

# Cross-Examination

## TIP SHEET

### **BELIEVABILITY**

There are seven elements of a believable or unbelievable story. While they are not easily named or isolated by lay people, they unconsciously come into play whenever a reader decodes a story. For example, should a reporter mention that the target's initial explanation has changed over time, readers understand this as a sign of untruthfulness.

When reporters are able to identify these seven elements during the conduct of an investigation, it allows them to write the story in such a way that readers themselves make these credibility calls. This has the additional advantage of preventing the need for editorialising and the associated risks of defamation or libel. A reporter does not have to call a target a liar. The readers make this call using perfectly accurate rendition of the interviewee's own words or behaviour.

It also serves as a guide to reporters themselves to be sure they are accurately weighing the believability of the information they source. It thus works both ways, allowing a reporter to identify the problems in an allegation and to identify which parts of the story need extra work or are simply not safe to publish.

Last, these seven elements assist in the structuring of interviews. One knows where to probe and how an expose of falsity may be accomplished.

Below is a brief summary of the seven key elements of believability.

## 1. WEIGHT OF A VERSION

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BEHAVIOUR	LEGAL NAME
Evasive, belligerent, unsure Defers answers to another person Body language	<b>Demeanour</b>
Story differs from allies Story conflicts with accepted, documentary or hard facts	<b>Contradiction</b>
Changes story during interview Deviates from previous positions	<b>Inconsistency</b>
Another person says the same thing Is backed up by documents	<b>Corroboration</b>
Has a good memory Is clear on the facts Was in good position to observe Has requisite, first-hand knowledge	<b>Reliability</b>
Has an interest in the case Has a reason to lie, exaggerate or 'push a line'	<b>Bias</b>
Unlikely story Not common sense Defies logic or the 'way things work' Far fetched	<b>Inherent Improbability</b>
<i>Expertise</i>	<b><i>Reputation</i></b>

## 1.1 Demeanour

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Demeanour is more than just body language. It includes the way a person answers questions and his or her general attitude in the interview.

In a multi-cultural society, body language is a tricky horse to ride. Making or not making eye contact means different things to different cultural groups. There is also little to be gained from pointing out in your story that a source was fidgeting or sweating or, alternatively, pleasantly smiling. These are a range of normal responses to stress and do not necessarily indicate deception or believability.

There are circumstances in which the demeanour of an interviewee can be used to discredit their version. When someone is evasive, or becomes obstreperous you can point this out in an article so that a reader may draw their own conclusions. In broadcast interviews, the evasiveness of an interviewee can be devastatingly presented.

Similarly, if a witness takes very long to answer a question, you may point out that they seemed to play for time or not know the answer. A reader will know this as a sign of someone tailoring answers rather than simply telling the truth.

The strongest discrediting by demeanour occurs when an interviewee receives help from others in answering a question that should have been easy for them to answer. If this occurs, you may point out that the witness declined to answer, referred you to his lawyer or spokesperson. Discerning readers will view future answers with suspicion.

Having said that, take care not to overplay your hand in analyzing body-language. Of all the indicators of believability, it is the weakest.

## 1.2 INCONSISTENCY AND CONTRADICTION

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An *inconsistency* arises when there is a discrepancy between the versions given **by the same person**. An example of inconsistency is when there is a difference between what an interviewee tells the reporter and what the same person said in a prior statement or correspondence.

A common but not infallible indication that someone is untruthful or unreliable when an interviewee cannot keep their story straight. The theory is that a witness who is telling the truth will be consistent in their version. An untruthful witness has to make up a story, remember it and repeat it accurately without a stable memory to draw on.

A *contradiction* arises when an **allied source** says something different to the source or target. It could also arise when versions conflict with documents produced or undeniable, hard facts. For example, a major-general says that the police used only teargas on protestors the day before, whereas a colonel on the scene stated that live ammunition was used because police feared for their lives. The police account is contradictory. Or the Minister denies being in a relationship with Mr B, but hotel bills show them sharing a room. Such a contradiction need merely be mentioned in a story for the readers or audience to draw a conclusion of mendacity.

One cannot criticize either party for contradicting an account provided by their adversaries. This is almost to be expected. However, discrepancies between witnesses may arise, not necessarily because an interviewee has deliberately misstated something, but because people perceive events differently and from different vantage points. They remember things differently, have different views on what is important and have varying skills in communicating what they have witnessed.

An argument based purely on a list of contradictions between interviewees leads nowhere. One side must be shown to be lying. Where different witnesses of events make contradictory statements, it is true that at least one of them is erroneous. However, the mere fact of contradiction does not afford a basis to say who is lying. Other aspects of believability come in here.

Minor contradictions between two people speaking about the same event or giving contradictory accounts on a single detail which does not go to the heart of the issue is not a basis for disbelieving either party, even if the contradiction could be construed as an anomaly.

Last, while much may be made of a prior *inconsistent* statement, a prior *consistent* statement does not have much value since, logically, self-corroboration has little value and is easily faked.

## 1.2 INCONSISTENCY AND CONTRADICTION

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### Negative Consistency

There is a special kind of inconsistency called **negative consistency**. A person's credibility suffers if he was silent or omitted to say something earlier on a subject that he is now relying upon as a defence. An interviewer must show that the target failed to act upon or relate the same information in the past, when it would have been human nature to do so. This form of discrediting shows that the version is improbable because it does not accord with common sense and seems contrived or made up after the event.

To be effective, **discrediting by silence** must refer to a material omission of a fact that a person would naturally have been at pains to reveal. It is unconvincing to criticize prior silence in a story unless this requirement is met.

### Case Study

On 15 February 2014, the personal assistant of a senior politician is charged by her boss for numerous acts of misconduct that allegedly took place during the past 6 months. They are absenteeism, failure to make hotel bookings and insulting a fellow employee at the Christmas party. The politician sets these out in a suspension letter.

The PA lays a grievance of sexual harassment against the politician on 25 February 2014. Her version is that for the last 6 months, her boss has been sending her text messages proposing a sexual relationship. She ignored these, hoping they would stop.

On 5 January 2014, while she was still on holiday, the politician repeatedly texted her until late at night. She replied by text message, "“With due respect Sir, pls do not ask me again. I really respect u nd I wont change”. He replied “noted”. However, on 21 January, in his office, he told her he wanted to kiss her all over and that he loved her. She finally snapped and rudely told him to “stop messing” with her. This rejection is the real reason for the action against her, the PA says.

During an investigation on 6 May 2014, the politician repeats the grounds for the disciplinary action against his PA mentioned in his 15 February letter. The harassment story breaks on 10 May 2014 in the press. In a press release he claims that his PA was suspended for repeated absenteeism, attempting to bribe him to give her brother a job and for sending text messages with a sexual content to herself from his mobile phone.

**Can you identify the negative consistency?**

## 1.3 CORROBORATION AND BIAS

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### Nature of corroboration

Corroboration occurs when another person or document confirms a source's version.

Crucially, *self-corroboration* does not count. Therefore, providing witnesses to attest that one has been consistently saying the same thing for a long time, is not corroboration. A corroborating witness or document must reflect *independent* knowledge of a fact. An entry in one's own diary, for instance, only shows prior consistency. It does not show whether the entry is consistently truthfully or false.

The value of corroboration is inter-related with the independence or bias of the source of the corroboration. A mother corroborating that her son was at home at the time of a bank robbery has rather less value than work colleagues who swear the suspect was at work at the material time. A suspect in a criminal investigation providing corroborating evidence against the investigating officer needs careful scrutiny.

### Absence of corroboration

Sometimes, credibility is affected by the absence of corroboration where it could reasonably have been expected. Bear in mind that the burden of a target to provide corroboration for a denial is in proportion to the weight of the allegation laid before them. A weak allegation may be met with a bald denial.

### Case Study

A reporter is told that a member of a bid adjudication committee for a big government tender, awarded in January 2014, was entertained at a Botswana game farm by the CEO of the successful vendor over Christmas 2013. There are photographs that appear to show the CEO, Warari Kariuki, and tender committee member, Emmanuel Omondi, sharing drinks. Omondi denies the allegation and adds that he was in Kenya over Christmas. The reporter asks if Omondi would provide a copy of his passport for inspection. Omondi declines.

**Consider whether the inference that Omondi is hiding something is stronger or weaker in the two paragraphs that follow.**

### 1.3 CORROBORATION AND BIAS

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#### Example One

In January 2013, a lucrative tender was awarded by the Department of Information Communications and Technology to a company owned by Warari Kariuki. Weeks after the tender award, rumours did the rounds in the department's Nairobi offices that Kariuki and bid evaluation committee chairperson, Emmanuel Omondi, were close friends and even socialized together.

A source, who wished to remain anonymous, stated that the two had been on holiday in December at a "luxury safari lodge in Botswana". The source showed this reporter a photograph apparently revealing the two men enjoying champagne together at a Christmas party. A *Weekly Wiseguy* reporter requested that Omondi confirm whether he had been on holiday in Botswana. Omondi was also asked to permit inspection of his passport. In a terse email reply, Omondi declined: "These are a pack of lies. I do not respond to rumours. I don't socialize with any CEOs. You guys are harassing me now"

#### Example Two

In January 2013, a lucrative tender was awarded by the Department of Information Communications and Technology to a company owned by Warari Kariuki.

The *Weekly Wiseguy* obtained screen shots from Kariuki's facebook account of a photo album titled, "Fun in the Sun at Maun Safari Lodge". In the album, Kariuki uploaded a picture showing himself clinking glasses with a person strongly resembling the Department of Information Communications and Technology's bid adjudication committee chairperson, Emmanuel Omondi. The picture is titled, 'Christmas Eve Party'.

The person resembling Omondi is not named in the photograph's caption. However, two other photographs of the same party tag a female party-goer, as 'Joyce Omondi'. The *Weekly Wiseguy* has established that Emmanuel Omondi's wife is Joyce Omondi.

The *Weekly Wiseguy* asked Omondi if he attended a party with Kariuki in Botswana over Christmas 2013. Omondi denied this: "These allegations are a pack of lies. I don't socialize with any CEOs. Besides I was in Nairobi for Christmas". Omondi, who comes from Kisumu, now lives in Nairobi.

The *Weekly Wiseguy* sent Omondi copies of the photographs from Kariuki's facebook account. Omondi denied the photographs were authentic. In reply, our reporter asked if Omondi would consent to an inspection of his passport by an auditor of his choice to verify whether he had been to Botswana over the 2013 Festive Season. Omondi stated, "My passport is private. I will not allow my family's safety to be put in jeopardy. You guys are harassing me now".

## 1.4 RELIABILITY OF OBSERVATION OR KNOWLEDGE

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Identification evidence is notoriously susceptible to error. This does not mean it should not be believed but rather that it should be approached with caution. There should ideally be some other hard evidence that corroborates a source's claim where the denial is one of **mistaken identity**.

In cases where the identity of a person is in dispute, an interviewee should be closely quizzed about the conditions under which their observation was made. These include the opportunity to observe, lighting, angle of vision, distance, fluidity of the scene, emotional factors influencing accuracy, passage of time and prior knowledge of the person identified.

Reliability of knowledge relates to whether a source is actually in a **position to know** what he or she claims to know. For example, did the source personally witness the recruitment of child soldiers or is the source reporting what villagers told him *they* observed. On what is the villager's claim based? Is there any way of verifying it with them? If not, why not?

Or does a source 'close to the police investigation' actually know that the CEO of XYZ Industries is a suspect in an illegal mining investigation? On what is this allegation based? What documents did the source see, how connected to the investigating team is he or she really? Why would the team share this information with him or her? If information was not shared, how did the interviewee gain personal knowledge?

Similarly, does the source who says that the company registered in Guernsey is owned by a former President actually know this as a fact? On what is this knowledge based? How did the source pierce the veil of secrecy? If it is an inference from surrounding circumstances, is it the most reasonable inference?

Sometimes there is an **ideological expectation** that a story will follow established (and sometimes problematically prejudiced) narrative lines. For instance, if a European businessman claims he was asked for a bribe in Nigeria, certain generalisations provide half the 'proof' of this particular allegation. Similarly, if a member of a shack-dwellers organization in conflict with government is shot, instinctive political sympathies for the downtrodden and antipathy towards the state, supply half the 'proof' that this specific killing was a government hit. Yet, these narrative expectations are not reliable proof or knowledge of the particular events in question. Spin doctors, in particular, propose an expedient narrative first. They then insert selected facts into this scenario to make a case beneficial to their 'client'.

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## **1.5 INHERENT IMPROBABILITY**

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**Please read the following case studies and, in groups, discuss whether, on the face of it, you would be inclined to believe the denial provided.**

### **Case Study One**

The 69 year old wife of the President of Uganda is accused of taking 11 trips to Israel during the course of November for various shopping sprees.

### **Case Study Two**

A Commissioner of Police has a salary of \$7000 a month. He is accused of taking a \$24000 bribe from an underworld figure in March 2010. His banking details have entered the public terrain. For 6 months preceding March 2010, his account shows cash withdrawals of about \$6000 per month. Between March and June 2010, there are cash withdrawals totalling around only \$100 a month. The main movement on his account during this time is a salary deposit and various sundry stop orders. The Commissioner states that in March 2010, he converted unspent foreign travel stipends from trips during 2008 and 2009 into local currency and lived off this cash. After June 2010, he starts making cash withdrawals of \$7000 per month.

### **Case Study Three**

A child prostitute accuses the Bishop of a large church of hiring her for sex and beating her up afterwards when she demanded payment. This allegedly happened on 2 May 2013. Crime prevention video footage shows a gold Mercedes Benz with the Bishop's registration plates stopping along a road on 2 May 2013 at 23h43. This is the stretch of road on which the alleged victim says the Bishop stopped to pick her up. The Bishop claims it is a conspiracy against him by certain elders in the church who want to depose him. They have access to his car keys and have obviously procured the girl to lie.

### **Case Study Four**

A drug-mule, arrested in a Brazil, accuses the wife of the South African Minister of Intelligence of being part of a drug-syndicate that recruits young women like herself to transport narcotics from South America.

### **Case Study Five**

The White House alleges that the Syrian government ordered a chemical weapon attack against residents of Damascus in rebel-held territory while a U.N. task force was in town investigating prior allegations of chemical weapon use.

## 1.5 INHERENT PROBABILITY

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The key issue is whether the source or target is asking you to believe something that defies common-sense or is not the way the world (or locality) usually works. This does not mean that the allegation is untrue. It means that an improbable story requires a greater amount of proof.

To use an example, an allegation that Archbishop Desmond Tutu was driving while drunk is going to require a great deal more proof before you run it than some pop-star who has often been in similar trouble before.

Conspiracy theories that a man found in bed with a sex worker was framed may be true but they require considerable explanation. Why would someone go to all that trouble? What interests are at stake? How would the framing be accomplished? How would the sex worker's long-term silence be obtained? How did the sex worker get into his bed without him noticing? These questions will occur to a reader and should be dealt with by a journalist taking the conspiracy theory seriously.