

## **UNEARTHING DOCUMENTS, SOURCING** **and LEGAL CONSIDERATIONS**

### **Don't be afraid**

- Writing high-end investigative stories in business can be an intensive process, taking months to complete your reporting.
- You'll become stymied at some point or another. Don't give up. Let it sit for a day or two. Then go back with fresh eyes.
- Think outside the box. What angle have you not covered? What source have you not tried?

### **The basics**

- Document everything, either with a written public record, private company document, internal e-mail or tape recording.
- Multiple sourcing is key. Get different sources to say the same thing. There's safety in numbers.
- Don't hesitate to let the sources know what you're working on. They shouldn't be surprised when it airs or shows up in print.

### **Public records**

- Legal documents
  - Criminal checks are important for anyone you're writing about, even if it's not part of the story. It's important information to know beforehand.
  - Do a thorough check at the courthouse for lawsuits as well. Look for litigation where subject is plaintiff or defendant.
  - Don't hesitate to call their lawyers.
- Ask for their resume or bio.
- Police records
  - Don't just check to see if person has been accused of something, or accused someone else of something.
  - Many police departments now have computer systems where names can be checked if they're also a witness.
  - <http://www.datahawk.com/finding-a-person-via-social-security-number.htm>
  - <https://www.fpf.com>

### **People information: first steps**

- Conduct a Nexis-Lexis search on anyone you're writing about. You want to see anything and everything the person has ever said.
- Make other background checks on things like political preferences, colleges attended, previous jobs. Again, ask for their resume.
- This info may not appear in your story, but you'll have a better idea of the person.
- Plus, doing this first can lead to sources later.

**\*\*\*This handout is supplemental material – Used at discretion of presenter\*\*\***

## **Lawsuits**

- State or federal lawsuits can often provide good background info on companies.
- But remember, allegations may not be proven.
- Look at exhibits, affidavits and depositions. They're a gold mine for any investigative story.
  - Frontline
    - The PBS show went through the depositions taken by cigarette company executives in lawsuits filed by state attorneys in late 1990s.
    - The CEO of Philip Morris claimed to not have any knowledge of how many teens smoked his products or ever asked his employees about it.
    - The CEO of Lorillard said in deposition he did not believe that smoking caused emphysema or lung cancer, and that smoking was not addictive.
    - <http://www.pbs.org/wgbh/pages/frontline/shows/settlement/depositions/>
  - Supervalu
    - Lawsuit against the grocery store chain alleged age discrimination.
    - *Minneapolis Star-Tribune* reporters got copies of depositions and wrote about them.
    - A senior vice president's quote: "Let's do it right so we can get rid of the garbage and save some money."
  - Tyco
    - When Tyco sued its former CEO Dennis Kozlowski, it added more than 100 pages of exhibits to its allegations.
    - Documents showed that he had approved perks for himself and other executives.
    - \$2.5 million Trump Tower apartment and nearly \$14 million in homes for employees.
    - [http://www.usatoday.com/money/industries/manufacturing/2002-09-16-tyco-loans\\_x.htm](http://www.usatoday.com/money/industries/manufacturing/2002-09-16-tyco-loans_x.htm)
  - Other examples
    - Exhibits to lawsuits may include copies of contracts.
    - When Miami music industry executive sued former business partners, he included copies of contracts and loan agreements.
    - He alleged he was never paid the money agreed upon in the deals.
- Federal and state government lawsuits against companies should be considered more serious than company vs. company litigation. Can be in other states as well. <http://pacer.psc.uscourts.gov/lookup.html>
- Look for lawsuits where current and former employees are suing company.
- Litigation between former business partners.
- <http://www.virtualchase.com/coinfo/step5.htm>

## **Divorces**

- When spouses of executives file for divorce, the value of the assets is typically listed in the filing.
- Some states require that the property be split evenly.
- Jack Welch divorce showed what could be found: His GE retirement package included New York apartment, free flowers, wine, dry cleaning, even vitamins.

### **Criminal litigation**

- Businesses are not above the law.
- State and federal prosecutors often file charges against businesses or executives.
- In January 2003, Deputy Attorney General Larry Thompson distributed 11-page memo to U.S. attorneys
  - Detailed revised set of principles in filing charges against businesses.
  - Corporations should not be treated leniently, or be subject to harsh treatment, he said.
  - [http://www.usdoj.gov/dag/cftf/corporate\\_guidelines.htm](http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm)
- Another source: <http://www.corporatecrimereporter.com/index.html>
- Ten most corrupt states are: Mississippi, North Dakota, Louisiana, Alaska, Illinois, Montana, South Dakota, Kentucky, Florida and New York.
- Ten least corrupt states: Nebraska, Oregon, New Hampshire, Iowa, Colorado, Utah, Minnesota, Arizona, Arkansas and Wisconsin.
- The corrupt agent
  - Prominent insurance agent arrested in Tampa for selling fake policies to businesses – wasn't licensed by any insurance company.
  - Reporter didn't find out about the case until after the sentencing.
  - The criminal file had affidavits from businesses that had been duped.
  - Story won awards for warning others about agents selling fake policies.

### **Elsewhere in the courthouse**

- Property records are a treasure trove of information on companies and executives.
  - Many real estate records are now available on the Internet.
  - [http://www.netronline.com/public\\_records.htm](http://www.netronline.com/public_records.htm)
  - Find local CEOs and their houses. How much did they pay for them?
- More real estate
  - Major construction plans for large buildings or large subdivisions must be filed with the local zoning and planning departments.
  - These are public records that the developer often doesn't want journalists looking at until they're approved. But they're a great glimpse into projects.
- Sources in courthouse
  - Who knows the most about what's going on in the courthouse?
  - Secretaries for judges. They can also provide access to case files that the judge has checked out.
  - Clerks. They know when the major cases are filed and what documents to look for. Many of them are wannabe journalists.
- Bankruptcy Court
  - Process that allows companies and individuals that cannot pay their debts to have some or all of their debts discharged or reorganized.
  - Attempts to provide fair method of repayment.
  - Three types of filings to look for in U.S. Bankruptcy Court.
    - Chapter 7 is liquidation. Everything must be sold to repay creditors.
    - Chapter 11 is reorganization. Debtor maintains control of the business unless court appoints trustee.

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### **Elsewhere in the courthouse (cont'd)**

- Chapter 13 is when person believes that they can repay all debt within a reasonable time period.
- Bankruptcy documents
  - The initial filing will list the company's assets and debts.
  - A later filing will list all of the people to whom the company owes money, as well as their addresses and phone numbers. This should be considered a free source list.
  - The business must develop and file a reorganization plan at the court.
    - This plan will detail how much it plans to repay creditors and must be approved by those owed money.
    - Can often detail store closings, layoffs, etc.
    - A committee of creditors may also come up with a reorganization plan. These creditors can often be valuable sources.
  - Attorneys and company will submit expenses to judge via filing to have them approved.
    - Look for outrageous expenses. They can still sometimes show up despite bankruptcy filing.

### **Secretary of State**

- Uniform Commercial Code filings detail who has borrowed money, how much, and what they're using as collateral. Do a UCC check on anyone you're writing about.
- Incorporation records for the business. Maybe the company is owned by someone you don't know about, or lists executive not on your source list.

### **Internal documents**

- Always ask for them, even if you don't know what you're asking for.
- Many company CEOs now send e-mails to all employees regarding major announcements. How hard is it to get someone to forward it to you?
- Memos and other important documents.
- Personnel records are often private documents, even in public agencies.
- Letters to and from other companies.
  - Example from *Rochester Business Journal*: “*Excellus Inc. deliberately sabotaged important Strong Health initiatives and continues trying to subvert the University of Rochester's health system, a Strong Health executive claims.*”
  - *A Jan. 4 letter to Excellus CEO Howard Berman, obtained by the Rochester Business Journal, and Berman's reply three weeks later, reflect a massive rift between Strong and Excellus, the parent of Blue Cross Blue Shield of the Rochester area.*”

### **Good investigative sources**

- Airplane owners
  - <http://www.landings.com>: Database for airplane ownership. Click on “Databases” at the top of the page.
  - Then do an “Owner Search” and find out if a company you cover owns a fleet of jets to transport its executives across the country.
- Home sales
  - <http://www.domania.com>: Run by Lending Tree LLC, this subscription-based site offers searches to look at the sale of homes on a particular street or range of addresses. Also lists previous sale prices of specific houses and a way to compare all homes sold in a certain area for a specific price range.
  - Not all U.S. counties are included in this service.
- Finding people
  - <http://www.switchboard.com>: Find home addresses and phone numbers for company executives and other sources anywhere in the country.
    - Will also look up businesses.
    - Have found unlisted phone numbers here that directory assistance won’t give out.
  - Other ways to find people with unlisted phone numbers/don’t want to talk:
    - [http://theboost.net/unlisted\\_phone\\_number](http://theboost.net/unlisted_phone_number)
    - I like this one the best: <http://www.reversephonedirectory.com>
  - You may surprise some people into being willing to talk.
  - Looking for lawyers
    - <http://www.martindale.com>: This will allow you to search for a lawyer anywhere in the country as long as you have their name.
    - Great for finding out-of-town lawyers filing cases in your jurisdiction.
  - Sources in the company
    - Have you ever done a Google search using the name of a company you’re writing about with the word “resume?”
    - That kind of search yielded Adam Levy, Atlanta bureau chief of Bloomberg News, dozens of sources for story on Michael Eisner.

### **Getting the CEO to talk**

- What if the CEO or source won’t talk?
- Write a letter asking your questions.
  - Write a certified letter with your questions and a deadline by when he or she must respond. Questions should make it clear the number of sources and information you have.
  - State when the story is expected to run or air.
  - The letter success
    - Sandy Sigoloff, aka “Ming the Merciless.” He had fired Arthur Blank and Bernie Marcus from Handy Dan. Blank and Marcus then founded Home Depot.
    - Sigoloff wouldn’t talk. Wrote him a letter and included page from 1977 SEC filing about the firing.
    - Sigoloff called me at home.

### **Getting the CEO to talk (cont'd)**

- Make sure the letter is Certified.
  - Requires the person that you want to interview to actually receive the letter.
  - If the letter contains your questions and details about when the story will run, then they can't complain when it appears and they didn't talk.
  - Success rate: Nearly 100%.
  - Downside: Will likely get phone call from person's attorney.

### **The FOI letter**

- The Freedom of Information Act entitles you to request any record maintained by a federal executive branch agency. The agency must release the requested material unless it falls into one of nine exempt categories, such as "national security," "privacy," "confidential source" and the like, in which case the agency may, but is not compelled to, refuse to disclose the records.
- State public records laws are available here: <http://foi.missouri.edu/laws.html>
- Professional FOI procurement service: <http://www.foia.com>.
- Don't hesitate to write letter using Freedom of Information Act asking for documents.
- Sample letters found here: <http://foi.missouri.edu/foialett.html>
- SPJ has good walk-through: [http://www.spj.org/foia\\_opendoors.asp](http://www.spj.org/foia_opendoors.asp)
- Downsides
  - Can take government agency months or years to respond, delaying story. Plan that into your reporting.
  - Can also cost paper due to high copying costs.
  - May not find anything if you're just fishing. Have what you want in mind.

### **Stronger sourcing**

- Get to know people at all levels of the company you're writing about, from the executives to the janitors.
- Think about who really knows about what's going on at the business and what the workers are thinking? Maybe that's the secretaries.
  - A secretary faxed me every Friday the internal company newsletter.
  - Had lunch every Wednesday at the Cajun Kitchen with employees.
- John Emshwiller of *The Wall Street Journal* wanted to talk to Enron traders.
  - Found out what bar they hung out at after work in Houston.
  - Went there with another reporter and just started asking questions.
  - Drove up to Jeff Skilling's home as well.
- Be polite when meeting people on their turf. Explain how they will help balance the story by providing their perspective.
- Some may be hostile if your paper has been negative toward the company in the past. Be prepared to handle the glare and insults.
- Give out your card to everyone. Someone will call. Make sure it has an e-mail address, or if possible, a cell phone number.
- Offer to meet at a neutral site where the person won't be seen.
- Who do you tap?
  - Who were the vital sources at Enron?

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### **Stronger sourcing (cont'd)**

- Ken Lay, Jeff Skilling and Andy Fastow? No, they all lied.
- The best source for Enron would have been Sherron Watkins, the vice president for corporate development.
- Others way below her talked to *Wall Street Journal*.
- Customers and suppliers
- Ex-employees
- Competitors
- Investors
- Board members
  - Especially former board members
  - When researching book on Home Depot, and the company was not cooperating, had coffee one day with a former board member.
  - He mentioned he had about two-dozen videotapes of the CEO and president meeting with employees.
  - He gave them all to me. Didn't need company's cooperation after that.
- Others you wouldn't guess otherwise
  - Ted Turner had private jet stationed at Charlie Brown Airport outside of Atlanta.
  - His pilot and mechanics became friendly with journalists, who would ask where Ted was flying to.
  - That's how reporters broke the story of CNN/Turner merging with Time Warner.
- Get out of the office and off the phone.
  - Factory floor
  - Trade shows
  - Warehouses
  - Trading rooms
  - Data processing centers
  - Research labs

### **Interviewing techniques**

- OK, now that we know who we want to talk to, how do we get them to talk to us?
- Be human, and be upfront.
- Start off slow. It may take several interviews to get the sources to open up and give you what you want.
- Use open-ended, versus close-ended, questions.
- The reluctant source
  - Keep the conversation going. Find common ground.
  - Before they hang up, explain what you are working on and that they should at least know that.
  - Avoid the debate over why they shouldn't talk.
  - But if you do have a person afraid to comment because of retribution from the story's main subject?

### **Interviewing techniques (cont'd)**

- “I understand your concern. But a lot of people talk to me because they want the truth to be told. That’s the only way to stop what’s happening. Let me at least go over a couple of things with you.”
- Responding to “No Comment”
  - Work with them. Is there some part of the story they will comment on?
  - First attempt: “You don’t have to worry. You’re just one of several people I’m talking to. Let’s just talk about this one part of the story.”
  - Second attempt: Tell them that “no comment” will appear in the paper and make them appear as if they are hiding something.
  - If they won’t talk at all, explain to the source that the story is running even without their comments.
  - Explain that the story will have more balance and be more fair with their comments.
  - If the door gets slammed in your face or they hang up the phone, wait a day or two and try again.
  - Try their friends or acquaintances to run interference for you in the meantime.
  - Your job is to get their side of the story.
- Background, off the record
  - Set the parameters before the interview.
  - My best source for covering one story was the former director of human resources who was never quoted.
  - But she knew where all of the skeletons were buried and pointed me to people who would talk on the record.

### **The aftermath**

- Be prepared for angry phone calls after the story runs.
- But if your story has been checked by paper’s attorney, then you should be fine.
- My worst call ever: Richard Scrusby and HealthSouth called and had his attorney on a conference call. Politely told him who he needed to talk to at Bloomberg.
- The lawyer phone call
  - What do you do when an attorney for someone you’re writing about calls you, either before or after the story is published?
  - Say as little as possible about the story.
  - Emphasize that the story will be or was as fair, accurate and complete as possible.
  - If they persist, put them in touch with editor and paper’s attorney.
  - Don’t change what you’re doing, as long as it’s ethical.

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