California Caucus of College and University Ombudsmen - The Journal

1995-1996

# California Caucus of College & University Ombudsmen

# The Journal - 1995

# *DEDICATED TO THE MEMORY OF*



Christine McKee

July 17, 1941 - May 4, 1995

## DEDICATION

Christine McKee

Former Ombudsman, University of Manitoba, Canada

Many of us have worked in the Ombudsman profession long enough to encounter individuals who are truly remarkable, and we have the privilege of calling these individuals "colleagues." However, for a select few, we have the good fortune to call them "dear friends." Christine "Mum" McKee was both -- a dedicated Ombudsman and a dear, reliable friend. When Christine retired from her position as Ombudsman at the University of Manitoba, she continued to remain my dear, reliable friend.

The following thoughts were written after Christine's passing as I reflected on my Ombudsman colleague and my dear, reliable friend. I penned my words the day after Christine passed away. I want to share my personal sentiments with all of you because I believe that those of you who knew Christine will understand the depth from which my feelings rose, and you will be able to share my feelings. However, for those of you who were not fortunate enough to have known her, I hope my written affections will provide some insight into a truly wonderful and unique woman.

## Dance with the Leprechauns

for

**Christine "Mum" McKee**

A lovely lady died yesterday. I heard about it this afternoon. Christine "Mum" McKee has gone to "Dance with the Leprechauns." I cried slowly at first

because I did not want to believe what I heard. Therefore, I held back the tears. Then, realizing the truth in the sadness, I let the tears fall completely -- or rather, almost completely, because I believe one or two puddles remain somewhere within me. Perhaps, this remaining residue of sorrow is a tribute to our friendship -- the long-standing, genuine, and reliable bond that existed between "Mum" and me.

During the many years that I knew "Mum" and called her my friend, my only regret was that our conversations did not last longer; that our laughter ceased too soon; and that the distance between our families was too far for us to meet frequently and share our dear, reliable friendship. "Mum" and I spoke often about our families -- updating each other about the growth of our children; about the benefits of having our respective spouses; and about our mutual love of travel.

The year that my wife, (C.D.) and I mentioned that we were going to Ireland, "Mum" immediately offered her home at Cashel-by-the-Sea and suggested that we should go, enjoy, and "Dance with the Leprechauns." Christine described Cashel-by-the-Sea as the epitome of tranquility, harmony, and genuine peace. "Mum" was correct because Cashel-by-the-Sea was a complete and total reflection of herself. Indeed, how could the environment be anything less because it was the place to which "Mum" and her husband, Jasper, voyaged often and loved dearly.

From the moment that C.D. and I arrived, we discovered that Cashel-by-the-Sea was exactly as "Mum" had depicted -- the charming white cottage; the piled stones; the handkerchief-covered haystacks; the sheep grazing in the meadows; the hospitable caretakers who cared for both the land and the visitors during her absence; and the neighbors -- especially the warm wonderful folk who reflected "Mum's" own charisma, warmth and sincerity.

I shall never think of Ireland without remembering "Mum" and Cashel-by-the-Sea. Already, I miss her deeply with a poignant regret that is inherent in the experience of having known a person who became a dear, reliable friend. Thank you "Mum"; God bless you always; enjoy your new surroundings; and have a "Dance with the Leprechauns" for me.

Ron Wilson
05/05/95

## ACKNOWLEDGEMENT

Shirley Crawford

It is with sincere gratitude and appreciation that the California Caucus of College and University Ombudsmen acknowledges the contribution that Mrs. Shirley Crawford made to our Asilomar Conference by way of the support services she delivered toward the completion of this publication. Without her diligent and nurturing assistance, our Journal would not have been possible.

Mrs. Crawford is the Administrative Assistant to the Assistant Executive Vice Chancellor-University Ombudsman at the University of California, Irvine.

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# INTRODUCTION

Ron Wilson

University of California, Irvine

The challenge of preserving and maintaining academic integrity within academic institutions that are confronting economic obstacles in the delivery of their services to the academic community is neither diminishing nor declining. In reality, institutions in academe are consistently faced with complex issues that entail conscience, correctness, sensitivity, accountability, and accessibility to their multi-level operations.

To combat the inherent dilemmas in a monolithic bureaucracy, many institutions have chosen to establish an "office of neutrals" who can hold a "mirror of truth" to their policies and procedures and dare everyone to look for flaws and cracks. When this happens, an academic institution either has a conscience and is an agent of social progress or it is not; either an academic institution possesses accountable methods to address the vicissitudes in society's population growth, cultural demographics, and economic needs, or it does not; either an academic institution utilizes and involves all its members or it does not; and either an academic institution is invested with the responsibility of ensuring fairness for everyone or it is not.

The articles in the 1995 Journal correspond directly to the Ombudsman Office mission and obligation of ensuring that the academic administration reflects just policies and reasonable procedures. In addition, the essays that follow describe the tools and resources that the Ombudsman will need to respond effectively and earnestly to this commitment.

In Ombudsing: A Ten Year Assessment of Principle, **John Binder** provides an objective analysis of his role as the Student Ombudsman at Kent State University from 1985 - 1995. Because the Kent State "Ombudsman services" had lapsed between the inception in 1970 and the Ombudsman appointment in 1985, Binder re-opened the office without the benefit of current records, policies, or procedures; served 79 students the first year; and doubled the number of cases in the second year.

During the third year, Binder was invited to share his knowledge of the Ombudsman practice with a management team in industry. In spite of a feeling that he lacked the requisite "years of experience" to counsel novices in the field of conflict negotiation, Binder aptly defined 10 guiding principles which, seven years later, he still believes are valid, relevant, and non-negotiable. (However, Binder affirms strongly that an individual case might warrant the clarification or emphasis of a particular principle.) Binder concludes his "ten golden rules" with an eleventh adage -- practicing the "art of objectivity" is rewarding.

#

The national rise in the number of academic dishonesty incidents and an increase in the awareness of academic integrity's importance prompted Washington State University to study their hundred year old policy; to restate the core values inherent in the honesty concept; to clarify definitions of plagiarism; and to suggest ways to prevent cheating. Because the University Ombudsman, **Mary Gallwey**, was a member of the Committee charged to develop the new statement, she was able to deftly capsule the several year process in her article, Academic Integrity is a Community Responsibility.

Gallwey's past experience in handling cases which involved charges of cheating gave her an edge in citing its subtle complexities: What constitutes a violation? What is the requisite proof? How should a suspect be investigated? How should the incident be reported? How can a faculty member reduce the temptation to cheat?

At the study's culmination, Galley was given the opportunity to answer these questions in a series of articles which appeared in the faculty newsletter under the column, "From the University Ombudsman." At present, Gallwey is convinced that the policies and procedures governing academic integrity will remain dynamic, viable, and interminable as new students arrive on campus to discover and absorb the wonders of knowledge.

#

In The Ombudsperson as a Change Agent, **Helen Hasenfeld**, skillfully outlines a masterful blueprint for resolving perennial problems. To achieve the goal of letting the institution address and solve a particular issue rather than permitting the Ombudsman's intervention for each student who encounters the specific problem, Hasenfeld offers the following plan:

1. Understand your institution and the hierarchical ladder up which a proposed change must ascend.
2. Initiate the process to begin the proposed change.
3. Implement the change after its initial approval.

To illustrate the manner in which a beneficial change can be effected, Hasenfeld provides a cogent and detailed account of the following projects at the California Institute of Technology that needed, underwent, and benefited from significant revision: "Revising a Sexual Harassment Policy and Procedure"; "Training the Teaching Assistants"; and "Creating a Committee for Work and Family Life to Improve the Affiliation between CalTech and the 25 year old Child Care Center."

The successful results of these three CalTech "ventures in reform" yield empirical evidence that an Ombudsman Office can engage in permanent, salubrious change.

#

Once again, **William Kennedy** offers valuable insight into the application of a business principle on an academic institution. In TQM and Ombudsry: Revisited, Kennedy employs cogent examples which make it disturbingly clear that the "quality control" concept can cause harm to the individual in a proportion equal to the desired improvement for the masses.

For example, the present economic reality that "one pie contains only a finite number of pieces" can cause a University Administration to reduce the number of employees under the guise of "Quality Control" or "Improved Methods." Therefore, an entire job category can be eliminated and the affected employees can be required to interview for a smaller number of re-defined positions.

When this phenomenon occurs on a campus, the Ombudsman Office might be besieged with employee grievances. Simultaneously, the Ombudsman might be asked to protect the "generals" from the inevitable effects of their pragmatic decisions on the unfortunate "soldiers."

Moreover, if the Academic Ombudsman Office was originally designed to unsnarl an administrative snafu from a bureaucratic policy or procedure run amok which became the innocent individual's nightmare, then, the present evolving foray into the volatile employment arena can create an untenable dilemma and/or a painful adjustment.

#

A former Peer Ombudsman at the University of California, Irvine, and a present doctoral student at The Harvard Graduate School of Education returned to his Alma Mater to conduct a summer research project on the current and controversial "Shield Laws." In Ombudsmen and The Shield Laws, **José Moreno** describes the present laws that protect the "confidentiality tenet" for

Ombudsmen and also advocates their expansion into a legal mandate that provides protection of the privileged communication between Ombudsmen and their diverse clientele in academe.

Moreno skillfully demonstrates the direct correlation between the client's perception of the "confidentiality principle" that will stave off future retaliation and the Ombudsman's ability to assist both the individual grievant and the institution at which they are employed.

Moreno also explains the strengths and weaknesses of the existing laws as well as the requisite legal components if an Ombudsman Office is to function as an institutional conscience with impunity. Moreno's postulate regarding the inherent contradiction lying in the principles of "justice" and "confidentiality" is reasonable and thoughtful, i.e., "Can justice for the individual be achieved at the expense of confidentiality being irrevocably lost for future clients seeking guidance in problem resolution without suffering personal retaliation?"

#

Was it fortuitous fate or apt irony that alphabetically placed How to Respond to a Subpoena after Ombudsmen and The Shield Laws? Albeit a paradox, **Janis Schonauer** perspicaciously confronts the Ombudsman's dilemma when the present Shield Laws fail to protect the neutrality and confidentiality tenets which buoy the office foundation in her article, How to Respond to a Subpoena.

If the unwelcome subpoena is delivered, the Ombudsman will soon be immersed in a veritable quagmire because the work setting will move from a warm, comfortable office to a cool, austere courtroom. Moreover, the number of opponents will expand significantly and will include: the former client (Plaintiff); the Plaintiff's attorney; the academic institution accused of malfeasance (Defendant); the institution's legal representative (University Counsel); and the Judge.

However, there are several logical steps that the beleaguered "Advocate for Equity" can take in formulating a "plea for neutrality." In her timely article, Schonauer objectively outlines a practical course of action for the subpoenaed Ombudsman to follow.

#

Any Ombudsman who has attempted to help a student obtain a belated degree by overcoming the specific requirements of an individual School or Program will derive immense enjoyment from reading The Vonnegut Degree by **James Vice.**

Using ironic humor and dry wit, Vice summarizes the awarding of an overdue degree in a series of five (5) personal memos and letters that he wrote between March 1971 and February 1994 while serving in the following academic positions: Assistant Dean of Students at the University of Chicago; Dean of Students at the Illinois Institute of Technology; and Ombudsman at Loyola University Chicago. The student, and subject of the personal correspondence, is Kurt Vonnegut, the famous author of Slaughter House 5; Cat's Cradle; and Palm Sunday.

Vonnegut began his academic studies at Cornell University before World War II; qualified for admission to the University of Chicago's postwar "Three Year MA Program"; completed three years of study (but did not write the requisite thesis); and finally received a Master's Degree in 1971. In the interim, Vonnegut published his books; conducted Writers' Workshops; and taught at Harvard University as a Visiting Professor.

In the early 1960's, Vonnegut submitted Cat's Cradle for his Master's Thesis. During this period, Vice was Assistant Dean of Students at the University of Chicago and was serving on the Academic Standing Committee that reviewed and denied Vonnegut's application for a Master's Degree because of a University rule which precluded a published work as an acceptable Master's Thesis. Furthermore, Vonnegut could not receive a Bachelor's Degree because he had never been admitted to the College; his excess credits did not meet the degree requirements in any undergraduate program; and he would need an additional year on the campus.

The matter remained in academic limbo until Summer 1970 when Vice noted that a published Master's Thesis was a Physics Department requirement! After a discussion with the Anthropology Department Chair, Vonnegut's petition was brought before the faculty members who voted to award him the degree that he received in 1971.

In 1994, Vice obtained Vonnegut's permission to publish his academic odyssey that spanned more than two decades, and which is related to us in this delightful account of a successful trek through higher education's bureaucracy.

#

In Researching Campus Conflict Management Culture(s): A Role For Ombuds?, **Bill Warters** builds a strong case for Ombudsmen to consider the benefits from conducting research while working in the field of academic conflict negotiation. Inspired from his present role as Chair of the Higher Education Committee within NAME (National Association for Mediation in Education), Warters encourages cooperation between Ombudsmen and the research faculty in academic Dispute Resolution Programs. Both of these entities in academe have a common commitment to improve the campus environment by reducing the causes of campus tensions.

Warters dispassionately depicts the present Ombudsman role of objectively investigating problems; equitably interpreting policies; and making appropriate referrals without prejudice. However, he skillfully concludes with an obvious fact: the Ombudsman is a unique recipient of raw data that has not been distorted by management for political purposes. This unfiltered information can be valuable for understanding the campus subcultures; measuring the subtle stresses within these diverse groups; and sounding an alarm regarding the possible volatile repercussions that might occur if certain cultural codes or ethnic conventions continue to be ignored or transgressed.

Cognizant of the reality that clients who approach the Ombudsman for a solution to their personal or professional dilemmas do not wish exposure -- even as empirical data -- Warters affirms that a successful researcher can take practical steps to preserve confidentiality for the individual subject while providing useful information for the academic community.

#

In The Social Worker as Ombudsperson: Similarities and Differences, **Annette Werk** and **Estelle Hopmeyer** present a comprehensive outline of the requisite steps that an Ombudsman and/or a Social Worker usually take to negotiate a conflict, resolve a dispute, or aid a troubled individual.

To illustrate the essential skills that are used in both professions, Werk and Hopmeyer, both certified Social Workers, convincingly describe a familiar case, i.e., the student who approaches the Ombudsman Office with an academic problem or a bureaucratic morass and promptly reveals a mental predicament with psychological dimensions. In this delicate and complex situation, Werk and Hopmeyer emphasize that both the Ombudsman and the Social Worker will define the problem; set a goal; obtain a verbal or written agreement to resolve the issue; undertake the involved tasks; make any necessary referrals; evaluate the results; and maintain confidentiality.

If the distraught student can identify and accept the realistic, available options, and can be assisted in their successful negotiation, this particular assignment (which might span four months or more) can be termed a triumphant intervention.

#

**Linda Wilcox**, Ombudsperson, Harvard Medical School, shares her valuable experience of opening the new doors of an Ombudsman Office at an old and established institution. In Getting Started, Wilcox masterfully identifies the obstacles that one might confront in attempting to provide "informal complaint resolution" in a setting that houses only offices for "formal grievance procedures," i.e., Human Resources, Personnel, Affirmative Action, and University Counsel.

Wilcox also tackles the awkward questions: "How can an office bereft of power benefit an institution steeped in sovereignty and founded on tiers of autonomy?" "How can an office that hears complaints from staff avoid embarrassing the offices that were designed to manage sensitive relations between employee and employer?" "How can an Ombudsman Office function independently, remain neutral, and protect client confidentiality?"

Wilcox's concise, prudent answers will convince the reader that experience is a powerful teacher and example an effective method. Moreover, Wilcox's suggestion to slowly build credibility through consistent, reliable behavior is sound, sage advice.

#

A daily exchange of ideas, opinions on how to effectively resolve a complex issue, and words of moral support is possible for the Ombudsmen whose computers can access the INTERNET and E-MAIL (electronic mail). Empirical evidence of this electronic feat is provided in Travel Reflections via Internet Electronic Mail - "E-Mail", by **Mary Rowe**, Ombudsperson and Special Assistant to the President at the Massachusetts Institute of Technology and **Dean Gottehrer**, President, United States Ombudsman Association and Head, Ombudsman Leadership Forum.

Using the E-Mail format, Rowe and Gottehrer share their respective trips and exotic adventures in Johannesburg, Cape Town, and Lesotho, South Africa. These personal accounts of their travels are exciting, informative, and a definite creation of modern technology.

#

Hopefully, the preceding Journal articles have provided both inspiration and information for our Ombudsmen who labor in the dispute resolution field. Moreover, we trust the essays in our 1995 Journal will assist our Ombudsmen in obtaining a positive reflection from the mirror they might hold to view the true composition of their institution. Finally, in their interminable quest to obtain this "mirrored truth," we conclude, Bonne Chance!

Ron Wilson
Assistant Executive Vice Chancellor-University Ombudsman
University of California, Irvine

Editor of the CCCUO Journal

# OMBUDSING: A TEN YEAR ASSESSMENT OF PRINCIPLE

John J. Binder, Ph.D.

Kent State University

I became student ombudsman at Kent State University on July 1, 1985. Although there had been an ombudsman for students first appointed in 1970, he had been in retirement since 1977, leaving a void of eight years in ombudsman services. There were no records, policies or procedures and the retired ombudsman had gone fishing.

With a background in higher education law, counseling and academic administration, I moved forward fearlessly, put my new title in the phone book and opened the door for business. A brief orientation of the service was given to the collegial deans and the office was off and running - barely. A grand total of seventy-nine students were served the first year. I attended one meeting of midwestern ombudsmen. A colleague gave me a brochure from an established ombudsman office at a large state university. That was the extent of my professional development in year one.

By the end of year two my caseload had doubled and, as fate would have it, I was about to become an "expert." During the third year, the personnel director in a nearby automobile assembly plant had been informed that an ombudsman existed in the vicinity. Since he wanted to develop an ombudsman service utilizing his middle management supervisors, he asked me to provide an in-service training day. Feeling inadequate for this task, I dragged my

feet for several months, but the request continued. Reluctantly, I agreed to consult in a one-day workshop.

I invited a clinical psychologist and a dispute resolution specialist to round out the objectives for the day but the main thrust for ombudsing was contained in a single chart entitled Ombudsman and listed ten principles:

1) UNDERSTAND YOUR ORGANIZATION - both the formal and informal channels.

2) UNDERSTAND GRIEVANCE PROCEDURES - most large organizations have various, decentralized procedures.

3) UNDERSTAND DUE PROCESS - it is nothing more than fair play.

4) STAY IN CHANNEL - use your authority to skip channels judiciously.

5) STAY OUT OF THE MIDDLE - the ombudsman is above and outside the problem, not in the center.

6) NEVER PLAY ONE SIDE AGAINST THE OTHER.

7) STATE WHAT YOU CAN DO AND WHAT YOU CANNOT DO FOR PEOPLE - define client responsibility.

8) TWO SIDES TO THE COIN - you are the advocate; you are objective in your assessment.

9) MUCH OF YOUR JOB IS LISTENING-REFERRING - formal grievances are a small percentage of your work.

10) RECOMMEND CHANGES IN THE SYSTEM.

Are these principles still valid in my practice nearly eight years later? If I were giving this workshop today, would I shorten the list? Would I add to it? The answer to the question of validity is yes, the principles

are valid and relevant. I would not delete any principle because I believe these are the ten fundamental rules that lead to the effective practice of ombudsing. From my experience, I cannot suggest additional principles that would bear equal weight; however, there is plenty of room for clarification, special emphasis and some caution.

Understanding your organization, grievance procedures and due process require no further explanation. But, what about skipping channels? The phrase "authority to skip channels" raises the eyebrow of the experienced practitioner. Is it clearly defined in your institution or in mine? To say the least, it is a sensitive issue. If a problem is referred to you from your president, courtesy alone permits you to deal directly with that office. How many have heard someone say, "Why did they come to you first?" The answer may be clear but a clear answer won't help solve the problem. The ombudsman who regularly skips channels runs the risk of becoming an intimidator rather than a persuader. More importantly, changes, at least immediate ones, are best effected at their source and that is usually at the operational level within departments and colleges dealing with assistant deans, program advisors and the like. To inform the next higher authority of a problem is a sure way of losing credibility at most and collegiality at least. If in assisting your client reach an equitable solution you upset someone in the organization, even slightly, you need to repair the damage.

Stay out of the middle. There is a tendency in any large organization to transfer the problem - let someone else own it and, therefore, be responsible for its solution. No one is more vulnerable than the ombudsman. Staying above and outside the problem does not reduce your effectiveness, it

strengthens it. Sometimes this can be accomplished easily and other times it can only be done by clearly asserting the proper role of the ombudsman. Playing one side against the other is the proven method for ending up in the middle. Staying out of the middle is closely interwoven with the need to not play one side against the other. In fact, the ombudsman is never one of the principal players. You are the facilitator of a process that ensures fairness. Manipulation of individuals has no part in that process. Don't confuse manipulation with persuasion.

The client who expects the ombudsman to perform a quick fix may be disappointed. The student who complains about the quality of teaching of a tenured faculty member needs to know that the faculty member won't be fired tomorrow, or even disciplined as a result of one or several complaints. The student should be informed that there are options for students, not always without risk, to improve instruction. The results may not be immediate. Without being judgmental, the experienced ombudsman can define student responsibility in the instructional process. A student once told me that she protested poor instruction by not attending class. This may be the least effective way to improve instruction. What the ombudsman can do quickly is put the student in touch with the help network. Every institution has one, albeit never quite as large as one would like. Every institution has dedicated knowledgeable people who will go out of their way for the student seeking assistance. It is still mildly surprising, after a decade of ombudsing, to see how quickly a problem is solved when the student is put in touch with the right person.

The problem with only two sides is the easy one. I have stated, not entirely in jest, that the typical ombudsman case has about nine sides. But what about advocacy and objectivity, are they terms in contradiction? The term "student ombudsman" may be part of the confusion. The title implies to some an immediate, unwavering advocacy for the student, and that implication does not fairly describe the process. By the time a student's complaint is thoroughly investigated, your advocacy may shift. You may eventually become the advocate of the financial aid officer who has patiently explained (correctly) the student's financial eligibility five times and the student simply doesn't like the answer. Your role is to be objective and you need to see that a sixth session does not take place.

Those well-meaning people in your institution who feel sorry for you because all you do is hear complaints need to save their sorrow for someone else. Attendance at a formal hearing represents a small percentage of the time most of us spend in our work. I spend much more time dealing with questions, concerns and confusion than I do with pure complaints or formal hearings. The statistics are clear in this matter in my institution, the student has a much better chance of reaching a satisfactory solution through informal negotiation.

Those who believe that working with student complaints is the most difficult aspect of ombudsing are missing the mark. It is more difficult to effect long-term change in a large, complex institution. This statement is made in the context of an institution that in the last decade has added or refined grievance procedures for student athletes, student employees, academic complaints, residence hall contract release, billing and financial aid.

This was accomplished through the leadership and cooperation of many persons in the institution. One must eliminate the notion that the ombudsman works alone.

A ten-year assessment is not complete without some mention of burnout. In talking with colleagues, one solution I suggest is that ten years is the time to take stock and renew the basic tenets of ombudsing. It is time to renew our belief in the dignity and importance of each individual. As each college generation changes, in some ways it amazingly tends to remain the same. Although the concern at hand is old to the ombudsman, it is unique and of vital importance to the client. Seeing the face of the student who has just been awarded a full, well- deserved academic scholarship because you helped locate her application lost in the system has its reward for the ombudsman too. Ideally, ten years experience in the institution should increase our effectiveness. If nothing else, it should ensure that ombudsing is an accepted, essential service for the betterment of students.

What would I do to revive a chart prepared nearly a decade ago? I would call your attention to the last statement on that faded transparency and underline it in red:

THE ROLE OF OMBUDSMAN IS A POSITIVE, REWARDING EXPERIENCE.

# ACADEMIC INTEGRITY IS A COMMUNITY RESPONSIBILITY

Mary Gallwey

Washington State University

Faculty throughout the United States note increasing divergence between their values and those of students with respect to academic integrity. A recent study of business students found that 80% acknowledged having cheated within the past five years, either in high school or in college, for example. Washington State University has developed a new policy, restating that academic integrity is a core value and setting forth definitions of and procedures for handling academic integrity violations. This policy replaced a more general one which had been in effect for most of W.S.U.'s hundred-year-plus existence.

W.S.U. had worked on its new statement of policy and procedures for several years. A group comprising academic and student personnel administrators, an Assistant Attorney General, representatives of the undergraduate and graduate students, and the University Ombudsman developed a statement of policy and procedure which was widely circulated for comment, revised, and approved by the Faculty Senate and Board of Regents. It was printed in the Student Handbook effective Fall, 1994. Faculty, however, with the exception of department chairs, do not receive the Handbook.

Fortunately, the Editor of W.S.U.'s faculty and staff newsletter (WSU Week) had agreed the previous spring to print a column "From the University

Ombudsman" on an occasional basis. Three columns were devoted to the new academic integrity policy and its implementation during 1994-95. These columns had several major purposes. The most urgent was to inform the faculty of its new responsibilities under the policy. However, my experience in handling cases under the previous policy had taught me that, even among faculty, there were differences of opinion about what behaviors constitute violations, what standards of proof are appropriate, and other practical questions, such as what the faculty member should or could do to reduce cheating, how to investigate and judge suspected cheating, what range of consequences might be available, and what the faculty member should do about reporting cheating. ("Cheating" is used here to cover the whole range of academic integrity violations.)

Perhaps most urgent was to inform faculty members that they were now required to report confirmed academic integrity violations to an officer in Student Affairs. This had previously been possible, but was little known among faculty. Repeated violations may occasion bringing the student before the Conduct Committee for possible disciplinary sanctions. However, it was equally important to educate faculty about what behaviors constitute violations under the code, especially since previous cases brought to the Ombudsman had made apparent the existence of varying definitions of cheating among the faculty. Justice requires that the faculty member accord suspected violators academic due process, but -- again -- previous cases had revealed considerable variation in concepts of due process, standards of proof, burden of proof, opportunity to respond to charges, and so on. Finally, as educators, we have a responsibility to educate students about the core values -

- including academic integrity -- of the University and to take reasonable steps to promote the realization of those values.

The three articles were: "Academic Integrity -- New Responsibilities for Faculty to Report Violations," "Academic Integrity Is a Community Responsibility," and "Preventing Academic Integrity Violations -- and Responding to Them." The first of these gave a brief history of the development of the new policy and emphasized the importance of reading the new policies and procedures, pointing to three ways of obtaining the document. It also made clear that investigating suspected violations, determining the academic consequences, assigning an appropriate grade, and reporting the violation to the appropriate student affairs officer were all faculty responsibilities. Many students (and some faculty) erroneously believe that the faculty member must prove guilt beyond a reasonable doubt and that the accused has the right to remain silent. Neither is the case! W.S.U.'s Conduct Code requires students to answer questions truthfully and the faculty member has to meet only a "preponderance of the evidence" standard of proof.

The second article emphasized the values underlying the policy and that upholding these values is a responsibility of every member of the academic community:

> Academic integrity cases are distressing to all parties. The search for truth and the speaking of truth, insofar as we can know it, is at the core of being an academic person. When we discover evidence of violations, we are hurt, offended, angry, sorrowful, betrayed. We have to make decisions we would rather never have to make about what to do, and we must carry them out in ways that may be personally distasteful. Even informing a student that there is evidence of a possible violation is unpleasant. Carrying through important due process steps (such

> as providing opportunity for the student to present exculpatory or mitigating evidence) can be very trying, especially when evidence of guilt is overwhelming but the student denies guilt. The urge to punish may become very strong and the desire to educate may fade in such circumstances.
> (WSU Week)

This article went on to outline some of the most important, fundamental aspects of academic due process:

> First of all, we should have the same definitions. For illustration, some instructors define plagiarism as "exact reproduction of published work," without acknowledgment. This definition is at once too broad and too narrow. Exact reproduction is not necessary -- and neither is prior publication. The important thing is whether or not the ideas or work are falsely presented as one's own, for example, by close paraphrasing. On the other hand, work that has become common knowledge in a field so that it is part of a general background need not be attributed; even when the exact words of some author are employed we no longer need to cite sources for statements such as "the earth orbits the sun" or "people repeat behavior which has been rewarded in the past." (See WAC 504-25-310 (6) Plagiarism in the Student Handbook, 1994-95.)
>
> Second, we should have the same list of violations of academic integrity. The most frequent problem here is that many students and some faculty do not regard multiple submission as a prohibited behavior. The student who has submitted a piece of work for credit in one course cannot receive credit again for it. This should be made clear. When students are encouraged to bring work from one course into another (for example, in a writing course which requires re-writing assignments from some other course), students should understand that it is the work of editing and revision which earns the new credit. (WSU Week)

The article went on to emphasize that we are members of a community, whose senior members, the faculty, have a responsibility to each other and to students to maintain the community's core values by example and by not putting students in temptation's way. Because not every person reads WSU Week every week, the new responsibility to report confirmed violations was reiterated.

The final column stressed prevention. It was based, in part, on the observation that faculty, themselves, may not define violations in the same way. The previous years' cases in the Ombudsman's Office had pointed to two particularly troublesome areas. The advice about defining plagiarism was repeated with some additional examples of specific practices such as submitting someone else's term paper as one's own, incorporating passages from a reference book into a take-home exam, paraphrasing a published work or making only minor changes, such as varying examples, in homework assignments, or after studying with others, and reaching a consensus to have everyone copy or memorize it, or even simply to aggregate individual responses to sub-sections of an assignment and print out copies for everyone.

> The second most frequent problem is multiple submission. The rule here is that one can't get academic credit, even for one's own work, more than once. The credit was earned and awarded in, say, anthropology or management; it can't be legitimately had again in, for example, education or psychology. A paper written at one institution should not be expected to fulfill a requirement at another. Students get confused about this because "it is my work; it's not a copy." They may also become confused when they are encouraged to bring a previously written draft (or submitted assignment) as a basis for further work, for example in an EXCEL (a tutorial for at-risk students) or a technical writing course. It must be made clear that the EXCEL or writing credit is for additional work, not the original paper. It would probably help students if faculty would be careful not to say things like "you can use a paper you've already written" or "you'll get credit in (other course name), too" in such situations. (WSU Week)

This article concluded with a great deal of practical advice on preventing academic integrity violations. Suggestions included making a vigorous explicit statement of the instructor' s commitment to academic integrity and intention to deal appropriately with violations. Examples of the range of appropriate sanctions were provided, but without suggesting exactly how

any particular instructor might, in a specific case, decide to act. A substantial list of specific techniques for minimizing the opportunity to cheat was also provided. This included some discussion of ways also of reducing the motivation to cheat (e.g., not grading "on the curve," a practice which puts students in competition with each other, rather than comparing each student's work to an absolute standard).

The most immediate apparent result of the articles was an increase in calls from faculty. Some wished only to express appreciation or request reprints or to inform the author that the caller had enlarged the articles and posted them on the student bulletin board. Most of the callers, however, wanted advice on how to handle a current suspected violation properly. One called for permission to reprint in a journal published for recipients of a leadership award, citing appreciation for the emphasis on values which were made explicit in the articles and the policy. Clearly the series met a need, which many faculty recognized, for clear, specific guidance in addition to information that, unfortunately, would not have reached some of them otherwise.

What remains to be done? The author is exploring with the Faculty Development office the possibility of a teacher's manual which would aggregate both policies and practical advice in a range of areas, from field trips to cultural diversity to amorous relationships to protection of human subjects in class-related research. It is an aim of the Ombudsman at W.S.U. to prevent problems, not just to try to achieve a just solution after the fact. Already the need for reprints of the series has become clear. A meeting with the Council of Deans is in prospect. Should the Office of the

University Ombudsman begin to offer in-service training for teaching assistants? For new faculty? Clearly the implementation of the policy is a work in progress and, probably, it always will be as new instructors and new students join the community of scholars.

# THE OMBUDSPERSON AS A CHANGE AGENT

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"There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things." Niccolo Machiavelli

An important part of Ombudsry is to help our workplace help itself in developing mechanisms to deal with larger institutional problems and/or to foster institutional change while remaining neutral ourselves. Working on an institutional level often helps resolve issues that have been contentious and perceived as either unfair or problematic. It is also an opportunity to instigate change which is seen as potentially positive to the campus. Although helping an organization change old policies or adopt new policies and programs is neither easy, nor does it produce instantaneous results, ombudsmen should consider this task as potential resolution of issues at an institutional level rather than deal with the same issue again and again with individuals.

Taking on the task of institutional change may feel daunting. To work in this arena is to put yourself "out there" for everyone to see. However, there are certain opportunities which present themselves in the life of an O that can be taken advantage of with a minimum of risk and a maximum of success. When these arise, it is important to recognize them as such and it is

helpful to have some tools to think about before and during such a project. The objective of this paper is to begin to look at what these tools are and how to fashion them to fit your own style and the style of your institution.

I will illustrate the use of these tools by drawing upon three projects that have recently emerged at Caltech: a revised sexual harassment policy and procedure(s), the institution of T.A. training, and the newly appointed Work and Family Life Committee. The bold words or phrases pertain to the concepts within that section.

1. Understanding Organizational Context: Diagnosis

   A. Know your organization. Understand its history and mythology. Think about "sacred cows". What are the chances for success in such a project? Who can you depend on to listen? Who will the beneficiaries be? Will such a project compromise your neutrality?

   B. Think about "turf" issues. Is this really something for the Ombuds office to tackle or is this really a suggestion to make to the correct person? Whose toes might feel stepped on if this plan of action comes from you?

   C. Think about others who have some interest in this area of concern. Have some off the cuff discussions with him/her to test the waters. "I've been thinking of something we talked about a while ago" is a good way to open such a discussion.

   Example

Caltech uses T.A.'s quite differently than larger schools. Most courses are taught by faculty, T.A.'s are used as graders, lab assistants and section discussion leaders. These roles were not seen as needing much preparation, except for some safety issues in lab. (**History** and **Mythology**)

Two summers ago, I received a call from the Dean of Students saying that too many under-grads were complaining that their Teaching Assistants were attempting to date them, causing a great deal of discomfort among the

under-grads and setting them up in a "catch 22" position. I was asked to talk to all of the new graduate students about our sexual harassment policy and the issue of power that T.A.'s have over the students in their sections. This seemed appropriate to me (**Role of the O**) and I called the different Division Chairs to ask permission to do so. (**Interest of others/test the water**) Each one had the opinion that we should really do more for T.A.'s and this was a good first step. No one offered to take on the task of organizing further training, but did not seem hostile to the idea. (**Turf**)

I gave some thought to this issue and decided that Caltech graduates will be leaders in industry, academia and government, and that as such, it is important for them to learn good communication skills. (**beneficiary**) I returned to the Dean of Students with feedback from his colleagues and my observations of why our students should have these skills. (**General concern of the Institute**) We both visited the Dean of the Graduate School (**others who have interest, or should have interest**) to discuss our thoughts. He showed some interest in this, and I offered to do a survey of current grad students to test the waters. (**Chances of Success?**) The results were resoundingly positive. We crafted a position to take to the faculty Graduate Students Committee for their approval, (**Turf/stepping on toes**) and received it.

I made it clear to the Graduate School Dean that I would help design and implement the program, but that it was a give away to his office. We are currently working on a revised curriculum based on evaluations of the first training, and are now in the transition phase of the Graduate School taking total responsibility for the project. A possibility has arisen to appoint an

ESL instructor as the co-ordinator of the whole project on an ongoing basis. I've strongly supported this idea and plan to do a presentation at "their" training.

2. Initiating the process

A. Begin with the realization that some organizations are more amenable to change than others, and that the sort of project that you have in mind needs to make sense and fill a perceived need by the powers that be.

B. Start small. Organizational change works best when you can tackle a project in which there is some modicum for success. A series of small successes generally enable you to attain the support you need to tackle something on a larger scale or more controversial.

C. Make a decision to "do no harm" (or as little as possible). An Ombuddie needs to show the institutional constituency that she/he possess the skills to be effective and to work as much as possible within the existing parameters of the institution.

D. Choose a project in which you will remain neutral. The objective should help the institution as a whole. Frame it in this way if or when you write a proposal.

E. Consider the appropriate climate/weather on campus for your project. Can you defend this idea as being a help to the campus community, or certain segments of same? What about the timing?

F. See if you have "allies" who will work with you in planning and presenting a new project. Having colleagues who are excited about a project cannot hurt!

Example

Caltech has had a sexual harassment policy since the early '80's, but was unable (**unwilling?**) to craft a set of procedures for the faculty. (**ability to change?**) There was a good deal of dissension on campus (**appropriate climate**) because of this by both staff and students for which procedures did

exist. When it became clear to the Provost that something needed to be done to rectify this omission, he set about doing this himself. Each draft was "edited" by individuals who he chose to make comments. It was pretty clear to me that this task was quite intimidating. The Provost did not seem to want to make any commitments to procedures because the faculty had always seen itself as immune from such constraints. (**institutional history**) My suggestion of a committee to discuss and formulate procedures (**neutrality**) ended in a fiasco. (**my INTENT was to do no harm**)

I let a year go by (**timing**) before indicating my discomfort at not having these in place to several well placed people on campus, including General Counsel, Director of the Women's Center and Director of Employee Relations. (**allies**) We caucused and decided to recommend another committee, one hand picked by the Provost with full campus representation, to attend to this task. (**does this make sense? is it possible to succeed?**) I made it clear that my role was to make sure that all of the procedures were consistent and fair. (**neutrality**) The committee was formed, it met over a period of 6 months, all of the campus constituencies were represented, and we hammered out procedures that are consistent to the point of adjudication. (**institute parameters**) A "conflict of interest" statement was inserted into the policy to deal with consensual relationships (**and non-consensual relationships**), (**controversial issue**) the faculty board asked one or two questions, passed the procedures, (**institutional parameters**) and we have had no further displeasure from anyone as to unfairness/unbalance of process. (**help the institution as a whole; success of the project**)

By waiting a period of time,

1. The first debacle was somewhat forgotten,

2. Faculty became interested in knowing how the law really did apply to them,

3. We developed a constituency to approach the Provost with a true plan of action and recommendations of committee structure.

By having the committee made up of respected and knowledgeable people who were committed to change, we were able to hammer out a revised policy and procedures that have been embraced by the whole campus. (**timing, institutional parameters, collaboration, success**)

3. Implementing the Change

A. Test your assumptions! Because you think something is beneficial does not mean that it is seen the same way across the campus. Don't begin a project unless you have some information and/or data from the community that can be used as a basis for your proposal. This might mean doing a survey, reviving a plan whose time is now more appropriate, etc. If you can piggy back a larger plan onto a request made of your office, all the better. This was the case with the T.A. Training.

B. Having collected data on need, feasibility, cost, plan of action, write a proposal with this information as it's backbone. Again, if a committee is available to help with such a proposal, so much the better. Your task is to show why the proposal will benefit the community and to sell it to the powers that make such decisions.

   I have found a proposal for a "pilot project" to be an excellent tool to use in attracting affirmative results. No one is then tied down to something forever, and the continuation of the project can be based on its actual merits.

C. Be creative with the proposal. Try to incorporate existing programs, materials, think of several ways to carry out such a proposal, etc. Be ready and willing to listen to feedback from members of the community and take it back to the drawing

board. Don't take it up the chain until you have received feedback from people whom you trust to be honest and give constructive criticism.

D. Cite what other peer institutions are doing along these lines. Many of our institutions are very attuned to being competitive in many realms of campus life, not only academics.

E. Have plans to give your program away. It is fine to help coordinate, plan, produce what is needed for a project to go forth the first time, but what you do not want is to increase your job description and/or take responsibility for someone else's job. Therefore it is wise to think about whether or not this project will stress the system and become either a time or financial burden for the new "owner".

F. Don't be overly disappointed if a project or program does not fly. Perhaps it needs to "sit" until:

1. its time has come,
2. it becomes clear to another person that this is necessary,
3. someone else comes to you about this same issue,
4. enough time has passed to "neutralize" a project that might have been too scary to tackle in the past.

Example

Caltech has had a child care center for 25 years. It has always had a loose affiliation to the Institute. It has its own board, but receives "in kind" services from Caltech worth quite a bit of money. The memo of understanding states that 85% of children attending be Caltech affiliated. Because of the high tuition cost, this number fell below 40%. (**data**)

The cost of the center has been a thorn in the side of staff, grad students and post-docs for many years. (**timing not right for change**) A

Quality of Life survey done in 1989 quantified this issue as being one that disgruntled large numbers of the Caltech community.(**data**) A small coalition of staff, including myself, decided it was time to bring the new utilization numbers to the attention of the President. He was not pleased. At the same time, a number of issues regarding Family and WorkLife surfaced, ranging from Cafeteria Benefits to Elder Care. (**campus climate, timing**) This seemed like a perfect time to present a **proposal** to the Administration to consider a discussion of these issues as well as some **coordination of existing benefits and services that already existed** on campus, but were not well known. In addition, the proposal spoke to the issue of recruitment and retention of world class scholars and competent support staff. (**rationale**) A list of **peer institutions** and what they had in place for staff, faculty and students to make work/study life more congruent with family life caught the attention of the Administration.

To my amazement, I found myself on a standing committee of the Institution, chaired by a faculty member, (**give away**) to look at Family and Worklife issues and make recommendations based on our discussions with the Caltech community. This has resulted in:

1. An increase to 90% of Caltech families signed up for the '95-96 school year at the Child Care Center. (**demonstrated success**)

2. A subcommittee working with the center to promote designation of United Way money to the center to build up a scholarship program. (**potential success w/no cost to institution**)

3. A summer child care program for K-5 children that began this summer with an emphasis on science. The science curriculum is developed and executed by work-study students. (**demonstrated success**)

4. The possibility of this program increasing to an after school latchkey program. (**has its time come? are there available resources now?**)

5. The organization of existing Caltech services and facilities, as well as those in Pasadena and the surrounding areas that will be "on-line" in Sept.'95. (**service w/no cost to institution**)

6. A recommendation to the Administration for a 3 tier child care program, utilizing existing facilities in the general Caltech area and including infant care. (**has its time come?/ are there available resources now?**)

In conclusion, I want to stress that without having others on the campus to help share the "risk" of institutional change, I'd probably be much more office-oriented. These projects have come to fruition because I like to collaborate, I don't mind giving things away, I have enough to do without "owning a project" and I am always challenged to look for natural opportunities upon which to build a wider solution. For me it is also a way of balancing my worklife. When one deals with the difficult and complex inherent in the Ombuds job, working on larger issues with potential positive impact for the entire community gives me another perspective of the community and puts me into contact with people who I might never had met. Try it, it's fun!!

# TQM AND OMBUDSRY: REVISITED

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It has been two years since I sat down to write "TQM and Ombudsry" (1994 JOURNAL) which sounded a warning to ombuds operations regarding the imminent onslaught of total quality management/continuous quality Improvement (TQM/CQI) initiatives sweeping across college and university campuses both here and abroad. The article predicted, among other things, that many ombuds operations might be subjected to various degrees of scrutiny by roving ad-hoc TQM problem solving teams which, in their relentless searches for disharmony and dysfunction, might see the ombuds office as a valuable source for identifying institutional problem areas. In this previous article, I suggested that ombudspersons might want to become familiar with basic TQM literature and lore so that they might prepare key administrative ombuds supporters for what might likely be coming across their desks in the name of quality improvement.

Since the appearance of "TQM and Ombudsry" and the presentation of related materials at the 1993 UCOA convention and in other professional forums, the form that the actual challenges of such quality improvement initiatives have taken has become clearer to me. It turns out that I sorely underestimated the potential peril that TQM inspired reformation practices pose to those whose professional efforts are dedicated to mediation, con-

flict resolution, and advocacy activities. My prediction regarding well-intentioned, if overzealous, teams of inquisitors desiring to look through ombuds files never seemed to materialize, at least not in my realm of experience. What has materialized, however, is that successive waves of massive and protracted variously motivated TQM/CQI campaigns christened "institutional re-engineering efforts" or "operational transformations" have effectively left many ombudspersons out of the loop while administrators frantically scurry about trying to "wheel-and-deal" to preserve some vestige of their previous empires. In short, what has happened in a number of organizations, is that ombuds or advocacy offices have been forced to function in a state of institutional paralysis, and worse, some ombudspersons have found their roles on campus becoming increasingly irrelevant. As a result, some, like myself, have chosen to remove themselves from that role and to apply their advocacy and mediation skills in other venus.

In the 1994 article I described the emerging role of the academic ombudsperson as a three-fold function: 1) explaining policies and procedures to aggrieved parties and assisting them with bureaucratic complexities; 2) serving as the mediator/negotiator to facilitate settlement of heated issues; and 3) influencing the development of new policies and procedures to meet changing institutional needs. The period of institutional chaos which accompanies typical TQM/CQI initiatives seems to effectively put an end to the third, or heuristic, function of the ombudsperson while it seriously impairs the first two.

If I understood him correctly, this is what Howard Gadlin was alluding to during his keynote speech at the 1993 UCOA convention when he warned of

the danger of the ombuds office becoming sort of an institutional shock absorber to protect the administration from being confronted with the legitimate claims of persons who feel that they have been grossly wronged by the institutions they serve.

In the experience of this writer, no ombuds operation is adequately staffed and prepared to deal with the onslaught of legitimate concerns that result from the institutional shuffling which hides behind the name "operational transformation," or some other benign-sounding euphemism. In fact the entire notion of refining policies and procedures goes out the window when all policies and procedures are put up for grabs during a TQM/CQI revolution with dubious motivations.

In reviewing a number of such TQM/CQI initiatives, I have concluded that for the most part there is a huge gap between the intentions of the truly evangelical TQM'ers and the line administrators who typically put these ideas into practice and manage the process along the way. Institutions have various reasons to undertake TQM/CQI conversion programs. Some large corporations that have undertaken TQM/CQI initiatives have done so as a matter of absolute survival. Classical examples of legitimate TQM/CQI revolutions include those occurring over the last decade at Xerox and Motorola both of which essentially reconstituted themselves from the ground up as a means of combatting sophisticated and successful foreign competition. Fundamental to these efforts was the relentless identification and elimination of waste, careful analysis of the competition, and the entire restructuring of the work force and work processes from the top down. Some of these pioneering companies experienced a turnover of 80% of management personnel

in developing a team that could embrace the new "quality" functioning. Those who underwent these changes early on realized that it might take 8-10 years before their quality efforts would bear fruit in the marketplace. Such long-term commitments had to be truly embraced by top leadership and by the various boards which oversee the operation of such corporations. Even among this group of firms, that are sincerely pursuing the long and difficult path of quality improvement, there have been several who have not survived long enough to see if the changes would have borne fruit. One thing is clear, radical organizational transformation such as that undertaken by these firms requires leadership that is very knowledgeable, very committed, and very sincere. The integrity of the entire effort rests in the dedication, sincerity, and longevity of the leadership.

Another tier of schools and companies seem to have decided to get on the TQM/CQI bandwagon for somewhat less noble reasons. Typically, these institutions may be struggling with the competition but do not truly believe that they are fighting for their very lives. Like most institutions in the industrialized world, these schools perceive themselves as having to provide more and more services with less and less financial support from their customers (students, taxpayers, grants, etc.). These firms look to TQM/CQI not as a radical means of reforming the company from the ground up but adopt portions of the gospel of TQM as a means of neatly cutting corners to improve the bottom line. Specifically, these institutions adopt the rhetoric of the TQM/CQI aficionados as a means of capitalizing on some of the by-products of genuine quality improvement initiatives.

One of the axioms of all TQM/CQI programs involves the elimination of institutional functions (and the employees associated with those functions) which do not "add value" to the final product. Another TQM/CQI aphorism suggests that organizations should eliminate layers of management as a means of bringing the voice of the customer closer to the ears of top leadership. Both of these principles are sound parts of a legitimate TQM/CQI reformation and have been successfully implemented by Xerox and Motorola. Both, however, can also be used to serve the political needs of administrators who feel the need to eliminate employees as a means of staving off real institutional change or simply to free up money for discretionary spending. In my experience, it is such half-hearted attempts to adopt the vocabulary of legitimate TQM/CQI efforts while pursuing alternative ends that pose the greatest risk to the well-being of an institution, those who depend upon it, and those who work to insure the equitable application of its policies and procedures.

A cursory review of TQM/CQI initiatives in higher education would suggest to me that most are motivated by other than the loftiest intentions. In fact, a pattern of pseudo-TQM/CQI management practices seems to be emerging in colleges and universities, health care systems, and in many corporations. These pseudo-quality improvement initiatives seem to share some common features:

1. Top leadership does not practice what it preaches. TQM'ers say "they talk the talk but they don't walk the walk." Austerity initiatives are spread throughout the institution but the perks and the salary increases of top administrators are not touched. Another manifestation of such hypocrisy is the severe trimming of the labor force from the bottom through middle-management while top management is not similarly trimmed and may even be increased in scope. Top managers may even reward themselves financially

for "making the hard choices." An example is the management team that claimed that it cut its own budget by 20% to meet corporate-wide targets. Upon examination, the "cuts" were actually savings computed from the benefits packages of employees laid off in other divisions.

2. Ad hoc quality improvement teams are composed and their output is carefully controlled by senior management. Team decisions are only acknowledged when they meet the political needs of top management. "Problem teams" are quickly disbanded or fall into disrepute while teams supporting management's inclinations are given expanded roles.

3. Operational problems are assigned to problem solving teams allowing management to avoid dealing with difficult issues. In most cases, the hardest decisions are farmed out to expensive consulting firms who take the heat for difficult calls like layoffs and changes in employment practices and classification systems. A common strategy used by consulting firms to help management avoid employee litigation is to phase out an entire employee category and require employees in that category to interview for a much smaller number of redefined jobs. Such initiatives effectively set employees against one another and destroy morale.

In my estimation, these kinds of pseudo-TQM/CQI and operational transformation efforts put the organization into a virtual state of paralysis. All operation decisions are effectively suspended as nearly every concern is answered with "we've got a team looking into that at this moment." Employees struggle to do their regular jobs as well as to serve on numerous TQM teams. The resulting confusion eventually begins to trickle and then to gush through the doors of the ombuds office. In other institutions, the situation is so disheartening and demoralizing for employees that they don't even bother to seek out assistance.

In my perusal of TQM/CQI literature, even the most idealistic TQM zealots tend to ignore the basis upon which ombudsing and related advocacy activities are founded: namely, that big institutions, by their very size

and complexity, inevitably evolve bureaucratic structures that cause unnecessary hardship or even direct harm to those who comprise or depend upon the proper functioning of that bureaucratic structure. The "continuous improvement," and "quality is a journey not a destination" rhetoric does little to protect the interests of the employee or the customer who is intentionally or unintentionally wronged by the system. The very idea that teams of employees can evolve systems that are immune from dysfunction runs counter to our experience as ombudspersons.

The ombudsperson's role is built upon the enlightened notion that all leadership is less than perfect. Responsible leadership knows that an internal system of checks and balances, especially one which is free and independent to seek redress for those who are wronged, goes a long way towards humanizing the monolithic structures which control many critical aspects of modern living.

I would conclude this discussion by issuing a warning to ombudspersons regarding the pernicious advance of pseudo-TQM/CQI practices in institutions of higher learning. Unfortunately, I have little to offer in the way of countering the profound effects that such institutional practices have upon ombuds operations. Perhaps this article might spark some discussion to that end.

# Ombudsmen and The Shield Laws

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As an undergraduate student at the University of California, Irvine, I had the opportunity to work for two years with our University Ombudsman's Office as Peer Ombudsman. In this position I was able to work with various campus constituencies and individuals in addressing a variety of issues and grievances ranging from date rape to academic dishonesty. At the core of our ability to work with these issues, and for myself as a student, was the confidence that we could serve the campus community as outlined by the University and College Ombuds Association Ethical Principles of "objectivity, independence, accessibility, confidentiality, and justice; [and where] justice is pre-eminent." Over the past two months, three years departed from the UC Irvine campus, I had the opportunity to return to the UCI Ombudsman's Office to assist in researching what could conceivably have a significant impact on the Ombudsman field. The issue is confidentiality and the extension of privilege to Ombudsmen in their work, in effect, shield laws. The purpose of this paper is to provide a glimpse of current "shield laws" in California and at the federal level, how they may or may not protect California's University and College Ombudsmen, and how such laws may impact the effectiveness of Ombudsing. In preparing this paper I received tremendous support and insights from various persons across the field, and would

like to thank in particular Jan Schonauer and Ron Wilson at the UC Irvine Ombudsman's Office, and Geoffrey Wallace at the UC Santa Barbara Ombudsman's Office.

In their discussion of "Conceptualizing the Ombudsman Office," Schonauer & Wilson describe the Ombudsman's primary roles on a university campus as, "that of a 'truth teller' and that of an 'institutional conscience'...the ombudsman becomes an advocate for equity who owes allegiance to neither an individual nor a particular segment of the campus..." (pg. 1 ) In its function, unfortunately, Ombuds Offices continuously find themselves in the precarious position of having to pay as much attention to perceptions, as they do to realities. As the principles state, and in most cases the reality of the Ombuds practice, ombudspersons are guided by "objectivity, independence, accessibility, confidentiality, and justice." These principles, as fundamental as they may be to the profession, paradoxically make the profession and the effectiveness of an ombudsman extremely vulnerable.

In their discussion "Maintaining The Confidentiality of Communications," Kandel & Frumer write, "Critical to the success of any ombudsman program is that it be used by employees. Most significant in structuring the ombudsman role is to ensure not only maximum protection of confidential information, but also the <u>perception</u> among prospective clients (the employees) that maximum protection is available from disclosure or retaliation." (pg. 588) In other words, if people do not trust in the confidentiality of an office, the purpose of an Ombuds office is rendered ineffective. In addition, Kandel & Frumer argue that ombudspersons must overcome two major disadvantages: being on the institutional payroll where the

ombudsman must report to someone, and having to disclose enough to justify the office's existence; and a dependency on confidentiality without direct and blanket legal protection of privileged communication. The tenet of confidentiality, whether real or perceived, is critical to the ability of an Ombuds Office to effectively achieve its purpose.

The perception of confidentiality is especially fragile on our University and College campuses. Tensions and conflicts are inherent processes within any setting where human interaction takes place. As microcosms of our larger society, these tensions and conflicts may be compounded and exacerbated as our Universities and Colleges are forced to deal up front with the complexities brought about by a diversity of peoples, interests, and roles bottled up in an insular environment, where the purpose is to explore and challenge oneself and, in that process, challenge those around you. Where the university and its decision-making processes have been described by organizational theorists as an organized anarchy, the Ombuds office serves a vital role in assisting the campus community through the cracks and pitfalls created by the ambiguities of anarchy. In order for the Ombuds Office to effectively assist the campus community through these processes, persons must feel secure that their communications will remain protected and kept confidential.

In California the state legislature has passed what could be considered as shield laws for Ombudsmen; however, the language of the statute calls for the protection of communication within a mediation process. California Evidence Code 1152.5 provides, "evidence of anything said or of any admission made in the course of mediation is not admissible in evidence

or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given." One can certainly see where this statute protects Ombuds offices in their work at mediating and resolving campus conflicts; however, a College and University Ombuds Office does not only deal with mediation. In effect, the laws in California are more narrowly tailored to suit mediation processes.

In the larger context a campus Ombuds Office serves as a confidante to the campus community and as a vehicle by which the pressures of everyday campus life can be vented. University and College Ombuds Offices provide an ear to frustrated and sometimes disgruntled students, staff, and faculty who just want to talk. Ombuds Offices provide a refuge where the campus community can take their concerns, as individuals or groups, about the institution with the confidence that the Ombuds Office can relay these concerns to the "Administration" without any form of retaliation or disclosure of their identity. In addition, Ombuds Offices serve as consultants to Administration in times of institutional ambiguity without trying to push an agenda. In short, the campus Ombuds Office, in many instances, and well before the need for a mediation process, serves the institution as an internal consultant, facilitating and enhancing communications throughout the campus. It is through this function that the role of "institutional conscience" can be truly applied. Whether the University or College is portrayed and perceived as a "faceless bureaucracy" or "organized anarchy," or both, the Ombuds Office is the only campus office which not only serves to mediate for the campus, but also to mitigate the harshness of the institution. The campus

Ombuds Office serves to not only protect persons from the institution, but to protect the institution from itself. Information shared by students, staff, and faculty is not always within the context of a mediation process and it is to this end which California's mediation laws fall short in protecting the Ombuds profession.

In the California Evidence Code 1152.5, privileged communications can be disclosed if all parties involved in the mediation consent to such disclosure. There are two issues raised with this provision which relate to Ombudsmen: the first is the assumption that the breach of confidentiality, whether voluntary or not, only affects the outcome of the specific case. Unfortunately, as discussed earlier, the Ombuds Office, to be truly effective, must rely a great deal on how their work is perceived, and in particular, whether their work is truly confidential and perceived as confidential...no matter what. Were an Ombudsman to disclose privileged information, even if all parties consented, the Ombuds Office leaves itself open to all forms of interpretations as to how and why information was disclosed. This can be even more damaging, if those who sought assistance from the Ombuds Office are not "victorious" because in their resentment and bitterness, they may turn on the office and publicly point blame at the Ombuds office as not protecting their interests.

The second issue raised by the provisions in the California's mediation laws is the paradox that is exposed between the principles of justice and confidentiality. Is justice served by disclosing privileged information in the efforts to see justice served in an individual case? Or is it just to violate the tenet of confidentiality and in the process endanger the profes-

sion and its overall benefit to the institution for the sake of an individual case? The federal courts have assisted the Ombuds profession in this paradox in two federal cases -- Monoranjan Roy v. United Technologies Inc. and Kientzy v. McDonnell Douglas Corp. The courts used four factors in determining whether information shared with the Ombudspersons should be privileged: 1) whether the parties believed that the communications were confidential; 2) the need for confidentiality; 3) whether society would recognize the value of the confidential relationship; and 4) a comparison of the benefits of disclosure compared to the injury that might result.(pg. 661) These four factors all weigh the tenets of confidentiality and justice within the larger context of whether the overall good outweighs the individual good, and they are right in step with the principles and doctrines of the Ombuds profession.

Most importantly, federal courts have recognized the benefits and needs of an Ombuds privilege. However, although these two cases extended Federal Rule of Evidence 501 to protect communications for Ombudsmen, the courts stopped short of extending blanket privilege. As with the California code, the Federal code extends privilege to Ombuds communications on a case by case basis. That is, an Ombuds office has to prove a mediation process was taking place for communications to be considered privileged. Thus the Ombuds Office could conceivably find itself having to either defend itself against the party who sought the assistance in the first place, or the Ombudsman's own superior(s)...the institution. In either case, much credibility could be jeopardized in the Ombuds' attempt to quash a subpoena. It would only be a matter of time before the campus community's trust and con-

fidence -- so critical to an Ombuds Office -- is lost if time and time again the Ombuds Office had to return to court to protect one of the most fundamental principles of the profession... confidentiality. One could only imagine the moral, ethical, and professional predicament if an Ombuds was compelled to testify by the courts. At any rate, in the short term interest, California and Federal Evidence Codes 1 152.5 and 501 can be used to protect Ombuds communication. However, mediation as a process is only part of the Ombudsman's function on a campus or organization. In the long term, the limited focus of current "shield" laws on mediation process, and not Ombuds processes, can result in an Ombuds Office function becoming limited in scope and effectiveness as Offices may choose, without blanket protection of communication, to not risk the profession and the principles by which it depends for fear of legal repercussions.

In summary, current California and Federal evidence codes do provide some protection for University and College Ombuds Offices. Both at the state and federal level, Ombuds communications appear to be well protected when all parties consensually agree to a mediation process. However, these codes only apply to that area of the profession which is involved in mediation processes. This in mind, it is imperative that University and College Ombuds Offices in California have a direct and clear communication line with the highest levels of administration in efforts to ensure institutional support and backing when communications are challenged. The institutional powers that be must agree and express their support (if possible in writing) of their commitment to protecting the communications shared by and to an Ombuds Office. Simultaneously, Ombuds Offices would be wise to post the codes of

ethics and principles to which they are committed and work under in literature dispersed outside the office and within the office. In addition, University and College Ombuds Offices must urge their institutions, local legislators, and state legislators to seek proper and direct legislation aimed at protecting Ombuds communications. As the field of mediation grows, it is equally important for Ombuds Offices to work closely with mediation associations and organizations in the analyses and deliberations of laws, regulations, and legislation which pertain to the practice of mediation, and, at the same time, educating the larger mediation profession to the particulars of the Ombuds profession which call for specific protections of Ombuds communications.

# HOW TO RESPOND TO A SUBPOENA

Janis Schonauer

University of California. Irvine

October 6, 1989, my first day as an Ombudsman, one of the policies handed to me was a copy of "Procedures for Accepting and Responding to Subpoenas Duces Tecum and Notices of Deposition." These procedures are a part of the Irvine Campus Policy and Procedure Manual, Section 700-11. Included are instructions for verifying the signature on the request, ensuring that at least five days have been allowed to respond, and the proper means of notification to the server and institution. The last item even instructs you to request the court for reimbursement @ 20 cents per mile and for clerical and copying costs. Not surprisingly, since this was a University policy, there was not a word about privacy, confidentiality, or the role of the Ombudsman.

I perused the document wondering what on earth it meant to me. After all, the Ombudsman is informal, confidential, neutral; <u>everyone</u> knew that on this campus where the office had been active for over thirteen years. That policy was quickly buried in the flood of visitors who find their way to the office at the start of the Academic year. I did not know I would be subjected to a subpoena last year. Today, I feel a little like Lyndon B. Johnson showing off my post-subpoena scar in the shape of a bent scale of justice. This paper will review my crash course in learning to respond to a subpoena.

It is my adaptation of the excellent advice I received from Elizabeth Clark, Sandra Cooper, Mary Lou Fenelli, Helen Hasenfeld, Harley Johnson, Susan Neff, Mary Rowe, Ella Wheaton, and others. Any omissions or errors are mine, however. I will identify options for you to consider should you be served a subpoena for your testimony or records. So, with 20/20 glasses firmly affixed to the back of my head, and my wounds healed, here are some points to consider when a subpoena arrives:

1. Prior to the subpoena, meet with your boss. Discuss the University and College Ombuds Code of Ethics. Describe the connection between objectivity and confidentiality. Craft an understanding of the neutrality, privacy, confidentiality values which are the foundation of the Ombuds office. Strive for agreement on these issues. Get that agreement in writing in the form of your Memorandum of Understanding, Terms of Reference, Job Description, whatever it is that describes your relationship to the institution. Have your boss provide the framework for legal counsel to follow in defending your office's right to confidentiality. Understand that counsel for your institution will not easily accept that you need to be different from everyone else. Advertise your confidential, informal status in office publications, inform the people who visit your office of your standing.

   Raise hypothetical cases where you might be subject to a subpoena, elicit the institution's response. Provide copies of existing "shield laws" and case decisions which have sheltered mediators and Ombuds from responding to a subpoena. Help your leadership develop an understanding of the value of an informal and private means of addressing the institution's problems. Determine if the institution will hire separate counsel for you in the event of a subpoena. Meet with the University counsel, faculty, and administrators who oversee the formal appeal mechanisms in the institution. Explain your informal, confidential standing which precludes you from appearing before or speaking in any formal process within the Academic Senate, Human Resources, or Student Policies.

2. Review your record keeping. Are you comfortable with the type and amount of information you keep? Do you need to keep records at all? Are you prepared to have the records

become public? If you ever act in a role which requires formal records, such as investigator or fact finder, write a note to your files and to the parties to whom you report that indicates you are, in this instance, acting outside your Ombudsman role.

3. When a subpoena does appear, ask to see the original subpoena to determine who is named; what records are requested; and where and when you are required to appear. Do not rely on secondhand information about the subpoena. You may not be named in the subpoena. Notify your legal counsel that the subpoena has arrived and restate your intent to remain confidential Provide counsel with your job description.

4. Resist the deposition, do not testify at the first request. As mentioned in step one, be certain that your job description includes that you are a confidential and informal problem solver and mediator. Refer to the evidence codes 1152.5 (California) and 501(Federal) which refer to mediators. Offer to speak to the role of the Ombudsman, without revealing specific names, dates, or cases. If your records are subpoenaed, and you are unsuccessful in defending them, offer to write a summary. Get your boss to intervene and explain the reasons why a case must be developed without the Ombuds' direct involvement.

5. If you must go to the deposition, bring the Code of Ethics, your job description, and literature which describes your office, and, at least at the first deposition, talk only about the general operations of the office.

6. Call on Ombuds organizations, use the Ombuds E-mail, Cal Caucus members, The Ombudsman Association, and the University and College Ombuds Association, for support, letters, hand holding and ideas. Read the literature. One excellent article is "Employment Litigation----The Corporate Ombudsman and Employment Law: Maintaining the onfidentiality of Communications" by William L. Kandel and Sherri L. Frumer in Employee Relations Law Journal, Vol. 19, No. 4, Spring 1994.

7. If these tactics do not convince those seeking information that they need to go elsewhere, write to the judge. Explain your role as a informal, neutral mediator and request that you be allowed to limit your testimony to the general duties of the Ombudsman. A judge may more likely

understand the role of a neutral third party if your counsel or the counsel for the plaintiff are still pressuring you for information.

8. Consider hiring your own legal counsel. This has the advantage of protecting you from an assault on the confidentiality. But it can escalate the conflict if you are hiring an attorney to protect your office from your own institution. You should think carefully and consult with other Ombuds about the risks involved before proceeding with this option. The California Shield Law (for mediators) provides that the person requesting disclosure may have to pay for the attorney fees incurred by the party fighting that disclosure. You may want to work out an agreement with your institution to provide you with outside counsel.

9. Maintain your sanity, get advice and support from your friends, partner, family and colleagues. Take care of yourself, meditate, stay healthy, get away from the fight every day. Take a walk, sing out loud, tackle a project which nurtures you. Remember Alinsky's organizing principles, do something "immediate, specific, and realizable"! Adopt a dog from the pound and tell all your troubles to her. It worked for me, and I <u>know</u> she can keep a secret. Find a way to forgive the person (or institution) subpoenaing you. I harbored a fair amount of anger and hurt at the thought that someone whom I had sheltered and helped would "turn" on me. This was a colossal waste of time and completely beside the point. The individual always has recourse to the legal system; sometimes it is the only way to address the wrongs suffered. Create a way to discharge any negative emotions which arise when you believe your neutrality has been compromised and your integrity challenged. Keep the lines of communication to your boss open.

10. Finally, discover a way to use your experience to protect the office in the next case. If you were called and did have to testify, try to gauge the damage done to your office's credibility and determine how to repair the harm. Use your influence to improve support for the informal and confidential nature of the office. Apply the knowledge you gained in your struggle to strengthen other Ombuds offices. Work toward developing a shield law for Ombuds.

# THE VONNEGUT DEGREE

James W. Vice

Loyola University Chicago

Kurt Vonnegut received a master's degree from the University of Chicago in 1971, more than two decades after he departed from the campus and after he had become famous and, one supposes, rich. The degree came as no little surprise to Vonnegut since he had requested a degree repeatedly some years earlier when he would have found a college or university degree of some sort, almost any sort, useful in getting a permanent, or at least semi-permanent, teaching position. He was, as I recall, a Visiting Professor at Harvard at the time notice of the Chicago degree arrived.

When Vonnegut's Palm Sunday was published, a friend and former student of mine called my attention to a passage in which the author spoke in disparaging terms of receiving the degree. Vonnegut was understandably cynical. What actually happened, however, was not the simple matter of exploitation that it seemed. It was the result of a well-intentioned venture into something like ombudsing: finding justice in a case which had fallen between chairs.

The story follows in a series of documents which require little editorial explanation. The first is an internal memorandum from me to the then-Vice President for Public Relations at the University of Chicago, Eddie Williams. The rest are correspondence between me and Vonnegut. The pre-1994

material was typed on typewriters and thus without benefit of pc spelling checks, and my proof-reading was clearly inferior to Vonnegut's. There are thus a number of "sic's" scattered through the texts.

DOCUMENT ONE

March 18, 1971

To: Eddie Williams, Vice President for Public Affairs

From: James W. Vice, Assistant Dean of Students

In re: Kurt Vonnegut

I. Who: Kurt Vonnegut is a novelist who has recently become very prominent and is particularly popular with the younger generation. Slaughter House 5, published about two years ago, received very favorable reviews. Vonnegut also has a play off-Broadway, as I recall, at present. He is currently a visiting professor of some sort at Harvard. His novels are a combination of science fiction, black humor, and social criticism, showing concern with bureaucratization [sic] and institutionalization.

II. Background: Vonnegut began college at Cornell before the Second World War. He did enough collegiate work during his army experiences to qualify for admission to our "three year M.A." program after the war. He studied for three years at the University but left without writing his master's thesis.

After the lapse of some years and the successful completion of several novels, he became interested once again in his degree. Correspondence with him over various degree questions has extended over some seven or eight years. Much of his concern

to get the degree focused on his desire to begin teaching and the need for a degree for teacher certification. As I recall, he first asked for a master's degree and at some point submitted one of his novels, Cat's Cradle, as an M.A. thesis. The proposal was rejected on the grounds that the University had a rule against accepting published works for the degree. He then requested a bachelor's degree from the College. This was refused on the ground that: (1) he had never been admitted to the College, and (2) the many courses which he has taken, though quantitatively in excess of those required for a degree, did not meet the programmatic requirements of any of our undergraduate degrees. Getting the degree was particularly important to him about three years ago when he was teaching at the Writers Workshop in Iowa and apparently needed the degree to be considered for tenure.

I first became aware of the case at that time when the matter was reviewed by the Committee on Academic Standing in the College. We agreed, rightly I think, that Vonnegut could not get a degree from the College without doing another year's work. On the other hand, I felt sorry for him at the time--having done so much work, needing a degree, and yet not having one.

Early this last summer, I read all of his novels and was very greatly impressed. They seem to me to show both great imagination and great education. Out of curiosity, I dug out his advising folder to remind myself of the details. As I looked

over the reasons for refusing him the Master's Degree some years before, I recalled that some departments now require the publishing of the thesis or dissertation; the rules had apparently been changed. I checked this matter out and then called it to the attention to the Anthropology Department. The new chairman Bernard Cohn agreed to have the matter reviewed by the department once they had reassembled in the Autumn Quarter. Late in the Autumn Quarter, Mr. Cohn reported to me that the department had voted to give Vonnegut the degree.

III. Problems. Or Why I am Against Publicizing The Event: From his writing, at least, Vonnegut is a very impressive fellow and certainly one whom it would be great to have associated with the University as an active alumnus.

On the other hand, we refused him the degree when he really wanted and needed it. He has not written to us for a couple of years and has recently come into a great deal of publicity for his literary successes. For us to publicize the degree might very properly be seen by him as an effort to climb on to his own success. I should think from his writing he would be very inclined to treat our actions either with skepticism (we are hypocritically changing our standards because he is more famous now) or irony (universities are just another example of large machines functioning independently of human needs and values with the ironic result of depriving somebody of something when he needs it and giving it to him when he doesn't need it).

Wayne Booth knows him and will be in correspondence with him, as I understand it. It seems to me of much greater long-term benefit to the University and to Vonnegut not to make short-term publicity out of the matter.

cc: Mr. Wayne Booth
Mr. Charles D. O'Connell

I realized that the public relations staff would learn of the degree at some point, so I wrote to postpone the inevitable University claim on Vonnegut's successes. I was almost too late. My carbon copy to Charles O'Connell, then Vice President and Dean of Students, came back with the hand written note: "JV Did you know that Dick Kubik [of Public Relations] wasn't told about this and gave the story to the [Chicago] Tribune by phone? I don't think the Tribune printed it. C. [O'Connell's initial] By the way, Congratulations!" Kubik, who was a very nice fellow just doing his job, had apparently learned of the degree without receiving any warning against publicity. I immediately called Wayne Booth, then as now Professor of English at Chicago and among other things an acquaintance of KV, to get him to call Eddie Williams to forestall a press release which would have gone out nationally and would certainly have been picked up somewhere. Wayne succeeded; and a more or less decent period elapsed before the University laid public claim to its "new" alumnus.

After the Palm Sunday publication, I sent the following letter to Vonnegut. By this time, I had moved to IIT.

DOCUMENT TWO

Illinois Institute of Technology
Student Life
Office of the Dean

May 15, 1984

Mr. Kurt Vonnegut
c/o Delacorte Press
Dell Publishing Company, Inc.
1 Dag Hammarskjold Plaza
New York, NY 10017

Dear Mr. Vonnegut:

I just finished reading Palm Sunday and came across the passage in "Self Interview" in which you referred to the acceptance of Cat's Cradle as a dissertation for the M.A. I do not know whether Wayne Booth has ever passed on an account of what happened. It is, in its way, a nice little story with a touch of irony.

I served as an assistant dean of students in the College of the University of Chicago in the middle and late 1960's and as such sat on the Academic Standing Committee which reviewed academic petitions, among other things.

If I recall correctly it was while you were at Iowa that having some degree would have been particularly useful to you and you filed a petition to receive a degree from the College. The then Dean of Students in the College brought the situation before the Committee with an explanation of the problem, which was outlined as follows. You had been admitted to the

Division of the Social Sciences for a Master's program in anthropology, had completed all of the course work, but had not written a thesis. You had subsequently submitted Cat's Cradle [sic] as a thesis and the Anthropology Department would have been sympathetic to the idea but for a University regulation which precluded the acceptance of published material as a master's thesis. You, therefore, having courses enough from the several colleges at which you had studied for a bachelor's degree, appealed to the College to accept these courses and award the degree. The Committee, after reflecting on your unfortunate [sic] situation, came to the conclusion that it could not award you a degree - except an honorary one - since you had never been admitted to the College. (Each of the Faculties [sic] is a separate degree - recommending unit; the College was in no position to recommend you for a degree since you had never been within its jurisdiction.) All of this, I thought at the time, would seem rather bureaucratic and unreal to anyone not immersed in the delicacies and intricacies of a university.

Sometime after that, Wayne Booth, who had by that time become academic dean of the College (a different position from Dean of Students) and I got into conversation about our Hoosier connection - Wayne having taught at Earlham and I having come from the city of Wabash. During the course of the conversation, Wayne learned that I had never read anything by you. When he learned that I also had never been able to make it through a novel by William Faulkner, he decided that stern measures were in order and insisted that he would get me fired unless I would read at least one novel by Faulkner, (but it really did not "take" until a couple of years later when I had to teach Absalon, Absalon [sic]. Your novels I found much more to my

liking, and I proceeded to read all that were then available. (There must be something in Hoosier upbringing that slightly twists one's sense of humor.)

A few years later, I was browsing through the catalogue of the Physical Sciences Division (that is the sort of thing that assistant deans do), and I came across a requirement in the Physics Department that the master's thesis had to be published. Aha!, it occurred to me, if the Physics Department would only accept a work for a thesis which has been accepted for publication, then there could no longer be a general university rule to the contrary. I begin [sic] checking through the rule books and found that, indeed, at some point the chief academic governing body of the university had done away with the rule.

I collected the facts and went to the chairman of Anthropology, a person who was fairly new to the university whom I did not know, Bernard Cohn. When I explained why I had come to see him, Bernie told me that he had been at the university earlier in his career, had been in the department at the time you had originally proposed Cat's Cradle, and had supported your proposal, only to find the proposal defeated by the publication rule. He was therefore quite prepared to take the message back to the departmental faculty and recommend the acceptance of your work. And so it was done.

That was not the end of the matter, however, [sic] A few weeks later I learned to my horror [sic] that the public relations people were planning to make a big thing out of the award. It seemed to me that it would be extremely tasteless for the University to crow about the degree. After all, you had not been given the degree when you particularly wanted, and I gather needed, it and you were suddenly given it "out of the blue" after you had already

taught at Harvard and done other distinguished things and made lots of money (I suppose). The p.r. people were not all impressed with an argument from good taste. I then went to Wayne Booth who had enough clout to get them to drop the matter at that time. And thus it was that at least some decent period of time was allowed to elapse before the University began to take credit for your accomplishments.

If you are ever in Chicago autographing books, perhaps I shall be able to bring my copy of Cat's Cradle for a sample signature. Best wishes with your work.

Sincerely yours,
[Signature]
James W. Vice
Dean of Student Life

Vonnegut responded.

DOCUMENT THREE

228 E 48
NYC 10017

May 28, 1984

Dean James W. Vice
Illinois Institute of Technology
Chicago, IL 60616

Dear Dean Vice--

I thank you for the strikingly humane and enterprising manner in which you extorted an M.A. for me from the University of Chicago. I worry about your future in the academic world. Sooner or later you'll be detected as a mole for the forces of humor and common sense.

It is true that the M.A. came much too late. When I really needed any sort of college degree whatsoever, I had gone broke, and was trying to get a job at a high school or a junior college. My feeling at the time was that it was the University of Chicago which had been doing the irresponsible screwing around, giving a degree after only two years of college, and then switching to a four-year degree, and so on. Also, every thesis subject I submitted was rejected. Finally, the place seemed more like a miniature golf course than a great and thoughtful university. I regularly sent money, incidentally, until I was awarded the useless degree. I also reject all offers of honorary degrees. Prizes that exciting can still be found in the bottoms of boxes of Crackerjack.

A woman told me the other day that she had applied to the U. of C. for admission, and had mentioned to her interviewer that Philip Roth and I had gone there, a fact she found attractive. She was told that Roth and I had been disruptive and unhappy there, and that we hadn't belonged in that particular setting. I don't know about Roth, but I give my word of honor that I was happy and grateful and peaceful there, and that nobody even noticed me until after I left and began writing books.

I am also a distinguished alumnus of the Chicago City News Bureau, which mentions me often in its publicity. Again, nobody noticed me while I was there. Both city editors under whom I worked have testified that they can't remember me at all. Those were the days when I was totally invisible. It was a nice way to be, except that it was hard to get waited on in in

[sic] restaurants -- not that I spent such a hell of a lot of time in restaurants. Not like now.

Cheers,
[Signature]
Kurt Vonnegut

This does not fully capture the original, since it omits five spaces where a word was changed by Vonnegut and does not duplicate the artful but illegible Vonnegut signature.

There the matter lay for almost a full decade. On the one occasion when I noticed in advance that Vonnegut was to be in town autographing a new book, I happened to be in line directly behind an aspiring young writer who told Vonnegut of his goal. Vonnegut could not have been more pleasant and supportive of the young writer with whom he carried on a long conversation as he signed other books presented to him, including my own. My name, distinctive though it is, did not register with him--or perhaps it did. In either case, it was clear Vonnegut enjoyed the conversation more than the miscellany of inanity he would probably have received from the rest of us.

Ten years, an advancement to Ombudsperson of Loyola University Chicago, and a triple by-pass later, I read in an ombuds newsletter of how the ombuds at Columbia University had helped someone to complete a degree belatedly. I thought of the Vonnegut degree story which involved dealing with much more curious institutional behavior and required more intervention. It seemed worth sharing with my confreres. I wrote Vonnegut again.

DOCUMENT FOUR

Office of the Ombudsperson
Loyola University Chicago
6525 North Sheridan Road
Chicago, IL 60626

February 4, 1994

Kurt Vonnegut
228 E. 48th St.
New York, NY 10017-1539

Dear Mr. Vonnegut:

I doubt that you will remember our exchange and your letter, so I have enclosed copies. I have no wish to publish your letter. I should like, however, to tell the tale informally to other university ombuds-types. Over the past twenty years a number of universities have created such a position to compensate--in a degree--for the increased specialization and bureaucratization.

You were all too prescient in your first paragraph, by the way. IIT got, as a new president, a business-school type who was soon rid of me. Revealing great constancy of purpose, no doubt, he resigned after only a year and a half to become Dean of the Columbia University School of Business.

We met briefly but had no time to chat when you were last in the city autographing books.

Sincerely yours,
[Signature]
James W. Vice
Ombudsperson

I received the following response.

DOCUMENT FIVE

228 E 48
NYC 10017

St. Valentine's Day 1994

Dear Jim Vice --

I could no more forget you than I could forget my first wife. And I am so happy to have copies of our letters from ten years ago. On this coming Wednesday I will be speaking at the University of Chicago for the very first time, a guest not of the Social Sciences Department but from the English Department which never had the least little thing to do with me. I will show our letters to the student paper.

As for my letter: Publish it or copy it or quote from it or throw it away or whatever. It's all yours. And may I wish you one hundred more jobs before you retire.

Your fan forever,

[Signature]

Kurt Vonnegut

Vonnegut's signature includes a portrait of himself which makes it even more artful while still illegible. I remain a little doubtful about the implications of that first sentence, especially since the letter arrived the day after Vonnegut's visit. It is also difficult to contemplate all those

job changes he seems to be wishing on me. When I called the English Department at Chicago to see how the visit had gone, the report was that it went splendidly-- an enthusiastic student response. I also called Wayne Booth, now a Professor Emeritus, to get his version, since we all know that reality has many sides. We recalled the glory days of yore, and he suggested I "write up" this account. In the words of the Master: "And so it goes."

# RESEARCHING CAMPUS CONFLICT MANAGEMENT CULTURE(S): A ROLE FOR OMBUDS?

Bill Warters

Nova Southeastern University

## Ombuds as Researchers?

The late Jim Laue, one of the conflict resolution community's most beloved practitioners and theorists, described a range of roles that conflict intervenors may play in any given dispute. The primary roles Laue (1978) identifies include those of activist, advocate, mediator, researcher, and/or rule enforcer. Each of these roles entails a different relationship to the parties involved in the conflict, and a different stance regarding the desirable conflict intervention process and outcomes. Discussions and written materials on college and university ombuds most often describe the ombuds as filling either the mediator, or perhaps less commonly, the advocate role, and tend to downplay or make invisible the researcher role, except as it manifests itself as fact-finding prior to engaging in other problem solving efforts.

My assumption is that ombuds practitioners don't often think of or describe themselves or their colleagues as researchers (in the more traditional academic sense) because this concept is potentially threatening to people who are counting on the confidentiality of the office and who fear exposure when research is shared with others. While good research preserves confidentiality when necessary, this reluctance is understandable given the type of sensitive cases ombuds often deal with. Ombuds may also be hesitant

to define themselves as researchers due to concerns about clearly differentiating their role from that of members of the faculty, who typically see research as their domain. Finally, ombuds may not emphasize research simply due to time constraints created by the demands of managing all the other activities usually associated with an ombuds office.

For whatever reasons, I would argue that ombuds are not commonly thought of as researchers, and they do not picture themselves in this role. However, as the very existence of the ombuds journal suggests, ombuds are actively observing, reflecting on, theorizing about, and writing up their work, and appropriately sharing these ideas with colleagues. My purpose in this article is to briefly explore a somewhat expanded role set for the ombuds, one that includes the ombuds as researcher, a role that I think has tremendous potential value.

Building on the notion of "reflective practice" as discussed by Schon (1983) and Wallace (1994), I would like to suggest that we work on developing collaborative projects that bring together faculty in the field of conflict resolution with campus ombuds practitioners, wherein in the ombuds assist the faculty researchers in exploring some specific aspects of campus life and culture, and the researchers assist the ombuds in reflecting on their practice and refining their knowledge of their working environment.

This idea for more collaboration between ombuds and researchers is inspired in part by my current position as chair of the Higher Education Committee of the National Association for Mediation in Education (NAME). In this role, I interact with a wide range of campus conflict intervenors, and also with faculty and staff from the growing number of academic programs in

dispute resolution. Recently I have become interested in exploring ways that these two groups can do more to support and learn from each other, since they share much in common, and bring unique strengths and perspectives that complement one another.

Why Study Campus Culture(s)?

While colleges as institutions are influenced by powerful external factors such as demographic shifts, economic changes, and political realignments, they are also shaped by strong internal forces. More and more, researchers and practitioners are looking at the social environments existing within organizations for clues for better understanding and improving their functioning. In a 1985 review of contemporary organizational studies, Ouchi and Wilkins stated that: "The study of organizational culture has become one of the major domains of organizational research, and some might even argue that it has become the single most active arena, eclipsing studies of formal structure, or organization-environment research, and of bureaucracy." (Ouchi, 1985, p. 458)

While the study of organizational culture (and a related concept known as climate) has become quite common in organizational research on businesses, there remains a relative lack of organizational culture research on higher education, especially as it relates to conflict and conflict management. A collaboration between ombuds and organizational researchers could help fill this gap.

Culture is important because it structures the way people perceive situations, and it effects the range of choices they consider when approaching conflict. Culture also tends to be somewhat invisible and taken for

granted, so we may not recognize its influence until we have transgressed certain codes or conventions and have experienced negative outcomes as a result. Higher education researcher William Tierney (Tierney, 1988a) uses an interesting methaphor to discuss this issue. When asked for his advice on acting, Spencer Tracy once remarked, "Just know your lines and don't bump into the furniture." However, as Tierney correctly points out, "On the stage of organizational culture, such advice is wholly inadequate. Participants within collegiate cultures have few if any written scripts prepared by an author to go by. And as for the furniture, the most visible props--role and governance arrangements--are not the ones we tend to bump into. Rather, we most often trip over perceptions and attitudes, the intangibles that escape our attention even as they make up the fabric of daily organizational life." (Tierney, 1988a, p. 2)

The Research Approach

Anthropologist Clifford Geertz explains that, "Man is an animal suspended in webs of significance he himself has spun. I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law, but an interpretive one in search of meaning." (Geertz, 1973, p. 5)

Following Geertz, given the subtleties of campus life, and the necessarily interpretive approach needed to study culture, I will advocate here for an ethnographic and qualitative approach to research that uses techniques developed by sociologists and anthropologists for studying people's "lived experience." According to Tierney, "An analysis of the organization-

al culture of a college or university must occur as if the institution were an interconnected web that cannot be understood unless one looks not only at the structure and natural laws of that web, but also at actors' interpretations of the web itself." (Tierney, 1988b, p. 4) This reality requires researchers to use techniques that get at people's perceptions and ways of making sense out of their interactions with others.

I suggest here that the ombuds is in a unique position to serve as a guide or "primary informant" (kind of like the character "Doc" in william F. Whyte's 1943 classic ethnography Street Corner Society) to researchers interested in campus organizational culture and subculture, especially as it relates to conflict-related behaviors and beliefs. Given their placement in the organizational structure and their function as problem investigators, interpreters or translators of policy, and referral sources, ombuds are in an unparalleled position to observe and understand organizational life in many different campus domains. Chaney and Hurst (Chaney, 1980) and Robbins and Deane (Robbins, 1987) both note the special position ombudsman programs occupy as environmental sensors. Chaney and Hurst write that "ombuds programs are in a unique position as one of the most revealing unobtrusive measures of stressors in the campus community," and Robbins and Deane conclude that "Data supplied to managers is normally filtered and condensed; not only is the process imperfect but information may be distorted for the purposes of influencing decisions. The ombuds receives unfiltered raw data from all levels and locations in the organization and does not have management

responsibility. In our opinion, the potential usefulness of ombuds to an 'early warning system' has been under-utilized..."

Focus on Campus Subcultures, Not University-wide Culture

It has long been noted that colleges and universities contain quite a range of relatively strong subcultures that are based on groupings marked by differences in age, ethnicity, discipline, work responsibilities, social affiliations, and organizational location. I would suggest that, rather than primarily focusing on case studies of conflict (which we all know can be quite instructive), or working to further document the basic activities of the ombuds office (a seemingly popular thesis topic in the early years when ombudsing was still somewhat "exotic"), we focus instead on developing greater understanding of the various subcultures on campus and how these groups manage conflict within their own networks and with others who fall outside their primary identity group. A few interesting examples along these lines (there aren't many yet) include Kay Harman's (Harman, 1989) examination of conflicts arising from tensions between professional versus academic values in professional schools, and Jim Schnell's (Schnell, 1985) look at conflict resolution within a greek letter organization.

Ombuds can provide a valuable window on the way conflicts get played out within universities, as well as a vantage point for exploring how the introduction of various dispute resolution services may in fact effect an organizational climate and culture over time. While I am not arguing that ombuds can ever truly know these various subcultures, they are certainly in a good position to explore what they do know, and then introduce the researcher to the right cultural informants to help them find out more.

Existing Research

There is already a small but growing base of general campus culture research that we might draw on as we develop our questions and approaches. A good summary of this work can be found in Tierney's (Tierney, 1988b) and Peterson and Spencer's (Peterson, 1991) reviews of this area of study. As they point out, the earliest work (in the 1960's) focused largely on the study of student cultures, and then in the 1970's, on distinctive colleges as cultures, the role of belief and loyalty in college organizations, and function of organizational sagas. More recent work has focused on the study of various academic cultures, leadership in different cultural settings, and the system of higher education itself as a culture.

It appears that interest in organizational culture on campus continues to develop. For example, New Directions for Institutional Research published a special "campus culture" issue in 1991 (Winter) encouraging university research officers to pay more attention to campus organizational cultural issues and use more cultural research approaches.

Areas for Further Study

A brief discussion of a number of potentially fruitful avenues for research are suggested below, although many more could be developed as well.

Campus Subcultures

As I have discussed above, a particularly fertile and relatively undeveloped area for research is the exploration of conflict management approaches used by various campus subcultures. As anthropologists and historians interested in dispute processing have noted, cultural subgroups have often developed internal methods of resolving disputes to protect their

group from involvement by outside "authorities" or systems of laws that don't take into account their norms and values. Jerold Auerbach's book Justice Without Law (Auerbach, 1983) provides a facinating account of alternative dispute resolution methods used in colonial America. These non-judicial approaches were successful as long as they involved individuals or groups who shared certain basic beliefs and who subscribed to shared norms of behavior. When conflicts emerged between individuals from different groups, or as group unity broke down, the use of lawyers and the common law became more prevelant. As Auerbach argues, "Law begins where community ends." Because of the existence of multiple subcultures on campus, the need for "organizational spaces" for cross-cultural (in the broadest sense) problem-solving forums such as ombuds programs or campus mediation centers may become even more clear as our understanding of campus subcultural norms for conflict management become better understood.

Indigenous Resources

Another interesting area of related research, and one where I think ombuds would play an important role, is in the identification of the "indigenous" problem-solvers who are found within various campus domains. Within any community, one can usually find individuals who, based on their interpersonal skills or social position, are frequently approached by people seeking problem-solving assistance. Ombuds often have contact with these members of the community, and could very likely assist researchers in identifying and then gaining access to these individuals for interviewing. Finding out more about how these parties do their conflict management work

may provide ombuds with additional insight into how they might improve their own practice, and how they might further address supporting and empowering "homegrown" approaches to problem-solving.

Patterns of Conflict

Another important area where ombuds have access to useful knowledge is around patterns of conflict on campus. Because many ombuds programs already produce annual reports that share aggregate statistics, ombuds are likely to be quite familiar with and interested in patterns of conflict on campus. Careful interviewing by researchers might encourage ombuds to further reflect on their practice, exploring in more detail their perceptions of the patterns of conflict on campus, be they temporal, topical, or structural in nature. Increased understanding of these patterns should prove quite valuable when considering the development of conflict prevention efforts.

Potential Problems

While I am enthusiastic about the potential value of an increased research role by ombuds, I am aware that a number of potential problems could effect the success of such efforts. These problems might include the creation of suspicion and/or potential alienation of "clients" whom the ombuds decides to invite into the research, who are unhappy with the suggestion. Another difficulty might involve struggles between academics and ombuds over the focus of the research agenda, with academics attempting to usurp the agenda, leaving ombuds feeling somewhat taken advantage of. Another possible problem, familiar to ombuds, is the creation of additional time demands on already overtaxed ombuds staff who are asked to regularly reflect on their practice in the presence of a collaborating researcher.

Potential Benefits

I believe that the potential benefits of having ombuds more involved as researchers outweighs the potential problems. Potential benefits include improved practice, increased selfawareness, and perhaps additional legitimacy for ombuds practitioner, who often work in environments that priviledge research. The collaborative approach I have started to outline here can also help to strengthen ties between ombuds and the growing number of academics interested in dispute processing.

Conclusions/Next Steps

In order to pursue this possible expansion of the ombuds role, a number of next steps might be considered. These include a greater elaboration and specification of the research agenda, compilation of a more complete bibliography of existing campus culture studies as they relate to conflict, and the development of dialogues on this issue between qualitative researchers and ombuds, either via email, or in person at some kind of workshop or conference session. Ombuds would need to identify additional areas of concern, and help develop research practices that respect existing campus relationships. Also, some decisions about how central a role the ombuds should play in the research will have to be worked out, as the ombuds could play an active role conducting interviews and gathering observational data, or they could serve in more of an informant and guide role, as seems appropriate given their individual situations.

As ombuds well know, conflict is a regular part of life on college and university campuses. Hopefully, more research and greater understanding of

the dynamics of campus conflict will help us improve the delivery of dispute resolution services, learn from existing conflicts, and reduce the amount of time lost due to conflict that could be better put into the pursuit of teaching and learning.

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# THE SOCIAL WORKER AS OMBUDSPERSON: SIMILARITIES AND DIFFERENCES

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Ombudspersons bring to their work many different personal characteristics and skills as well as many different professional backgrounds. Social Work training is particularly well-suited for the tasks of the Ombudsperson, most notably in work with "troubled" students. This paper will discuss the similarities and differences between the skills used by ombudspersons and social workers through the presentation of a theoreticai framework and case examples.

Assessment:

A thorough assessment is required by both professionals. While doing the assessment, the Helper remains neutral and asks questions which help to elucidate the problem under discussion. Who, what, when, and where are important questions. When did the problem start? Who is (was) involved? etc. This first phase is called information gathering.

While asking the necessary questions, the "worker/ombudsperson" makes empathic remarks to indicate that she is listening. She clarifies, summarizes, and reflects back in order to ensure that she has a clear and accurate understanding not only of the facts but of the meaning behind them that is being attributed by the "client-student." It is essential that the student feel she is being heard. Sometimes this creates the most change of all,

as both students and clients frequently report that no one listens to them. The attentive "listening" validates their concerns.

The helper must be nonjudgemental and neutral in this first phase. She is simply trying to ascertain the facts and understand them in the context of the situation being described. Sometimes she requests that the "helpee" give her permission to contact others in order to complete the information gathering phase. When she feels she has gathered enough data to proceed, the next stage begins. It is then time to clearly **outline the problem for work**. Accurate **Problem definition and specification** are crucial to the success of the work. This assessment and problem definition phase can be more complex with "troubled" students as the following case example illustrates.

Case Example:

Joanne is a year old full-time undergraduate student enrolled in the Faculty of Arts. She called in great distress, requesting an immediate appointment. When she arrived for the appointment, she handed me close to 20 typed pages, requesting that I read these. After getting the necessary demographic data, I asked her to tell me "her story." As I listened, my "antennas" went up and I soon realized this was not solely an academic problem as she had earlier identified it. She began to share her concerns about being followed, spied upon in the subway and in her student housing. While remaining focused on her academic concern that she might be asked to withdraw due to academic misconduct, I gently asked her who else she had contacted about these concerns. The list included the Dean, Associate Dean, etc. She then admitted that the Associate V.P. had given her the telephone number of the head of the Mental Health Services. After some discussion, she

agreed that a mental health appointment might be helpful. Together we walked up to the clinic where she received an appointment for two days later, to which I again accompanied her. She felt she could not manage this without my support. She called me after seeing the Doctor and many times subsequent to that.

As Joanne was to state later, "When I needed to speak to someone I might call and leave a message for you, even in the middle of the night. I had confidence and trust that you would call back as you always felt my problems were important."

Problem for Work/Goal Setting:

At this point, it is essential that "helper" and "helpee" decide together what they would like to accomplish. In other words, what are the goals they are working towards in their joint encounter?

For example, the problem may be defined as "the student states that the professor has refused to let her see her exam paper." The university rules state that she is allowed to do so. Thus the problem is an appropriate one to work on. The goal is, obviously, for the student to be able to convince the professor that she is entitled to see her exam and for him to agree to this. En route to this goal, there may be several steps. The ombudsperson may decide (with the student who has already unsuccessfully talked to the prof) to call the professor herself and discuss the problem. If this is successful, no further intervention is necessary. If a three way meeting is requested by the professor, then the ombudsperson may want to rehearse with the student the best way to approach the situation. This may include role playing the potential situations. A very similar sequence would

be followed between a social worker and her client. Another **goal** this student may want to work on is for her to gain the skill and confidence to challenge the mark the professor has given her, if after seeing her exam, she feels the mark is unfair. Although the ombuds herself cannot intervene re marks, she can help the student plan the best way to make this request. We have now moved into an expansion of both the problem for work and the original goal.

Once Joanne was receiving weekly psychiatric help, our weekly meetings together focused on academic issues. We identified several areas for work and I repeatedly refocused our efforts in an attempt to ensure that she complete her academic course requirements. I reached for her strengths... her healthy part... (an important social work technique) while not being afraid of, or diverted, by her bizarre thinking.

This can be called the **work phase**. A very important role of the helper is to help the student/client successfully negotiate. Often students (and clients) approach their opponents with anger and with a lack of tact, thus pushing them to a defensive position. By discussion and role playing the ombuds (worker) can help avoid this pitfall and this can frequently lead to greater success. The goal is to achieve a "win-win" situation if at all possible by identifying realistic options that can be acceptable to both parties. Compromise may sometimes have to be considered, but only if the student/client feels comfortable with the agreement.

Contracting:

At this point the ombuds (worker) makes a tentative beginning contract with the student (client). This includes the problem for work, the time

frame, the type of interventions to be made by each party and with whom. It is based on the goals agreed upon by both ombuds and student. Needless to say, this contract (which is generally verbal and not written) can be modified with the agreement of both parties as the work proceeds. There are times when an agreement may be in written form. This is particularly useful to ensure that all parties clearly understand what they have agreed to.

As time went on, Joanne was able to begin planning for future academic work and we agreed to continue to meet regularly to concentrate on those issues and on the goals we had agreed upon. I changed the times of our meetings to early morning and invited Joanne for coffee and muffins. Joanne flourished with this "shift from academic to more human encounters" and confessed that our first breakfast together was the first meal she had eaten with another person since leaving home!

Tasks:

One of the social work techniques which can readily be applied to ombudsing is the use of tasks. Each party undertakes to accomplish certain things between one interview and the next. By clearly outlining these, the work can move forward at a faster pace, i.e., the **ombuds** agrees to contact the professor and discuss the rules re seeing exams; the **student** agrees to write a clear resume of the actions she has taken re this to date and to make a statement re why she wants to see her exam.

Joanne and I identified several tasks that she had to undertake. For example, she wrote several letters and brought them for review before submitting them.

Evaluation and Referral:

When the interventions have been completed, it is important to evaluate the success (and or failure) of what has been accomplished. Was the problem solved to the satisfaction of the parties? If not, what part was left undone? Can anything more be done? If so, by whom? Sometimes a **referral** is required.

In reviewing our work together, Joanne stated that she felt that she had been treated with respect, not as a "student with a problem" but as a valued person. She claimed that the breakfast meetings and a subsequent lunch meeting "oriented her back to the human world versus her world of books and helped to put her feet back on the ground." Our work together lasted over four months. At our last meeting, we moved on to more personal matters and she shared what she had learned about herself and her future life goals. She expressed how much she had benefitted from her ongoing contact with both the Ombudsperson and the Psychiatrist and looked forward to her return to employment in the fall.

The **referral** process must only be done with the explicit agreement of the student/client. Due to issues of confidentiality, no information can be transmitted to another without this agreement. When the helper feels she has done all she can within her mandate, then sometimes a referral is indicated. It is important that contact with the referral source be maintained to ensure that the transfer goes smoothly. At times, this becomes a collaborative venture between the referee, the helper, and the helpee. In the case of students, the systems to which referrals and collaboration are effected include things like legal information services, office for students with disabilities, associate deans, etc.

Work with Joanne involved considerable systems work. The most significant was negotiation with the Director of Student Housing. Joanne was asked to move due to a petition from her house mates. We went together to discuss this and achieved an equitable solution although she did have to move.

Confidentiality:

Confidentiality is the key note of both professions. In all cases we are entrusted with important personal information and are expected to reveal facts only with explicit permission. Written consent for release of information to outsiders is a requirement in social work, while verbal consent is accepted in most ombuds situations. However, release of any information after the file has been closed requires written authorization. It is only by upholding the promise of confidentiality that both professionals can continue to receive the respect and trust of their constituents.

Conclusion:

We hope that this paper has clearly illustrated the overlapping skills and roles of the social worker and ombudsperson. Particularly in cases where the student manifests psychiatric troubles, the training one receives as a social worker helps one to recognize where the ombudsman role begins and ends and where outside referral can be made while continuing to help the student deal with his/her life on campus. Since ombudspersons continue to come from many diverse backgrounds, it would be interesting to assign a hypothetical case to two or three ombuds from these differing professions and discover whether they would approach the problem from different perspectives.

# GETTING STARTED

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The question of how to best "get started" when hired as an Ombuds at an institution where no such position has previously existed was discussed at a recent East Coast Ombuds Group (ECOG) meeting. The discussion focused on the interpersonal obstacles Ombudspeople find as they begin performing their jobs rather than on specific operational details (such as the designing of an office or purchasing equipment). Discussion was divided into two parts. The first dealt with the areas where problems were likely to arise. The second offered suggestions for preparing oneself for the role in light of potential problems.

## Likely Problems

Frequently the Ombuds function is created and designed by a small group of "concerned citizens" who are involved in hearing about institutional problems and are frustrated by how these problems are being resolved. After exploring alternatives, they learn that the informal methods offered by the Ombuds profession may provide quicker and more confidential resolution to people's concerns and can involve many fewer people than formal grievance procedures. Sounds great! Unfortunately, the vast majority of people in the organization will not be familiar with the Ombuds role. Just like the group that studied and recommended it, the rest of the organization

will need to be educated. However, most will not be able to devote the same amount of time to learning. Consequently, most people will not have a clear understanding of who the Ombuds serves (the administration or the individual), or how the Ombuds functions (as an advocate or adjudicator). Once told that the Ombuds acts as an independent problem-solver who does not take sides and has no authority to dictate a course of action, they may question how another person with "no power" can benefit the organization.

Constituent Responses

If you are the first Ombuds in your institution, there will be no template. Expectations and fears will reflect both ignorance and uncertainty about how much trouble you are likely to cause as you surface individual problems and organizational difficulties. Many will answer your telephone call with dread or hostility, even if your intentions are to gather information, ask for advice, or offer suggestions or help.

Supervisors will fear employees will be airing their group's "dirty linen" to you and that a query or complaint will reflect poorly on their management style. Many Ombuds have reported responses to a call such as, "Who?", and then, "Oh, no," or the hesitant groan of, "What's wrong now?" Some will refuse to believe that there can be any problems in their department and feel that the complaining person should be punished for bringing the matter forward. Most will not want to investigate the issue because investigations take time away from the really "important" things.

Potential clients will worry about their confidential information surfacing unexpectedly. People have been known to call and hang up if the voice mail answers, feeling too afraid to leave a name and telephone number --

even when the message assures confidentiality. When speaking directly with the Ombuds, people have given false names and workplace locations to insure that they will not be identified while they gather information about their problem.

The organization's legal counsel may be leery about honoring Ombuds' confidentiality when successfully forcing disclosure might mean winning a case. (Though Ombuds organizations are working toward getting a shield law accepted for the profession and many Ombuds have successfully refused to testify, presently an Ombudsperson can be subpoenaed and required to testify.) Some institutions that fully understand the position and see the benefits that can be derived from it, have fought hard and have successfully protected the confidentiality of the position, but a few others have been less understanding or cooperative. Since some clients may be considering legal alternatives as they explore options for informal resolution, the institution's lawyers may be worried about an Ombudsperson further complicating a legal complaint.

When it comes to solving people problems, human resource (HR) personnel may feel that an employee choosing to speak with the Ombuds implies either that the HR office is being viewed as untrustworthy or that the Ombuds is considered more expert than they in managing employee/employer relations (which is what HR is hired to do). For example, it can be difficult for HR people to see the value of an employee "letting off steam" in an Ombuds Office instead of the HR office so that the employees internal or external job search will not be hampered. This kind of problem suggests that some of the Ombuds Office's work overlaps with that of the HR department.

If HR's image is threatened, they may respond by vehemently guarding their turf.

The Ombudsperson must operate without threat to neutrality or confidentiality. This is best achieved when an Ombuds is responsible to and has the backing of the person in the highest position of leadership in the organization. Though this is not always the reporting structure, it is difficult to carry out the duties of the position without this, even when the functions are explained, understood, and accepted. For example, if an Ombudsperson is responsible to and evaluated by someone at a lower level, there may be instances when the Ombuds is subjected to inappropriate pressures when there is a difference of opinion about maintaining confidentiality on a particular issue.

Finally, even when an Ombudsperson is responsible only to the most powerful person in the organization, some people have cynically expressed concern that the office exists only to keep people from filing law suits against the institution.

My Own Experience:

At my institution, I was asked to develop an Ombuds Office from scratch. I recall having struggled with many of the issues that were discussed at the ECOG meeting. After lengthy study, the Faculty Council requested that there be an Ombudsperson at the school. The administration complied, but many high-level managers were leery. Early in my tenure, I remember discussing a particular case (without identifiable information)

with a much more established Ombudsperson than myself. I was seeking advice on how to approach the problem. It was suggested that I speak directly with the highest level manager in charge of this particular problem area. I remember feeling awkward and inadequate. I knew that my existence was not welcome by all senior management, including this individual, and that the Ombuds role was presently being uneasily tolerated. I felt that it would not work for me to request discussion of the problem at this level. Even with permission to do "something," I felt that I needed to do "something" that would work in an organization where the Ombuds position was not well-established, understood or welcome. Based on my understanding of the organization at that time, I felt that its culture required that I establish credibility for the office before the highest levels of the organization would see my interventions as potentially helpful. So, I sought (and thankfully succeeded at finding) another way to bring the problem forward.

At that time, I felt I had failed. I felt I had been weak. I was afraid to tackle the senior management problem and use the situation as a vehicle for explaining my role. Some months after this event, and many, many problems later, a crisis arose that required interaction with a member of senior management. As I entered the room, the individual welcomed me and asked that I be as helpful as I could be within the context of the confidentiality I had promised the person about whom the meeting had been called. It was then that I realized that my decision to build credibility, slowly, through consistent and reliable behavior while taking the time to educate the organization about what to expect, had been an effective strategy for me within the context of my organization.

"Outsmarting the Problems"... Some Practical Suggestions:

There are several Ombuds professional organizations. The Ombudsman Association (TOA) serves corporate, government, higher education and others. The University and College Ombuds Association (UCOA), and The American Association of Canadian College and University Ombudsmen (ACCUO) serve Ombudspeople working in higher education settings. These organizations have established codes of ethics and standards of practice that can guide an Ombudsperson's actions. Within this framework, it may be helpful to remind ourselves that, just as we help create and develop options for others to solve their problems, we can do the same for ourselves. By doing so, we too can choose which options are appropriate to our individual circumstances and comfort level, all the while remembering that there is no one "right" way to solve a problem.

Here are specific, practical steps you can take:

1. TOA and UCOA each have developed a handbook with suggestions about the Ombuds role. Each has a section on "Getting Started." The American Express Company has created a notebook on how to select an Ombudsperson, which includes comprehensive recommendations on how to search for and hire an Ombudsperson. All three manuals explain Ombudsmanry. ACCUO has information and suggestions for helping people define their terms of reference in the University setting. Using such guidelines, the institution can become familiar with what to expect and the Ombudsperson can learn from the guidance and suggestions

they provide on how to perform the function. Ombudspeople can benefit from joining professional Ombuds organizations and developing relationships with other Ombuds. It is often helpful to find those more experienced than yourself, with whom you are comfortable, to call for advice, support, or to be "an ear" as you tackle a problem.

2. If you are new to the profession and/or the role is new to your institution, it will be important to be clear about who and how you will serve as an Ombudsperson. You will need to explain your role numerous times both as you introduce yourself to the community and later. It may be helpful to develop a brochure to explain your job, which should be made available and disseminated often to your constituents. This can both serve to advertise your services and explain the scope and limitations of the Ombuds function. Another way of having your job better understood is to accept invitations to meet as many people as possible to explain the position and describe the range of services you can provide (i.e. listener, information gatherer, option-builder, mediator, etc.).

3. You should make a list of and develop a rapport with those people in the organization who are able to make changes

and take corrective actions and who can have a positive or negative impact on the work you do. Meeting one-on-one with these people can be helpful in learning more about them, how they are likely to operate, and how best to build a relationship with them. You can also work closely with people allied with these people and rely on the "word of mouth" to build your reputation. Nurturing the people holding the highest positions can greatly facilitate your acceptance into the organization. When you can, ask your senior "supporters" to introduce you to others.

4. Arrange that a description of your services be printed in the student, faculty and staff handbooks, and the policies and procedures manuals. You may want to put your terms of reference on your door for everyone who visits to see. People should receive both written and verbal explanations of what they can expect, preferably before they begin a dialogue with you. Request or have others request that you be interviewed by the magazines, newspapers and newsletters published by your institution. If appropriate, write an article yourself and submit it for publication. The article can describe your services (similar to the material for your brochure or the descriptions in the various handbooks and manuals).

5. Look for opportunities to continually teach others how to deal with conflict. This can be done by educating others about the value of resolving conflict early on and informally, by your own behavior (i.e. how you listen to others in group conversations), and in your observable interventions. As a new Ombuds, you may wish training on the Ombuds function so that your practice is within the guidelines of your chosen professional organization's code of ethics and standards of practice. If you do not have training in dispute resolution, seek training in dispute resolution. UCOA and CCCUO have beginners workshops at the annual meetings. Presently, TOA provides a comprehensive three-part training program entitled: Ombuds 101, Ombuds 202, and Ombuds 303.

6. Continually remind people what to expect from you as a designated neutral, that you are not a decision-maker or judge. Emphasize how your role can be beneficial to the organization.

7. You should try to get the involved parties to focus their attention on solving the problem rather than directing their anger at the person who brought the matter forward. Consider asking people to help you understand the situation better or to help brainstorm ways to bring about resolution. This approach can often be seen as less confrontational and more face-saving than implying mismanagement or misdeed.

8. Finally, people may need to be continually reminded that an Ombudsperson is not in the organization to cause trouble, chastise and embarrass individuals, or to act as a "politically correct" monitor. Remember, the Ombuds' purpose is to help people solve problems informally, in the least intrusive manner possible so as to minimize negative consequences. While doing this, the Ombudsperson seeks to provide upward generic feedback to the institution so that it may take positive corrective action.

# TRAVEL REFLECTIONS VIA INTERNET ELECTRONIC - "E MAIL"

Dean M. Gottehrer
United States Ombudsman Association

Mary P. Rowe
Massachusetts Institute of Technology

The following travel accounts by Mary Rowe, Ombudsperson, MIT, and Dean Gottehrer, President, USOA, and Head, OLF (Ombudsmen Leadership Forum), appeared on the Ombudsman Electronic Network during August, 1995. In our opinion, the detailed descriptions pertaining to their two trips provide important information for those Ombudsmen who are involved in Conflict Resolution. Therefore, the authors gave us permission to reprint their personal travelogues in our Ombudsman JOURNAL.

TO: OMBUD@MIT.EDU

FROM: Dean M. Gottehrer (deang@cruzio.com)

SUBJECT: Lesotho Report

When I returned from Lesotho, I said I would send out a note reporting on my visit and activities there. Here it is.

The Lesotho Ombudsman was created in the country's Constitution in 1993. Henry Nts'aba (pronounced en-TSABA) was appointed to the post in October 1993 and took office early in 1994. When his appointment was announced, the public affairs officer of the U.S. Information Service (USIS) in Maseru, Lesotho's capital city, contacted Mr. Nts'aba to discuss bringing an ombudsman to Maseru to work with him and his staff. Mr. Nts'aba responded favorably.

Inquiries in the United States resulted in an offer to me to travel to Lesotho as a professional in residence. I left California on July 13, arrived in Maseru on July 17 and returned home on August 12.

During my visit to Lesotho (pronounced Leh-SOO-too), I worked with the Ombudsman and his staff, met with government and non-government officials, traveled to visit the Lesotho Highlands Water Project Katsie Dam, participated in a public forum in the rural town of Quthing, was a guest on an early morning call-in program on Radio Lesotho in both English and the local language of Sesotho (pronounced Seh-SOO-too), gave a public lecture at the American Cultural Center in Maseru and met with a number of different interest groups.

The main purpose of my visit was to train staff in all aspects of ombudsman work, discuss how ombudsman offices operate in the United States and work on a computerized caseload management system. During the course of the visit, the American Embassy and USIS Maseru donated an upgraded computer to the office, purchased word processing and spreadsheet software and had a computerized caseload management system originally designed for the Municipality of Anchorage (Alaska) Ombudsman customized by its programmer to fit the needs of the Lesotho Ombudsman.

Sections 134 and 135 of the Lesotho Constitution establish the Ombudsman's Office. The country is a democratic constitutional monarchy. It became independent from Britain in 1966. A military

coup took place on January 20, 1986. The king returned from exile late in 1992 and elections were held on March 27, 1993, establishing the government that currently holds power. The Ombudsman is appointed by the king on the advice of the prime minister, for a term of four years.

The Ombudsman has been working with the Attorney General and the Minister of Law and Constitutional Affairs to refine a draft law that will be discussed by the Cabinet and presented to Parliament, which has the authority under the Constitution to amplify the powers of the Ombudsman. The Constitution gives the Ombudsman jurisdiction over national and local governments (including tribal chiefs and local elected governments) and statutory corporations. The corporations, known in Lesotho as parastatals, are companies that are or were government owned. They include a national bank, an agricultural development bank, an electricity corporation, the Highlands Development Authority, a housing corporation, a national insurance company, a national development corporation, a telecommunication corporation and a brick manufacturer.

The draft law will specify that the Ombudsman has no jurisdiction over the king, Parliament, the Cabinet in its policy making role (as opposed to the individual ministers as heads of their ministries), the courts of law and statutory tribunals. Discussion is taking place about whether the Ombudsman will have jurisdiction over the administrative acts of the court system, which is overloaded with a backlog. The statutory tribunals include organiza-

tions such as the Public Service Commission, which appoints and disciplines all civil servants, including the staff of the Ombudsman; the commissions that appoint and discipline teachers and judges, justices and magistrates; the Labor Tribunal, which handles labor disputes, etc. The Ombudsman is not an alternative to these judicial and quasi-judicial organizations and so has no jurisdiction over them.

The Constitution and draft law give the Ombudsman the power to:

* Receive and investigate complaints of injustice, threats to natural resources and the environment, as well as maladministration, corruption, unlawfulness, violations of fundamental rights or freedoms, dislocation of orderly administration, etc. One version of the draft law also gives him the right to investigate, comment on and make recommendations to agencies about breaches of Principles of State Policy, established in Chapter III of the Lesotho Constitution. That chapter describes principles of equality and justice, protection of health, provision for education, opportunity to work, just and favorable conditions of work, protection of workers' rights and interests, protection of children and young persons, rehabilitation, training and social resettlement of disabled persons, economic opportunities, participation in cultural activities and protection of the environment. These provisions are not enforceable by any court but are guides for authorities and agencies to achieve progressively.

* Initiate investigations on his own motion.

* Subpoena witnesses and documents from both government and private sources.

* Access government records and offices, including places where people are held against their will.

* Engage experts or consultants and have them conduct investigations and report to the Ombudsman. (This provision is particularly helpful when all the staff have conflicts of interest, something bound to happen in a small country with a small staff in the Ombudsman's Office.)

* Determine which complaints will be investigated.

* Set deadlines for when office recommendations should be implemented by agencies.

* Restrain an agency or government employee from taking any action the Ombudsman considers likely to inconvenience or adversely affect the conduct or outcome of an investigation or inquiry, pending the final determination of that investigation or inquiry.

* Make annual and special reports to Parliament.

* Release reports to the public.

The law also establishes penalties for refusing to comply with a subpoena, giving false testimony, withholding information, refusing to be sworn or provide information, wilfully hindering or obstructing the Ombudsman or staff, doing something calculated to improperly influence the Ombudsman, his representatives or witnesses. The penalties range from fines of 500 malotti (the currency of Lesotho; one malotti is equal to one South African Rand and it takes R$3.59 to purchase a dollar) and/or six months in jail up to M$1,000 and/or up to one year in jail.

The Lesotho Ombudsman has the following staff: Mr. Thabo Pule, principal administrative secretary (the person responsible for the day-to-day operation of the office); Mr. Semenekane Moorosi, chief legal officer (an attorney functioning as the chief investigative officer); a secretary; an accounts clerk; a driver; a messenger; and janitorial staff. Mr. Nts'aba is hiring three new staff: an investigator, another secretary who will also be the office's computer specialist, and an administrative assistant to the principal secretary.

The Ombudsman's offices are located in the government complex, across the hall from the government secretary. I recommended the Ombudsman seek offices outside the complex and away from any other government offices.

The principle focus of my efforts was to train the staff. We spent many hours together discussing the philosophy of an ombudsman's office, intake, investigations and how to conduct them, relations with agencies and how to develop recommendations and get them accepted, report writing, annual reports, how to make a report public, office and computer security, resource allocation and setting investigative priorities, training new staff, the computerized caseload management system, budgeting on a spreadsheet, and using the auto text and revision marks features of Microsoft Word to increase productivity and ease editing reports.

We worked together to develop a complete list of agencies under the Ombudsman's jurisdiction, incorporate it into the Anchorage caseload management system and customize the features to Lesotho where needed.

I left the staff a complete copy of the State of Alaska Ombudsman's Policies and Procedures Manual, a document developed over the office's 20-year history that will offer models of procedures that can be adapted and adopted to the needs of their office.

During the visit, we used my presence as an opportunity to meet with groups and individuals from a broad cross section of Lesotho society. I personally met with representatives of the Lesotho

Council of Churches, the Legal Society, the Federation of Women Lawyers, and the Lesotho Council of Non-governmental Organizations. I spent two days working with the director and instructors at the Lesotho Institute of Public Administration to develop a syllabus for them to teach future public servants about the Ombudsman's Office, what it does and what to expect in contact with the office. Part of that time, I taught them about the office and how to use the syllabus in their instruction.

I also met individually or in groups with the Lesotho Auditor General, the Attorney General, a number of cabinet ministers and principal secretaries of those ministers, several justices of the Lesotho High Court, including the chief justice, journalists and employees of the Ministry of Information and Broadcasting including the head of news for Radio Lesotho, representatives of the police and military and the resident representative of the United Nations Development Programme. One evening I spoke to a meeting of the Fort Hare Alumni Association. Fort Hare was a black university in South Africa, the South African Tuskegee as one of their members put it, where blacks could get a good university education. Nelson Mandela is an alum and met with the Lesotho group on his visit to the country shortly before I arrived.

So that I would not have just an urban understanding of Lesotho, we traveled two days in rural Lesotho. First, we went to visit the Katsie Dam, the first part of a four-part, 30-year hydroelectric and water transmission project in the mountains of Lesotho. Water

from the Lesotho highlands will form a reservoir behind the dam that will be used to generate power and then will be piped, pumped and allowed to flow into South Africa as a source of drinking water. It was an impressive project. Out in the middle of nowhere in Lesotho, the dam was rising. Concrete was being poured 24 hours a day, six days a week, trucked in more than 300 kilometers from South Africa. We saw a model of the project and viewed a video produced in South Africa explaining what would happen and the benefits it would bring.

The project reminded me of the trans-Alaska oil pipeline. Both had controversial environmental impacts. Both were seen as providing a significant source of local employment, which in both cases provided less local employment than many had hoped for. Both were viewed as a boost to the local economy, which certainly proved true in Alaska and remains to be seen in Lesotho. We walked on the face of the dam and into its inner passageways. We visited three weeks before the water would start to be held back by the dam.

The second trip was to the village of Quthing in southern Lesotho on the frontier with the Transkei. The Ombudsman and I spoke to a public forum for the community that was fairly well-attended. The questions here were quite different from those I got in Maseru. Maseru questions were often theoretical. Quthing questions were quite practical. The people here wanted to know about specific problems and what the Ombudsman could do about them. Many of them were not in his jurisdiction. For example, one questioner

wanted to know what could be done to prevent Basuto who work as miners in South Africa from assigning their insurance and death benefits to their South African girl friends rather than their Lesotho wives. The Ombudsman has no jurisdiction over the private sector, either in Lesotho or South Africa.

During lunch, I talked with the district secretary, the top government official in Quthing. He described livestock theft problems the area was experiencing. Cattle and sheep were being stolen and driven across the border with Transkei. He said that since October, more than 12,000 head were reported stolen -- and those were only the ones that were reported. Some herdsmen no longer reported the thefts. He also described being kidnapped by the Lesotho police, held and finally released. He was not optimistic about solutions to livestock theft and said it was his chief problem.

My visit to Lesotho was a very productive one. Working with the staff, I had an opportunity to exchange experiences and thoughts. Visits with other officials helped the Ombudsman and me to educate a significant number of leaders about an ombudsman's functions and how the Lesotho office will operate. I also read and commented on the draft law and made suggestions to the Ombudsman and other government leaders on how to improve the legislation. The donation by the American Embassy and USIS of computer equipment and software including a caseload management system provides the office with the ability to track complaints, calculate statistics and better account for the services it provides.

I departed Lesotho satisfied with the work we had done together but sad at leaving the staff I had grown close to during the month. I look forward to following their progress as the office grows and more people are educated about its function and use its services.

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TO: OMBUD@MIT.EDU

FROM: Mary Rowe <mrowe@mit.edu>

SUBJECT: Trip to SA

Dean's wonderful trip report has almost convinced me not even to attempt a report on SA... I have only a few minutes and I am nowhere as organized, nor have I integrated it as Dean has. But here are a few highlights.

I spent six days travelling, two weekend days at a game reserve (yay zebras), and nine days working. We did not sleep very much. We were in Johannesburg and Cape Town. The trip expenses were largely paid by USIS and some by the Independent Mediation Service of SA (IMSSA --- something like the Fed Conciliation and Mediation Service here and something like the AAA) and some by my spouse and me.

I worked with trade union women and men -- mostly black -- and with some corporate people -- mostly white -- some mediators and

arbitrators, many university people, and a couple of new corporate ombudspeople -- in all I met with maybe 100 or so different people. My spouse was working with many people about preventing targeted violence. (The SA Police are by the way changing from a Force to a Service, involved in community policing.)

The South Africans I met spanned a good bit of the political spectrum but seemed universally pragmatically oriented, super-supportive of Mandela, commited to working in a rainbow (many SA tee-shirts show a rainbow), very interested in contacts outside the country, a bit naive (or alternatively, and better stated, freshly oriented) toward workplace problems, and enormously able and talented people. SA'ns are also friendly, very gracious, multi-lingual and generally very impressive.

I was mainly listening and talking about dispute resolution system design, about sexual harassment and sexual assault, about training to deal with harassment problems, about affirmative action, and about dealing with HIV in the workplace, The SA'ns I met generally are very pro-affirmative action (and think that the US has largely botched it). They are determined to skip our mistakes and in many ways I think they may.

There is a lot to say -- there is a newly drafted Constitution, a new Draft Labour Law, an interim Bill of Rights. I just heard that the Sexual Harassment Education Project of South Africa had proposed a number of changes to the Labour Law which have been accepted -- there is increasing interest in fair treatment for

women. 30% of the new Parliament are women. Mediation is taking off. Many SA'ns are interested in a systems approach to DR in workplaces. Ombuds structures are of great interest. Cape Town is maybe the most beautiful city in the world and it really is true that there are hundreds of varieties of flowers that exist only there, in the world -- the flowers are AMAZING. Mandela has to be observed to be believed -- a person of Gandhi-like stature.

There are lots of problems. Random violence produces the kind of caution that I otherwise know of only in Bogota. 50% unemployment among people of color -- and many of the shantytowns are still there. Of 42?? million people, maybe a fifth are recent immigrants, many illegal, largely from the countries to the north. HIV status has shifted from the US' 1/3 to 1/2 of one percent of the population to almost 10% in maybe a five-year period. The human dislocation and pain of the history of apartheid recall the Holocaust (I do not say this lightly) and leave me feeling deeply disoriented that humans could have contemplated such pervasively contemptible immorality, let alone carried it out.

If you get a chance to go -- I would say go for it. The good news includes the food (inexpensive macademia nuts, great wine, great cooking in a hundred traditions, fantastic fruits and vegetables, and ostrich steaks if you are not a veg like me) -- a most extraordinarily beautiful country with many types of geography, and haunting cave art -- really remarkable and wonderful people across the rainbow -- and the deep commitment any person of conscience

must feel that this country must work -- for its own sake, for all of Africa, and for all of us in a diverse world. I was impressed that many Canadian organizations have offered a great deal of support and resources to SA organizations. I of course came back thinking we should all do more.

TO: OMBUD@MIT.EDU

FROM: Dean M. Gottehrer (deang@cruzio.com)

SUBJECT: Re: Trip to SA

Thanks, Mary, for your report on your South Africa trip. It is always better to have something than nothing. I learned much from your report that I did not know about SA. I agree with the assessment of Mandela. People in Lesotho are concerned that he live long enough to make SA a workable country because they think he is one of the few if not the only one who can do that. It is important to remember that Lesotho depends on SA in many ways, primarily economically. So if SA goes down the tubes, in all likelihood so does Lesotho.

If as you think more about your trip, more thoughts come to you, I hope you'll share them with us.

Best, Dean

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## THE CONTRIBUTORS

**John J. Binder**

At Kent State University since 1964, John is the current Associate Dean for Enrollment Management & Student Life and Student Ombudsman. Prior to his appointment as Student Ombudsman in 1985, John held the following positions: Director, the Elyria Academic Center; Director, Advising and Orientation; and Assistant Dean for Student Life. John also is an Adjunct Assistant Professor of History and teaches one class each semester which includes a Team Orientation Course for freshman.

After serving in the Korean War, John earned a B.S. in Secondary Education from Duquesne University; a M.A. in Counseling from the University of Notre Dame; and a Ph.D. in Higher Education Administration from Kent State University in 1972. His dissertation studied the landmark case of Dixon v. Alabama which defined due process for students in public colleges and universities. John and his wife, Lois, have five grown children.

**Mary Gallwey**

Mary joined the faculty at Washington State University in 1959; was appointed Ombudsman in 1993; and, currently, is a Professor of Human Development. During this period, Mary has served as Acting Dean, Department Chair, Executive Secretary of the Faculty Senate, and Member of the major University committees. Mary also has held many elective and appointive positions in local, state, and national organizations that are involved with social concerns. In 1989, Mary received the William O. Douglas Award of the American Civil Liberties Union of Washington, and the Martin Luther King, Jr. Award in 1991.

**Helen Hasenfeld**

Helen originally was hired as the Employee Assistance Program Director at the California Institute of Technology, and later, in 1991, was appointed the Ombudsperson with the intention of assisting for six months until the position could be filled. However, she became "hooked"; accepted Caltech's offer to become the Ombudsperson; and creatively utilized the skills that she had amassed from her previous work experience in Mental Health (counseling and organizational development), Employee Assistance (counseling regarding workplace issues), and Consulting (helping people develop options). Moreover, the many years of living in a University community gave her valuable insight into the world of academe and the peculiarities in academics. Helen earned an undergraduate degree from the University of Pittsburgh; an M.A. in Counseling from the University of Michigan; and a Master of Social Work from the University of Southern California.

**Estelle Hopmeyer**

Estelle is an Associate Professor in the McGill School of Social Work at McGill University in Montreal, Quebec, Canada. A member of the faculty since 1970, Estelle teaches both undergraduate and graduate courses in Social Work Practice with Groups. Estelle has developed a graduate level course in the area of bereavement, and serves as a Consultant to a number of community health organizations and bereavement self-help groups which include the Family Survivors of Suicide.

In September 1993, Estelle succeeded Annette Werk as the Ombudsperson for Students and is completing the second year of her five year term. At McGill University, the Ombudsperson position is a half-time appointment that permits the appointee to continue teaching, practicing, and conducting research in the School of Social Work.

**William A. Kennedy**

William combined a Ph.D. in Communication, Rhetoric, and Public Address from Wayne State University, Detroit, Michigan, (1978) with a Master of Divinity in Pastoral Ministry from Ashland Theological Seminary, Ashland, Ohio, (1990). William founded the Ombuds Office at the GMI Engineering & Management Institute in Flint, MI. in 1990, and served as the Ombudsperson until the office was dissolved in 1994.

In his current GMI positions as Professor of Communications and Chaplain, William teaches and writes in the areas of institutional ethics and conflict resolution. As Chaplain, William is involved in encouraging students of diverse backgrounds and different faiths to learn from one another and to cooperate together for the common good.

**José F. Moreno**

As the former Peer Ombudsman at the University of California, Irvine (1990 - 1992), José returned this past summer to work in the UCI Ombudsman Office on his alma mater campus. During this period, José completed the research for his article in the 1995 JOURNAL.

After earning a B.A. in Social Ecology from UCI in June 1992, José worked on the campus as a Research Associate until he enrolled in the Harvard Graduate School of Education from which he received a Master of Education in June 1995.

Fall 1995, José returned to the Harvard Graduate School of Education to become a doctoral candidate in Administration, Planning, and Social Policy. José plans to concentrate in the area of organizational behavior and politics within institutions of higher education.

**Janis Schonauer**

Janis is the Associate Ombudsman at the University of California, Irvine. Her prior work experience includes: Social Worker in both Illinois and Michigan; Group Counselor and Probation Officer in Belmont, California; Police/Community Relations Specialist with the Orange County Human Relations Commission; and several administrative positions at California State University, Fullerton and the University of California, Irvine. Active in the Ombudsman profession, Janis' recent contributions include serving as Resource Person for New Ombuds at the 1994 Cal Caucus Conference in Asilomar and University & College Ombuds Association (UCOA) meetings. Janis received her B.A. in Psychology from Michigan State University in 1968 and M.A. in Public Administration from California State University, Fullerton in 1981.

**James W. Vice**

Jim is serving his fifth year as Ombudsperson at Loyola University Chicago. An alumnus of the University of Chicago, Jim remained at his alma mater for several years as an administrator in the area of student affairs and as a Professor of Social Science. In 1975, he became Dean of Students at the Illinois Institute of Technology. In addition to his administrative duties at IIT, Jim taught Political Science. Jim's academic interests focus on the general nature of practical reasoning and the specific ways people reason together through institutions -- areas in which he has 26 years of teaching experience. These concentrations, combined with his varied administrative experiences, have sharpened his commitment to improving communication and community understanding within a university. In Spring '94, Jim was elected a Board Member of the Chicago Chapter of SPIDR.

**Bill Warters**

Bill is an Assistant Professor in the Department of Dispute Resolution at Nova Southeastern University in Fort Lauderdale, Florida, and Director of the Nova Conflict Resolution Resource Service. His prior negotiation experience included founding the Campus Mediation Center at Syracuse University; serving as the Program Coordinator for almost three years; and serving as the Co-Chair for the First National Conference on Campus Mediation Programs in 1990.

Bill received significant academic training in the area of Dispute Resolution via earning a B.A. in Conflict Resolution from the University of California at Santa Cruz, and a Ph.D. in Social Science (with distinction) from the Maxwell School of Citizenship and Public Affairs at Syracuse University. In conjunction with his doctoral studies, Bill held a Graduate Assistant appointment in the Program on the Analysis and Resolution of Conflicts -- a Conflict Theory-Building Center that is funded by the Hewlett Foundation. Active in the mediation field, Bill is the current Chair of the Committee on Higher Education for the National Association for Mediation.

**Annette Werk**

Annette is an Associate Professor and the Associate Director of the McGill School of Social Work at McGill University in Montreal, Quebec, Canada. A member of the faculty since 1973, Annette teaches both graduate and undergraduate courses; serves as the Director and Supervisor of the McGill Domestic Violence Clinic; and conducts research in the area of violence against women.

In September 1987, Annette became the first Ombudsperson for Students at McGill University and held the six year appointment until August 1993 when she was succeeded by Estelle Hopmeyer.

**Linda Wilcox**

As the Ombudsperson at the Harvard Longwood Campus for the past five years, Linda hears concerns from the faculty, staff, and students in the Medical, Dental, and Public Health Schools, as well as appointees at Harvard's 17 affiliated hospitals. In her previous positions, Linda served as a Spokesperson at union negotiations for a school system, and as a Mediator for a Massachusetts Court "Mediation Program."

An active participant in the Ombudsmen organizations, Linda is presently a Board Member of The Ombudsman Association (TOA), and a previous Board Member of the University and College Ombuds Association (UCOA).

Linda earned a B.A. from Boston University and a M.A. and C.A.S. from the Harvard Graduate School of Education. She also holds a Certificate from the Program on Negotiation at the Harvard Law School.

**Ron Wilson**

A 17 year veteran Ombudsman, Ron Wilson has directed the UC Irvine Ombudsman Office since 1979 after leaving the UC Riverside position of Director, Student Affirmative Action. During his UCI tenure, the title has evolved from Campus Ombudsman/Associate Dean of Students to the current title, Assistant Executive Vice Chancellor-University Ombudsman. Concurrent with these title changes, Ron's increased responsibilities include the jurisdiction of the Faculty & Staff Assistance Program and serving as the Ombudsman for the California College of Medicine and the UCI Medical Center.

Active in several Ombudsmen organizations, Ron is a past President of the University and College Ombuds Association, and this is his seventh contributing effort as the Compiler/Editor of the CCCUO Journal. Ron received a B.A. in English Literature from Bard College, New York in 1975; a Certificate of Administration and Analytical Skills from the Center for Public Policy & Administration, California State University, Long Beach in 1980, and a M.P.P.A. in Public Policy and Administration in 1983.

*California Caucus*
*of*
*College & University*
*Ombudsmen*

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Shirley Crawford

It is with sincere gratitude and appreciation that the California Caucus of College and University Ombudsmen acknowledges the contribution that Mrs. Shirley Crawford made to our Asilomar Conference by way of the support services she delivered toward the completion of this publication. Without her diligent and nurturing assistance, our Journal would not have been possible.

Mrs. Crawford is the Administrative Assistant to the Assistant Executive Vice Chancellor-University Ombudsman at the University of California, Irvine.

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# INTRODUCTION

Ron Wilson

University of California, Irvine

As we enter the 21st century, many segments of our heterogeneous society are still struggling to exercise the individual rights and privileges that were stated in the 1791 Bill of Rights and were expanded during the 19th and 20th centuries. However, as the 1900(s) draw to a close, many groups -- male, female, ethnic minorities, gays, lesbians, handicapped, and the elderly -- remain in the mire of prejudice and the marsh of bias from which they are still striving to emerge. In reality, as our nation enters a new century, our goal of "equal rights for all" remains in a stage of infancy and awaits the promised "coming of age." The dual challenges of equal justice and equal opportunity for every individual in our "multicultural population" are still visible and remain unconquered. The progress that has been made and the victories that have been won are followed by the shadows of unfilled dreams and dashed hopes which often represent "one step forward; two steps backward."

As citizens who respect (and expect) democracy, we no longer can cherish our liberties without providing the means for their possession by all the denizens who live in our pluralistic society. Our varied racial composition -- an inheritance from the immigrants of other lands -- must be viewed as a strong base on which we will continue to build our individual lives. Therefore, free expression of the minorities' viewpoints and opinions must be maintained and protected if America intends to keep pace with the world's growth and development during the coming century.

For those Americans who do enjoy all of the rights to which they are entitled, it is no longer sufficient to say that our government believes in equity if the amendments that were passed to guarantee justice to every member in our mélange of nationalities are thwarted and twisted to preserve the status quo. Moreover, it no longer suffices to state that our laws have created equality if we fail to recognize the necessity of a continuing debate -- respectful and relevant -- from the minorities, the disadvantaged, and the underrepresented whose voices remain unheard and whose claims for justice remain unheeded.

These democratic ideals and principles of justice are germane to our Ombudsman profession. Moreover, they are the pivotal points from which our duties in conflict negotiation and dispute resolution emanate. As Ombudsmen in academe, we know that our office holds a unique, strategic, and privileged position in the institutions that we serve. We also are aware that our survival in the "higher education arena" frequently depends upon our "high wire act" being performed without a net. However, during the last decades of the 20th century, our Ombudsmen have discussed "What is an Ombudsman? "What is not an Ombudsman?" "What should an Ombudsman do?" "What should an Ombudsman not do?" Sometimes our dialogues have taken a condescending tone and have revealed that Ombudsmen can be committed to a particular ideology at the risk of ignoring the validity of a different ethos. The aftermath can lead to divisiveness within the profession; to counterproductive actions; and to the very stagnation we hope to prevent. Is this the position in which we are willing to be rooted as the 21st century advances toward us? I believe the answer is an emphatic "no." In my opinion, Ombudsmen can utilize diversified approaches in their search to support equal rights and to achieve equity for

their diverse student, academic, and administrative bodies. Moreover, the excellent articles that follow in The Journal are positive examples of the several methods via which we can assume our responsibilities, perform our jobs, and fulfill our goals. The rich variety of theses in the following essays offer "food for thought," "intellectual recharges to our mental batteries," and "mirrors of reality" that reflect the many ways to effectively implement an Ombudsman's role.

#

In Ethics in the Academy, **Kathleen Beattie** acknowledges her instinctive reluctance to judge the actions of others and bravely explores the Ombudsman's dilemmas when asked to be the "community conscience."

As Beattie describes the search for answers to an Ombudsman's questions, "Am I the conscience for the academic community that I serve?" and "If I am asked to be the academic conscience, how can I determine the ethically appropriate behavior -- especially in our mélange of cultural and social norms?", she realizes that the members of the university community expect a satisfactory definition of the correct behavioral boundaries. However, Beattie recognizes that a common acceptance of uniformity in ethical behavior is precluded by cultural and social diversity; the diminishing of religion's positive influence; and the increasing ineffectiveness of civil and criminal laws.

Undaunted by these realities, Beattie outlines a plan of action to combat the existing void that lies within the parameters of acceptable and unacceptable behavior. Using three Case Studies in which the Ombudsman might be asked to provide an objective opinion and/or an equitable solution, Beattie concludes that the Ombudsman's obligation is to identify the most vulnerable party in the dispute and to suggest a reasonable and unprejudiced answer.

#

In An Ombudsman's Proposal for an Independent Judiciary, **R. Adolfo de Castro** pleads an excellent defense for granting full "functional independence" to the judicial branch. Adolfo de Castro believes strongly that an independent judiciary could possess administrative powers commensurate to those enjoyed by the executive and legislative branches, and could still remain accountable to its constituents, the citizens, who pay for its services.

At present, de Castro alleges that the judicial branch is subordinate to the government's political powers. Furthermore, the courts are lodged in this political arena because the appointments, terms of office, promotions, and salaries are determined and/or influenced by the Chief Executive and the Legislators. However, an independent Legislative or Parliamentary Ombudsman could offer the requisite "checks and balances" to monitor the administrative decisions of an independent judiciary, and also could serve as a control instrument that would "call into question" flagrant misuses of power. Finally, de Castro stresses that the judicial system must become a full-fledged government power if it is to meet the complex challenges of the 21st Century.

#

In Ombudsing in an Educational Institution: Use of Implicit and Explicit Power, **Norma Guerra** and **Gregg Elliott** present a masterful study of the Ombudsman's power.

Reaffirming the premise that dispute mediation between university community members requires independence, confidentiality, identification of equitable options, and a genuine respect for both parties, Guerra and Elliott concentrate on the latter aspect, i.e., the disputing individuals.

Guerra and Elliott demonstrate forcefully and unequivocally that the disputants' future relationship might be on a par with their present disagreement because both parties are members of the same university community. Consequently, an Ombudsman in academe should assess the present and future professional interactions between the person who is experiencing the conflict and the individual who is perceived as causing the problem. Moreover, unless the grievant is suffering a crisis which requires immediate intercession, the Ombudsman should gently guide and/or cautiously persuade the "perceived perpetrator" to reconsider a decision that might be unjust.

The authors provide a powerful buttress for their thesis with clear, concise schemata. The Table, Figure, and Case Studies offer synoptic descriptions of the disputants, the disagreement, and the method via which the Ombudsman can objectively address and amicably resolve a problem between players on the same team.

#

In Assisting Complainants Seeking to Establish a Record of a Complaint Without Violating Ombuds Ethics, **Tom Sebok** offers a viable and pragmatic plan to assist the Ombudsman in preserving the confidentiality and neutrality of the office while simultaneously offering positive and effective solutions to the clients.

Using a classic example of the grievant who desires to register an "informal complaint" that can house a "formal consequence," Sebok cogently summarizes nine alternative solutions which the Ombudsman may suggest. [The grievant does not want the other party to know that an informal grievance has been registered which could be used at a later date if formal charges are filed.]

However, the Ombudsman must listen objectively to both parties. Therefore, Sebok's nine recommendations that the complainant can take independently, afford sagacious, unbiased, and sound advice for the Ombudsman to give freely and without qualms about violating professional ethics.

#

In Academic Ombudsing: Process, Roles, and Relationships, **Lois Price Spratlen** and **Susan Neff** deliver a scholarly treatise on the actual process that the Ombudsman uses to effect an amicable compromise between disputants.

Using a five point outline, Spratlen and Neff divide their research into the following categories which comprise the mediation process and link together to form an effective "modus operandi" [MO]: Introduction; Phases of the Ombudsing Process; Contributions and Benefits of the Model; Challenges and Implications of the Ombudsing Process; and Conclusions.

A two page Matrix offers a comprehensive chart which describes the four stages through which a grievance might pass before reaching a resolution. This excellent Model cites "Orientation," "Facilitation," "Termination," and "Evaluation" as the four principal elements in "grievance composition." Furthermore, these entities depict the four phases which will be further defined by the grievant, the grievant's goal, the grievant's adversary, and the Ombudsman -- the objective Mediator who strives to facilitate an equitable solution for everyone.

Spratlen and Neff enthusiastically advocate their Model as an effective methodology for the Ombudsman profession because the empirical evidence appears to confirm a 90% success rate for clients who use Mediation to resolve their complaints.

#

The thesis of Common Sense Revisited by **James Vice** will be recognised immediately by every Ombudsman who strives unflaggingly to unravel the dilemma of the student who has been referred from Office A, to B, to C, to D, and back to A. Using modern examples from our universities; timely admonitions from present writers (Philip Howard and Fritz Schulz); and ancient maxims from

classic philosophers (Plato, Aristotle, Goethe, de Tocqueville, and Holmes), Vice creates a brilliant analysis of the existing tension between the myriad of rules and their application by conservative bureaucrats who are reluctant to use discretionary judgment, i.e., "common sense."

Vice adroitly supports his defense for "common sense" with elliptic phrases and quotes which evince well-known facts, e.g., find a problem, pass a law; too many regulations written in too much detail; all that is known cannot be articulated in detail; a rule is a general statement which cannot foresee all the circumstances; knowing the principle is not the same as knowing "how"; and all rights tend to declare themselves absolute to their logical conclusion.

These succinct, pithy statements unveil accurate observations on a complex phenomena, i.e., equal, but conflicting rights, can collide and cause tension. However, this discord can be resolved or alleviated by the wise individual who is willing to assume responsibility and apply common sense.

#

In Apologies, **Marsha Wagner** superbly outlines the seven essential components of sincere remorse, i.e., an identification of the wrongful deed; a recognition of responsibility and accountability on the part of the offender; an acknowledgment of the pain or embarrassment suffered by the offended party; a judgment about the offense; a statement of regret; an assurance of future good intentions; and an explanation of the offender's motives.

Citing a recent public incident that put two prominent statesmen at odds -- Senator D'Amato and Judge Ito -- Wagner facilely identifies the cruxes of an acceptable apology while simultaneously defining the fatal flaws that can increase the insulted party's rancor. [In the aforementioned incident, a second public statement of regret was necessary to repair the additional damage caused by the first explanation of the character defamation.]

Wagner's excellent critique of an acceptable and unacceptable apology provides valuable insight into the Ombudsman's continuous task of achieving an amicable resolution between two disputing parties.

#

After reading these dynamic, enterprising articles, I believe their creative contents will assist our Ombudsmen in developing, formulating, and executing the best answers for the individuals who approach the Ombudsman Office and ask

for help. As the articles demonstrate, the Ombudsman's responses can be flexible, and without concern or allegiance to either the "traditional" or the "non-traditional" beliefs. For example, the Ombudsman who works closely with the Institution's President, Chancellor, Dean of Students, and Campus Police upholds the Ombudsman concept just as the Ombudsman who distances the position from the Academic Executives on the grounds of neutrality; the sanctuary of confidentiality; or the maintenance of their present, individualistic footing. Both styles can provide neutral, confidential, focussed, and effective service. Both MO(s) can openly support the needs of the students, faculty, and administrators who request their services.

Finally, it is important to remember that when an Ombudsman Office closes, those of us who remain cannot become identical designs and shapes which have been cut from the same "cookie cutter." We must be individual, separate, distinct, and important ingredients in the "whole mix" that represents our workplace. Our approaches must be as diverse and unique as the academic population we serve. If we fail to achieve diversity in our actions, we relinquish our opportunity to serve the community that needs us most.

Ron Wilson

Assistant Executive Vice Chancellor-University Ombudsman

University of California, Irvine

Editor of the CCCUO Journal

# ETHICS IN THE ACADEMY

Kathleen Beattie

University of Victoria

During my time at the University of Victoria, it has been my privilege to serve virtually all of the constituent groups on campus, even though my position is a creature of the "University of Victoria Students' Society" (formerly the Alma Mater Society).

One of the most satisfying elements of that service, albeit at times a dubious one, has been that of playing conscience to the community. When I first realized the extent of this role, I had to wonder if I was inappropriately seizing power and control over situations which could just as well have been resolved without that intervention. As time and experience unfold, however, I am becoming increasingly convinced that the university community (and indeed the larger community) is probing for appropriate ethical boundaries. Therefore, my experience is one working out of that critical search.

## BACKGROUND

Common sense informs us of several realities. I will articulate three of these well-known facts as the basis for this discussion paper:

1. We live in a culturally and socially diverse nation, whether we own Canadian or American citizenship. This diversity is a hallmark of Canadian tradition in which we celebrate the "cultural mosaic" of

our society. No doubt, the same elements of diversity underlie the "melting pot" philosophy of our American neighbours. This diversity -- with its richness -- brings generally unarticulated limitations. For purposes of this discussion, the prime limitation is the complete lack of culturally dictated norms of social behaviour. For example, appropriate touching within one cultural grouping can be viewed as inappropriate or offensive behaviour within another.

2. The traditional keeper of appropriate community behaviour and interactions -- the state, usually informed by the church -- no longer speaks even to individual faith groups. It certainly does not speak to those who neither know -- nor care to know -- its teachings.
3. Lawgivers and law keepers, whether police, lawyers, or judges, no longer hold the respect of the general population. Examples of this reality can be witnessed in the barrage of "lawyer jokes" which abound at any bar meeting; the media stories about abuses within the police and justice systems; and the books such as Philip Howard's The Death of Common Sense.

THE STATUS QUO

If my premise is correct, then, we have no common understandings of ethically appropriate behaviour unless we deliberately and proactively develop those understandings, and acknowledge them as common principles underlying all of our interactions within a defined community.

Our community, by definition, is the post-secondary institution of learning, generally known as "The Academy." Sub-sections of this community have developed "Codes of Ethics" or "Codes of Honour" within their own disciplines, and those codes are valuable resources to an informed discussion.

However, we are still left within a void which spawns uncertainty, psychological and emotional stress, potential litigation, and financial expenses. Examples of this void can be found in the following case studies:

Case Study #1: A student is looking for an Honours or Thesis Supervisor in a specific specialty. One (male) faculty member has expertise in that field, but he is under a prohibition from supervising female students because of proven misconduct under the institution's anti-harassment policy. The student, unaware of the prohibition, asks the professor to supervise her Honours Thesis (4th year, psychology), and he signs her proposal for submission. What are the issues raised? What are the appropriate institutional responses?

Case Study #2: A junior high school teacher enters a bar during summer vacation and meets a fourteen year old girl, who is a former member of his class and who is expected to return to his school in September. He leaves the bar with her. They go together to a party, and subsequently engage in apparently consensual sexual relations. He is charged under the Criminal Code of Canada. Subsequently, at a trial and in the provincial court of appeal, he is found not guilty of criminal activity because he is "not in a position of trust" outside of the academic year. The Supreme Court of Canada overturns the lower court decision. One teachers' organization asks,

"How do we know when we will be held accountable?" and "What is the standard?"

Case Study #3: A graduate student on a Cooperative Work Term requests permission to extend the work term for a specific period at the instigation of her employer who wants her to complete a project for the Ministry of Health. The departmental Co-op Coordinator withdraws initial permission because the student would be in contravention of a "PSERC" (employees' union) regulation -- but allows other students to continue in parallel situations. When queried, the coordinator threatens the student with legal action (cause of action unspecified). He is caught changing the status of a second student in an effort to hide the parallel, and threatens the whole of the Admissions, Programs, and Standards Committee with a lawsuit. He also threatens the Ombudsperson with a lawsuit.

There does not appear to be a mechanism in place for "policing" the behaviour of administrative professional staff -- the expectation being that they will discipline themselves appropriately through collegial pressure.

CONCLUSION

What do these situations have in common? How might they inform our practice of Ombudsmanry?

I would suggest that, in each case, the judgment of the primary actor(s) and the consequent action are flawed in a basic way. Each situation undoubtedly could have been avoided if that actor had stopped; had asked himself or herself, "What is the 'high road' in this case?"; and had acted accordingly.

Given that such was not the case, and that we are professionally responsible for an appropriate resolution (at least insofar as we make recommendations) might it not be our role to be "our brother's keeper"?

It is surely a basic function of an Ombuds office to identify vulnerable or victimized parties and to offer some balance to the situation. Although we live in a society which esteems individual rights -- including free speech and freedom of association -- those rights might be curtailed (as in the first two case studies) when an actor has shown a propensity to overstep the appropriate boundaries.

I would propose to go further than this. By instituting discussion within the broader community, I would hope to generate philosophical understandings which would be clearly articulated. From those understandings, it would be possible to extrapolate appropriate action within specific circumstances as well as to curtail some of the excessive "bullying" behaviour (as in Case Study #3) which seems all too common. Meanwhile, it is still a great privilege to be invited to be part of the conscience of the Academy.

# AN OMBUDSMAN'S PROPOSAL FOR AN INDEPENDENT JUDICIARY

R. Adolfo de Castro

Commonwealth of Puerto Rico

The time has come for all jurisdictions in the United States to wake up to the fact that we are not such a wonderful democracy after all; that we do not really have three equal and separate powers of government; that our judicial system is way behind the times; and that we should not keep putting off the moment to hand the keys of the family car over to the judicial power.

There should be no question in anyone's mind that our judicial system must be allowed to face the challenges of the 21st Century as a full fledged power of government in its own right.

But, we have to do this according to S.O.P., and without subverting the constitutional order of checks and balances that govern relations between our three branches of government. On the contrary, it is precisely on the basis of this principle of democratic control that our judicial system can be endowed with the functional independence necessary to upgrade it to the level enjoyed by the other two branches.

Until now, all our judiciary possesses is an ill-called "judicial independence" which only covers the adjudicative (decisional) function of the judges. Practically everything else -- the appointments, the salaries, the terms of office, and the promotions -- still depend upon the will of the executive and legislative powers.

It is time to get our courts out of the realm of politics. It is time to count on a judicial power that is at a par with the other two. Albeit, it is good and necessary to have the political powers exert some measure of control over the judicial branch, at the eve of a New Century, it is more than time enough to simmer down the presently excessive measure to the appropriate level of reality.

As a first step in this direction, it should be wise to know that in the more avant-garde democracies of Europe, the institution of the legislative or parliamentary ombudsman has proven to serve well as an instrument of control of the administrative acts of both the executive and judicial branches of government. Moreover, this independent, legislative ombudsman -- without infringing on the judicial (decisional) function of the courts -- really holds them accountable to the people.

For our purposes, the positive results obtained by this means of democratic control are instrumental to the proposition that it is time for the American judicial system to freely exercise full authority to plan, develop, and carry out its own operational objectives -- the way the other two branches of government have always done it!

The idea is fine, but, we need to change a lot of attitudes to put it into effect. Notwithstanding the good results obtained by the legislative ombudsman as an overseer of the administrative conduct of the courts in other countries, here, the traditional misgivings of our judges and politicians in this regard will be difficult to overcome. The former, because they do not want any control at all. The latter, because they believe they would not have enough.

However history is full of such incidents; the fact is, no society has survived which has not overcome them. It may take a little longer for some of us to change with the times, but, in the end, we all find out that whatever does not go forward, retrogrades. In addition, there will always come a time to measure strengths and reserves; to examine the real world around us; and to correct the historical errors that keep our courts' systems subservient to the other two branches of government. Now is the time to link a new prerogative of self-government for our judicial system with the obligation to stand accountable to the citizen who pays for its services. THERE IS NO BETTER WAY OF MAKING DEMOCRACY WORK. NOTHING INCREASES TRUST IN GOVERNMENT MORE THAN CITIZEN PARTICIPATION IN ITS INSTITUTIONS.

In this direction, insofar as the accountability requirement is concerned, it should be enough to establish a legislative ombudsman office with jurisdiction over the administrative (non-decisional) acts of the judiciary.

The judicial independence matter, however, is going to give us a little more work. The most important thing to keep in mind is that everyone must understand that there is no judicial independence without a "judicial career." There are no shortcuts here. Either we all get together on the fundamental principle that entrance to the judiciary is only for the most competent or we waste our time with a dead horse.

No one should be a judge without examination. Our law schools are quite capable of establishing the courses required to prepare judiciary candidates for the entrance exams to be administered by the judicial power.

This done, without altering the delicate balance between the three branches of government, if we really want to depoliticize the American judicial system in line with the historical exigencies of the year 2000, it will also be necessary to take the following steps:

1. Amend our constitutions, state and federal, so that, with the exception of the judges of the highest court of each jurisdiction -- who should be appointed by the chief executive officers from judges of the courts of next-to-highest hierarchy -- all others should be selected by the judicial power through mechanisms of their own creation among candidates who have:

   (a) the certification, and

   (b) the endorsement of a commission especially created by law to evaluate their ethical aspects and traits of personal integrity as well as their reputation in their particular communities.

2. After these initial guidelines have been set, establish a truly independent judiciary which, in the same manner that it learned to accept the intervention of a legislative auditor (comptroller), will now also acknowledge a new constitutional obligation to account for its administrative action to another legislative officer, the Ombudsman. In addition, the Highest Court should work out a program of continued training and a set of evaluation procedures to allow the aforementioned special commission to promote the judges. This program, of course, must include the participation and vote of the corresponding bar and judiciary associations.

3. With these procedural and substantive measures in place, tackle the most sensitive aspect of our proposal for an independent judicial branch, e.g., let no one doubt that the only way to guarantee it is through the establishment of life appointments!

A study of the results obtained by the ombudsman in countries where the institution has jurisdiction over the judicial system evidences that its use as a mechanism of democratic control of the administrative excesses of the judiciary mitigates the fears legislators have about life appointments. Enough to state that the evaluation of the judges for promotion as well as the selection of judicial candidates for appointment, being an administrative function, also would be under the scrutiny of "the watchdog of good government" -- the legislative ombudsman.

With this in mind, we should proceed to correct the historical error that has kept the judicial branch subordinated to the political powers of government all these years. To do it, the judicial power must be granted a guarantee of budgetary autonomy consonant with its juridical maturity and constitutional mission. Accordingly, it will be necessary to include in the precited constitutional amendment a disposition to reserve a pre-fixed portion of the government's income for the judicial power.

As pointed out at the beginning of this proposal, all we have in our judicial system, up to now, is an ill-called judicial independence which only covers the decisional function of the judges. It is time to put an end to all the barren and retrograde discussions that maintain our judicial system enmeshed in the past. We have seen why the legislators do not need

to fear the judges. Neither do these judges need to feel any fear before the legislators. In the end, the last word about what is administrative or judicial is theirs.

Let us open the frontiers of the New Millennium armed with all the tools available to safeguard our ever-growing and delicate democracy. The legislative ombudsman is one of them. Let us use it! It is time we enjoy the fruits of a truly independent judiciary.

Let all the interested parties get together: the judges, their associations and councils, the lawyers, the law schools and public administration departments of our universities, the attorney generals, and all of the state and federal legislatures' "Committees on Judicial Matters." Let each of them analyze our proposal for a truly independent judicial system and submit their reports during the course of this year. We can discuss them at a grand international public hearing to be held in San Juan, Puerto Rico during the Summer of '97.

# OMBUDSING IN AN EDUCATIONAL INSTITUTION:

# USE OF IMPLICIT AND EXPLICIT POWER

Norma Guerra and Gregg Elliott

University of Texas at San Antonio

The diversity of activities falling under the auspices of "ombudsing" at different institutions around the world makes a discussion of ombudsing technique challenging. Depending on the institution, the ombudsperson is and has been considered many things. Arnold (1995) defines the ombudsperson as a third-party fact finder/adjuster who remains largely neutral while investigating complaints or grievances. Rahim (1986) portrays the ombudsperson as one who helps parties gather more information so they can overcome their misunderstandings, while Wallace (1993) argues that ombuds duties often require a stance which is not neutral, and that it is the pursuit of fairness and equity which defines the role.

The historical ombuds role seems to reflect Wallace's (1993) view that ombudsing is predicated on providing the individual an option for recourse against a bureaucratic entity, usually the government. It is in these cases where disputes arise out of the power imbalance between the individual and the organization that it is especially important to protect the rights of the individual (Gutek, 1992).

The traditional ombuds role at the educational institution has been one of an outside, independent authority that investigates a case and subsequently decides on the fairness of the decision in question (Rowat &

Wallace, 1983). The ombudsperson is called upon to make recommendations for the remediation of complaints and utilizes her or his powers of persuasion and the threat of publicity to encourage the respondent to take the appropriate action (Wallace, 1993). In an educational institution, the clout of the ombudsperson is often backed up by the possibility of further support from the administrative hierarchy (Steiber, 1991). In most cases the ombuds office is clearly established as being completely separate from the administration and as an entity that will act on behalf of the initiator in pursuit of what is equitable for the initiator (McDermott, 1995; Arnold, 1995; Wallace, 1993; Steiber, 1991; Rowat & Wallace, 1983).

The University of Texas at San Antonio (UTSA) ombudsperson works to insure that the policies and procedures of the university are being followed and implemented in a fair and equitable manner. In circumstances where policy is vague or it appears a policy may be out-dated or obsolete, the ombudsperson makes recommendations as to how the policy might be implemented or changed to best serve the university population. The ombuds role, however, incorporates more than just an acknowledgment and remediation of the immediate policy or procedural concern. The UTSA ombudsperson is a community-builder.

The UTSA Problem Solving/Conflict Resolution (PS/CR) Program was founded in 1993 with four "pillars," or values, serving as ideological supports for the program and for defining the ombudsperson role. These four values are independence, confidentiality, a commitment to alternative option generation, and respect for the nature of the relationship between the initiator(s) and respondent(s). Much has been written about the first three

"pillars," but little literature addresses the techniques ombudspersons can employ to fulfill the onus of the position in a way that does not negatively impact the relationship between the initiator and the respondent (see Table 1).

**Table 1**

**Definition of Terms**

| | |
|---|---|
| **Initiator:** | Individual(s) experiencing the conflict, and who brought the conflict to the attention of the ombudsing office |
| **Respondent:** | Individual(s) perceived by the initiator as the cause of the conflict |
| **Disputants:** | Term used to refer to the initiator(s) and the respondent(s) together |
| **Invested Relationship:** | Individuals in conflict who have an ongoing, interpersonal affiliation |
| **No Investment Relationship:** | Individuals in conflict who have a short-term or inconsequential relationship |
| **Implicit Power:** | Intervention techniques focused on maintaining the disputants' relationship while at the same time addressing the conflict situation |
| **Explicit Power:** | Intervention techniques focused on resolving the conflict situation without concern for maintaining the disputants' relationship |
| **Combination:** | Situation where the ombudsperson uses both implicit and explicit power in the intervention technique<br>• **I/E Combination:** Situation where the ombudsperson first uses an implicit power technique and follows-up with an explicit power technique<br>• **E/I Combination:** Situation where the ombudsperson first uses an explicit power technique and follows-up with an implicit power technique |

At UTSA, a major intervention consideration is the nature of the institutional relationship between the initiator(s) and the respondent(s). The nature of this relationship determines the nature of the intervention undertaken by the ombudsperson. For example, students may have several years remaining in their work at the institution and therefore cannot afford to alienate themselves from a professor whose courses they may have to take in the future. Staff and faculty members who are planning a career at the institution cannot afford to make an enemy of an administrative official, despite the perceived inequity of their current situation. The fact that the initiator and the respondent may need to continue their relationship past the resolution of the present dispute, requires the ombudsperson to consider the relationship variable before making an intervention.

UTSA ombudspersons conceptualize the conflict situation along two matrices: the nature of the conflict, and the nature of the relationship (see Figure 1). Some conflict situations have an urgency that requires a swift or immediate response. Other situations, while frustrating to the initiator, can be ombudsed at a more deliberate rate. These situations are referred to as being "crisis" or "non-crisis" situations. Similarly, some initiators are in conflict with a respondent with whom they will have a continuing association in the future. These circumstances are referred to as "invested relationships" and represent situations where the ombudsperson needs to take the relationship into account when intervening. Other initiators are in conflict with a person they don't know and with whom their

relationship is inconsequential or short-term. In these circumstances, referred to as "no investment relationships," it is less crucial for the ombudsperson to consider the relationship when intervening (see Figure 1).

We characterize the techniques of the ombudsperson as utilizing primarily one of two different types of power. "Explicit power" is characterized by an overt display of power that meets the desired end of the ombudsing intervention, but entails the danger that the respondent will feel subjugated or overthrown by having the ombudsperson take a stand against their previous actions or decisions. The threat of publication or publicity that reinforced the position of the historical ombudsperson represents this type of power. While most ombudsperson offices are established as having no formal enforcement powers (Rowat & Wallace, 1983; Steiber, 1991; Silver, 1967), the threat of taking the issue to the Provost or the faculty senate is often as effective at bringing the conflict to a quick end as it is in causing the respondent to lose face. Using this type of power will likely be successful in an ombudsing case, but it may leave the respondent with ill feelings toward the initiator and the ombuds office.

**Figure 1.**

The Academic Ombudsing Matrix

| Nature of the Relationship | Nature of the Conflict | |
|---|---|---|
| | Crisis | Non-Crisis |
| Invested Relationship | I/E Combination | Implicit Power |
| No Investment Relationship | Explicit Power | E/I Combination |

"Implicit power" is characterized by subtlety. Implicit power allows the respondent to weigh the judgment while allowing him or her to make a decision on his or her own. Benjamin (1995), in an article about mediation, compares the conflict resolver to the "trickster" character from folklore, suggesting that conflict resolution success often rests in cleverness and subtle manipulation rather than in force.

Implicit power bears resemblance in some aspects to the mediation technique of "selective facilitation" (Greatbatch and Dingwall, 1989) in that it accomplishes the means of the intervention; not so much by what the ombudsperson does, but by what she or he does not do. Ideally, the ombuds office will be recognized as a fair and just arbiter with the support of the President or executive administration. A friendly chat with a respondent to

see if the respondent can generate any options for an initiator may be enough to cause a respondent to reconsider an unfair decision.

Motivationally, the ombudsperson is focused on maintaining and building the university community. As the use of implicit power encourages respondents to make just decisions while maintaining disputant relationships, its use is facilitative in achieving the end of community-building. The following case studies illustrate the use of implicit and explicit power, and the results of associated intervention techniques.

Case Study # 1

Initiator disputant: Staff Member
Respondent disputant: Supervisor
Concern: Lunch break

The staff member came to the PS/CR office after not being allowed to go to lunch at the same time each day. He explained that he had to eat at the same time in order to prevent his blood sugar level from dropping to dangerously low levels, and he indicated he believed his supervisor was thereby creating a dangerous work environment and was putting the staff member at risk. The initiator further complained that his supervisor was not skilled or knowledgeable enough to recognize and manage this situation.

After discussing the situation at length with the staff member, the ombudsperson sensed this situation was only one of a series of many issues of conflict with the supervisor. The initiator went on to say he had more educational degrees and work experience than the supervisor and that he should be his supervisor's boss instead of the other way around.

The ombudsperson visited with the supervisor, who explained that indeed lunch breaks did vary given the traffic of the office. She said she was unaware that the staff member had a health concern and stated that the staff member was always visiting instead of working.

The ombudsperson's recommendation was that the supervisor set-up a regular lunch time for the staff member. It was further suggested that the supervisor spend some time with the staff member in order to provide him with ongoing formative evaluation regarding his work

performance. The ombudsperson requested that the supervisor contact the staff member to discuss the lunch situation and to inform him of her supervisory decision regarding his lunch routine.

The ombudsperson then stepped away and allowed the ongoing work relationship to continue, while periodically checking with both parties to ensure their future communications were more direct.

Case Study # 2

Initiator disputant: Student
Respondent disputant: Staff member
Concern: Lack of access to professor/remediation of the American Disabilities Act (ADA) violation

A student came to the PS/CR office after asking to make an appointment with his instructor to see if he could change his seat assignment due to a hearing disability causing him to not be able to hear the lecture. The division secretary told the student that the professor was very busy and that the student should ask him in class for the seat reassignment. After trying to explain to the secretary the urgency of the situation, the secretary sent the student to Disabled Student Services.

At the Disabled Student Services office, the student was given a special microphone for the instructor to speak into which would allow him to hear the instructor's lecture through an earphone.

When the student attempted to ask the instructor to use the microphone, the instructor had told him he was too busy to talk to him but that the student could make an appointment to see him later. Another attempt to schedule an appointment with the instructor ended with the secretary referring the student to the Academic Advising Center.

The student explained to the ombudsperson that he really needed the class and while he didn't want his teacher to be angry with him, he really could not hear what the instructor was saying. The student said he felt helpless in the situation, explaining that the secretary was keeping him from resolving his problem.

The ombudsperson made a visit to the instructor. The instructor said he did not want to begin making exceptions to his rules and that he had no intention of complying with the student's request unless the student came to see him as the instructor had told him. The ombudsperson explained the secretary's role and the student's frustration in not being able to make an appointment. The professor refused to consider the ombudsperson's information, so the ombudsperson thanked the

instructor for his time, returned to the PS/CR office, and submitted the following recommendations to the instructor's division director:

1. "The secretary should be instructed to set up an appointment for the student with the instructor."

2. "The instructor must comply with the identified ADA request."

3. "The instructor should follow-up with the student to make sure he can hear the lectures and discussion in class."

The division director met with the faculty member who was then asked to visit with the student. Shortly thereafter, the problem was remedied.

Discussion

When the disputants' relationship is characterized as a "no investment relationship," it is sometimes easier to intervene with the explicit power of the ombuds office. When the relationship has a longer commitment, however, the ombudsperson should consider the disputants' relationship and attempt to not jeopardize either the situation or future communication between the disputants. Navigation of the Academic Ombudsing matrix is further complicated by the variables and factors of the dispute which often go unstated. The complexity of the conflict, which logical discourse has usually already failed to remediate, requires both analytical skill and intuition on the part of the conflict resolver (Benjamin, 1995).

In the first case study, the ombudsperson was required to balance the employee's health needs with an employee-supervisor relationship complicated by resentment and poor communication. Relying on intuition and counseling skills, the ombudsperson ascertained that, while the initiator was presenting a health concern, the real problem was a lack of communication. As the dispute represented a long-term relationship with no immediate time

constraints for resolution, the ombudsperson made a subtle intervention of implicit power and presented the issue to the supervisor as a problem primarily with communication rather than specifically as a potential violation of a Human Resources policy. By presenting the problem as such, the ombudsperson was able to simultaneously address the policy and procedural concern as well as the interpersonal concern which had not even been presented by the initiator.

The second case study represented a crisis need with a no investment relationship between the student initiator and the secretary respondent. The faculty member was in violation of ADA statutes and was unaware of the situation's need for a swift resolution. In this situation, the necessity to get the faculty member into ADA compliance took precedence over protecting the relationship between the student and professor. The secretary, in a no investment relationship with the initiator, was exacerbating the problem, so the ombudsperson opted to exercise explicit power in a direct and forceful intervention at the level of the division director.

Summary

As a member of an educational community, the university ombudsperson should always attempt to mediate an explicitly powerful response with consideration of the relationships involved. In situations where the relationship does not need to be protected, a gentle intervention is still recommended, when possible, out of respect for the university community as a whole.

The intervention decision must take into account the longer-range ramifications of the conflict situation. The nature of the relationship between the disputants really is the best resource for determining what intervention to utilize. It requires judgment and intuition on the part of the ombudsperson to find ways to negotiate a settlement without wounding the respondent. When the ombudsperson is able to resolve a situation without alienating the respondent, however, it increases the chances the respondent will learn from the situation, and it promotes peaceful interactions within the university community.

At UTSA, we have found the ombudsperson can build community through the respectful consideration of relationships. One need not jeopardize future relationships unnecessarily. It is less a choice between use of explicit or implicit power, and more a choice to take every opportunity to facilitate change with a subtle respectfulness and a commitment to modeling respect and consideration in interpersonal relationships.

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# ASSISTING COMPLAINANTS SEEKING TO ESTABLISH A RECORD OF A COMPLAINT WITHOUT VIOLATING OMBUDS ETHICS

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On May 2, 1996, I sent a question to "Ombud@MIT.EDU" asking for guidance from colleagues about how to respond when complainants indicate a desire to "get something 'on the record' about an issue." I received 12 responses. All indicated the belief (which I share) that it is inappropriate for complainants to establish a "record" of a complaint in the Ombuds Office. What follows is some brief discussion about an actual case (fictitious identifiers used); several underlying issues which I believe this case raises; and nine alternatives (mostly suggested by colleagues) for helping complainants meet this need -- without using the Ombuds Office to do it.

A. Case Example

Joe Student made an appointment to speak with me about his concern that, following a heated disagreement in class with Professor Geteven, she might "punish him" by giving him an unfair grade at the end of the semester. Joe said he wanted something "on the record" about this concern before the grade was assigned. He reasoned that if he were to receive what he believed to be an unfair grade at the end of the semester, it would be helpful to his

"case" later on (i.e., a formal or administrative appeal or possibly even a lawsuit) if he could establish that he had expressed this concern before receiving his grade.

B. Discussion

Much to Joe's disappointment, I could not agree to fulfill his request. Had I consented to provide verification later on that Joe made the complaint to the Ombuds Office on x date, I was taking the following risks:

1. becoming a participant in a formal or administrative process later on,
2. becoming -- or being seen as -- a "de facto" advocate for Joe in that process, and
3. advocating for Joe without even having any discussion with Professor Geteven (because Joe, understandably, did not want to risk further offending her by letting her know he had expressed this concern about her to the Ombuds Office).

One of the unique characteristics of an Ombuds Office is that we allow individuals to speak freely about almost any concern without fear that it will be reported to anyone. This, of course, allows the complainant to retain control over how and whether a complaint is addressed. However, due to our also being impartial and independent complaint-handlers, the confidentiality we offer is different from that offered by attorneys and psychotherapists. Clearly, those professions offer a confidentiality which can be waived by their "clients." This would allow an attorney or psychotherapist to advocate effectively for his or her client, which is, of course, appropriate for their roles. However, because ombudspeople often hear both -- or multiple -- "sides" of a dispute, and because our roles

require us to function as neutral and independent complaint-handlers, we cannot allow any user of the office to "waive" our promise of confidentiality. This privilege must reside with the office, not with any user of the office. Otherwise, we risk advocating for one party -- and against another. (For an excellent and much more detailed discussion on the Ombuds "privilege" issue, see TOA's pamphlet entitled The Ombuds Confidentiality Privilege: Theory and Mechanics by Charles L. Howard and Maria A. Gulluni).

These Ombuds Office concerns are not automatically understood by users of our office. And, there are numerous situations in which a complainant may, understandably, want to "establish a record" of a complaint. In many of these situations, ideally, he or she would like to do that without the knowledge of the person about whose future behavior the complainant may be concerned. If this is the complainant's goal, it can be achieved without compromising the impartiality of the Ombuds Office.

The following alternatives have been suggested by the various contributors listed at the end of this paper. Some of them involve actions a complainant can take that do not involve notifying the respondent; others involve contacting officials who routinely keep records and can legitimately function as advocates for the complainant; and some involve assistance from individuals who do not function as officials in the organization.

C. Alternatives for Establishing a Record of a Complaint

Complainants seeking to establish a record of a complaint may take the following actions:

1. write a careful account, date it, have it notarized, seal it, and send it via "certified" or "regular" mail (NOT campus mail) to himself or herself. This document should only be opened in the presence of witnesses.

2. write a careful account, date it, have it notarized, seal it, and send it via "certified" or "regular" mail to the following persons:

   a. a colleague, friend, or family member who agrees not to open the document and to produce it upon request of the complainant

   b. a counselor

   c. a victim advocate

   d. a medical professional, or

   e. his or her attorney

3. speak privately with any of the aforementioned individuals in #2 who agree to verify what was said and that the conversation occurred on x date. (Note: The individual can be asked to make notes at the time of the conversation about the exact date of the conversation and about what was said.)

4. speak with any witnesses to the event(s) about which the complainant is concerned and ask that they assist in the following manner:

   a. provide a written statement about the event(s) they witnessed that the complainant can use later, or

   b. agree, if asked later, to testify on behalf of the complainant in a formal hearing.

5. ask any university administrator who would be willing to date stamp and hold, but not open, a letter until requested by the complainant.

6. make an audio or video tape outlining the complaint and send it "certified" mail to any of the individuals listed in #2 who agree to provide the tape upon request.

7. keep a log in a dated, bound logbook (of the scientific variety).

8. write a letter to himself or herself indicating that he/she spoke with the Ombuds Office about x complaint on a particular day. Again, this letter can be notarized, sent certified mail, and can remain unopened until it is needed. (Although the Ombuds Office will not verify whether the complainant contacted the Ombuds Office, it will provide a document indicating that it is the practice of the Ombuds Office not to provide this information.)

9. talk with or write a complaint to the Human Resources office or Legal Counsel. (Note: Depending on the constituency status of the respondent, be advised that Legal Counsel may be expected to provide legal representation to this individual.)

Of course, making a written formal complaint to the appropriate committee or administrator also establishes a record of a complaint. However, as indicated above, this alternative is often the last one complainants wish to utilize.

D. Acknowledgments

I would like to thank the following individuals for their ideas, which make up the vast majority of the recommended alternatives for establishing a record of a complaint suggested in this paper: Glenn Bacon, Frances Bauer, Ann Bensinger, Howard Gadlin, Judy

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# ACADEMIC OMBUDSING: PROCESS, ROLES, AND RELATIONSHIPS

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## I. Introduction

For more than three decades, ombudsman services have been provided in institutions of higher education in North America. Student protests and disruption of the educational process during the latter half of the 1960's motivated academic administrators to search for and implement creative responses to student demands for less bureaucracy and a more humane approach to providing educational programs and services to students (Rowland, 1970; Hoppe and Culhane, eds., 1995).

There are very few written descriptions of models used by early campus ombudsman pioneers in carrying out the functions of the role. Although governmental settings in other countries had provided these services for many years (Anderson, 1969), higher education was a new location for the ombudsman. Campus ombudsmen defined their role and scope of responsibilities as they provided services to clients. These pioneers had no role model or guides to assist them in the educational environment (Stieber, 1991).

While ombudsman services have now been available in institutions of higher education for over thirty years, few written descriptions of models of service delivery exist (Price Spratlen, 1990). More recently, ombudsmen have started to describe how they carry out their role functions (Schonauer and Wilson, 1990; Vice, 1992; Wiser, 1992). Such descriptions and models of

service delivery are useful for several reasons. They provide a basis for understanding and improving service delivery. They also help us communicate among ourselves as well as with others in the academy regarding the nature and value of what we do. Over time they will lead to the development of more systematic and professional approaches to the practice of academic ombudsing.

In this paper the authors define academic ombudsing as a process of equitably representing clients in disputes and providing services for conflict prevention, management, and resolution within institutions of higher education. Most ombudsmen are mandated to:

> "Protect the rights and interests of students, staff and faculty against arbitrary or capricious action or lack of appropriate action by University agencies…" (President Charles Odegaard's letter, 1968)

Ombudsman services are available to any member of the university community, i.e., students, staff, and faculty, and to users of university services or facilities. In this paper the authors define client as any user of ombudsman services, i.e., complainant, respondent, and unit head.

The first-named author has developed and used a model of ombudsing. This has served as a useful guide to practice and service delivery. Various aspects of this model have been described (Price Spratlen 1991; 1992).

Phases of the model and related dimensions are the focus of this paper. The first-named author originally identified elements and functions of the ombudsing process and described these components in an article that appeared in the 1990 edition of The Journal. The model's application has been

described in other articles that have appeared in The Journal in 1991 and 1992. The theoretical foundation of the model is described in the Price Spratlen Ombudsing Model (Price Spratlen, manuscript). The model presented in this paper builds upon and extends the content represented in the previous articles.

Changes that have been made in this model are in the areas of delineation of phases, identification of values and principles, and description of tools developed to guide the process. These changes are presented in detail in the content that follows.

This model has been informed by our collective knowledge of the literature, experiences gained in the process of delivery of services to clients, and insights developed from interacting with other ombudsmen. Refinements of the model are based on ongoing experiences with clients and the changing needs of the institution in which we practice. Through the use of a process model, the goals, values, roles, and tasks of each phase of the ombudsing process have been identified.

The paper is organized into five sections: the introduction and overview of the paper; the phases of the ombudsing process; the contributions and benefits of the model; challenges and implications of the ombudsing process; and conclusions.

## II. Phases of the Ombudsing Process

### Characteristics and Importance of Phases

The four phases which form the primary components of this model and theory are consistent with our conceptualization of the ombudsing process.

These phases are: orientation; facilitation; termination; evaluation/follow-up. For purposes of this presentation, phases are identified as discrete entities. However, in practice these phases overlap and interact in the dynamic way that interpersonal communication occurs. The communication model developed by Schein (1988) would be a visual representation of this dynamic process.

Phases of this model are represented in Table 1. This matrix includes the relevant components for each phase of the model. This method of organizing and presenting content reduces the need for extensive comment beyond what is represented in the table.

A. Orientation

The orientation phase is basic to all remaining phases of the model. This phase begins when the client and ombudsman meet. During this phase, introductions are made. The client identifies the problem from her/his perspective and together with the ombudsman works to redefine the problem so that relevant and helpful interventions can be developed. Parameters are established to make the problem manageable for resolution.

Two tools have been developed to aid this phase of the process. They are the Client Orientation Checklist and the Client Plan. These tools are included in Appendix A.

The orientation checklist is a tangible representation of services offered through the ombudsman's office. It serves to inform the client of the ombudsing process and to invite informed client participation.

This framework provides a structure for consistently providing comprehensive services to clients.

A client plan serves as a written agreement between the ombudsman and the client. In this document the client specifies what activities and tasks she/he will complete and what services are expected from the ombudsman's office.

Both tools facilitate the education and skill acquisition for all parties in the process. Clients are given xeroxed copies of every document that they sign. These items can be referred to whenever the client wishes to do so.

It is imperative at this phase to assist the client to establish and maintain a focus on her/his complaint so that a full and accurate description of the problem is provided. Once understanding of the problem has been achieved, the client should be informed whether the ombudsman's office is the appropriate place to address this problem/need, or whether a referral is appropriate. The Ombudsman's Office at the University of Washington offers an informal resolution (client-to-client) process. The ombudsman does not replace the existing systems for University governance or the University's established internal appeal procedures (University of Washington Handbook, 1992). Formal processes on our campus may include attorneys.

B. Facilitation

Facilitation is the second phase of the process. What distinguishes the facilitation phase in this model is the emphasis on informed

decision making for a planned approach to conflict management and resolution. The majority of the work in achieving resolution of the dispute is completed during this phase, making the facilitation phase the longest and most involved part of this model.

The client is helped to make informed decisions about the nature of the problem and what steps she/he is willing to take to resolve the conflict. The written description which the client provides is used to prioritize dimensions of the conflict and to identify methods of intervention. Once these are reviewed, the client selects the most problematic components of the conflict to address and decides about methods of intervention. The range of options includes: direct confrontation; conciliation (third-party assistance); mediation; or delayed intervention until a specific time.

Mediation is the form of direct ombudsman intervention requested by the largest proportion of our clients. During this phase, the academic or administrative head of the unit where the conflict is occurring is introduced into the process. The unit head is informed about the informal complaint and is asked to have the person against whom the complaint is filed (respondent) call for an appointment with the ombudsman. From facilitation through evaluation/follow-up, the unit head, i.e., director, dean, chair, provost, or president, remains involved in this process.

When mediation sessions occur, the unit head serves in three important roles: as participant/observer of the process; as evaluator of the ombudsman's performance; and as the person responsible to follow through on all recommendations related to the resolution of the problem.

Well over 90% of the clients who use mediation achieve a mutually satisfactory resolution of their complaints. This very high success rate is due, in part, to the education, collaboration, and representation that are integral to this process. In addition, this process also serves to mitigate against retaliation.

C. Termination

The third phase of the model is termination. The goal here is to reinforce the learning, skill building, and consultation development that occurred along the way. Clients are encouraged to name and discuss the perceived benefits and limitations associated with participating in this process, and to identify the most beneficial and the least helpful parts of the process. Clients are also asked if they are willing to serve as consultants to other clients who seek help with a similar problem but are apprehensive about deciding which method of intervention to choose. If the client agrees to serve in this role, the agreement is stated in the client plan.

Retaliation is once again addressed as an outcome which should not occur. Clients are encouraged to report any behaviors or situations which are perceived to be a form of retaliation.

A client plan is developed for the future. Responsibility for follow-up is left with the clients and the unit heads. The importance of client responsibility has been discussed in other consulting and helping areas by other authors (Schein, 1987, 1988; Chirban, 1996).

D. Evaluation/follow-up

The fourth and final stage of the model is evaluation/follow-up. This phase involves all clients, i.e., the complainant, respondent, and the unit head. Each is responsible for monitoring the agreement and for resolution of grievances. In addition, each is asked to complete and return an evaluation questionnaire.

Qualitative and quantitative data relevant to the ombudsing process are provided through completion of the Evaluation of Ombudsman's Services questionnaire. This information can be used to stimulate change in the procedures followed in the process of providing services, and can also be used for program development and to inform recommendations for changes in policies.

The unit head serves in a critical role by evaluating the ombudsman's performance in operationalizing the concepts of confidentiality, neutrality, knowledge, and skills demonstrated and used during the mediation process. Accountability is integral to these activities. Through active involvement of the unit head in the process, the ombudsman's effectiveness is extended to other units on campus. This outreach activity serves at least two purposes: accountability of ombudsman performance and increased awareness of ombudsman services.

Through the involvement of the unit head, agreements reached among disputing parties are monitored at the unit level. The unit head also serves as a buffer against the occurrence of retaliation.

## III. Contributions and Benefits of the Model

A. Contributions of the model to actual and potential clients

The contributions of the model to clients in conflict and to observers of the process are most evident in the high proportion of complaints resolved to the mutual satisfaction of participants, in the high level of client satisfaction, and in the increased utilization of services by other administrators on campus.

During the 1995-96 academic year, more faculty used the ombudsman's services than any other client group. More consultations were provided to other administrators, i.e., directors, deans, and provost, than in any previous year. In addition, the ombudsman made more consultations to other institutions off campus than in any previous year. These developments are a direct result of word-of-mouth evaluations that are made by users and observers of this ombudsing process.

B. Benefits associated with this model of ombudsing

This model serves the ombudsing process in the way that a map serves a driver or navigator. It is used to guide the process of conflict management and dispute resolution.

The specific phases of the model are associated with specific tasks. The process can be used to effectively guide clients through stressful and problematic situations.

Because the model defines its focus, structure, and goal, services can be efficiently rendered. The client is the central focus. The structure is embedded in the four phases of the model. The goals of the process are to develop the client's competency and personal empowerment and to facilitate resolution of the conflict.

Because this method of ombudsing is taught to clients, it can also be used by anyone interested in improving the art and practice of ombudsing.

## IV. Challenges and Implications of the Ombudsing Process

Academic institutions of the 1990's continue to face internal challenges (Kerr, 1996). The need for creative responses remains and ombudsing services are as relevant today as they were thirty years ago. However, a great deal of educational and public relations work remains to be done.

Regrettably, it is common to undervalue services of this kind. The contributions made to the institution by the ombudsman may not be evident or appreciated. In four institutions that we know about, ombudsman offices were eliminated in 1995-96. Elimination of an ombudsman's office represents a lost opportunity and a displacement of the ombudsman-like services to other offices or persons on the campus.

There are some limitations associated with the use of the model presented in this paper. It is an educative approach to problem solving and dispute resolution which requires the client to participate actively and work very hard to achieve the desired outcome(s). For clients who expect advocacy and partiality there are disappointments.

Coordinating the schedules of all parties involved requires a great deal of staff and participant time. While this entire process usually takes ten to fourteen days to resolve the problem, the period can be longer if any party is unavailable.

Timing of the response is a central component in the resolution of the conflict. It is known from experience that sexual harassment cases in particular are more difficult to resolve when the process extends beyond two weeks after the initial contact is established with the ombudsman's office. Early intervention -- once the process is initiated -- is the key to a mutually satisfactory resolution of the complaint. Because timing is such an important variable, our process will be modified this year to request that unit heads be represented by other administrators in the University, i.e, provost or vice provost, if their schedules do not allow us to act within the two-week window of time.

This model is most effective in addressing conflicts and needs of faculty, students, and staff who are highly motivated to participate actively in the learning process. Some clients who seek "quick fixes" are less willing to be active. Because the process is guided by the client's participation and performance, there are no "quick fixes."

Central to this process is the awareness that the model is effective, but it requires a considerable amount of work by all parties.

## V. Conclusions

One model of ombudsing that has stood the test of time -- systematic evaluation and direct observation -- has been presented and discussed. This model is rooted in theory and it has been refined through practice. Outcomes associated with the model have been discussed. The contributions of the model to clients, observers, and other users of these services are evident in the high proportion of satisfied clients.

Through the use of this model, the art and practice of ombudsing have been advanced. Other ombudsmen are encouraged to evaluate the model in light of their own method(s) of service delivery to determine the similarities and differences in models used to provide ombudsing services in institutions of higher education.

Table 1. PHASES OF ACADEMIC OMBUDSING

| | Orientation Phase | Facilitation Phase | Termination Phase | Evaluation/Follow-Up |
|---|---|---|---|---|
| Goals | Meet the client<br>Listen to client's story<br>Overview of available services<br>Education for informed client participation | Client assessment<br>Promotion of competency enhancement and development thru skill building<br>Clarification of requirements for conflict management and dispute resolution | Resolution of the conflict<br>Mutually satisfactory closure for the complainant and respondent | Document clients' perceptions of services<br>Identify clients' levels of satisfaction with services<br>Monitor adherence to agreements |
| Values, Beliefs, Principles | Protection of client's rights and interests<br>Confidentiality, neutrality<br>Accessible services | Collaborative relationship with client<br>Active client participation<br>Enhancement of client competencies<br>Linking ombudsman's process to university functions and mission | Mutual satisfaction of all participants<br>Linking client's needs to university resources | Client opinion of the process<br>Meeting client and institutional needs<br>Integrity of ombudsing process |
| Roles: | | | | |
| Client | Information source storyteller<br>Collaborator<br>Decision maker | Decision maker<br>Pace setter<br>Collaborator | Collaborator | Communicator<br>Evaluator<br>Monitor |
| Ombudsman | Counselor<br>Educator<br>Collaborator<br>Mediator<br>Institutional representative<br>Role model | Collaborator<br>Facilitator of the process | Collaborator | Available resource |

Table 1. PHASES OF ACADEMIC OMBUDSING (continued)

| | Orientation Phase | Facilitation Phase | Termination Phase | Evaluation/Follow-Up |
|---|---|---|---|---|
| Roles (continued) Unit Head | | Validates the informal complaint<br>Assures institutional tie and responsibility<br>Participant/observer of the process for equity | Collaborator | Communicator<br>Evaluator<br>Monitor outcomes |
| Unique Tasks | Introductions<br>Problem identification and definition<br>Review range of available interventions<br>Develop a client plan | Review written description of problem<br>Prioritize problems to address<br>Select the method of intervention<br>Develop plan for intervention<br>File informal complaint<br>Engage unit head in the informal complaint<br>Implement intervention | Review all phases of process with complainant and respondent<br>Sign memorandum of understanding<br>Validate that an institutional intervention occurred<br>Return written materials to client | Completion of evaluation form<br>Separation from the ombudsing process<br>Responsibility for initiating future contact returned to individual participants |
| Relevance to Ombudsman Process | Provides safe environment<br>Confidential disclosure<br>Collaborative relationship | Demonstrates value of systematic approach to problem identification, management, and conflict resolution<br>Operationalizes ombudsman's function<br>Makes identical services available to respondent | Return total responsibilities to each client for self-management of relationships and conflict | Obtain information about clients' experiences and reactions to the process<br>Use feedback to judge effectiveness of services and areas for needed improvement |
| Time Required for Service Delivery | | | | |
| Range | Few minutes to several hours | 1 to 8 hours | 10 to 30 minutes | Few minutes to 30 minutes |
| Average | 45 minutes | 5 hours | 20 minutes | 15 minutes |

APPENDIX A

University of Washington

# OFFICE OF THE OMBUDSMAN

## Client Orientation Checklist

_____ Ombudsman Description (University Handbook)

_____ Ombudsman's Brochure
- Mission Statement
- Issues Commonly Addressed

_____ Scope of Ombudsman's Services
- Education
- Consultation
- Conciliation
- Mediation
- Referral

_____ Characteristics and Expectations
- Confidentiality
- Non-retaliation
- Collaboration
- Neutrality
- Client Records

_____ Office of the Ombudsman Client Forms
- Orientation Checklist
- Profile
- Assessment Checklists
- Chronolog
- Plan
- Release Form (All material submitted will be returned to client.)
- Evaluation of Services (For client comment at any time during process.)

_____ Supplemental Information

_____ _____

Client Signature (Date) Ombudsman Signature (Date)

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APPENDIX A

University of Washington
## OFFICE OF THE OMBUDSMAN

### Client Plan

COMMENTS:

Client

Date

Ombudsman

Date

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# COMMON SENSE REVISITED

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The keynote address at the "First North American Conference" of ombudspersons was by Philip K. Howard, author of The Death of Common Sense. I was struck by the harsh reaction of some ombuds colleagues to the speaker, especially since the speaker anticipated a sympathetic audience with an address titled: "Ombudsmen: Catalysts for Common Sense in Organizations." I did not try to engage anyone at the conference in a dialogue about the speech and reaction to it because I did not want to place myself in the position of defending a speech, e.g., each auditor is likely to focus on a somewhat different selection of details. I also did not want to place myself in the position of defending a book I have not read.

What follows are reflections on a general line of thought. These are my own thoughts, not those of Mr. Howard. I still have not read his book; therefore, I cannot be sure how my thoughts relate to his. In his address, he omitted reference to one crucial problem which I shall discuss below -- the "common" in common sense.

The problem which Howard tried to address is in the news and on the political agenda. In its campus form, it devils many ombuds visitors. The proliferation of laws and administrative regulations, especially at the Federal level, in the past thirty years has produced the reactive call from both President Clinton and the Republicans to roll back the Federal government. Government regulations tangle most campuses in financial aid

procedures which in turn complicate registration and student billing. (Caryn Bills has called this the "Bermuda triangle" for all of the UIC students lost there.)

The media regularly detail such bureaucratic curiosities as the sort mentioned by Howard: the Federal agency which spends more money on travel accounting than it does on travel; the small-town, mom-and-pop store going out of business because it does not meet an OSHA requirement; the regulation which is so complex that no one at the appropriate office can explain it. These incidents readily evoke dismay.

One of Howard's examples seemed particularly to run against our grain: the case of the proposed New York City sidewalk toilets and the American Disabilities Act (ADA) rules. As I understood him, the principal point of Howard's objection to the outcome was that no one had, or perhaps, rather, that no one admitted to having discretionary authority to weigh competing claims. More of this later.

The disposition to rule-proliferation is not limited to federal bureaucrats. We need only read student disciplinary codes to see the phenomenon at work. My own university details twenty disciplinable offenses and then adds a twenty-first: "violations of University policies, regulations or rules"! The ombuds also hears of students and staff sent on a circular course from A to B to C to D and back to A, without finding anyone who admits to being able to help. I have witnessed administrators who refuse to take the responsibility of exercising discretion and who instead refer and defer to a committee or pretend that a rule book is self-applying.

The solution proposed by Howard for this problem of too many regulations written in too much detail is "common sense." What "common sense" means to Howard was given the following specificities:

1. enunciate objectives, set goals, define ends, and demand results which attain some established quality level;
2. reduce rules detailing the procedures by which these ends are to be achieved;
3. recognize the inevitable role of particulars in judgment; and
4. accept the necessity of having persons with discretion who are authorized to make choices and then hold these decision-makers responsible for outcomes.

In my opinion, we are burdened with the following vexations:

1. We have a society-wide problem of too many rules written in too much detail.
2. We have too many administrators who are afraid to take responsibility in the application of the rules.

The solution to this situation is responsible common sense. However, "What is the difficulty with this solution?" To get at the difficulty, we must ask why the rules were proliferated? What changes evoked this tidal wave of regulations?

First, we must remind ourselves of Anglo-American history. English and colonial government progressed through restraint on "arbitrary government" with the themes of "the rule of law" and "the rule of laws, not men." These themes were well-established by the time of the United States' founding.

When I was studying American history and literature in the first half of the 1950s, it was a commonplace that "Americans try to solve every problem by passing a law." This was considered a long-standing trait. The same, or a related trait, was manifested in the State constitutions adopted from the second quarter of the nineteenth century. In contrast to the U.S. Constitution which is quite brief (and the earlier State constitutions and colonial charters were often similar in this respect), nineteenth century State constitutional conventions -- and those held since -- created quite lengthy and detailed documents. This second generation of State constitutions roughly paralleled the transformation of the Democratic-Republican Party of Jefferson and his associates into the Democratic Party of Jackson and his successors.

I suggest that the rise of democracy and the attendant belief that "all men (persons) are basically equal" is easily taken to imply that everyone's judgment is equally good (or bad). This view is parodied in Book IX of Plato's Republic. The first chapters of Volume II of Tocqueville's Democracy in America explore some causes and implications of this inclination in the American mind. While Tocqueville did not address the new State constitutions so far as I recall, it is plausible to draw the conclusion from Tocqueville's generalizations that discretion and individual exercises of judgment should be strictly circumscribed. Thus, the constitutional conventions left as little leeway to the legislatures as they could and the legislatures left as little leeway to the executive as they could. (In Britain, where democratic government grew out of an aristocratic one, the common assumption was that some people "knew" better than others.)

This line of popular thought has always been in some tension with the recognition that the laws do not apply themselves. Here again, there is a long history. In England, the king and then judges applied the laws. However, good kings and good judges "followed" the laws. When the laws (the "common law") became too rigid and formulaic, they were supplemented by "equity" and by separate tribunals following different procedures to cut through the formalities in order to do justice in the specific circumstances. In Principles of Roman Law, Fritz Schulz quotes Goethe ("General concepts and great arrogance are always potential bringers of catastrophe.") and then goes on to expand upon the point: "In law all general rules and conceptions are liable to cause catastrophes, as it is impossible, when formulating a rule, to foresee all possible complications which life may bring." (Schulz, pp. 40-41). A tension between rules and discretionary judgment is nothing new.

Curiously enough, democracy is somewhat like autocracy (and unlike aristocracy) in its distrust of discretionary judgment by "intermediate" officers. In imperial China, rules from the center were supplemented by customary manners and deference to dictate the appropriate decisions of officials. Stalin supplemented his regulations with his idiosyncratic interpretations of the Marxist-Leninist doctrine and with terror. (These devices did not, of course, preclude corruption in both systems.) Our people, in their sovereign capacity, seem to be increasingly demanding with regard to discretionary judgment. Our rules are more rationalized and we depend less on the manners of our officials or on terror. But we both require more bureaucrats (to apply detailed rules) and we trust bureaucrats

less. (I shall leave comment on "political correctness" and "manners" for an endnote.[1])

In the 1960s, the United States formally recognized through the civil rights legislation that American institutions were being operated in a biased way in expressing race prejudice. During the same period, women were pointing out overt and covert gender prejudices in every aspect of American life. Negative attention was paid to the "old boy network" and the roles of other friendship or familial patterns in the selection of position-holders. That is, it became commonly recognized that decision-makers had not been playing fairly.

So, decision-makers in government and lesser organizations decided on laws and rules to rectify the unfairness. Although Congress did not, until recently, apply the laws and rules to itself, Congress decided that decision-makers must follow established rules in decision-making. These decisions about decision-making were accompanied by a search for "objective" measures such as examinations and quantitative outcomes. For example, the Chicago Police Department was obliged to substitute objective examinations for the old patronage procedures and personal personnel decisions in hiring and promotion. (The result in Chicago has been that examinations and quantitative outcomes have proved to be in conflict, and the objectivity of "objective examinations" is questioned.)

During the same period, Americans became aware that industrial and urban pollution were serious and remediable problems. Because it was in the self-interest of each individual polluter to pollute even if the corporate decision-maker recognized the general harm, it seemed reasonable to specify

in increasing detail procedures to minimize damage to the environment. (Because of widespread ignorance of economics, it is always assumed that any costs of such rules are born by "business.")

These reactions are quite consistent with general political principles and traditional American practice: find a problem? pass a law. This is a plausible corrective to arbitrary behavior, especially in government in which the legislature is primary. (Legislatures make laws, general rules.) This model for behavior has been transferred to executive and administrative offices and structures. Unfortunately, it ignores one purpose of the executive which is to deal with problems set in specific and particular circumstances. As remarked above, rules do not apply themselves. A rule is a general statement which cannot foresee all circumstances. An executive must exercise judgment and make choices. In doing so, the executive employs expert and common sense.

What do I mean by "expert and common sense"? The earliest philosophers from whom we have an extended corpus of writings, Plato and Aristotle, agreed that not all that is known can be articulated in detail. Plato said he had never written his views of the truth: his writings were an effort to move the reader toward truth. Aristotle discussed arts (techne) and practical reason (phronesis) in general terms but recognized the limits of his detail because the subjects require consideration of particulars. My own favorite modern philosopher on this "inarticulatability" is Michael Polanyi. Polanyi uses a nice example. Knowing the principles of physics involved in riding a bicycle is not the same thing as knowing how to ride a

bicycle. A person who knows how to ride a bicycle but focuses on the principles will probably fall off.

The point can be made by distinguishing "knowing how" and "knowing that" (cf., Gilbert Ryle). A person who has mastered a science or an art knows how to do a great deal that is not specified by "scientific method" or a handbook on the art. This knowledge is evidenced by an "expert feel" for the "rightness" of what has been done. In the 1920s, a distinguished scientist re-ran the Michaelson-Morley experiment and got results not consistent with the Theory of Relativity. When he reported this, his peers dismissed the results as experimental error on his part. Subsequent tests proved them right. In such a situation, there is a consensus of rightness based on unarticulated knowledge. Such a consensus of rightness also exists in "practical" matters in any community. This is the "common sense" of the community. In neither expert nor common sense is it implied that the consensus is complete. (The scientist was, after all, a "distinguished scientist.")

The philosophic problem of inarticulatability is accompanied by a practical one -- time limitations. In a situation requiring a decision, there is seldom time to recall and articulate all of the known grounds for decision. The codified administrative rules are basically an effort to provide this for all of the situations the codifiers can think of, but their product is then too long for the prospective user to encompass.

The problem with our "common sense" as a solution, however, is that in the past, the "common" sense was not common to those who were disadvantaged. Women and minorities were not significantly present in the pool of those

whose commonality contributed to the formation of common sense about matters of government or business. The same is true of persons with disabilities. Thus, when someone at present speaks of a "common sense" solution, common sense easily sounds like a return to the status quo anti. I suspect this plays a part, for example, in critiquing the NYC street toilets proposal.

Concern about individual prejudice and about bias in the pool of common sense cannot obviate the validity of the distinction between general rules and individual decisions. A homely example will do in lieu of an extended argument. Assume that "registration" and "late registration" periods are strictly defined in the college bulletin. With institutional knowledge, an international student is called abroad by the death of a parent, returns just in time to make late registration, but is delayed in reaching campus by a tornado. Who would not agree that a dean should make an exception to the rule and grant late registration? Would anyone argue that the bulletin should be rewritten to list this combination of circumstances as an appendix to the rule and definitions? In this instance, we can probably find consensus on academic common sense.

An institution needs responsible decision-makers -- people who learn the facts, weigh pros and cons of argument, and make decisions/choices. The facts presented may be in error or may be incomplete. The arguments offered may be inadequately thought through. And so, the decisions/choices made may be in error. We are all familiar with administrators who have made "honest mistakes." If they make too many mistakes or if the mistakes show a pattern of bias, they should be "held responsible," corrected, and perhaps removed from office. But incompetence is, I hope, usually the exception. We must

operate on the general possibility of error, but we cannot operate on the general assumption of incompetence. There is an apt quote from Oliver Wendell Holmes: "Universal distrust creates universal incompetence."

An institution of course also needs rules. When these rules are prolix, the parties to which they are applied cannot -- or will not -- know them and even some of the parties applying them may not know them. In one case with which I am familiar, a new dean of students did not realize there were two sets of disciplinary rules and procedures -- one for run-of-the-mill individual misbehavior and one for organized disruption of the institution. The dean did not inform the students; the students went before a disciplinary panel without knowing the set of rules under which they were being disciplined; and the panel never realized the students did not know what charges they needed to defend themselves against.

The NYC toilet controversy raises another kind of issue about the need for judgment. The point made above -- that the existence of bias in the application of rules does not preclude the need for judgment -- must be supplemented by brief discussion of that most volatile of all current topics, rights.

Holmes also observed that: "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of other, and competing, rights and other principles." For example, one of the panelists on a SPIDR panel discussion about the American Disabilities Act (ADA), described the following case that she was mediating:

> A unionized -- but small power company -- had (and argued that it could afford) only one "cherry picker." Therefore, the Union negotiations had resulted in a work-rule assigning the "cherry picker" on the basis

of seniority. (This rule was felt reasonable, because older employees tended to have more trouble climbing power poles.) However, the jobs working the lines were higher-paid, and the disabled office employee requested a line job which he could do if he used the "cherry picker."

In this case, there seem to be fairly clear and competing principles, i.e., Union rights vs. ADA rights. Resolution -- even through mediation -- would seem to require some balancing of claims. Or, are the rights of the disabled to prevail because the ADA is newly-recognized and is (in some sense) in vogue?

We have entered a period in which many social interactions are discussed in terms of rights. (One Chicago advertisement proclaims that everyone has a right to comfortable eyeglasses.) In this short paper, it is impossible to do justice to the history of the expansion of "rights" discourse or the validity of particular claims to rights. I simply note what is commonly agreed: that the current history begins with Negro (the civil term used fifty years ago) claims to exercise the Constitutionally guaranteed rights of citizenship (voting, fair trials, association) and with efforts to reverse segregation rules crafted by courts and legislatures under distorted Supreme Court interpretation.

The lengthy Supreme Court controversy between Justices Black and Frankfurter centered on the issue of whether "rights are absolute" or "rights, like interests, must be balanced since they may be in conflict." (You will have to read my soon-to-be-published book <u>The Reopening of the American Mind: On Skepticism and Constitutionalism</u> to get my detailed justification for preferring Frankfurter.)

Howard perhaps invoked hostility in part by referring to "rights and entitlements." "Rights" may be considered as timeless, whether given by God or inherent in the nature of human beings or of all creatures. Or "rights" may be considered as coming into being over time as we human beings expand our vision -- through contact with other human beings (past and present) and the investigations of science. "Rights and entitlements" is often used by those who question the validity of particular rights-claims and by those who are decrying the treatment of entitlements as even stronger than rights.

I do not know whether Mr. Howard was misunderstood or not. Disagreement arises from principle as well as misunderstanding. Ombudspersons deal with both sources of disagreement all the time. I am confident most of us are quite ready and capable when it comes to considering multiple points of view in particular cases. Are we, however, sometimes reluctant to listen to divergent points of view at a theoretic level? to consider issues framed in an unusual vocabulary? This seems to me worth reflecting upon. Everyone has shortcomings. I myself, for example, suffer from excessive modesty. But we should always strive to do better.

ENDNOTE:

1. Americans have long contrasted our national "directness" with the "formality" and "manners" and "inscrutability" of the Chinese. Is not "political correctness" a summary for a new American indirectness? a caution about the selection of terms? an evasion of old usages which are considered demeaning? And is it not criticized for leaving some topics undiscussed ("inscrutable" = unscrutinized)?

# APOLOGIES

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## "ALL I WANT IS FOR HIM TO APOLOGIZE TO ME!"

People who have been hurt or humiliated often hope for an apology. They may hope that an apology from the offender will restore trust, dignity, and, perhaps, a sense of justice. A thoughtful apology is a powerful means of indicating self-awareness and of showing respect for the person who was offended. But a facile and unreflective "I'm sorry" may exacerbate the situation and be perceived as rubbing salt in the wound. A successful apology achieves closure; an apology that backfires escalates a conflict.

The ombuds may help the offended party consider what it means to want an apology, e.g., as a step toward reconciliation; as a confirmation that the other party was to blame; as an assurance that repetition of the offense will be avoided; or as a humiliation to the alleged offender. A public apology may help restore the reputation of the person who was hurt; a private apology may open a path toward discussion, improved mutual understanding, and interpersonal trust. Apologies can take many different forms, and it is part of the role of the ombuds to help the parties identify their underlying interests in the process of facilitating either one-way or reciprocal apologies.

The following public snafu provides an excellent example of an apology that plunged the perceived offender deeper into the political mire:

On April 4, 1995, New York Senator Alfonse M. D'Amato, on Don Imus' radio talk show, used an exaggeratedly heavy accent associated with Japanese movie stereotypes of the 1940's to mock Japanese-American Judge Lance Ito, who was presiding at the O.J. Simpson trial. Senator D'Amato said, "Judge Ito loves the limelight. He's making a disgrace of the judicial system," and he went on to refer to him as "Little Judge Ito." The following day, after considerable criticism from colleagues, citizens, and the media, the Senator issued a brief statement that created more controversy: "If I offended anyone, I'm sorry. I was making fun of the pomposity of the judge and the manner in which he's dragging the trial out." Journalists and Asian-American groups objected even more vehemently to D'Amato's dismissive and inadequate "apology."

Finally, on April 6, in an attempt to quell the rising storm of criticism, Senator D'Amato recovered with a better prepared statement -- this time presented in more formal surroundings: "I'm here on the Senate floor to give a statement as it relates to that episode. It was a sorry episode. As an Italian-American, I have a special responsibility to be sensitive to ethnic stereotypes. I fully recognize the insensitivity of my remarks about Judge Ito. My remarks were totally wrong and inappropriate. I know better. What I did was a poor attempt at humor. I am deeply sorry for the pain that I have caused Judge Ito and others. I offer my sincere apologies." (The New York Times, April 7, 1995, p. A1)

It is instructive to compare the two statements of regret. The first was a casual statement released to the press by the Senator's office, stating his regret if he offended anyone, followed by a reiteration of his criticism of the judge. The Senator personally read the second statement, in a low, nervous voice, into the public record of the U.S. Senate. The full apology 1) acknowledged what he did, 2) stated that it was wrong and that he knew better, 3) recognized his responsibility to avoid ethnic stereotypes, 4) recognized that people had been hurt, and 5) apologized for having caused pain. All six of these ingredients, except the facile words "I'm sorry," were missing from the first poor attempt at an "apology."

In order for an apology to be received as complete and sincere, it may need to include the following elements:

A specific statement of what was done. It is important to clarify the exact nature of the offense, both for the accountability of the offender and also to avoid misunderstandings. The need for an apology usually occurs when two individuals or groups do not share the same perspective -- or when inadvertently or intentionally -- they did not do so at the time of the hurtful event. The first step is to seek common understanding of what action or omission was rude or wrongful. In some situations, a preliminary discussion or communication, or shuttle diplomacy by a third party -- such as the ombuds -- can help identify and, if necessary, make adjustments to the definition of the offense.

Recognition of responsibility and accountability on the part of the one who offended. This admission is perhaps the most important but also the most frequently overlooked element of an apology. This is the "I-statement,"

the recognition by the offending party that he or she had a choice to act (or speak, or not take action) in that particular way. "I knew better," Senator D'Amato said succinctly. The offender who is a public official, a senior manager, a parent, a teacher, or another role model might also acknowledge how he or she is entrusted with this particular responsibility. Some offenses, of course, are unintentional; therefore, it may be helpful, if it is true, for the offender to explain if there was no way that he or she could have predicted the impact of his or her action (or inaction) on the recipient. But, in any case, most offended people will appreciate any efforts made by the offender to explore how he or she might have anticipated the outcome -- both as an indication of the sincerity of the regret and as an implied suggestion of how a recurrence might be avoided.[1]

Acknowledgment of the pain or embarrassment that the offended party experienced. A non-judgmental expression of empathy is a basic step toward restoring trust. The offender may be able to identify with the offended person, e.g., "If someone had made a joke about my religion, I wouldn't have found it funny, either." Or even if the offender would have personally reacted differently, he or she might intellectually empathize: "It's understandable that hearing the bad news through the grapevine was upsetting." The acknowledgment does not necessarily imply that the recipient's response is typical, mature, or appropriate. It may be expressed only as a fact: "I now know that receiving a prompt reply is very important to you." But it undercuts sincerity when the offender seems to question the recipient's claims of hurt or injury ("I'm sorry if anyone was upset..."). And it subverts the purpose of the apology to dwell on a

judgmental "you-statement": "I'm sorry you're so impatient," or, "It's too bad you have no sense of humor." An apology is not a suitable occasion for self-congratulation on the part of the perceived offender with regard to his or her honesty or opinions. In Edward Albee's play, A Delicate Balance, Claire says to Agnes, "I apologize that my nature is such to bring out in you the full force of your brutality," and Agnes soon responds, "... I apologize for being articulate." (New York: Atheneum, 1966, p. 13)

A judgment about the offense. When the offender agrees that what he or she did was wrong, saying so is an important part of making amends. The story of George Washington chopping down the cherry tree, though perhaps lacking in historical veracity, has had enduring appeal in United States culture because of its insistence on the honor of acknowledging one's own wrongdoing. Many world religions emphasize confession. But status differences, cultural patterns, and advice of legal counsel may present obstacles to formal confirmation of having made mistakes. Nevertheless, a direct self-judgment ("I was insensitive." "What I did was wrong.") is often a way to establish common ground with the offended party.

A statement of regret. If the offender has fully taken responsibility for how he or she acted wrongly or at least for having hurt the recipient, a simple statement of "I'm sorry" sometimes may be sufficient. The impact of an apology on its audience generally depends on the context -- not on the words themselves. Senator D'Amato's two statements each contained those words, but one created more anger and the other may have decreased the tension. Except in relationships with a history of shared understanding and deep trust, simply saying "I'm sorry" is rarely sufficient. But an attitude

of contrition and a statement of regret are basic elements of an apology that will build future trust.

Future intentions. These details are often an important aspect of an apology. In some situations, the apology is requested when no future interaction is expected, but even then the offended party is often relieved to hear if steps have been taken to prevent a recurrence of the offense. When the two parties are likely to interact in the future, it is helpful to discuss the offender's intended self-restraint; improved behavior in the future; how the offender would like attention brought to a possible subsequent misunderstanding; or other means of preventing recurrence. Sometimes the offender will wish to ask the recipient for forgiveness; for an acceptance of the apology; or for another chance to gain that individual's respect. An apology may offer an opportunity not only to restore trust but also to achieve a better relationship.

Finally, it is important not to overlook the means of communication of the apology. Because the recipient's response emphasizes sincerity, any form of communication that appears offhand or trivializing may be resented. In contrast, any gesture of seriousness and personal investment will reinforce the genuine conviction behind the message.

The above elements may help the offended person "accept" the apology, move on, and put the offensive incident behind. An additional aspect of the communication might also help the offended party have increased understanding and respect for the offender.

An explanation of why the offender acted in this way. This component is often not the first priority of the offended party, but it may be very

important both to the offender and also to the future relationship of mutual respect between the two parties. An explanation may be the most risky element to include within an apology because it can so easily appear as a flippant excuse; as a defensive justification; or as a reiteration of what was already felt as offensive. Senator D'Amato's first explanation exacerbated the controversy and the outrage: "I was making fun of the pomposity of the judge," but his second presented a point of view that everyone could share: "What I did was a poor attempt at humor." An explanation that includes a recognition of the offense; the pain it caused; and/or a clear statement of wrong as perceived by the offended party, can be a means of showing more respect for the recipient by making the apology a more reciprocal process of increased understanding.

When people who have been offended say, "I demand an apology," it is helpful to probe which aspects of an apology they are seeking. Compelling an apology is usually counter-productive, and the suggestion, "just apologize and it will blow over," is generally misleading. Anyone considering offering an apology should consider the potential damaging results of an inadequate "apology." Sometimes the relationship is too adversarial; the differences are too great; and/or, the legal liability too profound for an apology to be offered or received as sincere. In many situations, a future apology would be possible, but only after a process of conflict resolution -- such as mediation -- that involved increased mutual understanding of both parties' needs, interests, and emotions.

Cultural, gender, and age differences are often factors to consider in requesting an apology. In some contexts it is highly unlikely that a person in authority would apologize to a subordinate, that a parent would apologize to a child, or a man apologize to a woman. Deborah Tannen has cited the differences around the world in drivers' responses to minor car accidents -- in Japan and England the drivers are more likely to express regret and show contrition, whereas in the U.S. each driver may be more eager to accuse the other in order to protect his or her own insurance or driving record. Similarly, women are socialized to assume an apologetic stance to the point that they often open a conversation with "I'm sorry," while men may have been taught that apologizing is a sign of weakness.[2]

A rich opportunity for an ombuds to facilitate an elegant resolution is presented when both parties can move to the point where they are ready to exchange apologies.[3] It is common for offenses to occur in the contexts of other offenses: whether two or more individuals or groups hurt each others' feelings by speech, actions, or omissions, or whether they mutually misunderstand each other, the offense that is first identified is frequently embedded in a history of other perceived offenses.

The elements of reciprocal apologies -- perhaps accompanied by explanations and requests for reconciliation or resolution -- are the same as those for isolated apologies. But the coordination of a pair or a series of apologies, between two individuals or among several groups, offers all parties a model of peacemaking and enhancing respect for each other and for resolution of differences.

End Notes

1. A useful discussion of the process of taking responsibility for conflicts rather than blaming others is found in Jeffrey Kottler's Beyond Blame: A New Way of Resolving Conflicts in Relationships (San Francisco: Jossey-Bass, 1994).

2. Deborah Tannen, "I'm Sorry, I Won't Apologize," The New York Times Magazine, July 21, 1996.

3. The role of the mediator in facilitating an exchange of reciprocal apologies -- ranging from agreeing, to disagreeing, to forgiving, and to moving forward -- is outlined by Karl A. Slaikeu, in "When Interpersonal Peacemaking is Needed," in When Push Comes to Shove: A Practical Guide to Mediating Disputes, (San Francisco: Jossey-Bass, 1996), Chapter 16, pp. 195-207.

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After graduating from the University of Victoria School of Law in 1987, Kathleen was called to the Bar of British Columbia in 1988. However, she chose to pursue alternatives to a traditional law practice and she became involved in arbitration at the Victoria Dispute Resolution Centre as well as remaining active in the mediation and pastoral care fields.

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**Susan L. Neff**

Susan joined the Ombudsman Office staff at the University of Washington in 1991, and is serving as the first Assistant Ombudsman. Prior to her present position, Susan worked as a legal assistant for six years and continues her interest in this area as a volunteer at neighborhood legal clinics.

After entering the higher education field in the early 1970's, Susan worked in the Student Affairs Offices at West Chester State University, Pennsylvania and at the Department of Housing, University of Georgia. Susan served as an Academic Advisor and Instructor at City University, Seattle, WA.

Susan received a B.S. in Education in 1972; a M.Ed. in Educational Services in 1975; and continues her course work in the areas of communication, counseling, and conflict management.

**Tom Sebok**

Tom is in his sixth year as the Director of the Ombuds Office at the University of Colorado, Boulder. Simultaneously, Tom is serving as the Secretary to the Board of the University & College Ombuds Association (UCOA), and is working with his Colorado colleagues to host the 1997 UCOA Conference in Denver. Tom's professional interests include helping the Colorado Ombudsmen to obtain a "shield law"; exploring ombuds ethical dilemmas; and clarifying areas of consensus and disagreement about the theory/practice of ombudsing.

Prior to the Ombudsman position, Tom spent 11 years in academic, career, and personal counselling at the following colleges: Chesapeake College, Wye Mills, Maryland; Salem Community College, Pennsgrove, New Jersey; and Northampton Community College, Bethlehem, Pennsylvania. Tom earned a Bachelor of Arts and Master of Education at the University of Delaware.

**Tom Sebok** - [cont..]

The participants at the Asilomar Conferences will remember Tom's strong interest in music -- writing songs to play on his guitar -- which they enjoy annually at the Camp Fire Celebration.

**Lois Price Spratlen**

Lois began her tenure at the University of Washington in 1972 as a faculty member in the Psychosocial Nursing Department. In 1982, she was appointed the Ombudsman for Sexual Harassment, and in 1988 she became the University Ombudsman.

At present, Lois is Professor of Psychosocial Nursing; the University Ombudsman; and, the Ombudsman for Sexual Harassment. In addition, Lois is a board certified psychotherapist in adult psychiatric and mental health nursing. Because of her work with hospitals, clinics, and public social service agencies, Lois frequently serves as an expert witness in sexual harassment cases and as a consultant to organizations on other forms of workplace misconduct. Lois continues to publish her findings on these subjects.

Lois holds degrees from Hampton University, Hampton, Virginia; University of California, Los Angeles; and the University of Washington.

**James W. Vice**

Jim is serving his sixth year as Ombudsperson at Loyola University Chicago. An alumnus of the University of Chicago, Jim remained at his alma mater for several years as an administrator in the area of student affairs and as a Professor of Social Science. In 1975, he became Dean of Students at the Illinois Institute of Technology. In addition to his administrative duties at IIT, Jim taught Political Science.

Jim's academic interests focus on the general nature of practical reasoning and the specific ways people reason together through institutions -- areas in which he has 27 years of teaching experience. These concentrations, combined with his varied administrative experiences, have sharpened his commitment to improving communication and community understanding within a university. In Spring '94, Jim was elected a Board Member of the Chicago Chapter of SPIDR.

**Marsha Wagner**

Marsha has been the Ombuds Officer at Columbia University in the City of New York since she established the office in 1991. This year Marsha is opening a part-time satellite office on Columbia's Health Sciences Campus. Her previous positions at Columbia University have included Assistant and Adjunct Associate Professor of Chinese Literature and Director of the East Asian Library. During her tenure as the Vice President for Programs at the China Institute in New York, Marsha worked with a bicultural staff.

Marsha cites both her participation in the 1992 CDR Mediation Training Program and "living in New York City" as contributing significantly to her dispute resolution skills. In addition, she "negotiated" her way through several trips to Taiwan and China which included living with her family in Beijing during the 1989 Democracy Movement.

After three years of study at Bryn Mawr College, Marsha received a B.A. in Chinese and a Ph.D. in Comparative Literature from the University of California, Berkeley in 1975. A member of CCCUO and UCOA, Marsha also coordinates Training Programs for TOA.

**Ron Wilson**

A 18 year veteran Ombudsman, Ron Wilson has directed the UC Irvine Ombudsman Office since 1979 after leaving the UC Riverside position of Director, Student Affirmative Action. During his UCI tenure, the title has evolved from Campus Ombudsman/Associate Dean of Students to the current title, Assistant Executive Vice Chancellor-University Ombudsman. Concurrent with these title changes, Ron's increased responsibilities include the jurisdiction of the Faculty & Staff Assistance Program and serving as the Ombudsman for the California College of Medicine and the UCI Medical Center.

Active in several Ombudsmen organizations, Ron is a past President of the University and College Ombuds Association, and this is his eight contributing effort as the Compiler/Editor of the CCCUO Journal. Ron received a B.A. in English Literature from Bard College, New York in 1975; a Certificate of Administration and Analytical Skills from the Center for Public Policy & Administration, California State University, Long Beach in 1980, and a M.P.P.A. in Public Policy and Administration in 1983.