

Alert: reporter in trouble and how to handle it



Mark van der Velden

Editor of the South African Press Association (Sapa)

Cops and reporters generally get along quite well. Neither side is perfect but each tries to live with the other's faults.

But clashes of interest are inevitable. Unless cool heads prevail, the fight can become ugly; even silly. Of interest to the public, yes, but rarely in its interest.

As editor, it's your job – besides being accountable for your reporters' ethical behaviour – to protect the space they need to get the story.

When the cops decide – intentionally or just plain ham-handedly – to close down that space and the “reporter in trouble” alert pops up, it's got to be your cool-headed intervention and pragmatic application of legal and constitutional rights that makes the difference.

Decide early what your objective is:

vengeful laying into ground-level cops (careful here, although it can have tactical merit!), by telling the world what a bunch of dumb-asses they are, OR to untangle things quickly and efficiently so that everyone can get on with their real jobs.

Try mostly for the second, harder, approach; the benefits last longer.

Your obvious priority, if the reporter has been arrested, assaulted or is in danger, is to get him or her out to safety. Don't delegate; lead this one yourself.

Spare no effort; spend the money; call in the IOUs and contacts to make it happen; roll in the lawyers. Hold arguments, explanations and recriminations for later.

Even as you're extracting your reporter you need to know exactly what happened and why, and assess it carefully. Is it a 100% clean-cut case of bad cops vs innocent reporter? Knowing this will shape your decision on whether to insist on a full reckoning and fuss your way (publicly?) all the way to the top, or to fold your cards, or to pull your reporter aside for a stern private lecture while you take it on the chin publicly.

TAKE NOTE

The right to freedom of expression and media

Section 16 of the Constitution of the Republic of South Africa:

- (1) Everyone has the right to freedom of expression, which includes:
 - (a) Freedom of the press and other media;
 - (b) Freedom to receive or impart information or ideas;
 - (c) Freedom of artistic creativity; and

- (d) Academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to
 - (a) Propaganda for war;
 - (b) Incitement of imminent violence; or
 - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The police have very detailed, and actually quite enlightened, internal rules for dealing with the media. Tap into Standing Order 156 (see below).

Written rules are fine, but police leadership's problem is getting officers on the scene to apply them.

It's up to you to make sure there's no similar problem in your newsroom.

- **Use the agreement:** The 1999 Record of Understanding with Sanef on how

to deal with Section 205 issues. Read the full document in the appendix of this book, so you know how it can help. Also available on the Sanef website: www.sanef.org.za

- **Use the hotline:** Sanef secured agreement from the SAPS on April 25 2008 that in the event of arrests or harassment of journalists, editors should directly call Director Phuti Setati on 082 778 4312.

KNOW THE RULES

No, they may NOT take away your camera

Sparks can fly between police officers and reporters. Often, this is caused by a lack of knowledge – and application – of the written rules police have and the ethical standards journalists must uphold.

A little-known internal police document called "Standing Order No. 156 – Media Communication" spells out in detail over 27 pages exactly what SAPS members must do whenever they come into contact with journalists.

Compared to the repressive media relations regime applied by the apartheid-era police force, these regulations reflect – on paper, at least – a relatively enlightened, mostly transparent approach to the media. Knowing these rules is vital for reporters and editors.

Here are ten of the most interesting points in SO156:

- Journalists may ask any SAPS member for information and they are free to respond if the topic is in their field of expertise or responsibility, and it will not jeopardise police work. They don't have to respond if they don't want to, but then they must redirect the query to a designated media liaison official, who in turn must respond.
- Police officials must treat media politely and with respect "even when provoked".
- Even if actual publication of a photograph may need permission, no journalist may be stopped from taking pictures or video recordings.
- A reporter who interferes in a cordoned-off area should be asked, politely, to leave, or be "escorted" out if he/she

refuses.

- Police may "under no circumstances" verbally or physically abuse journalists and no cameras or other equipment may be seized, unless this is destined to be an exhibit in court.
- Police may "under no circumstances whatsoever" wilfully damage the camera, film, recording or other equipment of a journalist.
- Police may not make "ill-considered, irresponsible, discriminatory statements or comments or use foul language".
- While they must maintain confidentiality on individual journalists' investigative or exclusive requests for information, police members are not allowed to exercise favouritism by giving news to one medium and not another.
- A section on national key points guarded by members says photographing or filming these may only be stopped – preferably after checking with senior ranks – if a criminal motive is reasonably suspected. And police should exercise discretion because some key points are also tourist attractions or places that generate media interest.
- Lastly, a detailed section on the infamous Section 205 disclose-your-sources-or-go-to-jail confirms a 1999 agreement ("Record of understanding") between Sanef and the government, that this should only be used as a proven last resort, and then only through the National Prosecuting Authority after obtaining a go-ahead from the national police commissioner.

AS I SEE IT

Ombud as internal conscience

**George Claassen**

Ombudsman on
Die Burger since
2003

The establishment of an internal ombudsman system at media institutions only started to become part of the media landscape from the 1960s.

Since then the awareness has grown that the Fourth Estate cannot hold other parts of society responsible without in one way or the other being accountable to society itself.

Today the ombud development within the media is reflected in an international body, the Organisation of Ombudsmen (ONO), with more than 100 members worldwide.

The purpose of an ombud system within the media is to be accountable to consumers in practising ethical journalism.

Unethical journalism has seriously tarnished the reputation of the profession in recent years, for example in the US the Jayson Blair case at the *New York Times* (plagiarism and fabrication), Stephen Glass at *The New Republic* (fabrication of stories and quotes), Jack Kelley at *USA Today* (fabricated stories, exaggerated facts and plagiarism). There have also been

many local plagiarism controversies.

In South Africa the system of self-regulation through the South African Press Council and Ombudsman and the Broadcasting Complaints Commission has probably diminished the role an internal ombudsman or reader's editor can play in the eyes of editors. That may be the reason that less than ten local newspapers have an ombud.

However, this is an over-simplification because numerous studies have shown that an internal ombud system, functioning through a sound ethical code, can drastically protect individual media against libel cases. It therefore makes sound financial sense to have an internal ombud.

An ombud acts as the internal conscience of the newspaper or other media. The ombud answers all complaints from the public and his or her direct contact information is published or announced daily or in every publication. If necessary, corrections or apologies are printed or broadcast without delay.

The ombud has an important role in interpreting the ethical code of a newspaper for its editorial staff. She or he works in close relationship with the editor: not only reactively after mistakes have been made and complaints have been received, but also proactively to warn about possible libel or unethical practices in planned reports.

Training of staff is therefore a vital part of the ombud's work, for example in making journalists aware of what plagiarism is and how to avoid it.

With the rapid growth of internet publishing, the challenges become bigger. Potential libel must be monitored even more closely because comments by readers on blogs can create havoc to a newspaper's bottom line.

To minimise harm is perhaps the most important function of the internal ombud.

DEFINITION

What does it mean?

An **ombudsman** (English plural: *ombudsmans* or *ombudsmen*) is an official ... who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens.
– Wikipedia

They are keeping us angels

Media in a democracy should be free to be a watchdog against the abuse of power – one of our many roles.

This is why in many democracies there is a belief that self-regulation is the best way to control abuses by the media of their freedom: being regulated by the government of the day could restrict that watchdog role, seeing as governments are often where abuses of power occur.

So the media prefer to be watchdogs over one another – and to increase credibility and trust they involve members of the public, and prominent legal minds, in the bodies they create to play that self-watchdog role. The profession draws up codes of conduct against which their actions and output can be publicly judged.

Media freedom is one aspect of freedom of expression. Freedom of expression is widely recognised as being central to democracy – but not as an absolute right. In our Constitution, it is guaranteed under section 16 but limited under section 36.

“Rights of free expression will have to be weighed up against many other rights, including the rights to equality, dignity, privacy, political campaigning, fair trial, economic activity, workplace democracy, property and most significantly the rights of children and women,” as the code of conduct of the Broadcasting Complaints Commission states.

To make matters even more complex, media freedom also involves the public’s right to be informed.

As the Press Code states: “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.”

So self-regulation often involves a weighing-up of these opposing rights. Frequently, this simply comes down to whether reporting was accurate, fair and balanced.

Broadly, those who have complaints on media stories have three possible

courses of action:

1. Complain directly to the editor or internal ombudsman.
2. More formally, lodge a complaint with the Broadcasting Complaints Commission or the Press Ombudsman – no costs involved, unless you choose to use a lawyer to do this.
3. Take the complaint to court – though it can be costly and time-consuming.

The strength of self-regulation rests on the support of the media.

As leaders in the media, editors can strengthen self-regulation by giving air-time or print space to making the public aware of our own self-regulatory bodies – and the decisions they make.

Press Council and Ombudsman: newspapers and magazines

Most people just want a quick correction of the facts, says Press Ombudsman Joe Thloloe. So as the editor of a print publication, you can best satisfy any complaining reader by acting quickly in deciding whether or not you feel you were at fault.

Of course, both you and all your staff need to be familiar with the SA Press Code so you can avoid violating it – and to argue your case if you feel unjustly accused. So print it out attractively and hang it on a wall in the newsroom, and invite the Ombudsman to speak to staff.

The Press Council explains on its website (www.presscouncil.org.za) that it, “the Press Ombudsman and the Press 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 Council has adopted the South

African Press Code to guide journalists in their daily practice of gathering and distributing news and opinion and to guide the Ombudsman and the Appeals Panel to reach decisions on complaints from the public. More than 640 publications, mainly members of Print Media South Africa, subscribe to the Code.”

Readers have 14 days from publication to complain to the Ombudsman. Like most voluntary agreements around arbitration, the findings are final and may not be appealed against in court. Complainants can go straight to court if they are unhappy with this principle.

The Ombudsman’s first step on receiving a complaint will be to try to resolve the issue informally – through the editor or the media house’s internal ombudsman. If no agreement is reached, there will be a formal hearing and ruling. Finally, if one side does not agree with the ruling, it will go to the Press Appeals Panel.

If the Ombudsman rules for a complainant against the publication, the “sanction” usually involves publishing an apology plus the ruling of the Ombudsman – who will also lay down conditions such as how prominently this should be done.

Broadcasting Complaints **Commission: radio and television**

Complaints about broadcasters go to the Broadcasting Complaints Commission of South Africa (BCCSA), and must be made to the registrar within 30 days of the date of broadcast.

If as a broadcaster you are signed up with the BCCSA, you and your staff need to know the code that you have agreed to uphold.

Complaints about broadcasters usually fall into one of these categories: indecency, biased reporting, harmful to children, offensive, religious, violence or



privacy and dignity.

The commission explains on its website (www.bccsa.co.za): “Upon acceptance of a complaint the registrar shall immediately notify the respondent in writing of the complaint. The respondent will receive a copy of the complaint and be required to supply a copy of the broadcast with comment on the complaint.

“The commission will then consider your complaint either at a hearing or adjudication at its discretion.”

For an adjudication, the chairperson appoints a BCCSA member to try and reach a settlement or make a decision. This can be appealed against.

Hearings are done by a tribunal and are open to the public. Each side is entitled to put its case, and sanctions are imposed if the broadcaster is found to be at fault.

Sanctions usually involve broadcasting a “specifically worded explanatory and correcting statement”, but sometimes may involve a fine.

The BCCSA handles court cases only slightly differently from the Press Council: “When at any stage of the proceedings, the chairperson is of the opinion that it is in the interest of fairness that a complainant must waive his or her rights to further legal recourse, the chairperson shall require the complainant to waive such rights. If a complaint deals with a matter already before a South African court the commission will not consider it.”

– Elizabeth Barratt

Dealing with critics



Snuki Zikalala

SABC Group executive of news and current affairs

Editors need strong nerves and a thick skin, especially if you work for a public service broadcaster in which everyone has a stake.

As SABC's Group executive of news and current affairs, and probably the most cartooned and criticised editor, I encounter many critics.

After every news bulletin, I can expect a phone call from a businessperson, politician or member of civil society. Some are polite about our coverage, others abusive. But I keep calm and ensure that what was reported is accurate and balanced.

However, you do bleed when you are stabbed in the back by colleagues, even though externally you keep up a brave face and do not lose focus.

"Don't ever believe what you read in newspapers," is what I always say to myself. But I also often wonder what I have done to my colleagues that there is so much malice and hatred.

Some media houses stop at nothing

to discredit a colleague unfairly. It has to do with ideological warfare, as well as a battle for audiences and the small cake of advertising.

I used to call the editors to tell them that no one had even called me to verify or balance the story, but would receive the same answer: "I trust my reporter."

Some editors refuse to retract or give you the right to reply to a story that undermines your integrity. In order for us to return to ethical and respectful journalism, such editors must be sued – and they should also sue if they are defamed.

You develop a thick skin towards the critics if you genuinely know that what has been written and said about you has no basis.

My conviction, passion and dedication towards developmental journalism makes me fearless of critics who thrive on reporting negativity and sensationally for profits. I do not encourage sunshine journalism, but support critical, ethical journalism that strives to change South African society for the better.

Making a difference in people's lives on a daily basis makes me proud and satisfied when I leave for home in the evening. It's what keeps me going.

Development/developmental journalism

In the Third World, particularly in Africa, there has been a reaction against the detached and critical role of journalism. The argument is that media should, instead, actively promote national development.

"Development journalism" in this ethos is not just another beat like business or motor-ing – conventional reportage of a given topic. It is both about and for development.

Sometimes "developmental" journalism is used to describe the spreading of govern-

ment-oriented information about development, while "development" journalism is used to describe the media's independent evaluation of development programmes – at other times authors use these terms interchangeably.

For some, the aim of the development/al journalist is to explain development processes in simple terms to less literate citizens, identify possible solutions and help people to develop themselves and their communities. Here, reflecting grassroots voices is primary.

AS I SEE IT

Editors as writers



**John
Conyngham**

Editor of *The
Witness*

Should editors write? Yes, and no. For someone like me, torn between the buzz of journalism and the silence of literature, reconciling these sides of my nature is an ongoing challenge.

Few editors nowadays have time to escape from the relentless routines of editorship and management in order to write something creative, cogent and coherent. At best, most of us steal a few moments to point leader writers in a particular direction.

From time to time, over the years, I have written fortnightly columns although I realise with hindsight that my choice of subjects – like reflections on Auschwitz, studies of colonial meltdowns in Algeria, Ireland and Zimbabwe, and tributes to Pieter Pieterse and Bhambatha kaMancinza Zondi – is not the usual fare of editors, who tend to stick to politics.

Ideally, the position of editor should have a mystique. He or she must be the presence behind a paper or station, a

steadying hand on the controls.

Editors should at all costs avoid over-exposure, as there is nothing more irritating than seeing endless photographs or footage of them at social gatherings, handing out awards or blowing their paper's trumpet. But equally, when the going gets tough, usually to do with the abuse of power, an editor must emerge from the shadows and speak up with authority.

I last took such a stand a year ago when certain politicians in their blue-light cavalcades began endangering other motorists.

In a front-page leader, signed "The Editor", I admonished the culprits and reminded them that they were just ordinary citizens elected temporarily to positions of authority, and should behave like responsible adults. They responded angrily. The premier summonsed the province's editors to the provincial council chamber where all the MECs took turns in castigating us. But behind their bravado, the bullies capitulated: *The Witness* newsroom no longer gets readers' phone calls about official road hogs.

Having drawn a line, an editor should then step back into the shadows until another battle looms. Then it's out with a pen and back into action.

DEFINITIONS

In any of these cases, the journalist or media takes a stance. That's where it gets tricky. It means adopting a particular view of what "development" is (which can be sensitive to issues like gender or environment, or can put job-creation – without regard to costs – as the paramount issue.). Taking a stance also can mean alignment with an economic theory and policy as "correct", or reflecting what government is doing, or expert views in the "development industry", or grassroots concerns.

It's tough for mainstream "development/al" journalism to steer between propaganda and acting like community media. Advocates of this model also need to keep the journalism distinctive – eg on HIV-Aids – so as not to blur the lines with broader "communication for development" which relies on modes such as purposive messaging, social marketing and edutainment.

But, being pro-development does not mean independence is wholly impossible.

When to listen to lawyers



Gilbert Marcus

Advocate

Lawyers are not editors and editors should not allow lawyers to take editorial decisions.

The role of lawyers is to give advice concerning the risks of publication or the consequences flowing from material already published. Ultimate decisions, especially relating to what can be published, should be taken by editors but with full knowledge of the attendant legal risks.

The most pressing threats to newspapers are suits for defamation and compulsion to disclose sources of information, usually by way of subpoena under Section 205 of the Criminal Procedure Act.

Where a proposed article defames a person or discloses the commission or suspected commission of a crime, there is an obvious need for caution. Journalists should be carefully questioned by their editors concerning the accuracy of their allegations and the reliability of their source, and whether or not the facts can and have been independently corroborated.

Disclosure of a source can arise in the realm of defamation where a newspaper relies on the defence of reasonable publication.¹ One of the factors going to reasonableness is the source of the information.

Similar problems arise in the context of Section 205 of the Criminal Procedure Act. Here, however, the issue concerns the journalist's possession of information about the commission or suspected commission of a criminal offence. The consequence of an unlawful refusal to answer questions in an inquiry under Section 205 may be imprisonment, whereas the refusal to disclose a source in a defamation suit may result in the failure of the defence of reasonable publication and ultimately the payment of damages.

Generally, the safest course is to publish only matter which is verifiably accurate. Truth tends to be the best defence in most situations, although it will not always avail in cases involving publication of private or confidential information.

While protecting the confidentiality of sources is an article of faith for journalists, the law does not see the issue in the same light. Where possible, therefore, information should be verified by sources who do not seek anonymity.

Where possible, editors should avoid resolving disputes in courts of law. Legal



Sanef editors protest outside the Cape High Court in 2001, in support of *Die Burger* editor Arrie Rossouw who had applied for the withdrawal of a search warrant.

MY EXPERIENCE

proceedings can be, and usually are, protracted and costly. When served with a Section 205 subpoena, editors should immediately invoke the 1999 agreement between Sanef and the department of justice and National Prosecuting Authority, and seek to resolve the problem.

If this proves impossible, the editor and journalist will be faced with difficult choices. It may be contended that the journalist has a “just excuse” for refusing to answer questions.² Should the journalist be found not to have a “just excuse”, he or she may be liable to imprisonment.

Defamation suits are usually preceded by a letter of demand. Most people who have been defamed want nothing more than the record promptly and prominently set straight.

Where the newspaper is vulnerable to a claim for defamation, therefore, the best course is to seek to resolve the matter by a correction, an apology (if appropriate and required), or affording a reasonable right of reply. If this fails, resolution by the Press Ombudsman is preferable to a costly legal battle.

Footnotes:

- 1 This defence was recognised in *National Media Limited and others v Bogoshi* 1998 (4) SA 1196 (SCA). This decision recognises that there are circumstances in which a newspaper may publish false defamatory matter if, in all the circumstances, it is reasonable to do so.
- 2 There is no closed list of circumstances which may constitute a “just excuse” for a refusal to testify. In *Attorney-General, Transvaal v Kader* 1991 (4) SA 727 (A) it was held that it would amount to a just excuse “if a witness were to find himself in circumstances in which it would be humanly intolerable to have to testify”. This case must now be considered also in the light of the constitutional guarantee of freedom of expression.

Free speech must always be 'a very good thing' whether or not it causes trouble. I do not believe the media can do its job properly without causing trouble. Not infrequently, though, the trouble it causes lands it in hot water.

– Justice Pius Langa,
Chief Justice

Catching flak on health at Frere



Phylcia Oppelt

Editor of the *Daily Dispatch*

Those of us who sit down at morning conference at the *Daily Dispatch* in East London could never have imagined that an impromptu brainstorming session around a single-source story would eventually transform itself into a national issue.

When we met in May 2007 to discuss the diary for the following day's newspaper, the news editor mentioned a woman who had lost her baby during birth at Frere Hospital's maternity unit.

The story was tragic and the reasons unclear, but it remained an unremarkable diary item until another manager mentioned her friend, who had given birth at Frere a short while before and whose placenta had dropped out on her kitchen floor a week later. Other managers then mentioned incidences of stillbirths and botched births.

That is when my deputy, Andrew Trench, and I realised that something far greater was at play; that there was something amiss at Frere, the feeder hospital for a vast geographical area in the eastern half of the Eastern Cape.

We set up an investigations team: Ntando Makhubu, our health reporter; Chandre Prince, our court reporter with an excellent nose for human interest stories; and Brett Horner, a senior reporter. They were taken off diary – a huge sacrifice for a small paper.

Prince and Makhubu were assigned the mothers and medical staff at the maternity unit while Horner contacted as many former employees as possible.



Two weeks later, we realised the story was far bigger than we had anticipated. Until then, it had been managed by the newsdesk. Now we decided that Trench would direct the investigation, and the story slowly began taking shape.

He spent time sifting through the information as the team returned from interviews, and involved our graphic artist and photographic editor to ensure a complete package would evolve. We brought in a hidden camera for Prince and Makhubu as they freely walked the halls of Frere's maternity unit.

We had our stories ready 10 days before we decided to publish. From our previous encounters with the Eastern Cape department of health, we knew the denials would flow as soon as we published. And so we accuracy-checked each story – that would form part of the package – to death. We gave the department a week to respond. Eventually, they placed a R46 000 advertisement in our own paper on the same day of publication to rebut our "Why Frere's babies die".

We had done pre-publication publicity in our circulation area and had

HOW WE DID IT



arranged for one of the reporters to be interviewed by Jeremy Maggs on his morning SAfm programme. From there, invitations arrived for media participation, particularly radio programmes as well as a Carte Blanche insert. The investigations team, Trench and I participated.

None of us expected the political reaction: from Health Minister Manto Tshabalala-Msimang flying out to East London and setting up a task team, to her former deputy Nosizizwe Madlala-Routledge declaring Frere a national emergency.

Certainly, I did not expect President Thabo Mbeki's Friday ANC Online newsletter to be devoted to us and the subsequent ANC attack on my integrity.

But the support was there. Other media outlets spoke of the solid, old-fashioned journalism that we had prac-

ticed. Internally, within Avusa, there was similar support.

Ironically, the government's criticism of the *Daily Dispatch* and its reporting helped shape us as a newspaper. The Frere investigation has become the yardstick of the work that we want to do: in terms of tenacity, solid work underpinned by meticulous attention to detail and making sacrifices on a relatively small paper with limited resources.

Of course, we still keep an eye on Frere. We recently returned to the maternity section and found an amazing turnaround that stemmed from the reforms the health minister announced after our exposé.

For this reason, looking back a year to that news conference in May, there is little I would do differently.

Bringing together the news and views

Some editors are public figures, some prefer to be private. But all play a prominent role in regard to public opinion, even when behind the scenes.

In media theory, editors are pre-eminent shapers of what happens in the “public sphere” – a metaphor coined by philosopher Jurgen Habermas. This is that realm of life that brings together a range of news and views, thereby helping to set the scene for what people think is important and framing their horizons more broadly.

Public sphere and hot topics

An effective “public sphere” sets the bounds of what is permissible over a period. Some behaviours are stigmatised,

and some legitimised, in terms of how moral compasses point in the public sphere at a given point in time. For instance, a “public sphere” can create a climate that tolerates minor corruption and law-breaking, or legitimises a particular economic policy, or challenges notions that women are secondary to men.

A strong “public sphere” creates an agenda list of hot topics for discussion, debate and action.

For instance, government, business and other actors – and the rest of the media – can be drawn into responding to issues like gangs at schools, tik addiction or sports ethics.

For a democracy, you need a vibrant

Some definitions: getting interested

“Public interest” is usually meant to be wider than “national interest”.

Sometimes the two claims can compete with each other: for example, over whether state secrecy on a given issue genuinely meets both tests. What they share is that both phases are understood to imply a higher concern than individual or popular judgements.

Certainly, there is a distinction between **“what the public is interested in”** (mass subjectivity) and “public interest” (a concept designating an objective benefit that transcends mass appeal).

The “public interest” is generally seen as a judgement about whether something is in the “greater good of a society taken as a whole”. The **SA Constitution’s** section 192 recognises the concept of the “public interest”, but does not spell it out.

“National interest” is properly counterposed to “foreign interests” – those of other nation states – although sometimes the two can coincide (for example on trade or peacekeeping). SABC policies tend to take a wider view of “national interest” than just its international dimension, and interpret the concept instead in terms of building

a South African nation.

In this view, national interest is interpreted in terms of the Constitution’s focus on promotion of human dignity, non-racialism, non-sexism, supremacy of the constitution and the rule of law, universal adult suffrage, regular elections and a multi-party system of government. The 2003 broadcasting law commits the SABC to advancing both the public and the national interests, but without spelling these out explicitly.

Counterposed to both “public” and “national” interests are **“private interests”** – referring to the interests of each individual, for example in personal privacy and dignity. It is widely accepted that there is a stronger case for public interest overriding these individual interests in regard to people who are willingly public figures like politicians.

At the same time, exposing the private affairs of public figures still needs a rationale – is the information really relevant to their public role? Often, sources will opportunistically promote their private interests by presenting the coverage or suppression of stories as something that is in the public interest. That they stand to benefit in particular does not, however, intrinsically disqualify the sought-

“public sphere” – with voices coming from government, business, civil society and individuals of all walks of life (and not least poor people normally outside the media loop).

When a single sectoral voice predominates, like that of whites or men or government, then you have an elitist and limited public sphere.

Dynamism

Having a wide spread of news and views in the “public sphere” is something to be measured across the media as a whole sector.

Dynamism means there does not have to be a rigid proportional reflection of society at any given point in time. In

fact, editors can enrich democracy when new, young, minority or dissident voices are advantaged beyond the size of their initial base.

It’s the opposite principle to reporting on political parties according to a static reflection of previous voting patterns. Such “representative” formulae provide little impetus to debate, nor do they improve upon the ideas that dominate at a given point.

Beliefs vs media

Social progress and renewal is partly a function of contradictions between the ratio of beliefs on the ground, and how they find expression in the media.

● Too much difference, and the media

SPELLING IT OUT

after action from also being something in the greater public interest. However, best practice editing would promote transparency around the dual benefits, and be very clear on how the wider interest would indeed be served.

There are often **criticisms** of how the concepts are invoked.

“Public interest” is sometimes seen as being used to justify decisions that are in the corporate interests of the media seeking to draw audiences, and not much else;

“National interest” is regarded with suspicion because governments like to define it, and in ways that promote their particular interest in staying in power. They see themselves as representing the majority, and thereby equate their interests with that of the nation (or large part of it).

The **codes of conduct** of both the Press Council and the Broadcasting Complaints Commission of South Africa make reference to “public interest”, but without spelling it out. But in the UK, the 2004 Editors’ Code of Practice, ratified by the Press Complaints Commission, elaborates that:

1. The public interest includes, but is not confined to:
 - i) Detecting or exposing crime or serious

impropriety.

ii) Protecting public health and safety.

iii) Preventing the public from being misled by an action or statement of an individual or organisation.

2. There is a public interest in freedom of expression itself.

The code adds that whenever the public interest is invoked, editors should be able to **demonstrate fully** how it was served.

The full code can be found at www.pcc.org.uk/cop/cop.asp

Whatever an editor’s gut feel about “public interest”, the point is that you often need to draw on the notion in order to make decisions. It’s a helpful yardstick, albeit capable of many interpretations.

Think through your own interpretation in making tough decisions, because you may well want to **justify it** to your audience – or even have to do so to critics or a court.

This suggests that you elaborate your thinking before you instinctively decide to cry “public interest”.

Use the concept with insufficient care, and people will question your sincerity.

– *Guy Berger*

gets out of sync with the society.

- Too little difference, and standing ideas lack any serious challenge, testing or change.

Editors who want to enrich the “public sphere” have to operate a balance that works for their operation.

Within “public sphere” thinking, there is no requirement for any single media house to itself aspire to be a comprehensive forum – unless, however, it is a public service broadcaster, or a publication owned by the public through the state.

In these latter cases, there is a legal obligation to be widely representative, especially featuring political parties in election periods.

But for most private media, there is the freedom to adopt positions – although even here, basic ethics, such as reflecting the views of other sides, should still prevail.

Interest groups

In practice, much journalism in the private sector serves special interest groups – linguistic or class, for instance, or an effective lobby group like the Treatment Action Committee. That’s life in the reactive fast lane.

But in contrast, specific instances of public service journalism – in whatever medium, public or private – entail covering the waterfront of voices in a way that’s balanced. The range of voices, even

Surviving religious pressures



Cyril Madlala

Editor of *UmAfrika*

When we revived *UmAfrika* in 2001, it was reasonable to expect overwhelming support from the large family that is the Roman Catholic Church. After all, the newspaper had been established by missionaries as an instrument to spread the Good News.

Sadly, it had been liquidated when the church could no longer sustain it and funding from overseas dried up as South Africa overcame apartheid and became a normal society.

We calculated that the brand remained powerful. Not only was it instantly recognisable as a Roman Catholic newspaper but during the turbulent 1980s and 1990s, when the province was burning, the newspaper became a powerful medium that told

the story of the rise of the Mass Democratic Movement and life-and-death struggles in the face of the vicious system of apartheid.

All that was forgotten when freedom dawned.

The comrades took charge of the public broadcaster. The commercial newspapers, which had largely been complicit in the perpetuation of apartheid by doing the barest minimum to oppose it, fell over each other to endear themselves to the liberation movement.

Vrye Weekblad, *South*, *New Nation*, *Saamstaan* and *UmAfrika*, which had been alternative voices, had outlived their usefulness to the comrades.

The strategy then, when we revived *UmAfrika*, was to appeal to the leadership of the Catholic Church in KwaZulu-Natal to endorse the product, and encourage the millions that follow the faith to buy the newspaper.

In return, a specified amount of space would be dedicated to matters of religion, including a sermon. We would not advertise guns or sex services.

Fortunately, there was already a pop-

if unpalatable to some, should be accommodated for “fairness”.

Leadership role

Understanding all this puts editors in prime place to be mindful of their role as public intellectuals.

Your leadership shapes much of the content that filters into national consciousness.

Although people often talk about “the public” as if that body exists, indeed was always already out there, it is in fact your medium’s discourse that helps constitute particular publics and their “public opinion(s)”.

What’s critical is that editors resist spin and pressure by governments and

powerful publics who seek to dominate discourse within the broad public sphere.

It is the case that sometimes the media inherently tail behind political forces who set the agenda (for example the scrapping of the Scorpions).

At other times, the public leads (for example through xenophobic attacks, or civil society actions).

The task for editors is to add different views, including your own judgement and values, to the mix.

Contribute to the circuit of impact; don’t only respond to it.

Position yourself in the “public sphere”, and you can see the bigger picture about where your decisions fit into democracy.

– Guy Berger

HOW WE DID IT

ular priest whose radio sermons inspired thousands, including non-Catholics, to flock to gatherings whenever he was billed to preach. He was an instant success, and many of our readers cited him as a drawcard.

In the middle of all that, when the association with the church was beginning to yield returns as a marketing strategy, all hell broke loose. The sex scandal involving priests in the US hit world headlines. The church was paying hefty sums to settle claims from victims.

Naturally, or so we thought, as a newspaper we had to let our readers know what was happening elsewhere, particularly because of our association with the church.

Our readers flooded us with their own experiences. We published a few choice ones.

The response was prompt. Parish after parish informed us the priest in charge was so disgusted they would cancel forthwith all *UmAfrika* deliveries. Other priests used their pulpits to warn worshippers to desist from buying our newspaper.

The worst was yet to come.

We published a letter from a reader who alleged he had been molested by our own star attraction – the popular priest!

The authorities suspended him and deprived him of privileges as a priest. He was so overwhelmed by depression he was found dead, hanging from a tree. He left a note, saying he could take it no more.

Nobody has said as much to us as *UmAfrika* – but as editor at times I wonder if the man’s blood is not on my hands.

No doubt, it was a damn good story. It shook the faith of many when they learnt that so powerful a preacher, who had always uplifted them spiritually, had so much evil under his cassock.

He had been a magnet for our readers. As a business strategy to market the paper, we could not have had a better salesman.

But dead salesmen generate no revenues, even if editors felt it was in the public interest to publish.

Representing the enterprise



Peter Sullivan

Group editor-in-chief of Independent Newspapers in SA

I keep a list of my duties. “Always acknowledge the customer first; if you see anyone lurking outside the restaura ...” oh, sorry, that’s the Waiter’s Training List provided by her employer for my daughter.

There’s not that much difference, really.

Like any good waiter, my job is to satisfy customers. There is a menu of

things I do, which makes a case study difficult: like choosing a single item from a diverse menu. So, unsatisfying as it may be, here are some of my job’s menu choices. And some customers.

Sometimes customers are singles like an irate subscriber (amazingly, every one that phones has been a subscriber “for 30 years”), sometimes huge advertisers like Woolworths, or industry bodies like Print Media SA.

Sometimes my duty is to satisfy demands from the larger organisations on which I serve (because of my position, not my sparkling personality) like the International Media Council of the World Economic Forum (WEF) or the advisory Council of South African

Hearing readers’ complaints



Gavin Stewart

Writer and former editor of the *Daily Dispatch*

Two successive editorial secretaries did service in the 12 years I was at the *Daily Dispatch*.

The first had been schooled to pass only selected calls to the editor, which naturally excluded all angry and offensive people. The editor’s life was blissful and ignorant.

The next secretary had been housekeeper at a Holiday Inn where complaining guests were referred directly to the manager. Life was interrupted irregularly and not always pleasantly, rather like driving at speed with your head out of the window: not comfortable or safe, but revitalising.

It was also highly informative.

And it occurred to me that if the person in charge is too busy or too important to hear what the people we write about, and for, think of our publication, something is wrong with the publication.

Most of the readers who complained wanted to be heard and acknowledged by the person supposedly in charge. That was often enough.

It meant complaints were investigated on the same day and, when necessary, a for-the-record published promptly “with due prominence”. Easing anybody’s pain eases their desire to hurt you, which is a good idea.

If the complainer did not find this satisfactory I suggested going to the Press Ombudsman – which is much quicker and less costly for both sides than going to law.

If the *New York Times* and *Washington Post* can publish corrections prominently and honestly, so can we all. I made a fetish of corrections and there still weren’t many.

MY EXPERIENCE

Chambers of Commerce and Industry (SACCI).

I lecture South Africa's future generals on how to deal with the media, try to write analytical pieces on politics, media, economics, birds and books, and represent the company at fora (or forums) when required.

Great sometimes, jetting to Valencia to talk about the media's role in making Shosholozza's entry into the America's Cup a success. (Independent won an award there, for good reporting.)

There are other enjoyable aspects of a largely administrative position.

These include representing Independent Newspapers (via the Print Media Association) as chair of the Press

Freedom Committee and sitting as a judge on two committees serving the Advertising Standards Association, where we hear allegations of skullduggery from the public and from competitors about ads considered illegal, in bad taste or simply in conflict with the prescribed code.

I am the Independent group's ombudsman and serve on eight charities, from one which buys expensive instruments for underprivileged orchestras to The Star Seaside fund, which has sent over 120 000 children on a ten-day holiday to the sea.

Of all the people I serve, these children are my most delightful – and easily satisfied – customers.

HOW I SEE IT



When the ombudsman tells you to publish an apology to readers, you have to do it.

I cannot find a case where a correction was published and the aggrieved party still sued – but there are cases

where the failure to correct information exacerbated the defamations and increased the damages.

Free to fly – for a greater purpose

"Everyone has the right to freedom of expression, which includes freedom of the press and other media." (SA Constitution, Bill of Rights, Section 16)

Mention the "First Amendment" in the US, and many people will know what you're talking about. But refer to Section 16 of our constitution, and you'll get quizzical looks from most South Africans. Which means that editors should be promoting this critical constitutional right, big time.

Freedom of the media is derivative of freedom of expression, although it is also cited as a distinct freedom in the Constitution.

It's unusual for a sector of society to be singled out for constitutional protection. That our media is so recognised, reflects how the freedom granted this specific institution contributes to democracy in ways over and above individualised free speech.

Having freedom of expression in a society without media freedom would be like allowing individuals to vote but not letting them form political parties.

Views for democracy

Freedom of the media is not special priv-

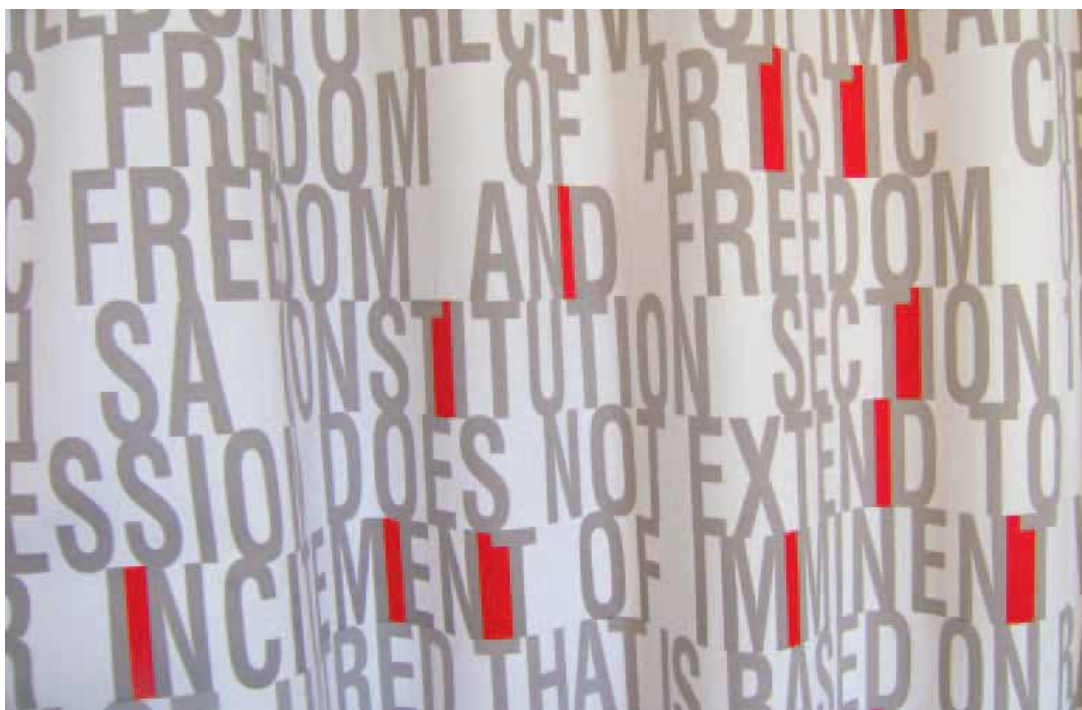
ilege for the institution's own vested interests. It's a higher level of individual freedom, and media houses are entitled to exercise this freedom not just as a right for them, but also for a greater purpose – the necessity of unfettered news and communications for a vibrant democracy.

This thinking underpins Sanef's campaign to the South African public under the slogan "media freedom is your freedom". Unless our citizens are persuaded that it's worth cherishing media freedom, no constitutional protection on its own can preserve hard-won liberties.

Freedom, of course, is not absolute: the media still has to account to the laws of the land and also to the self-regulatory mechanisms to whose principles it subscribes.

That means tempering media freedom rights in relation to constitutional limits (such as hate speech or propaganda for war), and balancing the power of media speech with citizens' other rights – like dignity or privacy.

And, of course, within any media house, journalists are also not free to say whatever they like. Their freedom of speech is constrained by editorial policies



and procedures. The same also goes for editors.

But all principles and guidelines need interpretation, and therein lies much leeway.

To preserve their freedom in the grey areas, some editors think it's better to push the envelope, and to seek forgiveness rather than to ask permission.

Broadcast differences

There's also a difference for broadcast media whose use of finite airwaves incurs licence conditions appropriate to the use of this scarce public resource.

The obligations include issues like local content quotas, defined language requirements and political neutrality.

Other media (such as newspapers and websites) have no such character and are therefore without intrinsic need for statutory regulation. – *Guy Berger*

QUIZ

Pick your canine

Rank the following in terms of your democratic priorities for the roles of the media.

(At the same time, recognise that oscillating between them, in everyday practice, is the mark of a versatile editor.)

- ☐ Neutral and fair newshound.
- ☐ Mongrel that exhibits a wide range of content origins.
- ☐ Watchdog that is focused on exposing government abuses.
- ☐ Sniffer-dog finding ills committed by a wider range of players.
- ☐ Guide dog that educates, not just informs.
- ☐ Circus poodle that mostly aims to entertain.
- ☐ Guard dog which deliberately protects particular groups' interests – such as minorities, a specific language or city.
- ☐ Neighbourhood pooch that is close to one or more communities.



A goat
tethered by
a long rope
may graze
further than
others,
but it
cannot be
called free.



– Tom Gaway-Tegulle on
the Ugandan press

Five overlapping roles to play

As an editor, do you consider the role of your media as being just to entertain, inform and make profits?

Or do you feel that you as an individual, and your media, also have special roles to play in promoting and building South Africa's new democracy? If so, here are some definitions to help you analyse how you are doing this.

Media independence

This is often seen as a pillar of democracy. As for every other institution and individual, this means having both rights and responsibilities. Media do influence democracy, in particular the two crucial factors of:

- Political competition – during and between elections.
- Participation – during and between elections.

Journalists not only observe, reflect and analyse people and events: their work influences these processes of political competition and participation, which in turn ultimately feeds back to influence media freedom and independence.

Democracy is not a state of being, it is a continual process with feedback loops: the space for democratic growth has to be continually cleared.

On a philosophical level, can one ever say there is “enough” democracy? With historical hindsight, can one ever say that any democracy is so entrenched that it can never be lost again?

New democracies

In an “emerging” or new democracy, this process of democratisation is hopefully taking place. It is a time of crucial political change, out of which can quickly come increased democracy, entrenchment of democracy or a slide back to a less democratic state. History shows such varied changes – even a good constitution is no guarantee against back-sliding.

In some new democracies there is little media infrastructure, so the media start playing their democratising roles by co-operating on basic, practical issues like buying printing presses, setting up

radio transmission equipment or raising funds to start a news agency, as well as working on the creation of regulatory and institutional frameworks.

South Africa has much of that infrastructure in place, so we sometimes forget that we are still at the beginning.

The SA media still need to provide mutual support to learn to promote democracy, build democratic space and improve the quality and independence of journalism – all three of which mostly did not exist under apartheid.

There are various democratising roles (see below); some media will concentrate on particular ones, while others will try to encompass all of them. Within one news bulletin, or one edition of a newspaper, each story may play different roles.

But it is not only about content – it is also what your medium does outside publishing or broadcasting.

Crucially, it is what you choose to do as an editor both in your newsroom and in the wider media sphere, which defines the roles you personally are playing in our democracy.

Definitions of roles

The democratising roles are not mutually exclusive: they are different practices which are all needed in order to promote democracy.

They also overlap one another:

- 1 Liberal** – political watchdog.
- 2 Social democratic** – guidedog, messenger and educator.
- 3 Neo-liberal** – neutral referee or mirror of society.
- 4 Participatory** – active promoter of democratic participation.
- 5 Self-transformative** – improving and transforming journalism and the media environment.

In practice

Don't let these names put you off – have

a look at the kinds of practical actions that each of these encompasses.

1. LIBERAL ROLE

DESCRIPTIVE VERBS: Protect, defend, fight, champion, lobby.

ACTIONS: Guard citizens' rights and hold the powerful to account, especially the state. Publish news others do not want published. Uncover unacceptable activities in state and business. Hold office-bearers to account for performance of duties. Fight for transparency and access to information. Be a politically neutral watchdog, an adversary of those who abuse power and a champion of the people. Promote own rights and responsibilities, protect editorial independence. Uphold democratic principles and ethics in own work.

2. SOCIAL DEMOCRATIC ROLE

DESCRIPTIVE VERBS: Challenge, encourage, educate, enlighten, research, survey.

ACTIONS: Be neutral educator not political agent. Act as public steward, challenging the apathy of people. Encourage people to be informed and knowledgeable. Be a messenger. Enlighten the public so they can self-govern. Serve the developers, act as intermediaries between government and citizens. Highlight government policy, spread understanding and debate to draw public interest. Do political education regarding democratic principles and civil and political rights.

3. NEO-LIBERAL ROLE

DESCRIPTIVE VERBS: Reflect, debate, serve, disseminate, balance, monitor.

ACTIONS: Be a neutral referee or mirror of society, balanced and impartial. Serve democratic duty to diversity and pluralism. Provide platform for rational debate of a wide range of views. Disseminate diverse views as information to help the audience form opinions. Challenge prejudices and highlight alternatives. Service the political system by providing information, discussion and debate on public

affairs. Set the news agenda, do not leave it to politicians to raise debates.

4. PARTICIPATORY ROLE

DESCRIPTIVE VERBS: Mobilise, advocate, question, involve.

ACTIONS: Be an active democratic player. Promote ongoing participation of civil society, including the non-elite and information-poor. Promote freedom of speech so public opinion is not just formed by elite. Promote existence of wider democratic community between elections. Promote public discussion to get democratic participation in policy-making. Contribute to creating a public sphere where civil society and government debate political/apolitical issues. Question government actions in this arena.

5. SELF-TRANSFORMATION ROLE

DESCRIPTIVE VERBS: learn/teach, encourage, negotiate, compromise, transform, unite, set ideals.

ACTIONS: Unite around shared concerns. Publicly fight for politically and economically independent journalism. Foster journalist solidarity and co-operation. Lobby against and redress own imbalances. Monitor own transformation status (race, gender). Debate diversity issues and democratic responsibilities. Promote media education and training. Strive for professional excellence. Award integrity. Hold workshops on media law/ethics/human rights/xenophobia/HIV/gender/poverty.

Editors have to succeed in the arena of media as business, especially if they work for the private media, so their work is judged internally against business ideals. However, on a national level editors represent the media as an institution in society, so their work is judged against ideals of journalism and of democracy.

– Elizabeth Barratt

(Drawn from "Choosing to be part of the story: the participation of the South African National Editors' Forum in the democratising process", MPhil thesis, 2006)



That which I have seen,
that is what I say;
I will not say it with fear.



– Nigerian folk song, cited by Alfred Opubor, 2004