public figures are ultimately and publicly accountable for their actions and such

a proliferation is warranted in a sense, owing to the fact that Zuma was the president of the ruling party. One has to decide whether what has been reported was dealt with as fairly as possible, or, is both ethical and cogniscent of the particular rights of the individual. This is only in so far as they are measured against other overwhelming competing rights, one of which principally is the public interest.

Let me now analyse the various unfairness claims I have chosen to isolate. I will show that while they are distinct, they are also inter-related, as they are all a crucial aspect of the two primary cases. First of all it is imperative to become clear on just what defines correct and justifiable media reporting from a legal perspective and then to analyse this ethically. While we are not primarily concerned with the legalities, it does become clear that journalism, whilst protected under the constitution, such a provision is incredibly broad and so the media have instituted the *Press Council* and *a Code of Conduct* that is primarily grounded in its obligations and duties to operate ethically.

3. The Institution of the Free Press

Concurrent commentary on the issue of Jacob Zuma's trial by media claim and various instances of media backlash have been fraught with vitriolic accusations by the ruling party and members of its electorate, and to be fair, these are neither illogical or nor wholly unreasonable. The institution of the press has, for the better part of the last

century and across the globe, faced numerous criticisms for all of the above at some stage and sometimes with good reason. There seems to be existent a clash of values and also confusion over what the media do as opposed to what the business of the media is. Media houses have a broad scope within which to operate and a variety of angles are used to cover a particular story. This ensures that the public receives a wide range of facts and opinion rather than one central view. The multiplicity of media products, even within one form like the print media, also makes possible this range of views as well as maintaining economic competitiveness against other news agencies and publications. The confusion exists when there is a perception that the two cannot mutually coexist efficiently without some or other compromise made to the accuracy and quality of the reporting because of the misguided notion that objectivity, often confused with neutrality, is the only domain and function of the media.

For decades, journalists and news publications have been regarded as the objective, truthful and accurate reporters and publishers of newsworthy events deemed principally to be in the public interest. As media institutions have grown and a plethora of publications emerged, media technologies have evolved and readership demand has not only increased but has become more sophisticated and diverse. One of the primary developments has also been the division between what Herbert G. Gans (2003 p.28) refers to as ‘hard’ and ‘soft’ news, as well as the emergence of reportage versus editorializing or opinion. Hard news is generally breaking news stories or critical and important political developments, characterized as essential with a need to know status whereas soft news, also referred to as ‘infotainment,’ focuses on celebrity scandal,

lifestyle information and classic back page reads. The inclusion of editorializing and commentary is thought to perform the essential function of interpreting and analyzing major stories, especially ones that relate to important political or economic developments. (Gans 2003, p.28)

The danger though is that these two very different branches can become confused. Nice to know news becomes elevated to a need to know status, politicians and state figures treated as celebrities, and investigative journalists can start to muddle stories that need to remain objective with their own commentary. Gans deliberates on this further where he states that, "in addition, news is not merely information. Journalists also speculate when information is lacking; they assign motives to the political actors on whom they report, and they pass on information, as well as misinformation, publicity and propaganda fed to them by their sources." (2003, p.57)

To cope with this evolution, its subsequent implications and the ethical dilemmas that accompany it, an emergence and recently, resurgence in media ethics has occurred and institutions that can hold editors and journalists accountable if they step out of line, has been established.

Within the South African Constitution, Freedom of the Press is protected under the right to Freedom of Expression. A distinction is drawn within this provision between freedom of speech and freedom of the press. The latter can be characterized as the ability to publish material that is protected by the principal right, Freedom of Expression, and it is

allowed to do this without fear of Government intervention or control even if, and this is most crucial, what it prints is openly critical of government or national policy. Through such means, the press remains an independent arbiter by holding governments accountable especially in healthy democracies; also known as the 'watchdog role.' Within the *Press Council Code* published by the South African Press Council this is laid out as follows,

> The basic principle to be upheld is that the freedom of the press is indivisible from and subject to the same rights and duties as that of the individual and rests on the public's fundamental right to be informed and freely to receive and to disseminate opinions; and the primary purpose of gathering and distributing news and opinion is to serve society by informing citizens and enabling them to make informed judgments on the issues of the time; and the freedom of the press allows for an independent scrutiny to bear on the forces that shape society.(Part A, pg.9)

The South African Media in particular, while operating under the auspices of one of the freest constitutions in the world, is not without its own regulations. Raymond Louw, Chairperson of the South African Press Council, is quoted as saying in the Foreword to the *SA Press Code, Procedures and Constitution* (pg 1) that,

> The media in South Africa, supported by the guarantees of freedom of expression and of the media in the constitution, have established self-regulation as the means of dealing with press misdemeanor and ethical and professional lapses on the basis that this is the only mechanism through which constitutional principles can be protected and pursued. Further to that it states under procedures that the press council of South Africa accepts the following code, which will guide the South African press ombudsman and the South African appeals panel to reach decisions on complaints from the public after the publication of the relevant material. Furthermore, the press council of South Africa

> is hereby constituted as a self-regulatory mechanism to provide impartial, expeditious and cost effective arbitration to settle complaints based on and arising from this code.

There have been criticisms that a system of self-regulation by the media, made up of media representatives and journalists, is hardly a sufficient or objective arbiter but the press council has responded that it is far more expedient in serving the public interest for the media to use such a system in a democratic society. Louw proceeds in the foreword by saying,

> South Africa is thus the direct opposite of countries where governments and other institutions try to exercise control over editorial content generally by seeking to punish editors and journalists for publishing stories that embarrass them or disclose conduct that politicians, officials, business persons and others wish to keep secret. (Louw, *ibid.)*

This does not merely close the matter though nor is it the final rejoinder to a question of what regulates media practice both legally and ethically. Rather, it is to say that law governs the media but in order to protect media interests, which may lead them into a position where they are directly in opposition to political or public opinion, they need to have a further regulatory body over and above the courts. This is especially true where complaints or misdemeanors fall outside of the parameters of legal definition. The relevance here is that any brief perusal of the *Press Code and Procedures* shows it is very clearly drafted with a view to upholding the ethics of journalism.

> The Council, the Ombudsman and the Appeals Panel are a self-regulatory mechanism set up by the print media to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers and magazines, on the one hand, and members of the public, on the other, over the editorial content of publications. The mechanism is based on two pillars: a commitment to freedom of expression, including freedom of the press, and to excellence in journalistic practice and ethics. (The Press Code, *Welcome, the Press Ombudsman.* Online version*)*

If this were the case would it not be relatively effortless to settle disputes between publications and those who may feel the media have unfairly treated them and that they can find resolution without having to wait out protracted periods of time or incur the legal costs of the court? On the face of it, yes, and the office of the press ombudsman has been especially effective in this regard. Nevertheless, the difficulty exists when we try to define 'unfair' treatment by the media when the media have such a wide scope within which to function protected as they are by the provisions in the Constitution for Freedom of Expression.

4. The case for Media freedom

While my argument is not an exercise in defense of free speech, we cannot adequately assess Media competency without first addressing and clearing up any misguided ideals, or indeed misnomers, about just what media freedom entails. This is because none of the obligations or duties the media has towards its readership or the public, nor an assessment of these, would easily be made possible if the right provisions were not already in place legally to protect this particular duty. Freedom of Expression is without a doubt a

fundamental human right, but it is by no means the only right in our society and can be at times both a high hat and a snare when exercising it within its legislation impinges on or compromises some other possibly more stringent right. In many cases, this frequent ethical dilemma consistently faces journalists, especially when the lawful and necessary exercise of this right invariably leads to compromising the rights of an individual. R.Louw, who is also the Chairperson of the South African National Editors Forum and a notable free speech advocate, asserts that,

> Freedom of speech is not absolute. Judges and the Constitutional Court will not accept that. They say it's got to be balanced against competing rights unless you have freedom of expression and that in my mind is what the courts would say. My view would be regarded as a manic view but you can't have any other rights that are in the bill of rights, they can't exercise them, without freedom of expression and therefore as a result of that, freedom of expression must be pre-eminent.
> (R.Louw, 2010. Personal correspondence)

The main reason freedom of speech and free expression are sometimes touted as absolute and invaluable is owing to the fear that any restriction placed upon it is automatically aligned with censorship, government control or some kind of compromise to the role freedom of expression plays within our society. David van Mill in his paper 'Freedom of Speech', (2008) where he critiques and evaluates the arguments for limiting free speech notes,

> Those who support the slippery slope argument warn that the consequence of limiting speech is the inevitable slide into censorship and tyranny. Such arguments assume that we can be on or off the slope. In fact, no such choice exists: we are necessarily on the slope whether we like it or not, the

> task is always to decide how far up or down we choose to go, not whether we step off the slope altogether. (Van Mill, 2008.Ch.1)

Free speech is protected by section 16 of the Constitution, known as the Right to Freedom of Expression but is limited by the following considerations- "propaganda for war, incitement of violence or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm." (1996, Section 16)

Freedom of expression is absolutely necessary in any democracy in order for the media to have the jurisdiction necessary in order to fulfill the watchdog function. They need to hold public figures publicly accountable by exposing any wrongdoing, but it cannot be absolutely free for this would remove any sense of responsibility in line with its possible negative effects.

The media operate within the Constitution under the mandate of Freedom of Expression that allows for freedom of the press and freedom to receive or impart ideas. With this freedom though, comes a responsibility to uphold the value of freedom of speech and not to abuse it as a means of defending journalism that is in contravention of the stipulated clauses in the Constitution or the Press Code or indeed any unethical conduct or reporting. However, the practice of journalism is never that cut and dried so to speak and gray ethical areas abound. This is especially true of instances when the exercise of free speech, such as freedom of the press, can come into conflict with other essential rights or has the ability to harm an individual in some way. This can be through contravention of their individual rights, and thus open to defamation claims, or it harms them in some

other way not necessarily defined explicitly by law. While there may not be a legal case, it does not necessarily mean there is not an ethical or conduct related one.

In essence, the media have to balance the often-conflicting duties of satisfying the public interest whilst still treating the subject(s) of their reporting ethically and fairly. If they do not do this, the quality and validity of the reporting is undermined because it can be seen to go above and beyond what was necessary to adequately report on the facts or to comment upon it, and thus can lead to a claim of defamation or an infringement on an individual's right to dignity. To properly address Zuma's claim, first we have to be clear on what kind of rights or interests Jacob Zuma has as an individual and how these relate to his aspirations as a public and political figure. This, I propose, will make clear what kind of reporting he can reasonably be subjected to and will offer an argument in response to the first claim of unfairness that reporting had actual or potential consequences for him as a politician both as an aspirant president but also his then current position as head of the ANC. In this way, the media speculation over his personal life was unfair and unethical because it was done in a bid to draw negative correlations between those activities and his ambitions as president so that he appears unfit for public office.

This section will also examine the second claim I wish to address: that the media assumed a position of opposition regardless of whoever is in power (no political agenda) so that it is anti whoever may be in power, which in this case was the ANC and therefore it can follow, also anti-Zuma.

I will now address Zuma's claim against the media on both of these points and show that there is an overlap between them. In order for the media to fulfill, its prescribed and ethical role within a democratic society it may be warranted for it to report on those aspects of a politician's personal life that can be seen to be in contravention of the acceptable behaviour for someone of his position, both politically and personally, but predominantly because of his political status. The result of such an investigation or unearthing of material may bring the particular news bearer or organization into a position of direct opposition against a political organization or individual. The foregoing section will show that this is not always to be seen as some kind of pig-headed obstinacy to popular public or political opinion but is essentially necessary to maintain the independent credibility of news agencies to actively fulfill the watchdog role. Thus, it is crucial to the maintenance of democracy. In many totalitarian and rebel occupied African States, leaders openly or secretly engage in nefarious activities and either journalism is state controlled, or merely a mouthpiece for echoing propaganda like sentiments in support of these or to blindside its citizens. This can be seen in countries like Zimbabwe where journalists have been imprisoned or banned for publishing material about Robert Mugabe's misuse of state funds or his militant state policies.

5. Interests of the media vs. the interests of public figures

While defamation is principally a legal term, its ethical application is directly related to the understanding of how we are to morally, and justifiably, treat an individual by recognizing that how people are perceived and their reputation is intrinsically and extrinsically valuable, especially if they are in the public eye. Over and above the privacy debate and what is acceptable for journalists to publish about the personal affairs of public figures, there also exists the matter of what they write and how they do this. *The Encyclopedia of Ethics* defines defamation as,

> Words or pictures that have the effect of damaging a person's reputation. Defamation is considered morally wrong if it *unjustly* has a negative effect on the esteem in which an individual is held by the community. For this reason, negative claims that are nevertheless truthful, accurate or factual are not necessarily morally wrong. In the law, a distinction is sometimes made between defamation of a person's character, through printed words or pictures known as libel, and the defamation of a person's character through the spoken word, known as slander.
>
> (S. Terkel & R. Duval 1992, pg.62)

Up until now the biggest criticism leveled against South African editors and journalists by the ANC has generally centered around the perception that during Zuma's rape and

corruption trials and the period leading up to the 2009 general election, media reporting extended far beyond a neutral and objective summation of the facts. Rather, it was centered far more on his character and reputation in a way that could be seen as unscrupulous where the media sought to portray him in such a way that he appeared unfit for public office over and above any deduction that could be made *prima facie* on the charges he was facing alone.

Readership demands have to be balanced against the competing value of the public interest though and it is this term "public interest" we will now be concerned with. Constant and intrusive reporting on a public figure, especially a political one, is generally defended as being in the public interest. This often results in politicians responding in kind with lawsuits claiming defamation, libel or intrusions into their privacy that compromise their sense of dignity, which can, at times, be well justified. Surprisingly, Louw provides the rejoinder that 'no one has successfully defined the term public interest.' He qualifies this by saying, "there is, in the latest protection of information act, a definition of public interest which merely indicates that there are matters which are not just curiosity value but are seen to be matters which are important in the public mind…they cover virtually all aspects of public society." (Louw, 2010)

One could safely say that in a South African context, the conduct of the government is always within the public interest. Especially so, since there is a perception that there is very little separation between party and state and there has been enough evidence to show that corruption in the higher echelons of government is rampant. Louw further

substantiates the importance of public interest, especially where it relates to journalists, when he states, "why there is always a difficulty in defining public interest is because there are facets that suddenly emerge which you can't really define but which strike the public as being important and for good reason probably." (Louw, 2010)

In the case of Jacob Zuma, there is a firm case in favour of the high level of media reporting, especially during his two court cases. Not only was he an aspirant president, but also in both circumstances he was facing the kind of charges that could cripple his political career. By this sheer fact, a shadow was cast over him, as there was enough prima facie evidence to launch a case (which the state felt obviously that it had some chance of winning). At the same time, it was emerging that the ANC were trying desperately to cover up as much of the arms deal as possible by preventing any meaningful and responsible investigation by SCOPA and the Ethics Committee. The media were in fact at this stage performing the crucial democratic role of watchdog, and where a cover up may have been planned, open exposure and the printing of leads or last minute stories could possibly have been defended quite successfully on the grounds that they were legitimately in the public interest.

The media have to be careful and responsible, though, when choosing how far it is reasonable and permissible to go in serving the public interest before they invariably and unfairly compromise the rights of the public figure concerned. J.H Retief (2002) says that the public interest or the public's right to be informed and the individual's privacy right

are not absolute, and where it relates to crimes or gross misconduct, the public interest becomes 'overwhelming' and their privacy can be compromised to satisfy this. (2002, 154) However, the converse also rings true- the media cannot on a whim launch a full scale media style offensive on a public figure to merely satisfy a possible 'nice to know' desire of the public. Andrew Belsey (1992) puts forward the slightly radical view that improper or "scandalous' behavior by a politician can never be said to be protected by a right to a privacy claim legitimately. Not only because they are public figures, but because the nature of their job affords them great power and influence and any exercising of this 'must be open to public scrutiny."(1992, pg.22)

What is quite remarkable here is that often public figures cannot easily or convincingly define for themselves, whether on a personal or professional level, where the public interest ends and their own right to privacy begins. The media are an essential tool and ally in the electioneering process, thus a candidate uses media coverage to portray him or herself in a particular way that will endear them to the public. It makes known that they are the sort of person best suited to lead the country- family orientated, possesses a reasonable demeanor and treating those under his care such as staff and family members well, and so forth.

If however, the candidate is successful and sits in office and something happens that could tarnish that image, the public interest can be justified and the individual cannot now turn around and accuse the same media that reviewed him in the way he sought as now unfairly compromising his privacy. (Louw, 2010) Nevertheless, this is incredibly

common and more than likely Jacob Zuma felt that the media, through insinuations and allegations, was improperly disclosing his personal life. This may have aided the public perception about whether or not he may be guilty of rape or corruption, possibly this is what he meant by 'trial by media.' Alternatively he felt that invasions into his privacy constituted malicious journalism and were done in such a way that it wasn't in the public interest but was serving some other function (political and media conspiracies aside.) Surprisingly, scandal in the media is an easily explainable facet of human behavior, and while this does not justify it ethically or indeed legally, it goes some way in explaining how this phenomenon gathers the momentum it does. James Fallows in his book *Breaking the News: How the Media Undermine American Democracy* (1997) explains this curious preoccupation with the negative aspects of a politician's life.

> A convenient way to think about this side of journalistic culture is to imagine a seventh-grade science class in which kids are trapped and realize that they are finally going to have to learn the difference between metamorphic and sedimentary rocks. Then someone looks out the window and sees a fight on the playground or two dogs tangled up. The room comes alive, and by the time the teacher can get control the bell has rung. (Fallows, pg.133)

So far I have outlined what might reasonably constitute ethical reporting, as it relates to one aspect of fairness, by principally examining just what sorts of media coverage and publication can reasonably be directed towards a public figure, particularly prominent political members. By addressing this, I have aimed to show thus far, that one aspect of the unfairness claim by Jacob Zuma (principally that concerned with his

individual privacy interests versus that of the public interest) in this case, is not adequate as a defense in respect of this claim.

6. Objective Reporting is not always responsible reporting

The next claim of unfairness I have chosen to address is to review the claim that, Media reporting was not objective and truthful but was instead based on falsehoods or characterized by commentary and editorializing and not the hard facts of the case.

It's absolutely crucial at this juncture to make a very clear and concise distinction when it comes to reviewing the actions and reportage of the media against public figures and politicians. It is not only that the media are the fourth estate and responsible for fulfilling a watchdog role as it were, so that the public interest is protected, they also do not have to do this necessarily by being facile conduits of objective reporting only. Indeed Theodore Glasser (1988) comments in his paper 'Objective Reporting is Irresponsible' that, "Objective reporting virtually precludes responsible reporting, if by responsible reporting we mean a willingness on the reporter to be accountable for what is reported. Objectivity requires only that reporters be accountable for how they report, not what they report." (1988. Pg.28)

He goes on to develop the argument that objectivity favors leaders and officials and protects them because a lack of interpretive reporting undermines the fact that in a democracy, ordinary citizens should enjoy the same measure of importance in their utterances as even the most high-ranking government official. It is essential in any democracy for people's opinions to be separate from the positions they hold in society. If an objective article states only that president Jacob Zuma uttered the following this and that, there may be a public perception that because it was uttered by the president and the journalist gives it authority as such, it must therefore be true or at the very least absolutely credible. It is important to note that this view does not take away from the fact that journalists be required to be accurate and truthful when reporting. This cannot be compromised as it undermines the media's credibility and institution and is the fundamental principal that will delineate journalism as truthful and not deceptive. Instead, the case that objective reporting is not the only kind of reporting and that the media are not required nor mandated to be wholly objective or detached from what they report, is concerned more with the 'voice' the media has in their analysis and portrayal of various stories.

Two kinds of journalism are identified by P. Weaver (1988) as, 'Liberal Journalism' and 'Partisan Journalism.' Liberal Journalism is the factual and objective style of journalism we have become very familiar with, and is characterized by a marked detachment from any ideological stance, is at pains to appear neutral and is defined further by Weaver as a 'tabula rasa' or clean slate. Partisan Journalism, on the other hand, defined as the 'journal

of opinion' and most widely used in European countries, is more concerned with interpreting public affairs, known as 'ideological journalism.' It is specifically journalism that casts light on a particular viewpoint or position, and news is compiled with a view to elaborating on this. (Weaver.1988, pg.18, 19).

Surprisingly while this kind of media is regarded as inherently suspicious, it is by no means anything new. The ANC themselves have their own personal news magazine called *the New Age* and many publications like *Rapport* or *the Sun* are geared at a specific kind of readership with a specific kind of view. This does not mean that Partisan journalism is not subject to the same restraints as liberal journalism. Raymond Louw defines the media's position on this quite critically where he says,

> There used to be this supposition that all newspapers have to act objectively. They don't have to *report* objectively but many of them of course do say we report objectively, or the word that's now coming into fashion, it used to be objectively in my day now it's 'fairly,' which means you're giving an even handed approach rather than a clinical objective [one]. That's what people say, there's a need to dissect fairly in terms of the attitudes that a newspaper exhibits in its dealings of affairs. Some of them who are in support of shall we say COPE, as distinct from the ANC, they will exhibit their critical attitude of the ANC and their not so critical attitude of say Cope. But all of that is permissible as part of the view that there should be freedom of expression and that those people do of course run the risk that if they are unfair or inaccurate or libelous that they can be taken to court and have a finding made against them. The other risk they run is the public saying there's no point in reading that publication because it's biased and it has no quality. (Louw, 2010)

Of course, the issue here is the presupposition that readers will understand the intended readership for a specific publication and they can choose to subscribe to or read it if they want, or throw it in the bin if that's where they think it belongs. If a particular magazine or newspaper does not give readers what they expect, either in terms of product or through irresponsible journalism, readers or the public will respond by either not buying it, or lodging a complaint about the content to the press ombudsman. In this way, it becomes clear that while much criticism is leveled against media firms and publications for being a law unto themselves, it would be ignorant not to believe that in fact the power does lie very squarely with the readership. However, one objection to this view might be that constant reporting on only one side of the issue has the potential ability to shape public opinion on the matter. The point I am trying to make clear here though, is that it would be foolish on the part of either party, the media or the ANC, to believe that the public are not wholly equipped to make informed choices when news is consistently portrayed in a one sided or irresponsible manner. To make clear this point, public support for the SABC has dwindled dramatically over the past few years. This is owing in part to public perception and new evidence that shows news stories were consistently slanted in a particular way that supported commonly held ANC views, especially where they related to international news stories.

Outlining the essential functions and jurisdiction of the institution of the press, particularly where they relate to the case at hand, seems plausible and is in fact its legal mandate. However, all of these considerations have to be measured against a clear understanding of just what constitutes ethical journalism as opposed to what is codified

by law. The principles that characterize the functioning of the media cannot be so easily defended if they are essentially at odds with basic ethical concerns, especially if their practice results in consistent and flagrant abuse of an individual's or organizations basic rights. J.H Retief, who is also a member of the Press Council, outlines in his book *Media Ethics* (2002) that essentially the Ethical Code for Journalists is 'to maximize truth and minimize harm and act independently.' (2002.pg.21) This can be seen essentially as making sure that at all costs the public interest is served and done so in a way that promotes accountability. This means always in support of the truth and independently, but never at the cost of the individuals own dignity in a way that is flagrant, unwarranted or without an overwhelming case for doing so.

First, it is imperative to make a distinction between the nuances of neutral reporting and 'opinion' or editorializing. This I hope to show will make clear the ethical concerns around matters of truth and value. On the one side, there exists what we understand as neutral reportage, as distinct from opinion or judgment pieces, and the public has always desired a clear distinction between these two, especially since there is a fear of the morally loaded term 'bias.' Judith Lichtenberg (2006) goes into some detail about this when she says,

> The accusation of bias is misplaced with respect to editorials, which are supposed to be "biased." This statement reveals the odd character of the term 'bias'. On the one hand, the term is pejorative- we only describe a view as biased if we mean to condemn it or the person who holds the view. On the other hand, the popular outcries of bias in the media suggest that a view is equivalent to a bias. Deeply embedded here is the assumption that views about social or political matters cannot be true but simply express the emotional commitments of those who hold them. (2006, pg.602)

If we were to delineate it further we could make the distinction that subjectivity and bias are not the same thing. Subjectivity implies a perspective that can still be viewed as objective, but bias implies that a person may be prejudiced to a certain view from the get go, irrespective of the facts of the case. Whilst the latter may be undesirable, it is reasonable to accept that the pursuit of absolute truth in journalism is to be found in facts. Subjectivity on the other hand, could be seen as a choice about which sorts of facts are valuable in satisfying the best version of the event (one seen as most accurate) and the one that best satisfies this term 'public interest.' Journalists make these kinds of distinctions all the time and it raises the question of whether or not there can be a notion of absolute truth and in turn, whether or not the primary value of journalism lies only in how close to the truth it is?

John Stuart Mill is famously quoted as saying in this respect, that,

> The only way in which a human being can make some approach to knowing the whole of a subject is by hearing what can be said about it by persons of every variety of opinion and studying all modes in which it can be looked at by every character of mind. No wise man ever acquired his wisdom in any mode but this.

(1999.pg.9)

As mentioned earlier in the paper, the idea of neutral reporting of facts ignores a journalist's very real responsibility to the news that they are reporting. I argue that subjectivity in reportage occurs more often and frequently than we would readily admit. However it is not unethical when it does not compromise on the validity of a story or promote falsehoods or lies. This has always been a bone of contention with the media and

rightfully so. It makes the public weary about what version of the truth they are being exposed to or what side of the story they are hearing and henceforth, why the media are often referred to as 'spin doctors.' Lichtenberg goes on further to raise the question, "Is neutrality a virtue?" (2006, pg.604) While I am not going to raise this question within the same argument as she does, it is a very relevant question within the context of what we are addressing here. Within the practice of journalism, on the face of it, the answer would undoubtedly be yes, but the problem arises when we relate this idea of neutral factual reporting to instances where there are stories about child abuse, gross mismanagement of public funds or cruelty to animals. Judgment in news reporting, if it is sound and accurate, can be both impartial and objective too, as distinct from biased, and seen as a perspective that is not altogether undesirable. In the first instance, the particular circumstances, socio-political or cultural and the context of the story, may inevitably call for one kind of subjectivity in how it is reported. In the second instance, a journalist may report on a matter in a way that is sympathetic to a particular cause. One of the primary tenets of journalism is the pursuit of truth, but it would be foolish to believe that reporting is not in some way or another, a form of interpretation. This interpretation has to be further clarified against the considerations of how one goes about deciding what is relevant and what is not. This is limited by the readership, the length of an article, its importance (defined by the public interest on one hand and commercial appeal on the other) and hence where in the publication it would be placed. It goes without saying that invariably any articles that were related to Jacob Zuma, either the rape trial or legal proceedings for the arms deal, were almost always either front-page news or received extensive coverage in opinion and editorial sections. This was reasonable, so I would

argue, given that Jacob Zuma was at the time of the rape trial, deputy president, and thereafter strongly favoured as the leader of the ANC and the next South African President.

The media have defended their treatment of Jacob Zuma by saying that they were merely reporting on the facts of the case, his behavior and conduct, as well as, instances and events that he was alleged to have been involved in and the process of the trial and how it was playing itself out in courthouses. According to Louw, they did not even need to use the defense of freedom of expression, and especially freedom of the press, to explain why they were doing it, in other words a legal defense. They were merely reporting on the actions of the president. The media defense is both plausible and logical but something obviously went awry and Jacob Zuma disagreed with this media position or he would not have opened as many defamation cases as he has against the media. His fellow politicians and party supporters came out strongly to defend him, calling the media 'a brood of fangless vipers.'

In this section I have made the argument that Zuma's claim of unfairness on the basis of a lack of objective reporting is not credible when a thorough analysis is given of just what constitutes the term 'objective' and how this is not to be confused with neutral reporting.

Let us now turn our attention to the two hard cases, Zuma versus *The Guardian* newspaper and Zuma's case against Zapiro. I will now present these cases, which Jacob Zuma took to court in support of his 'trial by media' claim, and I will show how the

foregoing argument shows the ethical basis on which to disagree with it by further assessing those unfairness allegations I have chosen to address.

7. Jacob Zuma vs. the Guardian and Jonathon Shapiro

7.1 The Case against Simon Jenkins and *the Guardian* Newspaper

The first example is a clear case that contains examples of what could be reasonably described as unethical and irresponsible journalism and certainly, in one instance, gives credence to Zuma's claim of being unfairly 'tried by the media.' The article, "Get used to a corrupt and chaotic South Africa but don't write it off" written by Simon Jenkins (2009)[2], just a few weeks before the 2009 election, has some highly critical phraseology in it, the most famous being,

"He [God] is about to give us a criminal and a rapist as president." It is followed by descriptions such as "to the skeptics he is the harbinger of Armageddon…he is a polygamous, leopard skin-draped, Zulu Boss, an unschooled former terrorist, Communist sympathizer and rebel rouser" and further on "another African crony politician for whom power is not about government but about personal enrichment."

[2] A copy of the article is to be found at this web address as it was removed from the Guardian website as part of the findings of the case. Alternatively turn to Appendix (B) for a full transcript. *http://southafrica-pig.blogspot.com/2009/03/get-used-to-corrupt-and-chaotic-south.html*

In the first instance, Zuma sued *The Guardian* and won his case against them for labeling him a rapist, a charge of which he was found not guilty of, and as a 'criminal,' after the NPA dropped the charges against him. In this instance it is fair to say these allegations made by *The Guardian* are libelous and in gross violation of what we have now defined as responsible and ethical journalism. They are clearly neither reasonably subjective nor a fair portrayal of him. Such statements also provide an instance of support to his claim that the media 'tried him in the court of public opinion' outside of the courts and it is grossly negligent to publicize a man as being guilty of charges he has been freed of. To this end Zuma won the case and 'accepted very substantial damages' and the article was withdrawn from *The Guardian* website (SAPA, 2009). Zuma issued a statement where he said, "We had to take action in this matter because the publication crossed the line. Media around the world are obliged to exercise their freedom of speech in a responsible manner." Media critics were also suitably unimpressed when the newspapers apology was published far less prominently than the original article and was 'initially unavailable online' Zuma's lawyer reported. (SAPA 2009, *Zuma sues London's Guardian*) Such a complaint is often leveled against newspapers when they are made to print a retraction. It is also a criticism against the success of institutions like the Press Council and the Press ombudsman, for while an apology may be printed or a story retracted, it is sometimes done in a very low key or virtually invisible fashion so that the newspapers image remains untarnished and little attention is drawn to its mistakes.

While touting Zuma as a rapist and criminal is evidently unethical and guilty of defamation, in light of what has been discussed so far with regard to media freedom, is

the rest of the article guilty of this outside of the implications of the case? By reiterating my argument raised earlier in the paper about the nature and parameters of acceptable and ethical journalism, and the fact that journalists can also engage in commentary, I propose that the rest of the article is more in bad taste than just wholly inaccurate and libelous. What also comes to the fore here are some very pertinent points around the ethical tensions that exist between responsible reporting and what is protected by the constitution versus the rights of the individual, which should be protected if journalism is to remain an ethical practice. I have argued previously that Jacob Zuma is no ordinary individual nor is he a celebrity in the mainstream sense of the word. He was the man who was highly likely be the next South African president and that essentially meant with the considerable power and authority that could be vested in him; he would not be able to enjoy the same freedoms or protection as perhaps any ordinary citizen. Of course, this particular view is fraught with all sorts of tensions because it implies that he is now up for grabs in whatever way possible. It is important to note though, that in order for this to be a defensible claim on the part of the media, it has to be reasonably limited to those aspects of his personal life that have a direct bearing on his role as a statesman. In the previous section, it was mentioned that ethically journalists are compelled to maximize truth and minimise harm in their dealings as reporters, but a dilemma arises when the practice of responsible reporting can invariably result in harm when it has a negative result on a person's reputation or character. Two major considerations have to be addressed to solve such a dilemma; one is the greater interest that can justify the cause of the harm and the second is the nature of the harm caused.

David van Mill in his paper ‘Freedom of Speech’ (2008) addresses the problems that are encountered when we adopt the main premise from John Stuart Mill’s famous book *On Liberty* and the implications and inconsistencies that can follow from this. J.S. Mill identifies this main premise, also known as the harm principle, as such,

‘The only purpose, for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others.’

(2008, ch.2.1)

D. van Mill says that it is not always clear what definition or meaning of harm J. Mill is referring to but he takes it to mean that, ‘an action has to directly and in the first instance invade the rights of a person.’(*Ibid*.) He goes on to qualify this by saying that, ‘the limits on free speech will be very narrow because it is difficult to support the claim that most speech causes harm to others.’ He also qualifies Mill’s distinction ‘between legitimate and illegitimate harm.’ Primarily we can understand that legitimate harm includes things like blackmail and libelous or defamatory speech. However, illegitimate harm can be seen as an unwarranted claim of emotional distress when it cannot be measured whether someone is merely sensitive to negative or critical speech. (*Ibid*.)

Recall that earlier the definition for defamation was that negative speech could only count as defamation if it was ‘unjustly’ done, here emphasizing that the subject was unfairly, untruthfully or inaccurately being portrayed negatively. However, D.van Mill goes on to relate that while J.S. Mill is concerned with speech that ‘directly’ impinges on the rights of others in an illegitimate way and should be outlawed, it is reasonable to see that speech deemed ‘offensive, obscene or outrageous is not sufficient grounds for

prohibition.' (2008, ch.2.2) Louw backs this up by saying that while people have a right to speak freely you cannot accomplish this if it is going to negatively impact on someone else *when the opinion is not based on fact*. (Louw, 2010)

If a newspaper or a journalist has written an article about a notable political figure that makes certain claims that can be seen to have no basis in fact, but the journalist is implying that they are correct and they are being published in a way so as to appear to be correct, then we can legitimately say the exercise of free expression and *the publishing* of this has compromised the public figure's reputation or integrity. This would then evidently be unfair or unjust and is therefore unethical and possibly defamatory. In the case of *The Guardian* newspaper however, Simon Jenkins does put forward some views that while on the surface appear defamatory, are more akin to free and valid commentary. While they may be obscene or offensive they are, I would argue, not in contravention of acceptable limits of free expression. In *the Press Council Code, Procedures and Constitution* (Section 3) a provision is made for advocacy provided it is reasonably limited. It defines it as, "a publication is justified in strongly advocating its own views on controversial topics provided that it treats its readers fairly by making fact and opinion clearly distinguishable, not misrepresenting or suppressing relevant facts, not distorting the facts in text or headlines."

Was Simon Jenkins as a journalist not well within his rights to question Zuma's legitimacy as the best candidate for the presidency by exposing and openly discussing his faults, his behavior, and the various aspects of his personal life that had a direct impact on

the perception of him in the public domain, and in fact, to compare these with other political aspects of South Africa's democratic government? Just as citizens freely express outrageous, negative or pessimistic views across all avenues of society, formulated by information gleaned from a plethora of sources, we recognize the right to have an opinion on something. The freedom to make it public is probably the most important aspect of the right to freedom of expression, and indeed, therefore, of responsible reporting.

While Simon Jenkins and *the Guardian* were wholly liable for illegitimately claiming Zuma was a rapist and a criminal, he had nevertheless been on trial for both of these things because there was enough *prima facie* evidence to warrant a case. Is a journalist not well within their rights to say, "If I am going to comment about your effectiveness and potential as president, am I not entitled to weigh up these aspects of your past in order to give a fair appraisal and comment, even if it's critical?" I argue it would be hard to make a case against this aspect of the article when, as has been clearly noted, one of the primary functions of the media is holding prominent public figures accountable when their behaviour and interests can be reasonably defined as being in the public interest and potentially against the public good.

7.2 The Case against Zapiro

In the second instance, Zuma brought a case against Jonathon Shapiro, political satirist and cartoonist for *The Mail and Guardian* newspaper for a cartoon that depicted Zuma about to rape a representation of the Justice system (see appendix (A)[3]. Interestingly the South African Human Rights Commission cleared Zapiro of the charge of defamation and violating Zuma's dignity in June 2010 after a long and very public battle. The commission found Shapiro innocent of hate speech, unfair discrimination or a violation of any human right as denoted by the Constitution and issued the statement that,

> Although the SAHRC finds the cartoon and the words used in relation thereto probably offensive and distasteful it falls short of and does not constitute hate speech, unfair discrimination under the Promotion of Equality and the Prevention of Unfair Discrimination or a violation of any fundamental human right contained in the constitution. (Sapa, 2009. Zapiro's Zuma rape cartoon cleared)

What makes this case so remarkable are the crucial considerations it raises for a continued study of the role that free expression has for the media and in turn freedom of the press. It also makes an important case for understanding that the media play an

[3] http://www.mg.co.za/zapiro/all (for the comprehensive catalogue of all Zapiro cartoons for the Mail and Guardian)

essential role in the analysis and opinion of news events, over and above the presupposed function of merely factual reporting.

Satirical cartoons have featured in news publications for at least the last century and a half. The Victorians were incredibly fond of satire and titillating caricature, especially when it revealed aspects of social life that were deemed improper. As news media became popular so did the use of cartoons, especially what became known as the 'funnies.' Apart from the classic Garfield or Charlie Brown reads, newspaper audiences (especially British) were particularly attracted to political cartoons that parodied or mocked political policies, parties or politicians. Images of Margaret Thatcher and the works of Puppeteering shows like the DC Follies, show that the public has always reveled in having a good laugh at the exaggerations and antics of those in government. Ironically, when these same 'antics,' or the public figures behind them, are reported on in conventional printed news stories the humor is decidedly absent and public response is far more critical. Yet the same characters can come to life and step into a far more ambiguous space within the realm of the visual media.

Before we can consider whether Zuma was justified in claiming unfairness, or rather if Zapiro was within his rights ethically, as well as legitimately serving the public interest, it is important first to see why satirical cartoons can be considered a very serious form of journalism despite their humorous appeal. They can and do become the focus of fierce media-freedom arguments and continue to serve an essential function within the realms of the press.

Political and satirical cartoons, I would argue, occupy an ambiguous space in the tenet of journalism that allows them to comment on things in a way that normal reportage or 'editorialising' cannot do. The gross parody and exaggeration of features acts as a buffer that seems to remove the perception of any maliciousness behind the commentary even though essentially the cartoonist is only representing one side of the story or interpreting it in a way that will deliver maximum impact. This allows cartoonists to comment on a story or to put forward a view (or even their own view) and to capture the essence of a particular story or event in a quick and digestible way. They also create a scenario, fictitious or otherwise, that allows readers to imagine or analyze the story by imagining its finality or implications. In this way, cartoons are a very valuable and serious form of journalism because they allow for political interpretation and a better understanding of events.

Surprisingly, political cartoons have been criticized as an exclusively western tradition where depictions of otherness can enhance or encourage racist stereotypes. Conversely, there is also the belief that cartoons make politics and current affairs more readily available to the illiterate or uneducated members of society. It is this function that serves as a very real defense of why political satire is both valuable, as a journalistic tool and a historically one too. Primarily it has the ability to fulfill the same function as any other kind of news reporting or commentary, so that its intended outcome and unforeseen results mean that it can, and does wield, quite powerful ramifications for the subjects of

its satire. In this way, it should still adhere to the same ethical and legal restraints as other types of journalism and reportage.

With this view in mind, Nkereuwem Udokah has written a paper entitled "Political Cartoons: Readership among Uyo Residents of Akwa Ibom State in Nigeria."(2006) What is most notable about the paper is that there had been a perception by the news editors of local Nigerian newspapers of the service and function the cartoons were fulfilling but as a result of research, and data gathering by the author, were found to be quite out of touch with their readership. There was a belief that cartoons were simplified communication for the slowly educated or illiterate and that this was useful in mobilizing people towards political change. (2006, pp.8 &9) What did emerge from the data, despite the fact that the readers of politically cartoons were predominantly urbanized and educated (sometimes up to 58% of those surveyed could not understand or decode the intended message in the cartoons), was that in some cases, understanding relied on being abreast of political issues and current affairs. (2006, pg.13) The implication of this, when regarding political cartoons, is to ask the question, do they adequately fulfill their intended function or are they overvalued because of their humour and visual appeal?

In the case of Jonathon Shapiro, his representations of Zuma are at times quite scathing and always critical, although Shapiro defends this with the claim that he is merely holding the president to account by offering commentary on his behavior and utterances. When Shapiro temporarily removed the figurative shower off Zuma's head, which was initially drawn whenever Zuma was depicted as a reference to his comment about AIDS

during the rape trial, it was noted that he promised that the shower would be back on Zuma's head if he did not measure up. ‘All it is a temporary change. If he doesn't perform or things go wrong, it will wang [sic] back on his head.’ (SAPA, 2009 *Zapiro’s shower off Zuma’s head for now*)

Louw defends Zapiro’s right in this regard by saying,

> …They are in fact a very good depiction of what’s going on and in trying to appease all factions [you’re required to] give a very benign picture of Zuma- I don’t see that it’s necessary. What would be the point of it? I don’t think there’s a point in saying anything else than here’s the leader of the country and you’re pointing out his defects on a continuing basis. I just don’t see that there’s a reason to promote him as a warm and generous human being…If he had to pull off something which was exceptional, and so exceptional that it in a sense puts him into a different light, I suppose then one could expect that there could be a cartoon showing that in the way they show cartoons about Mandela. But even that book Zapiro did I’m not quite sure that it carried any complimentary cartoons about Mandela. It was mostly critical. I suppose one could say it would enhance his evenhanded dealing with Zuma but I’m not altogether sure it’s necessary. (Louw: 2010)

What does emerge out of the Zapiro-Zuma fiasco is that Zapiro defended his right to publish the cartoon by vehemently defending it as being in the public interest. While Youth league members saw it as ‘deplorable,’ Zapiro felt that there was a very real threat to the justice system by the ANCYL, SACP and COSATU. They had threatened publicly that they would make sure he never stood trial by making promises of retribution if he did, which meant “very real intimidation of the judiciary and of individual judges” that justified his use of the metaphor. (SAPA, 2010 *Zapiro’s Zuma rape cartoon cleared*)

Zapiro also defended the use of the metaphor and denied it had anything to do with Zuma's previous trial record, although this may be dubious. If so, it could give a nod in favour of Zuma's claim in this case that he was 'tried by the media' as far as the media were representing him in a way that was contrary to the fact that he was found innocent of the charge of rape.

However, the South African Human Rights Commission stated,

> It was common knowledge that Zuma's allies in the tripartite alliance were calling for a political solution to Zuma's corruption charges and that Shapiro had acted with bona fide artistic creativity, in the public interest. The right to freedom of expression therefore outweighed Zuma's right to dignity. (SAPA 2010, *Zapiro's Zuma Rape Cartoon Cleared*)

While Zapiro was legally cleared of the charge, can we make the same deduction from an ethical standpoint as well? I argue that we can and that none of the unfairness claims I have argued against hold weight in light of what has been brought against Zapiro. Commentary and opinion, protected by the right to freedom of expression and the right to publish these, is further outlined with stipulations in *the Press Code* as follows,

> The press shall be entitled to comment upon or criticize any actions or events of public importance provided such comments or criticisms are fairly and honestly made. Comment by the press shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to. Comment by the press shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all-available facts which are material to the matter commented upon. (pg. 11& 12)

According to David van Mill, the press in this case is not guilty of harm ethically because "offending someone is less serious than harming someone, so the penalties imposed should be less than those for causing harm." (2008, ch. 3.1) Van Mill does qualify though that even the formulation of an offense principle is problematic because offense is a much more subjective area than serious harm. Many people take all sorts of offense at a variety of things exacerbated by all sorts of social and traditional beliefs and so the claims of emotional distress can become prolific and impossible to refute. (2008, ch.3.1) However, most people, it can be argued, would be able to agree on when someone has had their rights seriously and legitimately compromised and as a result suffered some form of serious harm. Where this relates to the effect of a serious impingement on a public figure is perhaps to be found in the way public figures are held accountable by the voters and public at large. As both Louw and Zapiro acquiesce, and I concur, a public figure cannot expect to be reported about in glowing terms if their private actions speak otherwise. If the media are thought to be consistently reporting in a way that is perceived to be negative, it is perhaps prudent to establish why it may legitimately be in the public interest and why, therefore there is a duty to report it or to take such a particular stance.

One further distinction to be made is that criticism is not synonymous with harm and that it can only be labeled as defamation or slander if the commentary is unjustly negative or seen as an incitement to cause harm through malicious intent. The ethical tenet of journalism may be loosely defined in a utilitarian model 'maximize truth, minimize harm,' but it also rests quite squarely on the individual conduct of the journalist when making decisions where ethical dilemmas relating to harm arise. More and more

journalists, and others concerned with the practice of ethical journalism, can realize that an ethic of virtue is most helpful in such instances by forming and developing journalists who can reflect individually on their conduct, separately from only moral laws or codes.

I alluded to, earlier in this section, one of the primary criticisms that can undermine the validity and ethical reporting of political cartoons namely, the fact that stereotyping is a very real part of its practice and is used to convey a lot of the humour. Subjective commentary is one thing, but bias, with regard to stereotyping, can have its basis in all sorts of views that could potentially have serious consequences for the value of accuracy. In the book *Images that Injure: Pictorial Stereotypes in the Media*, W.F Enteman (eds. 2003, pg. 18) says that the danger of stereotyping in the media is that it leads to us regarding people as 'artificial persons,' so that in a Kantian sense we see them as means rather than as ends in themselves. He says,

> There are those who argue that some cases of exploitation are harmless or nearly so…but if the underlying principle it that treating people as objects is wrong, there is no justification for compensatory justice. Stereotyping those with power may be less morally obnoxious than stereotyping those without power, but it remains morally obnoxious, The cure for centuries of stereotyping and prejudice is not more refined and sophisticated stereotyping and prejudice; it is cessation (2003, pg. 19)

This is a valid remark against Zapiro but whether or not his images are guilty of stereotyping is another debate altogether. What is notable in Enteman's quote is that he does say that a distinction exists for the public in the treatment of those with power as

opposed to those without, but it still remains 'morally obnoxious' and this owes, we can assume, to his view that it can be exploitative. Exploitation is defined in an ethical sense as 'taking advantage of the weakness or vulnerability of a person, group, or thing for the benefit of another in a way that is not in the best interests of that person, group or thing.' (Eds. Terkel and Duval, pg. 86)

In light of this, I propose, that Zuma was neither in a vulnerable or weak position at the time the Zapiro cartoon depicting him about to rape the female figurehead of the justice system was made. Rather, he was in a position of tremendous political power as the cartoon was created in reaction to the militant support of his fellow political allies and supporters who vowed he would never sit trial for what had occurred. Julius Malema, an ardent Zuma supporter, even claimed he 'would kill for Zuma.' In this way, Zapiro, it could be argued, was compelled to draw such a cartoon, and *The Mail and Guardian* to publish it. The decision was both responsible on the papers' part and imperative that the public be aware of this gross misappropriation of the judicial system. Ethically, there was a duty to report on it. The cartoon had the ability to show in graphic terms, just what the implication of this political scenario was for a democratic dispensation and the threat that was being made against an independent and auspicious judiciary system.

8. Conclusion

Zapiro has been found innocent of the charges by the SAHRC that he compromised Zuma's dignity. However, even from the perspective of the argument laid out here, while his particular brand of satire may be regarded by some as being in bad taste, and while possibly it does rely on stereotypes to forward its humorous agenda, it does nevertheless draw serious attention to a very valid and important political occurrence. Therefore, over and above the legal findings of the case, I have argued he is not, in an ethical sense, guilty of unfair treatment towards Zuma. What I have also argued is that there exist various sorts of journalism outside of the foray of what is merely termed 'reportage' and because of this, the media has wide and comprehensive directive that strengthens their role and their ability to remain a free and unhindered watchdog. Just as there are great freedoms, there are equally great responsibilities in respect of these. As society progresses, and the media in all its many forms continues to evolve alongside it, we see that more and more the public interest is not only defined by need to know material, ethically, it is also itself, accountable to a public that is incredibly self aware and mindful of misconduct.

The Guardian newspaper had no choice but to accept that it acted negligently and settle with substantial damages to Zuma. In this way, we can also see, the media can and should be held accountable and that they are not above reproach. If the press is in violation of the above rules when it comes to commentary, a case can be lodged with the courts or taken

up with the Press Council; claims often have a very hefty price tag attached to them. One of the points discussed earlier is that the press is not wholly a force unto itself, acting without impunity. The ANC have recently targeted the press for failing, in their opinion, to function adequately with regard to the effectiveness and due process of the Press Ombudsman and the Press Council. They feel that self-regulation still favours the media's position, or that its rulings are not nearly sufficient reparation for the damage that can be caused by libelous or defamatory reporting.

It is not only the job of the Press Council and the press ombudsman to mediate on cases where journalists transgress acceptable practice, both legally and ethically. They are also accountable to a public that is neither sympathetic nor apathetic. It would be foolish to think that a savvy public is not wholly empowered to make its own choices over and above what is conveyed through media products. It is quite ironic in this vein that despite the ANC and Jacob Zuma's bitter battle against what they saw as 'unfair' reportage and opinion, Jacob Zuma still won his place as president in a landslide victory with majority support.

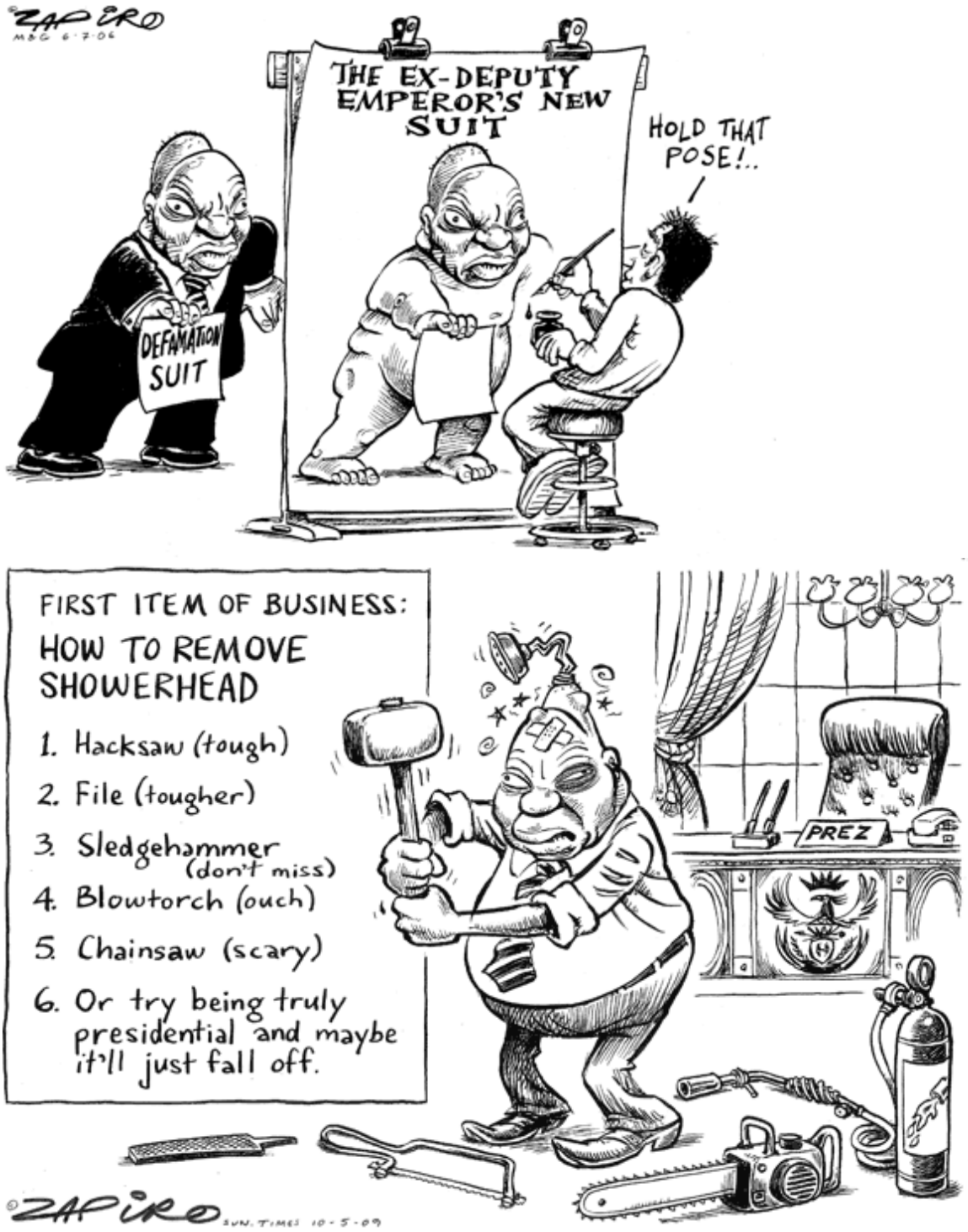
There is sufficient evidence and research that highlights that the nature and dissemination of information in the contemporary age, as well as the way media companies and multi national corporations are run, could pose very serious ethical concerns about the amount of power the media wields and could cause serious conflicts of interest. This is a valid concern for future study.

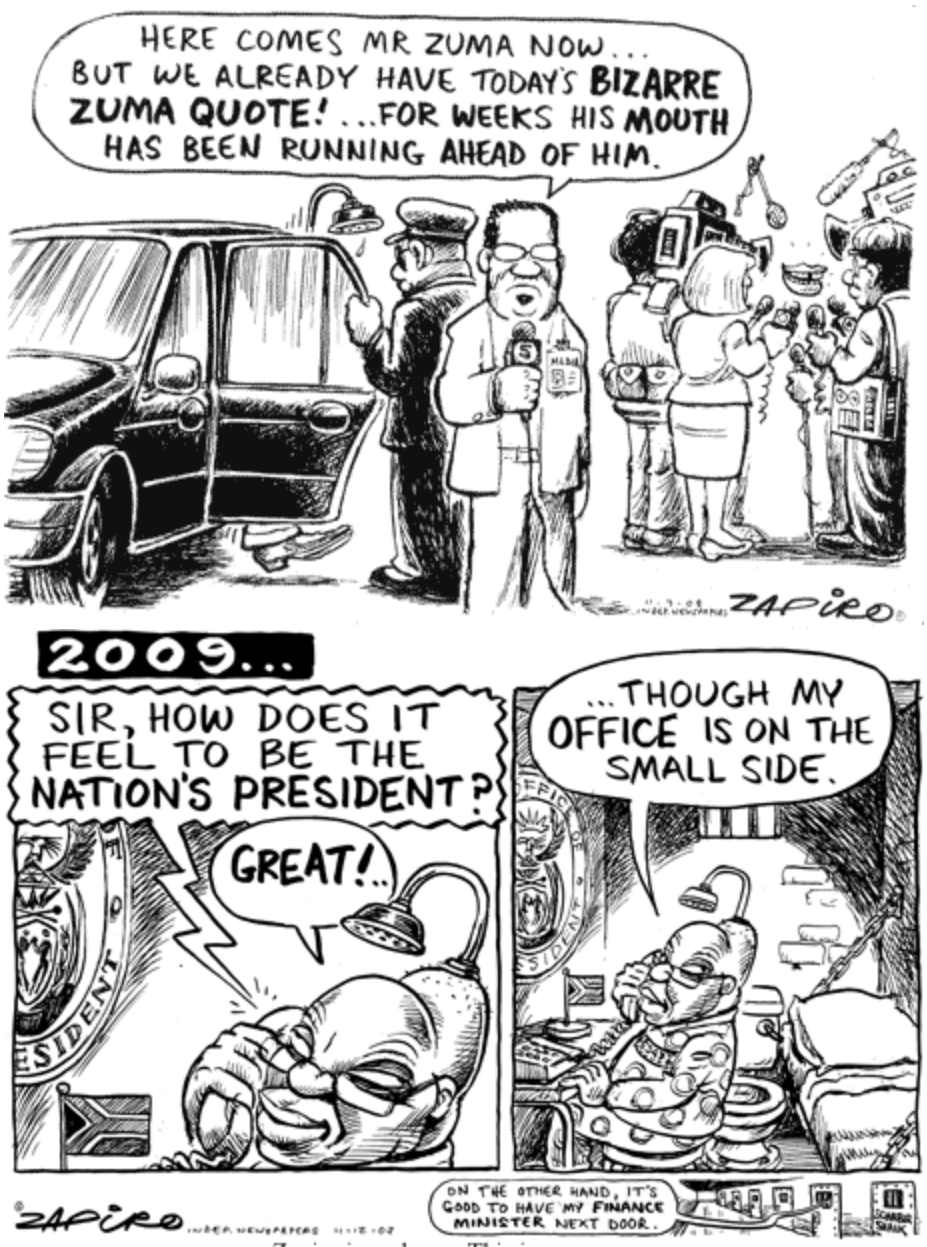
As far as the case outlined before us is concerned, I have argued that Jacob Zuma's "trial by media claim" is not wholly accurate and cannot be credibly claimed once all the mitigating factors that define the practice of ethical, and indeed legal journalism, are analyzed, as they relate to those unfairness claims I have presented. I have endeavored to show this by outlining that the media were well within their mandate ethically, and indeed legally. Even more critically though, the right to publish information without fear or favour, especially information that can be defended as being truthful and accurate and for the most part fair, sound and objective, is paramount to a healthy democracy.

Appendix A


GO FOR IT, BOSS!
ANC YL
ANC
SACP
COSATU
JUSTICE SYSTEM
SUN. TIMES 7-9-08
ZAPIRO


Eyes swivel independently to look for allies in any direction..
LEFT-WING POPULISTS
RIGHT-WING POPULISTS
..then adapts appearance temporarily
Awuleth' umshini wam'!...
De La Rey, De La Rey, Sal jy die Boere kom lei?!..
Also equipped to launch attacks suddenly from a distance.
LAWSUITS
MEDIA
NPA
ZOT!!!
Survival techniques of the POLITICAL CHAMELEON
ZAPIRO


ZAPIRO
M&G 6·7·06
THE EX-DEPUTY EMPEROR'S NEW SUIT
HOLD THAT POSE!..
DEFAMATION SUIT
FIRST ITEM OF BUSINESS:
HOW TO REMOVE SHOWERHEAD
1. Hacksaw (tough)
2. File (tougher)
3. Sledgehammer (don't miss)
4. Blowtorch (ouch)
5. Chainsaw (scary)
6. Or try being truly presidential and maybe it'll just fall off.
PREZ
ZAPIRO SUN. TIMES 10-5-09



Zapiro is on leave. This is a rerun.


IF ELECTED I PROMISE TO IMPROVE PRISON CONDITIONS!..
...ESPECIALLY IF CONVICTED.
PENDING CHARGES
ZAPIRO

Appendix B

Get used to a corrupt and chaotic South Africa. But don't write it off

As long as the opposition is strong enough, this great democracy can defy the moral contamination of a President Zuma

South Africa is steeling itself for the most important election in the brief history of its democracy, taking place next month. With the euphoria of majority rule evaporating, will it go the dreary way towards formal one-party rule, or might it emerge as the one stable and truly constitutional big-state democracy in Africa? The question is wholly open.

As I basked in the epic view of Table Mountain, with the sun sinking gently across the world's most gloriously sited city, I could not resist the old Afrikaner cliché that this was God's own country. "Yes," replied a friend wearily, "and He is about to give us a criminal and a rapist as president. Big deal."

There is no doubt that Jacob Zuma, leader of the ruling African National Congress, will emerge next month as president of South Africa. Despite scandals, divisions, corruption and skullduggery, the ANC enjoys overwhelming voter support. After ejecting Thabo Mbeki as president last year and setting off a deep party split, Zuma has a firm hold on his party, and thus on power. South Africa will be spared the ignominy of the election fiascos in Kenya and Zimbabwe.

That is just a beginning. Zuma still faces plausible charges of bribery over a $5bn arms deal before the South African high court, which, despite his every effort of diversion and delay, have not gone away.

The chief prosecutor has been sacked and Zuma's former partner, Schabir Shaik, has been "compassionately" released from imprisonment for his (undenied) part in the deal. Zuma's hope is that, once in office, he can protect himself. But that, in turn, may require him to maintain his party's two-thirds parliamentary majority for constitutional change. That in turn could start the dismembering of South Africa's tentative safeguards on political and civil rights.

At this point, raw politics comes into play. What can curb Zuma? A splinter group from the ANC, known as Cope (Congress of the People) has just appointed an ordained minister as its leader, to emphasise the need to cleanse politics of ANC sleaze. Cope is already scoring some 15% of the non-white vote. To this would be allied the Natal-based Inkatha Freedom party, firmly in opposition to the ANC.

The former white progressives - now the Democratic Alliance under Cape Town's dynamic mayor, Helen Zille - seem likely to win the Western Cape provincial assembly,

but their desperate ambition is to hold on to about 12% of the vote and ensure that a coalition of all anti-ANC groups can remove Zuma's two thirds majority.

On such mundane tactics are built the rocks of African constitutionalism. The key is not the holding of elections. It is a capacity to entrench enough pluralism and dissent to enable peaceful changes of government to take place, to render power permeable. Despite appearances, South Africa has long been one of the few "third world" states to pass this test. Apartheid never stamped out a free press or political opposition. Its ruling oligarchy was sufficiently open that, when the time came, it negotiated its own dismantling. Under Nelson Mandela and Mbeki, the ANC was boorish and corrupt, but rarely dictatorial. When Mbeki lost the confidence of his party in 2008, it ruthlessly but constitutionally removed him.

South Africa's politicians can castigate ministers. Judges can sentence, journalists can write, academics lecture and businessmen can trade without being shot or kidnapped. The finance minister, Trevor Manuel, is a respected figure, and the reserve bank has avoided the reckless negligence of its British counterpart. Despite a horrendous crime rate, this country is in no sense a failed state.

Thus all eyes turn to Zuma. To the sceptics he is the harbinger of Armageddon, whose slogan is "Bring me my machine gun"; he is a polygamous, leopardskin-draped, Zulu boss, an unschooled former terrorist, Communist sympathiser and rabble-rouser. Already his ANC youth movement is disrupting meetings of Cope, with blood-curdling slogans worthy of Robert Mugabe's thugs.

On this view, Zuma is just another African crony politician for whom power is not about government but about personal enrichment. When accused of corruption he blithely warns that, if convicted, he will "bring others down with me", a virtual confession of guilt. Under his sway the once formidable South African army is in disarray. Power generation is collapsing. How South Africa will host the soccer World Cup next year remains moot. The pledge of "No shacks by 2010" is mocked by the shantytowns growing to the perimeter of Cape Town airport.

Yet South Africa's capacity for putting the best face on the world is undimmed. To the purveyors of realpolitik, Zuma has a popular bonhomie absent from the aloof and ineffective Mbeki. He is one of the Robben Island alumni schooled by Mandela in the art of consensus. His courageous resolution of fierce tribal violence in KwaZulu-Natal in 1994 stands much to his credit.

Zuma may be of humble background but he is clearly no fool. His toppling of Mbeki was carefully planned. His selection of Kgalema Motlanthe as interim president was shrewd, as is his support for Manuel as finance minister. He follows his ANC predecessors in knowing that South Africa must keep the white business community aboard or it will die. His relaxed self-confidence is reassuring after the paranoia of Mbeki. His belief that there must be a "greater role for the state in regulating markets" is hardly extremist these days.

The courts may yet decide - and decide soon - to bring Zuma to trial on a catalogue of charges that promise to reopen the African antics of the British firm, BAE Systems. Someone is alleged to have passed him $500,000. It is then conceivable that Motlanthe might retain the presidency and South Africa plunge into civil strife, with Zuma's militant supporters pitted against the institutions of the constitution. Such an outcome would be a triumph for the rule of law, but possibly not for short-term peace and stability.

Since Zuma will shortly be in a position to forestall such a crisis by sacking those ranged against him, the constitution may have to wait on politics. Those dealing with South Africa must probably get used to Zuma's style of government, morally contaminated, administratively chaotic and corrupt. It is a country whose continued support for Zimbabwe, Iran, Sudan, Burma and China has betrayed Mandela's pledge for a "human rights-led foreign policy".

Yet I have visited South Africa for too long ever to write it off. It still reminds me of what America must have been like in the 19th century, the richest presence on its continent and a ceaseless magnet for political and economic migrants.

If the opposition can deprive Zuma of his two-thirds majority, South Africa could entrench just enough liberty to defy the pessimists. At the election after this one, an opposition might emerge coherent enough to do to Zuma what he did to Mbeki and Mandela did to Afrikanerdom. It could bring regime change in Africa, not through the bullet but the ballot box.

Appendix C

Media fair play

FRANZ KRUGER: THE OMBUD - May 30 2006 15:23

Jacob Zuma emerges from the Johannesburg High Court after being roundly cleared of rape, and makes just two points to the crowd of admirers: he thanks them, and he hits at the media.

Echoing comments by Judge Willem van der Merwe, he accuses the media of having found him guilty before all the evidence was in.

Since then, the point has been made by others in his camp. In the Mail & Guardian, Zizi Kodwa, African National Congress Youth League spokesperson, referred to "a brood of fangless vipers in the mass media".

As so often, the media make an easy target. In fact, though, coverage of the trial was largely fair to Zuma. The M&G and other media were generally careful to avoid pronouncing on his guilt or innocence before the judge did.

Our legal system expects outside parties to leave the courts alone to consider the cases before them, even though the past few years have seen much greater tolerance of public debate. During the course of the trial, there was discussion of some of the paths it took, and after its conclusion, there was much commentary on the decision.

The M&G carried a good deal of this. In the week of the acquittal, the paper's Comment & Analysis section was dominated by the issue, and the letters pages have also been full of it.

Public discussion of decisions of such importance is necessary and useful. The notion of a judiciary that is insulated from the rest of society is simply archaic.

When it comes to Zuma's own complaints of a media vendetta, he conveniently confuses the question of his guilt or innocence with discussion of his claim to leadership.

The trial offered plenty of material, even in his own version of events, to fuel that discussion, which will continue despite his subsequent apology. A certain, shall we say, vagueness in his understanding of HIV was unexpected from a man who previously presided over national initiatives to fight the pandemic. It's neither responsible nor smart to risk HIV infection in the way that he did.

And the anti-Aids shower has become a national joke.

There's an important distinction to be made between Zuma the accused and Zuma the public figure.

As an accused, he has the same rights to a fair trial as anybody else. As a public figure who aspires to lead the country, he must expect his actions to come under close scrutiny. There is a fine line between the two, but it can be observed.

The media have been criticised in quite different terms from other quarters. It has been said that the detailed reporting of intimate sexual details has been offensive, and has re-victimised the complainant.

This is a more difficult issue.

Because justice must be seen to be done, court proceedings are almost always public. Anyone can attend, either in person or by proxy, by following media reports, so that they can see how decisions are made and, hopefully, accept them as reasonable and legitimate.

Whether courts are dealing with murder, fraud or other crime, the chances are great that the evidence will include some ugly stuff. And people are easily hurt, particularly where public interest is high.

Rape is in a special category. In any crime, the reputation of the accused is at stake â€” and can be damaged even if they are cleared in the end. But uniquely in rape, the reputation of the complainant can come under scrutiny, as it did in this case, and be shredded. All of this takes place with raw material of the most intimate kind.

Given the nature of his defence, detailed scrutiny of what happened in November between Zuma and the complainant was probably unavoidable.

The M&G generally retained a more sober tone, but some news-papers turned the story into porn. It became a trashy X-rated novel, an opportunity to put sex into the headlines. It's hard to avoid the conclusion that this was done to boost circulation by feeding people's appetite for the sensational.

In fact, rape is violence of a particular kind. Even if the judge finally decided that this was ordinary sex, more sensitivity in coverage would have been in order.

The Mail&Guardian's ombud provides an independent view of the paper's journalism. If you have any complaints you would like addressed, you can contact me at ombud@mg.co.za. You can also phone the paper on 011 250 7300 and leave a message.

Source: Mail & Guardian Online

Web Address: http://www.mg.co.za/article/2006-05-30-media-fair-play

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