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[Various ombudmen associations related papers]

1991-1998

OMBUDSMAN ORGANIZATIONS AND RESEARCHERS

(Updated April 25, 1991)

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National Association of State Long-Term
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Office of State Long-Term Care Ombudsman
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National Society of Patient Representatives
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So You Want To Be An Ombudsman?

*To be a true ombudsman means to be fearless,
To experience fear and yet go forward.*

*To be a true ombudsman
means you will have courage
and will ask unpopular questions.
You will be the messenger---and you will be shot.
You will rock the boat, challenge the status quo,
exist as persona non grata.*

*You will be met with anger and you will need
to accept that being anger's target is part of this job.
Over time you may come to gain some energy
from the wrath as you become more confident
that change often grows from anger.*

*To be a true ombudsman
you will recognize the courage
that the other person must exercise to hear you.
You will understand that reasonable people disagree,
and that each individual believes in the merits
of his or her point of view.*

*To be a true ombudsman you will need to award
all public victories to others
and make your reward in a quiet facilitation
of their accomplishments.
You will need to see more in people
than they see in themselves.*

*And as a true ombudsman
you will hold confidence in the future
and confidence in the ability of people to change.*

Ann Bensinger

Corporate Ombudsman

A S S O C I A T I O N

Code of Ethics

CONFIDENTIALITY

The Ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention. The only exception, at the sole discretion of the ombudsman, is in the instance of threat to the physical safety of others and/or threat to company assets. This duty to warn, however, shall be initiated only after the ombudsman has strongly counseled with the client involved to encourage the client to personally come forth. In the event the client still refuses, the ombudsman has an obligation to notify the client of the intended breach of confidentiality in this situation. Even then, the ombudsman has the responsibility and obligation to discuss the situation only with those who have a need to know.

SAFEGUARDING

The ombudsman has the responsibility to insure that any records or files pertaining to confidential discussions with clients are safe from inspection at all times by other employees, including management at all levels.

RECOMMENDATIONS

The ombudsman has the responsibility, when recommending actions as a result of impartial investigations, to make recommendations that will be equitable to all parties and reflect good business practice.

PROFESSIONALISM

The ombudsman has the responsibility to behave in a professional manner at all times, to maintain the credibility of the ombudsman function.

CORPORATE OMBUDSMAN ASSOCIATION

CONFIDENTIAL QUESTIONNAIRE

Returns Monitoring Tear-Off Sheet

In order for us to monitor questionnaire returns while maintaining confidentiality in the survey process, we are asking you to complete this returns monitoring sheet and hand it in separately. We need this information so that we can do follow-ups to Ombudsmen who either were unable to attend the Conference, or else were unable to attend this session at the Conference. Your cooperation is appreciated. The usefulness of the information from this survey to the membership of the Association depends upon having as many members as possible complete the survey. Please return this tear-off sheet separately to Mary Rowe, or mail it to Jim Ziegenfuss.

Date: _____

Your Organization: _____

Your Name: _____

Your Job Title: _____

CORPORATE OMBUDSMAN ASSOCIATION

CONFIDENTIAL QUESTIONNAIRE

INSTRUCTIONS: Please complete this survey, place it in the enclosed envelope, and either (1) return to Mary Rowe at the Conference or (2) mail to:

Professor James Ziegenfuss Ph.D.,
Corporate Ombudsman Research Coordinator,
Graduate Programs of Public Administration and Management,
Suite W-160,
Penn State University - Harrisburg,
Middletown, Pennsylvania 17057.

Also enclosed with this survey form you will find a tear-off sheet that we would like you to complete and return either to Mary Rowe at the Conference, or mail to Jim Ziegenfuss, so that we can keep track of returns. We are separating the response-monitoring process from the survey itself so that we can maintain the confidentiality of the survey forms. Please complete the tear-off and return it separately to inform us that you have completed your questionnaire.

In describing cases/incidents, change the particulars in whatever fashion you feel necessary to avoid identifying the individuals or company involved. All company-specific information derived from personal, phone and mail surveys is confidential. No identified information will be shared in any way beyond the members of the Corporate Ombudsman research committee compiling the survey results. Only aggregated information will be shared with your colleagues at the Corporate Ombudsman conference and in research publications.

Please take the time to complete the survey form. Sharing your experiences can be helpful to all the members of the Association.

I. GENERAL INFORMATION

1. The approximate total number of managers and employees, or of clients (e.g. patients), served by the ombudsman office is _____.

2. Which case or which kind of case that you handled in the last year saved your company the most money?

2a. Total Estimated Savings \$ _____

2b. Please describe the case (for example, "We retained an extremely valuable scientist who had been in serious conflict.")

3. Please make rough estimates of the numbers of contacts and cases you see in a year.

Contacts _____ per year - Contacts are informal, brief (often 15 minutes or less, one-encounter and done).

Cases _____ per year - Cases are more formal, often taking an hour or more.

4. Do you investigate anonymous concerns? _____ Yes _____ No _____ Depends on circumstances

5. Do you counsel callers anonymously, either on the phone or in person, if asked?

_____ Yes _____ No _____ Depends on circumstances

6. Do you notify safety/security/audit/or similar departments about anonymous calls concerning illegal behavior?

_____ Never _____ Rarely _____ Sometimes _____ Frequently

7. Does your employer do business with a government agency? _____ Yes _____ No

8. Do you investigate ethics problems (e.g. Procurement, Security, Safety, Harassment, Waste, Mis-use of government property)?

_____ Never _____ Rarely _____ Sometimes _____ Frequently

8a. If you do investigate ethics problems, do these investigations result in written reports?

_____ Never _____ Rarely _____ Sometimes _____ Frequently

9. Counting all kinds of ethics and misconduct problems, how often would you say you get ethics/misconduct problems?

_____ Never _____ Rarely _____ Sometimes _____ Frequently

10. To whom do you refer complaints of unethical behavior? (Check all that apply)

- _____ Safety _____ Security
- _____ Personnel/HR _____ Audit
- _____ Legal Dept. _____ Other _____

11. When a case is referred elsewhere for investigation:

11a. You are kept informed of investigative findings _____ Yes _____ No

11b. You are informed of resolution _____ Yes _____ No.

11c. You follow up with your original contact _____ Yes _____ No

II. LEGAL ASPECTS OF OMBUDSMAN FUNCTION

12. Do you have an agreement with your employer about not testifying in formal hearings?

In-House: Yes No I need such an agreement

Out-of-House: Yes No I need such an agreement

13. If a former employee/client sued your company and you were subpoenaed by that person's lawyer, do you believe that your company would be willing to attempt to have the subpoena quashed in order to protect the confidentiality and neutrality of the ombudsman office?

Yes No

14. If you had written a formal, fact-finding report about a case which subsequently had become a lawsuit against your company, should the plaintiff (presumably a former client) be able to subpoena you and/or the report?

No Yes, the report Yes, me Yes, both me and the report

15. Should the Ombudsman Association develop position papers or policy proposals concerning the role of the ombudsman in legal proceedings?

Yes No

16. Has your ombudsman office ever been involved in a legal proceeding in which issues about the confidentiality and neutrality of the ombudsman function has been an issue?

Yes No

17. Do you formally investigate any kinds of problems in ways that result in written reports to a decision-maker?

Never Rarely Sometimes Frequently

18. Has anyone ever asked to audit or review your files or log books? (Check all that apply):

- Don't keep files after a case is closed
- Outside Agency: Refused Complied
- Someone in company: Refused Complied
- A headquarters ombudsman: Refused Complied
- Other _____: Refused Complied

19. About what proportion of your working time is devoted to each of the following activities?
- a. ___% Counseling and Complaint Handling -- Listening, helping to frame options, processing complaints.
 - b. ___% Management Advising and Consulting -- Providing upward feedback about issues, which may lead to policy and/or systems changes.
 - c. ___% Education -- Helping to train managers, supervisors and others.
 - d. ___% Administration -- Budgeting, general management, marketing, writing articles for company newsletters or similar media.
 - e. ___% Other _____
- (= 100%)

IV. OMBUDSMAN APPROACHES

20. Below is a list of approaches and techniques that ombudsmen use when working with clients and dealing with issues. Please indicate how frequently you use each of these approaches or techniques. Indicate the frequency by writing the appropriate number next to each item using the following scale:

	About				
<u>Never</u>	<u>Occasionally</u>	<u>Half The Time</u>	<u>Usually</u>	<u>Always</u>	
1	2	3	4	5	

Please mark the appropriate scale value next to each item.

- a. ___ Giving a hearing to feelings -- (e.g.) defusing rage, providing sympathy.)
- b. ___ Active listening -- listening to the client's concerns and assisting the client to formulate the problem clearly.
- c. ___ Developing options with the client.
- d. ___ Immediate Referral to other offices/people/helping resources.
- e. ___ Coaching -- training in the use of company rules or procedures and/or role playing a situation with the client.
- f. ___ Shuttle Diplomacy -- working back and forth between clients or groups.
- g. ___ Informal Mediation -- seeing disputants together in your office.
- h. ___ Codification -- preparing formal written agreements between parties.
- i. ___ Fact finding -- to determine the facts of the case.
- j. ___ Making recommendations to management for resolution.
- k. ___ Turning the case over to others at a later stage.
- l. ___ Arbitration/adjudication -- making a decision about a dispute which is binding on the parties concerned.
- m. ___ Generic intervention -- working towards a general solution rather than raising a particular incident in order to deal with a specific incident.
- n. ___ Upward feedback regarding general policy problems or systems change.
- o. ___ Other technique/action _____

V. ACTIVITY PROFILE

21. How frequently do certain kinds of cases/contacts occur in your organization? Below is a list of issues that occur in organizations. For each issue area, please indicate (1) whether the ISSUE is handled by the ombudsman office; (2) the APPROXIMATE number of contacts/cases in this area that your office handled last year; and (3) the TYPICAL manner in which your office responds.

As above, we define Contacts as informal, brief (15 minutes or less) and typically one-encounter and done. Cases, in contrast, are more formal and take longer.

We recognize that some cases will fall into multiple categories (e.g., termination because of drug problems). Use your best judgement about the appropriate category.

If the ombudsman office in your organization does not handle a particular type of complaint, mark the "No" category in the Issue column and then go on to the next item. If you do handle some issue but had no contacts or cases in that area in the last year, mark the "Yes" category and then skip on to the next item. **ESTIMATES RATHER THAN EXACT NUMBERS ARE OK.**

	<u>ISSUE</u>	<u>INCIDENCE</u>		<u>TYPICAL DISPOSITION (CHECK ONE)</u>		
	Handled By	<u>APPROXIMATE</u>		<u>Handle Alone</u> <u>With Client</u>	<u>Work With</u> <u>Another Office</u>	<u>Refer</u> <u>Immediately</u>
	Ombuds Office? No/Yes	Number Last Year	<u>Contacts</u> <u>Cases</u>			
<u>A. DISCRIMINATION</u>						
Terminations	<u> </u> N <u> </u> Y	—	—	—	—	—
Sexual harassment	<u> </u> N <u> </u> Y	—	—	—	—	—
Racial harassment	<u> </u> N <u> </u> Y	—	—	—	—	—
Sex discrimination	<u> </u> N <u> </u> Y	—	—	—	—	—
Racial discrimination	<u> </u> N <u> </u> Y	—	—	—	—	—
Reverse discrimination	<u> </u> N <u> </u> Y	—	—	—	—	—
Other EEO/AA (e.g. Handicapped, etc.)	<u> </u> N <u> </u> Y	—	—	—	—	—
<u>B. CAREER/WORK CONCERNS</u>						
Hours of work	<u> </u> N <u> </u> Y	—	—	—	—	—
Location of work	<u> </u> N <u> </u> Y	—	—	—	—	—
Transfer/Job Posting	<u> </u> N <u> </u> Y	—	—	—	—	—
Work assignment	<u> </u> N <u> </u> Y	—	—	—	—	—
Termination	<u> </u> N <u> </u> Y	—	—	—	—	—
Promotion	<u> </u> N <u> </u> Y	—	—	—	—	—
Performance evaluation	<u> </u> N <u> </u> Y	—	—	—	—	—
Salary/benefits	<u> </u> N <u> </u> Y	—	—	—	—	—
Deliberately unfair/illegal allocation of benefits	<u> </u> N <u> </u> Y	—	—	—	—	—
Deliberately unfair/illegal denial of benefits	<u> </u> N <u> </u> Y	—	—	—	—	—
Safety problems	<u> </u> N <u> </u> Y	—	—	—	—	—
Other _____	<u> </u> N <u> </u> Y	—	—	—	—	—

V. ACTIVITY PROFILE, Cont'd.

	<u>ISSUE</u>	<u>INCIDENCE</u>		<u>TYPICAL DISPOSITION (CHECK ONE)</u>		
	Handled By	APPROXIMATE		Handle Alone	Work With	Refer
	Ombuds Office?	Number Last Year	Contacts	Cases	With Client	Another Office
	<u>No/Yes</u>					
<u>F. MISC.</u>						
Suggestions for change in company policy	<u> </u> N <u> </u> Y	—	—	—	—	—
Privacy Problems	<u> </u> N <u> </u> Y	—	—	—	—	—
Drug Testing	<u> </u> N <u> </u> Y	—	—	—	—	—
Nepotism or favoritism on a personal/sexual basis	<u> </u> N <u> </u> Y	—	—	—	—	—
Environmental hazards	<u> </u> N <u> </u> Y	—	—	—	—	—
Other _____	<u> </u> N <u> </u> Y	—	—	—	—	—

G. EMERGING ISSUES

Have you encountered any new or unusual problems in the last year? If so, please describe.

 N Y — — — — —

VI. OMBUDSMAN TECHNIQUES

22. Many Ombudsman network members have expressed an interest in hearing about unusual or innovative techniques that their colleagues use to handle cases and publicize their functions. Briefly describe below any particularly effective approach or technique you use.

VII. GENERAL

23. What are the sources of your power to resolve problems?

VII. GENERAL, Cont'd.

24. Please indicate the size and estimate the annual budget of your Ombudsman office.

Number of Ombudsman _____ Estimated Annual Budget _____

25. How many years have you served in the ombudsman position in this company? _____ Years.

26. How many years have you worked at your company? _____ Years.

27. What is your educational background? Please check degrees obtained and indicate fields(s) of study.

___ Bachelors (Major) _____

___ Masters (Area of Study) _____

___ Doctorate (Area of Study) _____

28. Please estimate your salary within one of the following ranges:

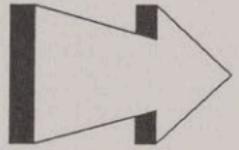
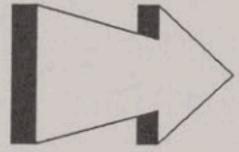
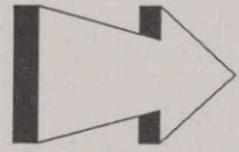
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- ___ \$35 - \$45,000
- ___ \$45 - \$55,000
- ___ \$55 - \$65,000
- ___ \$65 - \$75,000
- ___ \$75 - \$85,000
- ___ \$85 - \$100,000
- ___ \$100 - \$125,000
- ___ Over \$125,000

29. Please briefly describe one successful and one unsuccessful case that you have handled recently.

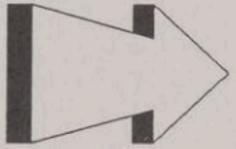
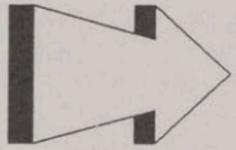
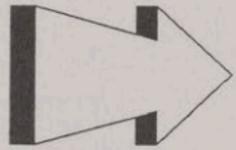
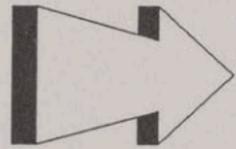
A. Successful -- A case that was professionally satisfying (e.g., an early warning about a possible unsafe practice in the workplace permitted a production manager to make changes before anyone was hurt.)

B. Unsuccessful -- A case that defies resolution (e.g., Despite meticulous and continuous effort, we have been unable to confirm or disaffirm the truth of a sexual harassment complaint, and we still do not know who is lying.)

THANK YOU COMPLETING THIS SURVEY FORM. PLEASE MAIL IT TO US IN THE ENCLOSED ENVELOPE AND WE'LL SHARE THE FINDINGS AT THE NEXT MEETING.



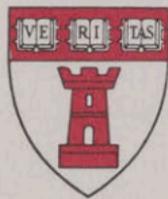
OPEN UP....



There is a safe place
to get help.

LINDA WILCOX
OMBUDSPERSON

HMS



HSDM

WHY?

HMS/HSDM is a large and complex environment. Misunderstandings and disagreements can occur. Conflict can drain your emotional energy, decrease your productivity, complicate your dilemma, or add stress. You may need assistance. The Ombuds Office is a place where you will find help to handle interpersonal difficulties.

WHO?

If you are affiliated with HMS/HSDM as a:

- student,
- fellow,
- faculty member, or
- staff person,

you are eligible and welcome.

HOW?

Contact: **LINDA WILCOX**
Ombudsperson

Call: (617) 432-4040 (confidential line)
(617) 432-4041 (staff assistant)

Fax: (617) 432-3834

Visit: The Ombuds Office
221 Longwood Avenue
Room 420 (Elevator A)
Boston, MA 02115

SOME APPROPRIATE CONCERNS

SEXUAL HARASSMENT

RACISM OR OTHER KINDS OF
DISCRIMINATION

FEELINGS OF STRESS OR ANXIETY

ETHICS / WHISTLE BLOWING

PERSONALITY CONFLICTS / MEANNESS

WORKING CONDITIONS

FEAR OF RETALIATION

FAVORITISM

For many, the Ombuds Office will be a safe first step. If you are in need of specific expertise, referral information will be provided on other issues, policies, or resources. If you are associated with an affiliated hospital, you may also find help there.

WHY?

HMS/HSDM is a large and complex environment. Misunderstandings and disagreements can occur. Conflict can drain your emotional energy, decrease your productivity, complicate your dilemma, or add stress. You may need assistance. The Ombuds Office is a place where you will find help to handle interpersonal difficulties.

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Boston, MA 02115

OMBUDSPERSON?

The ombudsperson at HMS/HSDM is an impartial complaint-handler who strives to see that people are treated **FAIRLY** and **EQUITABLY**. The ombudsperson will assist people with complaints involving interpersonal misunderstandings or conflict. The Ombuds Office is independent of any existing administrative or academic structures and is responsible only to the dean. It is meant to supplement the existing resources available to members of the Medical School community.

Speaking with the Ombudsperson will likely increase your awareness of alternatives available to you for resolving your concern. Possibilities will be tailored to fit your particular circumstances and take into account any fears you may have about retaliation. The goal will be to enhance your ability to deal more effectively with the situation on your own. If more assistance is requested, further information can be gathered on your behalf, referrals can be made to those more expert in a specific concern, or proper authorities at the Medical School or affiliated hospitals can be contacted. When appropriate, shuttle diplomacy or mediation can be employed to help find a satisfactory solution.

INFORMAL PROCESS

The Ombudsperson will provide you with a safe forum to voice your concerns, evaluate your situation, organize your thoughts, assess your feelings, and decide on what is important and relevant to your specific circumstance. Together, we will explore options for you to consider. Options can range from simply talking about your problem to pursuing a formal grievance proceeding. *You* will select the options *you* prefer.

Your privacy will be respected as conversations will ordinarily remain confidential. In unusual circumstances, such as where information is subpoenaed for a legal proceeding or there is a potential threat to safety and other options have been exhausted, information may have to be shared. If you have particular concerns about confidentiality, please raise the issue.

FORMAL PROCESS

If all attempts at resolving the situation informally have failed, you may choose a more formal grievance process. Union members will follow the process outlined in their collective bargaining agreement. All other individuals will be subject to the policies and procedures established by the Medical School for their group. If the situation also involves an affiliated hospital, the Ombuds Office will work together with that institution to determine the best way to proceed.

HARVARD MEDICAL SCHOOL
LINDA WILCOX
OMBUDS OFFICE
ROOM 420
221 LONGWOOD AVENUE
BOSTON, MA 02115

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CAN OMBUDS PRACTITIONERS AND OTHER SENIOR EMPLOYEE
COMPLAINT HANDLERS BE NEUTRAL?

Mary P. Rowe
M.I.T.

September 1984

Neutrality, objectivity, fairness.....these are qualities that non-union employees often say they want in their complaint handlers. This is especially so now that a rising proportion of such employees are well educated; many are scientific and technical personnel. Many who seek an objective review of their concerns are themselves managers, who now frequently want to raise the problems they have as employees, as well as those they have as managers. Minorities and women ask that traditionally Anglo, male establishments should treat them fairly. And in case a company is seen to be unfair, union organizers hover, ready to offer the option of "impartial grievance arbitration."

Chief executive officers also raise these questions for reasons other than just avoiding unions. For example, those interested in a far-reaching, Martin Weitzman-type shift to profit-sharing, are in fact seeking an orientation of common values with their employees. They are pushing toward management and employees working together for common goals, [especially since many employees are themselves supervisors], and away from

Group decision making at companies like Intel is a similar example of building common goals.

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"management vs. employees.", "Neutrality" in dealing with employee complaints is another manifestation of the same philosophy of management. In addition, the American sense of fair play runs very deep in many chief executive officers. So the question is also frequently raised at the top: Can internal complaint handlers be neutral?

This question is also being raised by the complaint handlers themselves. Some were appointed as ombuds practitioners with a public expectation of objectivity and perspective. Some simply dislike the increasing litigiousness of US society and the polarization of unionization; they seek an emphasis on mediation rather than arbitration. Since mediators traditionally are neutral, [designated to help disputants find their own settlements], internal mediators ask, "Can I be neutral?"

There are however powerful traditional views that there is no such thing as an "internal neutral." And many employees as well as managers believe there ought not to be, or "at least there are limits." This article discusses some of the major issues: external pressures and the need for advocacy, either for employee advocates or for management; the problems of individual psychological bias; the need to consider public interests; problems of confidentiality.

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External Pressures

He Who Pays the Piper.....

Many people do not believe it is possible to be a neutral complaint handler inside a company. The first problem is thought to be that one would be pushed around by management. "Inevitably one would be coopted or threatened or bribed to conform to the ideas of senior managers"..... Senior complaint handlers around the country tend to have the view that this is mainly a theoretical problem with only occasional practical significance, at least at their level.

Most full-time complaint handlers report that they are left alone to do their work nearly all the time and by nearly all senior managers. Most do also know one or a few major managers in their company who believe, "He who is not with me is against me," and who will make no bones about their antipathy to "neutrals," For example, about a third of the senior complaint handlers I have talked with have been leaned on, in-house, to leak confidential information. They report however that this happens rarely and can successfully be resisted. It may be that the kind of company that has an innovative non-union complaint structure in the first place is the kind of company where top management will respect the integrity of complaint handlers; for

whatever reason, little abuse by top management is reported by their ombuds practitioners.

Pressure from employees

Complain~~ing~~ handle~~s~~s themselves are however usually quite thoughtful about the problems of being "neutral" for reasons other than cooptation or threats by management. Many came to general complaint handling from work in an Employee Assistance Program or an Equal Opportunity office. As client-centered practitioners they may have been designated as employee advocates, or they may see the need for employee advocacy to redress a perceived imbalance of power. Moreover employees who are used to the union model may expect an ombudsman to be their advocate--this is reported to happen occasionally by at least two-thirds of all ombuds practitioners I know. And it is so common for employees to speak ill of ^{traditional} ~~general~~ personnel officers who do not behave as advocates that full-time complaint handlers speak soberly about the pressure toward employee advocacy.

On balance, most complaint handlers take external pressure philosophically and feel that inappropriate requests from management and employees can be resisted and/or balnce each other out.

Companies can lessen the problem of external pressures in a number of ways. Most important is the corporate specification of neutrality or advocacy. Some complaint handlers

are expected to be "advocates for decent process, not for any person or point of view." Some Open Door Investigators are instructed to begin any investigation with the idea that a complaining employee is right, and only thereafter are they to pursue the case as an advocate for the person[s] or position found to be in the right. Some companies say up front that the "interests of the company are paramount." Some companies have appointed Employee Advocates as complaint handlers. A number of companies say that their long-run interests lie with any employee who has been wronged and that they may have a partial interest in common with each of several people in the company who have wronged each other. [For example, in the case of an employee found in an internal investigation to have suffered from discrimination, Control Data will attempt to provide a remedy equivalent to that which would have been set by the EEOC.]

Each of these policies is theoretically somewhat different from the others. In practice nearly all senior ombuds practitioners and complaint handlers report they try to be neutrals although only about two-thirds of those I know are designated as neutrals by their companies.

In an effort to enhance the appearance of neutrality, and to make it sfer^{for employees} to consult complaint handlers, most companies now permit or affirm the confidentiality of complaint offices. With some exceptions discussed below the ombud practitioners I have talked with expect to maintain confidentiality if asked to

do so.

Companies also try to structure the jobs of senior complaint handlers so as to minimize conflicts of interest. Theoretically an internal ombudsman should report to the CEO in order not to be vulnerable to, or cooptable by any other top managers. In practice perhaps a third of US ombuds practitioners report at or near the top, others to vice presidents and other senior Human Resource and Personnel directors. In large companies it is common that senior complaint handlers have completely separate, confidential staff offices. It is relatively unusual for a senior complaint handler to be expected to review the management behavior of senior managers who report directly to the CEO, so in practice high-level reporting is the rule and there is relatively little conflict with top managers.

Most full-time complaint handlers also do not adjudicate, or do so very rarely. Of the classic functions provided by complaint systems [providing information, counselling, fact-finding, conciliation, mediation, adjudication, upward feedback to management], the internal ombudsman typically does all but the one: they usually are not internal judges or arbitrators. My research indicates that it is much easier to be seen and to function as a neutral if one does not adjudicate. Many companies recognize this in their complaint structures: formal, adjudicatory complaint and appeal channels are separate; the ombuds office is called by contrast, Liaison Office

[Southland], Personnel Communications [Anheuser-Busch], Employee Advisory ^{Resource} ~~Service~~ [Control Data] or in fact, Ombudsman [Upjohn, AT&TIS, Dennison, World Bank).

Neutrality and objectivity can also be enhanced in an in-house adjudicatory structure, usually in a formal final appeal by peer review or a group of uninvolved managers or an appeal board. These structures often involve a group, rather than one person. Typically they are composed of people who are not full-time complaint handlers, who, in fact are not otherwise involved in the complaint system. In consequence, the same person is typically not both a mediator and an adjudicator. The neutrality question can also arise in the relatively rare cases where an ombudsman serves as an investigator, to make formal recommendations to line management. Many ombuds practitioners will avoid this role in cases where they have already been involved as a confidential counsellor as a mediator.

Some companies also avoid conflicts of interest by choosing, as ombuds practitioners, quite senior managers who would be thought relatively immune from pressure. At the World Bank for example the Ombuds position is a two-year, pre-retirement job with the guarantee of continued pay if the incumbent is removed.

There is some disagreement, however, about the desirable term of service for an ombudsman. Some commentators feel that full-time complaint handlers should serve for a limited

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period so they won't get coopted. Others prefer the development of a long-term professional whose continuity is expected and who therefore may feel relatively safe with respect to any one difficult situation. [A famous article contains a line favored by ombuds practitioners about the need for the job to be a "long-term job at substantial pay".]

Personal Bias

Many senior internal complaint handlers believe they should be designated as neutrals but that it is personally impossible to be a perfect neutral. This problem is ^{or} shared of course by external ~~practitioners~~ ^{arbitrators and mediators} and judges: one's personal prejudices may inform one's judgment. It is a problem taken very seriously by most of the full-time senior complaint handlers I have talked with. While generally rejecting the notion of difficult external pressures most will on occasion feel strongly buffeted by internal feelings. For example, most ombuds practitioners care about their employers. If they learn something that may impact on the profits of the company they may feel a strong pull. A similar need for professional self-discipline may arise where an employee appears to have been badly treated. In order to cope, most long-term practitioners develop an extraordinary ability to take the long view, to be able to imagine and perhaps uncover many different sides to the same story.

A company can do several things to safeguard against

the personal bias of complaint handlers. Top management should choose seasoned ombuds practitioners with very wide cross-cultural experience, the kind of person who builds bridges, rather than the kind of all-out ^{advocate} ~~lawyer~~ you would want in a court fight. Companies should provide confidential advice for the internal ombudsman, for example from legal counsel or from other ombuds practitioners in the same office. Separation of counselling and mediation functions from adjudication may also help with personal bias problems.

A company should also provide a number of different options from which a concerned employee may choose. For example at Polaroid, an employee may take a given problem to a supervisor, to the ombudsman, to the Employee Council, to personnel. Providing such options at MIT is called redundancy, in the sense of engineering redundancy: fail-safe, backup, checks and balances.

Senior complaint handlers around the country differ sharply about whether a company ^{must} ~~should~~ offer ombuds practitioners of different ethnic characteristics and both genders. About half feel that within a given plant or company a concerned employee should be able to find someone like him or her to talk with. And indeed about half of the senior complaint handlers I know are female and about 15% are minorities. On the other hand many practitioners feel very strongly that what matters is not skin color or gender but skill, empathy, caring and judgment, and that

any practitioner should be able at least adequately to serve anyone with a problem.

Public Interests

The traditional ombudsman may respond to visitors' concerns or instigate inquiries on his or her own motion. In the latter case, the inquiry is often provoked by some third party complaint: A expresses a concern about the treatment of B. For an internal complaint handler this can pose an unusual problem. Many internal complaint handlers prefer not to listen to third party complaints. And traditional mediators ordinarily try to help active disputants to reach their own settlements, [within the confines of the law], without the mediator injecting a personal point of view or the point of view of any third party.

Internal complaint handlers differ on how they will handle third party complaints and public interests, and whether or not they consider such activity "neutral." The majority say they prefer to deal only with first party concerns and complaints, in an effort to encourage people to take responsibility for their own concerns, and to avoid being seen as inspectors general. Probably a majority also will investigate third party and anonymous concerns, when they are considered sufficiently grave. However it appears that most complaint handlers who consider themselves neutral feel comfortable pushing a point of view on such problems only when they believe that otherwise there will be a serious infraction of the law.

Confidentiality and the Duty to Warn

A related problem occurs when a visitor, who has requested to be completely off the record, relates to a complaint handler some story which makes the listener worry about the safety of the visitor or others. When does a confidential counsellor have a duty to warn?

About half of the senior complaint handlers I know have considered breaking confidentiality because they were seriously worried about the safety of a visitor or of others. Usually in such a case the complaint handler will state very clearly that confidentiality must be broken. This is the one subject concerning the neutrality of an ombudsman where there appears to be complete agreement among the practitioners I have known. Appropriately enough, their prevalent view appears to conform with emergent law in the field; most complaint handlers in fact report that they behave more conservatively about questions of dangerousness than the law requires.

More difficult cases arise where an ombud learns of dishonesty, or of intolerably incompetent, mean, racist or sexist behavior on the part of someone in the company. About half of the practitioners I have asked have thought about breaking confidentiality in such circumstance; it is sometimes tempting to imagine doing so. It is my impression however that most ombuds practitioners will not and have not broken confidentiality in any material way for such a reason.

This does not mean that a complaint handler need simply choose between sitting on worrisome information or breaking a confidence. Experienced complaint handlers report they work hard to find other alternatives. Often one can work at length with a visitor to help that person feel comfortable in seeking help overtly. Sometimes a visitor will not agree to immediate action but will feel comfortable pursuing a concern overtly after some time, for example after a change in work assignment. Sometimes a visitor will agree to one more confidential conversation—with a trustworthy manager who can help to make an overt complaint appear responsible and safe. And sometimes the complaint handler can get permission to represent an individual problem in a generic way. For example, where a manager is said by an employee to be dishonest, the ombudsman might alert financial officers to audit certain kinds of accounts without naming [or slandering] the alleged offender.

In the worst situation, when a visitor appears to be a danger to himself or others, the ombudsman can ^{sometimes} ~~often~~ accompany that person to appropriate help rather than breaking a confidence behind someone's back.

Testifying and Affidavits Outside the Company

If one is designated as an internal neutral, is it proper to testify in court? Many observers feel that an ombudsman who testifies for an employee against management will lose his or her job. And that an ombudsman who testifies for

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management against an employee [or former employee] will be seen as an advocate for management and not neutral.

Internal complaint handlers generally try to avoid taking on cases which have gone outside to investigatory agencies or the courts. Occasionally an internal complaint system may be required to re-inherit a case which has gone outside, but usually the company then will ask that outside action, for example at the EEOC, be tabled during a [re-] activation of internal mediation and review. There is thus an attempt to prevent the mixing of internal, process [non-polarized] and external process [advocacy] wherever possible. But supposing a case does go outside to court or to an agency? About half of the senior complaint professionals I know would try hard to convince their own management not to call them as witnesses, and would ask for attempts at protection from subpoena by outsiders. About a fourth would testify for their own management as a matter of course. Some would simply comply with any subpoena.

State laws differ on "privilege"--the freedom not be required to testify--but in general there is ^{no absolute} little judicial or legislative privilege even for social workers, doctors or clergy who may be serving as mediators. [There are occasional exceptions in some states, for example for whistleblowers.] In practice however many judges will quash a subpoena where the integrity of a confidential and neutral office is at stake. It seems likely that judges will be more comfortable in quashing subpoenas where

a company has explicitly designated a complaint handler as neutral and where the office has been announced as a confidential office. It is also more likely where the complaint handler has been engaged in confidential counselling and communications or in mediation, rather than investigation and adjudication.

This is an emerging area of ethics and of practice for complaint handlers. The American Bar Association Special Committee on Alternative Dispute Resolution and many professional organizations such as the Society for Professionals in Dispute Resolution, have been working hard to develop guidelines and codes of conduct. In general practitioners are tending toward the protection of neutrality and away from testifying about the process or outcome of mediation. This is obviously an important area for management to be clear about within the company.

Record-Keeping

Is it possible to keep complete office records and to be a neutral? Most ombuds practitioners keep and report ^{aggregated} data and emergent types of problems to top management. Some internal complaint handlers also keep careful, individual records, [albeit almost always apart from routine personnel files.] Occasional ombuds offices will keep written records of all counselling sessions including allegations of A about B even if B never knows that A has come in to talk.

Other complaint handlers feel such records may

compromise neutrality [and are an intrusion on the rights of B]. Some practitioners keep no formal written records about individual cases, beyond working notes that are destroyed when a case appears to have ended. These latter practitioners hope to protect the privacy and good name of all, and further to prevent public testimony about their cases by keeping very little information about individuals.

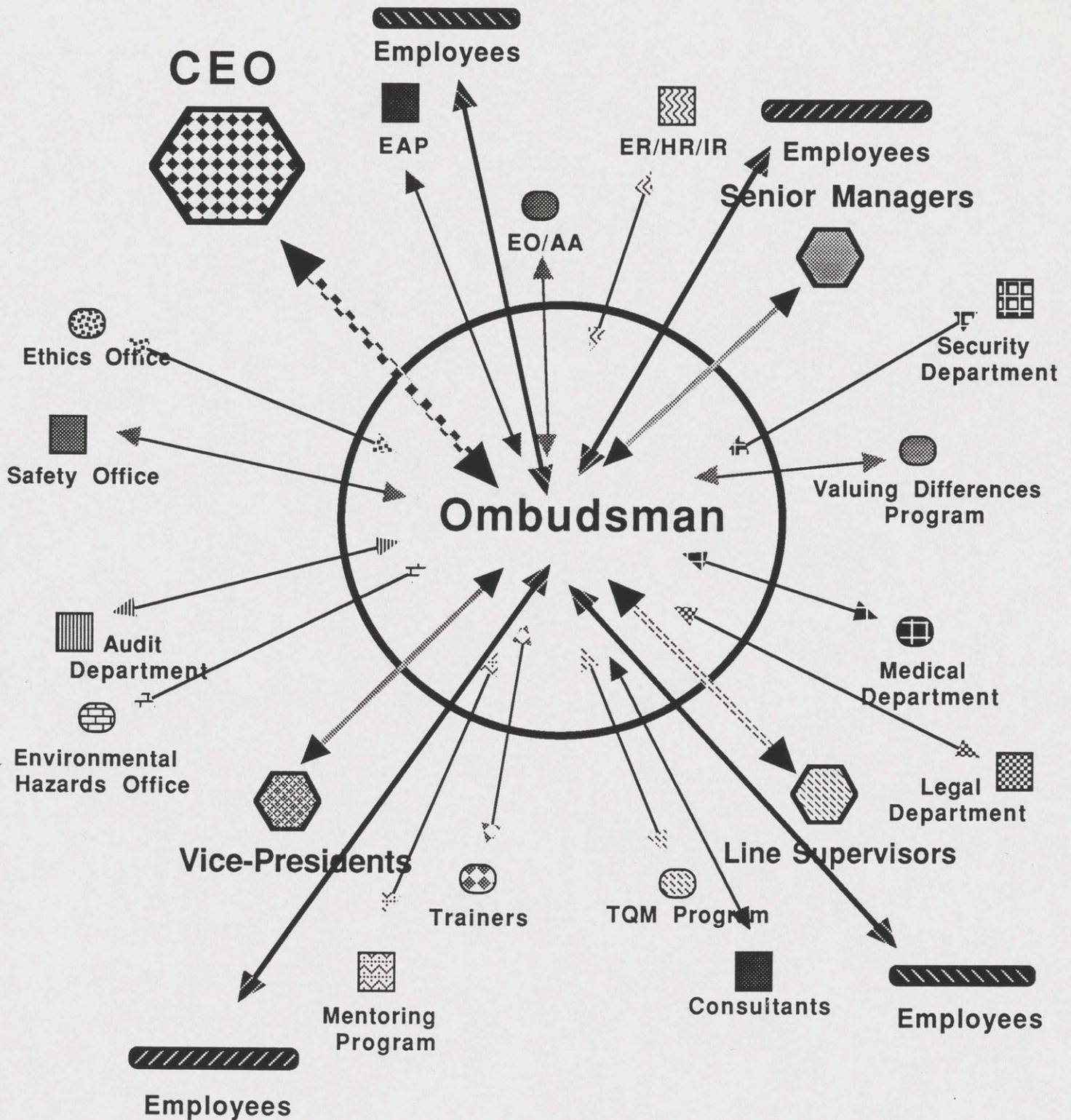
Yet others will keep individual records where there has been an open mediation leading to a formal settlement, or an arbitration, and where they have served as investigator or fact-finder. It has usually been presumed that records of this type would be open to subpoena.

As we review the concerns above, it seems clear that it is theoretically and sometimes practically difficult for an internal complaint handler to be genuinely neutral. Most of the problems that exist can apply also to external mediators and arbitrators, who also may be paid by the employer, who also may be presumed ^{sured} ~~summed~~ by employees, who may exhibit personal bias, have a duty to warn, and who worry about being asked to testify in court. On balance one ^{may} conclude that it is impossible to be a neutral although nearly all senior complaint handlers ^{report that in practice} ~~actually~~ ^{they} try to be.

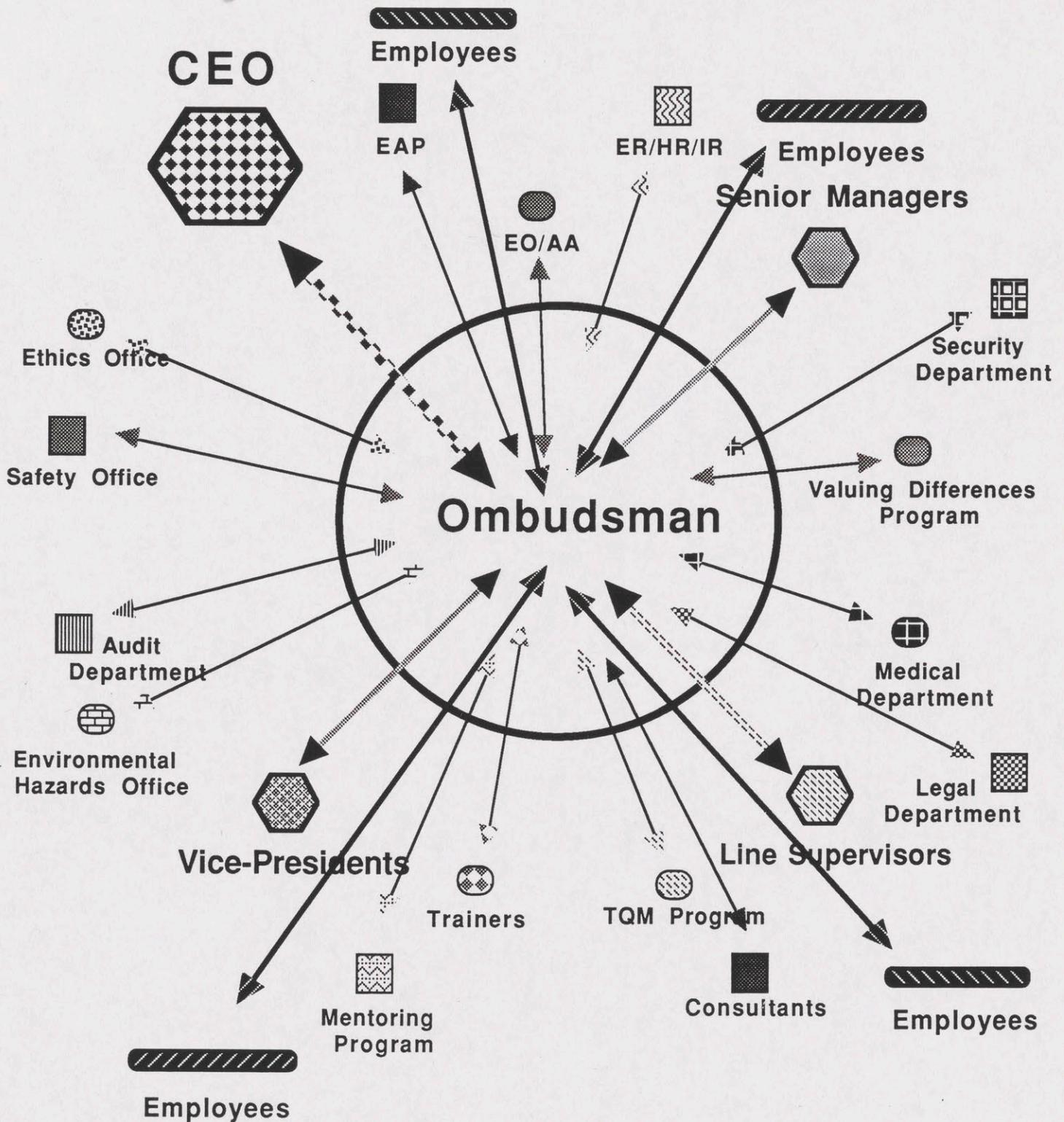
Top management can and should decide the priorities of their employee complaint handlers. If these practitioners ~~are~~ to be as neutral as possible, company policies, procedures and

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structures can enhance neutrality and objectivity, and should be designed to do so effectively.



Organizational Chart



Organizational Chart

EVALUATING OMBUDSPEOPLE

I. WHAT IS THE JOB?

A. Context:

1. Assist in the human side of work.
2. Deal with reported complaints to help achieve equitable settlements.

B. Content:

1. Principles:

- a. Confidential
- b. Neutral
- c. Advocate for solution
- d. Available
- e. Impartial
- f. Direct access (no red tape)

2. Practices:

- a. Provide a personal hearing
- b. Receive and give information
- c. Coach them how to help themselves
- d. Provide a two-way channel
- e. Mediate
- f. Facilitate organizational change
- g. Investigate

C. Intended Outcomes:

1. *Person feels better*
2. *Person is more productive*
3. *Incorrect situations are set right*
4. *Ethical situations faced and cleaned up*
5. *Individual improves skills in:*
 - a. Communication
 - b. Leadership
 - c. Problem solving
 - d. Conflict resolution
6. *Management gets unfiltered feedback*
7. *Reports generated - notable benefits, statistical profile*
8. *Office is used by a cross-section of employees*
9. *Office is used by a large number of employees (10-25%)*

II. HOW TO EVALUATE THE OMBUDSPERSON?

A. Decide what to measure:

1. *Adherence to the principles*
2. *Performance on the practices*
3. *What are the results/outcomes?*

B. Decide who measures the Ombudsperson on principles, practices, outcomes:

1. *Employees*
2. *Bosses*
3. *Peers*
4. *Self*

C. How often?

1. *Semiannually*
2. *Yearly*

D. Who sees responses?

1. *Private data*
2. *Publishable data*

E. Who requests data?

III. WHAT ELSE?

- A. **What unsolicited feedback has the boss gotten over the past year?**
- B. **Is the Ombudsperson active in The Ombudsman Association (TOA) or an internal Ombuds organization?**
- C. **Any papers or talks given?**
- D. **What education undertaken?**

Sample Questionnaire Format

- I. The mission of the Ombuds office is ...
- II. The principles of the office are ...
 - A.
 - B.
 - C.
- III. Please measure the Ombuds adherence to the principles ...
 - A.
 - B.
 - C.
- IV. The practices of the office are ...
 - A.
 - B.
 - C.
 - D.
- V. Please measure the Ombuds performance on these practices ...
 - A.
 - B.
 - C.
- VI. Here are some intended outcomes of using the office ...
 - A.
 - B.
 - C.
- VII. What results have you experienced?
- VIII. What else?

SAMPLE CONFIDENTIALITY QUESTIONS

- **Did you feel confident that your meetings would remain confidential?**

very confident confident unsure doubtful very doubtful

- **It is your perception that the resource maintains confidentiality?**

yes no opinion no

- **Do you feel confidentiality was maintained? If not, please elaborate.**

yes no opinion no

Explain _____

SELF-EVALUATION

How it it maintained? Have there been any leaks, any challenges? Are names in a locked file, in a locked office?

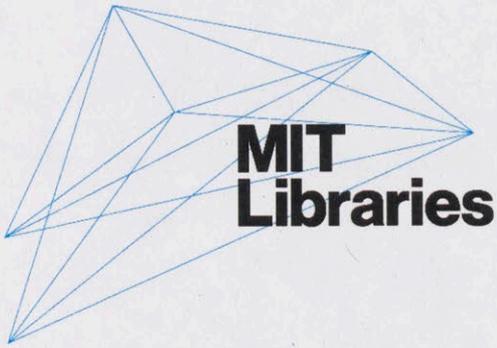
June 1989

REFLECTIONS OF AN OMBUDSMAN

During the period I was planning my retirement I began thinking about what suggestions I might pass along to my replacement. While on a flight I scribbled down the following thoughts which seemed to me to be appropriate:

- Be neutral.
- Be cognizant of the responsibilities of management and the rights of the employees, but don't lose sight of the responsibilities of employees and the rights of management.
- Management should treat the employee with dignity and respect, but the employee is expected to work. Conversely, the employee should treat management with dignity and respect.
- Don't become emotionally involved with clients, stay detached.
- There are always three (at least) sides to every story.
 - What the client sincerely believes to be fact may be misunderstood or imagined and in some cases contrived.
- Look for the "Hidden Agenda." The stated problem may be the tip of the iceberg or the last straw. It only helps a little to give an aspirin when there are compound fractures.
- Perception is reality. What is perceived by the employee is a real problem to them, even if it is not true.
- The client must take ownership to their contribution to the problem.
- Help people to help themselves; i.e., teach them to fish, don't just hand them fish.
- Has the client discussed this matter with their supervisor? If not, why not?
- Is it an isolated problem? Get them back into the system.
- If the system needs fixing, lobby to fix it. Constructive suggestions should always be considered.
- Not all problems are completely (or even partially) solvable.
- You can't snatch the world out of the air and throw it into a new orbit. Keep nudging at it and you will see progress without destroying yourself.
- Don't beat yourself up over an occasional failure.

Virg Marti



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Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139-4307

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The remaining contents of this folder have been redacted.

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distinctive-collections@mit.edu