The Ethics of Undercover Journalism

Why journalists get squeamish over James O'Keefe's tactics

By Greg Marx

When news broke in late January that James O'Keefe and three other men, two of whom were costumed as telephone repairmen, had been arrested by federal authorities and charged with "interfering" with the phone system at the New Orleans office of Sen. Mary Landrieu, observers of all sorts shared a similar response: What were they thinking?

Thanks to a statement O'Keefe has posted at Andrew Breitbart's BigGovernment.com and an interview he gave Monday night to Fox News's Sean Hannity, we now have a pretty good answer to that question. Landrieu had drawn the ire of some conservatives for her participation in a deal that helped advance health care reform, and the anger had grown amid claims that her office was avoiding calls from constituents. O'Keefe told Hannity:

> We wanted to get to the bottom of the claim that [Landrieu] was not answering her phones, her phones were jammed. We wanted to find out why her constituents couldn't get through to her. We wanted to verify the reports.

And while O'Keefe has acknowledged that, "on reflection, I could have used a different approach to this investigation," he also told Hannity he was operating in an established tradition: "We used the same tactics that investigative journalists have been using. In all the videos I do, I pose as something I'm not to try to get to the bottom of the truth."

During the interview, he and Hannity name-checked a few specific predecessors, among them PrimeTime Live's Food Lion investigation, 60 Minutes, 20/20, and Dateline NBC, including its "To Catch a Predator" series.

Considering the extent to which O'Keefe's activities are driven by political goals, it's debatable whether or not he really belongs to this family tree. But even taking him at his word, lumping O'Keefe in with those programs doesn't necessarily put him on the safe ground he's looking for. Journalism ethicists have long been wary of deceptive undercover tactics that those programs (and others) use—and with good reason. Overreliance on sting operations and subterfuge can weaken the public's trust in the media and compromise journalists' claim to be truth-tellers. Undercover reporting can be a powerful tool, but it's one to be used cautiously: against only the most important targets, and even then only when accompanied by solid traditional reporting.

The field's squeamishness with "lying to get the truth," as the headline of a 2007 American Journalism Review article put it, is well-documented. In the 1970s, the Chicago Sun-Times set up an elaborate sting operation at the Mirage Tavern to document routine corruption in city agencies; the sting worked, but the paper's Pulitzer hopes were dashed, reportedly because Ben Bradlee and Eugene Patterson disapproved.
Public officials should be responsive to their constituents, and when credible concerns of its methods. *PrimeTime Live*’s decision to have producers falsify resumes and smuggle hidden cameras into a Food Lion grocery store sparked contentious litigation (an initial $5.5 million jury verdict against ABC was reduced on appeal to $2) and drew two articles in CJR (not online).

Most recently, Ken Silverstein, the acclaimed Washington editor of *Harper’s*, posed as a foreign businessman to expose lobbyists’ willingness to represent unsavory clients. Silverstein came back with a gripping story and had plenty of defenders, but institutions like the Center for Public Integrity sided with *The Washington Post*’s Howard Kurtz in criticizing his methods.

In other words, press criticism of O’Keefe may reflect ideological disagreement in some cases. More broadly, it no doubt reflects some schadenfreude from an institution he and his patron Breitbart have conspicuously disdained. But it’s also consistent with the wariness with which much of the media—especially the print media—has long viewed undercover reporting.

There are practical reasons for that wariness. As other observers have noted, while the use of deception in reporting can yield sensational results, it also lends the subject a weapon to wield against the journalist. The ready-made complaint: If the reporter has forfeited the high ground of transparency and honesty, how can his conclusions be trusted by the public? The fallout may not be limited to the case at hand. During the Food Lion controversy, Marvin Kalb of Harvard’s Shorenstein Center worried that widespread use of deception “demeans journalism and damages badly the journalist and the public.” (This is not a theoretical problem. In announcing the verdict in the Food Lion case, the jury foreman told ABC, “You didn’t have boundaries when you started this investigation…. You kept pushing on the edges and pushing on the edges…. It was too extensive and fraudulent.”)

To mitigate this concern, undercover reporters are urged take care to situate what they’ve gleaned through deception in a structure of traditional reporting—to show that, unlike, say, *Punk’d* or *Candid Camera* or even “To Catch a Predator,” the gimmick is not all there is. Wherever one comes down on Silverstein’s work, one of the more effective criticisms of it was that his original story never gave the lobbying firms he targeted an opportunity to comment. A similar criticism applies to O’Keefe’s ACORN videos, which made him a national figure—whatever malfeasance he may have uncovered at ACORN, his failure to present his videos in any broader reportorial context made it difficult for the national media to take his allegations seriously. (And when other journalists did look into the story, they found that the footage, while containing some truly troubling material, should not all be taken at face value.)

That’s not the only guideline for going undercover. While there are, appropriately, no hard-and-fast rules or central authorities for journalism, a checklist drawn up by Poynter’s Bob Steele in 1995 is often cited for guidance on this issue. A few points on the list are probably too vague to be of much use, but the first two are valuable. They state that deception and hidden cameras may be appropriate:

When the information obtained is of profound importance. It must be of vital public interest, such as revealing great “system failure” at the top levels, or it must prevent profound harm to individuals.

When all other alternatives for obtaining the same information have been exhausted.

Whether something is of “profound importance” is obviously a matter of news judgment, but there’s good reason to question O’Keefe’s. If his focus on ACORN was the product of a worldview that vastly exaggerated that group’s practical political importance, his decision that Landrieu’s phone system merited a hidden-camera investigation was even more off the mark.

Public officials should be responsive to their constituents, and when credible concerns
are raised that they aren’t, the press should check them out. (In fact, as this story by Alexandra Fenwick notes, reporters in Louisiana did look into those allegations, and managed to do so without resorting to costumes or cell phone cameras.) But even if O’Keefe’s suspicions about Landrieu turned out to be true, her actions would count as little more than a good-government misdemeanor. Deciding that they warranted undercover treatment is a reflection of editorial judgment unconstrained by common sense.

Of course, O’Keefe’s comment to Hannity—"In all the videos I do, I pose as something I’m not”—suggests that he skipped this balancing test entirely. Attempts to reach O’Keefe for comment were unsuccessful, but in an interview late Wednesday night Breitbart defended his approach. “My tactics are unorthodox, and his tactics are unorthodox, because the mainstream media is full of shit,” he said. “When we report the truth, you ignore it.” Later, he added, “You guys are creating the market for creative journalism—it wouldn’t be there if you guys did your job.” (Whatever the merits of this argument, it is not exactly the defense that O’Keefe has advanced.)

All this may seem like so much legalistic hair-splitting to readers and viewers; in the big picture, whether O’Keefe’s work is best thought of as “journalism,” “activism,” or something else may be a niche concern. But as long as he’s trying to claim the mantle of undercover reporting, it’s worth noting that that tradition is more complicated, and more contested, than he’s acknowledging.

Greg Marx is a CJR staff writer. Follow him on Twitter @gregamarx.

I'm not sure "legalistic" is the kind of "hair-splitting" going on in this article. It's more "moralistic," or "ethicistic" (though that’s probably not a word). I think that's one of the main reasons "mainstream" journalists have such a problem with O'Keefe. They don't want to call what he does "journalism," because it's so clearly motivated by O'Keefe's preconceived political notions. But what he does isn't illegal, as far as media law is concerned.

I wrote a post on my own blog addressing this issue: http://tentrentingonmars.blogspot.com/2010/02/yes-its-legal-but-does-james-okeefe.html


#1 Posted by Ian on Thu 4 Feb 2010 at 03:50 PM

Interested in the future of journalism? For everyone who thinks that the media has degenerated into the mindless soundbites, here's a blow in the other direction. The topic 'Is quality journalism dying' airs on WETA at 5:00 am and 3:00 pm EST. More info can be found at http://www.weta.org/tv/programsatoz/program/72555

I think the program is awesome and informative, if your awesome and informative, you will too.

#2 Posted by vikki on Fri 5 Feb 2010 at 12:20 PM

OK, what about the ethics of receiving stolen property from a 'whistleblower' or 'leaker'? Like, oh, I don't know, the Pentagon Papers? Marx maybe even thinks that Edward R. Murrow's famous documentary on McCarthy was just coincidental to Murrow's lifelong fealty to the Democratic Party? There may be squeamishness about the ethics of such tactics, but there's apparently no outrage about the actual prosecution of these assorted journalistic methods - if used in the service of 'conservative' causes. I haven't heard the famous 'chilling effect' arguments from the usual sources that are heard when the mainstream media is threatened for using tactics that are ethically questionable by the O'Keefe standard. Gee, I wonder why.

BTW, the 'Food Lion' business, for sure, was explicitly political. Food Lion is hardly the only grocery change that could have been targeted. But by some strange coincidence, Food Lion was facing a unionizing drive. ABC producers selected some
Ralph Nader munchkins to be its agents provocateurs - again the story is shown to stink of a broadly leftist political agenda. Your article cannot bring itself to acknowledge that some partisan motives are behind such journalism, a naivete that should have died with the CBS/Bush National Guard fiasco from producer Mary Mapes (now appearing on those cruises organized by The Nation).

I am pleased I sort of caught this at the Politics Blog at the Detroit News before the CJR did, and came to familiar conclusions regarding the "win but lose" scenario that was Food Lion vs. ABC News. While the legal backdrop judged in favor of Food Lion, the relative damages were merely show. In other cases as well of investigative journalism, the judge and jury usually spot the journalist based upon heuristics, rather statute.

It was a case that exemplified a public interest, but also opened the door to approaching the responsibility and financial interest of a news organization that tried to hide behind the 1st Amendment, while also declaring freedom of getting paid for speech.

Food Lion recovered, but it was a year of chilling public opinion, despite the case's result, that showed how powerful the media can be, even when they themselves encouraged the actions they were "sent" to investigate.

O'Keefe hopefully will learn ethics from this matter, and as well, appreciate that journalism does require ethics, as much as any business does. I hate it, though, that the interest of financial gain was more on ABC's behalf than a supermarket that someone had a grudge against. Cheers!

Honestly Greg, could you be more hypocritical? An expose of a government funded, blindly partisan outfit with direct connections to the president, that results in a passage by Congress of a defunding vote is initially ignored by CJR (and the MSM at large).

But when an unknown, 20 something journalist gets arrested, it's suddenly big, big news. Multiple stories by CJR, a 1,000+ word front page missive in the Times…

It is, frankly, sickening. You guys are as partisan as they come. And you have the gall to criticize the Acorn story?

Come now, Carl...

The kid exposed entrenched corruption in ACORN offices nationwide. We're talking about multiple offices across the nation that were willing to help a child prostitution ring evade taxes.

Even more importantly, the sting resulted directly in the only bipartisan action taken by both houses of Congress during the Obama administrations, including a nearly unanimous Friday night vote to defund ACORN. It also directly resulted in at least two ongoing state investigations.

Any way you look at it, there was a story there that the MSM chose to ignore for as long as it could.

And of course, ACORN is indeed directly connected to the President... The only lawsuit he appears to have prosecuted as an attorney was on behalf of ACORN

This is not undercover journalism, it is political espionage.

What the 4 ding dongs were doing not only was wrong (unethical) it was illegal.

Hopefully, they will receive their just reward, and spend the next 10 years in jail.

He proved nothing against Acorn, which has been shown. He framed the situation in
As I said in my previous post, I hope these creeps spend the next 10 years in jail.

#9 Posted by Kanawah on Sat 6 Feb 2010 at 06:00 PM

Kanawah: He proved nothing against Acorn, which has been shown

padikiller: We're not talking about what he "proved". ACORN is still under investigation as a direct result of his sting. We are talking about the effect of what he did. Was it good? Bad? Right? Wrong? All subject to debate.

But his actions resulted in bicameral and bipartisan action in emergency sessions of Congress. You can't credibly assert that there wasn't a story there. There was. And the MSM (and CJR) sat on it.

That's just the reality.

#10 Posted by padikiller on Sat 6 Feb 2010 at 07:25 PM

O'Keefe is like a lot of young, untrained journo's--all action-oriented & up in people's faces and in the game half (at least) to get themselves famous. And yeah, a lot of those kids are "leftist." A lot are reactionary too. Not as many are milquetoast centrists--all those people are working in the banks, or in law school or on the campaigns, trying to get rich AND famous.

But here's the thing: there was a time, not so long ago, when kids like O'Keefe were merely fodder. They produced the raw material, the basic reporting, of journalism, and their stuff was then turned over to more experienced, cooler heads, who edited it, critiqued it, and maybe ordered them back out to get more stuff. Better stuff. FAINER stuff. TRuer stuff. Breitbart's model--and, increasingly, the model of the MSM--is to bypass all the experienced and knowledgeable people, fire all the people who can write, or edit, or fact-check an "investigation," and run straight out with the raw stuff the kids come up with.

In even entertaining the "debate" about his tactics as one about journalism, you do the tradition and profession of journalism a great disservice.

#11 Posted by ed ericson on Sat 6 Feb 2010 at 10:12 PM

Here in China, we call these people

50 cent party member,

五毛党

I don't like these people

#12 Posted by Kedafu on Sun 7 Feb 2010 at 10:30 PM

You people might be interested in the facts, admitted multiple times by Hannah Giles and now Breitbart that O'Keefe video edited the tapes to look like he was a ridiculous pimp when he entered the ACORN offices.

http://www.bradblog.com/?p=7715

And that Clark Hoyt's stance on correcting the reporting is that:

"Michael said there is no video that clearly shows James O'Keefe in his pimp garb inside an ACORN office. In most of them, as you know, you don't see him in the office at all, presumably because he's the one with the hidden camera. Michael found at least one video showing O'Keefe entering an office in a button-down shirt. He does not think that the reflection in the window that I pointed out to you shows O'Keefe in his pimp costume. I'm prepared to accept that judgment, because I found it hard to tell what is in that reflection.

Unless something more surfaces, I don't see visual evidence to support O'Keefe's claim to Fox News about what he wore. At the same time, I don't find the report commissioned by ACORN to be conclusive in the other direction. The report acknowledges that it relied on "hearsay" evidence, because the investigators did not interview the employees caught on O'Keefe's hidden camera.

Under the circumstances, I am recommending to Times editors that they avoid language that says or suggests that O'Keefe was dressed as a pimp when he captured the ACORN employees on camera. I still don't see that a correction is in order, because that would require conclusive evidence that The Times was wrong, which I haven't seen. The Times could seek out all the employees, but I don't think that's a realistic prospect worth the investment of effort."

Unfortunately the damage has been done and the New York Times doesn't want to correct it and pursue it.

This is not undercover journalism. This is a ratf*ck (look up the term). And when you have known rat*ckers telling a story with edited video tapes while dressed in costumes they never wore in the room, you cannot trust them.

Journalists should be demanding the release of the unedited video tapes and they
should make clear that there was a misrepresentation of basic facts.

The funny thing is, the same people that swallow the edited Breitbart O'keefe tapes are often the same people who demand access to the raw data of climatologists and tell us to distrust the editing of Phil Jones and company.

Well, apply that standard to your own. O'Keefe and Breitbart have been dishonest, so demand the truth.

#13 Posted by Thimbles on Wed 24 Feb 2010 at 11:44 PM

It's funny that the MSM is worrying about the type of shirt O'Keefe wore during his ACORN stings.

While Congress immediately understood the political significance of the stings' videos and docketed emergency bicameral hearings to drop ACORN like a hot potato, CJR and most of the MSM's "professional journalists" stuck their heads in the sand.

Now that the videos have destroyed ACORN as a national organization, and while investigations of ACORNS shenanigans are afoot across the country, the MSM's chief concern is doing anything it can do to make O'Keefe or Breitbart look bad - whether it is speculating over O'Keefe's attire or broadcasting fabricated "wiretapping" allegations against him.

But there's no liberal bias out there....

#14 Posted by padikiller on Thu 25 Feb 2010 at 08:40 AM

It ain't about liberal bias, it's about the truth.

And the people like yourself don't give a rat's ass about it.

And that includes Clark Hoyt:
http://www.bradblog.com/?p=7715

"The story says O'Keefe dressed up as a pimp and trained his hidden camera on Acorn counselors. It does not say he did those two things at the same time. There is no question, looking at the videos, that O'Keefe dressed as a pimp in front of his camera, and there is no question in my mind, after watching the videos, that regardless of what he was wearing in the offices, he presented himself to Acorn staffers as a pimp, unless, of course, you believe that virtually all the sound on the videos was faked, something for which I have seen no evidence."

Yeah, Clark saw no evidence because Clark saw edited tape. That's all anyone has seen outside the circle of Breitbart and O'Keefe. We know they lied about pimp routine, it was reported in ACORN report Clark cited that "While their press releases claim they were posing as a "prostitute and a pimp," the transcripts show that O'Keefe consistently introduced himself as Giles' boyfriend trying to protect her", and it seems that the times wants to play the sucker for right wing garbage peddlers (they did go through ACORN's garbage not long ago) rather than play the role of truth teller.

Which, after the Iraq hard sell and the hiring of Quayle's brain until it got too embarrassing, is par de course for them.

Knowing Breitbart:

it's a matter of time before the times gets embarrassed enough to treat him similar.

To paraphrase a troll, the O'keefe and Breitbart journalism revolution is dead; it self immolated in the gin pickling Andrew's dwindling neuron.

I hope he can restrain his impulse to go mano a mano with me.

#15 Posted by Thimbles on Thu 25 Feb 2010 at 10:29 AM

Dude, get a grip.

Let's assume that O'Keefe didn't dress up like a pimp and also that he later lied and said he did. So the trick what?

Storyline 1. Lying kid with an agenda sneaks a camera into ACORN offices across the country and catches a slew of ACORN employees willing to assist a child prostitution ring in tax fraud. Both houses of the U.S. Congress act immediately in emergency, bipartisan votes to cut of ACORN funding and the attorneys general of several states launch investigations...

"Watchdog" response: Yawn...

Storyline 2: Kid with an agenda who took down ACORN lied about the clothes he wore o video...

"Watchdog" response: DEFCON 3

Yeah... There's no liberal bias, afoot.

#16 Posted by padikiller on Thu 25 Feb 2010 at 02:20 PM

Lying kid with an agenda sneaks a camera into ACORN offices across the country
and catches a slew of ACORN employees willing to assist a child prostitution ring in tax fraud...

"Watchdog" response: Yawn...

You're insane or you're pretending there was no big ACORN CHILD PROSTITUTION brouhaha a few months back.

Which, by the by, is based on the edited video tape of admitted liars.

Which, by the by, is now not getting press. The newspapers of record are refusing to retract their previous flawed coverage based on the lies they were told by a prankster journalist.

What did go DEFCON 3, much like the child prostitution brouhaha which you've forgotten, is the prank he pulled in violating a state government facility and attempting to tamper with its phones.

You just don't pull pranks like that in a country that's willing to seek jail time for idiots who just wanted to kiss a little longer.


So we know O'keefe is an idiot and a liar and we know Breitbart is a maniac.

Does that not make one suspicious of their past journalism?

I'll say this, it's hard to maintain the claim of truth telling journalist while practicing Alinsky's Rules for Radicals, as O'keefe and Breitbart have done. Greg Palast does so on occasion, but when journalists have a cause, and allow themselves to violate the rules of truth telling for that cause, it puts their whole journalistic enterprise in question.

Unless you too are a true believer in the Big Hollywood "conservatives are persecuted victims" cult.

#17 Posted by Thimbles on Thu 25 Feb 2010 at 09:52 PM

More on Clark Hoyt
http://mediamatters.org/blog/201002250025

#18 Posted by Thimbles on Thu 25 Feb 2010 at 10:08 PM

Thimbles wrote: "You're insane or you're pretending there was no big ACORN CHILD PROSTITUTION brouhaha a few months back."

padikiller responds: A simple search on the CJR site will refute your assertion.

CJR sat on the story for a week, and did not utter a peep about the ACORN sting until after Congress voted to defund ACORN and until after I and other non-liberal-Kool-Aid drinkers clamored over and over for coverage.

And even then, once the noble self-proclaimed "watchdogs" of "professional journalism" were dragged kicking and screaming into acknowledging the import of the matter (much as Pravda was forced into dealing with the Chernobyl accident), the CJR "watchdogs" could not bear to actually address the fact that ACORN employees across the nation were only too willing to aid and abet a child prostitution ring in cheating on its taxes.

The only concern from the very beginning of the CJR writers was casting O'Keefe and Breitbart in the most negative light possible.

Do the search yourself- you won't see a single mention of child prostitutuion in any of CJR's belated coverage of the sting. Not one.

#19 Posted by padikiller on Thu 25 Feb 2010 at 11:25 PM

Maybe that's because, ida know, the right wing media is full of cranks and liars who push bullcrap stories 9/10ths of the time, the child prostitution story now likely one of the nine?

Your side isn't trustworthy, therefore when you snap your fingers they DON'T rush over to see what you want.

The same goes for the climate cranks and the Obama is and ISLAMIC MANCHURIAN who ATTENDED A MADRASSA bunch and the CLINTON MASS MURDERER crowd. You cry wolf way too often to be taken seriously.

You have no standards, and when the Nytimes suspends its skepticism to look at your video tapes, this is how it gets rewarded. "Oh Shi... we reported lies and bullcrap again. Another embarrassing retraction? Why do we ever listen to these people."

The answer is you shouldn't, these people are idiots and maniacs, but you do and every time it's another Lucy pulling away your credibility after you commit to the kick.

The right and the media that eventually repeats them are pathetic.
Thimbles, you can't have it both ways...

First, you say "you're insane or you're pretending there was no big ACORN CHILD PROSTITUTION brouhaha a few months back" in defense of the biased CJR folks.

Then when it's pointed out that CJR sat on the story, precisely in the manner I said it did, you change your tune and bitch about the "cranks and liars" on the right. (Like you won't find any of those on the left side of the political spectrum-Wait, there was that one Democrat who admitted lying under oath and who got disbarred for it... Who was he?... What was his name?...)

When you are wrong, as you were, you should just man up and say so, Thimbles.

It doesn't greatly matter what type of shirt O'Keefe wore when he took down ACORN. With regard to the effect the videos had, it doesn't really matter whether or not O'Keefe is a liar... Or a drunk... Or a bigamist... Or whatever.

To any rational, non-foaming-at-the-mouth liberal lunatic, there is no question that the story of what O'Keefe did and what he exposed ACORN to be is a much, much more important story than who O'Keefe is or what kind of shirt he wears.

OMG.

This is how stupid people try to win arguments.

"A simple search on the CJR site will refute your assertion. CJR sat on the story for a week, and did not utter a peep about the ACORN sting until after Congress voted to defund ACORN and until after I and other non-liberal-Kool-Aid drinkers clamored over and over for coverage."

Okay, based on this I thought your issue was that the media, cjr included, waited a week before echoing the jackals like you hollered for.

Which is why I commented "Your side isn't trustworthy, therefore when you snap your fingers they DON'T rush over to see what you want."

Because I couldn't imagine that you were actually using cjr's non-mention of the CHILD PORNOGRAPHY slur as a refutation of THE MEDIA'S ogling over the issue.

But you are, and that's dumb.

The other alternative is that you're claiming "the watchdog" is cjr only. Therefore when you say:

"Storyline 1. blah blah blah blah blah blah..."

"Watchdog" response: Yawn...

"Storyline 2: Kid with an agenda who took down ACORN lied about the clothes he wore o video..

"Watchdog" response: DEFCON 3"

You're claiming there's been a slew of non-pimp stories on cjr. DEFCON 3 level.

Show me one. Hell, since it's DEFCON 3, show me three. Should be easy.

What you have is a DEFCON 3 amount of stories about Landrieu phone tampering and a story defending him against charges of ties to outright racists.

Nothing about the "Kid with an agenda who took down ACORN lied about the clothes he wore o video..."

So I guess you were right when you said:

"Yeah... There's no liberal bias, afoot."

But I don't think being right unintentionally makes you look less stupid.

But yeah, nice try with the nonsensical hypocrisy thing, Better luck next time, eh?

FLASH!...

Some new headlines are rolling in over the wire...

Stop the presses!

"O'Keefe Went Five Months Without Paying Parking Ticket""

"Breitbart Wore Mismatched Socks to Press Dinner"
Funny. Still no mention in "the Watchdog" about the pimp that wasn't. That's a funny DEFCON.

#24 Posted by Thimbles on Fri 26 Feb 2010 at 04:43 PM