PROSECUTORIAL EDITING NOTES

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BOTSWANA

By

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BELIEVABILITY OF SOURCES AND TARGETS

BEHAVIOUR	LEGAL NAME
Evasive, belligerent Fobs off questions to others for reply Defensive language in reply. No comment.	**Demeanour**
Story differs from witnesses on same side Story conflicts with accepted documentary evidence Story conflicts with hard facts such as digital evidence	**Contradiction**
Changes story over time in material respects Embroiders new and convenient facts	**Inconsistency**
Another person says the same thing Is backed up by documents or metadata Source contactable But, watch for refusal to corroborate own story	**Corroboration**
Has a good memory In good position to observe Personally acquired this information Digital systems working properly	**Reliability**
Has no personal, business or political interest No reason to lie	**Unbiased**
Unlikely story Not the way things normally work Far-fetched Requiring too many 'moving parts'	**Improbability**
Expertise	**Reputation**

BELIEVABILITY OF DATA

QUALITY	LEGAL NAME
Answers a different point to the question posed Confusingly arranged, incomplete, previously hidden Grudgingly provided, refusal to provide.	**Demeanour**
Differs from other data Conflicts with accepted scientific, etc position Conflicts with hard facts such as digital evidence	**Contradiction**
Data swings wildly New inputs suddenly added Differs from previous research	**Inconsistency**
Other data backs up Accords with accepted scientific, etc position But, watch for refusal to provide primary/source information	**Corroboration**
Properly gathered Proper methodology applied, representative poll Results are falsifiable Not supplied by third parties 'Shy' subjects accounted for Digital measuring systems working properly	**Reliability**
Ideological / political orientation of compiler Business or political interests in composition Reason to fabricate, exaggerate or spin	**Bias**
Unlikely results, unusual trend Doesn't pass the 'sniff test'	**Improbability**
Expertise	**Reputation**

Principles of Prosecutorial Editing – Enhancing Believability of Stories

Antonio Gramsci famously possessed a "pessimism of the intellect but an optimism of the will'. With apologies to him, this paradoxical method is found in prosecutorial editing too: 'Pessimism of the allegation, optimism of the story".

First Stage – Pessimism

Central Question: Can all the facts of the story essentially be true but the target still be undeserving of censure / exposure / criticism?

This is not to say targets are blameless. Who is? But do the facts brought to light by the reporter point to his most likely being a wrongdoer? This is an important question before we put a name out into the world, intruding upon privacy and affecting reputation.

An example. A train crashes on a remote line. Two hours afterwards, rescuers get to the scene. The train driver is found drunk, shouting loudly 'I am to blame'. Open and shut story, isn't it? However, could the train driver have been drunk but the train crashed for reasons other than his intoxication, for example a defect of the line? Or faulty equipment, like a signal? What then is the real story? Do we know that he was drunk at the time of the accident? Or did he drink after the accident, in the shock of it all. And what did he mean, "I am to blame". Have we spoken to him, or people close to him to find out the context? Was it an expression of despair or a confession?

The task of a PE is to insist that these angles are covered. In the Panama Papers, some journalists did not seek an explanation from the target. A pessimistic approach to the allegation requires that their side of the story be considered. What legitimate business purpose was served in investing in front companies? In PP, the answers that where given by targets (or refused to be given) almost always strengthened optimism in the overall story.

Second Stage – Optimism

Plugging holes, assessing sources and the quality of their allegations in order to add weight to story.
Toning up, not down.
Arguing a story, not presenting facts. Treating readers as arbiters not consumers of your story.

Here the full repertoire of believability is brought to bear. The target's reaction, contradictions, refusal to back their own story up, reason to lie and likelihood of their counter-narrative when measured against the weight of the allegation.

The central conundrum on reporting on the PP was that off-shore companies could be used for perfectly legal purposes. The mere discovery that someone held shares in such a company was not a particularly heavy allegation to make. The allegation only became suggestive of wrong-doing when placed in the context of other facts – such as what business the off-shore shareholder was involved in and whether the jurisdiction in which he or she did business had tax or capital control laws that might be circumvented by anonymous off-shore investment.

Example: A judge denies owning shares in off-shore companies. Then presented with facts, admits it but claims she was not actively involved in managerial decisions. In any event the companies were legitimate vehicles for property investment that did not affect her work, she claims. But the accountant who supplied the shelf company also exclusively supplied shelf companies to a family of known gangsters in the same country at the same time as registration of the judge's company. A close associate of the crime family happened to own 10% of shares in one of the judge's companies but sold it to the judge's husband. When asked to disclose activity in the bank account of the front company, the judge refuses. Can you see how, with these factual elements, this story may, without any editorializing, be structured so that readers infer wrongdoing themselves?