



Public Service or Illegal Act?
The *Weekly Mail* and Bugging Staal Burger, Parts A & B
Teaching Note

Case Summary

Reporting information the public has a right to know is one of journalism's most basic principles. But what if that information can only be obtained by breaking the law? This is an especially tricky question in a context of democratic transition, when the laws being broken are relics of a former regime, but new ones protecting press freedoms have not yet—and may never—be put in place. Under such circumstances, how can journalists best serve the public good?

This case explores how the staff of a Johannesburg-based newspaper, the *Weekly Mail*, confronted those questions. The case takes place in 1992, during South Africa's rocky transition from apartheid. Rogue groups of right wing extremists are making every effort to disrupt the peaceful transition of power from President F.W. de Klerk's National Party to Nelson Mandela's African National Congress. While their acts of terrorism reverberate throughout the country, reporting them is a challenge. The groups are tacitly supported by the police and the military and not afraid to use violence to intimidate journalists. The *Weekly Mail* staff knows it must find irrefutable proof linking the rogue groups to the violence in order to make such a claim, but all efforts come up short.

An apparent breakthrough comes when a *Weekly Mail* reporter gets a tip that a notorious leader of one of these groups, a former officer in the South African police force named Staal Burger, is conducting weekly meetings in a Johannesburg hotel. Suddenly the newspaper staff, led by co-Editor Anton Harber, is faced with a decision it has never before confronted: whether or not to eavesdrop on the hotel room in order to catch Burger in the act of planning illegal activities. The newspaper's lawyer puts them in contact with a private investigator willing to do the job. Part A ends with the staff weighing the pros and cons of engaging in such risky tactics, and questioning whether they are justified in breaking the law for the sake of the public good.

Part B picks up the story soon after the staff's decision to proceed with the bugging has gone badly awry. When Burger finds the bug and detains the private investigator's

assistant, Harber agrees to come forward as the party behind the bugging in exchange for the assistant's freedom. The *Weekly Mail* editors are now faced with a new conundrum: they (represented by Harber) will be charged with eavesdropping, a law they cannot deny they have broken. But should they give in and plead guilty or, in a stand for press freedom, plead innocent, claiming they exhausted all their other options and acted in the public interest?

Teaching Objectives

Use this case to start discussions about investigative reporting tactics; whether breaking the law in the name of the public interest is ever justifiable; the relationship between law and ethics in journalism; and the role of the press in a new democracy. One option is to teach the two parts in separate class sessions. Another is to teach both in an extended session: after discussing Part A, hand out Part B, to be read in class, followed by a discussion focusing on the new questions it raises.

The question at the heart of Part A is whether it is ever ethical for journalists to break the law. Specifically in this case, do public interest and public safety justify eavesdropping? On the one hand, the journalists have been struggling to find proof of the Third Force's illegal activities, and they believe that if they can find a way to report on them they might save lives and prevent them from further disrupting the government's transition. These are obviously worthy goals. On the other hand, they have no way to guarantee they will get the story even if they bug the hotel room, and doing so brings with it serious risks: that they will endanger themselves and others; that, if found out, they will waste valuable resources fighting a court battle; and, whether they are found out or not, that they may see their credibility and reputation damaged. Ask students to carefully weigh the pros and cons of proceeding with the illegal surveillance.

Another way to think about the case is as one that pits an individual's right to privacy and dignity against the public's right to know. Under South African law, eavesdropping specifically "violates the dignity of the individual" by invading his privacy. Harber and his staff believe the public interest trumps Burger's right to privacy: do students agree?

One of the broader questions that may come up in the discussion is one that Harber also raises: is an illegal act always unethical? How should journalists confronting competing legal and ethical values think about the relationship between the two? Students may argue that breaking the law for the public good is justifiable if the law itself is unethical or being unethically applied to mask corruption or violence. Many journalistic codes of ethics make the argument that exposing a crime or injustice can be a valid reason for bending or breaking the law.

However, just because these codes suggest it may be ethical does not mean that, if caught, journalists will not be punished for having violated the law. Here you might remind students that even under governments that protect the freedom of the press, journalists are

generally expected to obey the law like any other citizen. Even in places where special “shield” laws protect journalists, wiretapping and other forms of spying are generally not protected. What, if anything, makes this case different?

Since the case takes place at a time when the government is transitioning to a new form of democracy, it raises excellent questions about what the role of the press should be under those circumstances. Although the new democratic institutions will presumably be more free, the journalists find themselves at the leading edge of the trend: they want to cover government sanctioned terrorism for the sake of the people, but it is not yet clear that the institutions are—or ever will be—in place to protect their right to do so. Should they forge this path themselves? Is it their responsibility to take a stand for the press’s freedom to pursue a story in the public interest?

If the journalists do decide to bug the hotel room, one of their defenses must be that they have exhausted all of their other options. Use this as an opportunity to discuss investigative tactics with your students. Do they agree with Harber that there is no other way to get this story? What else might they have done to avoid breaking the law, but still prove that Burger and the Third Force are behind the escalating violence? Another practical question to ask before the students read Part B, is whether Harber and his staff have taken all the steps they should to ensure that the private investigator is competent and trustworthy. Given the high stakes, this seems like an important step.

After the students have read Part B you might begin by asking them, now that the outcome of the bugging is clear, what Harber and his staff might have done to reduce the likelihood of this particular turn of events. Should they have vetted the private investigator more thoroughly, for example?

But Part B’s central question is whether Harber should plead guilty, which he technically is, or innocent, on the grounds that he acted in the public interest and exhausted all his other options for obtaining the information he sought. Students should, again, weigh the pros and cons of each option. A guilty plea may mean the whole episode will be over quickly, but it may also damage Harber’s reputation as well as the paper’s. It would also mean giving up the fight to cover a story that is clearly of tremendous public interest in the face of intimidation by powerful people—exactly the kind of dynamic the journalists are hoping will be reversed in the new democratic order.

Yet if Harber pleads not---guilty in the name of having pursued the public good, he and his colleagues will have stood up to such intimidation—but they may well spend many years and a lot of money on a case they will lose. A loss, like pleading guilty in the first place, could damage the paper’s reputation, as well as Harber’s. Is taking a stand for press freedom worth these risks?

Class Plan

Use this case in a class on journalism ethics, international media, journalism and the law, or investigative reporting.

Pre---class. Help students prepare for class by assigning the following questions:

1. (Part A) Should the *Weekly Mail* proceed with bugging Burger’s hotel room? Why or why not?
2. (Part B) Should Harber and the *Weekly Mail* plead guilty or not guilty? Justify your answer.

Instructors may find it useful to engage students ahead of class by asking them to post brief responses (no more than 250 words) to questions in an online forum. Writing short comments challenges students to distill their thoughts and express them succinctly. The instructor can use the students’ work both to craft talking points ahead of class, and to identify particular students to call upon during the discussion.

In---class questions: The homework assignment is a useful starting point for preliminary discussion, after which the instructor could pose any of the following questions to promote an 80---90 minute discussion. The choice of questions will be determined by what the instructor would like the students to learn from the class discussion. In general, choosing to discuss three or four questions in some depth is preferable to trying to cover them all.

Part A

- a) What are the pros and cons for bugging Burger’s hotel room? List on board.
- b) Should a journalist ever break the law to get a story? Under what circumstances might this be justifiable? Does this case fit those criteria?
- c) As Harber puts it, “Is an illegal act also, by extension, unethical?” How should journalists in the field think about the relationship between the two?
- d) Eavesdropping, under South African law, “violates the dignity of an individual”—it invades his or her privacy. Harber and his staff seem to believe Burger’s illegal activities mean he does not merit these considerations, and that the public interest overrides his right to privacy. Do you agree?
- e) Harber feels his staff might be justified in bugging the hotel room because they have exhausted all other alternatives, and the story is in the public interest. Do you agree with both of these claims? What else might they have done to try to get the story without breaking the law?
- f) Do you agree that the newspaper should be trying to “model behavior for an imminent democracy”? Is this the job of a news organization?

g) How will Harber's decision impact the newspaper's reputation and credibility? What are the implications for South African media in general?

h) When Harber meets with the private investigator and his assistant, he is struck by their youth, but concludes they seem to know what they are doing. He also knows it could be a set up. Did Harber do everything he should have to ensure their professionalism and trustworthiness? What else might he have done?

Part B

a) Now that you have read Part B, what could Harber and his staff have done differently to avoid their current situation?

b) Should Harber plead guilty or not guilty? What are the advantages and disadvantages of each?

c) Harber and his team feel this is an opportunity to set a precedent for freedom of the press in the emerging, post---apartheid democracy. Do you agree that it is Harber's responsibility to advocate for this? Is it worth Harber risking jail (and his reputation) for it?

d) What is the media's role in a society trying to build democracy? How can the *Weekly Mail* best fulfill that role at this juncture?

e) Which of the two pleas do you believe will be more damaging to the newspaper's reputation in the long run? Why?

f) Pleading not guilty could sap the newspaper's time and resources for years to come, whereas pleading guilty would mean the case would be over fairly quickly. Can the paper afford to plead not guilty?

g) Burger does not know that the recording equipment failed. Harber feels it is to the *Weekly Mail's* advantage to keep him ignorant of this. Do you agree? Why or why not?

Suggested Readings

Mark Easton, "Phone Hacking: Should Reporters Break the Law?" *BBC News UK*, July 21, 2011.

SYNOPSIS: Written in the early days of investigations into the phone hacking scandal that engulfed the British tabloid press in 2011/12, Easton briefly explores different points of view about whether the public interest ever justifies using investigative tactics that technically break the law. He refers to several major British codes of ethics that use language suggesting that breaking the law is justifiable when in the public interest; that, in turn, raises the question of what constitutes the public interest. Here he quotes the codes of ethics themselves, all of which indicate that exposing a crime or injustice may be a justifiable reason to use illegal tactics to obtain information. Easton concludes that if journalists do use illegal methods, they should be transparent about this when they report their stories. For a range of reader

opinion about this question, instructors and students may find it helpful to refer to the reader comments posted below the story.

<http://www.bbc.co.uk/news/uk----14232086>

Adrian Hadland (ed.), *Changing the fourth estate: essays on South African journalism*: HSRC Press,2005.

SYNOPSIS: This compilation of essays by journalists working in South Africa provides helpful context for this case. Students and instructors may find the chapters on “investigative journalism,” “journalism and the law,” and “journalism and transition” especially relevant.

<http://www.torontopubliclibrary.ca/search.jsp?N=4294494319>

Justine Limpitlaw, “The Republic of South Africa,” *South African Media Law Handbook*, published by the Konrad-Adenauer-Stiftung Media Programme of South Africa, July 28, 2011.

SYNOPSIS: This e-book, published by a foundation affiliated with Germany’s Christian Democratic Party that is working to promote media freedom in southern Africa, includes a chapter dedicated to explaining South African media law in clear, easy-to-follow terms. The chapter includes an introduction that discusses the state of media freedoms under apartheid, but the majority of the handbook provides up-to-date information about current media-relevant laws and policies.

<http://www.kas.de/medien---afrika/en/publications/23503/>

Chris Roper, “South Africa and the Media: Looking back at 2011, Looking ahead at 2012,” published by the Konrad-Adenauer-Stiftung Media Programme of South Africa, January 17, 2012.

SYNOPSIS: This article provides helpful background on the current state of the South African media’s relationship to the government, and to the public. Focused on the passage in 2011 of a highly controversial bill to protect state secrecy and impose severe punishments on whistleblowers, which was widely considered a major blow to press freedom, Roper paints a picture of a country in which the governing party – now the African National Congress, just coming to power in this case—retains a great deal of power to directly and indirectly restrict reporting.

<http://www.kas.de/medien---afrika/en/publications/29931/>

Peter Wanyande, “The Media as Civil Society and its Role in Democratic Transition in Kenya,” *Africa Media Review*, 1996.

SYNOPSIS: Although this article explores the press's role in a time of transition in Kenya, not South Africa, it provides a very clear review of how the media can contribute to the spread of information and mobilization of the public when countries are moving from one---party authoritarian rule to multi---party democracy. The paper also explores constraints on the media during these periods of change. Students and instructors will find it provides good background to the questions raised in this case about whether the press should confront the established regime by breaking the law, or might be more effective using other tactics.

<http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/africa%20media%20review/vol10no3/jamr010003002.pdf>