

Colette McDougall, Richard W. Colburn, Carol Colburn Hogel, Keith W. Colburn v. Anthony Pellicano, Jacqueline A. Colburn

Los Angeles Superior Court Case No. BC 381720

Judith Gibson¹

On October 22, in a jury trial presided over by Judge Richard Rico of the Los Angeles Superior County Court, four plaintiffs were awarded a total of \$US3.9 million damages for breach of privacy and emotional distress claims.

The plaintiffs brought the claim following their discovery that a private investigator named Anthony Pellicano had been wiretapping their family's home phone between December 1999 and October 2000. Pellicano had recorded hundreds of their conversations for his client, Jacqueline Colburn, for use in her divorce proceedings.

This jury verdict is the first damages award arising out of the Pellicano phone tapping cases which are being managed in a special list in the Los Angeles Superior Court in California.² It is of interest because, in terms of case management and verdict range, there are differences in the court's approach to breach of privacy damages claims arising from electronic intrusion to case management for civil claims in the United Kingdom arising out of what is now generally called "the phone hacking scandal".

Pellicano is currently serving a 15-year prison sentence for phone tapping and other crimes³. He did not file a defence or appear at the hearing. A default judgment has not yet been entered. This left the running of the case to the other defendant, Jacqueline Colburn.

Jacqueline Colburn's relationship to three of the four plaintiffs (Keith W Colburn, Carol Colburn Hogel and Richard W Colburn) was that, for about 18 months, she was the eighth wife of their millionaire philanthropist father. The couple had married in 1998 (when Mr Colburn was 85 and his wife was 38), but separated 18 months later, in circumstances of some acrimony.

When divorce proceedings ensued, the eighth Mrs Colburn retained Anthony ("Private Investigator to the Stars") Pellicano, paying him \$115,000 cash and jewellery worth up to \$500,000. He wiretapped the family's home phones. The intercepted calls included calls for Mr Colburn's assistant, Colette McDougall, who joined with the three Colburn adult

¹ Thanks to Erica Hess (Berbay Corp. Marketing & Public Relations) and to Segal Skigen LLP, the solicitors for the plaintiffs, who reviewed this case summary and provided the jury's answers to questions. Erica's summary of the case can be found at http://legalsegal.com/PressRelease_SegalSkigen_Colburn-Pellicano.pdf.

² According to the *Newsweek* interview with Pellicano on August 7, 2011, there are about 30 civil lawsuits outstanding. Most of these are being case-managed by Judge Elihu Berle in the Complex Tort programme (see footnote 12 for more details). Some of the outstanding cases are listed on Justia.

³ For a list of more than 300 articles on Pellicano, see <http://www.latimes.com/news/la-pellicano-sg.1.6702911.storygallery>.

children as a plaintiff in these proceedings. (Mr Colburn senior, the estranged husband of Jacqueline Colburn, didn't sue because he died in 2004 - before the phone tapping was discovered).

The Pellicano saga is as tortuous as the factual background to the phone hacking scandal. Before describing the Colburn jury trial, I will briefly outline the events leading to Pellicano's convictions, for offences ranging from phone tapping to possession of explosives, in a series of trials between 2002 and 2008.

“Private investigator to the Stars”

Pellicano was a Hollywood private eye who gained his nickname “Private Investigator to the Stars” because of his stellar clientele. Unlike the private investigators in the UK phone hacking scandal, Pellicano's clients were the Hollywood rich and famous, not the tabloids who write about them. His skills lay in keeping sensational stories about his clients off the front page, rather than on.

Pellicano's specialty was handling bad publicity for wandering stars, notably the media-challenged Michael Jackson. This involved persuading editors and broadcasters not to publish, as well as putting out adverse publicity to damage his clients' business rivals. A number of Pellicano's clients included movie action stars, such as Sylvester Stallone, “Die Hard” director John McTiernan and Arnold Schwarzenegger. However, he was also consulted by lawyers⁴ involved in litigation, or by the clients themselves, to use his information-gathering techniques in court proceedings; Jacqueline Colburn was one such client.

These information-gathering techniques used by Pellicano were the same as those under investigation in the phone hacking scandal - payments to police, obtaining confidential information by trickery or bribery, phone tapping and computer hacking. In addition, like UK private investigator Jonathan Rees, who provided information to *News of the World* between 1989 – 1999 and 2005 – 2008, Pellicano had close associations with criminals.

Pellicano boasted that his clients were like family – in the Mafia sense of the word. He liked to say he practiced the Sicilian code of *omerta* (silence) to keep their secrets from being written about by journalists. He kept a baseball bat in his car in case bribes did not discourage newspapers or broadcasters from publishing information that could damage his clients. Music from “The Godfather” was the hold music on his office phone.

His love of Mafia iconography, however, was his undoing. When a *Los Angeles Times* journalist, Anita Busch, began investigating a dispute between actor Steven Seagal and his former business partner⁵, she found a fish with a rose in its mouth (and the warning

⁴ See the list of attorneys' names given by Lily LeMasters at the 2008 trial: <http://sprocket-trials.blogspot.com.au/2008/03/anthony-pellicano-et-al-random-spector.html> .

⁵ Seagal's former partner, Julius Nasso, was said by the FBI to have connections to the Gambino Family. The Family had been “shaking down” Seagal for \$150,000 for every film he made; under threats, Seagal had paid \$800,000: D Thompson, “The Dark Heart of Hollywood”, 2012, p. 295. In 2002 Nasso, whose

sign “STOP”) on the smashed windscreen of her Audi car. A trail of evidence led to Pellicano, and his office was raided on November 21, 2002. Police executing the search warrant found enough plastic explosives in Pellicano’s office to bring down an airliner, grenades, illegal weapons and \$200,000 in cash. Pellicano pleaded guilty to weapons charges and was sentenced to thirty months imprisonment, to be released on February 4, 2006.

Police also found a locked room in Pellicano’s office, jammed with tapes and phone tapping equipment. Just as phone hacking in the United Kingdom was carried out on an “industrial scale”⁶, Pellicano’s empire of illegally obtained information turned out to be vast⁷. Because the amount of data he acquired was so enormous⁸, he had to access it by listening only to those portions of the tape identified by sophisticated software as containing key phrases or raised voices. It took police three years to wade through the material before a fresh set of charges could be brought.

Days before he was about to leave prison after serving his previous sentence, Pellicano was indicted again, in February 2006, on 110 counts of wiretapping offences, intimidating witnesses, destruction of documents, identity theft, racketeering and conspiracy. Thirteen other persons, including Terry Christensen, one of the lawyers who retained Pellicano, were charged. Pellicano and Christensen were convicted on August 29, 2008. Pellicano’s 15-year sentence for 67 counts of wiretapping, conspiracy, identity theft, bribery and RICO violations expires in 2019⁹. “Die Hard” director John McTiernan was also convicted of material false statement charges and sentenced to 12 months imprisonment and a \$100,000 fine¹⁰.

In an unfortunate similarity with the phone hacking scandal, police did not contact the victims of Pellicano’s activities, although several of them (such as serial eavesdropping victim Nicole Kidman) were interviewed. As a result, the plaintiffs only found out by accident that their home had been wiretapped, when the *New York Times* revealed on June 26, 2006¹¹ that Jacqueline Colburn was one of those interviewed by police. When the plaintiffs read the *New York Times* article, they commenced proceedings against both

indictment took place 2 weeks before the fish incident, pleaded guilty to conspiring to extort money from Seagal and was sentenced to one year’s imprisonment. A civil action commenced by Nasso for \$60 million against Seagal was settled.

⁶ Brian Cathcart, “Everybody’s Hacked Off”, Penguin, 2012, pp 10 – 11, 37 and 71.

⁷ Police raiding his office in 2002 seized “11 computers, including five Macs, 23 external hard drives, a Palm V digital assistant, 52 diskettes, 34 Zip drives, 92 CD-Roms, and two DVDs”: *Mail Online*, “Hollywood ‘private eye to the stars’ faces life in jail for threats and phone tapping” <<http://www.dailymail.co.uk/news/article-566745/Hollywood-private-eye-stars-faces-life-jail-threats-phone-tapping.html>>.

⁸ This equipment contained “3.868 terabytes of data,” the *New York Times* reported on 11 February 2006, which was “the equivalent of two billion pages of double-spaced text.”

⁹ An application to be released early for health reasons was refused on 13 August 2012: <http://www.hollywoodreporter.com/sites/default/files/custom/Documents/Pellicano.pdf>.

¹⁰ On 20 August 2012 McTiernan’s appeal against verdict and sentence was dismissed: <http://www.ca9.uscourts.gov/datastore/opinions/2012/08/20/10-50500.pdf>.

¹¹ “Pellicano Case Moves Beyond Hollywood”.

Mrs Colburn and Pellicano, arguing that the limitation period should be extended because of their lack of earlier knowledge of the phone tapping.

The Colburns' case has been one of the civil claims brought in relation to Pellicano's activities, which are case-managed by Judge Elihu Berle in the Los Angeles Superior Court¹². Unlike other litigants, whose actions against the police, celebrities and/or phone companies have been bogged down in discovery and appeals, the Colburns were able to get their case on relatively quickly. This is due to limiting the defendants to Pellicano (who did not defend) and Mrs Colburn, rather than the raft of defendants in other claims (for example, there are over 60 defendants in the Anita Busch claim), and careful presentation of uncontroversial evidentiary material.

The Colburn trial

The jury trial was presided over by Judge Richard Rico of the Los Angeles Superior Court.

The plaintiffs gave evidence they did not know their family home phone was tapped until someone emailed them a copy of the *New York Times* article revealing the FBI had interviewed Jacqueline Colburn. She had made hundreds of calls on the tapped phone, discussing personal, medical, family and business matters of a private nature.

The plaintiffs called an ex-Pellicano employee, Richard Campau, who said that Jacqueline Colburn regularly visited Pellicano's offices to listen to the more than 500 tapes of conversations made.

As Mr Segal, for the plaintiffs, told the jury in his opening statement: "She didn't go to Pellicano's office and put on headphones to listen to the Rolling Stones' greatest hits."

The plaintiffs also called a Mr David Powers, a physical therapist acquainted with Mrs Colburn, who said that Mrs Colburn had boasted to him about hiring Pellicano for this purpose.

Mrs Colburn told the court she hired Pellicano for protection following problems with the three plaintiffs who were his adult children. "It was a strained relationship because their father married someone 47 years younger than him who was of Mexican descent", she told the court.¹³

She also disputed the value of the jewellery she had given to Pellicano, but did not deny that she had never asked for its return.

¹² For information about the California Complex Court program see: Judicial Council of California, *Deskbook On The Management Of Complex Civil Litigation* (LexisNexis) <http://www.flcourts.org/gen_public/cmplx_lit/bin/reference/Other%20States/California/california%20deskbook%20excerpt.pdf>; and B Kabateck and R Karz, "The Importance of Complex Courts", <http://www.kbklawyers.com/news/ladj_complcourts.pdf>.

¹³ <http://beverlyhills.patch.com/articles/beverly-hills-wiretapping-case-defendant-claims-private-eye-hired-for-protection> .

The second issue raised by attorney Stanley McKiernan, on behalf of Mrs Colburn, was that the claim had been brought too late; only two of the taped conversations were compensable, because the plaintiffs had commenced proceedings two years out of time.

The jury took three hours to answer the three sets of questions they were given.

First, the jury found that eavesdropping occurred outside the limitation period (the relevant date was 4/5/2005), but that the plaintiffs did not know facts which would cause someone to reasonably suspect that he/she had suffered harm from another person's wrongful conduct (the first set of jury questions).

The next issue was whether Pellicano intentionally eavesdropped, on behalf of Mrs Colburn and without consent of each of the plaintiffs, on conversations about which those plaintiffs had reasonable expectations of privacy.

If the jury was satisfied that this was the case, it could award a lump sum compensation for each such eavesdropping, under the Invasion of Privacy Act, which Californian courts have determined authorizes civil awards of \$5,000 for each separate communication that is electronically eavesdropped or recorded.

The jury agreed, and found that Richard established 289 calls were made (which totalled \$1,445,000), Keith had 135 (\$675,000), and Carol 59 (\$295,000). In addition to these three family members, the late Mr Colburn's personal assistant, Colette, had had 176 of her calls wiretapped, resulting in a total of \$880,000.

The third set of jury questions related to the claim for loss of privacy for each of the plaintiffs. The jury found that Pellicano's intrusion, on behalf of Mrs Colburn, on the privacy of the plaintiffs would be highly offensive to a reasonable person, and that this was a substantial factor in causing harm. Each of the plaintiffs was awarded an additional \$150,000 for past non-economic loss (including emotional distress).

The judgment was against Mrs Colburn; a judgment in similar terms against Pellicano is in the course of being prepared, according to the Segal Skigen LLP press release prepared by Erica Hess.

What similarities and differences are there between the Pellicano breach of privacy claims and litigation in the United Kingdom arising from the phone hacking scandal? How have the prosecutions been handled? How have the respective court systems dealt with issues such as delay, availability of documentation, and notification of potential victims? Some of the answers to these questions are surprising.

The Pellicano claims and the UK phone hacking breach of privacy claims

I should start by noting that that, while crime in general may be increasingly transnational¹⁴, there is no actual connection between the private investigators in the United Kingdom phone hacking scandal and Pellicano. While Pellicano was once a close friend of Judith Regan, he says he was never retained by News, and met Rupert Murdoch only once. In fact, Pellicano told *Newsweek* the phone hacking scandal was “kid’s stuff” and described the private investigators who hacked into phones as low-level “stringers” trying to get a story lead¹⁵, while it cost \$25,000 for a client just to talk to Pellicano.

The Pellicano saga was reported in the English press over the same period (2002 – 2012) that the phone hacking saga had been in the news, but without any parallels being noted, even by the *Guardian*¹⁶. Yet the civil actions on both sides of the Atlantic share a common subject matter: private investigators using electronic surveillance to obtain private information, with the help of corrupt police and other officials, where there are criminal proceedings as well as the civil damages claims from those whose information has been disclosed.

Perhaps the most interesting difference between the UK phone hacking scandal and the Pellicano saga is the role of journalists. Not only were journalists among the victims of Pellicano’s activities, but investigative journalism, by both the *Los Angeles Times* and the *New York Times*, played a significant role both in bringing Pellicano to the attention of the police and in providing information to victims such as the Colburns. There was no suggestion that the conduct of journalists in the United States (even the tabloid journalists who allegedly accepted bribes not to publish) warranted investigation or even concern.

This is hardly surprising; the journalists (notably Anita Busch) were the heroes of this story, not the villains. Yet print journalism in the United States is not even self-regulated, let alone independently regulated.

Has there been an overemphasis on the use by journalists of private investigators to carry out illegal inquiries, when there have been other offenders, such as litigants, with much weaker excuses for their conduct? It should not be overlooked that the landmark phone tapping case in the United Kingdom¹⁷ the wrongdoers were not phone tapping journalists, but the Merseyside Police, who phone tapped a plaintiff in legal proceedings against the police.

Anita Busch paid a heavy price for being a good investigative journalist. She not only had a dead fish placed on her shattered windscreen; she had her computer hacked and her life threatened¹⁸. At the invitation of the judge hearing Pellicano’s application for early

¹⁴ For the United Nations Transnational Organised Crime campaign see <http://www.unodc.org/unodc/en/organized-crime/index.html> . For transnational crime from an Australian viewpoint, see <http://www.aic.gov.au/publications/current%20series/tbp/1-20/tbp009.aspx> .

¹⁵ “Hollywood Hacker Breaks His Silence”, Christine Pelisek, August 7, 2011.

¹⁶ See for example *The Guardian*, “Pellicano, Hollywood's 'Godfather', jailed for 15 years” <<http://www.guardian.co.uk/film/2008/dec/16/pellicano-hollywood-trial?INTCMP=SRCH>>..

¹⁷ *Halford v United Kingdom* <http://www.bailii.org/eu/cases/ECHR/1997/32.html>.

¹⁸ Her statement of claim is reproduced on Scribd: <http://www.scribd.com/doc/54238162/Busch-First-Amended-Complaint#>

release in August 2012, she spoke of the destruction of her career and health. Other journalists in court noted with concern her frail condition, and the presence of a wheelchair to assist her in moving around.

Are there comparable stories, in the UK phone hacking scandal, of journalistic heroism? *Guardian* journalists Michael Gillard and Laurie Flynn¹⁹, who began writing about police corruption in the 1990s, suffered career interruption as a result. On 2 August 2000, Commander Andy Hayman wrote to the editor of the *Guardian* demanding he stop them from writing about Jonathan Rees. Far from being intimidated, they went on to write “Untouchables” in 2005, which was the first book to expose the sale of confidential information between tabloids, police and corrupt officials.

The fiction that these journalists had been trying to influence the Rees jury, and had been sacked as a result, was repeated as late as 2012, when another police officer told the Leveson Inquiry that these journalists had been sacked by the *Guardian* for “placing misleading stories” in the newspaper “to influence the jury”²⁰. The release of the second edition of “Untouchables” shortly afterwards enabled Gillard and Flynn to set out what really happened.

The *Guardian* (in particular Nick Davies) continued to publish articles about phone hacking and even complained (unsuccessfully) to the Press Complaints Commission in 2009. Ultimately, investigative journalism broke the phone hacking scandal, just as it led to the discovery of Pellicano’s activities.

There are also common characteristics in relation to the police investigations in both countries, although of a less fortunate nature. In both the United States and the United Kingdom there was a failure by police to contact victims and reluctance to go beyond the “usual suspects” in terms of laying charges against many of the participants²¹. While many victims of the Mulcaire phone hacking in the United Kingdom have now been told, Operation Motorman and Southern Investigations victims have not been so fortunate. Again, there was no complaint, in the United States, that the conduct of police (even the police who provided information to Pellicano) warranted anything other than the FBI inquiry which led to the convictions of Pellicano and some of his clients.

¹⁹ Authors of “Untouchables”, 2005 (2nd ed., 2012). See <http://bristle.wordpress.com/tag/eamon-harris/>. The *Observer* continued to publish articles about Rees in September (“Axe Victim’s family sue for access to police file”) and December 2000, when Rees was convicted for conspiracy to pervert the course of justice and, from the end of 2002 until 2008 (when Rees was again arrested, this time for murder), Nick Davies wrote about phone hacking and Rees’ activities for *News of the World*. The acquittal of Rees enabled public exposure of his relationship with *News of the World*, which was one of the catalysts for the Leveson Inquiry.

²⁰ The statement of Bob Quick, paragraph 14, has the names redacted, but they were published in the next edition of the *Sunday Times*; see also the introduction to Michael Gillard and Laurie Flynn, “Untouchables”, 2nd ed., 2012, p.9.

²¹ See, for example, the comments of Professor John S Coffee of Columbia University: “[Investigator to the Stars Convicted](#)”, *NY Times* issue dated 16 May, 2008.

The Colburn case is a good illustration of both these points. The Colburn family only found out their phones had been tapped when they read the *New York Times* article. The newspaper, not the police, was their source of information. Jacqueline Colburn, although interviewed by the FBI, has never been charged.

The principal difference between the two jurisdictions has been whether the civil or criminal charges should be dealt with first, and preference for the use of an inquiry, in the United Kingdom, for information which is not necessarily intended to be of assistance to either. In the United States, the aim was, in true Law and Order style, to investigate the crime, and prosecute the offenders. The civil proceedings have had to wait their turn, which is why the Colburn proceedings have only just now resulted in the first civil verdict.

The very substantial differences in criminal penalties, civil procedure (trial by jury) and damages (an award of \$3.9 million would be unthinkable in the United Kingdom) reflect longstanding differences in case management and procedure in both countries. One common problem in both jurisdictions is the restrictive effect of limitation periods. The time limitation was very much a live issue in the Colburn litigation. The vast number of documents, sometimes going back years, creates an advantage for the defendants. Vos J's unfortunate recent decision to limit discovery by the phone tappers and their tabloid clients to documents from 2001, rather than going back to Mulcaire's 1998 employment (when Rees was also working for *News of the World*) is a good example²².

Celebrity gossip - the new opium of the masses - and the financial value of illegally obtained secrets about the rich and famous are the common threads to the civil damages proceedings on both sides of the Atlantic. The unfortunate results of these tabloid practices for the investigative journalists who deplore such methods were seen all too clearly by Professor Smolla²³ in 1999. It looks as though tabloid journalism really could ruin freedom of speech for the rest of us, just as Professor Smolla warned. In particular, the flow-on effect of this illegal conduct into the litigation process (due to investigators using these same intrusive tactics to pierce the veil of legal professional privilege and confidentiality - the reason why the Colburns were phone tapped in the first place) may not only remain unchecked, but increase, as private investigators seek other clients wishing to benefit from electronic intrusion.

An Australian footnote

Jacqueline Colburn paid a private investigator to tape the Colburn family phone to obtain information to help her divorce proceedings. How would courts in Australia respond to a litigant who secretly taped conversations for the purpose of court proceedings?

²² *Various Claimants v News Group Newspapers and Mulcaire* [2012] EWHC 2692
<http://www.bailii.org/ew/cases/EWHC/Ch/2012/2692.html>.

²³ Rodney A Smolla, "Will Tabloid Journalism Ruin the First Amendment for the Rest of Us?", 1998 symposium, "Privacy and Publicity in a Modern Age: A Cross-Media analysis for the First Amendment: (1998 - 9) 9 DePaul LCA J. Art & Ent. L 1

The question of secret taping came up in an Australian defamation case some years ago. A private investigator in a small town on the north coast went to two fundraising meetings for a member of the local community and secretly taped them. These meetings had been called to raise funds to pay legal bills for this man, who had been sued for defamation and had to pay that person's legal costs. The private investigator gained entrance to the meetings by paying the entry fee, but did not reveal he was actually sent by the person who had been the plaintiff in those proceedings, or that he was taping the meeting. One of the speakers at these meetings was a Greens member of parliament who was a longstanding friend of the person for whom funds were to be raised. The secret tape was used to commence proceedings for defamation against the MP for his statements during the meeting.

The defences of justification and comment failed. The trial judge rejected submissions that it was proof of wrongdoing and “a manipulation of the legal system” to send private investigators to secretly tape-record meetings for the purpose of commencing defamation proceedings²⁴. The trial judge went on to say:

“Nor, in my opinion, was the use of a private investigator secretly to record what occurred at the meeting indicative of some form of wrongful conduct or manipulation of the system. The position may have been otherwise if the plaintiff, or his identified representative, had turned up at the meeting seeking to interrupt it, or to threaten or intimidate those proposing to attend it. Although there may conceivably be cases where the means, by which a plaintiff comes to be possessed of the detail of what a defendant has published, assume importance, the present is not such a case. I consider it to be a neutral factor.”²⁵

The appeal court noted that both matters complained of were secretly recorded²⁶. They not only upheld the trial judge's findings on the other defences, but overturned the trial judge's findings on qualified privilege, and awarded damages and costs to the plaintiff. The High Court, in refusing leave to appeal,²⁷ did not refer to this issue.

If litigants secretly record their opponents' communications, complaints as to the lawfulness²⁸, admissibility²⁹, confidentiality³⁰ or other reasons for concern³¹ could be made. However, this puts the burden on the victim and, if the Australian courts' view is that secret recording is “a neutral factor”, may be a waste of time.

²⁴ *Bennette v Cohen* (2007) Aust Torts Reports 81-897 [2009] NSWCA 60, at [199] – [206].

²⁵ *Ibid*, at [210].

²⁶ [2009] NSWCA 60 at [119], [121].

²⁷ 3 November 2009 s85/2009.

²⁸ *DPP v Fordham* [2010] NSWSC 958.

²⁹ S 138 *Evidence Act* 1995 (NSW).

³⁰ *Doran v Investment Finance Pty Ltd* [2010] FCA 257; *Esso Australia Resources Pty Ltd v BHP Billiton Petroleum (Bass Strait) Pty Ltd* [2007] VSCA 224.

³¹ Secret recordings of MPs telephone conversations are not permitted in the United Kingdom, under the Wilson Doctrine. See the inquiry into the recording of solicitor Sadiq Khan MP's face-to-face conversation with his client, who was also a constituent: “Report on Two Visits by Sadiq Khan MP to Babar Ahmad at HM Prison Woodhill”, 20 February 2008, Rt. Hon. Sir Christopher Rose.

A 1992 ICAC inquiry³² found a massive sale of illicit information by private investigators, much of it related to legal proceedings. The profession of private investigator is unregulated in both Australia and the United Kingdom. Why regulate the press alone, and not private investigators?

The Leveson Inquiry is expected to hand down its findings, including findings about an appropriate regulation model for journalists, in a matter of weeks. Important though the right to privacy from intrusion for celebrities or families of crime victims may be, the same rights should be afforded to those caught up in court disputes, such as the Colburn family or Kim James³³, or by employers of litigants in workplace proceedings like Ms Halford ([1997] ECHR 32), or indeed any litigant expecting fair play before, during or after litigation is conducted. Legislation capable of dealing with technological innovation, stricter regulation of the use of illegally-obtained information and private investigators and a more proactive stance by the courts on this issue may be just as important as press regulation or reform.

³² <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/120> .

³³ <http://www.guardian.co.uk/uk/2000/nov/14/keithperry1> .