

9

Umpire, Where's the Line? Reporting the Private Lives of Footballers

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Terry Wallace was a tough footballer. During his time playing for the Hawthorn Football Club he was called 'the Plough' for his ability to burrow into packs of players and emerge with the ball. Later, as a coach, he presented a terrifying spectacle when excoriating his players after a losing game. Today, like many former high-profile players and coaches, he works mainly as a football commentator. This gives him an understanding of both the football and the media industries, a foot in both camps.

But Wallace finds it as difficult as anyone to know where to draw the line when it comes to a footballer's right to privacy and the media's reporting of the off-field activities of players. It is a tricky question. For example, does the public need to know that a footballer was involved in a minor car accident? What about a fight at a night club? A drug-fuelled argument? Or that a player has a mental illness?

Some academics argue the answer is yes: that by taking the \$400,000 salary, footballers enter a Faustian pact in which they become sports celebrities, and with that celebrity status comes media scrutiny.

While the AFL and the AFL PA (players' association), and clubs and coaches and administrators like to claim

that a player has a right to a private life they misunderstand the nature of media celebrity in the 21st century. Celebrity status means all behaviours and relationships are potentially public, or at least newsworthy.¹

Monash University sports academic Tom Heenan also argues that by delving into private matters, the media can help change things for the better. Connections between footballers, drug-taking, bikie gangs, and organised crime should be exposed in the public interest, he maintains, even if it involves things done off-field and in private. Exposing the drug taking of a footballer may well reveal a rotten club culture. The exposure of sex scandals involving footballers, Heenan says, changed for the better the AFL's view on women. For example, football clubs no longer paid off women who had been sexually assaulted by players in order to buy their silence.

Others, such as the AFL Players Association, are concerned that the media increasingly invade the private, personal space of footballers: '... in recent years, we have witnessed examples of media scrutiny that could never be considered to be part of the bargain,' says a former chief executive of the association².

Even sports columnists at mainstream newspapers have expressed disgust at particular intrusions on privacy, saying that while the media's role is to push, prod, expose, demand transparency and make highly paid sports stars accountable for their actions, 'it is not an unfettered right'.³

Terry Wallace played as an onballer — a creative play maker who ran and chased the football far and wide. He still holds the record for the most kicks in a season — 599 in 1983. He was part of the Hawthorn team that won premierships in 1978, 1983 and 1986. Wallace played a total of 254 AFL games, mainly for Hawthorn and also for Richmond and Footscray, which is now the Western Bulldogs. He coached the Western Bulldogs and, less successfully Richmond, for a total of 247 games.

More recently, as a sports commentator with a regular radio program, Wallace acknowledges the media is a major part of the multi-billion-dollar football industry and that footballers have high public profiles. However, he quickly adds that

somewhere along the line, there have to be boundaries about what is private and what is not private. When a father doesn't believe that he can attend his own 10-year-old's birthday party because it's in a public area and he is being filmed, photographed and analysed, I think there is a tipping point of what is reasonable and what becomes private and unreasonable.

Journalists' actions shocked Wallace on three occasions when he was coach of Richmond between 2005 and 2009. One night in June, 2008, Richmond defender Graham Polak was hit by a tram, bruising his brain so badly that doctors put him in an induced coma. There were concerns about long-term brain damage. After months of treatment and rehabilitation, he was allowed home but complained of short-term memory loss and balance issues. Wallace recalls that at the time someone from the media appeared at Polak's house, claiming to have the club's permission to interview him. Polak was 'an absolute mess. He wasn't in a position health wise to be able to make the correct decisions at that point. This was something to me that stepped across the line of what was fair and reasonable,' Wallace says.

A more complex and thorny case involved that of former West Coast and Richmond superstar Ben Cousins. No one doubts that Cousins was a fantastic footballer: he won a Brownlow Medal, a Premiership medallion, the Most Valuable Player award, was selected six times for an all-Australian team and captained West Coast for five seasons.

On the flip side, his activities made him the star attraction in a media circus. His association with underworld figures, public intoxication, failure to train, club suspension, recreational drug use, failed rehabilitation, arrests, refusing breath tests, sacking by

West Coast, drug-induced hospitalisation, failed rehabilitation again, drug and alcohol bingeing, and year-long banning by the AFL Commission for bringing the game into disrepute made for sensational headlines. Television news later showed him driving during a snail-paced police car chase, eluding police by climbing on the roof of a two-storey house, running from police.

Following his ban from football, the Richmond Football Club in 2009 decided to give Cousins a chance — his last — to play at the elite level. Wallace recalls that the board potentially saw the opportunity as life saving for Cousins:

Could we live with ourselves if in two or three months' time ... if we don't give him that opportunity to try to straighten himself out and the news comes through that he ends up passing away ...

Cousins played for two seasons hampered by injury, then retired.

One Sunday, Cousins was taken to hospital by ambulance after his girlfriend could not wake him. Wallace recalls that by the time the ambulance reached Epworth Hospital, the media was already there waiting. 'Fair or foul?' he asks about the media's behaviour.

Monash University's Tom Heenan is critical of the way Cousins was treated by the media, the justice system and the AFL:

Where do you say that somebody who has an addictive illness is a criminal? Where do you say that someone who has an addictive illness brings the game into disrepute? This man is sick and it is not acknowledged. The media really does have a duty of care in this to actually say at times that Cousins is ill.

Heenan has a point. But is it the media's role to protect people from themselves? Imagine if the media were to apply that test to politicians or others who may or may not have mental or drug issues. Where again would that line be drawn? Who would decide?

Wallace's time as Richmond coach did not go well for him or the Tigers. The team won 37 games, lost 60 and drew two. Amid

mounting pressure, media speculation and internal ructions, he quit as coach in mid 2009. Not surprisingly, the media were all over the story in the days leading up to his resignation. There they were at 4 am outside his house, sleeping in cars and wanting the first grab of audio or vision for the day.

On one day during this period, Wallace and his wife went for a coffee, leaving his two children, then at primary school and early high school, at home. The media waited until they had gone, then knocked on the front door and started questioning his children: 'Is your father going to have a job in a couple of weeks? How do you feel about what is being said at school about him?' Once again, it seemed to Wallace that the media had crossed a line.

Clearly, the notion that there is a separation between a player's or a coach's public and private lives has blurred in the current 24/7 frenzied media environment. About 850 print, radio, television and digital reporters are accredited by the AFL to cover football. A further 1100 people work as broadcast crew, photographers, player statistics collectors and so on. That's about 2000 media covering between 720 and 792 registered players, depending on the year. As well, with almost everyone now having a camera on their mobile phones, there are very few places sports stars can go without being photographed and uploaded on social media such as Twitter, Instagram or Facebook. What rules or laws are there to protect players? And what guidelines exist to help journalists make ethical decisions?

Natalie Hickey is a barrister in Victoria who specialises in intellectual property and has represented clients in disputes about misleading or deceptive conduct, trade secrets and defamation. She is particularly interested in legal issues in sport such as contractual disagreements, sponsorship disputes, and the use of sporting footage and images. Her first point on this question of footballer privacy is that Australia does not have a specific law granting anyone a right to privacy. Her second point is that even the highest judges in the land do not have a clear definition of what

is private. 'Murray Gleeson, former Chief Justice of the High Court, says he used to think that a telephone call between two people was private. But now walking down the street with everyone on a mobile phone or on the tram when you can hear who people are talking to, that's changed,' she says.

One course of action might be for footballers to pursue defamation proceedings. Hickey reminds us of former NRL star Andrew Ettingshausen, who received \$350,000 from a magazine that he sued in the mid 1990s after it published a grainy photo of him and others in the showers.⁴ The judge found that the shape between his legs was 'capable of being interpreted as a penis'. The payout, which astounded many, was later reduced to \$100,000. Hickey questions whether in the current era of sexting and uploading of all manner of photos to the internet whether someone's reputation would be deemed to have suffered to the degree that Ettingshausen's apparently did.

Another legal option could be to sue for breach of confidence, which Hickey calls Australia's de facto privacy law. It means simply that if someone uses your confidential information without permission, it may amount to a breach of confidence. Of course, the law being the law, it's more complicated than that. There are questions about what is confidential, the circumstances, and the degree of the breach.

Says Hickey: 'If it's in a bedroom and someone has taken a photograph clearly through nefarious means, then I think you would have a really good case.' A good case also might involve players such as Dustin Fletcher or Matthew Scarlett who keep a low profile off the field but are upset by an unprovoked intrusion on their private lives.

The best advice she has for managing a reputation is to ensure that people's private lives are consistent with the image they wish to project.⁵

Ethics in journalism often can seem elusive; in fact, the phrase ‘journalistic ethics’ might be considered an oxymoron by some. Competition among sports journalists is fierce, and there is untold pressure to break fresh news and be first with the story. Journalists are ambitious and hungry for scoops. Matt Pinkney, the AFL’s Head of Content, says football stories matter because they sell newspapers and attract clicks on websites.

Football is probably the single most important topic for the *Herald Sun* in Melbourne — that’s pressure there, and for a journalist to be successful, they have to find stories that other journalists don’t have. It’s all very easy to do the hamstrings and the ankles but if you want to become a well-regarded football journalist there’s a pressure to go down this path to get stories which are different.

Terry Wallace recalls the pressure a senior TV reporter was under when chasing him for an exclusive interview. He had suffered serious facial injuries in a game and the reporter threatened to have a TV contract that Wallace had with a related station torn up unless he gave him the interview. Wallace, who needed reconstructive surgery, was against doing the interview because he did not want children or mothers to be put off the game due to his appearance.

In recent years, journalists have broadcast the details of players’ personal medical records that had been stolen from a clinic; published photos of players apparently snorting cocaine; hotly pursued scandal after a teenage girl published photos of naked footballers on her social networking site; delved into players’ marital problems and affairs; reported on booze benders; showed a player urinating in public outside a nightclub; reported on sexual harassment and the groping of women and ... on it goes.

Many of these stories fall into the category of being of public interest, but it’s difficult to see how they are *in* the public interest — and there’s a world of difference between the two. So what is

there to guide journalists? The Media Alliance has a code of ethics. It simply says reporters should respect personal privacy.⁶ For radio and television broadcasters, the guidelines suggested by the Australian Communications and Media Authority are more clear. The authority says the core notion in the various codes of practice for its members is that broadcasters should not use material about a person's private affairs without that person's consent unless there is an identifiable public interest reason for doing so.⁷ It advises that broadcasting private material about a public figure may be considered reasonable if the person has actively drawn attention to the material or if the private material 'raises questions about the person's fitness for office or capacity to carry out his or her public duties or activities, and is accordingly warranted in the public interest'.

In a similar vein, the Australian Press Council says that public figures sacrifice their right to privacy where public scrutiny is in the public interest. 'However, public figures do not forfeit their right to privacy altogether. Intrusion into their right to privacy must be related to their public duties or activities.'⁸

It is important to note that codes and guidelines developed by the industry are advisory and do not have the force of law. Also, not all journalists belong to the Media Alliance and therefore are not covered by its code.

In 2011, the Australian Athletes' Alliance, whose members include the AFL Players Association, argued in a submission to a Federal Government issues inquiry that Australia should have a law against serious invasions of privacy:

We believe, however, that professional athletes and other individuals with a public profile should still be entitled to lead their private lives with dignity, free from unreasonable interference into their personal space and from the substantial distress which may be caused by the dissemination of private information or other material.⁹

There is tension in finding a balance between a journalist's obligation to report the truth as fully as possible and to respect an individual's privacy. And 'public interest' may be interpreted differently by editors and reporters depending on the circumstances, the numbers of people affected, and so on. Figuring out the right thing to do is not an exact science. Who can predict the outcome of publishing seemingly private information or photos?

Matt Pinkney, the AFL's Head of Content, recalls a poignant yet controversial photo of Geelong's Mitch Clark being comforted by his coach after a game that Geelong had won. Clark had been open about his fight with depression for a number of years. The photo showed Clark with his hands on his head, obviously distressed and walking away with coach Chris Scott putting an arm around him. Pinkney says the photo attracted commentary about being intrusive on Clark's privacy, especially as he was suffering a mental condition. Yet the photographer won an award for the photo and the tide of opinion slowly turned, particularly as Clark later spoke publicly of the incident. Pinkney says:

... people began to say this is an example of how even the strongest and mightiest can be subject to these things. The photo is now held up as an example of a great public service, where — had the debate turned just a little bit — we would have been accused of a gross breach of his privacy. There are a few examples like that. The summary is we have to make individual judgements about context and potential damage. It also depends on the sort of response we get from the subject as well.

Speaking of which, after the 2015 Grand Final, Pinkney recalls, that a television station showed the losing West Coast Eagles coach Adam Simpson in the rooms after the loss to Hawthorn, alone with his head in his hands, a beer sitting at his feet. The League and clubs had agreed for the station's remote camera to be in the rooms at that time. 'West Coast and I think the AFL and Simpson himself were all deeply concerned and said it was a private

moment that was not to be broadcast. We had instructions that the footage was not to be shown anywhere. The absence of consent in borderline cases such as these can make editorial decisions very difficult,' Pinkney says.

There is another unspoken influence at play in the decisions journalists make about whether to reveal information that might be considered private and upsetting to the person involved. It is that once published, the bridge to further information from that person's football club or fellow players will forever be burned. No more scoops, exclusive interviews, press conference invitations or background briefings — often the bread and butter for journalistic content. The impact of this type of exclusion cannot be over-estimated. Sporting journalists who are not welcome at club press conferences better be good at finding their own stories. Once they are lone wolves outside of the pack, it becomes very difficult for them to undertake regular reporting.

This phenomenon might have been in play in 2015 when the Swans revealed that its superstar forward Buddy Franklin had an 'ongoing mental health condition'. However, neither the Swans, Franklin nor the media identified the specific condition. Swans coach John Longmire said the details were a private matter for Franklin and it appeared that the media, on this occasion, agreed. The contrast with the over-the-top coverage of Ben Cousins, whose drug use could also be viewed as a mental health issue, could not have been greater. The news about Franklin was accompanied by stories wishing him well and praising him for being willing to make public the fact of his mental condition. The media fell in line: there were no scoops about the condition and even social media was unusually respectful.

Matt Pinkney says those in the industry knew what the condition was but were under heavy pressure not to disclose it.

So we've got a partial consent to what may be seen as an invasion of privacy and then the person involved has drawn the line at a particular detail that you can go no

further on. What happens is you've got this promise of mutual destruction that if we go ahead and publish all hell will break loose.

The Swans could threaten to withhold interviews from those who published the details of Franklin's condition. There is a sort of mutually assured destruction promised over these things. Powerful institutions and individuals such as Buddy Franklin can make life difficult for those who report the 'wrong' things about them.

Research based on interviews with ten AFL players found that they generally accepted that they were role models but that they viewed the media with 'hostility or disdain'.¹⁰ Footballers felt the media was out to get them and portrayed players as idiots with too much free time and money. 'This continual scrutiny and exposing of player indiscretions by the media may contribute to the increased pressure and scrutiny placed on AFL players by their employers.' The players believed their privacy often was not as protected or upheld as much as the average person. Nine of the ten said the AFL was more concerned with protecting the game's image than a player's personal privacy. The players also felt that clubs were prepared to collect personal information from players and regulate and manage their behaviour to avoid incidents that might damage the club or the league. 'They found clubs considerably concerned with their own wellbeing and prepared to sacrifice players' privacy in their own interests,' researcher Andrew Podbury wrote.¹¹

It may be understandable that players feel hard done by when it comes to the media. But they are more than young men — and increasingly young women — who can kick, mark and run. AFL players are extraordinarily well-paid national celebrities and role models. They are superstars in a billion dollar industry involving broadcast rights and sponsorships in Australia's most popular sport. They are also subject to codes and contracts that govern their behaviour. These include their playing contracts, the AFL

Players Code of Conduct, AFL Player Rules, collective bargaining agreements, an individual conduct and responsibility policy, and a National Alcohol Code of Conduct. Several of these cover the behaviour of players in their private, off-field lives and carry serious sanctions for breaches, as Ben Cousins found when he was suspended for bringing the game into disrepute. Podbury noted that many of the clauses represented an overreach by the AFL in regulating the private lives of players. He found:

The notion of 'bringing the AFL or a club into disrepute' is vague and largely in the eye of the beholder, thus providing the AFL and its clubs with a tool that can be used to regulate and punish AFL players for their behaviour at any time whilst they are an AFL listed player.¹²

Well, such is the life of an AFL footballer.

Though there are too many examples of the media behaving appallingly in dealing with the off-field antics of footballers, this chapter comes down firmly on the right of media to report on privacy issues if they are deemed to be in the public interest. It agrees with Wallace that interviewing Graham Polak after his head injury crossed the line and potentially involved deception, and that interviewing his children was pushing things too far. Showing Ben Cousins being admitted to hospital over a suspected drug-related issue, however, was acceptable given that Cousins had admitted to having a drug addiction and was under a strict drug-testing regime as a condition of playing for Richmond. As it turned out, he had reportedly reacted to sleeping pills.¹³

A key responsibility of the media is to expose publicly those who transgress laws, rules and common standards. Such exposure is critical to robust democracy in that it holds powerful individuals, politicians and companies to account for their behaviour. Given that footballers are subject to the rules and codes mentioned above, the media has a responsibility to report misconduct and transgressions whether they occur on-field or in the

private lives of footballers. And undoubtedly, there is a huge public appetite for stories about the very human foibles of footballers.

Journalists' codes of ethics at best are vague and pay no heed to the competitive nature of football reporting. There is always tension for journalists between acting independently and doing no harm. Tension exists between the public's right to know and an individual's right to privacy. There is stress about burning bridges to future stories by upsetting key clubs or players. Every journalist wants a scoop that catches the public's attention. In some ways, there are few rules when it comes to reporting the off-field lives of footballers. At the end of the day, journalists and editors need to have a moral compass in determining whether it's the right thing to do.

Endnotes

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