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Professional fouls: misconduct in the mass media

I'm a lawyer, so let me start with a law: the Trade Practices Act, section 52:

- . A corporation shall not in trade or commerce engage in conduct that is misleading or deceptive...

The Australian Competition and Consumer Commission has provided me with the following summary of some of the successful prosecutions conducted over the past year under Section 52:

- . Telstra, which will have to pay \$45 million in refunds as a result of misleading telephone customers about its maintenance plan;
- . Vales Wine Company, fined \$165,000 for false claims as to the vintage and description of its product;
- . TNT Australia, which had to give an enforceable undertaking after misleading representations as to its means of transporting goods; and
- . On-Clinic Australia, against which an injunction was granted to restrain misleading representations about its impotency treatments.

What you will notice is that none of those successful prosecutions had as its defendant an Australian mass media corporation. I'll tell you the reason for that shortly.

But first: the 1997 Media Watch rundown of the guilty among our mass media - guilty of misleading or deceptive conduct in trade.

These are just some of the serious transgressions we have picked up and used in our programme so far this year - in just five months:

First: Find a prejudice, and milk it dry...

- . The Murdoch Sydney Telegraph's clone story from the Murdoch London Sun original (well, hardly an original there, either) putting flesh on the conjecture of the saloon bar commentator:

Why don't we send out a few kids - cadet journalists, typists, whatever - to prove that unemployment's a crock? Tell them to say they're unemployed, unqualified, but willing to try anything... they're neat, tidy, well-spoken. They'll get jobs.

And they did (if you can call casual waitering and telephone canvassing 'jobs') - thereby adding fuel to the fires stoked by resentment and ignorance.

What a scoop! Four well-presented middle class kids, with the ineffable confidence implicit in the self-knowledge that they already have jobs, real jobs, actually being accepted for minimum-wage drudgery in preference to inarticulate, flannelette-shirted victims of neglected western suburbs high schools. Who would have thought it possible?

It's certainly not the crude, brutal bullying the nasty bastards at Channel Nine's A Current Affair inflicted on the Paxton kids - but it's not substantially different.

And it is certainly false, misleading and deceptive.

Next: They'll never know the difference... for which you need to understand that the television networks all maintain overseas offices, not to cover overseas stories, but to have a programme-buyer on the spot and - even more importantly - a plausible justification for senior executives' junkets. But those offices are made colorably necessary by posting a journalist there, whose job is to repackage what has already been pulled off the wok (that's insider-talk for satellite transmitted material) unless, of course, it's a really big story... in which case, the satellite footage goes straight to air in its original package. It's in the repackaging that the problems arise (but only if someone knows the difference).

- . When there was an IRA bomb threat that halted the running of the Grand National steeplechase at Aintree, about 400km north of London, the Australian networks' reporters-on-the-spot did their pieces to camera in London streets...
 - the ABC's man in a Nash terrace at Regents' Park;
 - Channel 9's man in front of New Scotland Yard;
- . when Timothy McVeigh was on trial in Denver, Colorado for the Oklahoma City bombing, the Australian networks' reports were filmed in a Los Angeles street and in Washington DC. For the latter, the ABC's man was stood (it seemed to us very artfully) in front of the J Edgar Hoover FBI building, but with his head

obscuring all but the last three letters of the name, so that we saw "VER", and thought it was DEN-VER.

- . Not that they actually say they're on the spot: next time there's some plane crash in Alaska, and the network's reporter is seen standing in front of an airport hangar, you won't hear him (or her) sign off with "Clark Kent in Anchorage, Alaska, for Seven News"... no, it'll be "Clark Kent in the United States for Seven News". Maybe not false, but undoubtedly misleading.

As was the Seven Network's 'Witness' programme in which Paul Barry pretended he was the reporter on a story about the crash of TWA 800 off New York - a pretence that required him to edit out of a BBC Panorama film pictures of the real reporter, then insert his own piece to camera, and lightly rewrite the BBC script (cutting out all its references to TransAtlantic services) and then revoice it.

But the princes, the nonpareils, the very quintessences of this kind of sleight of hand - the professionals who put those dissemblers in the shade - work (yes, they still do) for the Seven Network's 'Today Tonight'.

- . They, of course, are David Richardson, reporter, and Chris Adams, producer, who put together a story to the effect that Christopher Skase, the much-reviled Majorca fugitive, is so powerful that the island's police force runs interference for him, blocking the way of decent Aussie journos bent on exposing the miscreant. So much in the pocket of Skase are the Majorca cops, we were told, that they harassed the representatives of truth, justice and the ratings - searching their hotel rooms and setting up roadblocks, all in order to snatch their incriminating videotape that proved beyond doubt that Skase is fit and well and ought to be extradited to Australia forthwith.

Only, as everybody knows, the whole thing was a fake. The image of Richardson, at the wheel of a car speeding around a roadblock, breathlessly declaring "Let's get out of here!" was shot, not on Majorca, but - with unconscious irony - in the theatrical district of Barcelona. And there was no roadblock. Richardson was acting or - not to put too fine a point on it - lying. So was his co-conspirator, Adams.

That the executive producer of Today Tonight, Stewart Richmond, was unaware of the dishonesty seemed, at first, unlikely - but he claims complete ignorance, and I must accept his word as that of a gentleman.

Channel Seven, with an admirable grasp of the realities (if not of ethics) sent Richardson and Adams off on a holiday for a month. That's all.

Many people have asked me: How did they think they would get away with it? The first answer is that they were very unlucky not to get away with it - it was only spotted by a barrister friend of mine who happens to know Barcelona like the back of his hand, and who pointed out to me landmarks in the background, the police uniforms, and suchlike dead giveaways.

And the second answer is that they did get away with it.

The perennial Chase-for-Skase is but one epitome of the wholly unAustralian (or so we would like to believe) but time-honoured journalistic tradition of kicking a man when he's down, but make sure you've got steel tips on your boots...

- . Everyone hates Mal Colston. Nobody's going to mumble anything (not in the ranks of the mass media, anyway) about presumptions of innocence and prejudging the issues.

So: by all means victimise his family. Besiege his home. Camp on his drive. Bring in a crane and a cherrypicker so you can get pictures from the street. Hammer on his door so you can film whoever answers it - look at that guilty face - and, sooner or later, you'll provoke an angry outburst in front of the cameras which can then be shown in all its humiliating detail to the whole nation.

They did all that, but it wasn't enough. They all got footage when one of the Colston sons came out of the house and walked down the drive to ask them to keep off their private property, quite calmly and politely, but was insulted, pushed and eventually provoked into an angry response.

What did they do with the footage? They edited it, changing the sequence of events and cutting out their own misconduct to create a deliberately false, misleading and deceptive report - and none worse than the reports presented by Glen Milne, for Seven, and Laurie Oakes for Nine. Media Watch was able to demonstrate the dishonesty of the videotape editing, because we obtained an unedited version.

Not that any of that troubles the newspaper journalists. They routinely reorder events to suit themselves, and the existence of television footage wasn't going to change that.

The Murdoch Telegraph was sufficiently emboldened by the events and the certitudinous belief that they could say anything they liked about the Colston family that they used
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the following headline for the story:

PHOTOGRAPHER FELLED IN SCUFFLES AT THE RATHOLE.

And another who didn't quite get away with it is the long lunch analyst for the Sunday Age and the Financial Review, Stephen Downes.

What he didn't get away with was a conflict of interests (one that needs to be explained to more than one Melbourne journalist, truth to tell: there are a number to whom it has been my melancholy duty to point out that being a paid publicist for people flogging certain brands of cheese and wine while at the same time holding themselves out as impartial experts on those subjects in the editorial columns of the Herald Sun, and endorsing with enthusiasm the selfsame brands of cheese and wine, is not on).

And it's no answer to say that Downes, paid publicist for Crown Casino restaurants and, later, allegedly dispassionate reviewer of those same restaurants, was "only writing about food, for God's sake". Certainly it's a trivial occupation (the title 'food critic' always suggests to me a man shouting at a sausage), but then - so is most journalism as it is presently practised.

Next, some instances of what I might term sleight of hand.

- . The Adelaide Advertiser has the cheek to run, on Saturdays, a section called 'Insight'. That's a name stolen from the pre-Murdoch English Sunday Times, where it referred to their team of the world's finest investigative journalists including, notably, Phillip Knightley. They were the ones who shamed Distillers over the Thalidomide litigation (at great cost to their proprietor, but thank God they did), and told the truth about Britain's Northern Ireland scandal, among other work. It was customary for the Insight team to devote months to researching their stories.

In the Advertiser's travesty of that kind of fearless and honourable public-service journalism, Murdoch's Adelaide paper produced 15 special reports on South Australia's economic future. An incredulous readership was confronted with unrelentingly upbeat and optimistic analysis that depicted Adelaide as the centre of the world, with a limitless future in technology, culture, and booming employment.

Only by examining the Hansard of a parliamentary estimates committee could one learn - as Media Watch learned - that the series of article was euphemistically categorised as a 'joint venture' between the Murdoch monolith and the South Australian government. The Advertiser (whose staff reported, wrote, illustrated and edited the articles) was paid \$75,000 to include them in the paper.

Not that the readers were told that. The intention was that the readership would believe the series was genuine.

There has long been a Murdoch culture, born of necessity. In a one-newspaper town (and most capital cities in Australia are just that), it's a brave journalist who won't go along with the Murdoch-first, ethics a poor second, philosophy.

A further instance from the Advertiser:

- . AFL is Adelaide's game. Rupert's acquisition of a large slice of Rugby League (it's perfect for the gaping maw of television - rates well where they know the game, satisfies quotas for local production, and costs almost nothing to screen) requires, though, that he set up a SuperLeague team in Adelaide. And that he creates a following for it.

Hence the Advertiser's front page, sports columns, and principles (such as they might be) are subverted to the cause. Murdoch-loyalty first, or what-are-you-doing-in-your-next-job?

The culture's not materially different in the Packer colossus. The English-speaking world's finest television interviewer, Ray Martin, is pitchforked into the studio with James Packer, probing him deeply with such questions as "Would you like to propose to Kate Fisher now - live on television?" (I gather that one wasn't in the script and young Packer was a tad unhappy about it), but more importantly reading out the Dorothy Dixers so that Mark 3 can assure anyone who's listening (the whole of Australia, in other words) that his father's corporation has every right to take over Fairfax, and would never interfere in the editorial judgment of the journalists.

- . It was lese majeste, I suppose, for Media Watch to counterpoint the spindoctored James Packer's straight face with his father's sworn evidence before a parliamentary inquiry to the effect that he agreed his network ownership precluded him from newspaper ownership, in the national interest, and that he'd always believed a proprietor had a perfect right to use his papers to push his own barrow.

If it's a crime for life to imitate art, they ought to lock up Packer's 'A Current Affair' and Barcelona Tonight on Seven, and throw away the key.

- . We all laughed as the Frontline team created stories (Mike's image needs a crippled child for his friend, or one with AIDS - but he must have caught it in a nice way), yet there was nothing funny when Ray Martin imported a Papua New Guinean family with the happily photogenic problem of Siamese twins under no significant risk of dying when surgically separated and Ray's deathless line about them coming to Melbourne was "summer people in winter clothes";

and, this year, the invention of stories in the tradition of Frontline is entirely unabated.

When Frontline had the victim of one of their entrapments committing suicide, it wasn't funny - but it was surely ironic. Less than two weeks ago, Ray Martin was given the Packer spindoctors' script to read (and there wasn't a word of apology in it) after Mr Benny Mendoza hanged himself in his garage after three days of hammer blow promos for ACA, followed by a programme item that labelled him as a dishonest television repairman. Martin's self-justification was "we didn't hound him". No, but they did lie to him, entrap him, and vilify him. Any mildly thoughtful journalist would have realised that a man in Mr Mendoza's position, and with his cultural background, might well suicide after such a treatment. And his alleged wrongdoing was a great deal less significant in the scheme of things than theirs.

We've had people flown to quack clinics in Europe and Israel, and the programmes declaring them to be cured of cancer and heroin addiction (the latter in the space of eight hours, even);

and we've had the scandal of Sandline - no, not that Julius Chan betrayed his people by secretly setting up mercenaries to assassinate the BRA leadership... the scandal is that he didn't tell the truth to Ray.

Not that the ABC escapes the net. As we have had cause to note:

- . Robin Williams turned over his programme and his credibility to the paid publicist for Uncle Bens' dogfood;
- . Paul Grabowsky didn't know there was anything wrong with doctoring interviews to make it look as if he had done them, when he hadn't;

- . ABC radio programmes have been easy meat for publicists generally, despite the practice having already been exposed and forbidden - 3LO being possibly the worst transgressor;
- . and all programme commissioning procedures went out the window when Bill Kelty pulled the old-mates act on Brian Johns, and the Whitlam lectures deal saw the ABC hand editorial control to outsiders.

Elsewhere, the Age labelled a boy on a motorbike as the person who lit the Dandenong bushfires and - when that turned into a fireball likely to consume most of their defamation verdict allocation - how did they handle it?

- . No apology. They blamed the police for their own incompetence, and called the boy a hero in a make-good story. They seem to have got away with it.

Editors of some Fairfax newspapers, unwilling to give offence to a man they were sure would become their boss - sooner or later - excised from news stories about companies with poor records in corporate governance any reference to Kerry Packer's PBL.

Rupert Murdoch flew into Sydney on one of his awe-inspiring visits and, suddenly, his tabloid - which had John Howard as a fatally gutless 90-pound weaking - saw the light, and Little Johnnie became Mr Tough.

And in Canberra, when an anonymous government hatchetperson, assigned to neutralise the Stolen Generation story by smearing the character of Sir Ronald Wilson, what did the press gallery do?

Did they expose the dirty-tricks practitioner? Did they tell him (or her) they wouldn't have a bar of such cowardly and unethical scandalising?

Did they what! They ran it.

Now that's a fair old litany of misconduct by people who hold themselves out as guardians of the truth; people whose professional code has this preamble:

Respect for truth and the public's right to information are overriding principles for all journalists..

People whose ethics forbid the suppression of relevant facts from their stories, prohibit them from being influenced in their professional duties by commercial considerations including their employer's commercial considerations, insist that they shall use only fair and honest means to

obtain their stories and pictures, and require that they do their utmost to correct anything they've published or broadcast that is found to be harmfully inaccurate.

And my overview has had to leave out journalistic hypocrisy (exemplified by the tabloid populist attacks on politicians' overseas junkets, but not on the emptying-out of every Australian newsroom to join in the celebrations in Hong Kong - a set piece that wasn't so much a story as a Royal Visit outside broadcast in reverse;

as it has omitted proprietorial hypocrisy whenever the Press Council (and it isn't often) produces an adjudication with some potential for embarrassment;

and the shameful performance of the entire Australian mass media in its treatment of the Pauline Hanson story. But there isn't time to go into that.

What I have just reviewed was merely some of the ethical breaches that are the stock-in-trade of Australian journalists... not just a handful of the disreputable ones, but the highest-profile, award-winning leaders of the game.

The important point I wish to make is that those are all quotidian examples of Australian media purporting to do its job. Each one is, to a greater or lesser degree, a disgrace. Each one represents a betrayal of the trust that the community reposes in its journalists, because it has no choice. We don't trust them because they deserve our trust - we trust them because we have no other means of obtaining the information they hold themselves out as providing, honestly and professionally.

Journalists form a particular group of unquestionable significance in the community - a group entrusted with the exercise of considerable power. What they write and construct has profound influences on how the community votes, how it perceives itself, its level of tolerance and decency... and in many other areas of perceptions that inform its daily life.

The community would not wish such power to be reposed in people whose honesty, ability and personal standards are questionable. It is thus necessary that there be standards of conduct for journalists, and that they be enforceable in a system that includes public participation and appropriately coercive powers.

There is far too much cheating and dishonesty in Australian journalism, too many subtle and not-so-subtle conflicts of interest, there is racism and there is deliberate exclusion of contrary points of view - yet nothing happens to those who are guilty of it. That's because the community, we consumers of the mass media, have no right to bring the media to account for

the way it exercises its power and exerts its influence. When they cheat, there is nothing we can do about it... and there is no independent body with any responsibility to represent the public interest.

The examples of Trade Practices actions that I gave at the beginning offer no comfort: while advertisers (to whose blandishments we are all naturally resistant) can be and will be brought to account for misleading us, successive Federal governments have chosen to protect media owners from the operation of that law - as they have with the law of privacy. The media have, in relation to their non-advertising activities, been made exempt from a system of public-interest regulation that applies to all other corporations.

Is it not the worst kind of humbug that the Australian Competition and Consumer Commission can (and does) prosecute mass media corporations for dishonesty in their promotional activities, but is prevented by law from prosecuting media dishonesty in their informational activities?

- . Nationwide News (Murdoch) was fined \$120,000 a year ago for misleading the public on a "free" mobile phone promotion (it would cost you \$2000); and
- . Network Ten negotiated an enforceable settlement after being prosecuted for "advertorials" which made false representations about a Gold Coast land promotion.

As a result of this government-granted protection for the media as information-providers, and directly affected by the ever-tightening concentration of ownership of our print and electronic media, public confidence in media standards is probably at its lowest level in living memory. With the creation of new media, ownership concentration is certain to increase, meaning that it is not only the journalists' conduct we need to scrutinise - it is also that of their employers.

The latter is an area that has received no attention at all, and that's probably because the politicians were at dinner with the tycoons at the time. Actually, they were waiting on their tables. They know their place.

Yet the public-interest issues of new media, multimedia, cross-media ownership, monopolies, conflicts of interest and false and misleading conduct in trade all scream out for a cogent set of enforceable rules. That there are no such rules is, in itself, the clearest evidence of their necessity: it proves the power of the tycoons.

The Press Council (concerned only with print), a body with no coercive powers and a stated unwillingness to assume any such powers, a body which cannot even secure the participation of the journalists in its deliberations, a body with a pitiful record of dealing with public complaints, a lapdog which has solemnly decreed that journalists certainly do not need facts (a belief will be good enough) to justify the destruction of reputations and whose Chairman had this to say last May:

The system of self-regulation works well, because people here are telling us that the Fairfax newspapers are superb examples of journalism. They're not supervised, they're not regulated by the Government, and work according to the Code of Practice established by the Press Council and by the media at large.

The Australian Press Council is a body with which I need trouble you no further.

Hard as you may find this to believe, one of the reasons given by the chairman of the Press Council to justify the present situation of the Australian mass media being unaccountable is that Media Watch exists.

Whatever we may do at Media Watch, we certainly do not accept the role of media policeman.

The Australian Broadcasting Authority, which has proved a statutory enactment of laissez-faire, is - I note - soon to be headed by none other than the present Chairman of the Press Council. His impending appointment may explain why he said this on 'First Wednesday':

What should be put in place of the cross-media rules ... is a legal regime which removes the control of who owns the media from government and puts it into a body which operates under the rule of law...

That is, himself - as it turns out.

The journalists' own ethical tribunal is another entity of little credibility. It boasts the doubtful achievement of having one of its members plead guilty to criminal offences concerned with forgery of bail documents in order to secure an exclusive interview with a murderer.

At the same time he was forging the documents and lying to police about what he'd done, his employer was putting up \$50,000 to secure the prisoner's bail. The journalist has been dealt with by the criminal court, but his employer will never be called to account.

So it can be seen that the formulation of an enforceable code for media proprietors is no less urgent than one for the

practitioners.

There's something indecent about unaccountable journalists and unaccountable owners demanding more power against the community. They seek what they are pleased to call shield laws (to shield them from us, no less) and reform of the only protection the community has - the law of libel. To a degree, they are getting what they demand. State by state, the public is being dragged out of the system.

Juries have either been abolished, or denied any real role in the process. The public, the tycoons have shouted at receptive politicians (there's no need to shout, just whisper what you want), the public is too stupid to understand the complexity of free speech; it awards too much in damages. Government, buckling to their own conflict of interests, listen - and do their bidding. The attempts to agree on a uniform defamation code are dominated by proposals to remove any privacy protection from the law.

The shame of it is that only through the exercise of what the mass media claim to be their business - free speech - will we have change.

And that free speech will not take place in Australia's mass media. When did you ever see them devoting time and space to voices calling for their accountability?

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