"All that is needed for evil to prosper is for people of good will to do nothing." Edmund Burke.

The Whistle

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7-A Campbell Street, Balmain NSW 2041. Tel: 02 9810 9468, Fax: 02 9555 6268.

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Occupational Causation: Did My Job Make Me Sick? Howard M Sandler, MD.

EARLY IN MY CAREER as a medical officer with NIOSH, I became acutely aware that the occupational link for illnesses was frequently missed. I commented in a letter published in the *New England Journal of Medicine* in 1980 that a high percentage of pathologists missed a straightforward case of asbestosis on an autopsy. Since then, occupational safety and health professionals have made great strides in. identifying work-related health effects. But the question remains: Are we doing a good job of determining when illnesses are caused by work?

I am sure we are all frustrated by some clinicians' matter-of-fact opinion, "Well he works with chemicals; therefore, his asthma (or you fill in the condition) must be the result of his job." Another good standby is, "I can't find any other reason; therefore, it must be work!"

Let's discount the obvious motivators for making an arbitrary work-relationship determination:

- Higher medical fee schedule;
- Workers' compensation indemnity payments;
- "Keeping the patient happy."

What unfortunately remains is that few clinicians employ a formal scientifically based methodology to make a determination of causation. A true "weight of the evidence" decision based on sound science requires criteria weighting on either a broad substance exposure effect/causal association or an individual worker basis. For example, did exposure to triethyl doorknob cause my permanent hair loss (a concern near and dear to my head!)? In order to begin to address a causal relationship in this instance, one must answer the following questions:

- What is permanent hair loss?
- Did the exposure occur before or after the primary
- How much exposure must occur over what timeframe for the effect to occur?
- Did the exposure simply aggravate an underlying condition?
- Has the effect been documented in humans?

Determining the link between work and illness can be a real ... well, pickle.

Association vs Causation

Armchair scientists will use deductive reasoning like Sherlock Holmes in causal determination: "If you rule out all probabilities, the remaining possibility, no matter how unlikely, is the culprit!" The fatal flaw in this approach is that, in medicine, we simply don't know the cause of the disease in many instances. For example, most causes of interstitial fibrosis are unknown or idiopathic. Simply because a worker happened to work in a building containing asbestos doesn't mean his interstitial fibrosis is asbestosis, the interstitial fibrotic disease produced by high-level, long-term asbestos exposure.

On a global basis, inappropriate deductive reasoning can also lead one astray. Consider this statement: "Everyone who ate a pickle in 1869 is dead today. Therefore, pickles cause death."

Statistically speaking, there is a 100 percent association in the pickle example, but, epidemiologically, it is clearly without scientific foundation. It is simply not biologically plausible. But, as some might point out, "Somebody could choke to death on a pickle!" Possibility does not equate with probability, much less certainty.

Defining the Disorder

Showing a work association for a worker's complaints is often difficult because, frequently, all you have to go on are symptoms such as pain, cough or headaches. Symptoms such as these and others frequently occur in the general population at rates of 30, 40 or 50 percent or higher. They can result from allergies, stress and a whole host of different causes. Frequently, they simply occur without a clearly identified disease.

It is important to have specific disease-identifying criteria in order to make a diagnosis. This is frequently a problem when you evaluate scientific studies. For example, most studies of carpal tunnel syndrome and work fail to use nerve conduction studies, commonly accepted as the gold standard to determine the presence or incidence of CTS. Recent studies have shown proper diagnostic identification can greatly affect the number of workers who are considered to have CTS. The impact of diagnostic criteria can seriously affect the results of studies especially for relatively ill-defined disorders, such as tendinitis, respiratory symptoms or pain.

Defining Exposure

Another area of critical importance in determining whether a study can be used to establish causation is how the exposure was derived. Unfortunately, few studies exact measurements of specific exposures to employ. For example, many chemicals are used in the same job. The amount of chemicals changes over time and the ability to ascertain the level even simply, (low, medium or high), is often a guess. Researchers may say that all workers within a production area are similarly exposed. While this makes the study possible, any safety and health professional knows how inappropriate such a designation is. To think that the results of studies employing these and other less-than-exact methods are used by regulators, juries and workers' compensation judges and in the media

illustrates the role of scientific uncertainty in everyday occupational safety and health events.

What Does Work-Related Mean?

Before we can create a study to understand the relationship between an exposure and an effect, we must carefully define how the effect is considered work-related. Ideally, we would want to follow a group of workers who do not have the disease from the time they are first exposed over a sufficient time to allow the expression of the effect. This prospective study should also include a control group of workers similarly selected and see if there is a significantly higher amount of the disorder (dependent variable) in the exposed group versus the unexposed (control) group.

Without this type of study, we may be simply looking at aggravation of an underlying disorder or the inability to select the study group (cohort) or causal factors without bias. Bias can critical flaw cause-effect investigations.

If the effect is not easily diagnosable then the definition of work-related be comes even more muddled. For exam pie, various researchers have pro posed that keyboard users develop musculoskeletal disorders more frequently than nonusers. Similar to how OSHA includes work-related aggravation of an underlying disorder as a recordable occupational disease (for example, age or weight-related carpal tunnel syndrome), studies have often merely examined workers without addressing whether they have musculoskeletal problems which existed prior to their office work or they have not adequately ruled out the many causes (confounding variables) or potential causes of carpal tunnel syndrome. These cross-sectional studies, the bulk of the science in so-called cumulative trauma disorders, lack the capability to determine a causal effect.

Other studies have looked at workers exposed to certain dusts and whether there is a small but significant decrease in pulmonary function. These studies may show a drop, but they do not tell us whether this is a permanent effect. Moreover, the effect is rarely of clinical significance. For instance, the drop in the respiratory test does not affect health. Temporary, minimal changes in function should not be considered to be work-related health effects.

Causation and Bias

As mentioned previously, bias can severely affect the findings of any cause-effect study. Sources of bias include how study participants are selected, as well as how effects are defined or events are recalled. However, more recently, the scientific community is coming to grips with a more insidious bias, journal publication. As Andy Rooney of 60 *Minutes* fame used to say, "Did you ever notice" how the vast majority of published studies find a positive effect? Is this simply coincidence, or is there a bias for journals to publish those studies with a positive outcome or effect? Research into this area clearly documents this and other types of publication bias.

Another bias I feel is important to recognise is how results are interpreted. Frequently, studies will find no effect, an increased effect or a reduced effect: that is, a dearth of the expected amount of the disease/disorder.

For example, in studies of the neurobehavioral effects of chemicals such as lead and solvents, study participants frequently do better on some

neuropsychological battery tests and worse on others. If we interpret the negative test scores as a deleterious effect of exposure, then why don't the same researchers also speculate that the higher test score areas represent enhancement of neurologic function? Although I can't find any benefits from lead exposure, the same type of critical weighing of evidence should be used on positive and negative data as noted here to ensure the proper assessment and use of good science.

Global Causation Determination

Although Sir Bradford Hill has been frequently quoted and his 1963 causal criteria used by various scientists, few safety and health professionals are familiar with and use those criteria, outlined below, or a similarly constructed decision-making approach:

- Strength of association
- Consistency
- Temporality
- Biologic gradient
- Plausibility
- Coherence
- Experimental analogy
- Analogy

The trick is not simply to show that the critically important criteria are fulfilled, but- just as important- how they are satisfied. For example, NIOSH used four of the criteria listed above in its 1997 musculoskeletal study review of workplace factors. While NIOSH defined categories such as "evidence for an effect" and "strong evidence," they never revealed the method employed and results used for the workplace connection. Scientists must be able to review and reproduce studies like the NIOSH study. Without an understanding of the evaluation weighting scheme used, how do we know they were accurate in their classification? For example, did they weigh negative studies equally to positive studies? Did one poorly performed study with extremely positive findings have a disproportionate influence on the ultimate assessment of all studies? The same can be said for diesel exhaust cancer studies. With such small diesel exposure-cancer effects noted and poor exposure determination and confounder control, *i.e.* smoking, do small positive effects really mean anything?

Individual Causation Determination

How does the local clinician know that your employee's carpal tunnel syndrome, cancer or apparent memory loss is due to work? Just as the global assessment of causation for a specific exposure effect requires solid methodology for evaluating individual studies and overall assessment of all scientific evidence (causal criteria), individual case causation assessment also requires a clear step-by-step approach. In its 1977 occupational disease recognition guide, NIOSH outlined a number of criteria to aid practising clinicians. Others have outlined similar approaches. The following criteria represent a melding of the critical factors to ensure proper individual causal association:

- Does the person really have what is prospected/alleged?
- Has the clinician diagnosed the disorder according to accepted practice parameters and using appropriate ICD-9 designators?
- **Has the extent of the disorder been assessed using a well-constructed, functional assessment, or is it simply a loose**

association of symptoms which reportedly affect social or work performance?

- Was there actual exposure (not risk of exposure)?
- Was the exposure sufficient in duration and extent compared with that assessed globally in the scientific literature?
- Did the exposure occur before the effect (not just the clinical detection, but the onset of the pathogenesis)?
- Did the exposure have the appropriate latency?
- Did the acute reversible effect stop once exposure ceased?
- Does the global cause/effect occur in humans, and is it based on appropriately assessed weight-of-the-evidence causal determination?
- Are there other causes (alternative aetiologies) which more likely explain the effect? Was a weighting method used to determine the likely cause, *e.g.,* regression coefficients?

Summary

As occupational health is focused on prevention, it is critical that accurate causation assessments be used in regulation, clinical practice, claims and litigation, and in the press. It is just as important to warn and prevent as it is to avoid the harm done to jobs, industry and workers' peace of mind by making unfounded allegations of workplace hazards. In the end, that's all sound science is really about.

Source: Occupational Hazards, 9/98. www.ohnteractive.com**.**

Malingering. George Mendelson & Danuta Mendelson

Malingering was originally described as a means of avoiding military service. In present day forensic practice, malingering may occur in circumstances where the person wishes to avoid legal responsibility or in situations where compensation may be obtained.

In law, the term "malingering" is used in relation to persons to whom military regulations apply; in other situations malingering is regarded as fraud and may lead to charges of perjury or criminal fraud. Malingering was, and still is in certain jurisdictions, an offence under workers' compensation statutes (for example, the Workers Compensation Act 1990 (Qld) s11.2).

> ***malinger v. intr. exaggerate or feign illness in order to escape duty, work, etc. The Australian Concise Oxford Dictionary 2 edn.***

Although accusations of malingering occur at times in medico-legal reports, it needs to be recognised by members of both the legal and the health-care professions that there is no such "diagnosis" as malingering, and that the ultimate decision as to the veracity or otherwise of the plaintiff or the accused is a question for the court to decide.

The term "malingerer" was introduced in the late 18th century, and is thus of relatively recent origin. Since the introduction of workers' compensation legislation in the second half of the 19th century the issue of possible

malingering has been raised most frequently in relation to civil litigation. With the advent of workers' compensation statutes, and the growth of personal injury litigation and tort law during the 20th century, interest in the simulation of disease increased quite markedly and it has produced quite a voluminous literature.

While there has been a great deal of interest shown by the medical profession in the subject of malingering, there is no evidence of sophisticated understanding by the legal profession. In the civil jurisdiction, the simulation of injury for financial gain is regarded as fraud, and the simulator can be criminally prosecuted for fraud and, in some circumstances, for perjury. In cases of this type the verdict will be made by the fact-finding tribunal on the basis of facts other than those obtained during a medical or psychiatric examination.

The term "malingering" thus applies to a finding of fact, made by the appropriate tribunal or court, on the basis of all the evidence presented in the course of the proceedings. There is no basis for the accusation of malingering to be made by any medical expert witness in the guise of "diagnosis". Indeed, diagnostic and classification schemes are quite specific in stating that malingering is not a diagnosis.

Keschner has provided a detailed non-technical description of the various techniques of medical examination used to detect simulation, so as to enable the court to better understand the evidence given by the expert witness (see list at end of article).

The rules of expert evidence allow it to be given by those who possess some specialised knowledge, skill, training or possibly experience sufficient to enable them to supply information and opinions not generally available to members of the public.

The expert witness is permitted to give opinion evidence; other witnesses are allowed only to testify as to facts of which they have personal knowledge. The facts on which the expert witness gives an opinion should be proved in court by evidence given by other witnesses. While in practice the expert witness gives an opinion based on information supplied by others - that is, strictly speaking, "hearsay evidence" rather than facts of which he or she has personal knowledge - that opinion is necessarily diminished in validity if the facts on which the expert relies are shown in court to be incorrect or if the information elicited by the expert witness is contradicted by other witnesses.

The psychiatric expert witness may draw attention to clinically relevant factors such as inconsistencies in the history obtained and, on examination, the mental status, poor treatment compliance, lack of motivation during treatment or rehabilitation program, and the presence and extent of any **psychiatric impairment.** The clinician can also legitimately comment on the nature, or absence, of a diagnosable psychiatric disorder using a specified system of diagnostic criteria and classification. However, it is not for the expert witness - psychiatric or otherwise - to "prove" the plaintiff's entitlement or to "prove" the plaintiff a liar in a compensation claim, or to decide whether the accused should be absolved of criminal responsibility. These functions properly belong to the tribunal of fact, in whichever jurisdiction the matter is being resolved.

There is continuing interest, among psychiatrists and psychologists in particular, in the subject of deception and in the detection of simulated mental disorder. Attempts have been made to devise standardised

methods of detection of malingered amnesia or simulated mental disorder by defendants in criminal cases (see Parwatikar).

In such cases the expertise of the psychiatrist is called on, and the usual scenario is that expert psychiatric evidence is given for both sides in the adversarial contest, the trier of fact then being required to choose one opinion or set of opinions. This was demonstrated in the *Hinckley* case in the United States, and the spectacle of psychiatrists giving totally contradictory opinions in the courtroom was described by Lesse as a "theatre of the absurd".

The view that it is the task of the expert witness to determine malingering was illustrated in Doupis v J*ennings Industries Ltd* (unreported, 1 April 1987, NT Supreme Court, No 244/1985) where a Dr Shoulder was asked "What are normal tests for malingering?" and replied "It's one of those conclusions one comes to after considering the entirety of the information and weighing up in what way symptoms presented seem understandable in ordinary terms; understandable to medicine, surgery and psychiatry'.'

That this question was asked, and was allowed by the learned judge, is in our opinion an indication of the erroneous belief by lawyers and judges that it is possible to make a "diagnosis" of malingering or that it is capable of being objectively demonstrated by "tests".

There have been a number of decisions where judges have been prepared not to accept the views of expert witnesses as to whether or not a plaintiff is lying or malingering. In Ilardo *v Australian Telecommunications Commission* (unreported, 25 October 1983, Federal Court (NSW Registry) No G239/1983) a consultant psychiatrist expressed the opinion that the plaintiff in a personal injury claim "was not malingering". However, the Administrative Appeals Tribunal denied the plaintiff's claim for workers' compensation, and the Federal Court dismissed her appeal against that decision.

In *Australian Postal Corporation v Lucas* ([1991] 14 AAR 487) an expert witness had described the plaintiff as "a blatant liar and a malingerer" (at page 488), but by a majority the AAT held that the plaintiff was entitled to compensation. (That decision was appealed on a point of law to the Federal Court, which set aside the decision and remitted the matter for decision by a differently constituted tribunal.)

Finally, in Vasili *v Australian Telecommunications Corporation* (unreported, 12 December 1991, Federal Court (SA Registry), No S G85/1991) the plaintiff had developed low back pain at work and subsequently had a spinal fusion. Despite the plaintiff's having undergone what the AAT termed "the most painful and, indeed dangerous, surgical procedure of spinal fusion" (para 20 of the AAT decision, cited in para 19 of the Federal Court decision), the AAT held that this had been "a deliberate -and calculated attempt to obtain compensation for an injury which has long since resolved".

Frequently, the "ultimate issue" in instances of alleged malingering is whether the plaintiff or accused is truthful or tying. It is imperative that expert witnesses refrain from becoming advocates for either side in the adversarial contest between the opposing parties.

The task of the expert witness should be confined to issues of diagnosis of any physical or mental disorders which may be present, their aetiology, and the degree of impairment. **The expert witness is obliged to also**

draw attention to inconsistencies in the history obtained and on examination, poor treatment compliance, and lack of Cupertino or motivation during the course of treatment or rehabilitation program. However, the specific question of the veracity of the claimant - or the accused - is for the court to decide.

Malingering. **Australian Law Society Journal**, page *27,* Vol. 31 No. 7 8/96.

George Mendelson *MB BS MD FRANZCP is Honorary Clinical Associate Professor, Department of Psychological Medicine, Monash University.* ***Danuta Mendelson*** *MA PhD LLM is Senior Lecturer, School of Law, Deakin University.*

To find out more ...

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Sickness dismissals a management perspective. Gillian Howard.

Dismissing an employee who is off sick either with a chronic illness or injury, or where the illness or injury is long-term is potentially fair under section 57(2)(a) of the Employment Protection (Consolidation) Act 1978.

But many managers have in the past laid too much stress on OH staff managing employment problems which have arisen from the sickness absence having not fully appreciated the scope and extent of their role.

Issues that have come before tribunals recently are the importance of consulting an employee who is away from work because of illness or injury, the importance of advising both the employee and the doctor of the reason for the request for a medical examination and report, the importance of thorough management investigation of the medical condition and its prognosis, and being not being too hasty in deciding to dismiss. They have also given some guidelines what management should do when faced with conflicting medical reports.

Gillian Howard warns managers of a number of issues recently raised by the dismissal of employees in difficult sickness situations that were held to be unfair by courts and tribunals.

Management's role.

Some managers still believe that it is the function of their OH staff to 'police' the sick pay scheme, check up on suspected malingerers and visit and counsel genuinely sick employees. While this latter function is perfectly proper and indeed is probably better carried out by OH staff trained in counselling, management must not underestimate its own role.

Two Employment Appeal Tribunal (EAT) cases have stressed that the role of OH staff is not to act as policemen but rather to advise management and make recommendations about such issues as fitness for work, outcome of treatment and the impact of any residual disability at work. It is management's decision - not that of the OH staff - whether to terminate an employee's employment or continue to pay sick pay - *Board of Governors, National Chest & Heart Hospital -v- Nambiar [1981/ IRLR 196 and WM Computer Services Ltd -v- Passmore (unreported). In* this latter case EAT stated: 'Whilst of course the medic al evidence loomed large in the case, the continued employment or otherwise of the (employee) was an employment decision and not a medical decision...'

Personal consultation

In genuine cases of chronic or long-term illness or injury, the tribunals have stressed how important it is for management to consult the employee during a period of sickness absence - this means personal consultation and not just sending letters.

In one case, the managing director of a small firm got 'cold feet' when he read the GP's assessment of the heart condition of his receptionist - a very pessimistic prognosis concerning her future health and return to work. He therefore decided that it would be inadvisable for him to visit and speak to her as he would reveal her GP's gloomy view of her medical condition, and wrote advising her that he had filled her position with a permanent member of staff and that her contract would end in September that year.

Personal consultation

EAT referred to cases which stress that personal consultation is almost certainly necessary if a dismissal on grounds of ill health is to be regarded as being fair. While the tribunal appreciated that the employer had acted with the best of motives, this did not take away the necessity of consultation. The tribunal pointed out that he could still have visited her and discussed the position in general terms without actually disclosing the precise prognosis of her GP - W*right -v- Eclipse Blinds (EAT 86190 IDS Brief 426).*

The role of OH staff

One of the principles of fair dismissal for illness is that the employer must ascertain the true medical position before a decision to dismiss is taken.

This means doing more than merely receiving medical statements from the *GP -Crampton -v- Dacorum Motors Ltd,* where the managing director on being told by employee's doctor that Mr Crampton was suffering from 'angina pectoris', proceeded to look the condition up in *Black's medical dictionary.* Mr Crampton was then dismissed. The tribunal held that this was not a sufficient medical investigation.

If an employee is undergoing hospitalisation or is under the care of a consultant, a proper investigation into the true medical position also involves obtaining a report from that consultant.

Informed consent

OH staff can play a vital role here. With the employee's informed consent and knowledge of their rights under the Access to Medical Reports Act 1988 (see *Occupational Health, February* 1989), OH staff may liaise with the consultant, obtain a confidential medical report and provide management with the answers to the following six questions:

1. The likely date of return to work?
2. Will there be any residual disability at this date?
3. Will it be temporary or permanent?
4. Will the employee be able to render regular and efficient service?
5. Are there any duties that the consultant recommends that their patient does not undertake, on a temporary or permanent basis?
6. Will their patient continue to undergo treatment or take prescribed drugs or any other medication upon their return to work, and if so, what?

Informing the doctor

The cases have stressed how important it is that the doctor consulted on this basis must be told the following:

- The precise nature of the duties (with preferably a job description)

- The work environment
- The amount of sickness absence during employment and during this particular spell of absence
- The reason for the enquiry.

The courts have stressed that employers who do not inform the doctor (and the employee) sufficiently clearly about the nature of the enquiry have not acted reasonably and this may well render the dismissal unfair.

Advising the employee

The importance of fully explaining the reason for the medical examination and the consequences of an unreasonable refusal by the employee to undergo examination were confirmed the striking illustration of *Whitbread & Co plc -v- Mills [1988/ IRLR 501,* when the employee, who was off work because of a work-related accident, was required to undergo a medical examination which she (and the doctor) thought related to her claim against the company for personal injuries. It was in fact to determine whether to terminate her contract. EAT held that this, inter alia, rendered her dismissal unfair since neither she nor the doctor had ever been made aware of the purpose of the examination.

If the employer is contemplating dismissing the employee, this must be made clear to the doctor. In *The Hobart Manufacturing Co Ltd -v- Simons (IRIB 362)* the company wrote to Mr Simons' doctor asking when he would be fit to resume work. His doctor replied 'probably within the next two months'. On the basis of that advice, the employers decided that they could not wait any longer and dismissed Mr Simons. EAT held that the employer had never, in the course of their discussions with either Mr Simons or his doctor, discussed that they were considering the immediate possibility of dismissal.

'Had (the doctor) been so aware, he might have been able to give a firmer estimate of the likely date of return', held the EAT.

This means that employers must give clear instructions of what information they require from the GP or consultant and what the employer intends to do with that information.

The British Medical Association's model letter on this point (now included in the ACAS advisory handbook, 1987) advises that the GP or consultant should be advised of the reason for the examination for the following purposes:

- So that the employer can plan the work in the department;
- So that the employer can administer Statutory Sick Pay and the company's sick pay.

Conflicting reports

In some cases employers are faced with conflicting medical advice - the employee's GP reports that the patient is still unfit for work but an examination by the OH physician or nurse reveals the contrary. In such cases the employee concerned often requests that the employer obtains a third, independent medical report from an outside consultant.

As a general rule this is unnecessary, as the tribunals have held that where the employer receives two apparently conflicting medical reports, they are not obliged to seek any further medical information. They are

entitled to take the advice of their OH staff -*Evers -v- Doncaster Monk Bridge (unreported).*

Medical records

There are four major exceptions to this rule when it is advisable to obtain specialist medical reports:

- Where the company doctor's report is 'woolly and indeterminate' (Liverpool *health Authority -v- Edwards [1977/ IRLR 471)*
- Where the continued employment of the employee would pose a serious health and safety threat either to the individual or to other employees or members of the public *(Bawden International Ltd -v- Miller EAT 493/86)*
- Where the company doctor or GP has not personally examined the employee but has merely relied upon certificates and the medical records
- Where the employee is actually undergoing treatment from a specialist of which the company doctor is unaware and whose report would have been relevant in coming to any decision concerning fitness to return to work - Grimes -v- Milk Marketing Board (unreported).

Access to reports

Under the Access to Medical Reports Act 1988 employees have a fight of access to any medical reports prepared by a medical practitioner who has had or is responsible for their clinical care. Reports by independent medical experts obtained by the company on a one-off basis do not come within the terms of this Act. However, an employee may still have access to such reports under an Order for Discovery of Documents granted by any court or tribunal under their statutory powers in any claim(s) against the employer, eg for unfair dismissal, wrongful dismissal or for personal injuries.

The question that came before the courts recently was whether the defence of 'confidentiality'- could apply to an independent medical report and the notes written by the company doctor to an outside specialist explaining the case and requesting the report, *Ford Motor Company Ltd -v- Nawaz [1987] DLR163. EAT* ordered that the notes of the company doctor prepared on Mr Nawaz, the outside consultant's medical report, the instructions given to the consultant by the doctor and his notes following the examination were, '...all documents which were properly the subject of discovery ... What had to be determined is whether the medical expert had sufficient material before him upon which to advise management to take the decision which they did...'

Perhaps OH staff will be more circumspect in what they actually write a patient's health records and to management from now on - particularly in light of the Access to Health Records Act 1990, which comes into force on November 1, 1991.

Occupational Health UK, 6/91.

Gillian Howard LLB, Dip Company Law (Cantab) is an industrial relations consultant and a frequent speaker and broadcaster.

WBA NSW Branch update and meeting arrangements for the holiday period.

HealthQuest Issues - Forced Medical Retirement. An elated Dr Brian Pezzuti, MP raised his concerns about HealthQuest (HQ) and the Medical Appeals Panel (MAP) in Parliament last September after being f formally advised by letter by the Health Care Complaints Commission (HCCC) that t hey intended to address his concerns, having reviewed " 11 complaints received between 1998 and 1999, " WBA understands the 11 complainants also received letters from the HCCC in similar terms to that received by Brian Pezzuti.

The letter summarised complainants' concerns in terms such as "inadequate information provided by (HQ and MAP) .... reliance on 'unsafe' information (about whistleblowers) from employers .... inadequate assessment and documentation and unsound use of psychiatric advice .... (and) lack of transparency and fairness in processes used by (HQ and MAP)".

The HCCC, pursuant to the Act, notified the Director General of Health of their intention to conduct an investigation and requested a response to their concerns within 4 months. They hope it " will obviate the need to institute (their) own investigation".

Now, this could be a worry. Particularly as the Ombudsman has since advised they intend to leave it to the HCCC.

Fingers crossed! Let's hope this investigation is different and says it like, it was... warts'n'all! Hopefully the HCCC knows glossing over who did what, to focus only on the future, has only ever served to maintain the status quo because the future never comes! Change, to be real and lasting must be in the 'now' and part of the reckoning.

Protected Disclosures Amendments Bill 1999. The Bill was put up by the Democrats in October provided for a civil action for compensation and would have made it unlawful to contract out of the public interest. Unfortunately it did not get up! The Liberals and Labor were not interested. Ho hum, is anyone surprised?

But well done, Upper House Dr Arthur Chesterfield-Evans! He appears to be shaping up as the replacement John Hatton and needs all the support we can give to him. Keep quality disclosures going his way.

Building industry issues. The Northern District Times 13 October 1999 reported how 'public anti-corruption Whistleblowers Australia conducted a noisy protest' outside the electoral office of Ryde MP John Watkins on the previous Thursday. The Times also reported the MP 'was not doing enough to sniff out shonky builders'. While protest organiser, Richard Blake, armed with a megaphone, rammed the message home; Bob Taylor, with placard aloft, denounced the 'Sir Humphreys' of the Dept. of Fair Trading for treating Watkins like a mushroom and George Micalik, Geoff Turner and Barbara Newman put the 'noise' into the demo.

It was a much more sober Barbara who, together with Lionel Bucket and Cynthia Kardell, met with Watkins and his two minders at Parliament House on 28 October. Current problems affecting builders and consumers alike, for example apprenticeship schemes, insurance arrangements, licensing and the lack of regulation in so far as ordinary members on the

Tribunal and the ubiquitous building consultants were put on the agenda. Nothing, of course, was resolved. But the Minister appeared keen, prepared and he was, as always, courteous and thoughtful.

Later, at a nearby coffee shop, we reassured ourselves that:

- Watkins had proved himself a competent change agent when on the Parliamentary Committee on the ICAC. and
- we were in it for the long haul.

So, we will just keep pushing away at it.

Caring and sharing meetings go into recess over Christmas. The last meeting on Tuesday 14 December and back on Tuesday 18 January 2000. Telephone contact numbers (generally) will still apply over the period.

Thank you one and all for your courtesy and consideration in 1999. Merry Christmas. Stay safe and well, and we look forward to seeing you in year 2000.

Cynthia Kardell, NSW President.

John Watkins allows rip-offs? Is the Minister for Fair Trading letting people down?

Demonstration against performance of Department of Fair Trading on building industry rip-offs.

The NSW Branch of WBA held a demonstration outside the Electoral Office of the Minister for Fair Trading, John Watkins, on 7th October 1999. The Office is located in Victoria Road, Gladesville. Five members were present, plus two relatives.

The following is the text of the flyer we handed out:

John Watkins allows rip-offs? Minister for Fair Trading letting people down?

Are you having a new home built, or your existing home renovated or built onto? Well beware, because if the builder does shoddy work, you could find great difficulty in getting Justice!

Between (approx.) 1989 and 1996, there were no less than four inquiries into the building industry in NSW, one of them a Royal Commission. These found average standards were alarmingly low, apprentices were being poorly trained, many incompetent builders had licences, and customers were being ripped off all over the state. They also found that the Building Services Corporation, the NSW. Government agency set up to give free advice and impartial adjudication for the public, was too often a hindrance rather than a help, their Inspectors too often siding with shonky builders in denying that obviously unsound buildings needed substantial repairs or to be rebuilt. Through the nineties some customers did obtain money settlements as a result of these inquiries, but few have got anywhere near their true costs. Many have suffered severe health problems from the stress of all the frustrating procedures.

Moreover, despite the strong recommendations for many improvements by the inquiries, nothing much seems to have changed since! In a lame attempt to make things better, or at least to make them look better, the BSC was restructured into the Department of Fair Trading (formerly Consumer Affairs).

Unfortunately, too many of the BSC's Public Servants were then simply transferred to the Department bringing the anti-consumer culture with them.

This is the present situation:

1. John Watkins, State Member for Ryde and the new Minister for Fair Trading since the election in March, is quickly having the wool pulled over his eyes by the Sir Humphreys in his Department.
2. There are now regular delays of two years or more before complaints are even registered!
3. Inspectors still give the shonky judgements against the consumer.
4. Clerks often lose your file, and are rude.
5. Dept. officials often turn up at Tribunal hearings without the necessary documents!
6. The people of New South Wales are still being ripped off over and over again!

What can you do? Well, if you are getting building done, we advise:

(a) be very, very careful with your choice of builder,
(b) keep a close watch on the work,
(c) do not trust Council Inspectors, because some of them are crooked,
(d) if there are major problems, then, if you can possibly afford it, deal with the builder or his insurance company direct, i.e. do not involve the Department of Fair Trading.

If you would like to help us try to improve the system, or if you need help yourself, phone us, Whistleblowers Australia, on (02) 9810 9468. (There is also another group working on the problem which we will tell you about).

The flyer was very well received, and about 300 were handed out, including one to the receptionist at the Office (the Minister not being present) and one to the cameraman from the Northern District Times, who took our photo, resulting in a report in that paper the following Wednesday.

Information was also given to the public via a megaphone, and by placards saying, among other things, "Sir Humphrey Fools Watkins" and "Shonky Builders".

Those present rated the demo quite a success.

Richard Blake,
NSW Committee Member.

Brevity - an invaluable tool for whistleblowers.

Brian Martin's "Whistleblower's Handbook", quoting me, advises whistleblowers to be brief when supplying information to people they are

asking for help. This of course is easier said than done. Quite apart from the volume of material that whistleblowers accumulate, and the tangled chains of claims and counter-claims that are a standard part of the reprisal process, the emotional impact of thinking about what has happened turns most people's brains to jelly, making the process of summarising all but impossible. However, it has to be done. The one or two page summary of their case is one of the most powerful tools a whistleblower can have, and you should not be reluctant to ask other whistleblowers for help in getting it together.

This note was stimulated by a letter I received recently, which I am publishing with the writer's permission. (Identifying details deleted.)

"Dear Jean, I was delighted to read your letter of support for Mick Skrijel (Good Weekend 14.8.99). I wrote a letter of support to Mick myself.

"I suspect that I was up against one or more crooked police, myself - for 15 years.

"When my husband fell out with a close relative, we suddenly found ourselves being harassed by creeps (presumably paid) at night.

"Two trained blue heeler dogs and fourteen secret house moves in ten years were of little comfort. We moved state, used unmarked removal vans, had all mail and bank records etc sent to my parents' address but each time my husband submitted his tax return, we were soon harassed again.

"The best friend of my husband's relative was at that time a very senior officer with the AFP. [Australian Federal Police.] Perhaps he obtained a warrant to access our tax records. The harassment stopped when my husband's relative died.

"I would be very grateful if you could tell me how to use Freedom of Information to discover whether access was given to our tax files during those years."

This letter, I think, is a model of how to write to a stranger asking for help. (Not that I was able to help much - as I told her, I'm sure she was right about what was going on, but the supply of such information is normally done on a 'mateship' basis, of which there would be no record. There are many ex-AFP officers working in the Tax Office, and all it would take would be a phone-call to one of them.)

It is admirably short - compressing fifteen years of hell into one, clearly handwritten page. It is admirably clear. The few details given are enough to support the writer's conclusions, and establish that she's not suffering from paranoid delusions. And, most importantly, she starts with an expression of appreciation of the recipient's work, and ends with a concrete and specific request for something that is relatively easily done.

The next time you write to someone you hope will help you, have another look at this letter, and see if you can manage something similar. It is likely to be received very much more positively than the 3-5 cm pile of documents and vague, unspecified open-ended request to 'do something', that unfortunately is so much more common.

Jean Lennane, Nov. 1999

Finding the law on the Internet. Elizabeth Naumczyk.

Finding the law on the Internet. Elizabeth Naumczyk Australian Law Society Journal, page 40 - 41, Vol. 31 No. 7 8/96. *Elizabeth Naumczyk is foundation faculty law librarian at Griffith University Library.* *She acknowledges the help of Sue Pace in preparing this article.*

It is more important than ever for legal practitioners and their support staff to become at least aware of the limitless potential the Internet can offer, particularly so for those affected by the "tyranny of distance" and also because of the trend towards internationalisation of law in Australia.

The Internet provides access to information collections around the world at all times.

It is possible to access networked information sources ranging from public, research, commercial, advertising, directories and electronic journals to newspaper resources, news wires, library catalogues and software.

The Internet also makes communication easier through electronic mail, participation in electronic discussion lists, newsgroups and electronic conferencing facilities.

A significant leap forward has been the recent release of more Australian legal information on the Internet, making the "library without walls" a reality for the legal researcher with the development of new sites in Australia such as the Australian Legal Information Institute (AustLii), ACT LawNet, the Law Foundation of New South Wales and the Melbourne Magistrates' Court.

The Internet can no longer be ignored given that it is relatively inexpensive to access. It may prove to be a lifesaver in the future, or may give that competitive edge when time is of the essence.

Primary and secondary legal information is continually being added to the World Wide Web and retrieval is enriched through linkages between documents and search systems. Use of the Web may result in a decision to cancel hard copy subscriptions to reduce overheads.

The Internet is a channel for legal professional associations and court registry and parliamentary information, such as daily court lists, bills, digests and weekly *Hansards.*

Discussion papers released on the Internet will have the facility to comment on-line and generate a community response. It is an excellent marketing vehicle for law firms or personal expertise, or for joining other colleagues on the Net to further such ends.

The development of encryption mechanisms and the ability to "fix" versions of electronic documents mean that it will be possible to transmit confidential information to clients and other parties.

The Internet can be accessed from a personal computer, modem and phone-line, either at home or the office. There are communication and subscription costs to Internet service providers, and accessing some products may require a subscription. Each issue of *Internet Australasia* includes a directory of service providers for all Australian states.

To get started you need an Internet browser which is a program that reads hypertext, the technology on which the World Wide Web is based. To make full use of the services available on the Web you need a browser with a graphical user interface, such as Netscape, running on your own workstation.

Search engines such as InfoSeek, Lycos and Webcrawler can search websites around the world and other parts of the Internet, such as gopher resources, and usenet newsgroups. Most search engines provide tips for searching.

The National Library of Australia at **http://www.nla.gov.au** includes a range of Internet resources and navigational guides.

For more efficient searching on the Net and to ensure relevancy, use search facilities such as directories and search engines. Yahoo and Galaxy are two well established Internet directories on the Web which include not only identification of Web resources but also e-mail lists, newsgroups, FTP and gopher sites.

Major legal players are the American law schools such as the Legal Information Institute at Cornell Law School at **http: //www.law.cornell.edu** and universities such as Washburn, Washington and Lee, Rutgers, Indiana, the Fletcher School of Law & Diplomacy at Tufts University (Massachusetts); Supreme Court libraries, the United Nations, governments and the American Bar Association.

The best and most current guides to legal Internet sources are to be found on the Internet. Lyonette Louis-Jacques at the University of Chicago Law Library has also compiled "Law Lists" at http://www.lib.uchicago.edu/cgi-bin/law-lists.

The legal practitioner can now find valuable primary source information such as case law, legislation, particular constitutions, treaties, and law reform agency publications on the Internet. The Australian Law Reform Commission has established an Internet home page at **http://uniserve.edu.au/alrc.html** is now possible to subscribe free of charge to a service on the Internet which provides copies of High Court judgements the day they are handed down. This service is from Lawnet Australia at **http://wwwlawnet.com.au** and the subscription page is at http://wwwlawnet.com.au/hct/hct-list.html. The service e-mails subscribers to notify them that judgements have been handed down. The judgements are available at the Web site to read, print or download. AustLii has provided "free" access to commonwealth and some state and territory legislation and decisions using the SINO (search is no object) search engine. Legal information available includes:

PRIMARY LEGAL SOURCES.
Commonwealth consolidated Acts,
Regulations and numbered Acts
NSW Consolidated Acts and Regulations
Administrative Appeals Tribunal 1976+
Family Court of Australia 1986+
Federal Court of Australia 1977+
High Court of Australia 1947+
Immigration Review Tribunal 1990+

Human Rights and Equal Opportunity Commission 1985+
Industrial Relations Court of Australia 1994+
Land and Environment Court of NSW 1988+
Refugee Review Tribunal 1993+
Supreme Court of the Northern Territory 1986+
Supreme Court of Tasmania 1987+
SECONDARY LEGAL SOURCES.
Reconciliation and Social justice Library
Australian Commercial Disputes Centre
Australian Community Legal Centres
Australian Institute of judicial Administration
Commonwealth Attorney-General's Department
Council for Aboriginal Reconciliation
Western Australian Information Commissioner
NSW Court of Appeal Judgement
Summary Bulletins
NSW Law Reform Commission
Privacy Committee of NSW
E-Law (the law journal published by the school of law, Murdoch University)

Law course materials

SINO allows the user to search globally over the legislation, judgements and other materials in the collection in full-text using either Boolean and proximity operators or natural language searching.

The rich hypertext linking being developed by AustLii adds greatly to the value of basic legal materials, allowing one to go between sections, other statutes, definitions and cases. There is a note-up field providing additional references. An example of a basic feature is that legislation highlighted in a commonwealth law report, such as the Judiciary Act, can be accessed immediately by clicking on the highlighted word or phrase.

Government information is also a major item on the Internet, and Australian government information can be found at many sites including **http://gov.info.au** and the Parliament of Australia Internet trial at **http://www.aph.gov.au/library/ trialhom.html.**

A few hours is all that is needed to become acquainted with the scope of Australian and international legal information sources available via the Internet. Simply accessing a "comprehensive" site like AustLii at its home page **http://www.austlii.edu.au/** or the Australian Legal Information Index page at http://www.spirit.com.au/-dan/law/ provide numerous links to Australian as well as overseas Websites.

Major Australian legal publishers are now using the Internet to provide ready access to some materials and update print publications, and links to other government university and law firm sites.

The Law Book Company site at **http://www.ozemail.com.au/lawbook** includes its catalogue, plus weekly judgement summaries, and a summary of the *ABC Law Report.* Book orders can be executed via the Internet.

Butterworths at **http://www.butterworths.com.au** provide access to its *Legal Research Guide* and *ACL Express,* a fortnightly newspaper covering decisions of Australian courts. You can find the CCH home page at **http://www.cch.com.** While much information is freely accessible on the Internet, some information is accessible only by subscription.

Universities both in Australia and overseas are developing home pages and sites of interdisciplinary sources relevant to various faculties, not just law. The easiest way to tap into legal resources on the Internet is to search the law faculty and library home pages, for example those of Monash, Murdoch and Sydney Universities by just typing in the name of the university as keywords. Legal information has been organised into categories such as Australian, international, Asian and topical sources. A bonus is the ability to access the computer catalogues of the university libraries. A new utility called webCATS: Library OPACs on the World Wide Web at **http://libraryusask.ca/hywebcat/** provides links to all the online public-access library catalogues with Web interfaces.

The Internet also has directories of sources available in full-text, such as electronic journals, although access may depend on subscription.

For a list of Australian electronic journals search the National Library of Australia site at **http://www.nls.gov.au.** Hieros Gamos established by Lex Mundi is a global association of 125 independent law firms, and its legal directory for information on the legal profession at **http://www.hg.org/** now has more than 180 law and law-related journals and newsletters. Australia has a number of electronic legal journals such as the *High Court Review* produced by Bond University, *E-Law* produced by Murdoch University, the *Arts Law Centre Newsletter* (Tasmania), Internet Law *Journal* (LBC, Australia) and The *Legal Express* (Butterworths, Australia).

Personal bookmarks can be created to quickly access sites of importance. Printing as well as saving to disk are all possible and the information can be read as text files by any word-processing package such as WordPerfect.

Correction. In last month's article on legal resources available on CD-ROM, it was incorrectly stated that the range of electronic legislation produced by Aunty Abha's Electronic Publishing, (02) 9261 4288, which includes acts and regulations for the Commonwealth, NSW, Victoria and Queensland, was published by LBC Information Services. This is not the case: Aunty Abha's is an independent publisher. It does, however, jointly market its legislation with LBC, (02) 9936 6444, whose "value-added" annotations are complementary products.

The electronic publisher listed last month as *Diskrom* has changed its name to *Computer Law Services.*

Addition. Another useful CD-ROM product has been brought to our attention: *The 'Tax Partner' Library,* published by the Australian Tax Practice, (02) 9878 0577, includes a collection of all relevant statutes, regularly updated and with a commentary, the Australian Tax Office's rulings and guidelines, and reports on decisions relating to tax from the major courts and the Administrative Appeals Tribunal. The Australian Tax Practice also offers a number of weekly bulletins on tax issues.

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It is, after all, the responsibility of the expert to operate the familiar and that of the leader to transcend it. **Henry Kissinger** (b. 1923), U.S. Republican politician, Secretary of State. *Years of Upheaval,* ch. 10, "The Foreign Service" (1982).

I'll take fifty percent efficiency to get one hundred percent loyalty. **Samuel Goldwyn** (1882 - 1974), U.S. film producer. Remark to personnel who questioned his authority. Quoted in: Arthur Marx, *Goldwyn: The Man behind the Myth,* ch. 27 (1976).

Injuries litigation group formed in 1996.

The General Practice Section has formed a Personal Injuries Litigation Group to address the growing need for representation and continuing legal education in areas relating to personal injuries litigation.

The primary objectives of the Personal Injuries Litigation Group are to:

- raise the standard of personal injuries litigation throughout Australia;
- provide lawyers who have an interest in the field of personal injuries with the opportunity to develop their litigation skills;
- provide lawyers with a forum through which they can expand their professional and personal contacts in the personal injuries litigation field.

The group will aim to provide speakers for major conferences and provide other professional development benefits for personal injury lawyers as opportunities arise.

People interested in joining the group should contact the Section Administrator, General Practice Section, Law Council of Australia GPO Box 1989, Canberra ACT 2601 (or DX 5719 Canberra). Tel: (06) 247 3788. Fax: (06) 248 0639.

Injuries litigation group formed. Australian Law Society Journal, page 48, Vol. 31 No. 7 8/96.

Whilst the GPS-Lcof A is for practitioners there is another organisation promoting the cause of victims of workers' compensation, OHS abuse & CTP - this is Injuries Australia, Attn.: Bill Weston, Cardiff NSW. Tel/Fax 0243 811 902.

Case study 1: Powerhouse Museum manages exhibits better than staff!

Lesley Jane Killen writes to detail her experiences over the period when she was an employee of the Powerhouse Museum (PHM) & subsequently. The PHM is under the jurisdiction of the NSW Ministry for the Arts. The PHM is more formally referred to as the Museum of Applied Arts & Science.

I was a Clerical Officer level 1/ 2 at the PHM and also served as a fire warden, first aid officer, co-spokeswoman, OH&S delegate, honorary secretary to the Workplace Committee as well as Chairperson Clerical Assistants and Typists Branch, PSA. The final chapter of my public employment saga began when I applied for extended leave for a 1995/96 pilgrimage to Israel and family reunions in Cyprus and UK. Memorable events of my employment include:

- payment of base entrance level wages for 14 months;
- then being sent to Coventry;
- an 'improper' Conduct and Service Review;
- sexual harassment: compensation (reimbursed *2* days sick leave and medical expenses);
- I was relocated twice - management prefer this method of problem solving.

The 1995/96 PHM budget plans allowed for my absence on leave for 15 months from 17/12/95. In February 1995 an (acting) manager was appointed in my workplace and I formally applied for leave. After this I noticed a change in management's attitude toward me and things began to go wrong (I attributed this his transition into his new job). In April I was moved from reception to a back room to make room for Stores staff and it took 2 weeks to set up my workstation. My duties were changed and I was required to report to 3 supervisors on a daily basis regarding specific projects. A timetable was prepared by the manager, which he then sabotaged.

In June 1995, concerned parties advised me that the (acting) manager was hostile to my application. His behaviour was bizarre and I was urged to seek outside help. I went to PSA executive and in July the PSA executive intervened in the PHM management/union meeting -

I was granted full leave by the then Commissioner of Public Service.

The PHM managers were aware of all pertinent details of my history, yet they ‘forgot’ they sent Public Employment & Industrial Relations Authority officers to the PHM. Management Liaison meetings became ineffective because of the aggression of an assistant director (AD). In July PHM managers granted part of my leave, and I was unable to finalise any plans. *Why did PHM managers refuse to obey the Commissioner's directive? How can they get away with it?*

During 1995 two supervisors reported on my work-performance. The (acting) manager was furious and wanted a different report, one that would permit the commencement of detailed monitoring under the PHM’s "Performance Management".

Although I had worked at the Powerhouse Museum (PHM) for 10 years, Senior Management did not know what constituted my duties of employment. *Why was I penalised for their lack of understanding and diligence?* The (acting) manager issued me with a work timetable, sent in his monthly reports as well as visitor reports for the Director. However Senior Managers appeared to be unaware of these reports.

At this time I had accumulated *32* days sick leave, 40 days recreation leave plus long service. I requested 15 months absence drawing upon my leave entitlements boosted by LWOP. Senior Managers had expressed concern at my recent period of sick leave, however I was not counselled

by Human Resources about this matter. *If I caused such concern why didn't management jump at this chance to let me go by approving my leave application?*

Things came to a head on 8/9/95 when I was working without supervision. The (acting) manager arrived at my desk in an aggressive state. Events escalated from verbal abuse to assault. I was chased out of the office and sheltered myself in the women's loo. As I left via the main office, I saw some 14 of my colleagues. Most looked stunned; one was laughing, and no one came to help. That afternoon the manager assaulted me in front of my supervisor. This supervisor supported me throughout the ordeal and still does. She resigned in 1997 citing problems with the same manager. I approached many organisations for assistance.

To explain away my complaints PHM's management (not medically qualified) formed an opinion that I suffered from a *"personality disorder".* At least 2 co-workers (one present in the next office and the other told about it) substantiated my allegation of the assault - *did we all suffer the same delusion?* I had not spoken to these individuals about the incident.

I was devastated. I was in shock. I was signed-off work on 16/9/95 suffering from initial shock and work-related post-traumatic stress (I continue with these symptoms and receive state sickness benefits).

If management of the PHM believed me to be ill their actions did not reflect the duties of care and concern for a "sick employee". They did not support me or otherwise respond to me in a manner congruent with their OHS and other obligations to an employee exhibiting a putative "personality disorder" following a workplace incident (the 8/9/95 verbal abuse and assault). This employment abuse represents the actions of workplace bullies. It explains why disturbing aspects of my case have never been investigated. Some of these matters are:

- A memo dated 6/9/95 between HRM and the (acting) manager outlines plans for a formal "Performance Management" interview with me on 8/9/95. I was not informed of the purpose of the meeting. The PSA and management do not have an agreement on "performance management". The Director confirmed this at a monthly staff meeting. *Why were arrangements made for "performance management"?. Why was I required to go alone into the manager's office? Was there an ulterior purpose?*
- On 8/9/95 I alerted the Public Service Association of NSW (PSA) and was referred to the Workers' Compensation Officer.
- An Associate Director (AD) statement (1998) confirms seeing me on 9/9/95 and was "concerned for Ms. Killen's general mental state".
- I reported the assaults to this AD's secretary on Monday, 11/9/95. I waited over 2 hours for a reply. AD did not come over in person preferring to delegate to Human Resources Manager (HRM) who was already involved in the management of my workplace problems.
- Assault is a criminal offence, yet the Police were not bought into investigate and there was not even an in-house inquiry into the 'alleged' incidents I reported. I was given inappropriate advice on resolving workplace conflicts, and management ignored the report and choose to punish the victim.
- On 16/9/95 I wrote to the Anti-Discrimination Board of NSW (ADB). The ADB initially responded to my letter, but due to my ill health

and other issues correspondence only became active in June 1996. The effort to get my case up before the ADB is the greatest exercise in futility I have ever undertaken. ADB said my case was out-of-time. I appealed and ADB allowed my case to be taken from June 1996 conveniently taking the assaults and harassment out of the case. ADB would take months to answer my letters while allowing me a few weeks to reply. The conciliation meeting was in March 1999 - 3.5 years after initial contact. I wrote to the Ombudsman about ADB. At first they seemed helpful, however eventually I was advised I did not have a case.

- In October 95 I was sent to Corpsyche for assessment. Their report was rejected. In November 1995 the Commonwealth Rehabilitation Service (CRS) assessed me. Their report lays the blame with the manager - lack of communication, training and inexperience. The CRS report and recommendations were ignored.
- Some 20 days of my accumulated sick leave disappeared into a black hole. My wages ran out on 27/11/95.
- The Associate Director stated the PHM *was unaware* of other complaints. There were at least *5* complaints from mature-aged women preceding and post-dating my incidents. One cites 'stalking'. Most complainants have resigned. Many of the alleged perpetrators were unable to *remember the* assaults and subsequently have been promoted or provided permanency. Many of those placements *were s*ubject to Selection Merit challenges by the complainers. The other victim of 'performance management' successfully appealed at GREAT in January *1996* and was supported by a staff-backed petition. Temporary staff are vulnerable.
- During *1996* my *colleagues advised* me of interviews by Webster Investigations - private investigators (PI). These were of concern. They complained the PI did not take notes. He ceased employment and a new PI interviewed selected staff. One staff member reports that during her interview in a restaurant (a location suggested by the PHM's OH&S Officer) she sighted the (acting) Manager apparently at a lunchtime meeting. The interviewed staff have **not** sighted copies of their reports **nor** signed them. Why?
- The psychiatric interviews with GIO's doctors were worse. My gender, sexuality and *lifestyle were raped*.
- On the industrial front very little happened. The PSA Industrial Officer (I/O) asked me questions put to me at previous meetings. I/0 was unaware of Worker's Compensation case and would not liaise. I wrote 2 letters of concern to PSA executive who did not reply. Needless-to-say, I have used alternative agencies since that time. I have since resigned union membership.
- In January 1996 I met the PSA's lawyers. A year later they advised me I did not have a case. I requested my file. After intervention from the Law Society my file was handed over to McClellands who advised I had 2 cases - Worker's and Victims Compensation. We lodged under the old act in less than 2 weeks at end-March 1997.
- I wrote to the Department of Fair Trading. While I appreciate that the union has the discretion to decide which cases to handle its literature implies all cases will be referred for legal assessment. There is a point when fair 'trading' becomes unfair 'trading'. In light of the success of my subsequent advisers (solicitors etc) I believe, I have a case under false advertising. The D of FT referred me back to the union.

- In March 1996 I attended WorkCover conciliation meeting with the *employer, their* insurer and the PSA Workers' Compensation officer. The conduct of the employer at that meeting was indescribable. The Chairperson apologised to me. WorkCover have at least *2* other reports of very serious OH&S breaches from PHM staff yet they still have not prosecuted the employer for failing to provide *'a safe and secure working environment". Why?*
- At the March 1996 WorkCover conciliation meeting I noted that GIO representative had the same unusual surname as an Assistant Director of the PHM and I was concerned at the potential for a conflict of interest. This relationship was later discussed with PHM management, the OH&S Officer (who found it amusing) and my computer supervisor.
- Against my wishes the PHM OH&S Officer came to my home to interview me. She was later surprised to learn that management are not empowered to enter an employee's home. Harassment at home continued by officers acting on the orders of the PHM Human Resources management on the pretext of delivering correspondence. In April 1996 I went to see a chamber magistrate who advised application for AVO. At Downing Centre Court I received a favourable magistrate's decision. June Letter of Undertaking between the parties supports this.
- My *service was* stopped. LWOP commenced on 1/5/96 prior to medical assessment by HealthQuest. I was ordered to work outside the manager's office, *(1/8/96). I* declined citing medical *certificates and* reports. My treating doctors' medical *certificates requiring 'a safe and secure working environment' were often* the only barrier *between me* and the employer's plans. I was threatened with dismissal on *6/9/95. Would a concerned employer do this when* SLWOP *and special sick leave apply?*
- In June 1996 I approached Office of the Director of Equal Opportunity in Public Employment (ODEOPE). This agency was very supportive. We agreed my immediate need was to get back into the workplace. I secured a volunteer position in December 1996. I provided a few hours weekly clerical service for 19 months. I received good references and training.
- In May *1996,* prior to sending me to HealthQuest, the PHM salary section withdrew their contributions to my Superannuation Scheme back-dated to 20/11/95.
- In July 1996 I met HealthQuest for psychiatric assessment. I received conflicting PSA advice about this appointment. The meeting was horrendous. I was not allowed an observer or to see the Museum's report. I have now requested this under Freedom of Information Act. I discovered there was a deal to grant me a medical discharge. I was unaware of this. I wanted to go back to work. At this point the focus of the meeting shifted. HealthQuest found me fit to return to work in a laterally transferred position away from PHM as *'interpersonal problems are insoluble and the situation is one of irretrievable breakdown'.* This doctor declared me fit for Public Service permanency in *1986.*
- The July 96 HealthQuest report required a lateral transfer to a safe and secure working environment - this report was re-interpreted. PHM management now knew the nature and cause of my illness. PHM management failed to implement any recommendations. Why?
- On advice from Legal Aid, I tried unsuccessfully to report the assault to local Police. In mid-1997 the Police Commissioner

referred me to the NSW Police Restorative Justice Group. They negotiated with PHM management and finally secured an interview in September 1997. The delay was caused by the Director requiring information of the authority the Police had to investigate my report. The outcome of this was the employer agreed *"they did not know what to do about my case".* They agreed to provide wages for my work via ODEOPE. I sent in monthly flex-time sheets, and I was finally paid gross wages after I sent in *Letters of Demand.* They agreed to provide rehabilitation. Yet, CRS and Kairros Pty. were unable to negotiate this.

- I thought I being stalked. After months of wondering if paranoia had struck I told my counsellor who advised me this was part of the course [or "treatment"]. By a strange coincidence the day after my final court case the strange clicking noises on my telephone stopped. My mall now remains in the letterbox. And I sincerely trust I misheard Court discussions that an investigation agency received $220,000 for services rendered.
- In 1998, 3 years after the injury, the rehabilitation process began and CRS was appointed as my first rehabilitation provider. Citing problems with my employer, CRS closed their files in 1996. In 1998 the proposed rehabilitation program failed to satisfy my concerns or meet the requirements of my treating doctors. I was induced to accept an unfavourable rehabilitation plan. I took an observer to a meeting. The observer pulled me out of the meeting and wrote a letter of concern to CRS. I found a new provider, Kairros Pty. Ltd. At first things went well. However with increasing contact between the provider and my employer the "good rapport" changed. The crux of the rehabilitation issue is the rehabilitation provider never offered me a placement for employment, although other agencies found me work. (I never refused a placement).
- In May 1998 I was awarded Victim's Compensation for workplace assaults and subsequent harassment. It was a landmark decision. The generous financial settlement allowed me a more secure lifestyle. The psychological benefits of exoneration are incalculable for me, my family, my supporters and witnesses.
- On 5/11/98 I attended Workers' Compensation Court. The *'voice on the mobile telephone'* ordered the Ministry for the Arts to take over as the negotiators for the lateral transfer and the rehabilitation program - the employer was effectively sidelined. On 6/11/98 my doctor approved [the arrangement] and documentation was sent in to the lawyers and a 3-day hearing was set for April just after state elections.
- The last verbal communication by Kairros to me was by answer-phone on 25/10/98 advising the proposed "job" offered to me on 5/11/98 did not exist. Naturally, I was curious but assumed there had been a re-think. My lawyer later confirmed the job was not available (the job did not exist). This causes me to believe the PHM management and the Ministry for the Arts were determined to make it impossible for me to return by failing to find a suitable lateral transfer or providing return-to-work and rehabilitation programs.
- In February 1999 Kairros Pty. Ltd, closed my file over concerns about my dyslexia. The Kairros exclusion served to further remove the employer from the process. These matters were not discussed with me.
- I attended Workers' Compensation Computation hearing on 1/4/99 - All *Fools' Day.* The Judge needed questions answered. The employer and their insurer were neither present nor contractible by

phone. The case was thrown out. And the offer to settle my claim was inadequate.

- The Workers' Compensation Court hearing was rescheduled for 6/4/99. Again the parties for the other side were not present. The two employer's witness were on overseas holiday. The case was settled at the previously rejected amount. The ADB issue was [also] resolved and the settlement required me to resign from employment at the PHM. I wonder how much the GIO (insurer) case manager's decision influenced this outcome?
- The Director received an AM in the 1999 Queen's Birthday Honours for *'Service to museum administration, and to the promotion of Australian innovation in science, technology and design'.* The Auditor-General's report for 1998 states *'except for retrospective legislation, the Museum would have been expanding moneys unlawfully during the year'.* The Premier, who holds the portfolio, was returned at 27 March State election. Life is full of irony.

What happened to the key players? Is there is no justice? The (acting) manager returned to the 1995 position. The state of NSW paid me compensation for his violence. The colleagues from hell, who took their '30 pieces of silver', are now returned to their previous positions - they had been acting in the promotional position chain created when the manager was laterally transferred. My case has now been settled substantially to my satisfaction. It is likely that my 'colleagues' are expendable to the PHM, however I doubt they are aware of this.

It seems to me there must be a hidden agenda. Perhaps, it is a case of bullying escalating into full personal vendetta - '*problems are insoluble'.* Or, simply that I stood in the way of other plans that benefited cronyism vis a vis Merit Selection challenges.

Bullying like torture is never carried out in isolation. It is supported by a system that actively condones those actions. This is done by silence, suppression of facts or passive involvement. As can be seen by the variety of responses to my call for help.

Bullying is found everywhere even in democratic countries with human rights legislation. *The Winslow Boy,* was 13 when falsely accused of theft and thrown out of naval college, (Britain, 1911). Mordechai Vanunu, (Israel, 1987) - now in solitary confinement in a 10 x 6 ft cell. Karen Silkwood (USA) was killed in a mysterious accident. We all have one thing in common. We are whistleblowers. The system takes over and our lives are never the same again.

Bullying is not a new phenomenon despite the sudden interest of the media. What is new, is more people speak out and challenge the system. This is a positive process. The negative side is 'work rage'. We all demand our rights but forget the other side of that coin is our duty of care to each other. There is collective responsibility and accountability for all our actions. **As long as we are silent and condone the actions of others nothing will be done. When right needs to be done, it must be the concern to all of us.** I still have legal and industrial issues to resolve.

Case study 2: SMH reports that a Telstra employee had his life placed on hold for

almost 10 years.

A life on hold. Robert Wainwright. Pages 3 & 15, Sydney Morning Herald 29/11/99. www.smh.com.au.

April 1990 Geoff Marr complains about overtime payments for staff at his North Sydney office.

July 1990 Marr stood down over allegations that he misused Cabcharge vouchers.

October 1990 Telstra begins to secretly tap Marr's telephone. Taps continue until November 1991.

December 1990 Marr officially sacked, also facing criminal charges for allegedly selling confidential Telstra information.

March 1991 Telstra hires private investigators to spy on Marr

June 1991 Telstra's Disciplinary Appeals Board confirms sacking,

August 1991 Marr begins his first Freedom Of information case.

December 1991 Federal Court says it has no jurisdiction to hear Marr's appeal.

April 1992: Criminal charges against Marr dropped.

August 1992 NSW police begin investigation.

November 1993 Federal Industrial Relations Commission says it has no jurisdiction to hear Marr's case.

August 1994 Senator Paul Calvert asks questions in Federal Parliament.

November 1994 Sydney Morning *Herald* highlights Marr's case.

December 1994 Telecommunications Minister Michael Lee announces independent inquiry by retired Victoria Supreme Court Judge Kenneth Marks.

March 1995 Marks's decision handed down. Telstra ordered to reinstate and pay five years' back pay.

May 1996 Marr returns to work for Telstra.

May 1996 Telstra finally pays money ordered by Marks inquiry, but only after Federal Industrial Court hearing.

July 1996 Marr launches malicious prosecution and defamation proceedings in the Supreme Court.

February 1998 Federal Ombudsman delivers final report, which criticises Telstra and orders it to apologise to Marr, his family and friends.

November 1999 Settlement of action for defamation and malicious prosecution in mediation before Sir Laurence Street.

*Telstra thought it would be easy to silence Geoff Marr. Just sack him. Ten years and millions of dollars later, writes **Robert Wainwright**, it knows it made the wrong call.*

Telstra has paid more than $1 million in compensation and entitlements to end a nine-year battle over the sacking of an employee for allegedly misusing $170 in Cabcharge vouchers.

The giant corporation this month agreed to an out-of-court settlement, believed to be more than $700,000, to a Sydney man, Mr Geoff Marr, in what may be the longest-running unfair dismissal case in Australian history.

It adds to a separate payment of more than $330,000 in 1996, when Telstra was ordered by a Federal Government-appointed arbitrator, retired judge Mr Kenneth Marks, QC, to reinstate Mr Marr and pay his wages for the five years he was out of work after being sacked in July 1990.

But the real cost to Telstra was far more, with some estimates running at high as $5 million in terms of legal and staff costs. The saga has led to a four-volume report by the Federal Ombudsman and along the way has involved an investigation by Federal and NSW police, a string of Supreme and Federal court hearings, a special inquiry by Mr Marks and a mediation hearing chaired by Sir Laurence Street to resolve compensation.

When it ended this month, it had been raised in Federal Parliament, dominated Senate hearings into Telstra's budget, caused hearings by the Parliamentary Privileges Committee, and sparked investigations by the Privacy Committee, NSW Ombudsman and even the Legal Services Commissioner.

There have been allegations that Telstra manipulated its own internal appeals tribunal and claims in Parliament that the wife of a Federal minister was used to by his Cabinet colleague over Mr Marr's case.

Documents indicate that Telstra’s investigation of Mr Marr the Cabcharge allegations coincided with his threat to expose an entrenched overtime and meal allowance rort. The North Sydney business analyst has been retrenched as part of the latest settlement, which prevents him discussing the case publicly.

A spokeswoman for Telstra said there would be no comment on the decision, but the details of Mr Marr's battle are contained in the Ombudsman's report and in comments in Federal Parliament by Tasmanian Senator Paul Calvert, who championed Mr Marr's cause.

The Federal Ombudsman found that Telstra:

- Hired a private investigation firm, which obtained confidential Police and credit files and maintained a round-the-clock surveillance and searched Mr Marr's garbage;
- Used its own security staff to get confidential medical, immigration and banking records;
- Tapped private telephones and shredded records.

Telstra was also accused of manipulating its own internal Disciplinary Appeals Board, which upheld Mr Marr's sacking. Mr Marks overturned the sacking, concluding that Mr Marr ha been denied natural justice.

Senator Calvert commented: think it shows that the little man in the community, if he has the gut and is willing to persevere, can take on organisations, even as large as Telstra, and get justice However, the fact it took him nine years to do it proves that the system does have its problems."

It began as a seemingly minor dispute about the payment of overtime - a testy falling-out among staff that eroded the morale of a small number of workers in Telstra's North Sydney office.

Geoff Marr. "Million's of dollars have been spent in the corporation's efforts to destroy my credibility and ruin me financially."

But nine years later, the battle between the telecommunications giant and one of its 92,000 employees from that time will go down as the most bitter and costly unfair dismissal case in Australia. Whistleblowers will claim it as one of their greatest successes, because this month Telstra agreed to finalise payments in compensation, back wages and entitlements believed to total more than $1 million to the former employee, Geoff Marr.

Before it ran its course, the case was raised in Federal Parliament, dominated Senate hearings into Telstra's budget, led to several protracted hearings in the Federal and Supreme courts, started inquiries by prominent judges, created a four-volume report by the Commonwealth Ombudsman and was investigated by the NSW and Federal police. There have also been hearings by the parliamentary privileges committee, and investigations by the privacy committee, the NSW Ombudsman and the Legal Services Commissioner.

In February 1990 Marr, a computer science specialist with a masters degree in economics, was working for Telstra as a business analyst.

A dispute arose in April that year when he asked his immediate boss to increase overtime payments to two recruits. When his request was refused, Marr threatened to take the matter further and to reveal what he knew about overtime fraud within the office - later confirmed by an internal investigation. Unintentionally, he had lit a fuse that burnt to the top of Telstra management. Even the then chief executive, Frank Blount, became embroiled in what should have been a small management problem.

In July that year, Marr was suspended without pay, accused, among other things, of secretly downloading and selling confidential information. "They thought it was easier to get rid of me rather than solve the problem," he told investigators in 1995.

The allegations, some of which led to criminal charges, were baseless and were later dropped or dismissed.

Behind the scenes, managers decided to hire a private investigator to obtain evidence against the analyst. They said it was to establish the validity of a claim of hardship by Marr, who had been suspended without pay before being sacked. The Commonwealth Ombudsman, John Wood, found otherwise. He told Marr in his report last year that the aim was to "reinforce" the sacking as well as "collecting any further information that might be useful to Telstra when defending itself against your appeal. In my view, Telstra's commissioning of covert surveillance ... represented an

unreasonable breach of your privacy [and] the privacy of other individuals."

Paul Miles runs a private investigations firm in Sydney's western suburbs. When Marr, his best friend and former rugby league team-mate, rang in early 1991 to say he was being followed, the former police officer was quick to act. The "tail" was easy to spot.

The investigators watched Marr's house, searched his garbage and mail and sought confidential records from government agencies. Other "agents" later tapped his phone and those of relatives and friends such as Miles.

The details of the phone taps were never revealed because the magnetic tapes were destroyed. Wood commented: "I regard Telstra's destruction of the [telephone] reports and records as a serious administrative failure. Telstra did not have sufficient justification to monitor your telephone service and Telstra unreasonably breached your privacy by connecting [monitoring] equipment to your telephone service.

"Telstra was also responsible for further specific unfair and unreasonable privacy intrusions as carried out by its . . . inquiry agents, ranging from examination of the contents of your garbage, to improper accessing of confidential government information concerning you and friends or acquaintances."

It was, Telstra later admitted, a waste of time, but at $32,000 it was a mere drop in the ocean of money eventually spent on lawyers and court cases. But in mid-1991, Telstra's internal Disciplinary Appeals Board had upheld Marr's sacking, finding that he had misused $170 in Cabcharge vouchers. It was a kangaroo court where Marr was denied access to witness statements, leading to claims that the management had manipulated the system.

But Marr had no avenue to appeal. In the following years, Australia's legal system, coupled with Telstra's jurisdictional arguments, blocked his attempts to clear his name and regain his professional life.

By April 1994 he had been turned away by the Administrative Appeals Tribunal, the Australian Industrial Relations Commission and even the Federal Court.

His sustained level of attack was via Freedom of Information (FOI) applications. From his cluttered two-bedroom flat in Wollstonecraft, Marr launched an unyielding assault on Telstra's files of documents. He studied the legislation, represented himself and succeeded in opening a mine of documents, including the private investigator's stilted surveillance report, along with memos between managers and internal reports that confirmed his claim of overtime and meal-allowance rorting.

At one stage, he was opposed by Dr Geoffrey Flick, SC, who helped write the FOI legislation. When he approached the Herald with his story in November 1994, he was still struggling to overcome the jurisdictional problems that prevented him finding a court to hear his claims.

It wasn't until 1995 when the then Telecommunications Minister, Michael Lee, stepped in, that a solution was found. Faced with criticism in Parliament, Lee ordered two independent inquiries, one by the retired Victorian Supreme Court Judge Kenneth Marks, QC.

In March 1995, Marks overturned the Disciplinary Appeals Board decision, finding that Marr had been denied natural justice. He said that prejudicial material had been given unfairly to Telstra's Disciplinary Appeals Board and Marr had been refused access to documents and witness statements. One board member had even known four of the prosecution witnesses.

"It is difficult to resist the suspicion that the undisclosed possession of the material vitiated a fair hearing of the charges," Marks said. "The prejudicial nature of the material is sufficiently potent to make it difficult for any person reading it to be unaffected.

"There is little doubt that in an analogous situation in the courts, a jury would have been discharged." In a landmark decision, Marks ordered Telstra to pay Marr more than five years' back pay, including overtime, holiday pay, superannuation entitlements and costs. It amounted to more than $330,000 - money he would have earned in that time.

It took 14 months and a Federal Industrial Court hearing to get his money. Telstra also had to offer him his job back and, to everyone's surprise, Marr accepted it, walking back into the lion's den in May 1996, while continuing his legal battle to win compensation for his hardship.

The matter did not rest in Federal Parliament. Marr had found an ally in the Tasmanian Liberal Senator Paul Calvert, who was a member of the Senate Estimates Committee; Calvert was convinced that Marr was being pursued not because of the Cabcharge allegations, but because he had threatened to expose the overtime rort.

Calvert's committee threatened to delay finalising its budget hearings into Telstra until several hundred questions about the case were answered. Some of them concerned the involvement of the Sydney barrister Trish Kavanagh, the wife of the then Industrial Relations Minister, Laurie Brereton. Kavanagh was identified in a series of memos as having advised Telstra and had even spoken to Lee about the case.

Calvert accused Telstra of using everything" to stop the Marks inquiry. "It could be seen that Telstra was improperly using a minister's spouse to get to another minister," he said, adding, "I hope that is not the case".

The allegations were vehemently denied, although Kavanagh confirmed she had spoken to Lee at the ALP's 1994 annual conference in Hobart about the case. The accusations brought an angry response from Labor Party members, who said Kavanagh's personal relationships were irrelevant to her professional life.

Secrecy provisions of the just concluded settlement prohibit Marr from commenting publicly. But the depth of his anger about the whole matter was clear in a statement he prepared earlier this year for the Supreme Court hearings into his claims of defamation and malicious prosecution. Instead of going to a hearing, Telstra opted for an out-of-court settlement, mediated by Sir Laurence Street.

"Few people have had to endure the hardships I have been put through. This limits their ability to comprehend the impact of the anguish, strain and depression generated by Telstra's conduct," he wrote.

"I was a dedicated and loyal employee, but the corporation turned its unlimited resources against me to cover up the actions of a few, dishonest staff.

"I complained about fraud within my section and found myself the subject of false allegations and criminal charges. Millions of dollars have been spent in the corporation's efforts to destroy my credibility and ruin me financially. Telstra has achieved the latter, but no amount of money will change the truth.

"Despite voluminous evidence, Telstra still denies it has done anything wrong, shows no contrition and maintains I am guilty of any number of offences. I will never be able to put this matter behind me."

Lawyer whistleblowing on lawyers: a book review.

Book review: *The Evil of the Ratbag Profession in the Criminal Justice System*, by Brett Dawson, 1998, 404pp.

Review by Dr Karl H. Wolf. B.Sc. (Canada), Ph.D. (Australia), D.Sc. (USA)

Order from any Dymocks Bookshop (paperback A$29.95); or Brett Dawson, PO Box 32, Woombye, Queensland, 4559 Australia, A$30.00 (+ $6.00 for postage and packaging within Australia).

Before dealing with the book *per se*, a few words on why the reviewer, while not being a legal expert, feels suitably qualified. Not only was he exposed to three indirect and two direct involvements in the law, and consequently has studied a fair list of law-related books (e.g. on experts and voodoo law in court, international law, human rights, advocacy, injustice by the Jury system, …), but the main contention is the reviewer's decades-long scientific/technological and humanities-related education which compels him to examine this super-critical analysis by Dawson. After one has fully mastered the many cognitive-cum-intellectual principles, as well as the rules of various professions' methodologies and knowledge domains, ones experience can transcend any discipline. Thus, one can even critically analyse or evaluate a publication on law. Indeed, as well known, quite often it takes an 'outsider' to induce a change.

Another important question to be settled: should only *experts* review the ethics, efficiency/efficacy, or social responsibility or accountability *of their fraternity*, such as the legal profession? *In*-house, *within*-discipline-style investigations prompted by professional misconduct, dishonesty, fraud, or any other misdemeanours, have in general (with rare exceptions) not been successful. Many professions believe themselves to belong to a sacrosanct priesthood, untouchable by outsiders - open for evaluation by only the 'initiated members of the group'. Under this cloak of secrecy much bamboozling occurs. One may then argue that '*external* experts' ought to examine the 'allegedly misbehaving' colleagues. But this process too is often impossible or extremely difficult to even initiate. Thus, what is commonly left to those at the 'receiving end' of the innumerable types of dishonesties is self-motivated action. Whistleblowing is part of this process. Our open democratic system even demands that intelligent individuals (e.g. 'public intellectuals' like John Ralston Saul: see also the 1998-book *'Speaking Their Minds: Intellectuals & the Public Culture in Australia'* edited by Robert Dessaix) accept the 'duty' to analyse the numerous social institutions, in addition to demanding their 'rights' to do so. If only experts can examine experts, it would forbid any philosopher to

do any philosophising of any human enigma because s/he is 'only a generalist of everything and not an expert of any specific knowledge domain'. This sort of argument can be applied to any communication in any social setting. The rule ought to be: *'as long as you got your facts straight during a critical evaluation, you can present the conclusions reached; while at the same time admitting being wrong when presented with logical counter-arguments'*. Such arguments in support of whistleblowers who are not experts in a particular field, but feel compelled to expose wrong-doing, do not apply to Dawson who has had thirty years of experience as a prosecutor and defence/property/civil litigation lawyer, law lecturer, and trainer of law graduates. He is doing the 'fully-qualified evaluative and expository whistleblowing', whereas we present here a 'descriptive or synoptic review' of his report (i.e. book).

The book's back-cover explains that 'it would be possible to describe it as a disgusting bit of so-called legal scholarship that lawyers and Judges moulded the criminal system to suit the objectives of the legal profession, with scant consideration for the needs of anyone else'. To prove his case, Dawson riles over 400 pages about his fraternity's 'bloated, greedy, and corrupt practices' in Australia and New Zealand, based on well-researched information. The author's language is couched to address both intelligent laypersons as well as legal professionals. However, the 'loose' linguistics chosen by Dawson has turned off one of my lawyer-acquaintances to join me as co-reviewer of his book. He feels that Dawson is, for example, 'highly emotional, invective, scurrilous, sarcastic, …' in his rhetoric. Indeed, any reader will notice Dawson's strong, colloquial language (often with humour) and the minimal use of legalese - he certainly does not pussyfoot around or resort to nice euphemism to reduce the emotional impact of his linguistic blows. The use of a couple of religious metaphors on page 3 may also turn off some readers, but Dawson certainly did not mean to be offensive. Independent of whatever the legal profession has to say about the book (they may call him, for example, 'recalcitrant', using a milder euphemism), from our (*The Whistle's*) viewpoint the 'lawyer's whistleblowing on lawyers' proffers a fascinating case. Send your opinion to the editor.

The book offers so many highly interesting details about the criminal law that anyone who loves a 'good detective story' will certainly be totally fascinated by Dawson's elaborate, step-by-step, approach. After reading this book, you can 'analyse' any detective story yourself as to the accuracy of the legal process involved! More importantly, however, is while being entertained, you gain a lot of invaluable practical knowledge about our system of law. Much of this is disturbing: Dawson exposes the legal system as being 'sanctified' by its chosen members, which appear to be 'untouchable' and have hoodwinked us far too long.

The book's layout has some unique features. The absence of a *Content* and an *Index* has been neatly compensated for by an *'overview'* of all 22 chapters collectively presented at the beginning of the book. Then, each chapter begins with an *'introduction-cum-abstract'*, followed immediately by a *'numbered content list'* of that particular chapter. Consequently, the reader can obtain a quick introduction to and an overview of the whole book. The numbering of all chapters and all subsections also assists in quickly finding particular topics. Thus, Dawson provided a necessary hierarchical structural or division of his data. The book is well written (unless you object to the frequent colloquial no-holds-barred expressions), concise, and all arguments are logically presented. In all, the relevant rhetorical pieces allow many brief intellectual interludes to rethink the

author's often-incredibly disturbing information. Only some typo-errors have been pointed out by the author in a letter to the reviewer as a result of having had to meet the publisher's deadline, but mis-understanding is impossible.

Dawson's 'compacted' text outlines so many fundamentally important facts that it is not possible to do full justice to his book in a brief review. Hence, merely a few preferentially selected tit-bits -- obtained from each chapter without identifying them -- can be quoted or paraphrased in telegram-style to whet the reader's appetite. Today's legal problems are of historical making: to increase the power, wealth and status of the defence lawyers (DL hereafter), they seized control of the courts from the Judges in England during the 1750-1800 period; this allowed them to earn money by getting the guilty off; which encouraged criminals to employ DL who, as a consequence, escaped conviction; and that then lead to the increase in DL numbers. Other results: procedure triumphed and it became easier to make unjustified claims of unfairness in trial procedures; and the trials became increasingly 'adversarial' in contrast to the European 'inquisitorial' approach; the latter is more likely to find 'the truth'. The DL's take-over process was repeated in the 1960's when 'legal aid' was made available by the government (and paid by the taxpayers).

Thus, court procedures underwent revolutionary changes to assist the DL to help the criminals, but not the innocent. Criminals could safely conspire in secret with lawyers; witnesses were prevented from speaking out by lawyers objecting to their evidence; criminals did not have to say anything in court; victims lost control of the prosecution; it was pretended that no pre-trial statements had been made; trial process was slowed down; DL developed their own crooked ethics; and lawyered defendants were advantaged; non-lawyered defendants did not receive the same justice; many guilty persons got off; the Judges do not seem to care about this, according to Dawson. He compares our 'British-derived' legal system with the earlier American one that did not need lawyers for anything! Judges declared that lawyers are essential to make convictions more acceptable, resulting in much hypocrisy. Numerous negative ramifications were the consequence, as detailed by Dawson: e.g. in this skewed system DL must lie and cheat, supported by the lawyer union with concocted new 'in-house' ethical rules. 'Truth' was divorced from 'legal ethics'. All this is stacked up against Police ethics. Ethics and 'adversarialism' is not compatible; we need something like the European 'inquisitional, truth-seeking' legal approach.

Dawson continues: all the Judges are ex-lawyers (reflecting a type of nepotism?), which may lead to a style of conflict - e.g. letting the lawyers be criminals too, as exemplified by numerous 'deleterious, unethical' activities, listed in the book. The 'rampant proceduralism', 'judicial incompetence', 'fraudulent preference philosophy', and 'getting-the-guilty-off' methodology often pervert the law. What would happen if Judges were ex-Police officers?

The 'concocted liberal bail hearings' do not require niceties of evidence, but make it easier for the DL to manipulate the system and enhance their fees. Also, under the phenomenon of 'creating non-truth-based fair trials', the DL need a concept which excuses Judges to have to find the truth: it is called *'fairness concept'* - meaning fair to the defendant and DL, and no one else. Consequently, so much in court can now be twisted as 'unfair'. The two above-mentioned DL take-overs were accompanied by creating 'rights for criminals' of which Dawson lists 27 such 'rights' in contrast to

simultaneously dumping more ‘duties’ and restrictions on the Police. ‘Breaches’ of any one of these rights entitles criminals to get off. Much relates to obtaining, sifting, presenting, and withholding evidence. Dawson deals with 26 aspects about evidence that, like all other information he supplies, is highly illuminating. Readers with be fully disgusted with our legal system!

The sentencing of criminals does not concentrate whether s/he is sorry for the anti-social activity; on the contrary, s/he concentrates on an expensive program of cheating and lying to get off, helped allegedly by the DL. If the criminal feels dissatisfied with an ‘incompetent’ lawyer’s performance, s/he cannot sue the court, Judge and/or lawyer - the reasons why the adversarial system cannot allow suing of lawyers are dealt with. Defamation laws protect the legal profession: the evil deeds of lawyers remain hidden. The word ‘adversarial’ stands for lawyers versus everyone else, namely, clients, crime victims, community, Police, and taxpayer. Pity the client who fails to recognise this huge imbalance of power. The DL perpetuate their ‘time-consuming fraud, frequently charging for service of no value, requesting retainers for absolutely nothing, and so forth.

Victims cannot sit in court - they are ordered outside for much of the trial: the French and Japanese crime victims matter more than ours. The community also is pushed aside, while the DL get rich in pursuing the ‘get the guilty off’. Result: criminality is rampant. The inefficient criminal law has numerous ramifications, e.g. many victims have stopped reporting crimes; many criminals are released without prosecution; the Police is accused of impropriety, causing misleading distrust; making the Police’s task more difficult and occasionally to be dishonest; etc.

Dawson offers near the end of the book a hypothetical case (a good ‘who-dunnit’ story) in which he demonstrates how ‘a competent adversarial DL has access to an almost inexhaustible supply of 100 dirty tricks, any one of which might get a client off’. These tricks (‘the real legal skill, based on twisting facts and procedures’) are identified by asterisks (*).

A comparison of the Australian/British ‘adversarial’ system with two non-English (French and Chinese) ‘inquisitorial’-style ones demonstrates that ours does not look too favourable! Dawson claims that a ‘revolution’ (is he now on ASIO’s list as a social misfit or an undesirable, like some academic historians and other intellectuals?!) is needed to disempower lawyers, give priority to truth and to the needs of victims of crime, instead of to the greed of the DL in their activity to get the guilty off. Yet, the lawyers defeat all meaningful change by being in control of any ‘reform’.

Letter to the editor.

In accordance with editorial policy and practice this letter has been edited.

Dear Editor,

I am a whistleblower over the ‘medicalising’ of the expression of dissent within sections of the Australian society. Society does not look kindly on those who blow the whistle (ie pejoratively 'squeal' or 'dob') and the punishment is often swift.

My campaign started when I was subjected initially to this type of abuse. I was put into Mont Park and kept there to secure payment of $101.40. This letter is a continuation of my twenty years long campaign.

I understand that the medicalising of whistleblowing issues has increased over recent years particularly the insidious use of 'hired gun' psychiatrists who compile reports and other medical documents to be used to discredit whistleblowers.

I do not expect to live long enough to have recognised any value that I may have brought to the community. The reason for this is that I am not getting basic medical attention for a heart condition. The repercussions of my is whistleblowing very patronising thing to me, and contrasts with my inability to get the basic medical attention required for my cardio-vascular problems. I need to maintain my personal integrity. I now expect to die without any value of my campaign being recognised by the wider community.

Yours sincerely, Patrick Vallence, PO box 127, North Essington Vic 3041

Christmas cards & forthcoming issue of The Whistle.

The next issue of ***The Whistle*** will be printed & distributed in mid-February 2000. We would be grateful to receive original articles or copies of other material on featured topics and more general issues.

The feature topics for the 2/2000 issue are **good, bad and ugly experiences with workers' compensation claim assessment, insurer medical reports, OHS compliance & enforcement, etc.**

We are particularly keen to receive:

- articles for publication;
- feedback on past & the present issue;
- your suggestions to improve ***The Whistle.***

Please post copy by 31/1/2000.

Bah! Humbug! **Christmas cards.*:***

Send SAE for free sample or place orders for immediate delivery. Cost $3.50 for ten cards & envelopes plus $2.00 package & postage. Post & packaging paid for orders of more than 30 cards.

ORDERS: WBA, 7-A Campbell St Balmain NSW 2041

or Fax 02 8804 8857.

WHY ETHICS MATTERS: an extract from the Institute for Global Ethics Internet site.

This material was originally an appendix from: ETHICS, ACTUARIES (AND ROBOTS) a paper presented by Ian Robinson FIA FIAA ASIA ASA to the October 1998 sessional meeting of the Institute of Actuaries Australia. Extract from appendices A, D & K, pages 88, 89, 102 to 104, and 107.

Some of the (below) sites include numerous links to other sites. For example, try http://condor.depaul.edu/ethics/ethi1.html

One hundred years ago, humanity had less power and less reach. Catastrophe meant natural disasters such as the Krakatu volcano, the potato famine, and the San Francisco earthquake. But in this century, poor ethical judgement has produced such devastation as the grounding of the Exxon Valdez and the meltdown of the reactor #4 at Chernobyl. Technology will advance exponentially into the 21st Century. Imagine how much we'll have at our fingertips then!

It's not just national leaders who have us in their grip. Technology empowers people at many levels and in many locations. Do they understand that ethics has consequences, and that their actions can have enormous impact? Will they make ethical decisions based on their highest moral values? Or will they simply do what's expedient for whatever serves their self-interest?

The people who affect our careers, our families, our environment, our government - we need them to act ethically on our behalf. After all, when we begin a course of action, we're more comfortable acting in agreement with our principles. Shouldn't they be, too?

SOME USEFUL WEB SITES.

Association for Practical and Professional Ethics:
http://php.ucs.indiana.edu/~appe/home.html

Australian Association for Professional and Applied Ethics:
http://www.arts.unsw.edu.au/aapae/

Chicago Sun-Times Ethics Articles:
http://www.depaul.edu/ethics/sun5.html/sun5.html

Encyclopedia of Applied Ethics: http://www.apnet.com/ethics/

Ethics Center for Engineering & Science:
http://www.cwru.edu/affil/wwwethics/

Ethics on the W^: http://www5.fullerton.edu/les/ethics list.html

The Ethics Information Center: http://www.gaiafriends.com/ethics/

European Business Ethics Network:
http://www.nijenrode.nl/research/eibc/eben/index.html

Hopkins University - Ethics: http://www.ihu.edu/~phil/subfold/ethics.html

Institute for Business and Professional Ethics: http://www.depaul.edu

The Institute of Chartered Accountants in Australia: http://www.ica.au

The Institute of Global Ethics: http://www.globalethics.org

KPMG US - Business Ethics Practice: http://www.us.kpmg.com

University of British Columbia's Centre for Applied Ethics: http://ethics.ubc.ca/papers

ETHICS CENTRES AND LEARNING

- *The St James Ethics Centre* - founded in 1989 by St James Anglican Church and incorporated in 1990. It is an independent non-profit, non-political organisation that provides a forum for the promotion of business and professional ethics.

It provides consultancy services (for example, assistance in drafting a code of conduct), a free counselling service for people who encounter an ethical dilemma and seek assistance for its resolution, other support to individual professionals, learning programmes for current and future leaders, as well as awards to people who have demonstrated leadership and moral courage. Worth noting is that the Centre has representatives on a number of corporate and professional ethics or disciplinary committees.

Street Address: Level 2, 140 Sussex Street, Sydney NSW 2000

Postal Address: GPO Box 3599 Sydney NSW 1044

Telephone: (02) 9299 9566 Facsimile: (02) 9299 9477

- *Australian Association for Professional and Applied Ethics - formed* 1993 out of conference of academics and professionals from many different backgrounds. Its aim are to encourage awareness of applied ethics as a significant area of concern, to foster discussion of issues in applied ethics, and to foster and maintain lines with special interest groups. Each year it holds a conference.

It can be found in the Internet at http://www.arts.unsw.edu.au/aapac/

The author is aware that ethics is taught at the *Graduate School* of *Business at the University* of *Sydney* and *The University* of *New South Wales* (and no doubt at other universities an colleges).

The latter in fact offers the course Graduate Diploma in Professional Ethics which can be completed in one or two years of evening or distance learning. Details can be found a http://www.arts.unsw.edu.au/philosophy/pg.html

Fill-in quotations on "power".

Powerful men in particular suffer from the delusion that human beings have no memories. I would go so far as to say that the distinguishing trait

of powerful men is the psychotic certainty that people forget acts of infamy as easily as their parents' birthdays. **Stephen Vizinczey** (b. 1933), Hungarian.

Authority has always attracted the lowest elements in the human race. All through history mankind has been bullied by scum. Those who lord it over their fellows and toss commands in every direction and would boss the grass in the meadow about which way to bend in the wind are the most depraved kind of prostitutes. They will submit to any indignity, perform any vile act, do anything to achieve power. The worst off-sloughings of the planet are the ingredients of sovereignty. Every government is a parliament of whores. The trouble is, in a democracy the whores are us. **P. J. O'Rourke** (b. 1947), U.S. journalist. *Parliament of Whores,* "At Home in the Parliament of Whores" (1991).

No oppression is so heavy or lasting as that which is inflicted by the perversion and exorbitance of legal authority. **Joseph Addison** (1672 - 1719), English essayist. *Interesting Anecdotes, Memoirs, Allegories, Essays, and Poetical Fragments,* "The Cruelty of Parental Tyranny" (1794).

Nothing strengthens authority so much as silence. **Charles de Gaulle** (1890-1970), French general, president. Quoted in: André Maurois, *The Art of Living,* "The Art of Leadership" (1940).

For nothing can seem foul to those that win. **William Shakespeare** (1564 - 1616), English dramatist, poet. King Henry, in *King Henry IV, pt. 1,* act 5, sc. 1.

Whistleblowers Australia Inc. Regional Contact points.

New South Wales: "Caring & Sharing" meetings, we listen to your story, provide feedback and possibly guidance for your next few steps. Held every Tuesday night 7:30 p.m., Presbyterian Church Hall 7-A Campbell St., Balmain 2041. **General meetings** held in the Church Hall on the first Sunday in the month commencing at 1:30 p.m. (or come at 12 noon for lunch and discussion. The **AGM** is held at 1:30 pm on the day of the July General Meeting. **Contacts:** Cynthia Kardell, Tel./Fax. 02 9484 6895, or messages Tel. 02 9810 9468; Fax 02 9555 6268. **Goulburn:** Rob Cumming, Tel. 018 483 155. **Wollongong:** Brian Martin Tel. 02 4221 3763. **Relevant web site:** http://www.uow.edu.au/arts/stsbmartin/dissent/

Queensland Contacts: Feliks Perera, National Treasurer, 1/31 Jarnahill Drive, Mt. Coolum Qld 4573. Tel./Fax. 07 5471 7659. Also Whistleblowers Action Group contact: Greg McMahon, Tel. 07 3378 7232 (a/h).**South Australian Contacts:** Jack King, Tel. 08 8278 7853; John Pezy Tel. 08 8337 8912.**Victorian Contacts:** Anthony Quinn 03 9741 7044 or 0417 360 301; Christina Schwerin 03 5144 3007.**Western Australian Contacts:** Avon Lovell, Tel. 08 9242 3999 (b/h).**Editor of The Whistle:** WBA, 7-A Campbell St., Balmain NSW 2041. Fax: 02 9804 8857.

Support Whistleblowers Australia Inc.

Membership of WBA involves an annual fee of $25.00. Membership includes the annual subscription to The Whistle, and members receive discounts

to seminars, invitations to briefings/discussion groups, plus input into policy & submissions. (Anonymous membership is available on request). A concessional membership of $12.00 pa is available to persons on low-incomes.If you want to subscribe to '*The Whistle*' but not join WBA, then the annual subscription fee is $25.00.The activities of Whistleblowers Australia Inc. depend entirely on voluntary work by members and supporters. We value the ideas, time, expertise and involvement of our members and supporters.

Whistleblowers Australia Inc. is funded entirely from membership fees, donations and bequests.