

Plenary 6:

Where things can go wrong

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Chaired by: Winston Williams, Merlin HS
Room: Ballroom



National Housing Maintenance Forum

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Where things can go wrong - The Company and me, I!



Directors and Managers liability –
representing individuals in a
Police/HSE Investigation

Paul Burnley, Partner

NHMF Conference 2015

Answers not options...

Things you never dreamt would happen!

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The changing face of Health & Safety for Managers

Health & Safety – Cup of Tea Syndrome!

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Very few prosecutions of
companies and
especially Directors
and Managers and ...

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The Police did not stay around!

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Corporate and
management accountability
began!

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Evolution of the "Shame and Blame" culture

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“Railway bosses must be charged over deaths” says crash widow

“Killed by people who did not do their job properly”

The "six pack" –
competent Health & Safety
Personnel and Managers

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Director -v- Manager liability

- Not just directors
- includes managers
- Whoever has delegated authority



Then came the Corporate Manslaughter Act

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The new offence

Companies/organisations will be guilty if:

- The way in which their activities are managed or organised by its Senior Managers;
- Causes a person's death; and
- Amounts to a gross breach of a duty of care owed to the Deceased....

but

Who is a senior manager?

- Someone who plays a significant role in the organisation in the making of decisions about how the whole or a substantial part of its activities are to be managed or organised

or

- someone who is actually managing or organising those activities
- Police/HSE taking a very liberal view of who is a Senior Manager!
- Still no big Court case!
- Pinpointing of Managers!

Two concepts

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1. Taking decisions about how activities are managed or organised
 - “strategic management”
 2. Managing those activities –
 - “operational management”
- Emphasis is on "management"



Strategic management

1. Taking decisions about how activities are managed or organised – "strategic management"



Operational management

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2. Managing those activities – "operational management"



What about Director/Manager liability?

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Personal Liability under S37

“Where an offence is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director or manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable accordingly”

Health and Safety (Offences) Act 2008

The Police are now staying
around...

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"Enforcement"

- Police are taking the lead but ...



the HSE are firing the bullets!

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More interviews of Managers
are happening and...

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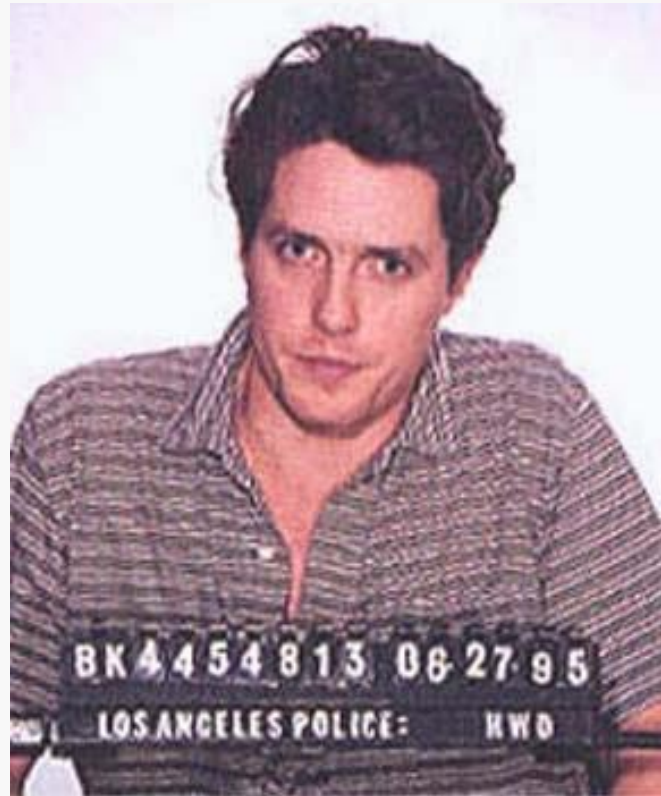
Arrests of Managers are
more likely

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On arrest

FREETHS



On arrest

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On arrest

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And finally ...

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Not always a good idea
to be interviewed

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Interviews

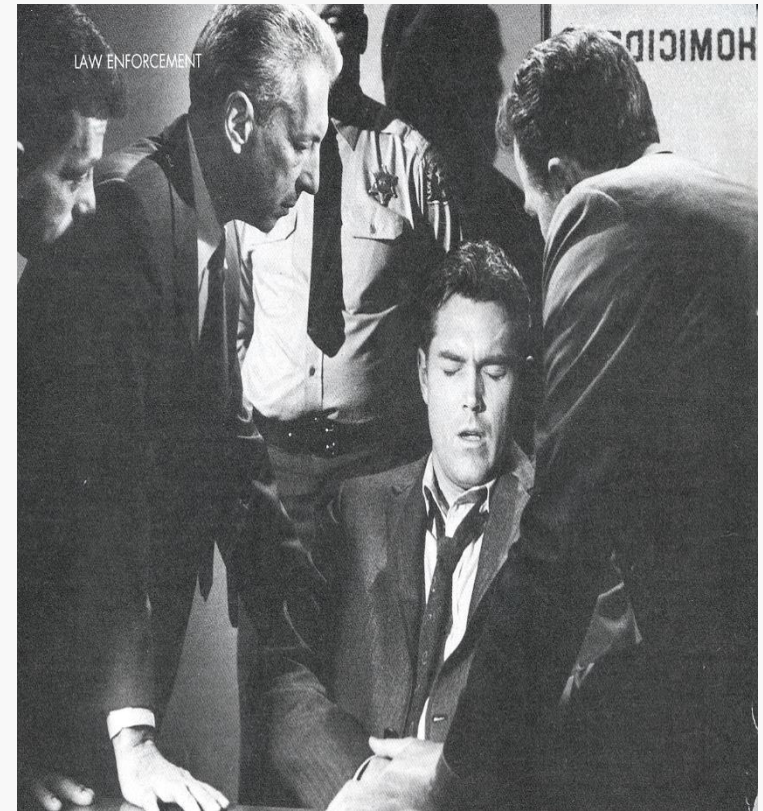
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- Initial interviews
- Informal interviews
- Section 20 interviews
- Under caution
- Written interview/taped interviews



Informal/voluntary interviews

- Do not have to attend
- Can refuse to answer any question
- Can have someone in with you
- Written statement format
- Entitled to a copy of the statement
- Can walk out at any time
- Cannot be used as evidence against you or the company



Interview under Caution

- Occurs if Police/HSE believe the individual has committed an offence
- Do not have to attend
- Caution has to be given
- Entitled to have someone with you (lawyer)
- Can refuse to answer any question
- Can walk out at any time
- Not under arrest
- Interview is recorded
- Entitled to a copy of the CD
- Can be used in evidence against you and the company



Section 20 Interviews

- Compulsory attendance
- Cannot refuse to answer any question
- Allowed someone in with you if you ask
- Written statement format
- Not entitled to a copy of your statement but ask!
- Cannot leave at any time
- Cannot be used against you but can against the company!



“Golden” Rules

- Ask what kind of interview it is
- Have someone with you
- Don't guess
- Don't assume someone else's role
- Answer the question – keep it short!
- Understand the question
- Don't be bullied!



“Golden” Rules – Part Deux!

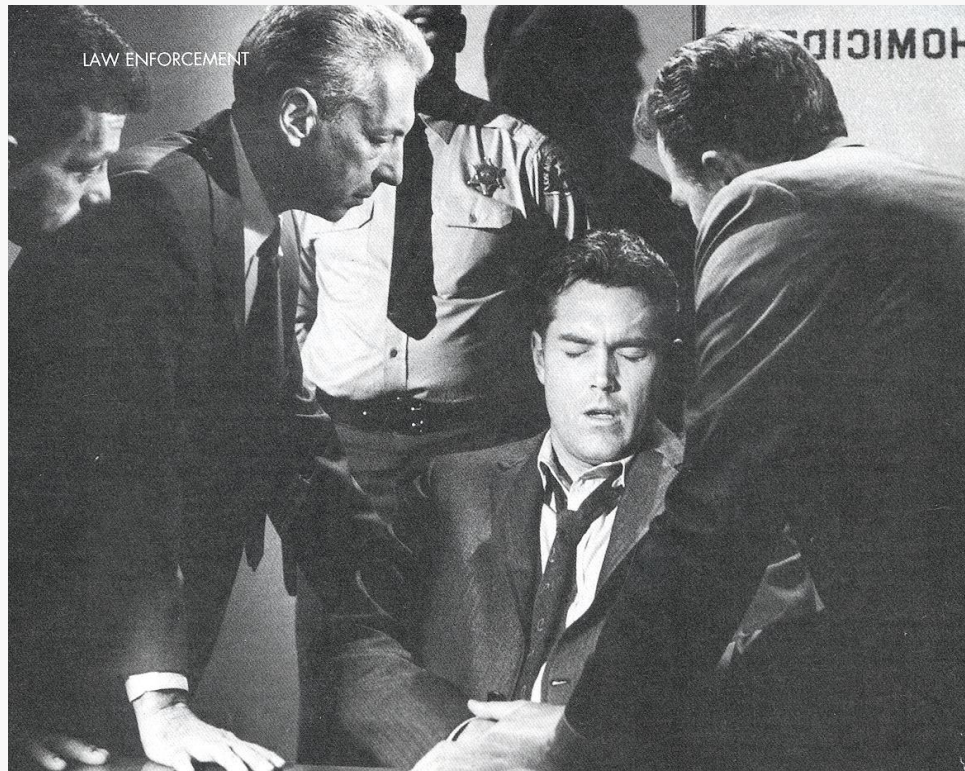
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- Stick to the facts – don’t give opinions!
- After two hours, take a break
- Don’t be afraid to change your mind
- Read your written statement – slowly!
- If you disagree with what’s written, say so
- Ask for a copy – there and then
- Don’t “chit chat” after the interview!



Reinforce Mischief to Employees/Contractors of Being Interviewed on their Own

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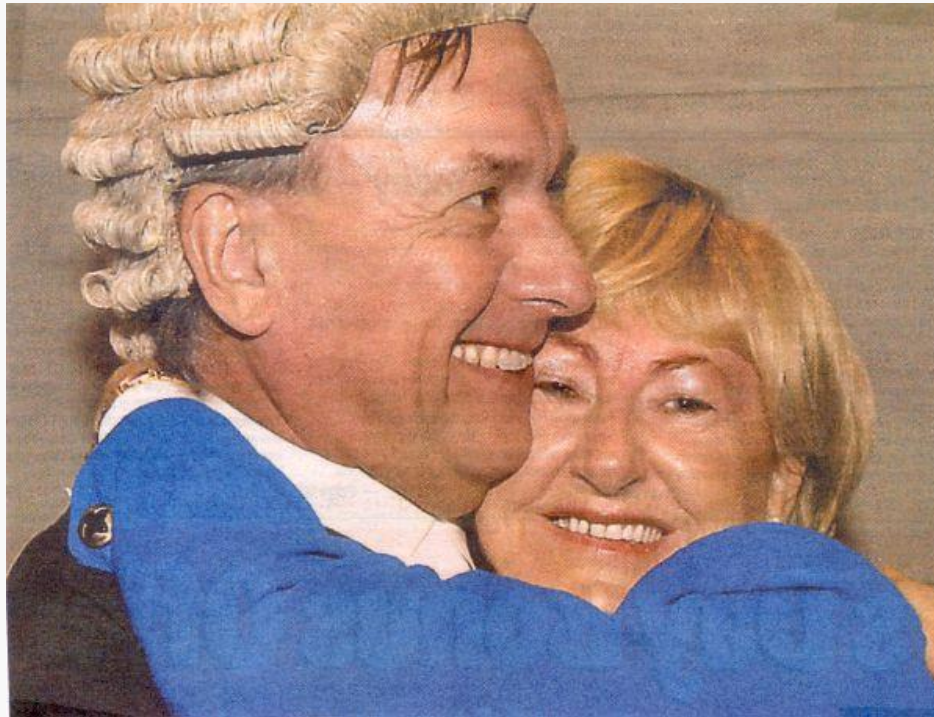
"Independent" Person to Help?

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Increased need for separate legal representation

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...but to be arranged very quickly!

What if I refuse to be interviewed by the Police?

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By the HSE?

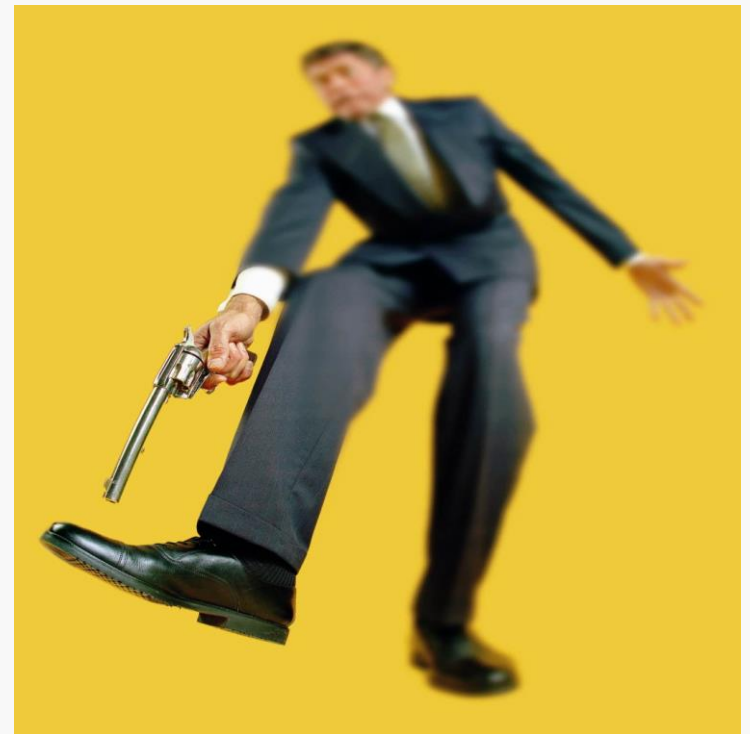
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Internal reports and documents

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- Privilege – why?
- S.20 powers
- Language
- The use of recommendations by the Police/HSE



Take a Harder Line

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Effect on a Manager as an individual

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The Board will blame me –
true or false?

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Questions

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