

Section 205

Cry 'halt!'



BY RYLAND FISHER

FOR MANY YEARS Rashaad Staggie was one of the best known people on the Cape Flats. He was known for his philanthropic behaviour and provided an informal welfare service to many people on the Cape Flats. He often paid their rent, provided work for many unemployed (and probably unemployable) youth, and when these youths landed in trouble, he would despatch his lawyers to keep them out of jail. The stories of him driving through the sub-economic townships in his luxury German car, throwing R10 notes out of the window, are legendary and mostly true.

But Staggie was also known for the way he dealt with people who upset him or got in his way: he would not hesitate to have people beaten up or even killed. And he had no qualms about boasting when he did this. He knew he had the support of the people in the areas in which he operated, and he had also managed to buy the allegiance of most of the poorly-paid policemen in these areas.

It was because of this that Staggie showed no reluctance to confront a group of people who were protesting outside his house in London Road, Salt River on the night of Sunday 4

August 1996. He was confident that, given his standing in the community, he would soon be able to get rid of these troublesome people.

He was wrong.

Staggie died much the way he had lived: he was shot several times, pulled out of his car and burnt — in full view of several journalists and a few dozen policemen who had been monitoring the protesters as they had moved across the Cape Flats to Salt River.

For us, the end of Staggie's life was the beginning of several dilemmas that refuse to go away.

The first dilemma was what to publish and how. We deliberated as long as one can deliberate on deadline on a late-breaking story and decided to be bold. We published, on our front page, Benny Gool's gruesome pictures of Staggie's fiery last moments. To this day, we are still debating whether we made the correct decisions that night. Should we have reflected reality in such a graphic way or should we have been more cognisant of our readers' sensitivities?

But the really big dilemmas began a few weeks later when policemen, sent by the Attorney-General of the Cape, delivered subpoenas to our office. In short, they wanted everything we had related to Staggie and Pagad,

After a while, one gets sick and tired of being pestered by incompetent police and criminal justice officials who expect us to do their work, being threatened and being verbally abused, of having to worry about the safety of your reporters, of having to live behind high walls.

Benny Gool's gruesome picture of Staggie's fiery last moments.



PIC BY BENNY GOOL, CAPE TIMES

the group who had been protesting outside his house on the night he was killed. Photographs, notebooks, transcripts of interviews, videos.

Subpoenas were issued to the editors of Cape Town's three daily newspapers, several photographers and writers, and also journalists at news agencies. The wording on all the subpoenas was the same.

The subpoenas were not classic Section 205 subpoenas inasmuch as they were not about revealing sources, but about handing over material.

But surely the people at the AG's office should have known that we don't use videos? And that it is highly unlikely that the SABC people would have shot stills.

They should also have known that two of the journalists, from Die Burger, had been wounded and taken to hospital long before Staggie was killed.

So it was clear to us that this was not much more than a fishing expedition by the attorney-general's office.

But this was not the issue.

The issue was that we were being expected to solve a crime the police had been unable or unwilling to solve.

The police had failed:

- despite their knowing about and monitoring the protest for several hours;
- despite the presence of dozens of uniformed policemen and a few undercover intelligence agents among the protesters.
- despite this probably being the most public killing ever in Cape Town;
- despite the tremendous public and political pressure on them to solve the case.

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We refused to co-operate with the police and told the attorney-general that we would fight his subpoenas to the highest possible level. After much pressure, he eventually withdrew the subpoenas.

For us, this issue went to the heart of press freedom and the independence of media.

There were people who argued that, because of our new dispensation, the media cannot expect to operate in the same way they have always operated and cannot expect to have the same kind of aloofness from the rest of society that they had always had. And if you accept that the media are part of society, then surely they must be part of the solution? I agree with all of this.

But these people go further and say: surely if it is in society's interest to solve this case, then the media should co-operate with the police? How can you berate the government for not doing enough about crime, when you refuse to use this opportunity to do something positive about crime?

This is where I cry: "Halt!"

Yes, the media have to engage more with the broader society, but this must not be done at the cost of our independence. It must not whittle away at our hard-earned freedoms. And it must not interfere with our ability to collect information and express opinion without fear of retribution or retaliation.

There is a difference between supporting a campaign against crime and being asked to compromise your integrity by helping the police to catch criminals they should have caught in the first place.

It is a matter of protecting our rights and our principles. But it is also a matter of protecting our people.

The Western Cape, contrary to the belief of many people in Gauteng and elsewhere, is a very volatile place. The culture of gangsterism and drug abuse is nothing new to hundreds of thousands of people on the Cape Flats. It has always been dangerous. Recently it has been combined with a disturbing level of intolerance that would make the relationship between Azapo and the National Party seem like a marriage made in heaven.

It is not only dangerous. It is very dangerous.

And it is against this dangerous background that we practise our journalism in the Western Cape: a background of almost daily shooting incidents and weekly (sometimes twice-weekly) pipe bomb attacks — not only on gangsters and drug dealers, but also on religious leaders, business people and academics who dare to speak their minds.

Every time our journalists are out in the field, reporting on the conflict between gangsters and the people who say they are opposed to gangsters, their lives are in danger. They get threatened verbally, sometimes guns are pointed at them and quite often they are denied access to events that are supposed to be public.

The situation is bad enough without our having to compound it by handing over our pictures to the police. If we do this, the limited access we now enjoy, will probably be reduced to nothing.

This is why, when on 17 August last year, we were once again issued with subpoenas (this time by the magistrate conducting the inquest into Staggie's death), we again refused to co-operate.

The circumstances around the latest subpoenas are strange, coming as they did a few days after a Sanef delegation met with the Ministers of Justice and Safety and Security to talk about ways in which we could amend or repeal outdated media legislation. We agreed to set up a committee of editors and justice officials to deal with Section 205 and other legislation related to

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the protection of sources. We also agreed that Sanef would work with the Law Commission to review all other legislation that impacts negatively on the freedom of the media.

One of the people at this meeting was Frank Kahn, the Cape Attorney-General, who had issued the original subpoenas against us. This time he cried innocence, saying that the inquest magistrate had decided, independently, to issue the subpoenas. He is theoretically correct. In practice, the magistrate is advised by the state prosecutor who, in this case, is a deputy attorney-general. I am prepared to give Frank the benefit of the doubt in this case.

We were supposed to have appeared in court last month, but asked for a postponement. We also asked the court to withdraw the subpoenas against our reporters and photographers. We argued that co-operating with the police, for instance by handing over pictures, is a policy decision that would be taken by editors.

The court has agreed to this so the editors are again expected to appear in court. We will be asked to hand over whatever material we may have.

We are going to refuse again. Our lawyers have advised us to testify in court about why we refuse to co-operate. I am worried about this, because I think some people might not be able to understand what we are doing. They could misinterpret our testimony as collaboration with the authorities on this case. They might not be able to understand that we are merely testifying about why we do not want to testify.

I suppose it is a risk we have to take. At least this time the risk is restricted to the three editors.

Personally, I was hoping all of this would go away. I think, after a while, one gets sick and tired of being pestered by incompetent police and criminal justice officials who expect us to do their work, being threatened and being verbally abused, of having to worry about the safety of one's reporters, of having to live behind high walls.

Somehow, I think I am going to have to live with this for a while. I don't think gangsters and drug abuse (and the drama around it) will go away for a while. I also don't think that attempts to co-opt and compromise us will go away either. I also don't believe that outdated media legislation is going to go away without a huge fight and quite a bit of pain.

Whether we like it or not, we will have to fight that fight and bear that pain. In the end, it will probably be a small price to pay, especially if it means that we are able to retain the independence and integrity of the media.

Ryland Fisher is the editor of *The Cape Times*.

Record of understanding on Section 205

THE SA National Editors' Forum, the Minister of Justice, the Minister of Safety and Security, and the National Director of Public Prosecutions have reached an interim agreement on Section 205, while sections of the Criminal Procedures Act are being "urgently investigated" for amendment so as to allow journalists their constitutional right to freedom of expression.

The Record of Understanding rests on two important principles, both upheld by the Constitution of South Africa: the duty of every citizen (including media workers) to testify about knowledge of a crime, and the right to freedom of expression and the particular right to this freedom of the media.

The understanding the parties have reached about the two, sometimes conflicting, duties is that there is a need to balance law and order and the administration of justice on the one hand, with journalists' rights to protect their sources.

According to the Understanding, Sanef has recognised on behalf of the media industry that the police and justice systems need sections 179 and 205 of the Criminal Procedure Act (Act 51 of 1977) in order to get information to prosecute criminals.

The government representatives have recognised that maintenance of law and order and the administration of justice must be balanced with the right to freedom of expression and the specific freedom of the media.

The parties have agreed to investigate urgently the possibility of amending the Criminal Procedure Act. Meanwhile the Minister of Justice, the Minister of Safety and Security and the National Director have given an undertaking that when a subpoena is issued:

- A journalist can refer the matter to the National Director of Public Prosecutions for consideration;
- The National Director may initiate a process of mediation and negotiation between all the relevant stakeholders in an attempt to resolve the situation in an attempt to avoid legal proceedings over whether the journalist will testify or hand over documents.
- The director must weigh the merits of the subpoena against the need for the journalist to protect his/her sources.

Sanef has agreed to ensure that its members comply with this interim arrangement.