

Journalism and "Hidden Cameras" World

Xiaoling Xie¹

¹Faculty of arts and social science, The University of Sydney, AUS.

Abstract

Surreptitious or secret filming and recording now have become tools for journalists to have access news in a secret way. But the powerful tool sometimes comes with journalists' invasion of privacy and breaking the law, which means secret filming requires their social responsibility and requires them behaves in a good manner. But is it ethical to make these conversations public as journalists? How do laws and legislations to regulate these behaviors? How the law and legislation changed since 1980s in Australia. This essay will analyze these questions from ethical and legal aspectives.

Keywords

Journalism;Hidden cameras.

1. INTRODUCTION

To be technical, hidden camera is not a newborn baby, back to 1980s,investigative journalist Chris Masters reported an explosive news revealing police corruption in Queensland under the help of hidden cameras, while in 2010, Ben Fordham from A Current Affair made a recorded conversation public, he and Andrew Byrne, the producer, both broke NSW listening Devices Act. The two examples show that for journalists, secret filming and recording was used as a tool in order to obtain exclusive news story. But is it ethical to make these conversations public as journalists? How do laws and legislations to regulate these behaviors? How the law and legislation changed since 1980s in Australia? This essay will analyze these questions from ethical and legal aspectives.

2. "THE MOONLIGHT STATE" PROGRAM IN 1987

Chris Masters is a Walkley-award winning journalist and spent 27 years working as an investigative journalist at the ABC's Four Corners Program. In 1987,his investigative program aired at ABC and it revealed police did underworld business with drug traffickers and criminal groups in Queensland. Police corruption deadly shocked the public, which prompted a judicial inquiry took over by Tony Fitzgerald QC. Fitzgerald delivered the report in July 1989, showing the evidence the inquiry had found. Corruption existed among Queensland police since 1950s.The direct effects were the prosecution of numerous police officers, five minsters and the Premier. The police commissioner pledged guilty and was sentenced to prison for 14 years and so were four ministers (Ransley & Johnstone). But Chris Masters himself had been fighting for defamation for 13 years after the program aired.

3. BEN FORDHAM CASE

Reporter Ben Fordham from "A Current Affair" and the producer Andrew Byrne made a private conversation public. This recorded conversation was about how Markham commissioned his nephew to kidnap and assault a male escort. And the guy's nephew Tolmie passed the tape to producer Andrew Byrne without the consent of his uncle. Ben Fordham later posed as a hired killer to record the conversation with Markham with hidden cameras to get him admit that his

plans to torture the escort. Both of the reporter and the producer were found breaching the NSW Listening Devices Act.

4. ETHICAL ASPECTS

4.1. Utilitarian Ethics and Consequentialist Approach

Utilitarianism refers to as a consequentialist approach and it closely related with the theory developed by Jeremy Bentham and John Stuart Mill (Dwyer, 2012). Sander describes Bentham's idea of utilitarian, as 'the consequences of actions are the key to assessing whether they are ethical (Sanders, 2003).' The consequence of Chris Masters's report reveals the corruption of Queensland police reaching all the way up to the police commissioner, which even prompts the famous "Fitzgerald Inquiry". Chris Masters focus on the outcome for the public's right and this report has beneficial effects on social development and democracy. What Chris Masters did was ethically acceptable to serve the greatest good for the greatest number, which according to Tim Dwyer, 'the greatest happiness principle is related to utilitarianism and advocates actions that are likely to lead the maximum amount of happiness (Dwyer, 2012).'

The distinction between act-utilitarianism and rule-utilitarianism could help us to understand the whole picture of the story. According to Graham, under act utilitarianism, actions should be judged directly from their consequences for happiness, while rule utilitarianism takes into account the rule on which the act is based (Graham, 2004). In the corruption case, if it was analyzed from act utilitarianism perspective, the theory helps the report to reveal wrongdoings of the police in Queensland and also helps us to have an understanding of the story. But the case was on the opposite side if rule utilitarianism applies to. In rule utilitarianism, law against surreptitious filming without other people's consent.

4.2. Deontological Ethics

Kantian ethical percept is that actions should be judged based on the intentions that motive them. Kant's focus was obligation, fulfilling our duties and behaves in a good manner in everyday life (Black & Roberts, 2011). As an investigative journalist, Chris Masters' uncovering a corruption is his responsibility to tell the true story of police corruption and to help the public know what happened inside government department. The intention of his behavior is from a journalist' social morals.

According to Dwyer, moral duties for media practitioner can be many: to be fair and honest to their reports or keep their sources private even in news gathering (Dwyer, 2012). Thus, Kantian ethics can be explored in many ways and sets itself up to "a high moral ground". Critics of Kant's approach may argue that "Categorical Imperative does not contain within it a way to resolve conflicts of duties (Cavaller, 2012)." Chris defended defamation for 13 years after the report was aired and the duty of journalists to tell the truth and the duty to be an honest person is conflicted in some way. It is our duty to be loyal to the law but it is our duty to tell the truth. How do we reconcile them still remains a question for media practitioners.

Confidentiality is wildly regarded as a professional duty in some areas such as among doctors and lawyers, but as for media practitioners it is also a duty to protect the anonymity of their sources, which in Ben Fordham's case, the conversation was provided directly from a third person and the producer decided to make it public.

From the perspective of profession of journalism, Quinn from California State University argues, "goodness is a preferable criterion of morality to rightness" (Quinn, 2007). Quinn points out that journalists often lie and use various kinds of deceptions to achieve good goals, which are necessary sometimes. Chris Masters used hidden cameras and listening devices to unveil the underworld business in Queensland police, it seems unlikely to achieve an explosive story if Chris Masters had not used these devices (Quinn, 2007).

5. LEGAL ASPECTS

5.1. How the Legislation Changed in Past Few Decades

Pearson points out that under commonwealth law, it is an offence to listen or record a communication passing over telecommunication devices and without seeking agreement of the person who makes the communication (Pearson & Polden). Also each state and territories have separate legislation to regulate the usage of listening devices and surveillance cameras. For instance, In Queensland, there is "Invasion of Privacy Act" while in NSW "Surveillance Devices Act" was shared with Vic, WA and NT.

The Invasion of Privacy Act was put into effect in 1971 in Queensland, regulating "A person is guilty of an offence against this Act if the person uses a listening device to overhear, record, monitor or listen to a private conversation and is liable on conviction on indictment to a maximum penalty of 40 penalty units or imprisonment for 2 years." (Invasion of Privacy Act 1971). In NSW, the act was updated in 2007, which counts modern surveillance devices in. The law not only includes prohibition on installation, use and maintenance of listening devices, but also regulates prohibition on communication or publication of private conversations or recordings of activities (Surveillance Devices Act 2007).

Mr Markham's nephew Adam Tolmie, passing a recorded conversation to a Current Affair producer Andrew Byrne about his uncle's commissioning him to kidnap and assault a male escort. Because of recording a conversation without consent of the other one, Adam Tolmie breaks surveillance devices act, so was communication the recording with a third person. When Ben Fordham interviewed his producer about the content of the conversation and used it as part of the program, they were breaking the law (Media Watch, 2014). The story still continues, when Ben Fordham acted as a hired killer and lured Markham into a car and recorded their conversation with hidden cameras to make him admit he wanted to kidnap the male escort. Fortunately, although Justice Fullerton decided not to record a conviction against each of them because of their good character. Both of them actually breach privacy of others as journalists.

5.2. Breaking the Law or to Cater for Public Interests

Chris Masters got the news by using hidden cameras and during the following years, he had been defending defamation. Here comes the question? Should the media publish the materials that obtained through the use of a surveillance device, which is illegal but if, it is the public interest?

In communication theory, public interest according to Beattie and Beal, is what the majority people want (Beattie & Beal, 2007). In this case, what the majority of people want is to how the government would deal with this issue since corruption would extend to parliament and public service.

But according to Pearson and Polden of the journalist's guild to media law, public interest is different from public curiosity, it is necessary for us to analyze the potential meaning behind the issues rather than only interested in some celebrities (Pearson & Polden, 2011). In this case, the will of journalist Chris Masters is to investigate the corruption inside the police, which is a department supported by taxpayers and it is the right of the public to know how the police run and it is a point where public interest lies.

Based on Whittle and Cooper's explanation, the public interest have a right to know whether the state works well or not and this also extends to institutions and officials as well as companies and organizations which requires the public's trust (Whittle & Cooper, 2008).

6. HOW TO BALANCE FREEDOM OF PRESS AND DEFAMATION

In this case, Chris Masters works for ABC as a journalist do have a right to report and ABC also has the responsibility to unveil the truth, but the police do have a right to defend their reputation which was damaged by the exposure in the corruption case. How to balance the right between the right of the reports against the right to reputation still remains a question.

Chris Nash, professor from Monash University pointed out that, Australia is different from UAS, in which First Amendment regulate the press rights of freedom. Australia is few countries that have no legal instrument to assert the scope of citizen's freedom of speech (Nash, 2005).

But I may argue that Australian Constitution does establish the Commonwealth of Australia as a democracy country, which in my understanding that citizens should have the right to express their opinions freely.

Defamation law is supposed to protect those whose reputation was damaged and in Common law system, framing defamatory materials as matter that: damage a person's reputation and cause this person to be shunned or avoided (Pearson&Polden). But the reality is always much more complicated than the definitions. In this case, although Chris Masters's report eventually leads to an inquiry of investigation towards Queensland police, he spent 12 years or so to defending defamation in court. When he was interviewed by Crikey, which is an independent media, Masters described what a devastating period that he experienced "the result is not only the professional results but the emotional toll of long court battles that affect journalism. The hardest things that I ever did in my career were not to do with gathering the story in the first place but in defending it"(Whyte, 2013).

But what on earth, why he was in charged of defamation? Whose reputation was damaged in this case, an individual policeman or the reputation of Queensland police? Yes, it's true the whole policeman's reputation may not as good as before and this results in the publics' untrusted towards them, but if journalists like Chris Masters are not brave enough to unveil, the problem still exists. Should we balance it from a perspective of good result?

The controversial debate towards defamation raised some scholars to call for the reform of defamation law. Dario Milo, a scholar and lawyer pointed out that defamation law clashes with two basic human rights: the right to expression and the right to reputation. He argues in his book 'Defamation and Freedom of Speech' that defamation law needs to be reformed to balance the conflicting rights (Milo, 2008).

7. CONCLUSION

Technology makes life much convenience but also brings potential risks, the using of hidden cameras and listening devices to record a private conversation may occur criminal behaviors as for journalists or others. In my opinion, as a citizen and a journalist with responsibility and a social conscience, it is our duty and obligation to comply with laws and rules that enacted by the government.

Media Entertainment and Arts Alliance (MEAA) also have journalists' code of ethics and require alliance members to follow. In Clause 1,it says "Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts."(Media Entertainment and Arts Alliance, 2014). But how to balance the freedom of expression and deal with the law remains a problem that we could think about.

REFERENCES

- [1] Ransley,J.&Johnstone,R.(2009).The Fitzgerald Symposium: An Introduction. Griffith Law Review.18:3

- [2] Sanders,K.(2013).Ethics and journalism. London:Sage.
- [3] Quinn, Aaron (2007) 'Moral Virtues for Journalists', Journal of Mass Media Ethics, 22:2.
- [4] Christians, Clifford G. (2007) 'Utilitarianism in Media Ethics and Its Discontents', Journal of Mass Media Ethics, 22: 2-3.
- [5] Fenton, N. (2012). 'Telling Tales: Press, Politics, Power and The Public Interest'. Television and New Media. 13: 3.
- [6] Graham, G. (2004), Eight Theories of Ethics, London : Routledge.
- [7] Black,J.&C.Roberts.(2011).Doing ethics in Media:Theories and Practical Applications. Milton Park and New York:Routledge.
- [8] Cavaller,R.(2012).Online guild to ethics and moral philosophy.Retrieved from [http:// caae. phil. cmu. edu/ Cavalier/80130/index.html](http://caae.phil.cmu.edu/Cavalier/80130/index.html)
- [9] Whittle, S. and Cooper, G. (2009). Privacy, Probity and Public Interest. Challenge series. Reuters Institute for the Study of Journalism. Department of Politics and International Relations. Oxford University;UK.<http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Privacy,%20Probity%20and%20Public%20Interest>.
- [10] McQuail, Denis (1992), 'The public interest in communication', Media Performance: Mass Communication and the Public Interest, London, Sage, 20–33.
- [11] Catcher,S. (2014). Queensland Police Corruption. Retrieved on March 28,from <http://qld-police-corruption.blogspot.com.au>
- [12] Whyte,S.(2013). Journos in the dock: the real threat to press freedom?Retrieved on Apr 8,from [http:// www. crikey. com. au/ 2013/ 04/ 08/ journos-in-the-dock-the-real-threat-to-press-freedom / ?wmp_switcher=mobile&wmp_tp=1](http://www.crikey.com.au/2013/04/08/journos-in-the-dock-the-real-threat-to-press-freedom/?wmp_switcher=mobile&wmp_tp=1)
- [13] Milo, D. (2008). Defamation and Freedom of speech.Retrieved from[http:// www. oxfordscholarship. com/ view/ 10.1093/ acprof:oso/ 9780199204922.001.0001/ acprof-9780199204922](http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199204922.001.0001/acprof-9780199204922)
- [14] Sophie, R. (2010). Ethical dilemma's in journalism.Retrieved from[http:// helpiminadilemma. blogspot. com. au/ 2010/09/murphy-midas-case.html](http://helpiminadilemma.blogspot.com.au/2010/09/murphy-midas-case.html)
- [15] Invasion of Privacy Act 1971(Qld) s.11.1 (Austl.). Retrieved from [https:// apps. legislation. qld. gov. au/ Search/ isysquery/ 0d970b8f- 715d- 49e2- 94d2- 90a1766566a4/ 1/ doc/ InvasOfPrivA71.pdf#xml= https:// www. legislation. qld. gov. au/ Search/ isysquery/ 0d970b8f- 715d-49e2-94d2-90a1766566a4/1/hilite/](https://apps.legislation.qld.gov.au/Search/isyquery/0d970b8f-715d-49e2-94d2-90a1766566a4/1/doc/InvasOfPrivA71.pdf#xml=https://www.legislation.qld.gov.au/Search/isyquery/0d970b8f-715d-49e2-94d2-90a1766566a4/1/hilite/)
- [16] Surveillance Devices Act 2007(NSW) s.11.27 (Austl). Retrieved from[http:// www. legislation. nsw. gov. au/ xref/ inforce/ ?xref= Type % 3Dact% 20AND% 20Year% 3D2007% 20AND% 20no% 3D64&nohits=y](http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D2007%20AND%20no%3D64&nohits=y)
- [17] 2010.ACA reporter Ben Fordham escapes conviction.Retrieved from [http:// www. news. com. au/ entertainment/ tv/ aca- reporter- ben- fordham- escapes- conviction/ story- e6frfmyi- 1225911026951](http://www.news.com.au/entertainment/tv/aca-reporter-ben-fordham-escapes-conviction/story-e6frfmyi-1225911026951)
- [18] 18.Pearson,M&Polden,M.(2011).The journalist's guild to media law.Allen and Unwin:Australia.