

*Reconstructing a legislative procedure  
for 'error' detection: the Rywingate case<sup>1</sup>*

L'interesse per la comunicazione specialistica è aumentato molto negli ultimi tempi: in particolare, ci si concentra sempre più spesso sulle caratteristiche del testo, degli utenti, e dei contesti d'uso. La specializzazione nello studio linguistico, abbinata ad un legame sempre più stretto fra linguaggio e politiche sociali, può essere un segno dei tempi. D'altro lato, l'eccessiva settorializzazione nel o attraverso il linguaggio è sempre meno sostenibile alla luce della crescente intercomunicazione fra specialisti e un'effettiva pressione sociale che richiede la 'traduzione' di ciò che è tecnico (professionale, criptico) in ciò che è comune (pratico, popolare, o socialmente funzionale). Una tale mediazione fra discorsi risponde anche all'esigenza delle moderne società democratiche – sempre più aperte, istruite, mobili e tecnologicamente competenti; inoltre, attinge a una crescente mediatizzazione dei discorsi e a una sorta di 'commercializzazione' dell'informazione.

Questo studio indaga tali tracce di osmosi nella comunicazione specialistica in ambito legale. Un esempio è dato da un recente caso verificatosi in Polonia: un 'errore' nel disegno di legge sui media e il suo collegamento a un episodio di corruzione. Lo studio analizza le modalità attraverso le quali la procedura legislativa è stata ricostruita in tribunale e presentata dai media. L'obiettivo principale è di mostrare come il potere nella progettazione del testo di legge sia costruito, ridefinito, attribuito e denunciato in termini di discorso. Data la stratificazione dei ruoli e delle identità sociali, si illustrano i modi attraverso i quali i diversi attori nella costruzione sociale della legge mettono in discussione l'autorità e la responsabilità. In particolare, si osserva come, sotto pressione, la responsabilità del legislatore venga via via sottratta all'istituzione, e 'diluata' in una sorta di ricostruzione poliziesca degli eventi.

Today we are witnessing a spread of interest in specialist communication, both within linguistics and outside of it, with a focus on specific configurations of features of texts, users, and contexts. For linguistics this means a growing specialization among scholars in how textuality is being described and explained for classes of audiences and purposes,

<sup>1</sup> A preliminary version of this paper was presented at a conference on Document Design, Tilburg, January 2004.

most of which referring to discourses in specific situational settings. Quite importantly, specialization defends if not creates an illusion of a segregationist perspective on language and society. It even attempts to replace the earlier philological or general humanistic perceptions of textuality and societal functions of language.

Specialization in linguistics, matched by a growing bond between language and social policies, may well be a sign of the times. On the other hand, however, compartmentalization in or through language is hard to sustain given the growth of inter-communication between specialists or a genuine social pressure to 'translate' the technical (professional, cryptic) into the common (practical, popular or socially functional). Such mediation of discourses (and competencies) is also enhanced by the expectations of modern democratic societies that are becoming more open, educated, mobile and technologically capable. It gains additional impact from mediatization of discourses and commodification of information.

The present paper looks at such osmotic traces in specialist communication in the legal domain. A case in point is a recent failure in a legal procedure in Poland, an apparent 'error' in the Media Bill, and its link to a corruption scandal. The paper gives a comprehensive analysis of how the legislative procedure was reconstructed during the hearings in front of the camera, and how it was covered in the media. The major purpose of the paper is to show how power in legal document design is discursively constructed, redefined, allocated and denounced. Given the lamination of social roles and identities, it is shown how various actors in the social construction of the law dispute authority and responsibility. It is illustrated how, under pressure, the responsibility of the law-maker is laminated away from the institution, and 'diluted' in a detective-style of reconstruction of the events. In the narratives analyzed ample space is lent to the natural human right not to remember or simply to 'err'.

We interpret 'failure' in an institutional text in terms of ethical behavior, and show how disparate valuations of such an incidence, both within and outside of the institution, can damage not only the integrity of individual texts, but of entire domains of social action. We claim that axiology should function as a missing interface in a metapragmatic calibration of all discourses, whether specialist or 'regular'.

## *1. Introduction: ethics in document design*

The construction of a document requires field and textual expertise defined in terms of genre (domain) characteristics, such as those of websites, advertisements, legal bills or pharmaceutical leaflets. Such competence is strongly vested in institutional power and thus also in specific context configurations. It is perhaps less obvious that documents should also respond to ethical standards, both within and outside a particular institution. The association of the two constraints, institutional and external, becomes most apparent in cases of failure in document design. For the purposes of this paper we interpret 'failure' in terms of ethical behavior, and show that respective judgments can influence the integrity not only of individual documents but also of entire discourse domains.

In order to drive the issue home, we have looked into the consequences of an apparent failure in a legislative process. The case in point is the Media Law currently being discussed in Poland. Two versions of the Law made their way to Parliament: one with and one without the incriminated phrase "or magazines."<sup>2</sup> The change in the formulation meant a substantial difference in the interpretation of the document, and the existence of alternative wordings raised suppositions of legal (and political) abuse. The discovery was heavily mediatized and led to serious destabilization of the government in office. It also added to a growing social outcry about the poor quality of legal documents in Poland, and a low morale of lawmakers and law users.

Quite importantly, the Law placed itself at the center of public attention due to its alleged connection with a corruption scandal, the so-called *Rywingate*, implicating the role of the Prime Minister and the ruling political coalition (see § 2). For the first time in Poland, a Parliamentary (*Sejm*) Investigation Committee was convened to scrutinize the government's legislative activity. Its hearings were televised and raised considerable social interest. An essential part of the hearings concerned the tracing of where, when and by whom the incriminated phrase "or magazines" could have been removed (or added) in the legislative process.

The paper gives a comprehensive analysis of how the legislative pro-

<sup>2</sup> We speak of *magazines* and not of *periodicals* or *journals* even though the Polish term *czasopismo* can refer to various types of publications.

cedure was reconstructed during the hearings and how it was covered in the media. The major purpose of the analysis is to show how power in legal document design is discursively constructed, redefined, allocated and denounced if challenged for performance failure on the part of the agent. What is the focal point then is the way in which the various actors involved accept, dismiss or delegate their responsibility.

From the methodological point of view we resort to the concept of *lamination* of social roles and of discourses, interpreting it in terms of *reframing* (*recontextualization*) of meanings. Our position is informed by mainstream studies in social identities in language (for an overview see, e.g., Duszak 2002), by the work on interdiscursivity and heteroglossia (in the tradition of Bakhtin 1986; cf. also Kalaga 1997 on textual osmosis and Fairclough 1992 on orders of discourse), as well as by frame-related analyses in the tradition of Goffman (e.g. Tannen 1993; Kramsch 1998; Verschueren 1999).

Document designing involves various social identities on the part of the encoder. In the case of interest to us this means, first of all, a layering of legal and ideological (political) roles. A state of tension, if not of overt conflict, can be envisaged in how the various self-concepts of the lawmaker are put together and how they may be redefined under pressure. As a result, the paper focuses on the human factor in document designing, and argues for an ethical (axiological) perspective on specialist discourses. It is assumed that the lamination of agent roles goes hand in hand with lamination of discourses. A document (in the making) interacts with other documents in its own institutional domain. What is more, it also enters, whether overtly or covertly, into a 'dialogue' with other texts of the national system of discourses. Today, this interdiscursivity of texts is enhanced by a growing mediatization of discourses.

For the purposes of our analysis we speak of *recontextualization* or *reframing* of texts, and – more specifically – of discourses on 'legal failure'. We show that explanations of what went wrong were related to various frames (judicial, political, social, journalistic), and that ultimately a legal failure becomes a matter of human accountability within a broader social context. When reframed in retrospect narratives, an institutional procedure receives a new interpretation and a new social significance. In our case such reconstructions further undermined the credibility of Polish lawmakers and political elites in general.

By and large then, the study views document design as a complex system of people, environments, beliefs, technologies and formats (cf. Kaltenbacher / Ventola 2004). Document designing is above all a socially relevant activity, hence technical competences and specialist credentials may eventually yield to valuations similar to those normally attributed to people as social actors. Any document is first of all a text and, as some affirm (e.g. Krzeszowski 1997), the axiological parameter is of primary importance in any discussion on textuality, to which specialist discourses are no exception.

## *2. Rywingate: contexting the “or magazines” ‘error’*

Before expounding on the essence of the ‘error’, some background information is necessary in order to contextualize the ‘error’ itself. What mediatized the apparent ‘blunder’ in the legislative act was that it was linked to an earlier corruption attempt on the part of Lew Rywin, a popular film-producer and a Polish tycoon, to Adam Michnik, editor-in-chief of the leading national daily *Gazeta Wyborcza*, once an icon of the Solidarity movement. Rywin’s proposition was secretly recorded by Michnik, and then made public. Rywin presented himself as a messenger of “a group holding power”, implicating that his “mission” was endorsed by people from the Democratic Left Alliance (SLD) that was in power at that time or even by the Prime Minister himself.

What links Rywingate and the “or magazines” legislative blunder is the Media Law that still remains on the agenda in the Polish Parliament. The point of Rywin’s corruption proposition was apparently to ensure that the new Media Law would be formulated in such a way as to enable *Gazeta Wyborcza*’s parent company Agora to purchase a national commercial television station. Rywin’s corruption proposition received new credibility once the media disclosed that there were in fact two versions of the bill – one including the incriminated phrase “or magazines” and one without it. This led to speculations that the bill had been manipulated to suit corporate interests.

On 10 January 2003, under art. 111 of the Polish Constitution, the Sejm Investigation Committee (full name: *The Sejm Investigation Committee to Uncover Corruption in the Media During the Drafting of the*

*Law on Radio Broadcasting and Television*) was established in order to achieve three main goals: first, to reveal the circumstances underlying Lew Rywin's attempted bribery and to discover who sent him to Adam Michnik; second, to scrutinize the legislative process in terms of the amendment regarding media regulations; and, third, to examine why the state authorities failed to react appropriately to the information about Rywin's proposition.<sup>3</sup>

In the empirical part of this paper, we shall focus on evidence from the Committee's hearings. A total of 86 public hearings were held, during which 51 witnesses were questioned, and 4 cross-examinations took place. In addition our general assessment of the case was backed by its press coverage, particularly by editorials and the results of public opinion polls.

### *3. 'Error discourses' as laminated discourses*

We argue that language as social practice entails lamination of specialist and general discourses, and that the mechanisms of reframing affect the meaning and the valuation of texts. We will address two major issues in such an integrated analysis of the legal document: an interdiscursive flow across and away from the legal domain, and the ethical dimension of lawmaking.

#### *3.1. Specialist and general discourses: an interdiscursive flow*

Adopting an integrative position on textuality does not imply disregarding the validity of any segregated studies in specialist genres. It merely argues that a broadening perspective may reposition, and complicate, one's object of analysis.

<sup>3</sup> It might be added that in December 2003, while the Committee was still at work, a court case was launched against Rywin, who was charged with influence peddling (paid protection) with regard to the Agora company. The court, however, recategorized the offence as 'criminal fraud'. On 26 April 2004, Rywin was sentenced (though not unanimously), to thirty months in prison and a fine of 100,000 PLN (approx. 25,000 euros). This sentence was appealed by the defendant. In a final judgment on 10 December 2004 the appellate court recategorized the offence again, and Rywin was found guilty of assisting an unidentified group with influence peddling. The court changed the original sentence into two years' imprisonment, but affirmed the previous fine.

Today there exists ample research into various institutional and professional discourses, such as legal documents, doctor-patient talk, or academic papers (e.g. Chimombo / Roseberry 1998; Bargiela-Chiappini / Nickerson 1999; Trosborg 2000; Gotti 2003). Such analyses normally derive from 'niched' specialist studies in that they elaborate on the specific field and discourse expertise of members of various professional communities. They discuss context configurations in terms of user design and power distribution. According to such views, specialist texts are shown as being created for particular audiences and for particular situations of use.

On the other hand, however, specialist genres function in discursive domains and institutional settings that are fuzzy, osmotic and dynamic rather than stable, solid and divisive. We witness a proliferation of discursive mutants that exploit domain-specific frameworks and adjust them to their own needs and goals. We also observe a growth in inter-community communication, often coerced by public pressure for information and social control over texts. Indeed, mediatization of communication, including specialist communication, is a powerful factor in undermining any segregational (and domain-specific) views on texts. At the same time the media not only stimulates such reframing of specialist discourses – their “promiscuity” – to recall Bakhtin's (e.g. 1986) imagery. It falls prey to recontextualization of meanings for social mediation, giving rise to hybridized blends of ideational and textual formats. Namely, “media genres involve a complex admixture of genres from other domains [...] which are recontextualized (and in the process may be significantly transformed) within the media.” (Fairclough 1998: 150). In our data, for instance, Rywingate hearings comprised a mixture of several public and legal genres, including a political talk-show, a court interrogation, a parliamentary committee meeting, and a conversational dispute. As a result, the hearings analyzed could be treated as an instance of an intertextual (interdiscursive) genre resisting any strict analytical formulas.

On closer examination then, the specialist-general flow in discourses turns into a cline, so we may talk about gradient strategies of reframing. Patterns of recontextualization may be enacted for purposes of center-to-periphery communication, as is the case of (legal) experts speaking down to novices (or apprentices) in their institutional domain. It may,

however, surface in center-to-center talk, when experts in one domain (e.g. the law) speak to experts in another domain (e.g. the media or the medical profession). It may also take on a somewhat ‘looser’ course of action, as illustrated by an ‘undirected’ expert translation of the legal document for the needs of the general public. From our perspective we could envision the following major directions of intra- and inter-group mediation of the legal document in question: lawyers to politicians, politicians to lawyers, lawyers to the general public, lawyers to the media, lawyers to other specialists, politicians to the general public, politicians to the media and politicians to other specialists.

Mediation away from the original domain of the institution necessitates adaptation of texts to users (and contexts). Most naturally this assumes the form of some ‘trivialization’ of the content and ‘loosening’ of the institutional format of the document. More ‘naive’ talk, however, may lead to an axiological disfiguring of the original document, or to the stigmatization of the document (if not of the entire field) in the social consciousness of the interpreter.

It is unavoidable then that (legal) documents should be notoriously and diversely reframed in various social practices, and that such recontextualizations are costly. As already pointed out by Verschueren (1999: 220ff) in his discussion of Rodney King’s case, when reframed, an institutional event may receive an interpretation incongruent with its original reading. Thus in the case of the famous Afro-American trial, what looked like a solid case with hard and unmistakable evidence in the form of a video tape (of the police severely beating up the suspect for a minor traffic offence) lost its professional edge when repositioned in various institutional and public narratives. Somewhat similarly, it would appear that Rywingate hearings led to a redefinition of blame and responsibility of the actors implicated in the scandal. In both cases something went wrong in the institutional procedure, the fact became public, reverberated in a social uproar, and led to a re-evaluation of the entire institutional procedure.

### *3.2. Law, morality and politics*

The main objective of this paper is to emphasize the ethical dimension in document design – the relevance of what people consider good



and bad in their evaluation of the document and its makers. This goes beyond institutionally defined measures of legitimacy, lawfulness, doubt or rejection. As argued above, such valuations project on the perception of the domain within a broader context of social communication.

The relationship between law, morality, and politics has stimulated sharp controversies, as one can readily see in the classic and contradictory concepts of politics by Aristotle and Niccolò Machiavelli. Legislative activity does not constitute a morally neutral sphere. The legislative process and its outcomes depend on axiology, as well as on the values and attitudes that dominate in a given society. Certain moral principles, embodied for example in the Ten Commandments, have also become accepted legal norms. In all democratic states, citizens have the right to monitor the law and legislative process.

The beginnings of this doctrine may be traced back to the English 'rule of law' and its three concepts: equity, the good, and justice. The three ideas, which had already been present in Roman law, construe a legal system that corresponds to Christian morality and St. Thomas Aquinas' idea of natural law (*Summa Theologica*, 13: 91-2, 3).

The concept of the Rule of Law in Continental Europe has been complemented by the idea of *Rechtsstaat* (state ruled by law), which arose during the German Enlightenment (von Mohl 1832). Because of the widespread violations of the law by the communist government before 1989, the idea has also gained favor in Poland. The *Rechtsstaat* concept is embodied in the Polish constitution, where in art. 7 it states that "the organs of public authority shall function on the basis of, and within the limits of, the law".

The legislative process clearly must observe strict rules, associated not only with the principles of the *Rechtsstaat*, but also with specific procedures and rules stipulated by the statutes. Ethical norms and morality should be taken into account at every stage in the legislative procedure. As Lon L. Fuller has written (1964), law has its own universal morality, which means, *inter alia*, that public authorities must act in compliance with statutory law. The internal morality of the law is a *sine qua non* for the existence of a legal order. An even more uncompromising stand was taken by Radbruch (1932), who listed three dialectic elements of law: (1) law must be just i.e. provide equal treatment for equal things and people;

(2) law must contribute to the public welfare; (3) law must be certain. In his later work *Gesetzliches Unrecht and Übergesetzliches Recht* (1945), Radbruch went even further, arguing that certain legal rules deriving from natural law, as those mentioned above, override legal provisions. Therefore, a law that contradicts those rules cannot be binding.

A political order is also based on a value system. A textual/internal analysis of political discourses which does not place them in their broader social context “is of limited value” (Fairclough 1998: 143). Thus, the relationship between law and morality can be reinterpreted as the relationship between politics and morality, which has been complicated today by the growing mediatization of politics and communication in general: in part, it is the media that is monitoring law and the legislative process.

It is a common view that legislative behavior can be influenced by the legislators’ ideologies and party affiliations. It is equally common, however, to combine politics with corruption, manipulation, incompetence, or lack of social responsibility. Bralczyk argues (2003: 15-16) that the Poles believe that politics is permeated with lies, that it is often unclear who is actually responsible for legislative acts, or how citizens could effectively monitor the legislative process.

The public debates on the work of the Investigation Committee of interest here clearly illustrate the changing social understanding and the relative evaluation of what was happening and why. We have isolated the following major phases in the evolution of social attitudes to *Rywingate*:

- A period of public enthusiasm and trust (hope) that the Committee could “make a difference” (could effect positive change).

This was the first Investigation Committee ever convened in Poland to deal with a corruption scandal (and/or failure of the legislative system). It came amidst a growing public outcry about the inferior quality of Polish legal documents, the low morale of lawmakers and the public, a sense of growing corruption, and negative opinions about politicians, growing unemployment, the fall in living standards, etc. As a result, it seems, the Committee served as a safety valve for the release of public discontent and, disillusionment, if not plain wrath. It was argued, for instance, that more investigating committees of this kind were needed in

order to uncover other cases of wrongdoing, and thus to heal public life in Poland. For many Poles, the proceedings were a genuine source of information about the functioning (or rather *malfunctioning*) of public institutions. The Committee was taking credit for having shed some light on what was until then an invisible web of connections between Polish political and business elites. Rywingate demonstrated that these links were deeper than most people had suspected.

- A period of growing skepticism towards the outcomes of the Committee's work.

People started to believe that the Committee would not be able to uncover the truth, i.e. to determine who sent Lew Rywin to Adam Michnik with a corruption proposition, or who 'tampered' with the "magazines" in the bill.

- A period of ideological stigmatization of the Committee's work: back to square one.

The sessions of the Committee started to be seen as episodes in a political drama in which supporting actors were taking the opportunity to advance to the front of the (political) scene. Some of the members discredited themselves by showing incompetence, poor language skills, lack of fairness in treating witnesses or a general inability to handle the situation. The style of interrogation reflected and reaffirmed the political divisions within the Committee itself. The testimonies were interpreted largely in political terms, depending on ideological allegiances or differences. Media polls indicated that TV viewers too, in evaluating the proceedings, were largely driven by their political preferences. The hope that the 'error' could be "clarified", however naive it may have been at the start, was becoming dimmer as a result of a growing political orchestration of the case. The Committee's image, it seems, was recast in the social consciousness to come very close to the standard negative view of a political institution.

- Disillusionment with the Committee's final report; the sense of the procedure questioned.

The Committee was not able to negotiate one interpretation of the evidence collected. Several of its members prepared their own recon-

struction of the events and their own versions of who was responsible for the legal ‘error’. Unexpectedly, though by a majority of one vote only, the Committee adopted a report that was favorable for the ruling leftist government. Namely, it practically excluded the existence of a “group holding power”<sup>4</sup>. The Committee was dissolved in an atmosphere of a new political scandal and rising questions about whether the procedure should be repeated in future.

Although the investigation of the Rywin affair has produced few details that could really damage the government, its television coverage became for Poles a constant reminder about corruption. Talk of introducing anti-corruption classes in schools was heard, along with debates on the historical and social causes of corruption in business and politics. A 2003 report on corruption by the Batory Foundation revealed that entrepreneurs considered corruption the most important problem in Polish society. A 2002 Batory Foundation report estimated that 50 per cent of Poles have participated in some form of corrupt act. A 1999 European Bank for Reconstruction and Development survey of more than 3,000 firms operating in Central and Eastern Europe found that one in three firms in Poland pays bribes to obtain tax relief or delay the repayment of debt.

#### *4. Data analysis*

##### *4.1. Goals and methods*

In this part of the paper we report results of an empirical analysis of ‘error’ discourses conducted in front of the Investigation Committee. Our initial corpus covered a total of 86 official transcripts of the hearings and amounted to over 2.7 million words (2,753,559). For the purposes of the analysis we selected only those sections of the protocols in which explicit reference was made to the “or magazines” phrase in the context of the Media Law under scrutiny. We found 446 such references, of which 357 were exploited in the construction of ‘error discourses’. By definition such discourses were interactively created in se-

<sup>4</sup> Incidentally, this was not the report that was later approved by Parliament. The one that was approved confirmed the existence of a “group holding power”.

quences of question / answer exchanges between the witnesses and the members of the Committee. The 'legal' side comprised actors who were variously involved in the actual designing of the document. It was natural then that they would assume different positions of defense in fending off the responsibility for the legislative 'error'. The legal actor configuration is presented in Table 1.

### MAIN LEGAL ACTORS

#### ► The Council of Ministers

Leszek Miller	President of the Council of Ministers
Marek Wagner	Head of the Chancellery of the Prime Minister
Aleksander Proksa	Secretary of the Council of Ministers

#### ► Ministry of Culture and Arts

Andrzej Celiński	Former Culture Minister
Waldemar Dąbrowski	Culture Minister
Aleksandra Jakubowska	Deputy Culture Minister
Ewa Ziemiszewska	Director of the Legal and Legislative Department
Tomasz Łopacki	Chief Specialist of the Legal and Legislative Department

#### ► National Council of Radio Broadcasting and Television [National Broadcasting Council – KRRiT]

Juliusz Braun	President of the National Broadcasting Council
Janina Sokołowska	Director of the Legal Department
Iwona Galińska	Deputy Director of the Legal Department

#### ► Government Legislation Centre [RCL]

Aleksander Proksa	President of the Centre
Beata Hebdyńska	Deputy President of the Centre and Director of its Legislative Department
Bożena Szumielewicz	Chief Legislator responsible for Media Law

#### ► Parliamentary Standing Culture and Media Committee

Jerzy Wenderlich	Chairman
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Table 1. Main legal actors.

In what follows we shall present the results of our qualitative analysis into how individual actors responded to the interrogators' questions concerning their knowledge of what happened (why, when, etc. the phrase was added or removed) and about their particular responsibilities in the legislative procedure. The following major strategies of defense were established:

- delegation of responsibility;
- downgrading of responsibility;
- denial of responsibility;
- suspension of responsibility;
- assumption of responsibility.

These will be exemplified below. The relative distribution of those strategies across speakers testifies to a complex and heterogeneous nature of power and of responsibility in legal document production. The analysis of the data uncovered the existence of two leading frames in how the testimonies were delivered: the legal frame and the general narrative '*whodunnit*' frame.

#### *4.2. Examples of strategies: coping with legal 'error'*

Below we shall discuss the types of defense strategies observed in the transcripts. Each time the locus of responsibility management is marked with bold type, and the name of the witness is underlined.

### DELEGATION

Delegation of responsibility assumed the following types:

- political or ideological responsibility;
- material responsibility, i.e. responsibility for the content;
- technical responsibility for the drafting of the bill, such as wording, standard layout, etc.

A classic example of the delegation of responsibility presented below (1) illustrates how a witness manages his (political) responsibility and delegates it to those on lower levels.

(1) **Poseł Jan Rokita:**

Ale moje pytanie dotyczy tego, na czym polega zdaniem świadka błąd techniczny albo zgubienie wyrazów. Czy tu wchodzi w grę **działalność ludzka świadoma**?

**Pan Leszek Miller:**

**Zapis, który został uzgodniony na posiedzeniu Rady Ministrów, brzmiał:** “jest właścicielem dziennika **lub czasopisma** o zasięgu ogólnokrajowym”. **W przesłanym przeze mnie projekcie te słowa “lub czasopisma” nie znalazły się, ale nie mogę powiedzieć, z jakich powodów.** W każdym razie sekretarz Rady Ministrów, który dla mnie jest **autorytetem** w tej sprawie, informował, że było to wynikiem **błędu technicznego**. Przypuszczam, że pan doktor **Proksa** będzie mógł wysokiej komisji szczegółowo te kwestie wyjaśnić. [Pos. 51 s. 8]

**Mr. Jan Rokita:**

But my question concerns the following: what does “a technical error or loss of words” mean to [you as] a witness? Would it involve **willful human activity**?

**Mr. Leszek Miller, Prime Minister:**

**The stipulation which was agreed upon at the session of the Council of Ministers read as follows:** “is the owner of a nationwide newspaper **or a magazine**.” **In a bill sent by me the words “or a magazine” were not included but I cannot say for what reasons.** The secretary of the Council of Ministers, however, who is an **authority** for me on this matter, has informed that it resulted from **a technical error**. I suppose that **Dr. Proksa** will be able to explain these matters in detail to the High Committee. [Hearing no. 51 p. 8]

Another illustration of the delegation strategy (2) refers to an interaction between a female interrogator and Aleksandra Jakubowska, Polish Deputy Culture Minister:

(2) **Poseł Anita Błochowiak:**

**Kto napisał art. 36?**

**Pani Aleksandra Jakubowska:**

Proszę?

**Poseł Anita Błochowiak:**

**Kto napisał art. 36?**

**Pani Aleksandra Jakubowska:**

Art. 36 w swojej części zasadniczej został napisany przez **Krajową Radę Radiofonii i Telewizji** - w resorcie kultury **rozszerzono to** o właścicieli dzienników lub czasopism. Z jakich powodów? Zeznawałam to w czasie poprzedniego posiedzenia komisji, gdzie miałam przyjemność przed państwem...

**Poseł Anita Błochowiak:**

Pani minister, [od razu] - "rozszerzono to", to znaczy, **kto rozszerzył**, gdyby pani była łaskawa.

**Pani Aleksandra Jakubowska:**

**To była decyzja podjęta w Ministerstwie Kultury** na podstawie analizy dokumentów, które posiadaliśmy. [Pos. 67. s. 4-5]

**Ms. Anita Błochowiak:**

**Who wrote art. 36?**

**Ms. Aleksandra Jakubowska, Deputy Culture Minister:**

Pardon?

**Ms. Anita Błochowiak:**

**Who wrote art. 36?**

**Ms. Aleksandra Jakubowska:**

The core of Art. 36 was written by the **National Council of Radio Broadcasting and Television**; in the Ministry of Culture **it was extended** to include the owners of newspapers and/or magazines. For what reasons? I already testified to that during the previous Committee meeting, when I had the pleasure of ...

**Ms. Anita Błochowiak:**

Minister, [one thing] - "**it has been extended**", means, **who has extended**, if you would be so kind.

**Ms. Aleksandra Jakubowska:**

**It was a decision made at the Ministry of Culture** after our documents had been analyzed. [...] [Hearing no. 67 pp. 4-5]

Networks of responsibility delegation established are shown in Figure 1 below.



► **Political responsibility**

*Prime Minister*  
Leszek Miller

*Secretary of the Council of Ministers*  
Aleksander Proksa

► **Material responsibility**

*Deputy Culture Minister*  
Aleksandra Jakubowska

*National Broadcasting Council*  
President Juliusz Braun

*Government Legislation Centre*

*Director of the Legal Department*  
Janina Sokołowska

*Deputy President and Director of the Legislative Department*  
Beata Hebdzyńska

*Director of the Legal and Legislative Department*  
Ewa Ziemińska

► **Technical responsibility**

*Chief Legislator*  
Bożena Szumielewicz

*Chief Specialist*  
Tomasz Łopacki

*Deputy Director of the Legal Department*  
Iwona Galińska

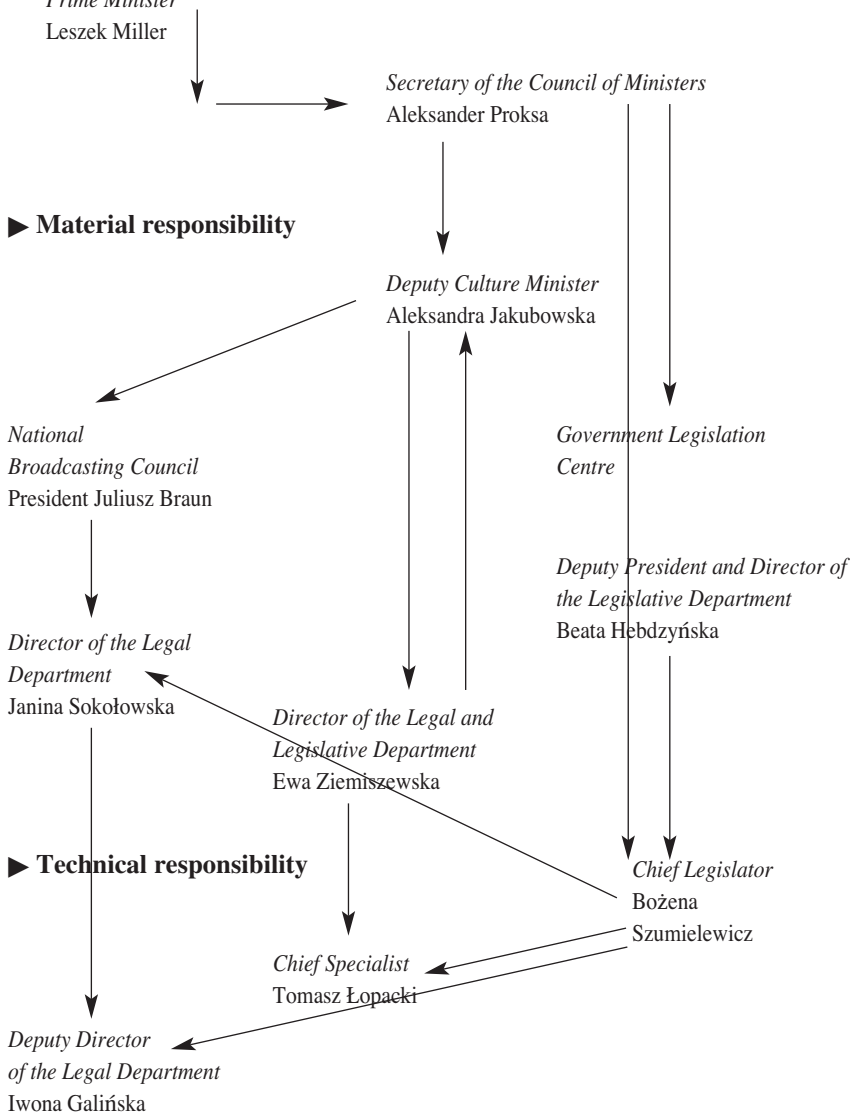


Figure 1. Delegation of responsibility scheme.

In fact, the networks of delegation strategies are more complex than those presented above. What is important is that the direction of the delegation of responsibility is top-down, and that flows of responsibility delegation can be observed only within material and technical levels. Put somewhat trivially, nobody blamed the Prime Minister for deleting the words from the draft Media Law. The Prime Minister delegated responsibility to his secretary, as in (1), who then implicated the Deputy Culture Minister and the Deputy President of the Government Legislation Center, who in turn put the blame on people who worked directly on the draft Media Law, i.e. the Chief Specialist and Chief Legislator.

### DOWNGRADING OF RESPONSIBILITY

The next strategy we determined was the strategy of downgrading responsibility either by using euphemisms to describe the disappearance of the words, or by resorting to the argument that ‘people fail’. The error was explained as being due to a lack of expertise (failure) or as a technical error (e.g. typographical error, printer’s devil).

(3) **Pani Aleksandra Jakubowska:**

W międzyczasie prasa wykrywa, że pomiędzy projektem przyjętym przez Radę Ministrów a projektem przesłanym do Sejmu istnieje różnica polegająca na tym, że wypadły dwa słowa „lub czasopism”. Oczywiście **zdarzają się różne techniczne błędy**. Rada Ministrów przyjęła w takiej wersji, w jakiej rzeczywiście powinno to się znaleźć w Sejmie, czyli „i lub czasopism”. Zdarza się, że wskutek **błędu technicznego przepisywania** coś może wymknąć. Nawet gdyby nie została wykryta, ta zmiana nie miała zasadniczego znaczenia dla tego przepisu, [...] [Pos. 24 s. 1]

**Ms. Aleksandra Jakubowska, Deputy Culture Minister:**

In the meantime the press has discovered that the bill approved by the Council of Ministers differs from the one sent to the Parliament in that two words, “or magazines”, are missing. Of course, **various technical errors occur**. The Council of Ministers approved a version [of a bill] which should have gone to the Parliament, that is with “and **or magazines**.” It sometimes happens that due to **a technical error in rewriting** something may slip out. Even if it wasn’t detected, the change would have no major meaning for this provision, [...] [Hearing no. 24 p.1]

(4) **Posel Jerzy Wenderlich:**

[...] Tak że ja wciąż chcę wierzyć, że był to **typowy chochlik w tym olbrzymim morzu pracy legislacyjnej**, a nie że premedytacja [...] [Pos. 42 s. 15]

**Mr. Jerzy Wenderlich, Chairman of the Parliamentary Standing Culture and Media Committee:**

[...] So I still want to believe that it was a **typical 'printer's devil' in this huge sea of legislative activities**, and not **malicious intention** [...] [Hearing no. 42 p. 15]

(5) **Pan Leszek Miller:**

**Błędy techniczne niestety się zdarzają.** Odnotować muszę, że część z nich nie daje się wychwycić przed publikacją w Dzienniku Ustaw lub Monitorze Polskim, co **w latach 1998-2002 spowodowało konieczność opublikowania sprostowań aż w 55 przypadkach.**

Poświęciłem tej **w istocie technicznej sprawie** tak dużo uwagi, ponieważ wiem, że stanowiła ona w czasie prac komisji przedmiot bardzo swobodnych interpretacji prowadzących do równie swobodnych wniosków. [Pos. 35 s. 5]

**Mr. Leszek Miller, Prime Minister:**

**Unfortunately technical errors occur.** I have to admit that some of them cannot be detected before the publication [of laws] in the Official Journal of Laws or Polish Monitor. This in turn **necessitated the publishing of corrections in 55 cases in the years 1998-2002.**

I gave so much attention to this, as a matter of fact, **technical problem**, because I know that it has become an object of liberal interpretations leading to equally liberal conclusions during the work of the Committee. [Hearing no. 35 p. 5]

## DENIAL OF RESPONSIBILITY

(6) **Posel Bogdan Lewandowski:**

[...] Zeznając przed komisją, pan minister Proksa oświadczył, że zarówno pani, pani dyrektor Sokołowska, jak i pan mecenas Łopacki broniliście tezy, że prawidłowy projekt, zgodny z tym, co zostało przyjęte przez Radę Ministrów, jest właśnie pozbawiony tych dwóch słów **"lub czasopisma"**.

**Pani Iwona Galińska:**

Panie przewodniczący, ja nie brałam udziału w Radzie Ministrów i nie czytałam też tekstu, który wyszedł po Radzie Ministrów, więc ja nie mogłam potwierdzać, że taka zmiana nastąpiła. [Pos. 55 s. 14]

**Mr. Bogdan Lewandowski:**

[...] In his testimony before the Committee, Minister Proksa stated that both you and director Sokołowska as well as Mr Łopacki, attorney-at-law, defended the thesis that a correct [version of the] bill, in accordance with what was approved by the Council of Ministers, was deprived of these two words “or magazines.”

**Ms. Iwona Galińska, Deputy Director of the Legal Department of the National Broadcasting Council:**

Mr. Chairman, I did not take part in the [meeting of ] the Council of Ministers, neither did I read the text which was approved by the Council of Ministers, so how could I have affirmed that such a change occurred.

[Hearing no. 55 p. 14]

## SUSPENSION OF RESPONSIBILITY

The strategy of suspension of responsibility was usually verbalized as “I don’t remember”, or “I don’t know”, as in (7) below.

(7) **Posel Bogdan Lewandowski:**

Pani dyrektor, proszę powiedzieć: pani zdaniem, w jakich okolicznościach nastąpiła zmiana art. 36 ust. 3 pkt 1?

**Pani Janina Sokołowska:**

Nie wiem. Sama się nad tym zastanawiałam. Nie wiem. [Pos. 58 s. 24]

**Mr. Bogdan Lewandowski:**

If you could tell us, in what circumstances, in your opinion, the change in art. 36.1.3 took place?

**Ms. Janina Sokołowska, Director of the Legal Department of the National Broadcasting Council:**

I don’t know. I was wondering myself. I don’t know. [Hearing no. 58 p. 24]

## ASSUMPTION OF RESPONSIBILITY

This strategy was subdivided into three sub-categories:

- (plain) acceptance;
- apparent assumption of responsibility (quasi-acceptance);
- acceptance with disclaimers;

as in examples 8-10 respectively.

(8) **Pani Beata Hebdzyńska:**

Zatem to, że z rządu wyszedł projekt nowelizacji ustawy o radiofonii i telewizji w brzmieniu niezgodnym z ustaleniami Rady Ministrów, **obciąża mnie osobiście**. [...] [Pos. 61 s. 26]

**Ms. Beata Hebdzyńska, Deputy President of the Government  
Legislation Centre and Director of its Legislative Department:**

So the fact that the bill amending the Media Law was sent by the government in the form which was not in compliance with what the Council of Ministers agreed on, **makes me personally responsible**. [...] [Hearing no. 61 p. 26]

Apparent acceptance of responsibility or quasi-acceptance involved the acceptance of potential responsibility for deleting the words “or magazines” e.g. when working on a computer, but denial of the intentional nature of the act committed. Usually, such an assumption was mitigated by using modalities, such as “it could have happened that some part of a text was deleted”, or plural forms “we could have possibly done something wrong then.”

(9) **Posel Jan Rokita:**

[...] Czy pan dopuszcza taką możliwość, że to pan przy operacjach manualnych nad komputerem mógł w pewnym momencie w art. 36 skreślić te słowa “lub czasopisma”?

**Pan Tomasz Łopacki:**

Tak.

**Posel Jan Rokita:**

**Dopuszcza pan taką możliwość?**

**Pan Tomasz Łopacki:**

**Dopuszczam.**

**Posel Jan Rokita:**

A jak to się mogłoby stać, pańskim zdaniem?

**Pan Tomasz Łopacki:**

Dokonywaliśmy kopiowania poszczególnych przepisów, przenosiliśmy, wycinaliśmy niektóre przepisy z jednego artykułu, przenosiliśmy na koniec ustawy. **Mogło się wydarzyć**, że jakiś fragment tekstu został wycięty, uzupełnialiśmy ten tekst. **Przy wprowadzaniu tego typu zmiany mogliśmy nie wpisać tych wyrazów.**

**Posel Jan Rokita:**

A w tym przepisie, w którym te czasopisma były, w tym ustępie art. 36 pan dokonywał jakichś redakcji przy komputerze?

**Pan Tomasz Łopacki:**

**Nie przypominam sobie**, w których punktach projektu wprowadzałem ja zmiany, a w których punktach wprowadzała pani Galińska.

**Posel Jan Rokita:**

A w tym ustępie przepisu art. 36 w ogóle wprowadzaliście jakieś poprawki redakcyjne, legislacyjne?

**Pan Tomasz Łopacki:**

W tym ustępie nie wprowadzaliśmy. **Wprowadzaliśmy w tym artykule. Dokonywaliśmy dzielenia całego artykułu na dwie części i ewentualnie wtedy mogliśmy zrobić coś nie tak.**

**Posel Jan Rokita:**

No tak, ale to na komputerze trzeba wziąć akurat ten ustęp i wykasować konkretne dwa słowa; to jest czynność celowa.

**Pan Tomasz Łopacki:**

Mogło być coś takiego, że wykasowaliśmy jakiś fragment tekstu, później go uzupełnialiśmy. **No naprawdę, nie chcę spekulować. Nie pamiętam momentu dokładnie, w jaki sposób to odbyło się.** [Pos. 55 s. 12-13]

**Mr. Jan Rokita:**

**Would you say it is possible that during the manual operations on the computer, at one point, you yourself deleted the words “or magazines” in art. 36?**

**Mr. Tomasz Łopacki, Chief Specialist in the Legal and Legislative Department of the Ministry of Culture:**

Yes, I would.

**Mr. Jan Rokita:**

**You WOULD say it is possible?**

**Mr. Tomasz Łopacki:**

Yes, I would.

**Mr. Jan Rokita:**

So how did it happen, in your opinion?

**Mr. Tomasz Łopacki:**

We were copying certain provisions, moving them, deleting some provisions from one article, and moving them to the end of the bill. **It could have happened that some part of the text was deleted**, we were supplementing it. **It is possible that during such changes, these words were not rewritten.**

**Mr. Jan Rokita:**

And in this provision in which the magazines were included, in this paragraph of art. 36, did you [yourself] do any editing on the computer?

**Mr. Tomasz Łopacki:**

**I can't remember** in which subparagraphs it was me who was introducing the changes, and in which it was Ms. Galińska.

**Mr. Jan Rokita:**

And in this paragraph of art. 36 did any of you do any editing or any legislative changes?

**Mr. Tomasz Łopacki:**

In this paragraph we didn't make any changes. **We made some in this article. We divided the whole article into two parts, and then possibly we could have done something wrong.**

**Mr. Jan Rokita:**

I see, but on the computer one has to mark a particular paragraph and delete two concrete words; this is an intentional operation.

**Mr. Tomasz Łopacki:**

It could have happened that we deleted some part of the text, and completed it later on. **So really, I don't want to speculate. I can't remember the exact moment, how it really happened.**

[Hearing no. 55 pp. 12-13]

Acceptance with disclaimers as defined by van Dijk (1987) followed the 'yes but' pattern. In such cases responsibility was blurred by quoting some exonerating circumstances, such as "a lot of editing and legislative changes", or the "very fast rate at which we [introduced these changes]" - see (10):

(10) **Pan Tomasz Łopacki:**

Uważam, że różnica, która powstała między tekstem przyjętym

przez Radę Ministrów a tekstem, który został wysłany do Sejmu w zakresie zniknięcia słów **“lub czasopisma”**, była spowodowana **dużą ilością zmian** redakcyjno-legislacyjnych, które wprowadzaliśmy, oraz tym, że było **bardzo duże tempo** wprowadzania tych zmian. Uważam również, że **dołożyliśmy wszelkiej możliwej staranności w sporządzaniu tego tekstu, ale nie udało nam się uniknąć tej pomyłki.** [...] [Pos. 55 s. 11]

**Mr. Tomasz Łopacki, Chief Specialist in the Legal and Legislative Department of the Ministry of Culture:**

[...] I think that the difference between the text approved by the Council of Ministers and the one which was sent to the Parliament, as regards the loss of words **“or magazines”**, was **caused by a lot of editing and legislative changes** we were introducing, and by **the very fast rate** at which we were doing this. I also think that **we acted with all due care and diligence when drafting that text, but we didn’t manage to avoid that error.** [...] [Hearing no. 55 p. 11]

### *5. Evaluation of the results*

The dominant line of the testimonies was defensive and consisted in non-admittance of guilt for what had happened. While fending off responsibility, the actors resorted to various strategies of evasion, including the delegation of responsibility and the belittlement of the wrongdoing that was actually done. The distribution of the major strategies employed is summarized in Table 2.



<i>Strategy of defense</i>	<i>N</i>	<i>%</i>
Denial of responsibility (47)	47	22.7
Downgrading of responsibility (46)	46	22.2
– error as failure (lack of experience)	12	5.8
– error as technical error / printer's devil / similar cases	12+1+6=19	9.1
– euphemisms	15	7.2
Assumption of responsibility (39)	39	18.8
– acceptance	12	5.8
– apparent assumption of responsibility	21	10.1
– acceptance with disclaimers	6	2.9
Delegation of responsibility (38)	38	18.3
Suspension of responsibility (37)	37	17.8
<i>Total</i>	<i>207</i>	<i>100</i>

Table 2. Defense strategy distribution (from most to least frequent).

The Table shows that the various strategies of defense were quite uniformly distributed across the testimonies analyzed, and that the admission of responsibility created a least preferred option. Quite significantly, this particular choice was, at the same time, undermined by the use of disclaimers or somewhat cynical comments that it is natural for humans to err. We also observed clusters of defensive strategies, e.g. denial and delegation of responsibility (7 occurrences) or denial and suspension (5 occurrences), which only testifies to the efforts made to evade any assumption of guilt.

In evaluating the data we have observed patterns in how the various strategies were managed by different categories of witnesses (see Table 3). There were also correlates between the preferred ways for opting out and the legal (political) positions of the interviewees. Indeed the availability of evasion depended on the type of an individual's involvement in the procedure under scrutiny.

<i>Strategy of defense</i>	<i>J.B.</i>	<i>A.M.</i>	<i>C.B.</i>	<i>A.C.</i>	<i>L.M.</i>	<i>A.P.</i>	<i>B.S.</i>	<i>I.G.</i>	<i>E.Z.</i>	<i>A.W.</i>	<i>J.S.</i>	<i>A.J.</i>	<i>M.W.</i>	<i>B.H.</i>	<i>T.F.</i>	<i>J.W.</i>	<i>W.D.</i>	<i>E.G.</i>
Delegation of responsibility (38)					2	3	6	1	5	4	1	15	1					
Downgrading of responsibility (46)																		
error as failure (lack of experience)										1		2		6	1	2		
error as technical error /																		
printer's devil / similar cases									2/0/0	0/0/1		5/0/3		0/0/1	1/0/0	0/1/0		
euphemisms	1	2			3/0/1	1/0/0	1	1		1		5					4	
Denial of responsibility (47)		1			6	1	2	2	2	1	4	25			2	1		
Suspension of responsibility (37)		1		3		1	1	3		2	6	10		2	7		1	
Assumption of responsibility (39)																		
acceptance	1							1				7		1	2			
apparent assumption of responsibility					1	1			1		1	14			3			
acceptance with disclaimers					1							4			1			
<i>Total (207)</i>	<i>1</i>	<i>1</i>	<i>4</i>	<i>3</i>	<i>14</i>	<i>8</i>	<i>10</i>	<i>7</i>	<i>10</i>	<i>10</i>	<i>12</i>	<i>90</i>	<i>1</i>	<i>10</i>	<i>17</i>	<i>4</i>	<i>4</i>	<i>1</i>

Table 3. Distribution of defense strategies among individual actors (raw numbers).

Thus, for instance, Aleksandra Jakubowska, the Deputy Culture Minister, who was responsible for the preparation of the Media Law, made use of all the strategies except for the 'printer's devil' argument. She exceeded others in the number and the types of the strategies employed (90 uses out of 207). The strategy of 'error as failure', in turn, was preferred by Beata Hebdzyńska, Deputy President of the Government Legislation Center and Director of its Legislative Department. On the other hand, Tomasz Łopacki, Chief Specialist in the Legal and Legislative Department of Ministry of Culture, who was technically responsible for drafting the Media Law, was not in the position to use the delegation strategy, hence the preponderance of suspension moves in his testimonies.

## 6. Conclusions

All the testimonies were carried out against a layering of frames, of which the legal frame was initially expected to dominate. In the course of the hearings it became obvious however that the social actors were changing frames or blending them for impact. This was done under a somewhat natural supposition that politicians are not necessarily lawyers, that not all lawyers are politicians, that MPs are not necessarily competent in matters of the law, and, last but not least, that lawyers are (fallible) humans. Most prominently, such a dispersion of frame characteristics revealed the presence of a competing 'whodunnit frame'. This had its reflection in a detective-style of reconstruction of the events with focus on individual narratives, action sequences, availability of alibi or access, time and place coherence checks, motivations and goals, etc. Within this scenario attention was paid to actions and routines, and ample space was lent to the natural human right not to remember or to fail.

Frame engineering blurred the essence of the legislative procedure in terms of institutionally vested competencies, controls and accountabilities. In this way the responsibility (or the potential guilt) of the lawmaker was diluted, and the fairness of the legislative procedure was undermined in social and moral terms. This was done even though – or perhaps because of – the recurring narrative frame consistently imposed the technical interpretation of what went wrong: what happened was an accidental loss of two words in a document under drafting.

The ‘whodunnit frame’ was also exploited considerably by the media in their coverage of the proceedings and Rywingate in general, only adding to a negative stigmatization of the legal domain in Polish society. Thus, for instance, in a bank robbery “Freeze!” scene, Aleksandra Jakubowska, the Deputy Culture Minister is shown with a caption that reads: “*Your money or (your) magazines!*” (the weekly *Polityka* no. 51/52 (2432), 20-27 December 2003: 29).

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