

WHO KILLED CHANNEL 9?

The death of Kerry Packer's
mighty TV dream machine

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CHAPTER 14

Sunday blues, part II

John Lyons's Walkley award-winning interview contains one of the worst examples of unfair reporting that I have seen in my 25 years in television. Appreciating the serious implications of that assessment, I am happy to offer Lyons his choice. If he intended to convey the wrongful impression that his report gave, then he is guilty at the very least of an egregious beat-up – making a sensational claim without the evidence to support it. If the error was unintentional, it demonstrates how utterly inexperienced he was in dealing with the highly sensitive tools of trade available to the television journalist.

His interview went to air on the edition of *Sunday* appearing on 11 March, 2001. It was part of a scathing analysis of the troubles besetting the NRMA at the time, in particular, political infighting that pitted the chairman of the board, Nicholas Whitlam, against a high-profile board member, Anne Keating. Their family

connections – the son of a former prime minister, the sister of a former prime minister – made their well-publicised feud all the more intriguing. In the course of his story Lyons suggested that Whitlam treated the famous old motoring organisation and its insurance offshoot much like his personal fiefdom, rewarding those who supported him with jobs or other perks, punishing those who didn't by withdrawing patronage. Suspecting that Ms Keating had leaked unfavourable information about him to the press, Whitlam organised a special inquiry to look into the matter. It was in pursuit of this part of his report that Lyons came up with what must have seemed to the audience to be a truly startling revelation. This is what he told viewers in an introductory section of commentary.

Lyons [commentary]: Tensions became war last year, after a series of newspaper articles which embarrassed Nicholas Whitlam by revealing his failed attempt to become Chief Executive. Whitlam was furious, and convinced the board that an internal investigation should be established. The board appointed Sydney QC Robert McDougall. Critics argued that McDougall was not independent, that he regularly earned other money from the NRMA, a fact that as late as this week, Mr Whitlam categorically denied.

Whitlam: I know that was asserted by some people, but that is absolutely unfair and untrue and has no basis on any legal or proprietary basis that I am aware of. In fact, it is something that was asserted by someone that is simply – that is not fair.

Then followed another bit of Lyons commentary, making the bold assertion that Whitlam had been caught out in telling an untruth.

Lyons [commentary]: But *Sunday* can reveal this morning that Mr Whitlam's statement is in fact false. A letter written by Robert McDougall himself admits only four weeks ago that [voice-over reading from letter]: 'I provided legal services to companies within the NRMA Group over the last 18 months.'

Lyons went on to cite more evidence of work McDougall had performed for the motoring organisation, as if to prove beyond doubt that Whitlam's answer to his question was a brazen attempt to evade the truth.

Whitlam would later claim to have been defamed by that section of the *Sunday* cover story as well as other parts. It's not my place to comment on the issue of defamation other than to note that it is very rare to hear any current affairs program publicly brand a prominent citizen as having told a falsehood – an allegation hardly meant to enhance his reputation. Normally, the reporter would limit himself to demonstrating point by point how the interviewee's response doesn't match the facts and let viewers make up their own minds. Lyons, as we'll see, gave the *Sunday* audience a most unwarranted interpretation of Whitlam's response. That will be easy enough to establish, but it's important, first, to understand the issues involved in ensuring ethical treatment of a TV interview.

In compiling a segment for a current affairs program of the standard of *Sunday* or *60 Minutes*, a reporter may conduct an interview lasting an hour or more to come up with five to ten minutes of material judged interesting and relevant enough to be put to air. That is a sizeable proportion to be consigned to the out-takes, especially if the interview involves allegations of wrongdoing in which an interviewee will naturally want to defend his position as thoroughly as possible. In order to justify such severe paring down of words, a television program accepts that it is bound by a duty of care to make sure the editing

process leaves in the most important points that the interviewee seeks to make. The key word in this process, the *sine qua non* of ethical television journalism, is to always keep within the *context* of what someone is really trying to say. Here's just one hypothetical example of how a TV reporter is able to fiddle with a recorded question-and-answer exchange to give an impression that is clearly out of context. Let us assume this is the exchange as conducted in the uncut original.

Interviewer: You have shares in that company, don't you?

Interviewee: Well, a few, but they were bought years ago and I totally forgot about them.

Interviewer: Isn't there a conflict of interest?

Interviewee: No, none at all.

In the process of editing that videotaped sequence, it is possible, under the pretext of saving precious air time, to combine the first question with the second, in effect deleting the explanation beginning, 'Well, a few'. Viewers will then see an abbreviated exchange that casts the interviewee in the most unfavourable light, making him seem arrogant and uncaring about public opinion.

Interviewer: You have shares in that company, don't you? Isn't there a conflict of interest?

Interviewee: No, none at all.

Even worse, it is possible to reverse the order of the interviewer's first and second questions to give the impression the interviewee is telling an outright lie.

Interviewee: Isn't there a conflict of interest? You have shares in that company, don't you?

Interviewer: No, none at all.

That was roughly the technique used by John Lyons, framing a question that was in two distinct parts and then going on to give the impression that his interviewee's response was to one part of the question when it was really to the other part. In order to understand the context in which Whitlam was speaking, it's necessary to look at the line of questioning Lyons was pursuing in the raw, uncut interview just before his interviewee's allegedly spurious response. Up to that point, the reporter had been focusing on criticisms levelled at the QC chosen by the NRMA board to conduct its inquiry – in particular, a claim that his findings may not have been as impartial as publicly portrayed.

Lyons: Just on that McDougall Report, it very heavily talks about circumstantial evidence. 'There is evidence, although circumstantial, to enable me to identify Ms Keating as the source of one story.' He bases his findings on three things: one, she refused to speak to him; two, because a motive can be attributed to her; and three, there's no plausible alternative source. In the year 2001, is that enough to convict someone publicly as an untrustworthy board member in your view?

Whitlam: Well, John, you know I can't be drawn on the contents of the McDougall Report.

Lyons: But you can at least talk about the general justice or lack of justice . . .

Whitlam: No, that's not my domain.

Lyons: Do you give due regard to the circumstantial evidence?

Whitlam: Look, I am not a lawyer. Mr McDougall is a

Queen's Counsel, a most distinguished Queen's Counsel, and I am sure that Mr McDougall knows what weight can be attributed to circumstantial evidence. As best I understand it people have been found guilty of murder on circumstantial evidence so – that is not my domain, that is not my area of expertise.

Lyons: But given he does other work for the NRMA, was he independent enough to do the enquiry? He gets other income from the NRMA. Shouldn't he, in terms of conflict of interest, not be the person . . .

Whitlam: I know that was asserted by some people, but that is absolutely unfair and untrue and has no basis on any legal or proprietary basis that I am aware of. In fact, it is something that was asserted by someone that is simply – that is not fair. But in any event Mr McDougall – I have no doubt that Mr McDougall is totally independent and he can speak for himself.

It's difficult to imagine how any reasonable-minded person, hearing that exchange within its proper, unedited context, could come to the conclusion that Whitlam was attempting to deny that McDougall ever did any work for the NRMA. The question that was actually put to him – a question that was left out of the program as it went to air – specifically dealt with the issue of whether McDougall could truly be described as independent and followed several other questions challenging the fairness of his findings. It was to the issue of the senior counsel's impartiality that Whitlam was clearly directing his response. That interpretation is reinforced by Whitlam's concluding words, also left out of the program: *I have no doubt that Mr McDougall is totally independent and he can speak for himself.*

No wonder those final words were left out of the report as it was televised. They would have hardly suited Lyons's astounding conclusion: *But Sunday can reveal that Mr Whitlam's statement is in fact false* – an assertion followed by various examples of the legal work McDougall did in fact perform for the NRMA. Lyons's manipulative techniques become all the more apparent when we compare the actual question he posed in the uncut interview with his scripted commentary. Here, again, is the two-pronged question the audience never got to hear, but to which Whitlam gave his forceful denial. The key phrases are italicised to highlight the thrust of what was actually asked.

Lyons [in uncut interview]: But given he does other work for the NRMA, *was he independent enough to do the enquiry?* He gets other income from the NRMA. *Shouldn't he, in terms of conflict of interest, not be the person . . .*

And here is the scripted commentary as it led into Whitlam's response, giving viewers the wrongful impression that his denial was to another issue altogether. Again, the italics indicate the thrust of the question as Lyons claimed to have presented it.

Lyons [commentary]: Critics argued that McDougall was not independent, *that he regularly earned other money from the NRMA, a fact that as late as this week, Mr Whitlam categorically denied.*

In his reporter's commentary, then, Lyons reverses the order of emphasis to make McDougall's independence appear to be a peripheral matter and his NRMA income the main thrust of his interrogation. The end result, with a little tweaking, fits neatly into the corrupt pattern of the hypothetical exchange I cited earlier in the chapter.

Interviewer: Isn't there a conflict of interest? He did work for the NRMA, didn't he?

Interviewee: No, not at all.

Meanwhile, let's examine Lyons's sensational claim from an entirely different angle – the questions he never asked but certainly should have if he really wanted to establish that Whitlam was attempting to hide Robert McDougall's employment record with the NRMA group. Surely, a responsible investigative journalist would have gone on to confront Whitlam with example after example of McDougall's close links to the organisation to demonstrate how evasive he was being. I have examined the entire hour-long transcript of the raw, uncut interview. It contains only one brief exchange – not used in the program – where Whitlam is asked about a particular case in which McDougall is said to have worked for the NRMA. In that one instance he disputes whether the case actually involved NRMA Insurance, the company for which he carried out his inquiry, but openly agrees he could have worked for the motoring division of NRMA. 'He may have, I don't know,' is another Whitlam response that was edited out of Lyons's report. In no other specific instance could it be argued that Nicholas Whitlam attempted to deny McDougall ever having worked for the NRMA at all. Yet he is still accused on national television of trying to dupe the Australian public.

So in that shabby example of TV journalism we have the makings of the 2001 Walkley award for Broadcast Interviewing. More important for the purposes of this book, we have an apparently rational explanation for why a former print reporter with less than three years' experience in television should be chosen by John Alexander to become executive producer of commercial television's most widely respected current affairs program. If he was good enough to win a Walkley for his TV work, after all, surely that established his credentials for the top job? It could be

argued that Alexander had no reason to suspect any possible flaw in Lyons's award-winning piece – but there was one significant development after the *Sunday* exposé went to air that should have set alarm bells ringing for the PBL Media chief, arousing at least some degree of concern.

Two days after his NRMA report, Lyons was invited onto the Graham Richardson show at radio station 2GB in Sydney to discuss the remarkable revelations he had brought to light. In the course of that radio interview Lyons repeated the allegations we have just examined.

'Nicholas Whitlam encouraged the board and the board agreed with him to set up this inquiry done by this Sydney QC,' Lyons explained to Richardson's listeners.

Now I asked Nicholas Whitlam on camera, surely he wasn't the right person to do the inquiry, because he gets other income from the NRMA; and he flatly looked into the camera and looked at me and said, he doesn't . . . hasn't done other work for the NRMA, that is untrue. We then dug out two letters, two documents – one from their own legal counsel saying that I recommended him for this inquiry because he's done other work for us; and the QC, we got a letter from him, a private letter saying: I've basically been doing work for them for 18 months and I've been on a retainer. So what Nicholas Whitlam told us on camera was absolutely untrue.

Whitlam proceeded to sue 2GB over that broadcast. A Supreme Court jury subsequently found that he had in fact been defamed on three counts, the first one being the allegation that 'he lied on television when he said that a Sydney Queen's Counsel . . . had not done other work for the NRMA'. The radio station quickly moved to settle the case with an apology, with the result that

Lyons's credibility as a reporter was never tested under cross-examination, as it surely would have been if court proceedings had continued.

Nevertheless, the jury's decision in the 2GB case had obvious and worrying implications for Channel 9. If Nicholas Whitlam went on to sue the network, it was almost certain to find itself in the position of having to prove the truth of Lyons's assertion that the NRMA Chairman told a lie on air. Even a cursory attempt to match his script with the transcript of the full interview would have shown that to be a shaky defence at best. Despite the warning signs, however, there is no indication Alexander or his Park Street advisers followed through by asking a few pertinent questions. The settlement between 2GB and Whitlam was announced on 3 May, 2002. Alexander arranged to have Lyons replace Stephen Rice as *Sunday's* executive producer in October, 2003.

By any journalistic standard, Lyons's treatment of Nicholas Whitlam could only be described as a 'hatchet job' – playing fast and loose with the facts to paint him in the worst possible light. That raises an intriguing question when one examines the section of the Llewellyn affidavit referring to Alexander's attempt to launch an attack against Kerry Stokes. 'There are plenty of journalists at Channel 9 who could do this,' the PBL boss is quoted as saying, 'John Lyons among them.'

Do what, exactly?

I have to confess that I myself have been guilty of authorising a story to be edited out of context. Though it's not directly relevant to the Whitlam episode it does illustrate the power of manipulation inherent in the editing process and how carefully that power must be wielded. While I was executive producer of *60 Minutes*, we sent Ray Martin to China to cover a much-talked-about tour

there by the pop star and inveterate eccentric Elton John. Ray sent back a script and recorded narration that wasn't quite correct, suggesting that John had publicly admitted to being homosexual when, in fact, he had at that point only ever admitted to being bisexual. Ray was en route to another story and couldn't be contacted to change the line. It looked as if we might have to delay showing a well-promoted story or drop an important sequence in his report. Fortunately, I remembered that in Ray's audio tape there was reference to a scene we had decided not to use in which Elton goes off to 'buy' a Chinese lion sculpture. Our editor managed to take that 'buy' and intercut it with the word homosexual to produce 'bisexual', making the story 100 per cent correct. It was totally out of context but at least, in this case, used for a good cause. And that sums up the magic of television – much too potent a force to be put in the hands of those prepared to misuse it.