

Investigative Journalism for Critical Sustainable Development

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*Rethinking Development, Sustainability and
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with FAIR.ORG

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Some career highlights

- Mazher Mahmood (the fake sheikh)
- London *Guardian* investigations (e.g. credit card fraud, training investigative journalists)
- London *Independent v* Lord Ashcroft
- Naomi Campbell (for and against)
- Phone hacking
- International Global Witness investigations (e.g. land grabbing in Malaysia)
- Vice.com Egypt coverage
- London *Telegraph* (police corruption trial)
- Advising corporate multinationals (GSK, British Airways, Diageo)

The Beckham Kidnap Story



Beckham kidnap plot – story gone wrong

- **NOW paid a petty criminal to interact with other petty criminals and secretly record their conversations**
- **Little or no editorial planning of the covert recording**
- **Use of agent provocateur techniques to incite discussion of possible kidnapping**
- **Participating criminals were bribed with drinks, food and small amounts of cash to converse in pubs and discuss potential crimes**
- **A gun was planted on one of the suspects and he was positioned in the film to look like he planned to use it for the kidnap**
- **A visit to the Beckham household to ‘case the joint’ was in fact arranged by the NOW fixer**
- **Police were ‘handed the dossier of our investigation’ by the NOW**
- **Prosecution collapsed due to tainted evidence**
- **Successful libel action by one of the petty criminals – NOW could not prove that the plot was genuine or that he was intent on participating**

INSIDE MALAYSIA'S SHADOW STATE

A FILM BY GLOBAL WITNESS



- For over thirty years, Sarawak has been governed by Chief Minister Abdul Taib Mahmud, who controls all land classification, forestry and plantation licenses in the state. Under his tenure, Sarawak has experienced some of the most intense rates of logging seen anywhere in the world. The state now has less than five per cent of its forests left in a pristine condition, unaffected by logging or plantations and continues to export more tropical logs than South America and Africa combined.
- The film reveals for the first time the instruments used by the ruling Taib family and its lawyers to skirt Malaysia's laws and taxes. It shows how they cream off huge profits at the expense of indigenous people, and hide their dirty money in Singapore.
- Taib and the local lawyers we approached denied Global Witness's allegations of corruption. A summary of their responses is included at the end of the film

<http://www.globalwitness.org/insideshadowstate/>

Planning an investigation

- **Identify the subject matter of the investigation and whether the conclusion is likely to be defamatory of anyone.**
- **What is the defamatory meaning of the story?**
 - **If defamatory, what defences are you going to be relying on?**
 - **How can you best summarise or encapsulate the public interest angle in the story?**
 - **Are you willing to comply with the principles of responsible journalism?**

Responsible journalism: the 10 factors

1. What is the public interest and how serious is the issue being investigated? Is it an issue of legitimate public concern?
2. What are your sources? Are they potentially compromised (e.g. they have been paid, lack credibility or have ulterior motives for disclosing information)
3. What steps are you taking to verify the information given by the source? How many separate independent sources can you rely on? The more the better.
4. Have you identified the specific defamatory allegation you intend to publish of the subject, and thought precisely about the meaning to be attributed to the words?
5. Have you given the subject(s) an opportunity to comment on the allegations?
6. Have you allowed sufficient time for the subject to respond? The longer you take investigating your story before publication, the longer you must give the subject to respond. It is usually optimum to allow 14 days to respond to detailed and complex allegations, 7 days at a minimum.
7. What is the tone of the allegations you are making? If the facts could suggest someone is guilty of an offence or suspected, ensure you do not overstep the mark by implying guilt, unless you are prepared to defend on that basis
8. Have you incorporated the gist of what the subject says in response to the allegations, giving them sufficient prominence and ensuring any edits do not detract from the explanation they give?
9. What is the status of the information? For example, if there is an official report and findings which are apparently credible, it is more safe to report them, than if you are picking up a story from another newspaper.
10. What urgency is there to the story? The more urgent the issue, the more there may be a public interest.

Lord Nicholls' Ten Factors

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.

2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.

3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.

Lord Nicholls' Ten Factors

4. The steps taken to verify the information. How many separate independent sources can you rely on? The more the better.

5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.

6. The urgency of the matter. News is often a perishable commodity.

7. Whether comment was sought from the claimant. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.

Lord Nicholls' Ten Factors

8. Whether the article contained the gist of the claimant's side of the story.

9. The tone of the article. A media report can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

10. The circumstances of the publication, including the timing.

“The list is not exhaustive. The weight to be given to these and any other relevant factors will vary from case to case. Any disputes of primary facts will be a matter for the jury, if there is one. The decision on whether, having regard to the admitted or proved facts, the publication was subject to qualified privilege is a matter for the judge.”

Responsible journalism – seeking responses from subjects

- Prepare pre-publication letter(s) to subject seeking comment on main defamatory allegations (and if necessary check them with the lawyer)
- Pitch the meaning as high as it is capable of being
- Allow as much time for their response (ideally 14 days)
- Incorporate responses from subjects attacked in article or film
- If subjects do not respond, include that they failed to answer enquiries, and (ideally) include any other public statement they have made in response to the allegations
- Obtaining legal and editorial signoff

Honest Comment

The five "propositions":-

- Be on a matter of public interest.
- Be recognisable as comment, (i.e. opinion) as distinct from an allegation of fact.
- Be based on facts which are true or protected by privilege.
- Explicitly or implicitly indicate, at least in general terms, the facts on which the comment is being made.
- Be an opinion which could have been made by an honest person however prejudiced he might be and however exaggerated or obstinate his views.

Confidentiality and privacy

- **Are there any confidential or private facts that you wish to refer to?**
- **If so, what is the justification for publishing them? Is there a public interest or public domain defence in relation to those specific disclosures?**
- **Do you need to go into the detail of private allegations or acts? It may be necessary to blur faces, or bank details, or specific names or features of information, to protect third parties, or to ensure that the extent of any infringement is only what is necessary to tell the public interest story.**

Red flags

- **Is the work defamatory?**
- **Does it potentially breach confidentiality or privacy?**
- **Does the work make use of other copyright work?**
- **Are there any ethical or compliance issues, such as risks of third party fixers paying bribes or otherwise breaching the law?**
- **Will you be showing any criminal acts taking place?**
- **Could the police get involved?**
- **In any of the above circumstances, you must contact the editor before going any further**
- **Where there is a risk of publishing defamatory confidential or other infringing information, obtaining a legal view is recommended.**

Conclusions

- **English law has only recently begun to strike a fair balance between free speech and the reputation rights of individuals and corporates – Africa is doing the same...**
- **Bold investigative journalism requires a fair public interest defence; where one does not exist, it is critical to obtain first hand evidence using modern technology and investigative methods**
- **The African Court of Human Rights and other regional overseeing courts must be required to take up cases of arbitrary interference with journalists where there is a public interest in the allegations**
- **Domestic courts must be encouraged to develop the law in a more liberal direction, towards striking a fairer balance between free speech and reputation**
- **Outdated laws such as criminal libel must be repealed**
- **Media organisations, NGOs and their donors must support journalists being harassed through powerful legal defences and advocating the facts of the case in the wider media**

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