Workplace Bullying: A Review of Litigated Cases

William Martin · Helen LaVan

Abstract Using policy-capturing methodology, this study examined the nature of workplace bullying in a random sample of 45 litigated cases in the United States. Among the findings were that most of the cases were in the District Court. Nearly one-fifth of the cases involved physical violence, the majority of the cases were in the public sector, and the supervisor was the perpetrator in many of the cases. The presence of a policy banning workplace bullying was present in slightly more than one-third of the cases. A striking finding was that 73.3% of the cases were found in favor of the employer as the defendant. These findings support the fact that even though there are no specific workplace bullying laws in the U.S., victims of workplace bullying can be legally protected. Implications for managerial practice and future research are suggested.

Key words workplace bullying · litigated cases · managerial style · judicial opinion

Relevance of Study

The role of organizational research is to identify relationships in organizational contexts and provide information for managerial decision-making. Given the pervasiveness of bullying and the potential negative effects of it, both from an individual and organizational basis, it becomes more imperative that research be conducted. To date, research on bullying has tended to be based on experimental designs, in which subjects are asked to report the existence of contextual factors relating to bullying in contexts that have been devised for the research study. Another stream of research is based on surveys in which likely victims or knowledgeable professionals (such as human resource professionals) are asked to report their experiences. Often, these are in one organizational setting and do not take into account

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the legalities. Hence, there is a paucity of research relating to the litigation of bullying. Granted that these court cases are perhaps the extremes of bullying, they are real scenarios, in which organizational members were unable to resolve the bullying behaviors and/or consequences and subsequently litigated. The contribution that this research makes is to discern the bullying in a variety of different contexts through litigation, rather than through the other methodologies. These are real incidents that have transpired and are reported on by a more objective third party, i.e. the judge writing a judicial opinion. What makes the study of more interest is that in the U.S. there are no specific laws that regulate bullying, so this litigation is based on a variety of other laws and tort actions.

Review of the Literature

A brief review of the literature as it specifically relates to the U.S. context in general and the U.S. legal context in particular will be presented below after first discussing the current controversy surrounding the definition of workplace bullying as a theoretical construct, and an operational definition. Shadish *et al.* (2002) illustrate similar definitional confusion resulting in challenges to construct validity surrounding the label "hostile work environment." This definitional challenge is not limited to the study of workplace bullying.

More exhaustive literature reviews have been written elsewhere (Hoel *et al.* 2006; Einarsen 1999, 2000; Rayner and Hoel 1997). This review will not address the ethical aspects of workplace bullying, which have been previously addressed by LaVan and Martin (2008).

To date, there is no agreed upon, universally accepted definition of workplace bullying (Yuen 2005). This presents problems as it relates to comparing studies both within any particular country and across countries. For instance, without such a consensus definition, it is a challenge to know whether the incidence and prevalence of workplace bullying is increasing or decreasing.

Not only is a consensus definition non-existent, but different terms are used to describe the same phenomenon: for instance, workplace aggression, workplace abuse, workplace bullying, and workplace harassment, to name a few. Schat *et al.* (2006) reconcile this definitional dilemma by pointing to the fact that "…the behaviors that constitute workplace aggression are generally consistent with the behaviors that constitute these related constructs" (p. 49).

Furthermore, different disciplines rely upon varying definitions of workplace bullying. In the psychological literature, workplace aggression is more typically found and is defined by Schat and Kelloway (2005) as "behavior by an individual or individuals within or outside an organization that is intended to physically or psychologically harm a worker or workers and occurs in a work-related context" (p.191). In the legal literature and industrial relations literature (Hoel *et al.* 2006), workplace bullying is more typically found. In the landmark case of Raess v. Doescher (No. 49 S02-0710-CV-424, Indiana Supreme Court [April 8, 2008]), the case in part turned on the question of the admissibility of Dr. Gary Namie as an expert on workplace bullying and the legal definition of workplace bullying— which did not exist in any statute or case law until the Indiana Supreme Court ruled in favor of the plaintiff. In an analysis of the legal opinion of Raess v. Doescher, the term "workplace aggression" did not come up in a single instance, the term "human aggression" did not come up in a single instance, nor did the term "aggression." However, the term "workplace bullying" came up in 22 separate instances. Given that this research is based upon litigated cases, we shall adopt the construct used in Raess v. Doescher.

Some may agree with Justice Potter Stewart's famous definition of pornography when he said, "I know it when I see it." This definition reflects tautological reasoning and does not guide researchers in advancing scholarship in workplace bullying. Browne and Smith (2008) assert that the definition promulgated by The Workplace Bullying Institute (which prepared the Healthy Workplace Bill now being considered in 29 state legislatures) is considered the universal definition. This definition describes workplace bullying as "repeated, health-harming mistreatment" (The Workplace Bullying Institute 2009).

The Workplace Bullying Definition is conceptually consistent with other definitions found in the literature. This definition includes three important elements: (1) frequency; (2) impact on health; and (3) treating others in a less than preferred fashion according to some benchmark. Hoel *et al*. (2006) assert that the two elements that characterize the many diverse definitions of bullying are "…persistent behaviour and unequal power relationships" (p. 255). Hoel *et al*. (2006) also note that the concept of power crosses disciplines in the study of workplace bullying. A growing body of empirical evidence demonstrates that workplace bullying has deleterious health effects both physically and psychologically (Rayner *et al*. 2002; Bowling and Beehr 2006; Nielsen *et al*. 2008), consequences which shall be addressed in more detail later.

The operational definition used in this study is based not only on The Workplace Bullying Institute definition but further upon the definition offered by Salin (2003) below and the conceptual framework also posited by Salin (2003): "…repeated and persistent negative acts towards one or more individual(s) which involve a perceived power imbalance and create a hostile work environment. Bullying is thus a form of interpersonal aggression or hostile, anti-social behavior in the workplace" (p.1214).

Salin posits a conceptual classification as a way of explaining workplace bullying (Salin 2003). In this classification scheme, there are three interrelated structures: enabling structures[1] or antecedents; motivating structures[2] or incentives; and precipitating processes[3] or triggering circumstances. "Bullying can thus be understood as the result of an interaction between three groupings of explanators, or at least two of them" (Salin 2003, page 1226). According to Salin (2003), the enabling structures or antecedents are a necessary condition for workplace bullying to occur whereas either the motivating structures or the precipitating processes may occur but not necessarily both. Salin's (2003) conceptual classification was used as the basis to code the characteristics of the litigated cases in our sample, which will be discussed in more detail in the methods section. This classification is based upon a conceptual model which posits that organizations play a role in bullying in three ways: enabling, motivating and triggering factors (Hoel and Salin 2003). Similar to these three organizational factors, leadership or managerial styles are implicated in some research as playing roles in bullying (Ironside and Seifert 2003; Lutgen-Sandvik *et al*. 2007), for instance, a highly authoritarian or laissez-faire style (Salin 2003). Researchers in the U.K.

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[1] Presence of dissatisfaction/frustration with working situation/organizational climate; Perceived status incongruence/ power imbalance; Autocratic style of management; Low perceived costs for the perpetrator; Laissez faire leadership style; Lack of policy against bullying; Lack of punishment; Bullying seen as a rite of passage; Efficient means of accomplishing tasks.
[2] High internal competition; Politicized climate; Relative ranking incentives (rewards); Form of discipline for those who are perceived to violate established production norms; Constructive discharge; Expected benefits for perpetrator.
[3] Restructuring, downsizing, crises; Organizational changes; Changes in management; Changes in composition of work group; Cost cutting; Reengineering; Employees who feel powerless; Delegation of control to semi-autonomous teams; Promotion of the perpetrator; Arrival of a new manager.

(Lewis 2006) and in the U.S. (Rowe and Sherlock 2005) have reported that, in some instances, managers are the source of workplace bullying.

Prevalence of Workplace Bullying

Bullying is a pervasive workplace problem. Bullying has been reported to occur in organizations ranging from health care organizations (Einarsen *et al*. 1998) to arts organizations (Quigg 2007). Schat *et al*. (2006) acknowledge the dearth of prevalence data on workplace aggression, which, they assert, is a higher order construct that includes workplace violence and is thus related to workplace bullying. As already highlighted, the focus of this paper is on workplace bullying based primarily upon legal constructs and secondarily based upon psychological constructs.

Numerous epidemiological investigations have been conducted seeking to estimate the prevalence of workplace bullying. U.S. prevalence data is collected in two major ways: occurrence data using behavioral checklists, and self-report data (Cowie *et al*. 2002; Lutgen-Sandvik *et al*. 2007). In the United States, there is no generally agreed upon prevalence statistic. To this point, Lutgen-Sandvik *et al*. (2007) comment that U.S. prevalence data is generally lacking and that the data that exists does not measure the prevalence "…of the persistent, enduring phenomenon of bullying using a tool specifically designed to measure bullying" (p. 842).

Given the limitation regarding estimating workplace bullying prevalence, there are several investigations worthy of attention. In one investigation, it was found that nearly all (97%) of the respondents, all of whom were Hispanic, African-American and Asian-American, experienced bullying at work (Fox and Stallworth 2003). In another workplace bullying investigation with a sample of 262 ethnic and racial minorities in the United States, it was found that 10.2% of the respondents filed a grievance or EEO lawsuit (Fox and Stallworth 2003). According to the Bureau of Labor Statistics 2005 Survey of Workplace Violence Prevention (2006), one in twenty (5%) of all surveyed workplaces reported an incident of workplace violence in the previous 12 months. In this survey, workplace violence was defined as violent acts directed towards a person at work and included bullying.

At the extreme, according to the Census of Fatal Occupational Injuries produced by the Bureau of Labor Statistics (2007), workplace homicide in 2006 was the lowest it has ever been since 1992, with 516 homicides being reported at work, representing a 50% decrease since the peak number in 1994. The focus of this research, however, is not on workplace homicides and not on matters that would be brought to criminal courts. The 45 cases in this study were all civil, not criminal cases.

Another interesting aspect of reviewing the prevalence of workplace bullying is to examine investigations looking at settings where workplace bullying is more likely to occur, such as among public sector employers (Unison 2000; Hoel *et al*. 2004). Also, in a meta-analytic study (Bowling and Beehr 2006), women have been found to more likely be victims of workplace bullying.

Bullying is also a global phenomenon. Some researchers (Mikkelsen and Einarsen 2001; Zapf and Einarsen 2003) suggest that workplace bullying is more prevalent in the U.S. due to the cultural values of the U.S. which emphasize individuality, assertiveness, masculinity, and achievement, as well as a relatively higher power disparity than is found in Scandinavian culture. Based upon The American Workplace Survey, it was estimated that workplace negativity is higher in the U.S. than comparable Scandinavian populations, with

30–35% of U.S. workers experiencing a negative act at least once a week over a 6–12 month period (Lutgen-Sandvik *et al*. 2007). To a lesser degree, in a recent epidemiological study estimating the prevalence of bullying using the Danish Psychosocial Work Environment Study (DPWES) on a representative population sample, it was found that 8.3% of 3,429 sampled employees between 20 and 59 years of age had been bullied within the past year. Furthermore, 1.6% of the sample reported daily to weekly bullying. An interesting finding was that the prevalence of bullying differed in a statistically significant way by occupational status, as evidenced by the highest prevalence among unskilled workers and the lowest prevalence among managers/supervisors (Ortega *et al*. 2009).

One of the differences that arise with regard to workplace bullying is that Zapf and Einarsen (2003) found that bullying in Scandinavian countries typically takes place among co-workers to a greater extent than in the U.S. and the U.K., in which 10–38% of the bullies at work are managers or supervisors (Hoel *et al*. 2001; Lutgen-Sandvik *et al*. 2007). Yamada (2004) discusses the legal differences in addressing workplace bullying ranging from laws being in place in Scandinavian countries such as Sweden and Norway to countries with no federal statutes addressing workplace bullying, such as the U.S. (Yamada 2004).

Effects of Workplace Bullying

The link between workplace bullying and concomitant psychological and physiological consequences has been well established in the literature. Lutgen-Sandvik *et al*. (2007) posit a continuum of workplace bullying similar to the conceptualization of first, second, and third degree burns. Along this continuum, the psychological and physiological effects increase in intensity. For instance, at the highest level, bullying is likened to a "third-degree burn" (Lutgen-Sandvik *et al*. 2007) resulting in "…deep scarring and permanent damage" (Lutgen-Sandvik *et al*. 2007). In fact, it has been asserted that "[T]he inducement of harm is an essential and necessary component in all definitions of bullying" (Saunders *et al*. 2007, p. 341).

The psychological effects include depression (Niedhammer *et al*. 2006); burnout (Einarsen *et al*. 1998); post-traumatic stress disorder (Leymann and Gustafsson 1996); prolonged-duress stress disorder (Scott and Stradling 2001); alcohol abuse (Richmann *et al*. 2001; Rospenda 2002), and suicide (Leymann 1990). Niedhammer *et al*. (2006) describe workplace bullying as a risk factor for maintaining mental health.

The effects of workplace bullying are not limited to psychological and physiological consequences but also interpersonal and familial consequences (Jennifer *et al*. 2003; Rayner *et al*. 2002; Tracy *et al*. 2006). Moreover, the effects of bullying are not only limited to the targets but also impact the witnesses of bullying (Vartia 2001) in terms of experiencing general stress and mental stress.

After experiencing the effects of workplace bullying, victims will engage in various coping strategies. A useful model that has been used in the psychological literature of workplace victimization including bullying (Aquino and Thau 2009) is the transaction model of stress (Lazarus and Folkman 1984) which describes two coping strategies: problem-focused and emotion-focused. This model of stress was used in an investigation seeking to understand why women litigate sexual harassment claims (Wright and Fitzgerald 2007). Pursuing a legal cause of action fits under the category of problem-focused coping because it can be argued that the victim is doing more than seeking to manage the emotional consequences of the workplace bullying and trying to eliminate the source of the

stress by defending himself or herself and seeking revenge in the courts. On other hand, Huang (2008) found that "[T]ort victims may sue to pursue… justice, meaning, or vengeance" (p.55). This fits with emotion-focused coping. Hence, it is likely that those pursuing causes of action in the court system are using the court system as a way to cope.

To date, there is no literature on the percentage of victims of workplace bullying who file causes of action in the court system. However, it was found that only 1% of victims of sexual harassment file causes of action (Fitzgerald *et al.* 1997). It was also found that litigants of sexual harassment experience a "…myriad of emotional responses" (Wright and Fitzgerald 2007, p. 81) and suggests that many litigants of workplace claims suffer from Narcissistic Personality Disorder.

Study Methodology

While there are a variety of mechanisms in place in organizations to ameliorate workplace bullying, when these fail, the individual can pursue his or her workplace rights by litigation. How the bullied fared in this litigation is the main rationale for the study.

This study used policy-capturing methodology (Roehling 1993; Werner and Bolino 1997) to identify case characteristics that are related to case outcomes. The current study is based on an analysis of a random sample of 45 cases from 273 cases from 2003 to 2007 that have been litigated based on individuals who were bullied and ultimately litigated.

These cases were retrieved using Lexis/Nexis over the past 5 years. Lexis Nexis legal was selected for the source of the litigated cases for a variety of reasons: It is widely accepted in the business and legal communities as the source of comprehensively included cases at the state, district, federal and Supreme Court levels. It has been the source of data for many previous studies cited in the literature review of the present study.

The use of coding in the analysis of public decision is well established in the literature (Rowland and Carp 1996; Carp and Rowland 1983). Similar coding methodology has been used in comprehensive decision datasets (Spaeth *et al.* 1999). In this study, the coding of the variables is described in Appendix I. In general, when a condition was present, it was coded as 1. When absent, it was coded as 0. Both the case characteristics and the variables that comprise the Salin conceptual framework are coded in a similar manner. See Appendix II for the coding of the Salin variables.

Findings

This section will first report the empirical findings of this study and then turn to a qualitative analysis of two illustrative cases to provide a sense of depth, richness, and texture to the topic of workplace bullying.

Based upon a sample of 45 litigated cases spanning 5 years, the results will be described below.

Frequencies

This descriptive analysis of the findings will be organized into the following sections, beginning with court venue, legal considerations, followed by case characteristics, participant demographics, then the nature of the bullying using Salin's (2003) explanatory model, and finally, the individual and organizational effects as well as managerial actions.

Court Venue/Case Outcome

As portrayed in Table 1, our findings indicate that 73.3% of the cases were at the District Court rather than the lower courts or the Supreme Court. A significant finding is that the employer prevailed in 73.3% of the 45 litigated cases reviewed. Only 4.4% of the cases were remanded. None of the cases reported monetary damages.

Case Characteristics

Two out of three (66.7%) of the cases occurred in the public sector. Also, nearly two out of three (60.5%) took place in the service sector in contrast to the manufacturing sector (11.6%). Within the service sector, nearly one in three (27.9%) of the cases took place in schools. Beyond the setting, the majority of cases referred to only one bully (71.1%) and one victim (60%). Moreover, the supervisor/manager was identified as the perpetrator in more than half (55.6%) of the cases and as the victim in slightly more than one-tenth (11.1%) of the cases. In more than half (53.3%) of the cases, a third party was also identified. The majority (80%) of the cases involved behavior entirely on the job.

With respect to union characteristics and employer policy considerations, it was found that the union was mentioned in less than one-fifth (18.2%) of the cases. Arbitration was mentioned even less, at 6.7% of the cases. In terms of duty of fair representation and unfair labor practices, each of these was mentioned in less than one in twenty cases, with duty of fair representation at 2.3% and unfair labor practices at 2.2%. In terms of employer policy considerations, three in twenty (15.6%) of the cases referred to a code of conduct and slightly more than one in ten (11.1%) referred to a bullying and/or disruptive behavior policy. Only 2.2% referred to an ethics policy.

Demographics

In terms of demographics, males (73.3%) were more likely to be bullies and even victims (55.5%). Interestingly, less than half (40.0%) of the bullies were Caucasian, yet less than one-fifth (20%) of the victims were Caucasian. In the majority (71.1%) of the cases, there was a single bully reported and slightly less than two-thirds (60%) of the cases there was a single victim reported. Thus, there are cases in which there are multiple bullies and multiple victims.

Nature of Bullying

Based upon Salin's (2003) characteristics which define workplace bullying, the top five in descending order found in these 45 litigated cases were as follows: perceived status incongruence/power imbalance (84.4%); low perceived costs for the perpetrator, lack of policy against bullying, verbal aggression all tied at 64.4%; and lack of punishment (53.3%). It is noteworthy that one-fourth (24.4%) of cases reported acts of physical violence.

These findings related to the nature of bullying can be further categorized into overt bullying behaviors to more subtle bullying behaviors. The prevalence of the overt bullying behaviors in descending order is as follows: verbal aggression (64.4%); interpersonal aggression (42.2%); acts of physical violence (24.4%); and antisocial behavior in the workplace (15.6%). In contrast, the prevalence of the more subtle bullying behaviors in descending order is as follows: excessive criticism (44%); depriving responsibility (13.3%); social isolation (11.1%); tied at 4.4% are rumors, attacks on private life, as well as withholding information; and, finally, silent treatment (2.2%).

Table 1 Table of case frequencies.

	Variable	Frequency in sample
Case Characteristics	Court level	District 73.3%
	Sector	Public 66.7%
	Employer type	Manufacturer 11.6% Service sector, not school 60.5% School 27.9%
	Number of bullies	One 71.1%
	Number of victims	One 60.0%
	Manager/Supervisor the victim	11.1%
	Manager/Supervisor the perpetrator	55.6%
	Third party	53.3%
	Number of third parties	Zero 65.0%
	Union involved	18.2%
	Arbitration involved	6.7%
	Duty of fair representation	2.3%
	Unfair labor practice	2.2%
	On vs. off job behavior	Entirely On Job 80.0%
	Ethics policy	2.2%
	Bullying disruptive behavior policy	11.1%
	Codes of conduct	15.6%
Demographics of bullies/victims	Bully's status	Employee 80.0%
	Victim's status	Employee 82.2%
	Bully's gender	Male 73.3%
	Victim's gender	Male 55.6%
	Bully's race/ethnicity	Caucasian 40.0%
	Victim's race/ethnicity	Caucasian 20.0%
Nature of Bullying	Persistent /Repeated negative acts toward one or more individual	73%
	Perceived power imbalance	35.6%
	Hostile work environment	53.3%
	Interpersonal aggression	42.2%
	Antisocial behavior in the workplace	15.6%
	Between members of the organization	28.9%
	Social isolation	11.1%
	Silent treatment	2.2%
	Rumors	4.4%
	Attack private life	4.4%
	Excessive criticism	44.4%
	Withholding information	4.4%
	Depriving responsibility	13.3%
	Verbal aggression	64.4%
	Acts of physical violence	24.4%
Precipitating variables	All Precipitating variables	Zero 24.4%
		One 37.8%
	Restructuring, downsizing, crises	15.6%
	Organizational changes	24.4%

Table 1 (continued)

	Variable	Frequency in sample
	Changes in management	20.0%
	Changes in composition of work group	11.1%
	Cost cutting	4.4%
	Reengineering	6.7%
	Employees who feel powerless	51.1%
	Delegation of control to semi-autonomous teams	6.7%
	Promotion of the perpetrator	4.4%
	Arrival of new manager	13.3%
Motivating structures	All motivating structures	Zero 33.3%
		One 33.3%
	High internal competition	28.9%
	Politicized climate	42.2%
	Relative ranking incentives (rewards)	6.7%
	Form of discipline for those who are perceived to violate established production norms	15.6%
	Constructive discharge	13.3%
	Expected benefits for perpetrator	11.1%
Enabling Structures	All enabling structures	Zero 6.7%
		One 8.9%
	Presence of dissatisfaction/frustration with working situation/organizational climate	44.4%
	Perceived status incongruence/ power imbalance	84.4%
	Autocratic style of management	46.7%
	Low perceived costs for the perpetrator	64.4%
	Laissez faire leadership style	13.3%
	Lack of policy against bullying	64.4%
	Lack of punishment	53.3%
	Bullying seen as a rite of passage	2.2%
	Efficient means of accomplishing tasks	42.2%
Legal Basis	Title VII gender discrimination	28.9%
	Title VII national origin discrimination	6.7%
	Title VII race discrimination	35.6%
	Title VII age discrimination	6.7%
	Title VII physical/mental ability discrimination	0.0%
	Title VII religious discrimination	2.2%
	Vietnam-era status discrimination	0.0%
	Americans with Disabilities Act	4.4%
	Vocational Rehabilitation Act	0.0%
	Pregnancy Discrimination Act	0.0%
	Age Discrimination in Employment Act	2.2%
	Intentional infliction of emotional distress	4.4%
	Defamation of character	0.0%
	Constitutional (Federal)	17.8%
	Constitutional (State)	0.0%

Table 1 (continued)

	Variable	Frequency in sample
	Whistleblower's Protection Act	2.2%
	Occupational Safety & Health Act	0.0%
Managerial	Regarded as a managerial style	33.1%
Action, Impact	Post Traumatic Stress	4.4%
	Stress	53.3%
	Productivity	13.3%
	Litigation	28.9%
	Violence	4.4%
	Retaliation	17.8%
	Fired	13.3%
	Constructive discharge	2.2%
	Refusal to hire	2.2%
	Suspended	2.2%
	Transferred	2.2%
	Reprimanded	11.1%
	No employer response	37.8%
	Morale	31.1%
	Safety	6.7%
	Productivity	15.6%
	Voluntary turnover	2.2%
Outcome	Finding	Employer 73.3%
	Remand	4.4%
	Monetary damages awarded	0.0%

Precipitating Variables

Using Salin's (2003) conceptual framework previously discussed, in almost four out of ten (37.8%) of the cases was there at least one precipitating variable. The prevalence of precipitating variables in descending order is as follows: employees who feel powerless (51.1%); organizational changes (24.4%); changes in management (20%); restructuring/downsizing/crises (15.6%); arrival of a new manager (13.3%); changes in composition of work group (11.1%); tied at 6.7% are reengineering as well as delegation of control to semi-autonomous teams; and tied at 4.4% are cost cutting as well as promotion of the perpetrator.

Motivating Structures

Using Salin's (2003) conceptual framework previously discussed, in one out of three (33.3%) of the cases was there at least one motivating structure variable. The prevalence of motivating structure variables in descending order is as follows: politicized climate (42.2%); high internal competition (28.9%); form of discipline for those who are perceived to violate established production norms (15.6%); constructive discharge (13.3%); expected benefits for perpetrator (11.1%); and relative ranking incentives/rewards (6.7%).

Enabling Structures

Using Salin's (2003) conceptual framework previously discussed, in less than one out of ten (8.9%) of the cases was there at least one enabling structure variable. The prevalence of enabling structure variables in descending order is as follows: perceived status incongruence/power imbalance (84.4%); lack of policy against bullying (64.4%) and low perceived costs for the perpetrator (64.4%); lack of punishment (53.3%); autocratic style of management (46.7%); efficient means of accomplishing a task (42.2%); laissez fair leadership style (13.3%); and bullying seen as a right of passage (2.2%).

Legal Considerations

Workplace bullying does not typically occur in a vacuum independent of other legal issues in the workplace. As such, it was discovered that Title VII race discrimination occurred in one-third (35.6%) of the cases; Title VII gender discrimination in nearly one-third (28.9%) of the cases; Title VII national origin discrimination in less than one-tenth (6.7%) of the cases tied with Title VII age discrimination also at 6.7% of the cases; and Title VII religious discrimination in 2.2% of the cases. Of note was the fact that Title VII physical and mental ability discrimination did not appear in any of the 45 litigated cases in the sample. Thus, there seems to be an interaction in at least one-third of the cases between a member of a protected group as defined by Title VII and being a victim of workplace bullying. Beyond Title VII, issues related to the U.S. Constitution were identified in nearly one-fifth (17.8%) of the cases and intentional infliction of emotional distress in nearly one in twenty (4.4%) of the cases.

The Effects of Workplace Bullying: Individual and Organizational

Both the individual and organizational effects will be identified. The effects of workplace bullying in decreasing frequency were stress (53.3%), retaliation (17.8%), reduced productivity (13.3%), Post Traumatic Stress Disorder (PTSD) (4.4%), and violence (4.4%). The organizational effects of workplace bullying in declining order were reduced morale (31.1%), decreased productivity (13.3%), safety (6.7%) and voluntary turnover (2.2%).

Managerial Actions

Consequences to workplace bullying are an effect. With regard to consequences, in nearly four out of ten (37.8%) of the cases, there was no employer response and in slightly more than one in ten (11.1%) of the cases, the perpetrator was reprimanded by the employer and even terminated (13.3%).

   As it relates to organizational policies and codes of conduct related to workplace bullying, it was found that only one-third (35.6%) of the employers among the 45 litigated cases mentioned a workplace bullying policy, three in twenty (15.6%) mentioned a code of conduct, and only 2.2% mentioned an ethics policy.

Discussion

Considering the management of workplace bullying, our findings suggest that bullying is perceived as a legitimate managerial style, that many organizations do not have a policy on

bullying and that when litigated, the employer prevails. Perhaps it is this acceptance of inappropriate managerial style, combined with the lack of a policy against bullying, that result in litigation in the first place. Yet the impact of bullying on morale and productivity is not only prevalent, but grows worse if unaddressed in a timely manner.

The contributions that this study makes are several-fold: one of the contributions is the unique methodology within the bullying literature, in which bullying in a variety of organizational contexts was captured through the use of litigated cases as a data source. It increases understanding of the extreme cases of bullying, which resulted in litigation. It identifies the contexts in which the individual prevails and in which the organization prevails.

In this study, using a policy-capturing research method to analyze bullying court cases, we analyzed 45 workplace-bullying cases that were litigated in the U.S. court system, seeking to describe any patterns that may have emerged from this analysis. This descriptive study presents data regarding workplace bullying that is difficult to compare to other literature due to the differences in constructs, operational definitions, and research methods. However, similarities and dissimilarities will be presented between the findings of this study and previous investigations.

Our findings support the findings of other researchers with regard the setting in which the workplace bullying occurred; the core elements across diverse definitions of workplace bullying; Salin's (2003) definition of workplace bullying; the effects of workplace bullying; managers as a source of bullying; and the role of management and leadership style. Specifically, and consistent with the findings of previous investigators (Unison 2000; Hoel et al. 2004), the majority of cases in this study (66.7%) occurred in the public sector. With regard to the core elements that cut across different definitions of workplace bullying (Hoel et al. 2006), it was found in our study that nearly three-fourths (73.3%) of the cases involved persistent, repeated negative acts toward one or more individuals. This finding also reflects Salin's (2003) definition of workplace bullying. With respect to the effects of workplace bullying, our findings of the presence of stress (53.3%) and post-traumatic stress disorder (4.4%) reflect those of previous researchers (Rayner et al. 2002: Leymann and Gustafsson 1996; Bowling and Beehr 2006; Nielsen et al. 2008). Consistent with Rowe and Sherlock (2005), managers/supervisors were the perpetrator in more than half (55.6%) of the cases. In contrast, managers/supervisors were found to be the victims in slightly more than one in ten cases (11.1%), which is similar to the findings of one investigator who found that managers have the lowest prevalence of workplace bullying (Ortega et al. 2009). In terms of management and leadership style, we found that nearly one out of three (33.1%) of the cases regarded bullying as a managerial style, confirming the work of several researchers (Ironside and Seifert 2003; Lutgen-Sandvik et al. 2007), as well as finding evidence of both an autocratic management style (46.7%) and laissez faire leadership style (13.3%) which also reflects the findings of previous research (Salin 2003).

On the other hand, our findings are inconsistent with those of other researchers with respect to workplace violence and the gender of the victim. Our findings found that almost one-fourth (24.4%) of the bullying events involved acts of physical violence, which is greater than the one in twenty (5%) of the cases of workplace violence reported in the Bureau of Labor Statistics 2005 Survey of Workplace Violence Prevention (2006). Bowling and Beehr (2006) found that women were more likely to be the victims of workplace bullying and this study disconfirms that finding because over half (55.6%) of the victims were male.

Beyond similarities and dissimilarities, our descriptive study reveals several noteworthy findings that are worthy of validation by other researchers using the same or different research methods.

Implications for Future Research

It is suggested that an analysis of additional litigated cases at the state and federal level would provide additional insight into bullying. This is particularly true if other states begin to allow expert witnesses to opine on "workplace bullying." This will occur if other states follow the lead of the Indiana Supreme Court by recognizing a new legal phenomenon, that is, workplace bullying. Bullying cases are also litigated under state and municipal ordinances and could be the focus of a subsequent research study. Torts actions besides intentional infliction of emotional distress might also be focused upon.

While the overall focus of this study is that the bully is the aggressor, it is possible that in some situations, the victim baited the bully (so that the bully would be disciplined). This would also warrant subsequent research. Additionally, an examination of differences between the race and/or sex of the bully and victim would be another area for future research.

An additional approach might be the use of key informants or the use of arbitrated, rather than litigated cases. Such an approach and data might generate suggestions for both subsequent research and for improving organizational practices, so bullying can be better managed in organizations.

In any of the fore- mentioned suggestions, researchers might consider using multivariate analysis to discern relationships and interactions among case variables that are not discernible from univariate analysis. Both parametric and nonparametric research could be used in this research.

Implications for Practice

There are a variety of organizationally based implications for practice. These include legal approaches, changes in organizational structures and practices, and training techniques, as discussed in Table 2. These include both an enhanced ethical awareness and the placing of responsibility. Legal approaches include intentional infliction of emotional distress, involving the union and its duty for fair representation, and trying to define bullying as a form of legally prohibited behaviors, such as harassment, as defined by Title VII. Organizational techniques include encouraging companies to develop codes of conduct or ethics policies, striving to have job descriptions strictly interpreted to avoid depriving authority, stress and conflict resolution techniques, change management or organizational development techniques, and access to resources outside the chain of command, such as a hotline. Training techniques include stress management training, assertiveness training, and mediation training or establishing an ombudsperson.

Legal Techniques

Intentional Infliction of Emotional Distress Lawsuits

Individuals can sue the persons bullying them under a tort action of intentional infliction of emotional distress.[4] While this will not necessarily result in immediate changes in the workplace, the bullies may be financially sanctioned. Additionally there is the possibility of

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[4] The tort of intentional infliction of emotional distress has four elements: (1) the defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress from http://biotech.law.lsu.edu/Courses/tortsF01/IIEM.htm

Table 2 Techniques to ameliorate workplace bullying.

Legal Techniques
Lawsuits involving intentional infliction of emotional distress
Involve union and its duty for fair representation
Try to define bullying as a form of legally prohibited behaviors such as harassment
Organizational Techniques
Encourage companies to develop codes of conduct or ethics policies
Strive to have job description strictly interpreted to avoid depriving authority
Stress and conflict resolution techniques
Change management or OD techniques
Access to resources outside of the chain of command such as a hotline
Training Techniques
Stress management training
Assertiveness training
Mediation training or ombudsperson

including the manager who is allowing the bullying to be a defendant in the lawsuit. This may lead to a reduction in subsequent bullying.

Involve Union in Duty of Fair Representation

If a union is involved in the workplace, the bullied employee can file a grievance. Under the duty of fair representation, the union is obligated to represent the bullied employee. However, similar to harassment grievances, the duty is not always clear cut, since the union may also have a duty to represent the employees doing the bullying.

Identify Other Legal Protections

Since at this time, the legal definition of bullying is imprecise, the individual is encouraged to identify other protections that he/she may have under other laws: Title VII, ADA, ADEA or various state and municipal harassment ordinances. For example, is the individual being bullied due to age, race, sex, national origin, or disability?

Precisely Define Job Duties

Organizations are encouraged to precisely define job descriptions to be sure that the job descriptions are strictly adhered to. This will reduce the bullying of individuals who are loafing and not doing the required duties of the job. These individuals are likely to be bullied by other workers who have to pick up the slack. It will also reduce bullying of the individuals who for whatever reasons are overachievers and are regarded as rate busters. Other workers may bully this type of employee, since they fear that the job requirements could ultimately be increased.

Organizational Techniques

Codes of Conduct and Ethics Policies

Organizations can also adopt and enforce codes of conduct and/or ethics policies, wherein bullying behaviors are proscribed and sanctioned. It will be necessary for the organization

to communicate and enforce the codes of conduct or the ethics policies uniformly and consistently.

Precisely Define Job Duties

As previously mentioned, organizations are encouraged to precisely define job descriptions to be sure that the job descriptions are strictly adhered to. This will reduce the bullying of individuals who are loafing and not doing the required duties of the job. These individuals are likely to be bullied by other workers who have to pick up the slack. It will also reduce bullying of the individuals who for whatever reasons are overachievers and are regarded as rate busters. Other workers may bully this type of employee, since they fear that the job requirements could ultimately be increased.

Conflict Management

Individuals who find themselves embroiled in a conflict can seek to resolve that conflict in several ways including, but not limited to, competing, collaborating, compromising, accommodating and avoiding. Those individuals who compete and demonstrate aggressive behavior to resolve the conflict may find themselves "crossing the line" and harming others in a bullying manner. As such, it is the affirmative duty of the organization to offer conflict management training. This includes an assessment of conflict management styles as a guide to the selection of conflict management approaches that are not aggressive and in themselves do not run the risk of further escalating into a bullying situation.

It is also possible that the individual being bullied is bringing the bullying upon himself/herself by baiting the bully. If this is occurring, the employee being bullied may benefit from counseling, either through the EAP or from on the job coaching/counseling.

Organization Development

OD is the art and science of planned change in organizations. NIOSH (2002) developed a concept entitled *Healthy Work Organization (HWO)* to define the desired end-state for organizations seeking to not only protect worker health but to promote worker health. The characteristics of a HWO are as follows: surveillance of the changing nature of work, the effects of new organizational policies and practices on worker health and safety, changing worker demographics, and the interplay between environmental forces, such as the current fiscal crisis, and organizational adaptations to them, such as restructuring, downsizing or workforce reductions.

Stress Management Training

All employees, whether engaged in bullying behaviors or not, will benefit from stress management training. What we know about employee stress is that a high proportion of employees are stressed, whether due to job and/or personal reasons, and that this is a precipitating factor for bullying. Given the increased economic difficulties today, it is reasonable to expect that individuals will be increasingly stressed and increasingly engaged in workplace bullying.

Assertiveness Training

Individuals who find themselves victims of workplace bullying may benefit from gaining the knowledge and behavioral skills to carry themselves at work in such a way that signals to potential bullies that it is not appropriate to "bully me." Also, those individuals who are at a high potential for bullying, can also benefit from assertiveness training by learning skills on how to "tone it down."

Alternative Dispute Resolution (ADR)

ADR is a method of resolving disputes without relying upon a more adversarial process which is most closely associated with litigation and secondarily with arbitration. The two major forms of ADR are mediation and the use of an ombudsperson. These techniques exist, even in non-unionized workplaces. These two approaches share the following characteristics: a third party, neutrality, and an emphasis on the disputing parties resolving their differences to a point that is mutually satisfying for both parties. The role of the mediator or ombudsperson is not to judge or evaluate but rather to facilitate the resolution of the dispute that led to the bullying.

Appendix 1. Coding of Variables

- Coded as present 1, absent 0 for all of the following, except as indicated

  1. Court level: District, Appeals, Supreme
- Organizational or demographical variables

  2. Sector: Public, private
  3. Employer type : Manufacturing, service sector not school, school
  4. Bully's occupation: Employee, client, student, member of public, multiple
  5. Victim's occupation: Employee, client, student, member of public, multiple
  6. Bully's sex
  7. Victim's sex
  8. Bully's race/ethnicity: White/Caucasian, Black/African American, Hispanic/Latino, Native American, multiple
  9. Victim's race/ethnicity White/Caucasian, Black/African American, Hispanic/Latino, Native American, multiple
  10. Number of bullies
  11. Number of victims
  12. Manager/Supervisor the victim
  13. Manager/Supervisor the perpetrator
  14. Third party
  15. Number of third parties
  16. Union involved
  17. Arbitration involved
  18. Duty of fair representation
  19. Unfair labor practice
  20. On vs. off job behavior
- Behaviors

  21. Persistent negative acts toward one or more individual

22. Repeated negative acts toward one or more individual
23. Perceived power imbalance
24. Hostile work environment
25. Interpersonal aggression
26. Antisocial behavior in the workplace
27. Between members of the organization
28. Social isolation
29. Silent treatment
30. Rumors
31. Attack private life
32. Excessive criticism
33. Withholding information
34. Depriving responsibility
35. Verbal aggression
36. Acts of physical violence
37. Regarded as a managerial style
38. Post Traumatic Stress (PTS)
39. Stress
40. Litigation
41. Violence
42. Retaliation

- Employer Action

43. Fired
44. Constructive discharge
45. Refusal to hire
46. Suspended
47. Transferred
48. Reprimanded
49. No employer response

- Relevant Laws—Legalities

50. Title VII sex discrimination
51. Title VII national origin discrimination
52. Title VII race discrimination
53. Title VII age discrimination
54. Title VII ethnicity discrimination
55. Title VII physical/mental ability discrimination
56. Title VII religious discrimination
57. Vietnam-era status discrimination
58. Americans with Disabilities Act
59. Vocational Rehabilitation Act
60. Pregnancy Discrimination Act
61. Age Discrimination Act
62. Whistleblower's Protection Act
63. Occupational Safety & Health Act
64. Intentional infliction of emotional distress
65. Defamation of character
66. Constitutional (Federal)
67. Constitutional (State)

- Outcomes Organizational and Legal

    68. Morale
    69. Safety
    70. Productivity
    71. Voluntary turnover
    72. Ethics policy
    73. Bullying disruptive behavior policy
    74. Disruptive behavior policy
    75. Codes of conduct
    76. Finding
    77. Remand
    78. Monetary damages awarded

Appendix 2: Coding of the Salin Variables

Precipitating factors

Restructuring, downsizing, crises
Organizational changes
Changes in management
Changes in composition of work group
Cost cutting
Reengineering
Employees who feel powerless
Delegation of control to semi-autonomous work teams
Promotion of perpetuator
Arrival of a new manager

Motivating factors

High internal competition
Politicized climate
Relative ranking of rewards, incentives
Form of discipline for those perceived to violate established production norms
Constructive discharge
Expected benefits for perpetrator

Enabling factors

Presence of dissatisfaction/frustration with working situation or organizational climate
Perceived status incongruence/power imbalance
Autocratic style of management
Low perceived costs for perpetrator
Laissez faire leadership style
Lack of policy against bullying
Lack of punishment
Bullying seen as a rite of passage
Efficient means of accomplishing tasks

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