

Private eyes and media lies

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There are risks when private eyes and journalists become bedfellows.

In the wake of the *News of the World* hacking scandal, Karl Quinn examines the risks when private investigators and journalists become bedfellows.

AS THE *News of the World* sank without grace this month, at least one Australian took a moment to mourn its passing. "I'm sad to hear they're closing," said Mark Grover, managing director of Victorian Detective Services. "They were a bloody good client."

Grover says he was hired by Rupert Murdoch's now-defunct UK Sunday tabloid in 2007 to check out the claim that Lisa Robertson, the cabin attendant with whom Ralph Fiennes had sex on a Qantas flight, had worked as an escort in Sydney. Grover claims he was able to follow the trail from a dead mobile phone number linked to a brothel to a live one registered to Robertson. "It was the easiest £10,000 I ever made."

Such calls to Australian private investigators from the cashed-up English tabloids are unusual, but it appears that inquiries from local news and current affairs outlets may be more common than many people realise.

Several private investigators contacted by *The Saturday Age* have revealed they are often asked to help journalists with their investigations - occasionally by resorting to illegal means. "I've had journalists ask me if there's any way I can hack a phone," says **Warren Mallard, managing director of Lyonswood Investigations and Forensic Group.**

Mallard insists he always declines, explaining it is a serious crime in Australia to intercept telecommunications without a warrant. But others may not be so scrupulous. The Sydney-based investigator, who says he works regularly with print and TV news and current affairs outlets, says he sees reporting "about once a month" that, in his opinion, could only be the result of illegal activity.

"I read between the lines and I think, 'Gee, they've either had surveillance on that person or they've been hacking their phones or email'," he says.

The Sydney Morning Herald publisher Peter Fray said last week that his paper which, like *The Age*, is published by Fairfax, had used a private investigator in 2006, "to assist the *Herald* find Gordon Wood, who was wanted for the murder of Sydney model Caroline Byrne". Wood is now in prison for murder.

Fairfax general counsel Gail Hambly says this appears to be the only instance of the company employing an investigator in the course of its journalism.

One investigator *The Saturday Age* spoke to claimed to have an active job on the books for a News Ltd paper, information that came as a surprise to News's director of corporate affairs, Greg Baxter. When asked if News used private investigators, Baxter said, "I'm not aware that we do."

"You're in dangerous territory when you use a private investigator," he added. "To my mind, that's what reporting is all about."

News Ltd, the Australian arm of Rupert Murdoch's media organisation, announced last week that it would conduct a "thorough review of all editorial expenditure over the past three years to confirm that payments to contributors and other third parties were for legitimate sources". If it transpires that private investigators have been used by journalists or editors at the company, Baxter says it "probably would" be considered grounds for disciplinary action.

"[Chairman] John Hartigan's view is that private investigators are not used and they're not something that he would condone the use of and he expects the editors to know, either by experience or instinct or directly questioning the reporter, how they obtained the information. That, as far as he is concerned, is a given at this company."

That's a view with which Bruce Guthrie, a former editor of both *The Age* and, more recently, the *Herald Sun*, concurs. "One of the primary jobs of any editor is to protect the reputation of the masthead," he says. "When everyone else just wants to get the story out, it really falls to the editor to ask the hard questions - how did we get this story, and if we publish it are we going to be damaged? But there are editors who don't ask those questions, there's no doubt about that."

In Australia it is the tabloid current affairs shows and paparazzi-fed women's magazines that make widest use of private investigators, and - with their penchant for hidden cameras, impersonations and secret recordings - sail closest to the wind in doing so. "Some of what they do is not even a legal grey area," says one investigator. "It's breaking the law. If I did it I'd risk losing my licence or even going to jail."

This was the very real possibility *A Current Affair* reporter Ben Fordham and producer Andrew Byrne faced in 2009 when they were charged over the secret filming of a man as he ordered a \$12,000 contract killing.

In May 2008, Fordham, now a radio presenter on 2GB in Sydney, had posed as an associate of the man's nephew, and asked questions from the back seat of a car as the man and his nephew sat in the front. The man was secretly filmed giving the OK to his nephew to "pour petrol" over a male escort who was allegedly blackmailing an unnamed friend. But rather than notify police of the intended crime, Fordham merely notified the media adviser to the NSW Police Commissioner as the story was going to air. Fordham and Byrne were found guilty in July 2010 of breaching the NSW Listening Devices Act, but the judge deferred sentencing and later dismissed the charges. She remarked, however, that the pair were guilty of "an appalling lack of judgment".

Today Tonight has also found itself in legal trouble over its undercover tactics. In April 2006, private investigators Colin Chapman and Natalie Evans posed as potential buyers of a helicopter owned by Larry Pickering, former cartoonist for *The Australian*. They secretly filmed and recorded Pickering piloting the helicopter after drinking several beers.

Their intention was to expose Pickering's "lavish lifestyle" for a *Today Tonight* story about claims he was failing to pay child support to his former wife.

In a case brought against Pickering but dismissed because the video evidence was deemed inadmissible, Chapman, who also describes himself as an "investigative journalist", told the court it was part of his job to "misinform and disinform targets to get the evidence".

Some investigator-cum-journalists don't get close enough to their marks to try and fool them. Sydney paparazzo and private eye Ben McDonald proudly told *The Australian* in 2005 about researching Mary Donaldson in 2001 as she was about to head to Denmark to take up her new position as crown princess.

"It's not a pleasant job," he said of the nights he spent sifting through her rubbish bins. He was in search of the gossipy gold for which Danish celebrity magazine *KIG IND* - which was paying him a \$1300 a day retainer - was hoping. "But very good intelligence information comes from it, and if you don't follow the procedures, you'll miss out."

McDonald is an associate of Jamie Fawcett, a paparazzo, former private investigator and sometime author. A regular supplier of images to media outlets in Australia and overseas, Fawcett was charged in 2008 with placing a listening device outside Nicole Kidman's home in 2005, charges that were later dropped due to a lack of evidence. Despite having declared himself bankrupt in 2009 with debts of \$1.6 million arising out of his failed defamation case against *The Sun Herald*, which had described him as the most disliked freelance photographer in Sydney, Fawcett continues to ply his trade.

Although most news outlets would distance themselves from the methods employed by McDonald and Fawcett, few are immune to the appeal of their results. Fairfax is far from alone in having printed images by both photographers, and others provided by Fawcett's PhotoNews agency.

Even Paul Barry, one of this country's most acclaimed investigative journalists, has admitted to at least looking at material provided by Fawcett in the course of his research into Alan Bond. "I have certainly heard a tape of [Fawcett] talking to one of Bond's bagmen," Barry - who admits to having once used a hidden camera (when interviewing serial killer Charles Sobraj in an Indian prison) - told the ABC's *Australian Story* in 2008.

There is nothing intrinsically illegal or even wrong with media outlets employing private investigators to help with research. As one investigator puts it, "If we can do something in two days that would take a journalist a week or more, it's a simple business decision for the editor."

But is there an inherent danger in employing people not bound by a journalist's code of ethics to help produce journalism? According to Guthrie, yes. "I could imagine an editor who might call upon the expertise of a private detective who is not directly bound by codes of ethics the way journalists are. I never did it and I'm certainly not aware of it happening, but I can see the potential there as newspapers become more and more competitive in the battle for declining circulations. The danger is you can overstretch."

In practical terms, it has never been easier to do that. Technological advances mean the amount of information available on any individual is greater than ever before, and thanks to devices such as smartphones, it's never been easier to access, legally or otherwise.

In the course of researching this story, *The Saturday Age* has been offered spyphone software for \$1600 that can be installed on a "target" phone in just a few minutes (it is available even cheaper online from overseas outlets). Thanks to this miracle of hacking, the target remains unaware as a third party listens in to every phone call, reads every email and text message, and tracks the target's whereabouts using the phone's GPS system as a tagging device.

A number of private investigations companies sell this software in Australia, even though its legal status is grey at best. Their primary market is husbands and wives who suspect their spouse of cheating, but the only impediment to such software being used by an unrelated party - such as a journalist or paparazzo - is physical access to the phone. And, as the *News of the World* scandal has shown, a little palm greasing can go a long way towards gaining such access. (There are suggestions that some software can be installed without direct physical access, via an email or text message containing a Trojan horse, but there is considerable doubt about this.)

The Saturday Age has uncovered no direct evidence that such software is being used in the pursuit of journalism in Australia, but some investigators see little reason to doubt it either is already or soon could be. "The technology has created an incredible amount of temptation for people who are involved in any sort of business where you are relying on information," says Gamble.

"Anything that's going to give a journalist an upper hand over another journalist ... most of the time they don't condone anything illegal, however they do tend to turn a blind eye to how that information is obtained."

Adds Warren Mallard: "I don't see why Australia would be any different to anywhere else. The technology is available, and as sure as day follows night, if you invent something, people will use it."