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[Articles, case papers and notes]

1995-2007

Discussion went to ethics and the pain of the war and lost resources.

The war = loss of autonomy  
OOs must speak up

## Crystal Ball 2007

St. Louis IOA Conference

Mary Rowe, Judi Segall, Marvin Neal, David Miller, Doris Campos-Infantino

### Identifying "disruptive" issues that are new to your organization

The Crystal Ball began in 1984 when several Organizational Ombudsmen (OOs) were planning the next conference. We were discussing the fact that one task for the OO is to identify and surface "new problems" for the organization. Everyone is familiar with the idea of identifying "trends" for your annual report—trends are important—but on the other hand, by the time the OO is reporting a trend many managers already know about the problem.

Keep noting the effect of the systems around us.

We began to look for New Things and especially for "disruptive" new things that require an organization to review or change its policies and procedures and structures. 1984 was a year of fear of AIDS, the beginning of concern about stalking behavior, and the first reports about how to provide an equitable work environment for devout Muslims<sup>1</sup>. There has been a Crystal Ball ever since.

As usual we provide observations from all sectors on various topics—anonymous excerpts from phone calls, discussions, and emails from many dozens of OO's. We have been *inclusive*, rather than focused. We also provide *focused* sector reports from a panel of OOs. These include observations from many OOs in four sectors.

Individual notes for the Crystal Ball are not retained, and, as always, we report "concerns and allegations" rather than facts.

→ Helps us deal with the systems issues

**Q: What might IOA "do" with respect to the concerns reported for the Crystal Ball each year?** Booklets and articles? Courses? Conference workshops?

Developing a set of skills that can contribute to dialog

**Q: Should there be a yearly compilation of happy innovations?** What has gone *right* in your organization this past year?

**Q. Would you prefer more focus in next year's Report?** Fewer topics and more depth? Or do you like the inclusive mode?

At the end - remember these questions

<sup>1</sup> (A non-scientific list of "new things," year by year, can be found in the Appendix to *Effectiveness of Organizational Ombudsmen*, at: [http://web.mit.edu/ombud/ombuds\\_publications.html](http://web.mit.edu/ombud/ombuds_publications.html).)

Market our profession to other professions' conferences  
Get ourselves invited.

## ***Observations from all sectors***

### **Privacy concerns**

We see visitors who do not complain for fear of disclosing their **illegal status**. (Several OOs)

Clinical training sites are requiring student trainees to have legal "background checks" and mandatory "drug screens." Once **background checks** are forwarded to the appropriate administrators, the next issue is what to do with the results including records of alcohol/drug violations and other criminal offenses. The implications are serious.

Facebook, and students' willingness to post pictures violating student code policy on campus, brings up an interesting dilemma. Luckily, my institution does not look for **violations on Facebook**. However, we have had student employees reprimanded and urged to take off compromising pictures. This is usually done in the vein of educating the student, but it has brought up interesting points about student rights and the responsibility of the institution. (Several OOs)

We are hearing many stories about **inappropriate use of camera phones and recording devices** while at work, and inappropriate or illegal use of recordings. (Many OOs).

**MySpace and Google "discovery" by HR**—the use of online background checks is blurring private life and work life. (Many OOs).

Medical ID theft—sophisticated schemes to get medical records are adding to the risk facing medical information holders. (**Many versions of ID theft** were reported by OOs.)

Some managers think nothing of **going into email and voice mail just for fun or prurience**—not for business reasons.

### **Intellectual property concerns**

Faculty members are expressing concern that they are being strongly encouraged by administrators to allow their **lectures to be electronically recorded and placed on the web** for access by students or the world. Adjunct and other non-tenured and non-unionized faculty are concerned that their refusal to grant permission

for such recording and subsequent use may have implications for their employment, and even tenured faculty are concerned that refusal may impact relationships with chairs and deans. In addition we have inadequate policies on copyright of lectures, their future storage and use, and the use of someone's "image".

**Expose-plagiarism** (this is a pseudonym) and other, on-line, software tools used by faculty to screen the work of students and colleagues for plagiarized material may possibly violate both intellectual property rights and university policies. **Expose-plagiarism retains a copy of the work to provide a database** for comparison purposes and generates a profit from the use of the tool—is this a violation of IP and privacy rights?

### **Problems with managers—dishonesty concerns**

Some use a business vehicle for traveling to the golf course two afternoons each week while claiming to be at work and asking secretaries to lie if asked about their whereabouts. **Some "permanently borrow" computers** and lawn care equipment—these are the same folks who *never* complete their annual inventory forms and, when confronted, blame subordinates. (OOs in all sectors)

**Some managers "cook the books"** requiring their business people to represent expenses and earnings in a particular, technically legal, but highly questionable manner to give the appearance of increased profits or decreased losses. (OOs in all sectors)

Some managers use **pornography** on the Web. There are reports of internet **gambling**. There is **ticket-scalping, misuse of credit cards, conducting a private business, using office staff for one's business, accepting large gifts**—conducted while the manager is on the job. Several have been reported for **misusing company information** for private gain. There are numerous **violations of financial rules**. (Many OOs in all sectors)

### **Problems with managers—negligence concerns**

Some allow millions of dollars in grants or other funds to lapse, or escape, due to simple **non-compliance with deadlines**. Some *never* check or answer e-mail, or return phone messages. Some fail to submit paperwork to facilitate a payment or a raise due to

subordinates. Others never conduct performance evaluations, thereby eliminating individuals from receiving a raise or promotion.

We have **managers who do nothing about safety violations.**

We quite frequently see a situation of total disregard by a manager for responsibilities—not supervising an employee or a manager who is not performing technical duties. This has a serious impact on staff. Some managers do not address serious behavior exhibited by an employee or manager, or **look the other way regarding unacceptable behavior** (e.g., sexual or religious harassment, discrimination, theft, fraud, gross bullying, racist behavior, conflicts of interest). (Many OOs)

We have several faculty members with multiple major research projects who **intentionally delay and obstruct** the processing of dissertation paperwork in order to keep more inexpensive and compliant hands doing the work in their labs.

Some faculty turn their heads about mis-use of graduate students. Some even ignore academic misconduct by peers, unsafe work procedures, and inappropriate sexual liaisons of other faculty. They **do not want to deal with any kind of conflict**—and especially not with their peers. (Many OOs)

One manager, by his own admission to me, has done not a single hour of university related work in the last five years, spending his time at the job as he wishes while delegating every task to a subordinate.

One of the offices designated to receive certain types of employee grievances simply ignores those that are submitted. If the employee ultimately sues, they claim **they "misplaced" the paperwork.** (OOs from all sectors)

Our **formal grievance procedures take many months** and in a dozen cases, several years. (OOs from all sectors)

And then there are the *supervisors* of all the negligent managers who are well aware and refuse to take any action due to personal discomfort. Who is the more "negligent"—the person who commits such an act or the supervisor who is aware and does nothing? The negligence my visitors point to is when **senior managers won't**

**address an issue brought to her/his attention**, leaving the staff to continue to deal with the consequences.

### **Problems with managers—bullying concerns**

I have to put **disrespectful supervision** on top of the list.

It is absolutely no surprise that people without power lack loyalty. We have **managers who inspire no loyalty** at all.

We see a **very disturbing increase in managerial heavy-handedness**. Unfortunately, this has always been part of the culture here, but because of changes in upper administration, this behavior is now not just tolerated, but rewarded. In the past, the bullying approach was reserved for "low level" staff. But new administrators are now trying to push around faculty. It's going to be very interesting. The unions are very weak, and feel even weaker in the past year or so.

Many people are afraid of our new (plant manager, dean, CEO, Senior Vice-President, General Counsel, VPHR, CO). Not only will no one agree to take a complaint to our senior people now, their own staff people walk on eggshells. **It is now much harder—nearly impossible—to get people to report illegal behavior**, because of the intimidation. (Many OOs)

The attitude that trickles down, if you will, is "there's nothing that says we can't do it, and that's why we're doing it". I am praying that no one goes postal. **You just can't mess with humanity this way without repercussions**. (Several OO's)

The toughest part of my job is where an employee has been dealt with in a way that is provably unfair, but due to the political reality of the situation, it will be difficult if not impossible to rectify the situation. I find these situations the most wrenching, because of the implication that my office is complicit in knowing of injustice—while we are promoting the office as an advocate of fairness—in an organization that in fact fosters selective inequity. **Should I stay in an organization that tolerates political decision-making?**

## Diversity concerns

There is **no diversity issue that we are not concerned about** here. But the most serious is this—you bring a diversity issue forward now and many managers do nothing at all. This is true about race and true about religion.

We cannot get a handle on **abuse *within* our ethnic groups**. Perhaps because no one like them is a senior manager?

Our **Black managers no longer trust** this corporation—a big change. (Many OOs)

The **haves and the have-nots, “permanent” employees and contract employees—they are distinctly divided by race**.

We have determined that the work we do on diversity must **include socio-economic issues and inclusiveness** as well.

Overt discrimination is re-appearing now I think and covert discrimination is everywhere: **networks of (white) people** who knew each other at the previous job keep out people of color, just because they **only “see” people like themselves**.

We are outsourcing everything that has to do with supporting human beings. We no longer have anyone really working on diversity. **How on earth can you outsource diversity issues?**

## Mental health concerns

Corporate sector Ombuds are increasingly concerned about the trend to the **outsourcing of EAPs**. Previously a source of on-site support for employees, now there is an 800# to call for EAP to be connected to someone unknown in someplace unknown. With mental health services at the community level stretched beyond capacity in most cities, there are also fewer referral options outside the organization. (Many OOs)

Our university staff and faculty find it very difficult to assist and cope with "persistent complainants," and the mentally ill. We do not have a proper set-up or training program to cope. In an ideal world, it would be wonderful to have a plan to assist these people right away instead of letting them fester around for years and be bounced from office to

office. It seems no one in the campus community wants to deal with them and so the **persistent complainants and mentally ill—some are both—are left helpless**. And the staff and faculty members who interact with them feel helpless.

There is no plan of action for staff and faculty members to know **how to recognize mental illness** and no suggestions or tip sheet provided to staff and faculty to properly send the mentally ill person to obtain treatment. Moreover, sometimes the person does not seek help but still may go from office to office with their concerns. (Several OOs)

If the persistent complainant or mentally ill person becomes threatening, then that is another issue, and our Threat Assessment Team has procedures in place for threatening individuals. However, **if the persistent complainant or mentally ill person is *not* threatening, there is no procedure** in place for them other than referral. The challenge is that:

-- they use a lot of our time and energy, as they are very persistent and demanding;

-- they always involve many other stakeholders (union, HR, a few layers of senior management and colleagues), making the case even more complex for all to manage as they "cc" everyone on most messages.

-- their condition often stops them from being able to understand the situation and feelings of others, thus it is almost impossible to achieve significant progress. (Many OOs)

## **Religious concerns**

### **Religious and ethnic tensions and negligence by managers**

surprise me every time I hear them. (I've been in conflict resolution since 1990, but I haven't seen this before.) Visitors to my office decline facilitated dialogue with parties they're in conflict with on the basis that they are "right with God and have no need to talk to (the other party)."

I see an impressive acceptance of talk about Christianity at work. I have not heard that this tolerance has been extended to other faiths, so I'm concerned about possible growing exclusivity. I have heard



from some parties that **proselytizing is accepted**, including lunchtime Bible study and the like. As fundamentalist Christianity has infused the workplace, so it has also infused the way people think about and respond to the resolution of workplace conflict.

**Fundamentalism (of many kinds)** is either growing or much more acceptable.

I have noticed an increase in **incidents of religious intolerance toward non-Christians** on our campus. This trend has been growing slowly ...in recent years, the number of reported incidents is increasing in apparent correlation to an increase in the number of students wearing head coverings (perceived as identifying these students as Muslims or Jews) and or wearing a visible mark on their foreheads.

I sadly predict a continued increase in this type of prejudice — especially that directed toward **persons whose physical appearance is perceived as Middle Eastern.** (Many OOs)

We have more conflicts where people are at impasse—ready for **hunger strikes or sabotage or career suicide**—all on principle and unwilling to listen to anyone.

More of our students identify themselves as "**Fundamentalist Christians.**" Is the manner in which religion and spirituality have been treated or ignored—in our public schools and mass media—a contributing factor to this intolerance? The number of reported incidences of harassment—based on race and gender on our campus—has dropped in ten years by ninety percent. Not so with respect to religion.

### **Debt and poverty: income inequality concerns**

The aggregate size of student loans (post secondary) is placing a **huge burden on student borrowers** and parents who participate in supporting their children's' educations. Our office often has people call who have in excess of \$100,000 in student loans (some have reached \$180,000), and need options for preventing a bankruptcy, or even foreclosure and eviction from their homes. Even if a student borrower manages their finances well (and many don't), they have a huge burden upon college graduation. Our caseload in this area grows each year as the cost of a quality education has grown.

We have so many **employees who are so deeply in debt**. And so vulnerable. (Many OO's)

### **More active Boards – do they help or hurt?**

I'm not sure how new this is, but it seems to me we are seeing a new **involvement by the Board of Trustees** (Board of Directors) in management decisions. When questions are raised or discussions are attempted on new policies, the answer comes back that "the Board wanted this, and senior leadership did not want to expend the resources to fight it" and therefore we are doing it. I find it more difficult to fully discuss issues when a Board mandate comes down—or is reported to come down. (Several OOs)

### **Uncompensated overtime concerns**

The shift in employment status, from salaried to hourly, has generated **unpaid overtime**. Class action lawsuits against large companies have resulted in huge profits for lawyers who work with employees who have worked overtime, but have not been paid for that time, or worked over lunch hours and not been paid. Several universities have also faced lawsuits of this type. (Many OO's)

### **Disasters**

Our new **Business Recovery Office** will address a whole host of issues including suspect substances (i.e., white powder) found in the workplace, pandemic flu, and natural disaster.

We have received and transmitted anonymous concerns of **possible sabotage or behavior of great concern**. (Several OOs)

### **WWW**

I do continue to be amazed at how the **Internet can do more harm than good in terms of communications**. Many of my visitors have seen their conflicts/misunderstandings with another magnified due to e-mail, blogs, and so on.

*Survival rather than thriving*

## **Crystal Ball: Governmental Organizations**

- Governmental organizations have focused on increasing efficiency and effectiveness—with level budgets at best and shrinking budgets at worst.

- Federal agencies have advanced privatization initiatives. This changes the nature of government's promise as a lifelong career employer and the reciprocation of loyalty and commitment from workers. The overall impact of such initiatives is still not obvious, but initial observations are that the most vulnerable employees (lower skilled and lower paid) are the most vulnerable as their jobs are the easiest to outsource. Another observation is that in some cases, these privatization efforts are used as opportunities to deal with longstanding organizational or personnel problems.

*undermining status role*

- At least in the Federal government, the privatization initiatives follow particular procedural rules geared to decision-making based on costs and efficiencies. These rules alter the playing field for employees with concerns about fair treatment. The normal formal venues are geared to grieving individual actions (e.g. EEO complaints). There are no appeal mechanisms in the privatization procedures for affected employees to contest the outcomes.

*disaffiliation*

- All of these initiatives have eroded the sense of security in the government as an employer and increased anxiety in the worker.

*loss of autonomy*

- New change initiatives can be counted on with changes in political administrations. What can also be counted on is lack of leadership in implementing those changes. There is chronic lack of attention to the human side of change—little to no sense of how to help employees adapt to the change or even feel included. There is lack of attention to helping people leave gracefully and even less attention to helping those who stay to adjust to the changes. This creates yet more distance between those instituting the changes and those affected.

*disaffiliation*

*loss of appreciation of people skills*

- Meanwhile, supervision, people leadership and management continue to be low priorities. People are elevated for their technical skill and rewarded for that as well. With less slack in budgets, there is less room for people who are not high performers. The tendency is to not provide support—or develop people—and for individuals to have to *prove* themselves. There is less room for idiosyncrasies, risk-taking and creativity in fear-based environments where survival,

*disaffiliation*

rather than thriving, is the goal.

## ***Crystal Ball: International Organisations***

### **Locating our values**

- There is a major disconnect between the values our organisations espouse and the behaviours they appear to tolerate and reward
- It is also becoming increasingly difficult to locate the impetus for organisational changes in the foundation values upon which some organisations have been built (the houses have moved off their foundations)
- Loyalty is now a very altered concept, especially as change management processes that pay attention to respect for individuals' dignity are a low priority
- Increasing movement from career-based to project-based cultures generates and contributes to a dilution and loss or absence of a stable, values-based culture
- Delocalisation and outsourcing—this makes Ombudsman coverage and credibility more difficult to achieve, and consistency in modelled values almost impossible to achieve
- Inductions or orientations to organisations are now being sacrificed—the values of organisations become dilute and cultures become dispersed
- Transitions are now ubiquitous and lead to a plummeting of morale and loss of solidarity—people start fighting each other for survival
- The intensity of concern for survival—in the context of diluted organisational values—is leading to increased attempts to “instrumentalise” the office of the ombudsman
- Mechanisms for addressing supervisory and management misconduct are inadequate—they don't sufficiently address mismanagement

*Lack of appreciation*

*roles undermined  
disaffiliation*

*autonomy lost*

*status threatened*

### **How does this affect OO's?**

The Ombudsman is in danger of being seen as a repository of increasingly unfashionable values and ideas—we may become marginalised by our adherence to standards and codes that are out of step with rapidly emerging and changing new organisational cultures.

It also means much more energy goes into maintaining vigilance over our conduct and the conduct of others seeking to "use" the office—we have to avoid entertaining any invitations to be instrumentalised.

### **How do we take care of the office and of ourselves?**

- Ombudsman peer support is critical—regular meetings, case discussions, challenging and reinforcing standards of practice
- Educating our constituencies about reasonable expectations of the office
- Modelling our professional values and ethics
- Maintaining a life outside work

## ***Crystal Ball: Corporate Perspective***

### **I. Organizational restructuring in the effort to drive shareholder value**

- A. Lean Management/Change Management is occurring with increased use of outside consultants for recommendations
- a. Reduction in management layers causing larger numbers of direct reports and increased workload
  - b. Reduction in numbers of employees in functional areas with the creation of centers of excellence and increased workload
  - c. The organizational structure is being streamlined but the work being performed is not being redefined, thus, in many cases requiring the same amount of work to be performed with less personnel.

#### **Results:**

- Increased stress levels
- Increased mental health concerns
- Increased leave of absence requests

### **II. Compensation and the cost of living**

- A. Employees experiencing flat line of raises (i.e. 1-3% range)
- B. Employee benefit costs increasing each year (i.e. 2-5% range)

*Learning on Role + Status Affiliation*

*Unappreciation*

Result:

Employees not keeping pace with cost of living increases and having to make choices regarding which benefits are most important to maintain.

### III. Work schedules

- A. Lack of Flexible work schedules
  - a. Baby Boomers now caring for aging parents
  - b. Children and day care needs
  - c. Higher workload, less resources

*Autonomy*

*More affiliation questions*

Result:

Options for employees have been reduced. Challenge creates personnel conflict and stress in managing job requirements and family issues.

### IV. Ethics

- A. Leadership in ethical behavior challenged
  - a. Pressure to sustain higher goal attainment and shareholder expectations each year
  - b. The Sarbanes-Oxley Act is being challenged based on costs incurred to comply with the requirements and claims the costs make a company less competitive with other international companies who do not have to meet these requirements

Result:

Companies are incurring additional costs to retrain their organizations in Ethics and Compliance to address ethical lapses.

### Fast forward

The ongoing drive for corporations to achieve higher results, while reducing costs, in order to increase shareholder value will continue to be the primary objective. And while companies speak to the importance of their employees, the Ombuds Office continues to see that as a major challenge, the care and respect for the employee, while striving for this objective.

Rise  
Status

The increased use of outside consultants to assist companies in their restructuring efforts will require that the Ombuds Office/IOA have a voice at the table in order to educate about the importance of this function and how we assist the company with corporate governance, company values, and a resource for employees to address concerns in a timely fashion. By focusing attention to the well being of a company's employee, it ultimately helps them achieve the primary objective of higher results and increased shareholder value.

### ***Crystal Ball: Academic Issues***

Unappreciation

- **Continued decrease in public funding for higher education.**  
Increasing privatization of higher education. Institutions are now required to raise a major portion of their revenue from private sources, including tuition. The fund raising enterprise has taken a front and center role in higher education. Many presidents are seen as fund raisers in chief, not leaders of a learning enterprise. Their success is measured in terms of the dollars raised.

Loss of  
role  
Loss of  
autonomy

- **The "marketization" of higher education.**  
Colleges and universities have become increasingly more competitive for enrollment of "high achieving" students and prestigious rankings from external marketing entities (i.e. US News and World Report, Kiplinger's Best Value in Education). Many institutions are seen to be responding to these market forces rather than educational and pedagogical imperatives understood to be the underlying principles of our educational systems.

Institutions are compelled to invest in infrastructures and services rather than the members of their community. Priority is given to erect sexy, celebrity-architect-designed buildings that have little to no classroom or lab space, but look great in the campus publicity material and suggest the campus is a center for innovation and investment rather than to fill vacant faculty lines or hire additional personnel. In other cases recreational and social amenities are added to the campus infrastructure, while students struggle to complete their degrees in 4 or in many cases 5 years, due to insufficient course offerings or faculty hires.

- **"Intellectual authority in the infosphere"**  
What qualifies as intellectual authority today is changing fundamentally. A new paradigm is being shaped by technology

and globalization—many are no longer willing to accept that intellectual authority be closely correlated with expertise as conventionally recognized. Many now see discovery and discrimination as most relevant in determining expertise and discerning what reliable information is. Ombuds are increasingly called on to negotiate the differences in values, perspective and application of these paradigms.

*role + status*

- **Changing demographics of higher education**

Tuition on public and private campuses has risen steadily as the federal government decreases funding for financial aid programs. Is the access or opportunity gap widening? Enrollment of traditional age males is declining. African American male enrollment has declined even more significantly. In 1970 only 6% of students from the lowest income families earned a bachelors degree by age 24. In 2002 this figure remains at 6%. Are we facing a growing class divide among those earning bachelors degrees?

- **Emergence of expanded and closer connections between universities, (i.e. science and research) and industry.** Who really benefits as these partnerships proliferate? What are the implications for intellectual property concerns, graduate and post graduate roles, funding decisions, etc.? How do we respond to increasing questions about conflict of interest as it relates to decisions made by senior leadership?

*roles*

- **The “university community” has become a euphemism for an assemblage of special and often conflicting interests.** Collegiality within academia seems to be a vanishing trait. The increasing fragmentation of the curriculum represents a growing threat to the quality of the undergraduate experience. Rigidity in academia limits our ability to adapt, and changes tend to take forever to carry out.

*dis-affiliation*

- **There is a steady sense of uncertainty, instability and alienation.**

Despite the fact that we exist in a state of “permanent transition” our organization is ill equipped to deal with change in a positive supportive way. Communication is fragmented or withheld. Many organizations have become increasingly more “siloes” as external boards or regents exercise expanded influence and

*dis-affiliation*



decision-making control without consultation or engagement of campus community members.

- **Professional development and restoration**

OO Practitioners need to take care of themselves over time and provide opportunities to restore/rebalance. In light of the isolated nature of our role, it is important that we develop strategies and insights that respond to the tension we experience when our role "feels" incongruous with the environment we are working in. Strategies for "rebalancing", contextualizing and grounding can be essential if you work within an organizational culture that is not in sync with your professional values or standards.

*Disaffiliation*

### ***The most common question***

**How do we effectively negotiate the dissonance between our role (and also the espoused values of the organization) ..... and the organization's actual culture?**

What can we do individually? What can the IOA Board do? How can we make a difference? How can we convince our employers that that it is worth having an Ombuds Office in a "lean" organization, and especially if managerial action does not match the espoused values of the organization?

Do you have suggestions? Would you like to write for the IOA newsletter or the IOA journal about ideas that you find effective?

*Ethical + moral behavior reasonably  
our standards — but deeply undermined  
Are we a dinosaur? Can we  
be a moral compass?*

**THE CORPORATE OMBUDSMAN ASSOCIATION:  
A BRIEF HISTORY**

In the beginning there were seven people who shared a vision. They wanted to provide an association for those who were Ombudspeople in the private sector. Spearheaded by Lee Robbins from Wharton and Dr. Mary Rowe from MIT, they gathered in 1982 to develop just such an organization. The founders of the Corporate Ombudsman Association were:

- |                     |  |
|---------------------|--|
| . Dr. Mary Rowe     | MIT                                    |
| . Martha Maselko    | AT&T                                   |
| . Lee Robbins       | Wharton                                |
| . Michael Baker     | Educational Fund for Individual Rights |
| . Fred Olsen        | Control Data                           |
| . Clarence Williams | MIT                                    |
| . Chris McEachern   | Anheuser-Busch                         |

With these people in attendance, the COA was born in 1982 in the President's Conference Room at MIT. Part of their mission was to define a role which comes in many shapes and sizes and uses many titles such as: Director of Personnel Communications, Special Assistant to the President, Employee Relations Manager or many others.

In 1983 conference calls flew around the country to locate other private sector Ombudsmen and make plans for them to meet in 1984 at the first ever Corporate Ombudsman Association conference.

There were thirty enthusiastic participants at the meeting in Falmouth, Massachusetts in 1984. Since then conferences have been held in Dallas, 1985, St. Louis, 1986, Marina del Rey, 1987, Cambridge, 1988, Raleigh, 1989 and Hershey, 1990. Attendance has grown from the modest beginning of thirty in 1984 to 83 in 1990.

The COA was founded to give the private sector practitioner a forum; a group designed to share experiences and knowledge so that all who participated could come away with improved skills and a strong sense of comradeship and support. It is an association dedicated to helping its members to grow and learn in the very specialized field in which they function. Members of the COA recognize that their jobs are unique and present unique problems. Coming together at the conferences helps everyone to find solutions to those unique problems without violating the essence of the position.

In 1987 a handbook for the COA was compiled and presented to the membership by Jim Hendry, Ombudsman of the World Bank. It included the Code of Ethics for the COA as well as chapters on how to set up the office, cost, record-keeping and other valuable information.

Important issues have been undertaken by the COA; issues like researching a shield law to protect the ombudsperson from being forced to testify in formal grievance processes, helping members to develop negotiation skills, addressing the issues of diversity in the workplace in a proactive manner, and sharing case studies to strengthen problem-solving skills. These are but a few of the many valuable reasons for belonging to the Corporate Ombudsman Association. Probably the most important reason though, is the people met and the friendships made as common ground is explored and skills are improved.

Membership has grown from those seven founding members to a current membership of well over a hundred. The COA is growing every year as more and more companies are recognizing the need for this very special position and its value to their operations.

# ombudsmanNEWS

THE OFFICIAL NEWSLETTER OF THE OMBUDSMAN ASSOCIATION

## PRESIDENT'S LETTER

# God Bless America

BY PATTI LYNCH, TOA PRESIDENT

### Some of us may remember

where we were when JFK was shot. I remember a fall day when, for no apparent reason, school was dismissed early. I remember walking into my home and seeing my Mom watching the television and crying.

I will never forget September 11, 2001. I was in my office preparing for a mid-morning teleconference with three TOA board members. At 9 am I received a telephone call from my sister who lives in Florida. She told me a jet aircraft crashed into the World Trade Center.

Over 24 hours later I received confirmation that all TOA members were safe.

The unspeakable attack on the United States changed our world. It made very real the threat of terrorism. So, too, did it bring together a nation and a world committed to overcoming the horror. Many countries experience times of great trouble and trial. Clearly, this is one of those times.

As we struggle to understand the events and what it all means, we must remind ourselves that those who committed these actions against the U.S. do not represent a nation, an entire religious group or a single

ethnic group.

I am convinced that every individual has something to contribute, and we, as practicing organizational ombudsmen, have the unique capability and responsibility to contribute to the informal resolution of disputes. Some of these disputes will directly relate to the events of September 11, 2001. We also may be faced with mediating situations where hateful words are spoken and actions taken against members of our community, who may not share our religious or political beliefs. Unfortunately, for instance, we are already seeing aggressive and discriminatory actions taken against the American Muslim community.

This is a time when Ombudsmen can help to alleviate or avoid problems related to this tragedy by focusing on performing our role. We cannot allow a group of terrorists to divert us from our commitment to do our jobs to the best of our ability.

We are experiencing a fundamental change in the world we live in. America under attack painfully reminds us of the brevity and unpredictability of life.

Before we can help others, it is vital for us, personally, to find ways to cope with and ▶▶

CONTINUED ON PAGE 2...

## ABA ADOPTS OMBUDS POLICY

BY SHARAN LEVINE, LEVINE & LEVINE

With the extraordinary growth in the number and type of ombuds in the public and private sector in the last three decades came enormous variation in the duties and structure of an ombuds office. Efforts to achieve protection for ombuds communications through the courts has become very difficult. Statutory protection is imperative, but in order to achieve legislative protection, describing consistent standards for ombuds is paramount.

Four years ago, the American Bar Association's Administrative Law and Regulatory Practice Section, joined by the Dispute Resolution Section, organized a project to develop guidelines on the structure and function of ombud's offices.

On August 7, 2001, the ABA House of Delegates adopted the Standards as policy. The many sections who co-sponsored the ▶▶

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**ombudsmanNEWS**

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**GOD BLESS  
AMERICA  
CONTINUED  
FROM PAGE 1...**

▶▶ overcome this devastating tragedy. Reach out and contact another "ombuddy" for support.

Please join me in remembrance for those who died so tragically in the September 11, 2001 attack. Our grief and sympathies are with all those who are suffering in body and spirit. ●

**A MESSAGE  
FROM CANADA  
CONTINUED  
FROM PAGE 12...**

▶▶ Many people lingered throughout the day and well into the night, longing to touch each and every American and heal the hurt.

Since returning to a semblance of normal routine, our organizations count on us to help stabilize the mood. Persons seeking help these days inevitably refer to September 11th which will remain as one of the darkest days in our times. However, I for one, as a proud Canadian am convinced that we can transmit the love we feel for our American friends and neighbors who have victims of this great tragedy in their immediate entourage. I believe in the power of prayer and hope that God's grace, whatever you conceive Him to be, will bless you and your country. ●

**ABA ADOPTS STANDARDS  
CONTINUED FROM PAGE 1...**

▶▶ Standards are listed on the attached Report and Recommendation. The standards, as adopted and approved by the ABA, are included in your newsletter for your reference and use. The full ABA report is available on the TOA website, www.ombuds-toa.org. I encourage you to inform yourself about these important standards by reading the full report.

Many persons from within and outside of ombuds associations worked on the Standards. At times the conversations were difficult, some just plain hard, several very rewarding. Many TOA members gave of themselves tirelessly and patiently. Every issue was discussed, every question and conversation was considered. Everyone, myself most of all, learned a great deal from everyone else. Every committee member offered something of significance and their valuable contributions are reflected in the Standards.

Now the next set of tasks (some say, the real tasks) begins. A project to write a monograph to apply the Standards to practice is beginning and TOA members are actively participating. Work toward statutory protection may be discussed in earnest. Helping ombuds enhance their offices and helping entities establish ombuds will be aided by these Standards. The Standards and Report may be freely disseminated.

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**EDITOR'S NOTE:**

**THE ABA RATIFICATION OF OMBUDSMAN STANDARDS ON AUGUST 7, 2001 WAS AN IMPORTANT MILESTONE FOR THE OMBUDSMAN PROFESSION. VISIT THE TOA WEBSITE AT WWW.OMBUDS-TOA.ORG TO READ THE FULL ABA REPORT REGARDING THE STANDARDS. REMOVE THE FINAL STANDARDS FROM THIS ISSUE OF THE OMBUDSMAN NEWS TO RETAIN FOR REFERENCE.**

AMERICAN BAR ASSOCIATION  
SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE  
SECTION OF BUSINESS LAW  
SECTION OF DISPUTE RESOLUTION  
SECTION OF STATE AND LOCAL GOVERNMENT LAW  
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION  
SENIOR LAWYERS DIVISION  
COMMISSION ON THE LEGAL PROBLEMS OF THE ELDERLY  
NATIONAL CONFERENCE OF ADMINISTRATIVE LAW JUDGES  
STANDING COMMITTEE ON ENVIRONMENTAL LAW

REPORT TO THE HOUSE OF DELEGATES

**RECOMMENDATION**

**RESOLVED**, that the American Bar Association supports the greater use of "ombuds" to receive, review, and resolve complaints involving public and private entities.

**FURTHER RESOLVED**, that the American Bar Association endorses the *Standards for the Establishment and Operation of Ombuds Offices* dated August 2001.

August, 2001

# STANDARDS<sup>1</sup> FOR THE ESTABLISHMENT AND OPERATION OF OMBUDS OFFICES

## PREAMBLE

Ombuds<sup>2</sup> receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations.

Federal, state and local governments, academic institutions, for profit businesses, non-profit organizations, and sub-units of these entities have established ombuds offices, but with enormous variation in their duties and structures. Ombuds offices so established may be placed in several categories: A Classical Ombuds operates in the public sector addressing issues raised by the general public or internally, usually concerning the actions or policies of government entities or individuals. An Organizational Ombuds may be located in either the public or private sector and ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies. Both types may conduct inquiries or investigations and suggest modifications in policies or procedures. An Advocate Ombuds may be located in either the public or private sector and like the

others evaluates claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.

As a result of the various types of offices and the proliferation of different processes by which the offices operate, individuals who come to the ombuds office for assistance may not know what to expect, and the offices may be established in ways that compromise their effectiveness. These standards were developed to provide advice and guidance on the structure and operation of ombuds offices so that ombuds may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. Practical and political considerations may require variations from these Standards, but it is urged that such variations be eliminated over time.

The essential characteristics of an ombuds are:

- independence
- impartiality in conducting inquiries and investigations, and
- confidentiality.

## ESTABLISHMENT AND OPERATIONS

**A.** An entity undertaking to establish an ombuds should do so pursuant to a legislative enactment or a publicly available written policy (the "charter") which clearly sets forth the role and jurisdiction of the ombuds and which authorizes the ombuds to: ►►

- ▶ (1) receive complaints and questions about alleged acts, omissions, improprieties, and systemic problems within the ombuds's jurisdiction as defined in the charter establishing the office
- (2) exercise discretion to accept or decline to act on a complaint or question
- (3) act on the ombuds's own initiative to address issues within the ombuds's prescribed jurisdiction
- (4) operate by fair and timely procedures to aid in the just resolution of a complaint or problem
- (5) gather relevant information
- (6) resolve issues at the most appropriate level of the entity
- (7) function by such means as:
  - (a) conducting an inquiry
  - (b) investigating and reporting findings
  - (c) developing, evaluating, and discussing options available to affected individuals
  - (d) facilitating, negotiating, and mediating
  - (e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them
  - (f) identifying complaint patterns and trends
  - (g) educating
  - (h) issuing periodic reports, and
  - (i) advocating on behalf of affected individuals or groups when specifically authorized by the charter
- (8) initiate litigation to enforce or protect the authority of the office as defined by the charter, as otherwise provided by these standards, or as required by law.

### QUALIFICATIONS

B. An ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity. The establishing entity should provide the ombuds with relevant education and the periodic updating of the ombuds's qualifications.

### INDEPENDENCE, IMPARTIALITY, AND CONFIDENTIALITY

C. To ensure the effective operation of an ombuds, an entity should authorize the ombuds to operate consistently with the following essential characteristics. Entities that have established ombuds offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any such deficiency.

- (1) **Independence.** The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty

imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombuds's jurisdiction or anyone directly responsible for a person under the ombuds's jurisdiction (a) can control or limit the ombuds's performance of assigned duties or (b) can, for retaliatory purposes, (1) eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office.

(2) **Impartiality in Conducting Inquiries and Investigations.** The ombuds conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombuds from developing an interest in securing changes that are deemed necessary as a result of the process, nor from otherwise being an advocate on behalf of a designated constituency. The ombuds may become an advocate within the entity for change where the process demonstrates a need for it.

(3) **Confidentiality.** An ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds's office. An ombuds does not reveal the identity of a complainant without that person's express consent. An ombuds may, however, at the ombuds's discretion disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An ombuds should discuss any exceptions to the ombuds's maintaining confidentiality with the source of the information.<sup>3</sup>

### LIMITATIONS ON THE OMBUDS'S AUTHORITY

D. An ombuds should not, nor should an entity expect or authorize an ombuds to:

- (1) make, change or set aside a law, policy, or administrative decision
- (2) make binding decisions or determine rights
- (3) directly compel an entity or any person to implement the ombuds's recommendations
- (4) conduct an investigation that substitutes for administrative or judicial proceedings
- (5) accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent ▶▶

- ▶▶ (6) address any issue arising under a collective bargaining agreement or which falls within the purview of any existing federal, state, or local labor or employment law, rule, or regulation, unless the ombuds is authorized to do so by the collective bargaining agreement or unless the collective bargaining representative and the employing entity jointly agree to allow the ombuds to do so, or if there is no collective bargaining representative, the employer specifically authorizes the ombuds to do so, or
- (7) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of ombuds.

### REMOVAL FROM OFFICE

E. The charter that establishes the office of the ombuds should also provide for the discipline or removal of the ombuds from office for good cause by means of a fair procedure.

### NOTICE

F. These standards do not address the issue whether a communication to the ombuds will be deemed notice to anyone else including any entity in or for which the ombuds acts. Important legal rights and liabilities may be affected by the notice issue.

### CLASSICAL OMBUDS

G. A classical ombuds is a public sector ombuds who receives complaints from the general public or internally and addresses actions and failures to act of a government agency, official, or public employee. In addition to and in clarification of the standards contained in Paragraphs A-F, a classical ombuds:

- (1) should be authorized to conduct independent and impartial investigations into matters within the prescribed jurisdiction of the office
- (2) should have the power to issue subpoenas for testimony and evidence with respect to investigating allegations within the jurisdiction of the office
- (3) should be authorized to issue public reports
- (4) should be authorized to advocate for change both within the entity and publicly
- (5) should, if the ombuds has general jurisdiction over two or more agencies, be established by legislation<sup>4</sup> and be viewed as a part of and report to the legislative branch of government.

### ORGANIZATIONAL OMBUDS

H. An organizational ombuds facilitates fair and equitable resolutions of concerns that arise within the entity. In addition to and in clarification of the standards contained in Paragraphs A-F, an organizational ombuds should:

- (1) be authorized to undertake inquiries and function by informal processes as specified by the charter
- (2) be authorized to conduct independent and impartial inquiries into matters within the prescribed jurisdiction of the office
- (3) be authorized to issue reports
- (4) be authorized to advocate for change within the entity.

### ADVOCATE OMBUDS

I. An advocate ombuds serves as an advocate on behalf of a population that is designated in the charter. In addition to and in clarification of the standards described in Paragraphs A-F, an advocate ombuds should:

- (1) have a basic understanding of the nature and role of advocacy
- (2) provide information, advice, and assistance to members of the constituency
- (3) evaluate the complainant's claim objectively and advocate for change relief when the facts support the claim
- (4) be authorized to represent the interests of the designated population with respect to policies implemented or adopted by the establishing entity, government agencies, or other organizations as defined by the charter, and
- (5) be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant. ●

### FOOTNOTES

<sup>1</sup> These standards expand on a 1969 ABA resolution to address independence, impartiality, and confidentiality as essential characteristics of ombuds who serve internal constituents, ombuds in the private sector, and ombuds who also serve as advocates for designated populations.

<sup>2</sup> The term ombuds in this report is intended to encompass all other forms of the word, such as ombudsperson, ombuds officer, and ombudsman, a Swedish word meaning agent or representative. The use of ombuds here is not intended to discourage others from using other terms.

<sup>3</sup> A classical ombuds should not be required to discuss confidentiality with government officials and employees when applying this paragraph to the extent that an applicable statute makes clear that such an individual may not withhold information from the ombuds and that such a person has no reasonable expectation of confidentiality with respect to anything that person provides to the ombuds.

<sup>4</sup> The 1969 ABA Resolution, which remains ABA policy, provided that a classical ombuds should be "appoint[ed] by the legislative body or . . . by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two thirds."



# THE ETHICS OF AUTHORSHIP: AN OMBUDSPERSON'S PERSPECTIVE

BY LINDA WILCOX, OMBUDSPERSON, HARVARD MEDICAL SCHOOL

What is an "ombudsperson"? Simply put, an ombudsperson is an unbiased institutional resource you can go to if you have a problem. Indeed, a good ombudsperson doesn't take sides in a dispute, doesn't keep records or notes, will not comment about whether anyone has or has not been in contact with the office, and is independent — responsible only to the dean or president. Institutions hire ombudspeople to help with informal dispute resolution. An ombudsperson needs to be a nonjudgmental listener who can help visitors organize, generate and analyze options for dealing with their problems. Ombudspeople do not seek only one set of solutions for each type of problem that comes their way. Rather, they work with individuals to develop options that are appropriate to the needs and interests of the individual in that particular case. The final decision lies with the visitor — an ombudsperson does not tell people what to do.

With that in mind, I'll address the case study:

This case is not just about ethics, but about achieving a solution to conflicting interests. Ideally, the graduate student would speak directly to the adviser, but often this is a frightening task. The adviser may take offense at his or her judgment being questioned. Going to someone organizationally above the adviser, who is in a position to evaluate and promote the adviser may upset that person even more. If the graduate student is not comfortable going directly to the adviser or to those above the adviser, a visit to the ombudsperson ("Ombuds") may be an appropriate first step to sort out what do to. However, people often come to the Ombuds after bringing the matter to their adviser's attention but not getting the response for which they had hoped.

At the Ombuds office, the graduate student is able to relay thoughts and feelings in a confidential manner. The Ombuds asks the graduate student what he or she would like the outcome to be and why. By doing this, the Ombuds wants to learn the motivation behind the graduate student's desire to be first author — is it a sense of legitimate entitlement, or a pragmatic desire for a good job in industry? The Ombuds might help the graduate student explore what criteria are used in industry for hiring students who leave before attaining a degree. The two might also explore what criteria are used to determine authorship order.

Here are some questions the graduate student should consider: How important is it to be first author on a paper when trying to attain an industry job at this point in your career? Is your adviser pivotal in getting a great job through what he or she writes in a recommendation letter? Is the recommendation likely to be the same if you bring up the

authorship matter? Would the manner in which you brought it up make a difference? What criteria does the school have for assigning authorship? Were they followed? Was the order decided purely by this lab's standard practice, as was suggested by other students? If yes, was this method of assigning authorship discussed before you joined the lab? What part did the senior student have, if any, in the development of the project? Did this senior student contribute the idea for the project and/or the development of the protocols before going on to concentrate on a thesis? Should this information make a difference in who should be first author?

The question posed at the end of the case is this: "Is it ethical of me (*the graduate student*) to jump my place in the line and ask to be first author on this paper?" Only the graduate student can answer this question. Once the student has determined whether or not first authorship is deserved or whether trying to get it is desirable, the student is in a better position to make an informed decision. The next step for the graduate student might be any of the following: do nothing, speak to the adviser, contact the department head, ask the Ombuds (*in the role of a neutral party*) to speak to the adviser, ask for mediation, or file a formal complaint.

If the graduate student decides that the authorship order is unfair and feels that being first author is required to get a good job, he or she may request that the adviser reconsider the order. If the student wants to speak directly to the adviser, the Ombuds can help the graduate student consider how to bring the matter up in a manner that is least likely to offend. Then, a discussion about level of contribution and proper credit on a paper can take place between the student and the adviser, especially if written criteria exist.

Alternatively, the graduate student may request that the Ombuds act as a mediator. If all the parties agree, this can often prove to be a useful alternative. If an expert in the field is needed, the parties may be asked to agree on who can join the group to neutrally fulfill that role. In the case before us, let's suppose that the adviser, graduate student, and senior student agree to mediation. At the mediation, the materials gathered about authorship can be shared. Even when guidelines exist, most people are unaware of them. Further, most people want to appear reasonable when a third party is present. They are then more willing to evaluate the issues using objective criteria, if such criteria exist.

What are some possible outcomes of the mediation process? The senior student may feel embarrassed to take credit for someone else's work. This may be especially true if the guidelines suggest that all authors need to agree to a written ►►

## TOA BOARD NOTES

BY MIKETURPENOFF, SENIOR OMBUDSMAN SPECIALIST, FDIC

I wish that all TOA members and associates could have a window to view the TOA Board at work. Each monthly meeting (*telephone conference*) includes discussion of a wide array of topics and issues related to association business – finances, TOA training, the annual conference, committee reports, etc. What is impressive about the meetings (*among other things*) is the constant reminder from every board member that, “We need to be sure we consider our membership before we go ahead with this project...” or “How would our members feel about that?” At the September board meeting the events that have recently affected all members, associates and TOA friends were at the top of the agenda.

The discussion was a tough one. Patti Lynch, TOA President, asked early in the meeting “How should TOA react or respond to the terrible events of September 11?” All agreed that the Board should discuss what might be done. Several members offered personal stories or experiences. Others talked

about possibly collecting donations from members and matching those donations dollar for dollar with TOA funds. While all board members reacted positively to this idea, the association simply doesn’t maintain a budget line for charitable relief. After much discussion, the board decided that a special sub-committee would be formed to review possibilities for TOA response to the New York, Washington, D.C. and Pennsylvania tragedies. That sub-committee will soon offer some options for consideration. There was also a lengthy discussion and much concern expressed about harassment of Arab-Americans, Muslims and people of color in general. Board members agreed that a special request for insights from our membership through the TOA listserve might be helpful. Members and associates can aid in identifying effective organization-wide policies or procedures to help prevent harassment and fear in the workplace, as well as case-work strategies for when harassment problems and complaints arise. By now, if

you are part of the listserve, you have seen some of this discussion. Please offer any suggestions you may have for ombuds to handle these very difficult and hurtful situations. We will offer feedback to you on this important effort through the listserve and the holiday issue of the **Ombudsman News**.

The Board is rapidly moving forward with a pilot program for the first TOA ombuds. Board members agreed that the voluntary, unpaid position would be valuable to TOA and that “we should practice what we preach!” The Board will appoint someone to serve as ombuds on an interim basis. He or she will form a working group to draft a formal job description and selection criteria for a long-term TOA ombuds.

Wilbur Hicks has assembled a 2002 conference committee composed of TOA and UCOA members and planning is well underway on the joint TOA/UCOA Conference that will be held in Washington, D.C. in May, 2002. The committee is working hard to identify a conference theme, structure the conference

program, and determine pre-conference training, speakers, and break-out and general sessions that will most benefit TOA and UCOA members. Conference feedback from the May 2001 conference in Houston has been very helpful in this regard.

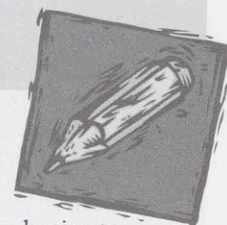
Sharan Levine, TOA associate and attorney, provided an update on the American Bar Association’s ratification of Ombudsman Standards and the associated report. While there was some difficult coordination and communication along the way to ratification, there is no doubt that the standards represent a significant milestone for the ombuds profession and a stepping stone towards statutory protection for ombudspeople. Please read Sharan’s article in this issue of **Ombudsman News** and retain the copy of the approved standards for your future reference. In addition, I urge you to visit the TOA website at [www.ombuds-toa.org](http://www.ombuds-toa.org) and read the full ABA standards report. ●

### ETHICS OF AUTHORSHIP CONTINUED FROM PAGE 6...

► statement about what they did to warrant authorship on a paper and if the senior student has done as little as appears in the case study. If the guidelines suggest that a statement be made that describes how the order of authors was derived, the adviser may feel uncomfortable stating that senior students in the lab are always given the first author position even if they have done nothing for the paper. He or she may change how decisions about authorship are made in his lab in the future. On the other hand, it may be determined that the senior student deserves the first position. Or, the senior student may have had more to do with the paper than stated in the case study, but maybe not enough to be the only first author. In that case, co-authorship is possible.

There is rarely one right answer when one begins to explore the interests of a visitor to the ombudsperson’s office. It is also sometimes hard to know, with certainty, who contributed what to a paper. What is clear from experience is that giving people a chance to explore their options in a neutral and confidential manner, combined with coaching on negotiation or the use of mediation, is an effective means of reducing unnecessary conflict within an institution. ●

*This essay appeared in **Science Next Wave** on March 30, 2001. It can be found and viewed in its entirety by subscribers at <http://nextwave.sciencemag.org/>*



The Ombudsman Association in Action:  
**TOA COMMITTEE UPDATES**

**RESEARCH AND SCHOLARSHIP COMMITTEE**

BY JOHN CARTER,  
THE CITADEL

The 7<sup>th</sup> Core Capability of the TOA Strategic Plan formally established the Research and Scholarship Committee in order to formalize application of scholarly and professional research to the field of organizational ombudsmanry.

On May 23, 2001 at the TOA Annual Meeting in Houston, **Wendell Jones** organized a lunch meeting of members interested in scholarship and research to discuss possible approaches to accomplish key goals, initiatives, and steps and strategies for this committee.

During June and July 2001 the committee worked on its first priority—the 2001 Survey of Organizational Ombudsmen. This 2001 Survey is an expanded examination of organizational ombuds and was built upon Salary and Workload Studies previously conducted by Mary Rowe and Mary Simon. In August 2001, with guidance and support of PMA, a finished product was mailed to all full members of TOA in North America, as well as to full members of UCOA in

North America and ACCUO/AOUC members. In October 2001, we begin analyzing data, and results will be disseminated to members soon thereafter.

The committee will spend the remainder of 2001-2002 developing a committee charter, and prioritizing an action plan for accomplishing goals and initiatives identified in the Strategic Plan. Our experience this summer with the 2001 Survey design and distribution led us to think about the use of online technology to conduct future questionnaires and evaluations among members. First and foremost, the Research & Scholarship committee wants its work to address member concerns and needs; if anyone has ideas about what organizational ombudsman research should look like, what questions we should be asking, or ombuds problems we should be solving, please let us know.

This committee is actively seeking additional members interested in joining the Research & Scholarship Committee, so if anyone wishes to get involved, contact **John Carter** (chair), **Mary Rowe** (vice chair), or **John Zinsser** (vice chair). ●

**CURRICULUM DEVELOPMENT COMMITTEE**

BY WENDY FRIEDE,  
AMERICAN EXPRESS

Many TOA members' and friends' first experience with TOA is through attendance at one of the many training programs offered by the association. Over the past four years 517 people have attended eleven Ombuds 101 sessions, 136 have attended six Ombuds 202 sessions and 347 people have participated in a specialized course. Our training is one of our strongest outreach tools as well as a revenue source for the organization.

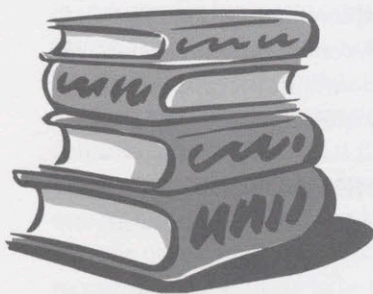
The Curriculum Development Committee (CDC) is chaired by **Wendy Friede** and co-chaired by **Mary Simon**. Twenty-two members of the committee are each working in subgroups dealing with topics of instructor requirements, course prerequisites, learning tracks, opportunities to deliver training in venues other than classroom environments, marketing to members and building bridges to training offered through other professional organizations. The Communications Committee and CDC

are working together to begin to create a library of decks, training modules and pamphlets available for use on a just in time basis.

Meeting the training needs of new and experienced ombudspople, increasing the quality and accessibility of our profession to meet the challenges of our changing workplaces are some of the objectives the current CDC is tackling.

Through Membership Surveys and Annual Conference Surveys ombudspople have expressed their desire to have more opportunities to attend the current offerings in a greater variety of locations as well as see an introduction of new coursework in areas of Ombudsing with diverse populations and dealing with various stakeholders. CDC members are in the process of firming up the 2002 calendar and are open to any input you may have. The October 2001 offering includes Ombuds 101, October 22-24 and specialized course Skills for Ombuds Support Role, October 24 in Washington DC. The February 2002 offering includes Ombuds 101, Ombuds 202 and a new Specialized Course. ●

**DEALING WITH THE FEAR OF VIOLENCE**



“Dealing with the Fear of Violence” by **Mary Rowe, Ph.D.**, and **Linda Wilcox, M.A., CAS**, is available for \$8.50 each, member, \$13.50 for non-members. This essential resource provides information and tools to address concerns about targeted violence in the workplace and practical guidelines to help analyze situations and guide actions. The publication describes the systems approach to violence and related issues; details the questions to ask when seeking a crisis consultant; deals with false racist allegations, over-reaction, emotional distress, harassment, hate crimes, and anonymous vicious attacks, among other issues. Simply mail your check with a business card attached to TOA, 203 Towne Centre Drive, Hillsborough, NJ 08844, and your copy will be mailed the same day.



## CALIFORNIA CAUCUS OF COLLEGE AND UNIVERSITY OMBUDS: 28<sup>TH</sup> ANNUAL CONFERENCE

Since its founding in 1973, the California Caucus of College and University Ombuds has hosted an annual conference. The original concept of a "caucus" can be traced back to a Native American Indian tradition of a gathering of tribal elders to address concerns. There is also a European tradition traceable to the medieval period of a gathering of those committed to a common interest to break bread together and to benefit from shared wisdom. The purpose of the annual conference of the California Caucus follows in the footsteps of both these traditions - bringing together seasoned and new ombuds so we can benefit from our shared experience and knowledge, discuss concerns and

network in a supportive environment with colleagues who are committed to the enhancement of our ombuds professional skills.

As in prior years the conference will be held at the Asilomar Conference Center in Pacific Grove, California. This rustic center on the beach offers a combination of natural and man-made amenities to promote physical activity, knowledge enhancement and contemplative reflections. There are trails for jogging and walking and high-ceilinged lodges with fireplaces. Asilomar is a showcase for the work of Julia Morgan, California's first licensed woman architect, who also designed Hearst Castle; on the grounds is the largest

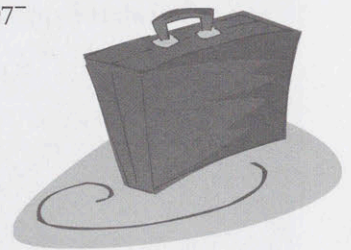
collection of Morgan-designed Arts & Crafts-style buildings at one place, completed between 1913 and 1928.

The focus at this year's conference will be on ombuds work as a means of humanizing the institution. The caucus will offer presentations by two long-term observers and champions of the ombuds, Dr. Stanley Anderson and Dr. Steven Olswang, whose familiarity with the administrative and legal worlds will provide a unique perspective. Participants will discuss how the ombuds can assist an organization to recognize and affirm its values, and how the ombuds can act as an agent of transformation - of the visitor, the conflict, and

beyond. Time will also be provided specifically for reflection and networking and taking advantage of the many treasures offered by Asilomar and the Monterey Peninsula.

Ombuds from academic institutions, private business, and governmental settings will attend. Administrators whose work incorporates ombuds activities or who have supervisory and reporting relationships with ombuds will also be present.

If you wish to register, contact Lewis Redding, Ombudsman, Jet Propulsion Laboratory, at [Lewis.A.Redding@jpl.nasa.gov](mailto:Lewis.A.Redding@jpl.nasa.gov) 818/354-7045, Fax 818/354-4977



## SEXUAL HARASSMENT: A DECADE LATER

Stanford University is sponsoring a conference titled **Sexual Harassment: A Decade Later** on March 22 - 23, 2002. The conference will be held at the university and Anita Hill will be the featured speaker.

The conference opens on Friday, March 22 with "An Interview with Anita Hill," with Judge LaDoris Cordell as interviewer. The session will be held at Memorial Auditorium on the Stanford Campus. Professor Hill's interview will be open to the public. The Saturday sessions will be open to conference participants only. Approximately 100 -150 attendees are anticipated for the lectures and round table discussions on sexual harassment.

The focus of Saturday's sessions will be to examine what we have learned in the areas of sexual harassment research, administration and litigation in the decade since the Hill/Thomas proceedings. There will be an emphasis on how these

issues affect institutions of higher education. The goal of the conference is to provide a forum for those who work with these issues in academic settings to come together to learn and to explore ways of improving effectiveness.

The preliminary list of presenters includes: Professor Deborah Rhode, Stanford University, Professor Louise Fitzgerald, University of Illinois, Professor Barbara Gutek, Arizona State University, Mary Rowe, MIT, Susan Hoerger, Attorney, Stanford University, Tom Fenner, Stanford University, Greta Schnetzler, Esq., Gordon and Rees, Attorneys at Law, and Dr. Laraine Zappert, Stanford University.

The conference registration fee is \$295 before December 15, 2001, and will be \$395 after December 15, 2001. For further information and registration, contact Carmen Jevons (Stanford) at [cjevons@stanford.edu](mailto:cjevons@stanford.edu). ●



## BOOK REVIEW: ABOLISHING PERFORMANCE APPRAISALS

BY WENDELL JONES, LABORATORY OMBUDSMAN, SANDIA LAB

I had a complicated reaction while reading this book. As I absorbed the conclusions drawn from research, there were strong feelings of validation. My gut-level sense about why performance appraisal doesn't work was shown to be true! Right along side of this joy was the painful reality that many very deeply held beliefs would have to be reversed for there to be any change in the status quo of our institutions.

This book demands attention to its radical premise for two important reasons: the credentials of the authors and the abundance of research cited. **Tom Coens** is a labor attorney who spent ten years at the Department of Labor and the EEOC. In private practice, he represents large corporations in litigation. **Mary Jenkins** served eighteen years as a human resources manager and executive with General Motors. Both authors serve as adjunct faculty at Michigan State University. While the book does not pose as an academic treatise, the 200 or so sources cited include references from such journals as the *Journal of Applied Psychology*, *Canadian Journal of Psychology*, *Organizational Dynamics*, and *Journal of Management*. The authors speak from a depth of personal experience and they make their case with published research.

What do they propose? Coens and Jenkins make the case that the hallowed annual performance appraisal process should be eliminated. They show that the "benefits" do not really occur and that the unintended consequences are toxic to the employees and the institution. After making this case, the authors move on to propose a myriad of informal, daily practices that can accomplish the stated objectives of an annual performance appraisal process.

The book goes right to the heart of the challenge. They begin by listing and endorsing all of the *intended* outcomes of a performance appraisal process. The aspirations of leaders are good, right, and appropriate. Their goal in this book is to change our thinking about "how" we address those goals. This is followed by a detailed treatment of all the assumptions that are made (and must be true) for the good and right intentions to produce commensurate results. In a way that can feel cruel, Coens and Jenkins prove every assumption false. There are more than twenty assumptions treated in the book. Here is a sample of three of those assumptions:

- A single appraisal process can effectively serve several functions at the same time.
- Ratings are motivating and let people know where they stand.

- Appraisals provide reliably helpful legal evidence.

Let me take up a couple of these so you'll have a flavor for this book.

Surveys reproducibly show that 80% of employees believe that they perform in the top 25% of employees. The rest believe they are "about average." If your appraisal process identifies the top and bottom 25%, here will be the result (*regardless of the process used*): 1/4th of the employees will be relieved that management didn't mess up the obvious, 3/4ths will be angry, de-motivated, and offended at how wrong management is. Nobody is positively motivated.



### ABOLISHING PERFORMANCE APPRAISALS

Tom Coens and Mary Jenkins

Cason Hall & Co.: Arlington, VA, 1996

ISBN 1-886436-03-7

\$48.00

Coen and Jenkins point out that most of us believe that we are required by law to have annual performance appraisals. This is true of many government employers, but most of the rest of employers volunteer for it through contracts and policies. One of the underlying assumptions is that an employer will be safe from litigation problems with an annual performance review process. The quote heard in my institution is: "The attorneys say we have to have an annual review process." The Michigan Bar Association conducted a poll in 1999 regarding the role that evidence from performance appraisals plays in lawsuits. The experience of the labor and employment law attorneys was that 44%

found that the evidence favors employees, 25% found that appraisal evidence had a neutral effect, and 31% found that the evidence favored the employer. Again, the underlying assumption was found not to be born out in practice. The authors agree that complete, coherent documentation is essential to defend the institution in court, but they demonstrate that a set of forms filled out by management as part of a required process usually worked out against the company in court.

One assumption that they take on is the belief that an objective process can be developed to unambiguously identify individual contributions to shared outcomes. The authors reference the work in systems theory to show that the apparent output of any individual is primarily the result of system factors beyond an individual's control. This traditional assumption is intimately connected with the assumption that an institution can be viewed as a complicated machine in which individual contributions add up to the whole. Most institutions are light-years away from even questioning this assumption. ▶▶

**ABOLISHING  
PERFORMANCE  
APPRAISALS  
CONTINUED  
FROM PAGE 11...**

► This takes me to the questions of, "What is an ombuds to make of this book?" First, if your leadership asks you to help in the process they describe to eliminate performance appraisal, please say "yes." (*I am a hopeless optimist.*)

Absent that option, you can help your visitors feel less flawed as people in their reaction to your performance appraisal process. You can help in the reassurance that they are perfectly normal. You can, hopefully, reassure them that the leadership of the institution has all the right intentions, they simply lack a way to express those intentions more successfully.

I'm finishing this writing during the days after September 11th. Our traditional performance appraisal system is a small irritant in the larger scale of life. But there is a connection. And that connection is made in an observation by Albert Einstein: "The significant problems we face cannot be solved at the same level of thinking we were at when we created them." I challenge all of us to demonstrate the courage to transcend the boundaries of conventional wisdom in all our endeavors. ●

## WELCOME NEW MEMBERS

**MEMBER**

**Adrienne Andrews, Ph.D.**  
Smith College  
Northampton, MA

**Diane Dorion**  
RBC Financial Group  
Toronto, Ontario, Canada

**Sue L. Morris**  
The Bank of Nova Scotia  
Toronto, Ontario, Canada

**Amanda T. Pace**  
The Coca-Cola Company  
Atlanta, GA

**Theresa L. Prator**  
Los Angeles World Airports  
Los Angeles, CA

**Veronica B. Thomson**  
Dresser, Inc.  
Addison, TX

**Scot Williams**  
EDFUND  
Rancho Cordova, CA

**ASSOCIATE**

**Philip De Barros**  
Poway Unified School  
District, San Diego, CA

## CALENDAR OF EVENTS

OCTOBER 22-24  
**TOA OMBUDSMAN 101**  
Washington Court Hotel  
Washington, DC  
Call TOA: 908.359.1184,  
ombuds-toa.org

OCTOBER 25  
TOA Specialized Course:  
**Skills for the Ombuds  
Office: The Ombuds  
Support Role**  
Washington Court Hotel  
Washington, DC  
Call TOA: 908.359.1184,  
ombuds-toa.org

NOVEMBER 4-7  
THE CALIFORNIA CAUCUS OF  
COLLEGE AND UNIVERSITY  
OMBUDS 2001 CONFERENCE:  
**The Ombuds Way:  
Affirming Institutional  
Humanity**  
Asilomar Conference Center  
Pacific Grove, California  
Contact: Lewis.A.Redding  
@jpl.nasa.gov, 818/354-7045,  
Fax 818/354-4977

FEBRUARY 11-13  
**TOA OMBUDSMAN 101  
TOA OMBUDSMAN 202**  
Concurrently  
Hyatt at Fisherman's Wharf,  
San Francisco, CA  
Call TOA: 908.359.1184,  
ombuds-toa.org

FEBRUARY 14  
**TOA Specialized Courses**  
Hyatt at Fisherman's Wharf,  
San Francisco, CA  
Call TOA: 908.359.1184,  
ombuds-toa.org

MARCH 22 - 23  
Stanford University:  
**Sexual Harassment:  
A Decade Later**  
Contact: Carmen Jevons at  
cjevons@stanford.edu

MAY 20-23  
**JOINT TOA/UCOA  
ANNUAL CONFERENCE**  
Crystal Gateway Marriott  
Arlington, VA  
Call TOA: 908.359.1184,  
ombuds-toa.org

## ANNOUNCING TOA'S WEBSITE REDESIGN!

Coming in soon to a website near you! The Ombudsman Association's website [www.ombuds-toa.org](http://www.ombuds-toa.org) is currently being redesigned and expanded. To better serve the membership, the redesigned website will highlight areas such as professional development and career opportunities and offer new features like "What's New" and "The Ombudsman Library." Look for the grand opening article in the next issue of the **Ombudsman News**.





## A MESSAGE FROM CANADA

BY: JUSTINE SENTENNE, HYDRO-QUEBEC, MONTREAL

### Today is Wednesday, September 12, 2001.

The sun rose again today. Here in Canada it is a typical early fall day with the air crisp with a slight breeze blowing. Under normal circumstances one would say: "It's a great day for a football game," but not this day. Not when we, as Canadians living for the most part within a very short distance of the border between the United States of America and Canada, are all so painfully aware that something is very much amiss, that there

is a vacuum and that you, our American neighbors, are grieving.

We feel the loss very strongly indeed, and not just because we are ombuds, but because we are all part of this hemisphere. The United States is our only close neighbor really, aside from the Atlantic, the Arctic and the Pacific Oceans. In our heart of hearts we wonder how our American soul-mates are coping with the World Trade Center disaster, the Pentagon and Pennsylvania tragedies and all those hijackings. How can we best show our solidarity with each citizen of this country, our peaceful neighbor who shares with us the longest undefended border in the world?

\* \* \* \* \*

As you know, there were many spontaneous outpourings of support and love all across this land, as there were elsewhere. Somehow, the close bonds we share with Americans impacted upon us perhaps in a different way. Certainly, prayers and respectful silence were the most evident testimony but there were individual endeavors as well.

On that fateful day, many of us Canadian ombudspersons were meeting in Quebec City for the Annual Meeting of the Canadian Ombudsman Association. We sat in stunned disbelief when a colleague informed us of the terrible events. Some TOA and USOA colleagues who came from the United States received our expressions of sympathy and the program came to an abrupt halt. The wide screen immediately provided

CNN coverage as conference organizers scrambled to take appropriate action. The day to day reality took hold as ombuds were solicited by their respective organizations to provide assistance and counseling, in some instances concerning people from various parts of Canada traveling on the hijacked flights or working in the World Trade Center. The feeling in the room was that we had just rediscovered our role as ombudsmen in listening and comforting those who experience pain and suffering. The sharing of knowledge and networking done while going through a crisis of this dimension creates bonds far beyond what occurs normally. In this vein, travel arrangements had to be altered to fit the circumstances and a great deal of sharing and accommodation took place. For instance, the many ombuds who had traveled from the Toronto area by plane were able to rent a bus to take back as many as possible on this ten to twelve hour journey. Similarly, the lucky few who managed car rentals to Montreal, offered lifts to those in need. Some chose to take the train as more cars were added while a few decided to stay longer in Quebec City. Saying our goodbyes, we felt how fragile we all are. The curtailed program and its somber conclusion were fitting under the circumstances.

On a personal note, I was in Ottawa, our nation's capital, on Sunday, 17th September as were many people from across our land. It was very moving to see everyone converging on the new U.S.A. Embassy to light a candle, say a prayer, leave a message, a bouquet of flowers or just stand in silence and sadness. This is the largest embassy the United States has anywhere in the world and the entire city block was ringed with a sharing of grief by people from all over Canada. It felt as though there was one big Canadian embrace encircling the U.S.A. to give it heart and show we care. We in Canada feel that the American spirit will survive this unimaginable evil deed and triumph over adversity to again lead the free world. ►►

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The remaining contents of this folder have been redacted.

If you would like to see the full folder, please email the

Department of Distinctive Collections at

[distinctive-collections@mit.edu](mailto:distinctive-collections@mit.edu)