



Investigative Reporting 101

By

Mark McGee

'Going Undercover' to Get the Story

One way for an investigative journalist to 'uncover' what someone in power wants to keep hidden from the public is to go 'undercover.' What does it mean for an investigative journalist to go 'undercover?'

It could mean that a 'known' journalist meets with or communicates with a 'powerful' person without that person knowing that the journalist is recording the conversation. It could also mean that an 'unknown' journalist meets or communicates with a 'powerful' person who doesn't know that person is a journalist who is recording the conversation.

I've been involved in both types of 'undercover journalism,' so I will share some thoughts from my own experience along with insights from others.

‘Known’ Undercover Journalism

A journalist who is ‘known’ in a community should be aware of the laws in his or her state that would impact their doing ‘undercover’ journalism. Most states allow for a journalist to talk with someone and take notes from the meeting. If the reporter is with the person, they’ll be able to see that they are taking notes. However, if the reporter is on the phone with the ‘powerful’ person, that person will not know the reporter is taking notes. Does your state have any laws that would not allow you to use those notes as part of your story?

An ‘undercover’ process might include what I call a journalistic ‘debrief’ where the reporter meets with the ‘powerful’ person without taking any notes. The reporter would ‘debrief’ themselves after the meeting by writing down as much as they could remember from the meeting. Reporting that way can have its challenges and possible lawsuits if no one else witnessed the conversation other than the reporter and the person. Again, check laws in your state to see what legal liability you might have in that situation. Even if your state has no laws against doing that, keep in

mind that a ‘powerful’ person might claim they talked with you ‘off-the-record.’ How would you prove you had not agreed to go off-the-record? It would be your word against theirs.

That’s why some ‘known’ journalists use hidden recording devices for private meetings with ‘powerful’ people. They may ‘wear a wire’ where the recording device is in another location. They may record the conversation with their smartphone or carry a small audio or video recording device into the private meeting. Is that legal? Can you use those recordings in a broadcast story? Can you use quotes from those recordings in a print or online story?

Depends on the state where you report. Some states have a ‘one-party consent’ law (e.g. Arizona, Georgia, Ohio), while other states have an ‘all-party consent’ law (e.g. Delaware, Florida, Washington). Some states have a ‘mixed consent’ law depending on whether the conversation is in person or on the phone (e.g. Connecticut, Nevada, Oregon). Check your state’s laws and know your rights as an ‘undercover’ investigative journalist.

‘Unknown’ Undercover Journalism

Many journalists are not ‘known’ in their community. By that I mean they may not be recognized by face or name. Those people may be photojournalists, producer journalists, or editor journalists. They may even be journalists from another community or state. Many media companies own multiple newspapers, TV stations, etc. It’s not uncommon for them to send a journalist from one community into another to do undercover work.

These journalists may use their real names, though they would not identify themselves as working for a journalistic organization. They may use a fictitious name so that the ‘target’ of their investigation can’t identify them through an Internet search. As manager of an I-Team (Investigative Team) in a one-party consent state, I would send ‘behind-the-scene’ members of our team into situations where they would gather information through personal observation and conversations — and the use of recording devices.

I will tell you that having a good legal advisor available is important when doing ‘undercover’ journalism (known and unknown). I often ran investigative scripts, audio, and video by legal advisors before going to air with a story that involved ‘undercover’ journalistic techniques. Skilled libel and first amendment attorneys can be invaluable to investigative journalists.

Undercover Journalistic Ethics

Some people might wonder whether ‘undercover journalism’ is ethical. I think that’s a question worth discussing. As a former member of many journalist organizations through the years I can tell you that it was a question often discussed among news managers and investigative journalists. If you work in a one-party consent state, you are most likely protected from ‘successful’ legal liability (though not always). However, that still doesn’t answer the question of whether doing undercover journalism is ethical.

My own view is that ‘undercover’ journalism should be a technique of ‘last resort.’ I do believe it is an ethical part of real journalism when there is no other way to uncover what powerful people are ‘hiding’ from the public and when that information is ‘vital’ to the public interest and/or public safety.

I prefer ‘direct’ confrontation with powerful people in government and business. I want them to see my face and my camera or any other recording device I may use. By ‘confrontation’ I don’t mean getting into a physical altercation

with someone — though I have been attacked on several occasions because I appeared in person with a recording device or notebook in hand to take notes. I prefer that people see me coming with camera rolling. Some people call that an ‘ambush’ interview. I view it as using the tools of my trade — just like a carpenter would walk up to the job site with a tool belt around his or her waist. A tape recorder or video camera were among my ‘tools’ as an investigative journalist, along with my ever-present notebook and pen. If someone didn’t want to talk with me or answer legitimate questions about things the public had a right to know, they could walk away — as many did. That’s what viewers would hear (radio), read about (newspaper or online), or see (television) in my story.

Of course, it’s important that you remember the laws in your state concerning ‘personal privacy.’ Is the person is an ‘elected official,’ a ‘public person,’ or a ‘private person’ in the eyes of the law? Those are discussions you should have with your news manager — and possibly a legal advisor — before starting what could become a contentious confrontation. Some people may sue you for ‘defamation of character,’ or ‘libel’ because of your story, so be prepared. Being sued is

one issue, but ‘losing’ a lawsuit is much worse than being sued.

If you’re going undercover for a story, do it ‘by the book,’ and expect to be sued. If you have the mindset that you will or may be sued, it will often help you do everything correctly — or at least the best you can.

One Example of Undercover Journalism

James O’Keefe is an investigative journalist who has caused quite a stir within the journalistic community. He started Project Veritas in 2010 ‘in the wake of Hannah Giles’ successful ACORN Investigation.’ One of the primary techniques O’Keefe and his investigative team used was ‘unknown’ undercover journalism. They used hidden cameras to record conversations with ‘powerful’ people or people with access to ‘power.’ The investigators often did not reveal their true identity or purpose for recording. Many journalists believe O’Keefe’s tactics are ‘deceptive.’ They also accused him of being biased against mainstream and progressive media outlets.

O’Keefe has since left Project Veritas and started the O’Keefe Media Group for the purpose of creating a ‘citizen army of journalists.’ Many journalists (especially independent journalists) believe that ‘undercover’ investigative journalism may be the only way to get ‘truth’ to the public because the mainstream and progressive media are not allowing the truth to be told.



1960s Radio News, © Mark McGee