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

The Whistle

Newsletter of Whistleblowers Australia Inc.

Issue No. 3/2000, October 2000.

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(This electronic version contains some minor changes and corrections from the printed edition.)

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Suppression of dissent website

in the section on Contacts

in the subsection on Whistleblowers Australia

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CONTRIBUTIONS PLEASE. Articles, letters cartoons or illustrations dealing with any aspect of whistleblowing will be considered for publication, subject to editing. Address material to: The Editor, ***The Whistle***, WBA. 7-A Campbell St, Balmain NSW 2041. Please submit material on diskette in ASCII format &/or M/S Word 7.0 or earlier version, plus hard copy.

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ICAC Press Release - 1998 annual Report.

In a news release (22/12/98) accompanying the ICAC Annual Report for 1997/98, the ICAC Commissioner Mr Barry O'Keefe, QC, said "The Commission's productivity has increased in all areas during recent years, so too has the workload, but no further rise in workload can be handled with the current level of funding, because more productivity gains are unlikely to be achieved. Despite identifying savings worth millions to the State through ICAC investigations into Transgrid, ***WorkCover NSW,*** Southern Mitchell Electricity and NSW rail organisations, among others, the ICAC's 1998-99 budget submission was rejected, although only a small increase was sought to meet new responsibilities imposed by Government initiatives. Progressive budget reductions and rejection of the budget submission have significantly reduced ICAC activities." I am not aware of the scope or scale of the 1997/98 ICAC investigation into WorkCover, however it is significant if ICAC has identified issues of corrupt conduct within WorkCover of greater significance that from my protected disclosures. The funding for investigations should be altered so that the NSW public sector agency is responsible for the full costs of investigations undertaken by ICAC, the NSW Ombudsman and /or the NSW Auditor General, unless the investigation can be demonstrated to be frivolous or vexatious.

Things which managers saw as critical in promoting corruption prevention strategies included the need for:

- open management styles, e.g., the General Manager visiting field workers and communicating an interest in staff problems
- developing and using transparent processes for employment, e.g. encouraging staff to disclose conflicts of interest (both real and perceived) and secondary employment
- spreading the delegation of tasks amongst staff so that no one person has sole responsibility for a task which is open to corrupt practices;
- leading by example and,
- being consistent and focussed on the organisation's values.

"An open, candid and honest CEO approach makes the organisational culture positive towards honesty and integrity. As soon as the General Manager becomes aware of fraud then it is investigated straight away."
"ICAC puts the fear of God into people. That is useful."

"A fair tender process strengthens the capacities our firm can provide to the state of NSW. "

"The rules ensure we are competing for tenders on a level Playing field".

"Our General Manager meets with all employee groups out in the field at least twice a year - management by walking around. This communicates that management are interested. "

Targeting the "grey areas" of corruption was also considered important. In particular, it was considered imperative that staff are trained to be able to make their own judgements about issues which may not appear obviously corrupt. It is also seen as important for organisations to give staff avenues to seek advice if they are not confident to make a decision.

Further information and guidance about conflicts of interest and ethical decision making are available in the Model Code of Conduct for NSW Public Agencies - Policy & Guidelines.

2 - 8.8.3 **Suspension of committee. A Committee should be suspended by the convenor in any case where there is a suggestion of bias, prejudice or conflict of interest. Such cases must be reported in detail immediately to the Department Head or nominee.**

2 - 8.9.3 **Suspension. Members must also take individual responsibility for ensuring that selection processes are fair and may seek the suspension of the committee where they believe that there has been a conflict of interest, prejudice or unfair questioning. They may submit a report to the Department Head or nominee if they believe this has occurred.**

8 - 1.4.3 **Conflicts of interest. Conflicts of interest exist when it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty. Conflicts of interest that lead to partial decision-making may constitute corrupt conduct.**

Some related interests that may give rise to a conflict of interest include:

- financial interests in a matter the agency deals with or having friends or relatives with such an interest that the employee is aware of;
- personal beliefs or attitudes that influence the impartiality of advice given;
- personal relationships with the people the agency is dealing with or investigating that go beyond the level of a professional working relationship;
- secondary employment that comprise the integrity of the employee and the agency; and
- party political activities or making adverse political comments that relate to the agency's work.

An individual employee may often be the only person aware of the potential for conflict. It is therefore their responsibility to avoid any financial or other interest that could compromise the impartial performance of their duties, and disclose any potential or actual conflicts of interest to their manager or other senior employee.

If employees are uncertain whether a conflict exists, they should discuss the related interest matter with their manager and attempt to resolve any conflicts of interest that may exist.

To resolve any conflicts of interest that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include:

· recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision;

· the employee relinquishing the personal interest; and

· the employee transferring (at no disadvantage in their terms and conditions of employment) from the area of work or particular task where the conflict arises.

Disputes over alleged conflicts of interests may be resolved through the organisation's normal grievance handling procedures.

8 - 1.4.11 **Political and community participation**

Employees must make sure that any participation in party political activities does not conflict with their primary duty as a public employee to serve the government of the day in a politically neutral manner.

This is important because of the need to maintain Ministerial and public confidence in the impartiality of the actions taken and advice given by public employees. What is considered appropriate by the head of a public agency in any particular case will depend on the nature of the issue, the position held by the employee, the extent of the employee's participation, and their public prominence.

If employees become aware that a potential conflict of interest has arisen or might arise, they should inform the head of their agency immediately and may have to stop the political activity or withdraw from the areas of their work where the conflict is occurring.

Special arrangements apply to public employees who are contesting State or Federal elections. Details of these arrangements are in the Public Employment Office Circular No. 95-4 and PEO Circular 96-7.

Within the context of the requirements of this model code, employees are free to fully participate in voluntary community organisations and charities and in professional associations.

8 - 1.4.12 **Reporting corrupt conduct, maladministration and serious or substantial waste of public resources. Employees are urged to report suspected corrupt conduct, as well as maladministration and serious or substantial waste of public resources. The *Protected Disclosures Act 1994* provides certain protections against reprisals for employees who voluntarily report such matters (but not vexatious**

or malicious allegations), either to the principal officer of a public authority, or to one of the three investigative bodies; the ICAC, Auditor General or the Ombudsman.

Disclosures may also be made to other officers of a public sector authority under its internal reporting procedures. In addition, under circumstances specified in the Act, protected disclosures may be made to a Member of Parliament or a journalist.

Where disclosures are made to an external investigating body, those concerning corrupt conduct should be made to the ICAC. Disclosures concerning maladministration should be made to the Ombudsman whilst disclosures concerning substantial waste of public money should be made to the Auditor General.

Managers must ensure that all employees have information about the agency's internal reporting procedures. The person dealing with the protected disclosure should notify the employee who made the disclosure of the action taken or proposed to be taken in relation to the disclosure and the outcome of such action.

More information about protected disclosures is available in Premier's Memorandum 96-24 and the Ombudsman's Protected Disclosures Guidelines. In addition, particular requirements to report suspected corrupt conduct are placed on principal officers by the *Independent Commission Against Corruption Act 1988*.

8 - 1.4.13 **Post separation employment. Employees should not use their position to obtain opportunities for future employment. They should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the agency. If they do, there is a conflict of interest and the integrity of the employee and their agency is at risk.**

Former employees should not use, or take advantage of, confidential information that may lead to gain or profit obtained in the course of their official duties until it has become publicly available.

All staff should be careful in their dealings with former employees of the agency and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

"Computer ignorance of aided ferry ticket fraud - Mr Barrie O'Keefe ... damning report". Robert Wainwright, Transport Writer, page 5 SMH Wednesday, October 20, 1999, www.smh.com.au. Mr O'Keefe said Sydney Ferries had to accept much of the blame for the seam, mainly because it did not know how to use the fraud prevention capabilities of computer ticketing. ***"Though you can put the mechanics or the electronics out for tender and though you can rid yourself of that mechanical responsibility, the responsibility and the accountability to the people of NSW for public money remains fairly and squarely with the government organisation,"*** he said. The fraud was uncovered in early 1997 by an officer in the accounts section at Balmain who became suspicious of the unusual number of refunds from ticket operators at Manly.

ICAC Model of Public Duty or What it really means to be a public official in NSW.

Annexure Independent Commission Against Corruption Model of Public Duty (What it really means to be a public official in NSW).

1. Serving the public interest above all else by:

- not serving own interests
- managing conflicts of interest

1.
2. **Five values - acting with integrity by being:**

- **Honest**
- Obeying the law
- Following the letter and spirit of policies and procedures
- Fully disclosing actual or potential conflicts of interest
- Observing codes of conduct
- **Accountable**
- Recording reasons for decisions
- Establishing audit trails
- Submitting to scrutiny
- Keeping proper, accessible records
- **Objective**
- Being fair to all
- Considering only relevant matters
- Being fully informed
- Dispassionately assessing without fear, favour or deference.
- **Open**
- Giving reasons for decisions
- Revealing all avenues available
- Where authorised, offering all information
- Communicating with clarity and sensitivity
- **Courageous**
- Giving advice fearlessly where required
- Doing the right thing even in the face of adversity
- Reporting and dealing with suspected wrongdoing
- Acting in the public interest above loyalty to colleagues or supervisors

1. Demonstrating leadership by:

- illustrating the worth of these values by example
- promoting these values to others
- striving for excellence

The purpose of the Model of Public Duty is to heighten understanding and acceptance of:

- what it means to be a public official
- the values which should govern public sector
- ethics and guide decision making by public officials
- the "commitment to ethical practices" requirement in public sector recruitment
- the public's entitlement to expect ethical standards of behaviour for public officials
- the benefits of using values to underpin the strategic plans in public sector Agencies and Local Councils

- a shared understanding of appropriate and expected behaviours in all public sector Agencies and Local Councils

This Model is part of the ICAC responsibility to raise community awareness about strategies to combat corrupt conduct and to enlist and foster public support to counter corrupt conduct in the public sector.

The five values are statements about the type of behaviour expected of all public officials. Clearly stated and shared values enable consistent decision-making. The five values guide public officials through choices so that it is easy to make ethical decisions and to speak honestly and openly. This is why the model is structured as it is and why values are an essential component.

The elements and values in the Model form the basis of the ethics that should be applied by public officials. The Model draws on a wide range of overseas and Australian sources. It has been designed to fit in the Australian context and with principles promoted by the ICAC.

The Model helps:

Public officials to identify and understand their responsibilities by providing guidance about expected standards of behaviour.

The public to understand the behaviour they should expect from public officials and compare it to the conduct observed.

Job applicants to meet the NSW public sector requirement "a commitment to ethical practices" that appears in all agency position advertisements.

Agencies/councils to test potential employees / suppliers / contractors for their understanding and commitment to public sector ethics.

Suppliers/contractors to understand their public duty responsibilities when working for government.

Strategic planners to ensure plans are based on common sector wide values. The Model provides the opportunity for consistency in service delivery both throughout individual organisations and across the State.

Managers & supervisors to describe expected behaviours and assess employee performance.

This Model provides the basis for agencies and councils to tailor their codes of conduct and value statements to their individual needs. Agencies and local councils should require behaviours from their employees that exceed, or at least meet, those identified in this Model.

Extracts from the Independent Commission Against Corruption Annual Report 1998/99

Corruption Prevention Initiatives advocated by the ICAC.

Corruption Prevention Initiatives advocated by the Independent Commission Against Corruption.

Leadership. The role of the CEO and other senior management in providing strong ethical leadership to achieve change within an organisation cannot be overstated. Ethical leadership is about leading by example and providing a vision for the organisation. This involves a commitment to such core values as integrity, openness and honesty.

ICAC acknowledges that public sector and commercial goals cannot be achieved without strong ethical leadership and an ongoing commitment to the shared agency values of integrity and fairness. Apart from a general agency-wide code of conduct, agencies should formulate:

- a Code of Conduct for Directors and a Director's Code of Ethics Executive Board (good practice principles can be found in the AICD Code of Conduct).
- a Senior Management Code of Conduct and a Senior Management Code of Ethics for the commercial environment.

The only certainty is that nothing is certain. Pliny The Elder (c. 23 - 79), Roman scholar. Historia Naturalis, bk. 2, ch. 7.

High ethical tone for the agency must be set from top - the CEO should promote an open, fair, equitable management style based on integrity, probity, ethical decision making and linking commercial goals with public accountability. The commitment of the CEO and senior management should be frequently reiterated in key policy statements and publications to reinforce and integrate public sector standards and values.

Organisational values. The cultural values of an organisation have a strong influence on the behaviour of staff in an organisation. These values affect everything the organisation does and may help or obstruct the implementation of new policies and procedures. The ethical culture of an organisation includes the shared assumptions, beliefs, values and attitudes held by staff. These attitudes and values operate on a variety of levels and are used by individuals or groups to make decisions, to justify these decisions and to evaluate outcomes.

Values provide the basis for leadership in the Agency and give employees a clear understanding of what the Agency stands for and how employees conduct themselves. The values include integrity and fairness and mutual respect and trust. The Agency’s values and the equity in the workplace policies are:

- developed in consultation with employees from all divisions.
- endorsed by Board.
- displayed in all work locutions.
- included in the annual corporate plan’s.
- incorporated into all induction and training programs.

Management and employee awareness/training. It is essential that core values and principles of accountability and personal responsibility be conveyed throughout the organisation. The messages need to be clear and consistent. In this way the organisation comes to have, as an essential part of its ethos, the values of integrity probity and honesty.

Staff and external newsletters are to include articles on ethics, corruption prevention and risk management w*ith the aim* to build awareness of the importance of acting ethically in accordance with the values amongst the

agency's employees. The program also addresses protected disclosures and internal/external reporting.

Fraud and corruption risk policy and corruption prevention strategies. Corruption prevention is about changing organisational features that allow corruption to occur. Since 1990, all NSW state public service organisations are required to develop and implement strategies to prevent fraud and corruption. The plan provides a framework and focus for corruption prevention activities.

Relevant policies (including the corruption prevention policy, strategies and the Probity Plan) should be endorsed by ICAC the Auditor General and NSW Ombudsman and be approved by the Agency's Board. The fraud and corruption prevention guidelines and all policies be disseminated throughout Agency and accessible on the internet to all staff and stakeholders.

Corruption risk assessment. Risk assessment is an essential part of a corruption prevention management plan. Every organisation has to decide how to manage the risks it faces. To make informed decisions about these risks, you need to be well organised and have up to date information about areas in which corruption might occur.

A corporate risk review and management program (incorporating a review of fraud/corruption risk) should be developed as part of the Internal Audit strategic planning process based on cost/benefit assessments and incorporating continuing risk monitoring and adequate Internal Audit controls.

Assigning staff and resources. The allocation of sufficient resources is crucial to the success of a corruption prevention plan.

The Manager of Internal Audit should be responsible for the development and implementation of a comprehensive Fraud/Corruption Prevention Program incorporating the appointment of Divisional Audit/Risk liaison officers. The CEO should issue directives that corruption prevention will be a management function with managers accountable for guiding their staff and achieving high standards of ethical conduct in the workplace. Ethics training and corruption prevention sessions should be incorporated into all human resource sponsored training programs.

Community/client awareness. Those who deal with public sector organisations need to understand the values, ethics and culture which underpin the operations of their organisations. The community is entitled to expect that services align with these values. Likewise, contractors should be expected to align themselves with public sector values and ethics.

The agency's statement of corporate values, corruption prevention initiatives, probity policy and tender selection process should be regularly shared with other agencies and issued to stakeholders (suppliers, contractors and clients). The Business Ethics Statement should be included in all tender documents, annual reports, etc.

Code of conduct. A code of conduct is an important management tool which can positively shape the culture of an organisation. Many organisations have found that adopting a clearly defined approach to ethical issues improves the organisation's reputation, helps to develop pride among staff, and is good for business.

The Code of Conduct (and associated Directors' Code of Conduct, Senior Management Code of Conduct, Statement of Business Ethics) should reflect the evolving needs of the agency and its employees. Codes, approved by the Board of Directors, should be subject to annual review and issued by the CEO to all staff stressing the expectations for honest, courteous and ethical behaviour. The code should be linked to the performance management program.

Procurement. State government departments and local councils do a lot of business with the private sector in the course of providing a wide range of services to the community. If organisations set and follow proper procedures, the risk of corruption is reduced, value for money is maximised, less time and public money is wasted and the performance and reputation of the organisation is enhanced. A purchasing system with clear rules for everyone, which goes fairly to the market and gets the best it has to offer, leaves little room for corruption and unfair advantage.

A procurement policy and a procedures manual should be developed. Contract and tender control reviews should ensure compliance with the procurement policy, the probity, propriety and thoroughness of tender evaluation and selection should be monitored. Guidelines for effective resource management should be developed incorporating procurement risks and recommended prevention measures relating to the engagement and contracting of professional services, plant hire, stores, purchase of goods and a plan for independent probity auditing for large or sensitive projects. The guidelines should be distributed to staff and stakeholders.

Conflicts of interest. The integrity of an organisation and its staff needs to be protected by the implementation of policies and systems which effectively manage conflicts of interest, actual and potential.

The agency's code of conduct will address the matter of actual and perceptions of conflicts of interest, including the acceptance of gifts, benefits or hospitality which may impact on conflicts of interest and possibly corrupt conduct. Effective commercial and public sector operations require ethical leadership and thus avoid the perception of conflicts of interest in decision making, procurement activities, etc. The internal audit manager should be available to consult and advise regarding situations which may give rise to conflicts of interest and maintain a register for the recording of disclosed conflicts of interest (including receipt of gifts etc).

Gifts and benefits. The offering and acceptance of gifts and benefits may give rise to potential conflicts of interests.

The procurement training program, guidelines and manual will cover specific matters regarding ethical behaviour and conflicts of interest.

Confidential information. Public sector organisations hold increasing amounts of information about private citizens and business enterprises. A great deal of this information is either personal, politically sensitive or has commercial value.

The code of conduct will refer to matters of confidential information and policies on information management and security.

Internal/external reporting. A significant proportion of corruption is detected solely as a result of reports from staff within the public sector. It is essential that agencies have good internal and external reporting systems

because such systems are important sources of information. Research shows that corruption in the public sector is significantly under reported. There are number of reasons for this, one is a widespread fear of reprisals among public sector employees. To be effective, the reporting system must address attitudes and issues which deter staff from reporting corrupt conduct. A workplace culture needs to be established in which integrity is encouraged and reports of corruption are acted upon. Effective reporting channels are of little value if people do not believe there is any point in using them out of fear of reprisals if they do.

Corruption prevention and protected disclosure policies and procedures (e.g. the Code of Conduct, Employee Handbook Administration Policy and agency policies) should be easily accessible to staff and stakeholders to facilitate the internal and external reporting and notification of allegations of mismanagement, waste, fraud and corrupt conduct. Reporting channels might include internal and external telephone hotlines to the manager of internal audit, and promote the role of the external investigation agencies to receive complaints and allegations. At least two internal reporting routes should exist to facilitate the reporting of protected disclosures. The agency should provide advice and support to individuals reporting allegations of breaches of the agency's procedures, policies, the compromising of the agency's values, as well as reports of allegations of mismanagement, waste, fraud and corrupt conduct. The agency's reputation and leadership can be jeopardised by perceptions that inappropriate behaviour is condoned (e.g. if internal or external reports are not properly addressed). Also there are many legislative obligations that may be breached if the agency's system corporate governance is compromised.

The Ombudsman's Protected Disclosures Guidelines provide standards for the reporting of allegations of mismanagement, waste, and corrupt conduct (e.g. suspected fraud or corruption) and the necessary responsibility for providing support and the protection guarantees. CEOs are responsible for reporting allegations of corrupt conduct under section 11 of the ICAC Act.

Internal investigations. Every public sector organisation is likely, at some time, to have to investigate reports of improper conduct. It is important to be prepared and have policies and procedures in place so that prompt action can be taken when a problem arises.

The ICAC booklet 'Internal Investigations' provides minimum standards for the conduct of internal investigations, and standards to be required if the agency contracts out the investigation process. The Board of Directors may seek to ensure that other corporate governance standards are implemented for the particular operating environment, although the amended standards should be consistent with the ICAC investigation standards.

Investigation reports should be issued under the signature of members of a senior management committee consisting of the CEO, Manager-Internal Audit, Corporate Secretary and Manager-Human Resources. The investigation report and recommended action should be tabled before the Board of Directors for review and oversight and for determination of any necessary further action and due diligence monitoring and control purposes.

Monitoring and evaluation. It is essential that corruption prevention strategies operate in an integrated and cohesive way. Organisations must

regularly review and evaluate their corruption prevention initiatives to ascertain if they are effective.

Regular review of the agency's corruption prevention initiatives against best practice guides such as the ICAC Practical Guide to Corruption Prevention, the ICAC Internal Investigations booklet, the NSW Audit Office Fraud Control Guidelines, the NSW Audit Office Guide to Better Practice Public Sector Governing and Advisory Boards, and the NSW Ombudsman's Protected Disclosures Guidelines, and other publications of the CJC, the Commonwealth Ombudsman etc.

Internal monitoring and evaluation of corruption prevention reporting, review of agency risk, and initiatives taken should be evaluated by the Audit Committee and the Executive Management Committees on at least a quarterly basis.

There should be an annual external quality assurance review of the corruption/fraud prevention program and the investigation reports completed and pending by internal or external investigators. Input to the annual external quality assurance review might be sought from the ICAC, the Audit Office and/or the Office of the NSW Ombudsman.

Development of key performance indicators. Best practice performance indicators should be developed to permit continuous performance monitoring and appraisal of major operating divisions by the Manager-Internal Audit and for report to the Board of Directors.

(Substantially sourced from the ICAC report 'A major investigation into corruption in the former State Rail Authority of New South Wales, 6/1998.)

The National President reports to members, September 2000.

Minutes of the National Committee meeting held at residence of JL on 5.8.00.

Present: Brian Martin, Jean Lennane, Cynthia Kardell, Rachael Westwood, Greg McMahon, Bob Taylor. Apologies: Christina Schwerin, Feliks Perera, and Vince Neary

Business discussed: 1. AGM in Adelaide, 18/19 November, plus mini-conference/seminar. Everyone supportive of date and place; seems several people at least from NSW will be able to come. The suggested theme for seminar and media activity was "the Costs of crushing whistleblowers - social, personal and economic" or something to that effect, focussing at this stage on two main examples of that: workplace bullying and related issues; and the submarines in SA, using the example of David Berthelsen (and perhaps other Defence Dept WBs) in the past having not been listened to, and the blow-out in costs taxpayers are now paying as a result, many years later. Also the example of Vince Neary, in the NSW railway system, which is now in a frightful mess.

Suggested Catherine and Matilda, being on the spot in SA, should be the main organisers; Brian Martin and Bob Taylor are happy to help; plus anyone else present is happy to be rung.

2. Internet and websites. Geoff Turner is in the process, nearly completed, of setting up a website at www.wba@whistleblowers.org, which is linked to Brian's site. Agreed we need to pursue some of the possibilities for interstate co-operation via email on specific issues such as workplace bullying and police.

3. Treasurer's report received and adopted; also Feliks' new address.

4. Membership list; procedures. Rachael organises the list, which now has about 20% on email. We will pursue the idea of an email list for members in general, as well as the nat. committee, and other groups as they develop.

Please note, Cynthia has a package of info. for new members - suggest State reps get a supply from her to distribute to members who haven't already got one direct.

5. Cases of national significance. Greg has the pamphlet almost ready for printing; has costing etc; and has funding from donations from branches and WBs. Brian will contribute some minor alterations to the WBA history section. The project is "ready to roll" very soon now.

6. Police corruption - ongoing issue nationally. Recent 4-Corners program on WA; current inquiry in Tasmania; Ray Hoser's books being suppressed by the government in Victoria; SA not good. Queensland and NSW remain better than before their Royal Commissions, but Jean and Cynthia are concerned about some apparent backsliding in NSW.

7. Workplace bullying and abuse of psychiatry. Ongoing problem, but the NSW branch has made significant progress with the NSW Health Dept over abuses by HealthQuest. A report for the dept admits some things have not been as they should be, and some changes are needed; delegation meeting Deputy D-G 16th August. Suggested congratulations on this effort (campaign over some 2 years included a number of demonstrations, as well as the usual copious letter-writing) which could well be cause for another 'Celebration' ceremony.

8. The Whistle - Bob will get the next issue out by the end of September, with a notice of the AGM and call for nominations for office-bearers.

9. Notice from Christina Schwerin that she has organised a meeting of WBs in WA - something WBA has been trying unsuccessfully to stimulate for many years. The meeting passed a vote of thanks to Christina for this very significant and useful advance.

10. Feliks suggested the National Committee should look at delegating specific issues to branches. The meeting thought it might be difficult to get this going, and to start with it might be better for the various states to list items in which they have particular expertise, experience or interest. These could be listed in the Whistle.

11. Other business:

i) Brian gave a report on WB research - quite a bit going on internationally, plus bits nationally, but at this stage there is no standard framework, no journal of WB research, no network, and theses are therefore not readily accessible. Brian continues to network by email. ? should be a position now of International Director for WBA.

ii) Surplus copies of Brian's book. Cynthia will ask Irene Moss, the new head of ICAC in NSW (so far making much better noises than her predecessor) to publicise it in the ICAC newsletter.

iii) Bob suggested WBA should consider nominating people for Orders of Australia. Consensus that it's worth considering, but mainly for WBs at the end of their cases where no longer generally active, because of the risk of becoming too mainstream and absorbed into the establishment.

No further business. Meeting closed at 5pm.

National President WBA goes into bat for civil liberties & the community.

Continuing censorship of Ray Hoser's Victoria Police Corruption books

Ray Hoser's books on police corruption in Victoria seem to be unpopular with the Victorian government. The Victorian Attorney-General and Solicitor General have apparently written to booksellers to the effect that they would be in contempt of court if they continued to sell them, although as far as I am aware, there are no current court proceedings to be in contempt of. (No doubt the officers will inform me if I am wrong.) I wrote to both of them on 9th August, asking them to confirm that the position stated in the letters to booksellers still accurately represents their position, saying I would assume in the affirmative if I did not hear to the contrary by August 18. They have not yet replied.

This action by officers of the Victorian government is most unfortunate, although unfortunately only too typical of pre-Royal Commission official attitudes to allegations of police corruption. Hoser's books can be criticised on literary grounds, and it would be surprising if such a volume of material contained no inaccuracies. However much of it is already on the public record, from media reports, coronial inquests and other inquiries, as well as material not previously published. But already published material alone should be enough to indicate that there are very serious problems.

Whistleblowers around Australia are only too aware that police corruption, like the poor, is and will always be with us. It must be assumed to be endemic unless very active measures are being taken to combat it, and even then will always be present in some areas, and to some degree. In my opinion, after many years now of study and observation of police services around the country, fiercely protective claims of cleanness from politicians and senior police are more likely to indicate problems than purity. Paradoxically the healthiest services are those whose masters admit that corruption has not been and can never be totally eliminated.

It would be nice if the Victorian government, rather than trying to suppress Hoser's books, took a good hard look at what they contain. Even if less than half of it were true, they have a very nasty problem of Royal Commission proportions. Just for the record, on the information available to me, the Victorian police are not alone. WA and SA are similarly troubled; Tasmania has a (limited) well-justified inquiry on at the moment; and Queensland and NSW, while still much better than before their Royal Commissions, are showing signs of backsliding.

How good it would be if governments could accept the reality of police corruption, stop trying to pretend it doesn't exist, and work with whistleblowers and the rest of the community on the best and most practical ways of minimising the inevitable.

Jean Lennane, Sept, 2000

The Hon. Rob Hulls, Attorney-General, 55 St Andrews Pl, Melbourne 3002. Fax 03 9651 0556

Dear Mr Hulls,

re: publications by Raymond Hoser, Victoria Police Corruption 1 and 2

I refer to your letter of 8 March 2000 on the above. (Copy attached.)

I am in the process of writing an article for Whistleblowers Australia's journal 'The Whistle' on this matter. Could you please confirm that the letter still accurately represents your position? If I do not hear from you to the contrary by 18th August, I will assume that it does.

Thank you for your attention.

Yours sincerely, Jean Lennane (Dr), President WBA. 9/8/2000

Mr E.J.Butler, Acting Victorian Government Solicitor, 55 St Andrews Place, Melbourne 3002. Fax 03 9651 0449

Dear Mr Butler,

re: Publications by Raymond Hoser - Victoria Police Corruption 1 and 2

I refer to your letter on the above, undated in my copy. (Copy attached.)

I am in the process of writing an article for Whistleblowers Australia's journal 'The Whistle' on this matter. Could you please confirm that the letter still accurately represents your position? If I do not hear from you to the contrary by 18th August, I will assume that it does.

Thank you for your attention. Yours sincerely, Jean Lennane (Dr), President WBA, 9/8/2000

Mort Bay complex

The Editor: Glebe and Inner Western Weekly, Fax 9564 1743

Dear Sir,

There's no paradox in those opposed to the building of the Mort Bay complex, now opposing its sale. (Letters, 9.6.00) The main grounds for opposing it then - that it was and is a gross over-development - still apply. Whoever owns them, the buildings will remain as ugly and intrusive as ever, and what guarantee do we have that once they are privately owned, the developer won't use their height and bulk as a precedent for other developments in foreshore scenic protection areas?

The Government's justification for ramming the development through then was the same as their justification now - 'to provide sorely needed public housing'. But most of the site then never became public housing, and

some $40 million of taxpayers' money was wasted in the process of creating what the Department now admits was a mistake.

How do we know this is not another one? Where are the figures to justify selling the whole block to a developer, rather than having the Department make that profit? The Department has told us the money won't in fact be used for new housing, but to make up some of their $700 million maintenance deficit - a massive shortfall caused at least partly by the demands of the 'it's all paid for, apart from the odd $140 million' Olympics.

Surely that's enough for most taxpayers to want to know a lot more before the sale goes ahead. If it's not, try and get hold of the contamination report done in 1994 that stopped the sale of Site C. Why are we not allowed to see it? What did it say about Site B?

Yours etc, Jean Lennane 9/8/2000

Getting help to deal with workplace bullying.

This is an augmented version of a review published in *Journal of Organizational Change Management,* Volume 13, Number 4, 2000, pp. 401-408. Brian Martin, *Science, Technology & Society, University of Wollongong, Australia*

You are about to enter a nightmare. You are a conscientious and productive worker. Your boss, who previously was supportive, starts making carping criticisms of your work and gives no praise. Then, out of the blue, you are carpeted and subjected to screaming abuse.

Previously you were invited to planning meetings, but now you are left off the list - but your subordinate is included. Petty obstacles are put in your way, such as difficulties in getting materials or cooperation. You are losing prime assignments. As the problems compound, you lose confidence and perform below your best. After one small oversight, you are criticised in front of your co-workers without a chance to reply. You begin to dread coming to work, never knowing when the boss will sink another barb into your weakened ego.

The boss's attacks are only the beginning. Co-workers get in on the act. Friends who used to fill you in on gossip now stay away and hardly look you in the face. Rumours abound that you are becoming incompetent. Before you worked well in a team, but now everything you do is undermined. You have nothing to do except for occasional assignments that are set up for failure.

The stress at work is taking its toll on your home life. When you confide this to a friend, word gets back to the boss and the rumors and pressure get worse. Co-workers seem to be pitying you or laughing at you. You are said to be on the verge of a breakdown. That might be true! The only choices seem to be to resign or go on sick leave.

This scenario is one example of a worker under attack. There are numerous variations, but typical processes include lack of support, verbal abuse, undermining of performance, isolation and humiliation. Common? Evidence suggests that it is a remarkably frequent occurrence. In

essence, workplaces are emotional torture chambers for a significant minority of workers. This has significant impacts not just on the victims but on morale and productivity.

The reality is that workplace abuse has been around as long as there have been workplaces. The factories of the industrial revolution were notorious for cruel exploitation. But this was seen as a feature of class warfare, ameliorated by the rise of workers' organisations and the introduction of legislation to stop the worst excesses. The abuse of individual workers has always existed but has not been widely discussed until recently. In the past decade, the publication of a number of insightful books signals a dramatic increase in awareness.

There are various names for these sorts of experiences, including harassment, abuse, bullying and mobbing. Harassment and abuse are useful descriptive terms. However, they often suggest particular events whereas the term bullying captures the idea of a process or ongoing interaction. Many people might like to think that adults have outgrown a childish tendency to bully or susceptibility to being bullied; "bullying at work" nicely challenges this presumption.

Bullies are normally thought of as individuals, so how can the participation of co-workers be described? A term common in Europe, mobbing, captures this collective dimension.

Mobbing is the title of a recent book on the topic, with the subtitle *Emotional Abuse in the American Workplace.* The three authors - Noa Davenport, Ruth Distler Schwartz and Gail Pursell Elliott - had personal experience of mobbing and then set out to investigate it and provide advice about surviving and overcoming it. They ably cover three important ways of approaching the phenomenon: understanding it, dealing with it as an individual and dealing with it at organisational and social level.

The first task is to understand and explain mobbing. Describing and naming an experience can be quite powerful when it crystallises for others what they had previously ignored. The next question is why it occurs. The authors of *Mobbing* present a number of psychological mechanisms that, in the context of conducive organisational structures, make mobbing possible. Study of the what and why of mobbing is fascinating; as an intellectual exercise it is likely to be of primary interest to researchers. Workers and managers are almost always more concerned with what to do about the problem. *Mobbing,* like many other treatments, analyses the phenomenon as a prelude to the urgent issue of responding to it. There are two main audiences: individuals who come under attack and managers who are concerned about the health of the organisation.

For the worker who is subject to mobbing, the essential first step is to understand what is happening. Some victims come to believe that they are responsible for everything that happens to them because of their own weaknesses and failures. The terms harassment, bullying and mobbing are valuable because they point the finger at the harassers, bullies and mobs and thereby remove guilt from the victim. By describing the likely consequences, such as confusion, anxiety, insomnia and post-traumatic stress disorder, *Mobbing* reassures victims that their experiences are "normal" responses to an intolerable situation.

Beyond this, the big challenge is come up with a programme of action for surviving and thriving in the face of mobbing. That's a tall order. Davenport, Schwartz and Elliott describe options ranging from grieving,

building self-esteem, using humour and taking care in choosing professional help. They also give advice on how family and friends are affected and how they can help. All this is quite valuable, but it is clear that there is no guaranteed way of getting through a serious case of mobbing. It often may be best to leave for another job.

Finally, *Mobbing* canvasses what can be done to create an organisational culture in which mobbing is minimised. Some organisations do this on their own initiative; laws, unions and consultants can also play a role.

Mobbing is highly readable and informative. It is clearly structured, nicely laid out, well referenced and filled with examples. The authors undertook interviews with a range of victims of mobbing. Quotes from these interviews are used throughout the text, giving a personal touch and realism to the discussion. Altogether, *Mobbing* is an ideal book to give anyone subject to or concerned about abuse at work.

However good a particular book may be, it can be worthwhile looking at others. This is especially the case for victims, who can obtain insights and inspiration, and is also true for managers and researchers. Out of the crop of contributions in the 1990s, it is hard to beat what has become a classic in the field, *Bullying at Work* by Andrea Adams with contributions from Neil Crawford. Adams, a British journalist, did an investigation into the issue leading to two radio programmes broadcast in 1989 by the British Broadcasting Corporation. The programmes triggered an immense response: victims finally heard someone describing their problems. The outpouring of further stories led Adams to focus on workplace bullying. The book is one outcome. It is a superb journalistic treatment with many amazing case studies, emphasising that bullying is very serious, has enormous financial implications but has been little recognised in business or elsewhere. Many bullies are promoted or get new jobs.

There is little analysis in the book except for the chapters by Crawford, a psychologist. His assessment of the psychology of bullies is that they have been subject to neglect, abuse and inappropriate anger, but not loved. They are envious, pick out victims and build alliances with lackeys. He recounts some self-descriptions of bullies, including those who have gained insight into their problems.

According to Adams, victims have three main options: leave, accept the bullying, or fight back. Appeasement doesn't work, so the only option with the potential to solve the problem is fighting back.

Another British book is Tim Field's *Bully In Sight.* This is a comprehensive treatment of bullying at work and how to resist it, based on his own experiences and contact with large numbers of bullied workers. Field covers characteristics of bullies and victims, tactics of bullying, symptoms of being bullied, workplace contexts that bullies find congenial, costs, causes, how to stand up to bullies, legal options and policy issues. Especially good is a 15-step process for unmasking a bully. Field has a tendency to produce long lists of characteristics, actions and options. These lists are useful for giving ideas but make it difficult to hone in on key ideas. *Bully In Sight* reads as an angry and negative personal testament. The book could easily annoy researchers with its over-generalisations, but they should take note that Field has undoubtedly made an impact through his activism and support on bullying, with his web site (http://www.successunlimited.co.uk/) being a valuable resource.

The focus of Gary and Ruth Namie's *BullyProof Yourself at Work!* is on personal strategies for targets to maintain their psychological balance. The authors canvass various approaches, including establishing and protecting personal boundaries, dealing with one's inner critic and handling damaging mind games, self-blame, anger and shame. They continually emphasise that targets should not blame themselves. *BullyProof Yourself at Work!* is attractively laid out, with practical exercises to develop self-insight and skills. Also worthy of note is their appealing and informative web site, http://www.bullybusters.org/.

The Namies offer only a few case studies of bullying, but they quote survey responses from 200 people who reported being bullied or witnessing bullying. Since the respondents were self-selected, the statistics can only be suggestive, but they are thought-provoking nonetheless. For example, the two most common causes of bullying cited by targets and witnesses were refusal to acquiesce to the bully and the bully's envy of the target.

At the opposite end of the spectrum from Field and the Namies is Peter Randall's *Adult Bullying: Perpetrators and Victims.* The book is a sober discussion of bullying based on more than 200 interviews with bullies and victims, describing the phenomenon in both workplace and neighbourhood, with special attention to the creation of personalities of bullies and victims. There are many case studies to illustrate points. More than other books, Randall places emphasis on creation of the victim personality, which may involve, for example, overprotection as a child or having authoritarian parents. Many anti-bullying treatments downplay the complicity of the victim for the obvious reason that this may disempower them. If victims blame themselves, it is difficult to survive and fight back. However, understanding the bully-victim dyad can contribute to developing better strategies to challenge it. Randall has less than other books on how to deal with bullies at an individual level, but includes quite a bit of material on prevention and resolution of bullying in the workplace and neighbourhood.

All the books contain horrifying stories of abuse at work, perhaps none more than Harvey A. Hornstein's *Brutal Bosses and their Prey.* Hornstein interviewed more than a thousand people about abuse by bosses. His book covers contexts fostering abusiveness, such as massive job cuts and the boss mentality, as well as personality factors that promote abuse for its own sake. He describes how striving for profit, power and self-protection can reward abusers and penalise those abused. A unique contribution is the "brutal boss questionnaire," to rate your boss's toughness and badness.

Hornstein examines three types of strategies to deal with the problem of brutal bosses. The first is to change the victim, which can sometimes help individuals but doesn't address the boss's ongoing abuse of others. The second is to change the abusers, which again can sometimes help in individual cases but doesn't address systemic factors conducive to bullying. The third strategy is to change the system. This sounds the most promising, but Hornstein is sceptical of management rhetoric about empowerment, flattened hierarchies, worker autonomy and self-managed teams, seeing them as being, in most cases, window-dressing for a workplace reality that is little different from the traditional boss-dominated culture. Hornstein instead says that worker abuse should be made illegal, though he gives no strategy for bringing this about or convincing argument that it will actually be effective.

The most unusual contribution in the recent bullying-at-work genre is *Corporate Hyenas at Work* by Susan Marais and Magriet Herman, South Africans with personal experience of bullying. The book is an engaging exposition of problems due to "corporate hyenas," namely bullies and downsizers, who Marais and Herman systematically compare to hyenas in the wild. They describe disturbed corporate ecosystems, types of corporate hyenas (from top ones to loners), various styles of attack and interaction, symptoms of hyena-positive organisations, "corporate killings" (unfair dismissals, victimisation, downsizing), how to survive and how to promote a sound corporate ecosystem. Analogies from the wild are used throughout, along with case studies and attractive graphics of hyenas and other animals.

The hyena analogy - especially salient in Africa - is remarkably fruitful and flexible, especially in highlighting different types and styles of bullies, their collective action and corporate culture. This approach is likely to resonate more with some readers than others. Marais and Herman draw on interviews as well as their own experiences. Their final chapters on personal survival are especially good. Like a number of other authors, their response to being bullied was to become informed, investigate further and provide their insights to others.

The book *Work Abuse,* though not just about bullying, deserves mention here. The authors, Judith Wyatt and Chauncey Hare, have long experience in advising workers in toxic organisations. Their lengthy book is written specifically to help workers in such organisations to develop the psychological insights, skills and self-transformations to survive. For the individual worker, this is a more ambitious enterprise than using tactics presented in the other books.

Wyatt and Hare believe the central dynamic in toxic organisations is shaming. Workers are humiliated by others but also heap shame on themselves, whether it is for not measuring up to others or for particular failures. *Work Abuse* is a manual for understanding the shaming process and developing the capacity to stop shaming oneself, to not be affected by shaming from others and to align one's self-interests with those of others in order to survive and thrive. Since abusive dynamics are found in most organisations, leaving may not be a solution and may be impossible for some individuals for personal or financial reasons. Wyatt and Hare's programme of self-understanding and self-development is not a quick or easy path but is certainly worthy of consideration for anyone who is at risk and wants to survive and achieve one's goals over the long term.

For developing practical plans to deal with bullies, an especially valuable offering is Carol and Alvar Elbing's *Militant Managers.* The authors carried out a survey of 350 senior managers in multinational firms, asking about the characteristics of highly aggressive managers. At the top of the list of ten characteristics was being a poor listener; second was having an adversarial style against individuals, including insults and attempts to humiliate. The Elbings also document common reactions to highly aggressive bosses. By far the most reported reaction is reduced performance.

Then comes the real challenge: action to stop highly aggressive behaviour. For individuals, the Elbings recommend documenting behaviours, trying out methods of response in a graduated fashion, taking note of responses and going on to stronger measures if the lower-level ones don't work. For example, a first response to aggressive language is

echo feedback: when the boss says, "Your work is pathetic," responds "Pathetic?" This may make the boss aware of the message being sent. If this doesn't help, the next step is an "I" message: "When you say my work is pathetic, I feel demoralised." The Elbings present a whole series of measures, up to desperation methods, including demanding something in exchange for doing what the boss demands, responding to aggressive methods by being unhelpful and going to the boss's boss. In each case, the boss's response should be noted and used to decide the next step. A job change may end up being the best option. The Elbings also present a parallel set of recommendations for the firm and for the superior of a highly aggressive manager.

The Elbings list numerous references from the psychological literature to back up the points they make about highly aggressive bosses. For example, *Militant Managers,* like other books, notes that top management seldom takes action against bullies. In addition, though, the Elbings explain why: people who haven't experienced a problem feel invulnerable and don't empathise; observers underestimate the pain that someone else is experiencing; and observers underestimate stressors as the cause of a victim's pain, instead attributing their reactions to their personalities. The Elbings give references for each of these points.

Militant Managers is an impressive example of scholarship used to give support and credibility to practical insights. For most readers, practical insights are more important, but even here the Elbings make a special contribution: the experimental method. Essentially, they encourage subordinates to become applied social scientists, analysing their boss's behaviour using a personalised form of action research. This general approach is the best hope for workers when off-the-shelf solutions don't provide the answer for a particularly difficult or complex bully.

It is understandable that authors use dramatic stories to illustrate their points, since horrific cases of abuse are more memorable and more likely to be recognised by and reported to others. My colleague Will Rifkin pointed out to me that as well as these "clinical" cases of abuse, there are less obvious "sub-clinical" cases to which numerous workers may be subject. Although for any individual the degree, impact and consequences of bullying are less in these sub-clinical cases, the overall impact on workers and the workplace may still be significant and worthy of study and action. Diagnosing low-grade harassment is difficult; however, those subject to it are likely to recognise the processes when reading about more serious cases.

As well as the more practical guides, there is a body of research on bullying. While this cannot be reviewed here, it is worth mentioning the important studies by Heinz Leymann, a Swedish expert on mobbing, whose major works appeared beginning in the 1980s. Davenport, Schwartz and Elliott's book is dedicated to his memory.

Most of the available books are far better on giving personal advice to victims of bullying than on providing policy advice to managers who concerned about the impact of bullying on their organisation. This might be explained by the fact that there are far more actual and potential victims in the book market than concerned managers. But there is something deeper involved. Many managers are themselves bullies and many others are supportive or tolerant of peers or subordinates who are bullies.

Bullying is undoubtedly damaging to organisational performance. The contribution of victims is seriously impaired and much time is spent in defensive measures by those fearful of attack. If victims fight back, workplace warfare can escalate dramatically. If official procedures are invoked or a court case launched, the drain on time and energy is enormous. Sometimes the battles enter the public eye, causing serious damage to the organisation's image. Finally, disgruntled workers sometimes undertake sabotage, occasionally with devastating effects.

The orientation of Emily Bassman's *Abuse in the Workplace* provides a strong contrast with the other books. It describes the problem relatively briefly and then places it in a wide variety of contexts, from the psychological to the organisational. It compares workplace abuse to discrimination, sexual harassment, and abuse (outside of work) of women, children and elders. It describes the problems associated with obedience to authority and learning via punishment.

Bassman describes how workaholism can be a contributor to abuse, as well as policies for managed medical care and a contingent workforce. Practices that can be abusive in themselves, as well as facilitate abuse by individuals, include drug testing, truth testing (such as by polygraph) and various forms of surveillance of employees.

Bassman also surveys various corporate responses, such as ombudsmen and grievance procedures, with due attention to their limitations. She says no quick fix at the organisational level is possible and argues that managers need to understand the culture and to pay attention to values, behaviours and feedback systems. She is emphatic that blaming the workers is not a solution: deep cultural change is needed. *Abuse in the Workplace* is a valuable wide-ranging treatment, forging links between the issue of abuse and a range of other topics.

The ten books discussed here were all published in the 1990s, yet there is a much earlier book dealing with the same issues: Carroll M. Brodsky's *The Harassed Worker,* published in 1976. This comprehensive treatment covers types of harassment, case studies, harassment as a social process, impacts on those harassed, systemic aspects such as work pressure, psychological aspects, cultures of harassment, treating harassed workers, and social system implications. Unfortunately, Brodsky's pioneering examination of harassment at work did not trigger an upsurge in attention to the issue at the time. His book seems to have little direct impact on the more recent interest, given that few of the other books even cite *The Harassed Worker.*

In spite of all its negative impacts, bullying continues and indeed probably is increasing as pressures are applied for greater performance from fewer workers. Bullying is not a rational process and is best understood as the exercise of power for psychological gratification at the expense of others. The authors are unanimous in rejecting bullying as a sensible way of improving organisational performance.

The issues of workplace bullying and sexual harassment have much in common. Sexual harassment has been recognised as an issue for much longer and there is a great deal of experience with development of policy and procedures. But in spite of this, sexual harassment continues on a wide scale. Official procedures are unlikely to deter more than a fraction of bullying. What is needed is a culture change: a corporate ecosystem that discourages and penalises hyena behaviour, to use Marais and Herman's picture. A management serious about promoting a climate free of bullying

has many options, laid out in these books. One good way to start would be to give copies of these books to all employees and encourage them to propose ways to help eliminate bullying from the workplace.

There are several lessons from these books for researchers into organisational change. The issue of bullying and especially the collective dynamic called mobbing needs to be included in analyses of organisations. The traumatising effects of bullying and the fear of being bullied can inhibit change (or occasionally foster it), as can the desire of bullies to maintain power over victims. The severe emotional impact on victims is hard to appreciate for those who have not been through it themselves or counselled those who have. Researchers need to appreciate the strong psychological issues involved in organisations, of which emotional abuse is one crucial element.

Books reviewed:

Bullying at Work: How to Confront and Overcome It , Andrea Adams with contributions from Neil Crawford, Virago, London, 1992, ISBN: 1-8538-1542-X, pbk

Abuse in the Workplace: Management Remedies and Bottom Line Impact, Emily S. Bassman, Quorum, Westport, CT, 1992, ISBN: 0-8993-0673-X, hbk

The Harassed Worker, Carroll M. Brodsky, D. C. Heath, Lexington MA, 1976

Mobbing: Emotional Abuse in the American Workplace, Noa Davenport, Ruth Distler Schwartz and Gail Pursell Elliott, Civil Society Publishing, Ames, Iowa, 1999, ISBN: 0-9671-8030-9, pbk

Militant Managers: How to Spot ... How to Work with ... How to Manage ... Your Highly Aggressive Boss, Carol Elbing and Alvar Elbing, Irwin Professional Publishing, Burr Ridge, IL, 1994, ISBN: 1-55623-737-5, hbk

Bully in Sight: How to Predict, Resist, Challenge and Combat Workplace Bullying, Tim Field, Success Unlimited, Wantage, Oxfordshire, 1996, ISBN: 0-9529-1210-4, pbk

Brutal Bosses and their Prey: How to Identify and Overcome Abuse in the Workplace, Harvey A. Hornstein, Riverhead Books, New York, 1996, ISBN: 0-57322-586-X, pbk

Corporate Hyenas at Work: How to Spot and Outwit Them by Being Hyenawise, Susan Marais and Magriet Herman, Kagiso, Pretoria, South Africa, 1997, ISBN: 0-7986-4885-6, pbk

BullyProof Yourself at Work! Personal Strategies to Stop the Hurt from Harassment, Gary Namie and Ruth Namie, DoubleDoc Press, Benicia, CA, 1999, ISBN: 0-9668629-5-3, pbk

Adult Bullying: Perpetrators and Victims, Peter Randall, Routledge, London, 1997, ISBN: 0-4151-2673-8 pbk, 0-4151-2672-X hbk

Work Abuse: How to Recognize and Survive It, Judith Wyatt and Chauncey Hare, Schenkman Books, Rochester, VT, 1997, ISBN: 0-8704-7109-0, pbk; 0-8704-7110-4 hbk

Victoria to protect Whistleblowers who expose government and Public-sector corruption.

State to Protect Whistleblowers. Karina Barrymore, Australian Financial Review, 28 February 2000, page 7.

The Victorian Government is planning legislation to protect "whistleblowers" who expose government and Public-sector corruption.

The laws will offer immunity from legal action and protection from reprisals for people who provide information on corruption within the Public sector.

The Victorian Attorney-General Mr Rob Hulls, said yesterday the new law had been designed to encourage people to come forward with information. During three years in opposition, he had received an average of 10 phone calls a year from public servants with information about inappropriate activity. However, he said, in all cases the people were reluctant to come forward because of fears of reprisals such as losing their job or being demoted or transferred

"There had previously been victimisation and harassment of people exposing potential corruption in the Public sector," Mr Hulls said.

"Unlike the Kennett government, which tried to silence critics wishing to expose public-sector mismanagement, corruption and waste, this Government is committed to exposing unacceptable conduct at the earliest opportunity."

The proposed new legislation was part of the Bracks Government's election promises of improved levels of openness and follows the recent restoration of independence to the Auditor-General and greater access to Freedom of Information laws.

"The offering of legal protection send a clear message to the community that far from being branded as troublemakers, whistleblowers can play an important role In Protecting the Public interest," Mr Hulls said.

"Timely exposure will enable the Government to act quickly to protect the public interest."

Law associations told "encourage and protect solicitors who blow the whistle on the illegal conduct of their colleagues".

Watchdog's pitch to protect whistleblowers. John Breusch, AFR 3 March 2000, page 31. www.afr.com.au.

Law associations should actively encourage and protect solicitors who blow the whistle on the illegal conduct of their colleagues, according to Australia's chief professional watchdog.

Mr Sitesh Bhojani, a commissioner at the Australian Competition and Consumer Commission, said protections for whistleblowers were essential in any professional body which wanted to ensure the interests of the community were promoted ahead of the interests of its own members.

He made the comment' in a speech last week to an Australian Institute of Criminology conference on crime in the professions.

Mr Bhojani's views were based on his assertion that a defining characteristic of any profession is that "the responsibility for the welfare, health and safety of the community shall take precedence over other considerations".

This, along with the fiduciary duty between a professional and a client, gives rise to "the community expectation that the profession and its members will act in the public interest first and foremost".

"That is, ahead of the interests of the members of the profession."

Mr Bhojani queried whether professional associations had adequate structures to encourage their members to reveal instances where their colleagues acted in a manner contrary to the interests of the community. "One could suggest that governing professional bodies have a major role in ensuring and maintaining the publics confidence of that profession by adopting a formal and public policy on whistleblowing," he said.

He cited the fraudulent investment schemes of murdered Melbourne lawyer Max Green and the alleged "scan scam'' among the radiology profession as examples of instances where the public's trust in a profession had been abused.

Lawyers have a legal obligation to report on the conduct of their colleagues only where a solicitor is suspected of mishandling trust funds. Mr Bhojani yesterday suggested to The Australian Financial Review that this obligation could be extended to all illegal activities by solicitors.

The president of the Law Society of NSW, Mr John North, yesterday said reporting procedures - which direct complaints about lawyers to the Legal Services Commissioner -regularly draw on information provided by solicitors, who are in turn protected from any retribution.

Mr North stressed that a solicitor's duties to both clients and the court ensured that the interests of the public are always placed above those of members of the legal profession.

Techniques of examining witnesses.

BLEC seminar papers Witnesses & Evidence, 1997. Techniques of examining witnesses. Max Perry, barrister at the Victorian Bar.

Techniques of examining witnesses (or, you could have studied dentistry.)

Introduction.

The purpose of this paper is not to attempt an overview of the various legislative provisions which combine to add depression to even the simplest of tasks in Court, (although the Federal Evidence Act and its State descendants will certainly repay reading in such a context) but to concentrate instead on discussing matters of technique in the formation of questions to witnesses and the purposes underlying the same. It is probably unnecessary to memorise large chunks of "Cross on Evidence" before approaching a witness, although the therapeutic value of proprietary medications cannot be overstated in the case of real or potential difficulties.

Evidence In Chief.

Before commencing evidence in chief an advocate will have a clear idea of what he or she wishes to develop by the witness's evidence in terms of their final submission to the Court. No lawyer will ask questions without a definite objective in mind, unless sincerely desirous of exploring the darker side of their tribunal's personality.

The essential characteristic of good "evidence-in-chief" is that it is almost conversational - a witness ought not to feel threatened or confused, but should be comfortable in giving evidence and further explaining the same where necessary.

To this end, a lawyer ought to:

- Look at his or her witness when questioning them and receiving answers;
- Modulate their voice and stance to express interest in what is occurring,
- Ensure that any notes or statements they refer to do not distract them from listening to the replies received - lawyers have a bad habit of mentally preparing their next question before they have received the answer to the one preceding it.
- Be at pains to structure the presentation so that it unfolds in a logical (and usually: chronological) order,
- Avoid unnecessary usage of the dreaded "legal speak" which characterises much of the profession (the author included.)

Thought should be given to the structure of the presentation, ensuring that evidence is presented as much as is possible in a chronological order, and at a pace which enables the tribunal to take an appropriate note.

It is important to ask a series of short, clear questions, each of which is designed to elicit only one fact or piece of information at a time. This technique ensures that the evidence is readily followed, and serves the additional purposes of refreshing the witness's memory as he or she progresses, as well as adding credibility to their general account.

Complex or convoluted questions will almost always be misunderstood by either witness or tribunal (occasionally both), with disastrous results.

To build the image which an advocate is at pains to present, he or she might well take a piece of the previous answer and factor that into the following questions which go on to new matters or materials.

For example: If a witness had just said that he or she was standing at a pedestrian crossing when an accident occurred, the next question might well be "As you were standing at the crossing, what colour were the lights?"

A Court or tribunal will be only too alert to the trick of repeating evidence without advancing to new material, and will tartly remind an advocate to move on.

The common vice of evidence-in-chief is that of the dreaded "leading question". In common with the meaning of life, everybody has some idea of what it involves, but few ideas rarely coincide.

Essentially, a leading question is one which:

- Assumes evidence to have already been given or

- Suggests the desired answer by the way in which it is asked (See: *Saunders (1985) 15 A Crim R ll5).*

An example of the former would be "After he hit you, what happened next?" (if there had in fact been no evidence to date of a blow), and of the latter "Did you have a conversation with the defendant in which he told you that the light was red?"

Leading questions can of course be asked about introductory matters or matters which are not in dispute, but it is wise to make this clear to the tribunal.

There are several useful techniques to avoid asking a leading question. These include:

Starling your preparation with a complex question which you then reduce to a series of separate questions, each of which is designed to elicit only one fact at a time;

For example, a question such as "Did the witness hit you with a glass as you were standing at the Bar extolling the virtues of imported liquors?" might be reduced to:

"On the day of at about where were you?"

'What were you doing at that time?"

'Were you alone or were other persons present?"

'Who was present?"

"Did anything occur at that time?"

'What happened?"

Using evidence already given in the proceeding as a reference point to direct the witness's attention towards a matter requiring an answer For example "Mrs Smith has told the Court that her vehicle was stationery at the lights and that your car hit it from behind. How do you say the collision occurred?" Concentrating on the desired answer, rather than the form of the question to be asked, and then finding a word or words which will prompt the desired response from the witness.

For example, if it is desired to obtain an answer that a party was driving a red motor vehicle, the colour of the same is what is essential to the answer.

A question which includes the word "colour" will in turn prompt a response including the word "red", and a question might well be 'What was the colour of the other vehicle at the scene?" A question which "covers the field" of possible response is also usually safe, but woe betide the lawyer who fails to do so.

For example, "Did you remain at the scene of the accident or leave?" would be proper. "Did you hit him or did he hit you?" (when there is a possibility of accident open on the evidence) would not be.

If it is felt that a question may verge on leading, the inclusion of the words "If anything" may afford some insurance, although their efficacy is likely to

depend upon the mood of the particular tribunal.

A question such as "What, if any, conversation did you have?" will usually escape, and a lawyer can always polish their halo if criticised by reminding the Court that the form of question has left the entire field of human endeavour to the witness's ingenuity. . .

Questions such as "What happened then?" and "What did you do after that?" are usually sufficient to "kick the wheel along" provided that an advocate retains control over the witness to ensure that damaging and/or prejudicial material does not emerge.

This can usually be avoided by linking the question to a non-contentious us point in the evidence.

A question such as "What happened next?" might result in "He told me that he had just got out of prison?" A question such as "You've told the Court that he accused you of assaulting him. What did he say to you about that?" will avoid such consequences.

It is important not to permit witnesses in most cases to give their conclusions as to what the facts indicate, but merely their observations regarding the same, and to lay a proper basis for any opinions which it might be sought to adduce.

Nothing is more calculated to rouse judicial ire (in a non-election year, at least) than a question such as:

"What did you think about the driving?", which will inevitably result in *"I'd never seen anything more dangerous in all my life".*

On occasions when a witness is cheerfully disregarding their lawyer's careful guidance as to the appropriate manner in which to give evidence, it is perfectly proper to halt the evidence and given an explanation as to what has gone wrong.

Failing to give the witness such an explanation will result in a withdrawn and confused witness. By all means blame the system at such times. Something along the lines of "I'm sorry, Mr Brown, but the rules of evidence won't permit me to ask you questions about what you thought at the time. Could you help me by telling me what you saw?" will usually do the trick and result in smiles of approval from a benevolent bench ….

It is essential when adducing evidence-in-chief that an advocate listen to their witness.

Many of the replies received will be a paraphrase or a generalisation of the evidence, in which case there will always be a fact or facts underpinning the same.

"He agreed to do the work" is a conclusion by the witness. Exploration of what is meant by the same will almost certainly reveal relevant direct conversation and evidence which will be a great deal more valuable in obtaining the material for your final address.

A witness can always give the gist of conversation if their memory is incomplete, (See: Wright (1985) 19 A Crim R 17), but an advocate will be at pains to obtain as much information as possible from their witness first.

It is essential to save the "killer point" for submissions, rather than seeking to demonstrate it through the witness.

It can safely be guaranteed that an attempt to emphasise the obvious with a question such as "So what you are saying Mr Smith is will be objected to as leading, and in any event determinative of the issue which the tribunal is called upon to decide.

There is also the horrifying possibility that the witness may consider such a question as a subtle hint to change their evidence, in which case hilarious or painful results (depending upon perspective) may occur.

Do not be too surprised if you ask a question along the lines of "So you are really saying that it is all Ms. Brown's fault?" if your client looks at you and replies "Well, I suppose that I could have been more careful".

Essentially, a case will often be won with good "evidence in chief", which presents a clear and credible version of disputed events. Nothing is more calculated to nullify the effect of a potential cross-examination before the same has even commenced.

Cross examination.

The probability that the Lord has a particular liking for cowards - after all, he made so many of us, is never more evident that when planning a cross examination.

It is a perfectly safe assumption to make that the longer a witness stays in the box, the more likely it is that he or she will say or do something thoroughly destructive to the cross-examiner's case. The safest survival guide of all is to consider what fact or facts it is necessary to elicit from the witness and having obtained the same to sit down with as much speed and grace as the situation permits. An advocate should never fall for the trap of merely repeating the salient aspects of the evidence in chief and asking the witness if that is what happened without proceeding to a point of attack or clarification. To do otherwise simply enhances the witness's credibility without advancing the case further. At the risk of destroying one of the profession's most enduring myths, the proposition that "You should never ask a question to which you do not know the answer" is almost as reliable as "Chariots of the Gods", although a great deal less readable. Such advice would result in few cases extending past the morning adjournment. The correct position ought to be that "You should never ask a question to which a negative reply which might be given without having prepared additional questions (insurance) which indicate to the tribunal that you do not accept such an answer if given". Such questions might include a general attack upon credibility, use of prior inconsistent statements, matters suggestive of bias, putting of a contrary instructions, "flagging" potential rebuttal evidence to be called and so on. The traditional wisdom has much to commend it that one never ask a witness commencing with words such as or `Can you explain?'

Any such question is an invitation to even the most bone-headed of witnesses to justify their position, with often hilarious results. After all, it is the significance of what was either done or not done which is the important thing, not a self-serving justification for the same or an opinion or conclusion which the witness ought not to be permitted to express. Very few advocates ever ask a Police Officer a question such as "Why didn't you believe my client's explanation, Sergeant?" more than once, Police responses to such a question ranging from a detailed expose of the

accused's criminal history to the more charitable assertion that ten or more eye witnesses are unlikely to stray into error. Traditionally, cross-examination has three purposes, and questions which do not comfortably fit within one or more of the same ought to sound a definite alarm bell. The purposes are:

1. To obtain concessions from the witness;
2. To damage the witness's account or credibility,
3. To put instructions to a witness whom it is proposed to contradict.

If concerned over how to put an instruction, a question such as "If evidence were to be given that occurred, you would dispute it?" has much to commend it, as an alert cross-examiner upon receiving a negative answer will not seek to ask "Why?", and the witness is denied the opportunity to repeat their case.

The most effective weapon of the cross-examiner is the use of leading questions which effectively control the witness and remove any initiative of volunteering information or explaining an answer from them. It is essential to remember that the prohibition against asking leading questions "in chief" does not extend to cross-examination. A leading question can be simply framed by starting with a proposition which is then converted into a question.

For example, a proposition such as "It was dark" can be converted into a question by adding the words "wasn't it?" and ensuring that the witness really only has the option of agreement or disagreement, not of supplying further information.

In terms of personality, a hectoring and bullying lawyer can expect few concessions from the witness, who knows what is coming and proceeds to "dig in". The "quiet assassin" often accomplishes their purpose before the deceased realises that something has gone horribly wrong …..

Questions in cross examination ought to be structured, cumulative and effective.

In this case the simplest survival rules are:

1. Ask only one question at a time. Multi-barrelled or proposition questions seldom succeed either because the witness pretends not to understand the same and gains valuable time to think about his or her answer, or because it is unclear later as to which part of the question the answer relates, enabling the witness to "slide away". A question such as "You were at the Hotel on the 4th of June and had a fight them ought to be divided up into its two essential questions. Failure to do so will ensure that the witness later smiles and says "But when I said "Yes", I meant that I was at the Hotel, not that I had a fight" and there will be a lot of repair work to be done.

2. Seek to obtain only one fact per question. A question such as 'When the fight occurred, there 'were three people at the Bar and two in the foyer and one had a knife which he was waving about, didn't he?", is doomed to unhappy results. The witness will ultimately pretend to have agreed only to the proposition (for example) that there were two men in the foyer, and maintain a stout denial as tom the other matters, which he or she is now well aware of. The advantage of eliciting only one fact per question is clearly that the witness cannot take them back later when the trap starts to close or the significance of the questioning starts to dawn upon them. It is

not very difficult to split the above example into several separate questions, each of which contains a part of the whole and accomplishes this end. 3. Avoid "legal speak". Although are usually the most eloquent and lucid of speakers - the writer has never met a lawyer who disagrees with the above proposition - a strange metamorphosis occurs when they enter Court.

The simple and direct speech of early adulthood is replaced with a degree of obfuscation which even a member of the early church might envy. Questions such as "Describe how you entered the premises previously referred to in your evidence and in particular any change or variation in your progress?" are not nearly as affective as "How did you enter the Bar?" Given half a chance the witness will certainly try to play the game …

4. Don't fight with the witness. An acrimonious exchange of repeated propositions and denials ultimately fails to advance the case one iota and it is wise to move on before the tribunal of fact gives some positive encouragement to do so ...

5. "Closing the gates". The most effective way to cross-examine is to anticipate the possible answer which a witness might give to an embarrassing or potentially damaging question, and then to destroy such an avenue in advance by a clear leading question. For instance, witnesses who are likely to claim not to have noticed matters will frequently admit to being observant before the answer comes home to haunt them several questions later. The Police academy has been particularly kind in providing generation of informants will reluctantly swear to being impartial; observant, thorough and methodical before an altruistic lawyer highlights deficiencies in their notes and/or statements ….

6. Do not make the final point through the witness. There is nothing more certain in life that if the advocate attempts to make the essential thrust of their questioning crystal clear to even the most determinedly confused of tribunals, (often a temptation in the Magistrates' Courts) that something will go terribly wrong. Questions such as "So what you are really saying Mr Smith Immediately betray the significance of the question (and the ones preceding it) to any intelligent witness who will then cheerfully counter with "No, what I am saying is Or "Oh, I see, I must have misunderstood you. What I meant to say was it is preferable to avoid the risk and to utilise the material gained in the final submission or closing argument. Where an evasive or obstructive witness is concerned, they can be dealt with effectively in the former case by repeating the identical question and asking them to answer the same, in which case they usually collapse fairly rapidly, or in the latter putting the proposition that the answer cannot exclude the possibility for which counsel contends, in which case a concession results or memory miraculously improves with unhappy results for the witness ...

Re-examination.

The purpose of re-examination is to clarify or explain matters which have arisen during cross-examination. It is not a "second bite at the cherry" to lead new evidence which did not result from the same, nor is it an excuse to simply seek to repeat the evidence-in chief. The East Melbourne general cemetery is full of the bodies of advocates who have disbelieved each of these propositions. As a general rule, the safest thing which can usually be said about re examination is "Do you really want to do this ..?"

If a matter can be easily explained or nullified, then re-examination is proper.

Limitations upon leading. Naturally, there is no greater license to ask leading questions during re-examination than there would be during evidence-in-chief. If, however, a witness's response in cross-examination has destroyed the few remaining shards of religious belief possessed by counsel, re-examining will inevitably make it worse.

Something along the lines of "You told the prosecutor that you didn't really think that the complainant was consenting at the time'. Why did you say that?" will probably result in "I remember her screaming as we threw her out of the car", with unfortunate results for the accused's long-term residential needs. It is usually preferable not to re-examine in such cases but to hope that the jury have not attached undue weight to the answer and to consider a question in more arcane fields of law subsequently.

Memory refreshing.

A witness is entitled to refresh his or her memory from a note or writing made or adopted by them while the events were fresh in their mind and memory if certain preliminary conditions are established. Essentially, the conditions are these:

- That the note or writing must have either been made or adopted by the witness when the events were fresh in memory;
- That it must be contemporaneous with the events described;
- That the witness's memory must be exhausted as to the matter or thing where it is sought to ask leave to refresh memory.

See: "Cross on Evidence" (Butterworths Loose leaf service) pp.17054 and following.

The examiner is at liberty to inspect such a writing and to ask questions about the time at which it was made and circumstances of doing so, without being at risk of tender at that time.

Furthermore, the, use of a document to cross-examine, *once it is established to be a memory refreshing document which has actually been used for such a purpose,* does not make the document tenderable at common law unless cross-examination has canvassed areas which have not been used to refresh memory, in which case such portions can be tendered: *R v. Harrison* [1966 1 VR 72 *De Bono v. Nielsen* (1996) 88 A Crim R 46 What is or is not "contemporaneous" is doubtless a matter which the Police Association and the profession will continue to differ substantially as to in the foreseeable future, although writings made several days after disputed events have been permitted to be used. Lawyers practising in crime are only too familiar with the Police witness who refreshes memory outside Court but mysteriously develops almost total amnesia when called upon to give evidence - it at least affords the basis for a most enjoyable attack upon credit. The distinction as to whether memory has been refreshed prior to Court or while giving evidence (See: *King v. Bryan* (No2) [1956 1 St R Qd 570 is usually negated by questions designed to elicit the fact that memory has been refreshed by reading the entirety of a document which is currently in the witness's possession and then relying upon a right of inspection without an obligation to tender. (See: "Cross on Evidence" (Butterworths Loose leaf service) pp. 17056) Practitioners will also note the effect of the Evidence Act 1995 (CW), and in particular s.32 of the same which deals

with refreshing memory while giving evidence and gives a Court a discretion to require production to the opposing party, and s.34 of the same which deals with documents used outside Court for a similar purpose, broadening the power to include ruling inadmissible evidence which has been so given when production directions have not been complied with. This is consistent with the common law distinction discussed above. Interestingly enough, the common law requirement of "contemporaneity" does not appear to exist in section 32 and 34 situations, provided that the events recorded were "fresh in memory". Alas, no such salvation exists for the Police Force, section 33 of the Act declining to give statutory recognition to such instances of human frailty On the brighter side, if complied with, such witnesses can be lead through or simply read their evidence, which differs from the position at common law, where a witness may need to refresh memory several times regarding different matters. The practice of simply permitting a witness to read a document once leave is given is more one of convenience than law. The risk of being required to tender allegedly memory-refreshing documents without establishing a proper basis for inspection and subsequent use is a real one, since such writings usually contain a variety of self-serving statements or opinions.

To demonstrate compliance with the common law safeguard that a document has actually been used to refresh memory and is available for inspection and/or use, is undoubtedly safer than "taking a punt" and simply calling for 3 document which one might *hen have to tender at common law (See: Walker v Walker 1937 CLR 630 although the blanket "tendering requirement" of this case has been abolished by s 35 of the Federal Act and replaced with yet another discretion …).

Put simply, a high degree of caution should be forensically married to a natural degree of cowardice, and a knowledge of the appropriate case-law and provisions.

The hostile witness.

A hostile witness has been defined as one who in giving evidence is "deliberately withholding material evidence by reason of an unwillingness to tell the whole truth at the instance of the party calling him or for the advancement of justice". The essential difficulty in such a case is that the party calling the witness is thereby unable to elicit the relevant facts by means of non-leading questions (ie: without a general or limited right of cross-examination): See generally: McLellan v. Bowyer *(1961) 106* CLR *95;* Hayden & Slattery *[1959 1* VR 102 Hunter *[1956]* VLR 31. It is important to note that a merely unfavourable witness is not necessarily an adverse or hostile one. (Unless one is dealing with the Commonwealth Evidence Act which refers to such witnesses as "unfavourable" - why me, God?) Witnesses may be confused, genuinely in error, honest (although the latter are mercifully rare) or stupid, without fitting the above definition. The usual scenario for such situations is based upon a legal practitioner's sense of trust when assured that a promised witness will hold to the general tenor of their client's instructions. Such instances of trust seldom occur more than once. It is a useful practice to ask a potential witness to sign and date their proof of evidence, to facilitate a later application to have them declared hostile if the need arises, based upon the prior inconsistent statements) which such a document will contain. If such an application is to be made it is because the lawyer is taken by surprise at the evidence and their case is unduly prejudiced. It is improper to call a witness merely for the purpose of seeking leave to cross-examine them.

If an application is to be made to declare a witness hostile, such a course is in the absence of the jury, and it will to demonstrate a proper basis for the court to grant such leave. Matters which can be relied upon can include demeanour; proof of association or contact with other witnesses or persons in either camp, or the making of previous inconsistent statements. Under s.34 of the Evidence Act 1958 (Vic) (and other comparable State equivalents), before a prior inconsistent statement may be used for impeachment, the witness's attention must be drawn to the circumstances of its making and the witness asked whether or not such a statement has been made. The matter will usually proceed by a witness being asked whether or not they have said or done a particular thing (for example, made a radically different statement as to the facts or been seen taking money or making statements about "what they would do when they got into Court" etc.) and locking down" the witness into a statement that they have not done so. An advocate will then prove the opposite either by requiring the witness to acknowledge the previous writing and their signature, and then tendering the same to the Court in support of an application to have a witness "hostiled", or by seeking to interpose viva voce evidence to prove the matters alleged, and to submit that the witness fails within the test laid down in the cases above. A prior statement does not cease to be inconsistent merely because the witness does not deny its truth but says only that he cannot remember the events of the day in question, and so cannot say if the contents are true or not: Houston and Stanhop (1982) 8 A Crim R 392.

If satisfied that a witness is in fact adverse, a Court may grant a general leave to cross-examine including matters affecting credit generally, or limit the same to particular issues or contradictions, see: Hunter [1956] VR 102; R v Thynne [1977] VR 98; Evidence Act 1958 (Vic) s.34.

A similar distinction is preserved by section 38 of the Evidence Act 1995 (CW), which permits questioning about matters falling within ss. (1) with the leave of the Court, or matters relevant only to credibility under ss. (3). If an application is to be made to the Court to grant leave to cross-examine a witness called by that party, it is important to remember that the only purpose of "hostiling" a witness is to attempt to nullify the otherwise harmful effect of the evidence previously given by them. Even if leave is granted and the material successfully used to impeach or contradict, this does not "resurrect" the validity of the first account given. All that has occurred is that if the tribunal is persuaded to reject a witness's evidence, with the result that there is simply no evidence at all. Because of this fact, the decision as to whether or not to seek leave to "hostile" is a tactical one, particularly in jury matters (although such an application in the latter is made in the absence of the jury). It may be quite possible to rely upon evidence given or to be given by other of a- lawyer's witnesses as to the matter which the witness has not sworn to, while at the same time retaining the benefit of other evidence which the witness has been given which is of benefit to the advocate. In such a case, a delicate "weighing" of the pros and cons of such a matter must occur. Ultimately, the atmosphere of a particular trial or hearing will determine the same, together with the importance of the evidence given (or not) by the witness. After surviving the these and other considerations, it can truly be said that there is a great attraction in pursuing post-graduate studies in a variety of disciplines without ever approaching a Court again in any capacity other than that of a spectator ...

Bullying: Causes, Costs and Cures. P McCarthy, M Sheehan, S Wilkie & W Wilkie (eds.)

***Bullying: Causes, Costs and Cures,* edited by Paul McCarthy, Michael Sheehan, Susanne Wilkie & William Wilkie, 1998**. Beyond Bullying Association Inc., PO Box 196, Natham, QLD 4111; 201pp; paperback $19.95 plus $5.00 postage. Reviewed by Dr. Karl H. Wolf, B.Sc. (Canada) , Ph.D. (Australia), D.Sc. (USA)

Introduction. This book is a good supplement, not merely an updated version, of the 1996 book on Bullying: From Backyard to boardroom, although several topics are covered in both - the substance of each topic will continue to expand and be refined. That is the overall Philosophy of Anti-bullying is evolving in response to, for example, data and case history interpretations and broadening of 'bullying domains'. Whistleblowing is, of course, mentioned.

Important caveats. Reading the literature about bullying (as well as whistleblowing and scepticism, among others, concentrating on the numerous deleterious human activities) could lead one to wrongly conclude that 'mankind is inherently evil'. Philosophers of ethics and morality have battled with this question for centuries, offering many conceptual answers. Let us just say (simplistically) that there also exists the literature on complimenting the 'positive nature of man' as a counterbalance. Those involved in studying and exposing, bullying, for instance, do have faith in the presence of some fundamental goodness in all of us - otherwise they would give up finding solutions! But aside from the gene-controlled evil, the social environment does have an overwhelming influence on developing and encouraging bullying!

Authors' expertise involved. Seventeen researchers contributed and their professional specialties are reflected by dealing with various aspects of psychology/sociology; pastoral care situations; assertiveness as a missing skill; school environments; bullying busters; legal response; women against women - cost of silence; email harassment/tyranny; workplace support programs; female workers' experience; organisational restructuring: rhetoric vs. reality; and violence in city revitalisation; ending with a historical philosophical reflection.

The book's coverage. Some preferentially selected specific bullying-related topics about covered indicate the practical applications presented: (1) definitions; precursors/predisposition in children; taming process during maturation of children/adults; addictive excitement; (2) post-traumatic stress disorder; (3) church hierarchy abuse; cult structure & behaviour; ten processes in authoritarian religious groups; hiding of abuse; witnessing abuse may be educative & therapeutic; legalities; (4) teaching of assertiveness - five skills; school-setting: seven elements; short & long-term consequences for victims; student attitudes; bystanders; (5) seven lessons learnt; (6) three main groups involved: victims, perpetrators & colluders; (7) legal responses; home environment; civil law, tort & contract; landlords; police officers; workplace setting; grievance procedures; loss of dignity; whistleblowers; medico-legal examinations; harassment by mail; (8) silence by women; gender influence; women-perpetrators; nursing: images of Florence Nightingale vs. Nurse Ratched; stereotyping; health

care bullying; cost of silence - break it!; (9) email petty tyranny; conflict resolution; non-contingent punishment; close supervision; responding the tyrant; (10) protect yourself; hidden costs for an organisation; handling of incidents; support programs; (11) female workers' experiences; identify victims & bullies; (12) components & common characteristics/themes of bullying; rhetoric vs. reality; (13) city revitalization-related violence; living-space wars; dark underside of livability; ritual sacrifices; consulting violence: seven types; (14) history & philosophy: Christianity; sins of paternalism; victimising the victims; the end of the modern world; one's identity - and, finally, towards a new mythology: pluralism.

Not all chapters are supported by references - those references present are valuable for further research. Chapter 1 mentions some publications, but no References were provided by mistake(?). The Index is sufficient, although a bit meagre. These are purely minor criticisms - as the book is indeed a fine contribution to this particular genre on bullying, whistleblowing, and professional scepticism! Congratulations to the researchers/authors!

Conclusion and recommendation. (a) Everyone is exposed to numerous social settings -- ranging from home, workplace, and school, to occasionally a hospital - so that just about every person ought to be familiar with what is known about bullying. Thus, the above-considered 1998 book by McCarthy et al. is a valuable contribution to both the professional who has to deal with bullying and the layperson who should be familiar with negative human tendencies for self-protection. Parents and teachers, all employees and managers, among others, certainly, must know to be able to offer advice! Psychologists and the medical profession too should consult the book. And, not to forget, do start with the fundamental 1996 book.

(b) The study of bullying (and other types of negative social phenomena) seems to be only in its infancy, as indicated by intellectual battles between psychological schools of thought and highlighted by new theories (nay hypotheses) advanced by the evolutionary psychologists. See the article The Cinderella Complex by Tom Morton, SMH of April 29, 2000, Spectrum Features, p. 5s, on child abase, bullying and murder perpetrated in step-families. As an extension of this particular environment, the question arises as to whether there are specific personality types of people which pre-determine them to become victims, bullies, tyrants, autocrats, dictators, sadists, psychopaths, abuse-merchant - all utilising different styles and various intensities. Also, are there certain social settings predisposed to certain types of negative inter-personal conditions? Numerous other questions can be raised.

(c) Many individuals have been helped by publications of this genre made available the past few years. Just imagine people being severely bullied for years, or whistleblowers emotionally destroyed, by uncaring members of society - all BEFORE the expository studies described in the present book. The victims must have felt that (a) they were 'the only ones in the world singled out' for attack', and (b) had no access to support and assistance! What a contribution Paul McCarthy and similar researchers are making on the micro- and macro-social scale! Thank you!

Many countries have no formal system to battle bullying (even whistleblowing is unknown there, as described in a recent article in The Whistle), so that researchers with an 'international conscience' might consider offering our experiences on the Internet. In Australia and the

USA, for example, we are socially more progressive in certain ways, it seems. Aside from the Beyond Bullying Association and Whistleblowers Australia Inc, there is the Australian Sceptics Inc., The Sydney Institute, and The Independent Scholars Association of Australia, among others, involved in either continual (being their main aim) or occasional exposés.

Feedback.

To the editor- The Whistle

Dear Sir/Madam

Enclosed are two articles for publication in the next issue of the Whistle.

The contents of the last few issues have - to say the least - been very ordinary.

I have sent two articles for you on disk and in hard copy as per your guidelines.

Please do not give me any half-baked excuses for non-publication - particularly in view of the fact that the same information has already been published in similar form elsewhere and both articles are of critical importance to whistleblowers.

Yours faithfully, Raymond Hoser, 41 Village Ave Doncaster Vic. 3108. Tel. +61 3 9857 4491, Mob. +61 412 777 211, Fax. +61 3 9857 4664, E-mail adder@smuggled.com. 18/7/00.

WBA member Raymond Hoser has been creating a tremendous stir with his books Victorian Police Corruption 1 and 2. Over the years some of Ray's material has been published in The Whistle. Readers who are interested in Victorian police corruption, smuggling of endangered species and other material should consult his weh site where many documents are provided plus information on ordering his books. **Editorial Committee.**

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.

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.

"

A tick in the box indicates your subscription has expired and you will *NOT* receive future issues of *The Whistle*. WBA can no longer afford to subsidise non-financial members. To ensure continuity of membership and delivery of *The Whistle* please renew subscription now. *Subscriptions are to be paid to:*

- ***Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. Tel./Fax. 07 5471 7659; or***
- ***Chairpersons of the State branches of WBA at the addresses shown above.***

Whistleblowers Australia Inc. Regional Contact points.

National President Whistleblowers Australia Inc.:

Dr Jean Lennane, 9 Rowntree St., Balmain NSW 2041. Tel/Fax. 02 9810 2511.

National Director Whistleblowers Australia Inc.: Greg McMahon, Whistleblowers Australia Inc. National Office, PO box U129, Wollongong University NSW 2500. Tel. 07 3378 7232 (a/h).

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 12:30 pm for lunch and discussion. The NSW **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. 0428 483 155. *Web site:* http://www.whistleblowers.australia.org

Wollongong: Brian Martin, Director-international Liaison, Whistleblowers Australia Inc. National Office, PO box U129, Wollongong University NSW 2500. Tel.: 02 4221 3763. *Web site:* http://www.uow.edu.au/arts/sts/bmartin/dissent/

Victorian Contacts: Anthony Quinn 03 9741 7044 or 0408 592 163; Christina Schwerin 03 5144 3007.

Queensland Contacts: Feliks Perera, National Treasurer, 1/5 Wayne Ave, Marcoola Qld 4564. 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.

Western Australian Contacts: Avon Lovell, Tel. 08 9242 3999 (b/h) & Frank Scott 08 9368 2817, Email franks@q-net.net.au

Editor of *The Whistle*: Robert Taylor, c/- WBA, 7-A Campbell St., Balmain NSW 2041. Tel./Fax: 02 9804 8857.

Websites of interest: www.anti-corruption.network.org.au

Whistleblowers Australia Inc. Annual General Meeting Saturday 18/11/2000.

Venue: South Australia is hosting the 1999/2000 Annual General Meeting of Whistleblowers Australian Inc. at the Diamond Club House, 19 Kilkenny Rd., Woodville Park South Australia - 10:30 am Saturday 18 November 2000.**Agenda.**

- Reports of activities during the year, including campaigns, whistleblower cases of national significance, submissions, publications, etc.Strategy discussions to fix policy issues & set activities and plan for 2001 and beyondElection of the office bearers and ordinary members of the national committee
- Other business & close of meeting

Nominations. Nominations for national committee positions must be delivered in writing to the national secretary (Rachael Westwood, 7A Campbell Street, Balmain NSW 2041) at least 7 days in advance of the AGM, namely by Saturday 11 November. Nominations should be signed by 2 members and be accompanied by the written consent of the candidate.In the past, we have consulted beforehand to find suitable volunteers. If you are interested in joining the national committee, it would be helpful to talk with one or more current members. (See list of WBA contacts.)**Proxies.**A member can appoint another member as proxy by giving notice to the secretary (Rachael Westwood) at least 24 hours before the meeting (i.e. by 1:00 pm 17 November). Proxy forms can be obtained from the secretary. No member may hold more than 5 proxies.

1st SA Whistleblowers Conference Sunday 19th November 2000.

The SA Branch of WBA has launched the inaugural **Whistleblowers Conference "The Cost of Crushing Whistleblowers: personal, social and economic".** The Conference is open to the public and will be held at 10:00 am Sunday 19th November 2000.The Conference will feature keynote speakers:

- **Dr Kim Sawyer "US Whistleblowers Protection Act and the False Claims Act", and**
- **David Berthelsen "The long-term effects of crushing whistleblowing".**

With a particular focus on:1. the personal difficulties and private costs borne by public interest whistleblowers in putting information on the public record regarding the waste of substantial public resources, corrupt conduct and the mismanagement within public and private sector organisations.2. the societal costs of suppression - issues of public health & safety, maladministration and malfeasance in public welfare and compensation.3. the economic burden mismanagement, malfeasance, corrupt conduct eg submarine construction, the banks, various workers compensation administrations, and the legal system.***For further details contact:*** **Matilda Bawden, 10 Quondong Ave, Parafield Gardens SA 5107.*I would like assistance to attend:*" The AGM 18/11/00. " The**

Conference Dinner 18/11/00. " The Conference 19/11/00." Help to organise accommodation. " Help to organise transport (21 day advance purchease air fare).Catherine Crout-Habel Tel./Fax. 08 8250 0388 or email: caitrin@dove.net.au

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