Journal of the International Ombudsman Association

EDITORIAL STAFF

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Abstract: Organizational ombudsmen contribute to many stakeholders: shareholders, management at all levels, those who call upon the office, people who are alleged to be a problem, responders whom the ombuds calls about a case or an issue, employees and managers in the organization who do not directly use the office, other cohorts in an organization like students and patients—and society. Ombuds perform many different conflict management functions, with many different skills, in many different contexts; they are difficult to evaluate.; Ombuds need to identify and communicate their *usefulness*, including the tangible and intangible benefits relevant to their own stakeholders. One thesis of this article is that there are many powerful ways to do so. The other thesis is that there is no single, "scientific" way to calculate the *cost effectiveness* of ombuds. How an independent neutral adds value to an organizational conflict management system seems a particularly interesting topic for ombuds effectiveness research.

Key Words: Ombuds, cost effectiveness, intangible benefits, conflict management system, organizational conflict, whistleblower

Abstract: Assessments of ombudsman effectiveness should not be governed by consideration of cost-effectiveness, nor by measures that demonstrate "customer" satisfaction. Instead it is argued that there should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated.   Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

Key Words: assessment, ombudsman, effectiveness, standards, practice, dispute resolution.

JANIS SCHONAUER

Abstract: The case discusses the institution of the Ombudsman Office at AllianceBernstein, LP. It demonstrates that measures of effectiveness must be established early, maintained through robust communication at all levels of the organization and evaluated through surveys. Key factors in the office's success are unequivocal support from the leaders of the firm, the commitment to a best practices office congruent with International Ombudsman Association and American Bar Association guidance, and communication of clear expectations for the office. Steps for communication about the mission of the office and its adherence to the four pillars of independence, neutrality, confidentiality and informality are discussed. The charter, policies and surveys of the organization are included in the appendix.

Key Words: Ombudsman, Securities and Exchange Commission, Effectiveness, Ombudsman Charter, Survey, Ombudsman Policies

JANET L NEWCOMB

Abstract: This article presents an innovative approach to measuring the value of an Ombudsman's case resolution services. It is based on the actual experience of a former Ombudsman over a three-year period, evaluating 752 cases. The valuation formula was derived in collaboration with the organization's legal department and substantiates cost-avoidance savings of $2,000,000 per year.

Key Words: Ombudsman, Measuring value, Cost-effectiveness, Litigation Prevention, Conflict Resolution, Risk mitigation

BRIAN BLOCH

Abstract: This short paper raises questions surrounding the organizational ombudsman's role in cultural change. It asks under what conditions an ombuds might be concerned with culture and how he or she would deal with such concern. It also provides a preliminary list of principles an ombuds might consider when contemplating cultural change. Rather than offering many answers, the paper introduces the subject with the hope of stimulating discussion, leading to future articles in this Journal that explore this important topic in detail.

Key Words: Organizational Culture; Ombuds; cultural change, change agent, neutral role, effectiveness.

ROSS BRINKERT

Abstract: Conflict coaching is a one-on-one process to develop a client's conflict understanding, interaction strategies, and/or interaction skills. It is relevant to ombuds as they routinely work one-on-one with visitors to develop awareness of conflict interaction and future options. The article introduces the Comprehensive Conflict Coaching model (CCCM) and considers its promise in terms of a history of informal conflict coaching within the field, areas of strong fit between ombuds and conflict coaching, and conflict coaching limitations. The article includes a case and ends with suggestions for related advances in theory, research, and practice.

Key Words: coaching, communication, conflict, ombuds, organization, training

ANDREW LARRATT-SMITH

Abstract: Organizational ombuds can assure confidentiality… until they are subpoenaed. Then they must attempt to convince a court that their communications are privileged — exempt from disclosure. Although ombuds are deserving of a privilege as an essential component of their ethical practice, the current legal status of the ombuds privilege is inconsistent and precarious. This article appeals to legislatures, advocating that statutes are required to secure the privilege, and considers how such statutes might be drafted.

Key Words: Organizational Ombuds, Privilege, Confidentiality, IOA Standards, Ethics

The Organizational Ombudsman: Origins, Roles, and Operations — A Legal Guide by Charles L. Howard

TOM KOSAKOWSKI

Editorial: Measuring Up?

DAVID MILLER

Warmest greetings to all JIOA readers in this, our third volume of JIOA! Our fledgling Journal enters its fourth year with optimism that, despite and because of the incredible diversity of stresses associated with the global recession and its aftershocks, the need for and role of organisational ombudsman offices is clearer than ever. At times of tension and difficulty, the importance of a solid platform of principles and Standards of Practice becomes repeatedly obvious.

It was the hope of the Associate Editors and myself that this volume be seen as "the Effectiveness Issue" and we are extremely grateful to IOA members who have made the initial contribution to what, we hope, is an on-going conversation within the JIOA on this subject. As a profession, we have not yet found a clear definition of effectiveness we can use to attempt to influence the expectations of key stakeholders regarding the added value of organisational ombudsman offices. There are multiple points of view about effectiveness, and on how it is defined, measured, demonstrated and communicated. It is reasonable to ask — as we aim for a multi-sectoral coherence in many areas — whether measurement of effectiveness is a potential vehicle for strengthening the profession in a quantum manner, and how can we do so while affirming and asserting its core elements?

The issue of effectiveness lies at the heart of professionalism and, as the papers herein reveal, raise some particular complications for a profession that has neutrality, informality, confidentiality and independence as core principles. Immediately, we must consider the questions of who we are demonstrating our effectiveness for — is it ourselves, our constituencies or our employers, or some mixture therein? Are we individual actors attached to a system or part of a system? The notions of culture and process are fundamental here. Should, and can, ombudsmen be change agents? Having two case studies from corporate worlds — and numerous other examples from many sectors — illustrates how processes of demonstrating ombudsman impact are in no way incompatible with our cherished pillars of independence and neutrality.

Ombudsmen are remarkable people doing remarkable work, usually, but we cannot expect our constituents to simply take our word for that — we have a professional obligation to demonstrate it. At the very least, we should be using those elements of our professional armamentarium to show how we are managing according to industry standards — one of the reasons that the development and endorsement of uniform case categories was so very welcome. Will demonstrating our effectiveness become a further aspect of organisational ombudsman industry standardisation? I believe it is inevitable though there is some considerable way to go yet. However, even if we had the templates already, we also have an obligation for appreciative and critical self-inquiry.

Two of our contributors have laid out the terms of our dilemmas in this respect. **Mary Rowe** reminds us, from the start, of the need to identify whose goals are being met when we aim to demonstrate effectiveness. She demonstrates that effectiveness cannot be determined by a single, scientific rubric of measurement of benefits or costs — she also calls us back to the intangibles, the ineffables that so often define our sense of self inwardly, yet which often lie beyond the handily quantifiable. Rowe asks the necessary questions that we, as a profession, must ask of ourselves before we can give professionally consistent accounts of our added value. One of the most complicated is the question of how to assess the effectiveness of an organisational ombudsman who makes no management decisions; if an organisational ombudsman is usually offering options for the actions of others, how do we know who should get the credit when things go well? Rowe's article lays out methods and examples, from many sectors and countries, for identifying and communicating ombudsman *usefulness*.

Howard Gadlin suggests that considerations of cost effectiveness or customer satisfaction are of lesser importance than assessments of consonance with the core principles and standards of the profession. He suggests that focussing on cost-effectiveness can move us away from reinforcing the reasons for having an organisational ombudsman office in the first place, and draws parallels with assessments of the effectiveness of teachers in schools.

Jan Schonauer has identified how, within a corporate environment, measurement of effectiveness can be based on robust and repeated communication of principles and process, and corporate adherence to standards of practice and a sturdy ethical structure. It also identifies the importance of checking out what is understood and perceived through surveys, and the role of a supportive leadership structure and commitment to externalised standards of practice in establishing realistic expectations of the ombudsman office and in maintaining its credibility.

Jan Newcomb has provided a concrete case study showing the derived dollar value of an Ombudsman's office in case resolution when a particular quantitative approach is employed. This article represents a three-year evaluation process involving quantified assessments of hundreds of cases.

Brian Bloch has mapped out parameters of what must surely become a cornerstone debate within our profession — the role of culture change in measuring effectiveness, and of the ombudsman as a potential change agent.

We also have two contributions from other quarters. **Ross Brinkert** has contributed a discussion of a model of conflict coaching that appears to have potential for genuine utility for organisational ombudsmen. By contextualising the model described in a history of conflict coaching and practice-oriented assumptions, and through the use of a case study, Brinkert identifies the degrees of fit between the work of ombudsmen and the model he describes, and considers an agenda for future development.

And In Fall 2009, The International Ombudsman Association sponsored its first writing contest. Limited to students in law school or graduate programs in dispute resolution, all competitors were asked to assume that they were advising the legislature in

their state in support of a privilege for organizational ombudsmen — they had to identify and discuss the legal and policy issues that the legislature should consider, including the arguments against a privilege and explaining why they should not be dispositive. **Andrew Larratt-Smith** won a cash prize of $2,500 and an invitation to the IOA Annual Conference in April 2010 in New Orleans to receive the award and, as the judges constituted a peer-review panel, his winning paper has been accepted for publication.

One of the many positive outcomes from these contributions has been the way in which they have suggested a research agenda for the profession — a neat continuation of the suggestions for a research agenda contributed in the last issue (Lincoln, A., Rowe, M., Sebok, T., Considering an IOA Research Agenda. JIOA, 2009, 2(1), 6-8): The manuscripts on effectiveness invite assessment of the content of our work, the outcomes of our work, the nature of culture and how it changes, and also call for the conceptual models which might help us better understand our usefulness and effectiveness.

It has been a mission of the Journal that our levels of rigour and professionalism are completely consistent with the IOA Standards of Practice. Over the past year, the JIOA has learned from experience that upholding the standards of practice of the IOA in a publishing enterprise is a challenging process. First, we strive for anonymity in the review process — for authors and for reviewers. However, conventional writing software leaves many opportunities for such anonymity to be undermined — our revised "guidelines for Authors" address this directly. Second, we strive to have as broad a reviewer pool as possible, so the many are not affected by a very few. In this respect, we have expanded significantly, to 24 potential reviewers. Of these, the majority are from the Education sector — we need more from the Corporate, International and Governmental sectors, and all offers are welcome! Third, we strive to ensure that the review process is a model of professional development insofar that it provides an opportunity for constructive skills growth for all authors and reviewers. Every paper is assessed according to a standardised review format and comments to authors are intended to provide options for further development where that is recommended. Our review format is under regular scrutiny and changes are currently being considered to reflect survey feedback from all sides of the review process.

Additionally, to ensure that our authors are accorded the readership their work merits, we are soon to conclude a licencing agreement with EBSCO so all articles will be accessible through search engines citing author and relevant key words. In this way, our profession will have a wider potential readership than any of us could have dreamt of in years past. Finally, the consequences of our experience over the past year are reflected to a useful extent in re-written guidelines for both authors and reviewers, soon to be available on our web-page **(http://www.ombudsassociation.org/publications/journal/**). Once again, feedback from all sides of the process is continually welcome. We will continue this effort by contacting all of the current writers and reviewers to better understand the experience from their points of view.

Finally, I want to express most grateful thanks to those who make an enterprise like JIOA happen. Our authors and our reviewers deserve the highest praise for their patience in enduring the review process. Our reviewers have grown considerably in number and have given prompt, constructive, balanced and creative feedback consistently. Reviewers may like to know that the quality of their feedback has received consistent and appreciative positive feedback from authors. Reviewers for this issue are listed under "Editorial Staff" and I cannot thank them all enough for their willing collaboration in the interests of the JIOA and the IOA generally.

I wish also to express my humble gratitude to the Associate Editors for their patient support during our regular (and irregular) meetings by Skype and telephone. We all look forward to the continuation of debate on effectiveness and, as Alan Lincoln put it so well last year, "to your comments, suggestions and contributions as the JIOA continues to develop and meet your needs".

Identifying and Communicating the Usefulness of Organizational Ombuds with Ideas about OO Effectiveness and Cost-Effectiveness[1]

MARY ROWE

ABSTRACT

Organizational ombudsmen contribute to many stakeholders: shareholders, management at all levels, those who call upon the office, people who are alleged to be a problem, responders whom the ombuds calls about a case or an issue, employees and managers in the organization who do not directly use the office, other cohorts in an organization like students and patients—and society. Ombuds perform many different conflict management functions, with many different skills, in many different contexts; they are difficult to evaluate.

Ombuds need to identify and communicate their *usefulness*, including the tangible and intangible benefits relevant to their own stakeholders. One thesis of this article is that there are many powerful ways to do so. The other thesis is that there is no single, "scientific" way to calculate the *cost effectiveness* of ombuds. How an independent neutral adds value to an organizational conflict management system seems a particularly interesting topic for ombuds effectiveness research.

INTRODUCTION

Identifying and communicating the usefulness of organizational ombuds (OO) is vitally important for practitioners and for the profession. This is especially true at a time of economic downturn, when employers need to boost productivity and cut costs and when employees and managers need as much "fairness and equity" as possible. Understanding this topic is, however, a work in progress for OOs. We have much to learn; we need to have more new ideas and share more evaluations with each other.

This article suggests many ways to understand and communicate the value of ombuds practice. However, the paper does not recommend a single-minded focus on cost effectiveness analysis for most OOs—the idea of formal, "scientific" measurement of the cost-effectiveness of organizational ombuds is hotly debated in the profession.

Because the question is so important, the article begins with a discussion of why OO *cost-effectiveness analysis* is difficult in most organizations and virtually impossible across organizations. The article then presents a number of ideas about ways of communicating the *usefulness* of OOs and of the OO profession.

The concern of this author, about attempting traditional cost-effectiveness analysis for OOs, begins with the question of whose goals come first in thinking about effectiveness. According to Standards of Practice,[2] an OO works independently of ordinary line and staff structures and is designated as a *neutral*.

An OO will therefore be considering the interests of many different stakeholders. It would seem that OOs cannot appropriately judge the effectiveness of OO practice from *just* the employer's point of view or *just* their own point of view—even though these are the two stakeholders that most often ask about ombuds effectiveness.

In addition, OOs do not make management decisions—many of the "achievements" of OOs happen because of the actions of other people[3]. And the work of OOs is largely confidential. Since the OO makes no management decisions, and his or her work—for multiple stakeholders and in systems improvements—is almost entirely off the record, it is hard to collect objective data about the benefits or costs of OO practice[4].

Whatever the difficulties, organizational ombuds and their employers—and all their stakeholders—deserve answers and deserve sound ways of thinking about the usefulness of the profession. This article presents two theses:

- *There is no single, "scientifically sound" method* of measuring the cost-effectiveness of an OO, or the effectiveness of OO offices across the profession. This is true for methodological reasons, some of which are mentioned below. It may however be possible, in relevant organizations, to estimate some of the costs and benefits of adopting a *new conflict management system that includes an OO office*. There are also specific, narrowly focused ways to assess certain aspects of OO work[5].

- *There are many powerful ways of demonstrating OO usefulness.* This article presents ideas as to how an OO office may be found useful, for most or all of its stakeholders, most of the time—and in multiple ways. Understanding how an OO may—*almost uniquely*—*add value throughout an organizational conflict management system*[6] may be the most interesting frontier in the field of OO evaluations.

I. Why is it Hard to Assess OO Effectiveness?

This article raises three sets of issues: it is difficult to assess OO benefits, it is difficult to assess OO costs, and it is difficult to isolate the effects of an OO office from the effects of the system with which it works.

A. IT IS DIFFICULT TO ASSESS OO BENEFITS

1) Multiple stakeholders

Assessing effectiveness theoretically would require knowing the interests of all the stakeholders. Who are the stakeholders for an OO? Thoughtful analysis turns up a long list[7]. Even the "key" stakeholders may differ from case to case, from year to year, and from organization to organization.

One would think that a true neutral would not be thinking of the benefits to just one of these stakeholders, for example the employer. The OO may question if it is even ethical to offer estimates of the benefits to the employer—presumably in order for the OO to justify the existence of the office—unless the OO also estimates benefits to other stakeholders.

It may however be difficult to estimate the benefits for many stakeholders. (In some cases it will not be possible to know all the stakeholders or even all the "key" stakeholders.[8]) And who is to judge? Even the stakeholders themselves may not have an "objective" view of benefits. An employee or manager may not get a desired outcome, working with an OO, despite fair assessment and option generation by the ombuds. Any visitor may be dissatisfied with the interaction with the OO. Any stakeholder, including the employer, may not understand the ways in which an OO can and cannot help.

By the same token, it is quite common for important stakeholders—for reasons that might seem to others to be simply emotional—to put the OO on a pedestal.

It follows that one cannot do a thorough or "objective" analysis of all the benefits from even one OO office, let alone all the benefits accruing in many offices across the profession. (Having different kinds of stakeholders, handling different sets of issues, keeping different databases,[9] and using different methods of data analysis all add to the difficulties in making comparisons.)

The multiple-stakeholder issue—and many other issues— differentiate the idea of an OO "return on investment" from ROI studies of lawyers, or other professionals—who may have one specific client or a standard clientele, who are likely to deal with a narrower set of issues, and whose value-added can more easily be differentiated from that of others in the relevant conflict management system.

2) Multiple missions—and various individual values of OO's

Assessing effectiveness also requires knowing the goals to be met. What is the formal mission of a given OO office and what are the professional values of the specific OO[10]? If the missions of various offices vary, and if the values held by OOs vary, and if effectiveness is to be considered in terms of the formal mission of each office *and* values of each OO—it will be difficult to compare practitioners and offices.

3) The role of the IOA Standards of Practice

Ombuds practice is a profession. Should OOs also be evaluated on the basis of the IOA Standards of Practice—or only on the basis of the mission of the office, and the values of the given practitioner? Or all of the above? And ombuds need to think through what it means to be effective in circumstances where adhering to the OO Standards of Practice and the mission of the office appears to be out of sync with the values of a senior manager.

4) The importance of context

In addition to various missions, values and standards, there are of course major differences in cultural context for each OO. As just one example, the need for each of the *functions*[11] of an OO may vary with context. OOs may be valued by their organizations for excelling in different functions.

The OO who *delivers respect, listens with great skill*, and is considered likable and trustworthy by all may be a superstar in cross-cultural communications and conflicts. Another OO might excel in *coaching—at helping people help themselves*—and only occasionally take an active third party role. The OO with a genius for *preventing and mediating* intellectual property fights may be greatly valued in a research culture desperate for such skills.

Is it possible to compare the effectiveness of OO practitioners in completely different contexts? One common idea about management effectiveness has

to do with "goodness of fit." (A senior officer might say: *"This OO fits our culture hand in glove. He may look really different but he speaks our language."*) What if much of OO success, through adaptation or homogeneity, depends just on "fit?"

Context also matters with respect to the laws, regulations, policies, rules, codes of conduct, ethnic traditions and cultural practices that are relevant to each OO office. The practice of different OOs may be quite different depending on what is and is not acceptable—or exemplary—behavior in each organization.

5) Who will do the evaluation and is that person objective?

Who could reasonably assess the effectiveness of an OO and of an OO office? For the OO to be the sole evaluator of his or her OO practice is obviously not an objective mode.

If there are outside evaluators, will the evaluations span the interests of many stakeholders, as a neutral might wish? Would an external assessor use just the employer's interests, that is, only use the interests of the people who hire the assessor? Would an external assessor offer his or her own methods of assessment, or use the Terms of Reference of the OO whose office is being assessed?

Is it possible for anyone outside the office to assess effectiveness objectively, considering the paucity of records, memories and "footprints" of the OO[12]? It may be hard for OOs to talk openly about their input to policies, as they might customarily work in the background with and through others. It might in fact impede effectiveness to try to take credit for improvements in the system.

The assessor question is especially important with respect to the "scientific" value or reproducibility of the assessment. To the extent that different evaluators look at effectiveness in different ways, this represents an additional difficulty in attempting to compare practitioners and offices across the OO profession.

6) Short-term vs. long-term analysis

What is the appropriate time period for OO effectiveness assessment? Suppose consistent work by a given OO bears good fruit two or six years later, in terms of a new and badly needed policy or the resolution of a multi-year problem[13]? Suppose an OO office visitor is promoted to be a VP or CEO? Supposing this new VP or CEO is sensationally good at conflict management, and gives credit to the OO who helped him or her?

7) Assessing intangible benefits as well as tangibles

Contemporary neuroscience demonstrates that peoples' actions, decision-making and judgments are not necessarily available to conscious thought. One's actions and judgments are heavily affected by emotions and "intangibles." What is the importance of intangible OO contributions and how can they be assessed[14]?

How could OO effectiveness be assessed and understood scientifically, when intangible benefits cannot be reliably defined? When they cannot be quantified except in proxy variables such as money? Many of the perceived intangible benefits of OOs are "social benefits" or "positive externalities," which are hard to measure in objective terms though they may be quite important. (Positive externalities of an OO office would be the benefits for third parties, perhaps in the organization or outside of it. For example, if a new OO were able to support management to make a workplace safer, or much more respectful, some benefits might accrue to the family members of employees, and also to society at large.)

The intangible benefits provided by different OO practitioners may vary. In some organizations an OO may appear most effective in one-on-one interactions—let's say that this OO consistently conveys hope and deep respect and appreciation as well as good concrete options. This OO is constantly coaching a wide variety of visitors, and assisting at problematic meetings to help beleaguered supervisors to succeed. People say this OO "never gives up," but will keep working on a concern for months if need be. This OO answers every email and phone call within 24 hours, and is seen to be exceptionally *"responsive,"* in a world where few senior people are responsive. Much of the effectiveness of this OO is regularly ascribed to his or her skill in building relationships, and *integrity, discretion and trustworthiness,* as well as to skill in generating options for those in conflict.

But contrast this image of effectiveness with that of another OO who is greatly valued, but mainly for recommending and helping with *conflict management systems improvements and public, collaborative, organizational change projects*. How might these contributions be assessed and compared with those of the first practitioner?

Some OO offices are seen to be particularly good at *surfacing very bad problems very early,* in a way that leads to timely attention to bad problems, and no outside whistle blowing. Suppose the benefit of these offices—as seen by the CEO and risk managers—is entirely in terms of contributing to and protecting the *public image* of the employer? Reputational risk could be characterized in financial terms, of course, but is this a useful yardstick across the OO profession?

Finally one can compare these images of effectiveness with that of an employer who establishes an OO office simply because it is *required by regulation* to have this kind of safe way of reporting illegal behavior—or the employer wants to have an OO to reduce potential penalties under the US Sentencing Guidelines. This kind of OO is "effective," so to speak, simply by existing.

B. IT IS DIFFICULT TO ASSESS COSTS

There are also methodological questions about cost analyses of OO offices that the OO profession may wish to examine.

1) Organizational costs and costs for individuals

Most discussions of costs in OO effectiveness analysis have focused on *organizational costs*. Theoretically, for a neutral who is looking at the interests of all stakeholders, there could be some estimates of costs saved or engendered for those who have contact with the OO office—apart from organizational costs.

Many OOs report that a significant number of their visitors choose the option of learning how to deal with concerns on their own. Especially if a visitor is in conflict with a peer, there may be no action by the OO or any other third party. A visitor may think through options with OO and then settle a concern directly. This would likely decrease the visitor's "costs," and hopefully, although not certainly, decrease the costs for the person who was the object of a complaint. It is not clear how to think about the tangible and intangible costs to individuals, but this is a topic that might be of interest to the ombuds profession[15].

2) Short-term vs. long-term analysis

Would an organizational cost analysis be based on annual financial costs? Does this make sense in terms of the mission and practice of an office where desired benefits may be long- term as well as short-term?

3) Social costs

Would the analysis include social costs (non-monetary costs and intangibles affecting groups as well as individuals)? For example, suppose that an alert from an OO led to exposure of many illegal aliens or to the shutting down of a particular workplace. Or to the firing of a well-loved doctor or religious leader or teacher or politician who has engaged in criminal behavior. An OO alert might lead to appropriate action, but the social costs might seem very high for many people in the organization, and there might be externalities of this kind outside the organization. It is even conceivable that backlash might lead to deep distrust of the OO in such a situation. Another possible "social cost" might be that of serious burnout for an OO.

4) Increased costs due to the OO

It is not even clear how to estimate all the financial costs of an OO. Should the analysis include costs in addition to the annual budget of the office? As an example, suppose the OO makes a mistake? Virtually all professionals will occasionally make mistakes, like forgetting to follow up on something, and mistakes sometimes result in increased costs for the employer.

Might the work of an excellent OO actually increase costs in a given year for the employer? For example, imagine that an alert from the OO triggers an expensive investigation. Imagine that an alert from the OO triggers long-term changes in computer security systems, or a safety program, or the need for a new employment lawyer.

It could happen that the perceived trustworthiness of a new OO means that there is a new cascade of serious concerns of a certain kind. These might be ethics cases, or bullying cases, or racial or sexual harassment cases that had hitherto not come to light. It is not clear how to estimate the costs of the line management time, and the time of HR and counsel, etc. required to deal with OO alerts. Is this an "OO office cost" question—or a "conflict management system cost" question? And should an analyst who is assessing such short-term cost increases plan to take account of the fact that the organization's costs over time might possibly *decrease* due to alerts from the OO?

5) Decreased costs due to the OO

OOs may help reduce the costs of conflict among employees and among managers—for example, in turnover and time lost to bickering. As a result pro-

ductivity might increase in a certain department or on a cross-cultural team. However, it may not be clear whether to calculate this effect as a cost saving, or a benefit from increased productivity or both. It also is not easy to make such calculations.

It is often thought to be the case that the work of an OO very significantly decreases the costs of line management time and legal staff in dealing with complaints. However it is not always clear how to attribute such cost saving. What are the achievements of the OO, how much credit should be given to the people in conflict who have settled their concern with the help of the OO, and what are the achievements of anyone else who may have helped in the situation?

C. IT IS DIFFICULT TO ISOLATE THE EFFECTS OF AN OO OFFICE FROM THE EFFECTS OF THE CONFLICT MANAGEMENT SYSTEM (CMS) WITH WHICH THE OO IS WORKING.

The OO profession does not have a conceptual model of how to think about who should get credit for successful conflict management in an organization with an OO and a conflict management system. The profession also needs a conceptual model for assessing intangible and tangible conflict management benefits when a visitor works with an OO and then personally settles a conflict with another person.

How can one assess the effectiveness of an OO separately from that of the people with whom the OO works? This may be especially difficult if the OO is working very hard to support, and help to improve, the whole CMS. Imagine that the OO regularly is able to get good new ideas, and quick-catches of bad problems, to the relevant managers. And then further imagine that the relevant managers are constantly instituting good new ideas and rectifying problems as a result. Who should get the credit?

Many OOs work very hard *not* to substitute for line and staff management but to "do themselves out of a job" as fast as possible with each case. Many OOs pride themselves on keeping a low profile while constantly supporting the system to improve. The more effective the low profile, the more difficult it is to analyze contributions of just the OO.

How an OO may add value to an organizational conflict management system may be the most interesting frontier in the field of OO effectiveness assessment.

Research in this area is very much needed. I have suggested elsewhere four challenges that are faced by every conflict management system—that an OO office may, almost uniquely, help to address—and where OO usefulness might be studied and described:

- How to help everyone in an organization feel they can *act effectively if they wish to—or come forward on a timely basis*—when they have serious concerns;

- How to *help coordinate the system* (CMS) and *provide back- up;*

- How to help *keep the system* itself and its managers and professional staff *accountable;*

- How to help the CMS to improve, by managers' learning from the ways in which conflict and concerns have been addressed, and how to *encourage management to respond* to CMS recommendations[16].

II. Various Ideas about Demonstrating the Usefulness of OOs

What might an OO do, to understand and demonstrate the effectiveness, or at least the usefulness, of his or her OO office? Writers in this *JIOA issue* will contribute many ideas.

Various organizations may also have their own ideas about effectiveness. For example, if an organization has a long-standing office, perhaps there will be ways to track how a given practitioner performs, from year to year. Does he or she constantly work with relevant groups on new system initiatives? If an organization has multiple access routes for surfacing ethics problems, can the OO office be compared over time to other access points, to see which kinds of callers choose which paths for which issues? Does the OO *consistently* surface and help to resolve issues that are judged to be important for a significant part of the organization?

There appear to be many possibilities for assessment that might be useful, that are not necessarily expensive, and which may respond to some of the methodological questions above. Many of the assessments below can be compared over time.

Many of these ideas are relevant to both tangible and intangible interests of multiple stakeholders, including:

shareholders, management at all levels, visitors (those who call upon the office), people who are alleged to be a problem, responders (those whom the OO calls about a case or an issue), the employees and managers in the organization who do not use the office, other groups that are relevant in a specific organization—like students and patients—and also to society.

This article first suggests some benefits from the OO office that are most easily seen only at a time of specific change. The article then lays out some benefits that can be demonstrated day by day:

- Some changes in effectiveness of the whole conflict management system—including the OO—can be measured at *times of specific, and visible reorganization.*

- Some demonstrations of usefulness are *relevant to all OOs on a regular basis.*

A. DEMONSTRATING OO EFFECTIVENESS AT A TIME OF MAJOR CHANGE

1) Identifying the effectiveness of major systems changes that introduce OO practitioners

Occasionally it may be possible to measure the effectiveness of a *major change in a conflict management system that occurs together with the introduction of OO practitioners.*

There are a few organizations where part of the conflict management mission is highly focused. For example, a specialized organization like a hospital might wish to offer an alternative approach to dealing with "unanticipated outcomes,"[17] for a variety of reasons: to assist providers in disclosing adverse outcomes to patients and/or families; to improve patient safety by promoting greater transparency in reporting errors and making more immediate system improvements; and to reduce the financial costs of errors, negligence, malpractice, insurance, and a wide variety of legal and settlement costs.

OO situations like this can be studied for their potential cost-savings for many stakeholders in addition to the employer—and for intangible, as well as tangible, benefits for a number of stakeholders.

A hospital might decide on changes in its conflict management system—including the introduction of an OO office. The new OO office may not produce major benefits and reduce costs all by itself, but rather

an evolving new system—with OOs—may produce many measurable benefits and reduce costs.

For example, in a hospital, the OO might be able to work with health care providers, hospital staff, family members and patients in cases involving unanticipated outcomes. The OO could serve multiple functions: as a compassionate face of the organization when unexpected harm occurs; as a coach to providers who are charged with disclosing the harm; as an internal neutral who assists in a resolution between patients and providers that avoids the need for litigation; and as a confidential source of information to leadership on potential systemic and individual problems.

Early prototypes suggest great relief for many patients and their families, and high rates of satisfaction, when health care providers immediately call in an OO after an unanticipated outcome. One can imagine the intangible benefits for everyone, from permitting health care providers to express their own emotions and even to offer apologies, to working with patients and families to uncover what their true interests might be post-event. For example, these interests might be in the form of complete disclosure and timely information, appropriate compensation, fixing the system that led to harm, and/or honoring the individual whose harm led to system improvements. There may also be significant intangible benefits for administrative staff as well as clinical staff as an entire system continuously learns from experience.

Early prototypes also suggest significant cost savings, in terms of reducing the financial costs of perceived or alleged negligence and malpractice, and pain and suffering. Over time one can imagine significant savings in terms of malpractice costs, and, slowly, for the health care system of the country. One can also imagine—with this kind of conflict management system integrated into the quality improvement and patient safety systems—that a hospital may learn more quickly about errors and how to prevent them. "Diligence" and "Checklist" methods of preventing ubiquitous oversights and errors might become even more widely accepted when errors are more easily surfaced.[18]

Having a respectful OO come immediately to the scene after every unanticipated adverse outcome might help in role-modeling active listening, and attention to feelings, for the occasional insensitive health care provider. Multi-year evaluations may show that a systems change works even better in later years than in the first year.

2) Benefits and cost savings from specific initiatives

Estimates might also be made as to various kinds of benefits and cost-savings from specific initiatives.

As a hypothetical example, imagine that the OO decides to work hard with many members of the organization on the issue of bullying. (This will probably be most successful after a bad case that goes public.) Suppose the OO were to ask relevant managers for help in a quick estimate of the health care costs, turnover costs, lost time, and legal costs and settlements that may be directly attributable to bullying[19].

In addition, since bullying can be a tell-tale for other forms of unacceptable and unethical behavior, the OO might ask for, or try to make estimates of, related costs that might be somewhat reduced if the employer were to address the problem of bullying in an effective fashion[20]. That is, it might happen that paying serious attention to bullying might measurably reduce other unacceptable behavior as well. Possible examples include serious errors, assault, embezzlement, harassment, safety violations, petty sabotage, serious sabotage, anonymous attacks against a manager, on the Internet—and certain kinds of supervisory incompetence.

In addition an OO might be able to communicate that prevention of bullying could improve the workplace in important, intangible ways, for everyone in the organization—and for employees' family members as well. The OO might share research with managers about the potential *intangible* as well as tangible impacts of bullying[21].

The OO might then ask for anonymous surveys or focus groups to assess reactions to a pro-civility-anti-bullying initiative. Here the contribution of the OO will be in alerting, and working with and supporting the conflict management system.

Some real examples conveyed to this author illuminate the fact that adding an OO office to an existing system *may produce some measurable systems benefits or measurably reduce costs.* In one Federal agency, adding a new OO office reduced costly FOIA and EEOC complaints to near zero in the first year. In another Federal agency, in his first year, a new OO was able to settle many dozens of class action suits through skillful mediation. Many new OOs report having been able to work with supervisors to rectify

a number of long-standing annoyances. Some have helped managers to make quick progress, in the first year or two, with serious safety problems.

New OOs frequently report having been able to offer some illumination of the concerns of one or another group in the organization. Several new OOs have recorded dozens of systems changes made by managers that made life more equitable for women—all triggered at least in part by concerns brought to the OO office. Others have lists of systems changes that have made life more equitable for various minority groups, various religious and national groups, persons with disabilities and LBGT groups[22].

In a number of corporations, new OOs appear to have reduced the costs of litigation and settlements in significant ways; saving legal costs for the conflict management system may in fact be relatively common with a new OO. In one university, legal costs were low for many years, compared with peer institutions. This was attributed to the fact that the system had an OO office that helped identify emergent issues in a low-key way for line supervisors to assess and manage.

A faith-based organization in a major city established an office resembling an OO office. The office had a significant caseload. Many years later the organization was flooded—in dozens of cities—with allegations about abuse. There were relatively few allegations in the city with the OO-equivalent.

In most of these examples, the benefits and cost reductions could likely be ascribed at least in part to the "conflict management system + the OO" rather than just to the OO. Some of these examples are "ad hoc" in nature and some would be hard to assess in objective terms. Nevertheless it would appear to be useful to ask all new OOs to keep a narrative of their first few years. The profession might this way collect more examples of changes that appear to have been facilitated by a new OO.

B. IDENTIFYING AND COMMUNICATING OO EFFECTIVENESS ON A REGULAR BASIS

1) Internal assessment of the caseload in terms of the mission

The OO might institute regular internal assessment of the work of the office in terms of the office mission. As just one example, if "inclusion" is part of the mission of the employer and part of the mission of the OO office,

one might compare broad aggregates and estimates of the "demographics and geographics" of *office visitors* (of those who use the OO office) to those in the organization[23]. Is the OO being used throughout various constituencies? If not, are there good reasons why not? And if the caseload does reasonably reflect the constituencies, might the OO wish to highlight this fact in various communications?

2) OO review of alleged "problem areas or problematic cohorts," as another part of the mission

If systems change is also part of the mission, in what ways are OOs supporting responsible systems change? The OO might track the characteristics of the *perceived sources of the problems*—as well as the issues—that are mentioned in an OO office. That is, the data collection system might be designed to include aggregate characteristics of alleged "problem areas" and some characteristics of the cohorts alleged by visitors to be sources of problems[24].

Demographic analysis can illuminate, for every cohort, which cohorts are most often seen to be a problem. For example, the analysis could show whether university support staff report significant problems more with administrators or with students.

Geographic analysis may also be useful. As an unusual example, cross-tabulating "complainants" by the geographics of "alleged offenders" permits the OO to track the proportion of people who are alleged to be the source of a problem who are not even in the organization; these sometimes costly concerns may be on the rise for many organizations.

Patterns of this kind may be useful information for managers. For example, it is now widely understood that women as well as men are responsible for perceptions of harassment, including sexual and racial harassment. And that men as well as women may be bullied and harassed. Recognition of relevant patterns may lead to more effective policies, structures and training programs.

OOs may wish to track their work every year on relevant systems change with regard to issues and areas that are perceived to be problematic. Ideally there may be important changes in policies or procedures or structures where it will be obvious to the colleagues with whom the OO has worked, that the OO played a useful role. (An OO might even inquire of such colleagues whether the office was seen to be

helpful in bringing information, or in offering options that relevant managers found to be useful.) This kind of analysis may then illuminate the usefulness of the OO office for various different stakeholders.

3) Anonymous feedback

The OO might analyze his or her published mission, standards of practice, and values, and provide anonymous feedback forms constructed around these standards and values[25]. In small offices, forms can simply be given to all visitors, alleged offenders and responders, to be mailed back anonymously. In larger enterprises, an external feedback vendor can collect anonymous evaluations. Anonymous evaluations may help to assess individuals' perceptions of reduced or heightened costs, from the actions of an OO, and perceptions of benefits.

In some organizations the feedback from such forms is almost entirely laudatory or sharply bimodal, but the prose on a form may help the practitioner to know *how* she or he has helped—or if the reverse is true, how the OO is seen not to have been helpful. For example, if the OO is seen not to have been helpful, does this mean the OO should do better in communicating what an OO can and cannot do?

4) Problems unknown to the organization or unrecognized

One of the most important functions of an OO is to help everyone in an organization feel they can act effectively if they wish to—or come forward on a timely basis—when they have serious concerns. Research suggests that many people hesitate to act when they see unacceptable behavior[26]. An OO office that is trusted may *help to surface serious problems timely and in-house.*

In today's complex world, many organizations have highly specialized senior managers. There may be few offices that receive data from the entire organization and from every cohort. Frequently an OO can *piece together small bits of information to see an emergent problem or pattern* before it is obvious to others.

As the OO analyzes the caseload every week, month and year, how is it different? *Does the caseload indicate anything that management or the organization does not know and needs to know?*

Ideally an OO can communicate promptly, in a way that is completely consonant with confidentiality—to management, and, as relevant, to the whole organization[27]. If the OO picks up new problems, and, especially, new problems that might be disruptive to established procedures or require new policies or new training programs, the office will be known for providing helpful "heads up" and support.

As an illustration, after the advent of computers, an OO began to hear from one or another computer user—in many different parts of the organization—with various forms of repetitive strain injury. The OO was able to collate these reports (identity-free), and to work with several managers to estimate some of the potential damage, and future costs, of repetitive strain injuries. The OO was then able to support dozens of colleagues who designed an extensive program to help prevent RSI. Reports of RSI, and costs over a ten-year period, were then significantly reduced.

As a similar example an OO was able in the early 1980's to recognize and report isolated instances of fear in the workplace of "Gay Related Infectious Disease" and then fear of AIDS. Over a number of months managers in the organization were able to put together policies and training to respond.

If the OO picks up problems like RSI and fear of AIDS, that need a coordinated address by many different managers across the organization, the OO may be able to foster informal coordination within the conflict management system. An OO can suggest where back-up is needed. The continued support of an OO may help to encourage managers to keep learning about a given issue, and to keep learning from each other.

5) Constantly listening, and reporting back, to many stakeholders

The OO might regularly introduce the office and himself or herself, to every group and cohort that extends an invitation. Some OOs routinely introduce themselves to all new department heads and senior managers. Many OOs welcome invitations to lunch-time meetings of support staff, specialized professionals, new employees and others. Meetings of this sort provide a chance to share current issues and annual reports and to make appropriate mention of OO work that is relevant to the audience. As an example, in talking with groups of non-exempt employees in the US, the OO might mention the common issue of uncompensated overtime and the relative ease of dealing with this problem through generic discussions in departmental meetings.

In each introduction there would of course be "time to listen," and if relevant, to begin to develop an explicit plan to "be useful" to the group or new manager in terms of their specific interests.

Some OOs are requested to get back to line managers immediately, whenever the practitioner can offer information, in a way completely consonant with confidentiality, that will permit the manager to be more effective. Some OOs see every senior officer at least once a year to give an aggregated report about the senior officer's area and to ask the senior officer about plans in that area for the coming year.

Every time that the OO learns of some important new issue or new solution to a problem, the OO might think which groups and supervisors would wish to be informed. Each time the OO is invited to a group, or talks with a supervisor or manager, she or he might ask, "How am I doing? Am I providing useful information and options? Is there any way the OO office could be more useful?"

Constantly checking in, and stopping by on an informal basis, may also serve to support managers and professional staff to be accountable and to continue to support improvements in conflict management. (The OO should always be prepared to answer the question from a manager, "What is in it for me?")

6) Inclusion in climate surveys

The OO might ask to be included in relevant organizational surveys. Climate surveys—for issues relevant to management or to a given cohort or business unit—can help to measure if the OO office is known, used, and valued.

A survey might ask *if a person has used* the OO office and then follow up with more questions: If so, what would you have done if you had not been able to contact an OO? Would you have raised the issue—and would you have raised it as quickly? Might you have left the organization? Do you feel that contact with the OO office has decreased stress for you or other "costs" from the problem, or added any difficulties? Do you feel that you may now deal more effectively with future issues? Would you recommend the office to others?

If you have responded to a call from the OO office—do you trust the OO Office? Was the OO office helpful? Do you feel that contact with the OO office has decreased stress for you or other "costs" from the problem that was addressed, or added any difficulties? Would you yourself use the OO office or recommend the office to others? For persons who have not had contact with the OO office, there might be questions about awareness, trust, and willingness to refer.

Answers can be compared for those who have or have not had contact with the office, and by the geography of those taking the survey. In many cases these surveys can be compared over time.

7) Annual reports, website materials and training

Some OOs make annual reports to the organization. These reports may or may not be as useful to managers as are frequent personal reports, but they can be very useful in letting everyone in the organization know about the OO office and what it does. They demonstrate that the OO is *accountable*. For the OO who painstakingly self-evaluates, annual reports may provide a way to communicate some of his or her achievements.

Many annual reports reflect the kinds of issues that come in, and make recommendations about tenacious problems, and beneficial solutions if any. There may be description of "new problems." The reports may communicate the cohorts that use the office. Reports may present analyses about how many people are affected by the problems that have been reviewed and report on some of the changes that have been made in response to concerns. Reports may also mention some of the results from anonymous surveys about the OO office.

Some OOs maintain a website with policy information, referral links for other offices in the conflict management system, useful links to conflict resolution materials and articles, and many materials of use to people in the organization for "self-help." Some OOs post short articles, guidelines and advisories. Hits on the website can be tracked over time to see which sources of help are seen to be useful.

Of particular importance, the OO website—and other websites maintained by the conflict management system which mention the OO office—can help communicate the possibility of making anonymous reports and asking questions anonymously.

Most OOs do some kind of training about issues and conflict management skills that are important to the organization. These events are important for communicating about the OO office, giving out brochures and short advisories, and building trust—as well as communicating about various issues and skills.

8) Which were the five or six most serious problems and issues last year?

Probably the easiest way to demonstrate the cost-effectiveness of an OO office is when both visitors and senior officers know that *very serious problems have been identified in time, in-house,* via the OO. Frequently the "most serious problems" are known to at least a few senior managers or can be described to the CEO in ways that do not identify the people who came forward. An OO may sometimes be able to get permission from a visitor to make sure that a CEO is not blind-sided by bad news—in a way that is greatly appreciated.

Probably every long-term OO can remember notable moments when it was clear that they have made unusual contributions. Many OOs have helped to surface delicate information about senior managers and other VIPs, as well as about other employees. Many have been able to help get potentially difficult situations settled appropriately, but out of the public eye.

Several OOs report having persuaded visitors to give up guns and other weapons. A number of OOs report having forestalled immediately threatened violence to self or others. At least one persuaded an arsonist to give himself up. A number of OOs report having provided early and effective warning of serious environmental hazards. Several OOs have helped a visitor with an unrecognized, emergency medical condition to receive medical help in time.

Many ombuds routinely help to surface concerns about (alleged) misuse of money and equipment, vandalism and sabotage and deliberate interference with the integrity of the work of others, serious conflicts of interest, thefts of money and intellectual property, the cover-up of serious errors, and a wide variety of fraudulent behavior.

At one ombuds conference, at a workshop on possible national security problems, three OOs came up afterward to talk about having alerted managers to serious issues while protecting the identities of those who provided information.

Helping to resolve painful issues in a family-owned firm, or among valued senior managers, may help stabilize a company. Helping to retain a very valued professional may save a great deal of money. Are senior officers deeply concerned about diversity and inclusion? Working on a coordinated systems initiative to foster mentoring frameworks—for non-traditional employees and managers to thrive—may help as an antidote to discrimination, as well as helping everyone. One terrible racial or sexual harassment case[28], or criminal abuse, or embezzlement problem, if surfaced very quickly, may pay for the cost of an OO. Averting serious sabotage, or a serious safety issue or a national security event will be seen to justify the existence of the OO office that helped to surface the problem.

CONCLUSION

Organizational ombuds have much to contribute to organizations. OOs have much to contribute to many stakeholders, including shareholders, management at all levels, visitors (those who call upon the office), people who are alleged to be a problem, responders (those whom the OO calls about a case or an issue), the employees and managers in the organization who do not directly use the office, other groups that are relevant in a specific organization—like students and patients—and also to society. OOs contribute in dozens of different ways using a wide variety of conflict management functions and many different skills in many different environments.

Ombuds need to learn how to identify and communicate their usefulness. They need to describe short-term and long-term, tangible and intangible contributions in ways that are relevant to their own stakeholders. One thesis of this article is that there are many ways to do so. The other thesis of this article is that there is no single, "scientific" way to calculate the *cost effectiveness* of OOs.

The evaluation of ombuds practice raises many questions suitable for research and for ombuds discussions. These questions begin with identification of the goals and modes of practice of each OO and each OO office.

A major complexity derives from the fact that many of the achievements of an ombuds come through the actions of others. The OO profession needs some new conceptual models for understanding effectiveness: for example, who should get credit for what kinds of successful conflict management in an organization with an OO and a conflict management system? How might analysts assess the benefits of having an OO when a visitor works closely with an OO and then personally settles a conflict with another person?

OOs are independent and neutral but are not really "individual contributors." OOs work with and through

their visitors, with those who are seen to be a problem, with responders of all kinds, and with everyone in the relevant conflict management system. OOs cannot just look at their own actions to understand OO effectiveness.

OOs need to assess their skills and usefulness with skepticism but also with vision, not to over-claim nor under-value what OOs can do—both as individuals and as an unusual, independent, neutral addition to a system. As Atul Gawande has recently written:

> "Under conditions of increasing complexity, in medicine and elsewhere, experts require a different set of values than we've had. We require greater humility about our abilities, greater self-discipline and the prizing of teamwork over individual prowess[29]."

How OOs may add value, identify their usefulness and communicate their usefulness with all or most of their stakeholders is a compelling challenge.

ENDNOTES

There have been a number of articles over the years about ombuds effectiveness research. Some are listed on the IOA members website: John Barkat, Blueprint for Success: How to Effectively Design an Organizational Ombuds Department (2002); Michael Eisner, Creation of an Ombuds Office Can Prevent Retaliation Claims, mediate.com (Jan. 2007); Tim Griffin, Physical Environmental Design Factors in College and University Ombuds Offices, The Journal of the California College and University Ombudsmen, 1994; Tyler R. Harrison, What Is Success in Ombuds Processes? Evaluation of a University Ombudsman, Conflict Resolution Quarterly, vol. 21, no. 3 (Spring 2004); Mary Rowe and Mary Simon, Effectiveness of Organizational Ombudsmen (2001); Rick Russell, On Being An Ombuds: Considerations and Suggestions for Practice (2003); Linda Wilcox, Setting Up An Ombuds Office—Safety Considerations, The Journal of the California College and University Ombudsmen, 1994. Frank Fowlie's doctoral dissertation—A Blueprint for the Evaluation of an Ombudsman's Office: A Case Study of the ICANN Office of the Ombudsman, 2003—is available on the ICANN website at http://www.icann.org/ombudsman/blueprint-for-evaluation-of-an-ombudsman-nov08.pdf. It provides a way to analyze the standards, structure and operations of ombudsman offices, case studies, a useful bibliography and more.

Many OO's have pioneered in identifying and communicating the usefulness of OOs. I wish I knew all of their work; I hope to learn more. Several are especially vivid to me in writing this paper. I would like to make specific mention of John Zinsser's work in pioneering multiple quantitative measures of the perceptions of multiple stakeholders (of an OO office); of Jerome Weinstein's, and Janet Newcomb's—and other McDonnell-Douglas ombudsmen's—pioneering work in estimating savings in legal costs; of Randy Williams', Arlene Redmond's, Patti Lynch', and Charles Howard's pioneering work in communicating the importance of ombuds offices as a way for corporations to fulfill their social and legal responsibilities; of Carole Trocchio's pioneering work in communicating the effectiveness of ombuds work in franchising; of Howard Gadlin's pioneering work in studying what actually happens in an OO office; of Al Wiggins', Clarence Williams', Ella Wheaton's, James Lee's, Marsha Wagner's, Merle Waxman's, Swinitha Osuri's, Thomas Zgambo's, Tom Furtado's, Tom Sebok's and Toni Robinson's teaching about the effectiveness of painstaking listening to those who may otherwise not receive a hearing; of Frances Bauer's narratives about ombuds work, Mary Simon's work demonstrating the usefulness of listening to groups, and teaching about effectiveness, Toni Robinson's work in helping managers learn about organizational policies and procedures, and Linda Wilcox' communicating important achievements with intellectual property concerns; of Carole Houk's pioneering work in understanding what an ombudsman program can bring to the conflict management system of a hospital; of Brian Bloch's and Jessie Dye's discussions of their pioneering work in faith-based organizations; and of the work of Brian Bloch, Don Noack, Deborah Katz and Jennifer Lynch on understanding changes in the conflict competence and "culture" of large and complex organizations. Finally there is an unheralded group of OOs who have pioneered in OO curriculum and skill development; accreditation; office design and office management; conference preparation, participation and management; committee work; liaison with interested organizations, CEOs, external colleagues and opponents; peer recruitment, mentoring and peer evaluations; research and teaching; writing and editing, who are, taken together, responsible for the profession's successes in identifying and communicating the usefulness of OOs around the world.

[2] See http://www.ombudsassociation.org/standards/ for the IOA Standards of Practice.

[3] OOs typically help to develop and offer options to visitors, to people who are seen to have offended others, and to responders, and managers, rather than prescribing solutions. Thus the person or people who choose an option and take an action are likely to be the people directly responsible for achievements in the OO domain.

[4] An insightful anonymous reviewer pointed out that evaluation of this kind of professional practice may lend itself to the methodologies of investigators like anthropologists, using techniques like the study of so-called naturally occurring experiments.

[5] For example one can do anonymous surveys in an organization about satisfaction with the OO office. Or collect specific kinds of cost savings, like measuring any reduced costs of lawsuits and agency complaints with a new OO.

[6] The term conflict management system in this article includes all the people in an organization who regularly deal with conflict and have an interest in preventing unnecessary conflict. For a chart that lists line management and many offices in such a system, please see Mary Rowe and Brian Bloch, "Analyzing Your Conflict Management System" at http://www.hnlr.org/?page_id=35%3E.

[7] See "Effectiveness of Organizational Ombudsmen," Mary Rowe and Mary Simon, Chapter IV, The Ombudsman Handbook, 2001, pp. 2-3, found at http://web.mit.edu/ombud/publications/index.html, # 23.

[8] For example, it could happen that an alert from an OO about a racial concern might result in recruitment and management actions that produce a better racial climate in a given department. These actions might affect many people, directly and indirectly, in the short term and over many years.

[9] Although most OOs are "generalists," OOs may also develop specialized expertise in order to meet the needs of their organizations, and perhaps because of their own interests. Word of mouth may then advertise these skills. The OO may thereafter attract more visitors with the same concerns. The caseload of one OO may thus be somewhat different from another in a very similar organization. In like manner the OO is likely to construct and expand the office database to reflect a specific or changing caseload. One OO might categorize a given case in the OO database quite differently than would another. And various OOs will deal with more or fewer earthshaking issues.

There is no standardized OO database although the IOA offers useful database recommendations to members, as a result of extensive work by the IOA Uniform Reporting Categories Task Force. (That Task Force was charged to work on categories rather than considering all database questions. For example there is little discussion of what might be useful analyses of the data.) As just one example of different methods used by different OOs, some OOs only collect a few demographic and

geographic data about their visitors: ("Which cohorts approach the OO office?") Others also collect a few data about the persons, offices or groups who are perceived by visitors to present problems: ("Which cohorts and areas are thought to be at fault?") Others collect a few data points about responders: ("Who are the kinds of people that I call to look into a problem?") Of course, none of these data sets identify individuals. But each data set reflects different issues: Who approaches the OO? Where are the perceived problems? Who is helpful in looking into an issue?

Another difference among practitioners is represented by different ways of discussing OO work. As one example, some OOs speak of those who approach the office as "clients." Others never use this word, concerned that the term compromises the appearance and reality of neutrality and impartiality—that it changes one's thinking. Some OOs speak of offering "advice." Others try nearly universally to offer "options," for the choice of the visitor. Some OOs think of themselves as *part* of their conflict management system, and some think of themselves as an unusual, neutral professional working *with* their conflict management system. Some OOs think of ombuds work as "*alternative*" dispute resolution, often meaning that they are seeking interest-based solutions. Others think of OOs as supporting *"appropriate"* dispute resolution, meaning that they also may help visitors to gain access and prepare for options based on rights and power if that is the choice of the visitor. All such differences might affect evaluations of OO work.

[10] Frank Fowlie (see his doctoral dissertation, op cit.), and Howard Gadlin and Elizabeth Pino (in their IOA booklet on Neutrality) have written about ombuds having their own professional values in addition to Standards of Practice. All IOA Standards of Practice OOs by definition follow certain standards. But some OOs might especially espouse the concept of "inclusion." Others might especially convey respect for reconciliation. Some think first about social justice, and others about "fairness and equity." In order to affirm neutrality, as mentioned above, some OOs strive never to give advice but always to offer options. In all of these cases, the advice one might offer and options one develops may be informed by one's values. OO values may thus affect the practice of each OO, consciously or not.

[11] Consider a list of the wide range of functions of an OO: Delivering Respect; Listening; Receiving and Giving Information on a one to one basis; Referral; Helping People to Help Themselves in a Direct Approach; Reframing Issues and Developing Options; Shuttle Diplomacy; Mediation; Looking into a Problem; Facilitating a Generic Approach to Problems; Supporting Systems Change; Follow-up. I am grateful to Clarence Williams (in personal communications) for his suggestion that delivering respect and active listening may be the most cost-effective uses of an OO's time, in terms of the interests of the organization.

[12] This question highlights the importance of studying what happens in an OO office, and in OO professional communications, as Howard Gadlin and a few others have tried to do—and the importance of considering the research methods of anthropologists, behavioral economists, social psychologists and sociologists—and the importance of OO's writing composite and identity-free stories and narratives.

[13] I am grateful to Don Noack for pointing out that an OO may achieve a great deal over time by changing the memes. (A meme is a postulated unit or element of cultural ideas, symbols or practices that gets transmitted from one mind to another.) Don wrote in a personal communication: "What if a meme planted one day takes two or more years to finally take root? Have we ever gotten comfortable with the fact that while we can possibly claim objective accomplishments for quite a few bad situations intersected, when it comes to cultural change it is more about our presence at an opportune moment, a clarifying question or comment, an idea sprouted out of a single oblique observation or simply blind luck? What if we never get any credit for setting up the venues, processes and opportunities that led to good people getting past their barriers to create cultural change?"

[14] My own thinking has been heavily influenced by the work of Robert Cialdini (see Cialdini, R. B. (2001). Influence: Science and Practice (4th ed.). Boston: Allyn & Bacon) and Daniel Shapiro (see Fisher, Roger and Daniel Shapiro, Beyond Reason: Using Emotions as You Negotiate, Penguin Books, 2006), and Jonah Lehrer, (see How We Decide, Houghton Mifflin Harcourt, 2009.) I believe that evaluations of OO effectiveness in the next ten years will increasingly illuminate the importance of intangibles and the importance of OOs' social and emotional skills.

[15] A few of the ideas in the second section of this article address costs and cost savings for individuals who deal with the OO.

[16] Rowe, Mary, "An Organizational Ombuds Office In a System for Dealing with Conflict and Learning from Conflict, or 'Conflict Management System,'" in Harvard Negotiation Law Review, September, 2009, online at http://www.hnlr.org/?p=266. These four contributions—by an OO office to a conflict management system—are illustrated in some of the options in Part II, below, on understanding and communicating the usefulness of an OO office.

[17] The Joint Commission on Accreditation of Health Care Organizations' Patient Rights Standard RI.2.90: Patients and, when appropriate, their families are informed about the outcomes of care, treatment, and services, including

unanticipated outcomes. Outcomes of care, treatment, and services that have been provided that the patient (or family) must be knowledgeable about to participate in current and future decisions affecting the patient's care, treatment, and services. The responsible LIP (licensed independent practitioner) or his or her designee informs the patient (and when appropriate, his or her family) about those unanticipated outcomes of care, treatment, and services.

[18] See Atul Gawande, Better, Picador, 2007, and The Checklist Manifesto—How to Get things Right, Metropolitan Books, 2009.

[19] With respect to legal costs, many OOs have noticed that (perceived) bullying sometimes appears to be the factor that tilts a complainant into formal grievances and lawsuits.

[20] For example, where the OO tracks multiple issues that are reported by visitors, the OO could look at the extent to which bullying is usually reported as the only issue—or together with other serious issues.

[21] See for example, Harvard Business Review (April 2009) How Toxic Colleagues Corrode Performance: The Impact of Rudeness, by Christine Porath and Christine Pearson.

[22] Changes that make life better for one group often help everybody. For example, better recruitment, mentoring, and performance evaluation initiatives are likely to serve the interests of all cohorts. The same is likely to be true for pro-civility-anti-harassment initiatives.

[23] "Demographics" describe people—for example, by gender, and job cohort. "Geographics" might refer to the country or division where the visitor or the alleged offender works. Many OOs just make informed guesses and keep only sketchy data about the demographics and geographics of those who call upon the office. (Some visitors are anonymous, and often an OO does not need to know very much about a visitor or caller in order to discuss policies and the pros and cons of responsible options; sometimes there are not a lot of data about the people attached to a case.) The use of these estimates— to make comparisons with the known constituencies— may therefore be quite imprecise but still be useful over time.

[24] Here again the (identity-free and aggregated) data will likely be imprecise but may be useful year by year if collected the same way each year.

[25] On the IOA website for members, OOs can find helpful ideas at: Ombudsman Office Feedback Survey Question Bank.

[26] See for example, Mary Rowe, Linda Wilcox and Howard Gadlin, Dealing with—or Reporting—"Unacceptable" Behavior The Journal of the International Ombudsman Association 2009, 2, (1), online at http://www.ombudsassociation.org/publications/journal/.

[27] A non-scientific list of "new things" that OO's remember having reported to their organizations since 1973 may be found in "Effectiveness of Organizational Ombudsmen," Mary Rowe and Mary Simon, Chapter IV, The Ombudsman Handbook, 2001, Appendix B, found at http://web.mit.edu/ombud/publications/index.html, # 23. Early examples include sexual harassment (seven years before the EEOC Guidelines), misuse of Federal resources (a decade before the Packard Commission Report), stalking and obsessed following behavior (six to eight years before most state laws).

A contemporary "new problem" reported by several OOs is the proportion of people outside the organization bringing serious complaints against people in the organization—and the number of serious complaints by members of the organization against people outside the organization. Another "new situation" in some organizations is the apparent significant increase in the number of issues per case. Another is an increase in boundary-crossing cases that include several different cohorts, different national and language and religious groups, many different issues, different sets of laws and regulations, and that are in other ways very complex. Each "new situation" like these may call for new policies, procedures, structures or training programs in the organization.

[28] Some early research on OO practice suggested that OOs themselves have believed that their helping to surface sexual and racial harassment, and bullying may be particularly cost-effective.

[29] 14 Atul Gawande, "Checking It Twice", in the New York Times Book Review, January 31, 2010, Letters Section, p. 5.

Assessing Effectiveness in Ombudsman Programs

HOWARD GADLIN

ABSTRACT

Assessments of ombudsman effectiveness should not be governed by consideration of cost-effectiveness, nor by measures that demonstrate "customer" satisfaction. Instead it is argued that there should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated. Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

KEY WORDS

assessment, ombudsman, effectiveness, standards, practice, dispute resolution.

In every historical era, many people have sought to carry out good work. It has always been true that some people do their work expertly but not very responsibly. People who do good work… are clearly skilled in one or more professional realm. At the same time, rather than merely following money or fame alone, or choosing the path of least resistance when in conflict, they are thoughtful about their responsibilities and the implications of their work.

— (Howard Gardner, Mihaly Csikszentmihalyi, and William Damon, Good Work 2001)

Assessments of ombudsman effectiveness ought to support our efforts to do good work. Toward that end assessments should focus on meeting our responsibilities and examining the implications of our work. Our responsibilities are shaped and continuously reshaped within the framework established by our standards of practice; the implications of our work are discernable within the organizations in which we practice. Consequently there ought to be two audiences for any examination of the effectiveness of an ombudsman program: the organization within which the ombudsman functions and the ombudsman program itself. Since our responsibilities are shaped by our SOPs, to my mind any discussion of assessing ombudsman effectiveness should meet two criteria:

1. There should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated.

2. Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

To better understand this approach it can be helpful to differentiate between the reasons for establishing an ombudsman program and the motives for establishing an ombudsman program. In my experience there are many motives for developing an ombudsman programs. Among the ones I have heard mentioned most frequently are: controlling the costs of conflict; reducing lawsuits or EEO complaints; improving morale among an organization's employees/members; a legally mandated need for an alternative dispute resolution program. In many instances an organization has decided it needed an ombudsman program after a major organizational crisis such as the revelation of undetected or overlooked major ethical violations.

Events such as these point to the primary reason for establishing an ombudsman program – the need for an informal, confidential, independent channel by which all members of an organization can explore and pursue complaints and grievances and raise concerns without fear of retaliation and with the knowledge that they will be treated fairly and that their issues will be addressed honestly and impartially. It is in the nature of large, bureaucratic organizations that their internal dynamics create impediments against people bringing forward issues and concerns that point to individual and structural problems within the organization. It is in the nature of large bureaucratic organizations that important information that could matter enormously for the better management and functioning of the organization is kept from the very people who could use it. An ombudsman program that is doing "good work" can be an effective way to address these needs.

Most discussions of Ombudsman effectiveness make me nervous because they appear to ignore the core principles of neutrality, confidentiality and independence and they are not anchored in a consideration of the standards of practice. Instead, these discussions seem informed by an (often unacknowledged) desire to determine the best approach to selling or justifying the ombudsman program to the organization within which it functions. Mind you, in a tight economy where organizations are scrutinizing many of their programs to decide what can be cut and what is too costly, such an orientation makes a certain sense. Indeed there have been several instances in the past few years of organizations dropping their ombudsman programs. Still, the concern to provide a justification of an ombudsman office in terms of cost-effectiveness moves us away from recognizing and reinforcing the reasons for an ombudsman program.

Over many years in the dispute resolution world I have seen a large number of reports claiming to demonstrate the effectiveness of ombudsman programs, mediation programs and integrated conflict management systems and not a single one of those reports was grounded in the standards of practice. Why is that? Is there a view that the SOPs are an essential or important part of the practice? Probably not. In fact, they may be rather unimportant to the organizational leadership, relegated to the arena of the Ombuds' preferred jargon. Instead, reports focus on matters such as the number of cases handled or persons seen, settlements rates, disputant satisfaction ratings, increases or decreases in the number of complaints filed, and most annoyingly, claims of savings in time and money. These latter often take the form of calculating the costs in terms of time and personnel of the ADR program's handling of a case, from intake through settlement and then comparing that cost with what the cost would have been had the case gone thorough to litigation. You can imagine the astronomical savings one can project through this methodology. Aside from the suspect nature of such statistical manipulations, approaching the assessment of effectiveness in this way is a direct insult to the very idea of ombudsman independence. Ella Wheaton, one of the most distinguished ombuds practitioners, always used to remind us that we need to be careful not to subtly make management decisions by settling cases in order to produce the right results for the head of the organization.

Let me be clear, I am not, in principle or in reality, opposed to using various legitimate measures of cost-effectiveness, customer satisfaction, lawsuits avoided, conflicts resolved, etc. to point to some of the value added to an organization by having an ombudsman. But I am opposed to having the value-added sensibility being the primary and most important framework within which the ombudsman program is assessed. I will return to the measuring effectiveness issue below, but first I want to address the importance of placing our standards of practice at the very center of any efforts to think about effectiveness.

When I first arrived at NIH there was in place an existing mediation program that served support staff for the infrastructure, a small proportion of the roughly 20,0000 NIH workforce. The program had a very high settlement rate and had gathered a variety of mea-

sures meant to prove its value to the parts of the organization it served. However, when I looked into their actual functioning I found a very different picture - mediators who were far from neutral in their conduct, and a director who bullied people into settlements and who regularly violated confidentiality (she was not an ombudsman but mediation programs have a similar commitment to confidentiality and neutrality). Fortunately I was able to demonstrate to the organization that this program, despite its ostensible success, could undermine the very rationale behind the establishment of an ombudsman program. While I do not know exactly how, I do think we must find ways of assessing whether or not our ombudsman programs actually follow our standards of practice. And the only way I know we can do this is to move toward opening up our practices to researchers who can study, first hand what it is we actually do. I am not alone in this view. Our professional Journal of the International Ombudsman Association recommended this practice and received the Board of Directors approval. It is with this in mind that I turn back to the assessing effectiveness issue.

In recent years there has been considerable discussion about measuring teacher effectiveness in the schools. This is an incredibly complex issue and it has elicited a very complicated discussion. One aspect of this debate has to do with measuring effectiveness in terms of the scores a teacher's students achieve on the standardized tests of achievement. A major point of controversy about using this measure is whether it forces teachers to choose between teaching general knowledge and the skills to acquire it and "teaching the test." There are significant implications of the criteria selected. Massive amounts of potential funding are distributed in part based on this one criteria of success.

When I listen to our discussions about measuring effectiveness I worry about creating a schema within which Ombudsmen will "practice to the measures," pushing for higher resolution rates or (unconsciously) altering their styles in ways that are not neutral, informal, confidential and independent in order to receive higher customer satisfaction ratings. This is not to argue against the use of quantitative measures. Among the most thoughtful participants in the teacher effectiveness discussion has been a group called "Teach for America." But this group, while employing students' test score results as one indicator of teacher effectiveness, has also begun an intensive observational based

analysis of what it is exceptional teachers do that leads to their success. If I believed that we as a profession were prepared to expose our practice to comparable scrutiny, I would have more faith that we might learn something useful for our actual practice worthwhile from quantitative measures. Of course there are significant confidentiality issues to be addressed but they can be addressed and ought not to be an excuse for shielding ourselves from critical examination. As Steven Farr, from Teach for America said recently, "Strong teachers insist that effective teaching is neither mysterious nor magical. It is neither a function of dynamic personality nor dramatic performance."[1] Anyone who has ever been to a gathering of Ombuds is aware of how often we romanticize what we do and who we are. While such talk may reassure and affirm us it does little to advance our work or our profession. And certainly when an ombudsman colleague for another institution is hired to assess the functioning of our programs we cannot really fool ourselves into believing that such an assessment constitutes an impartial and objective analysis.

Fortunately, in addition to teacher effectiveness there are other domains in which the quest for data-based understanding promises to help us understand matters where previously we were totally dependent on the opinions of the designated experts. We all understand the importance of getting an independent and impartial assessment of an activity or a treatment or an intervention. Considerable attention has been paid recently to the area of comparative effectiveness research:

> Comparative effectiveness research is the conduct and synthesis of systematic research comparing different interventions and strategies to prevent, diagnose, treat and monitor health conditions. The purpose of this research is to inform patients, providers, and decisionmakers, responding to their expressed needs, about which interventions are most effective for which patients under specific circumstances. To provide this information, comparative effectiveness research must assess a comprehensive array of health-related outcomes for diverse patient populations. Defined interventions compared may include medications, procedures, medical and assistive devices and technologies, behav-

ioral change strategies, and delivery system interventions. This research necessitates the development, expansion, and use of a variety of data sources and methods to assess comparative effectiveness. (Amanda Ripley, "What makes a great teacher" The Atlantic, Jan/Feb 2010).

Of course what we do is not the same as what doctors do, and the tasks of measurement of effectiveness are not at all comparable, but they are similar and there could be lessons for us regarding the sort of stance we ought to take towards our work. Luckily for us the academic world is filled with researchers interested in the study of organizational dynamics, institutional change and dispute resolution processes and programs. I believe it is time for us to develop collaborative relationships with researchers guided by accepted ethical guidelines and protections, who can independently examine and assess the work that we do, the way that we do it and the impact that we have. For years now we have argued that organizations have much to benefit from establishing an ombudsman program to function as an independent and impartial site for organizational self-analysis. Surely we can see the wisdom of following our own advice and applying it to ourselves.

ENDNOTE

1 "What makes a Great Teacher?" Amanda Ripley The Atlantic Jan/Feb 2010, 58-66

Creating an Effective Office — A Case Study

JANIS SCHONAUER

ABSTRACT

The case discusses the institution of the Ombuds-man Office at AllianceBernstein, LP. It demonstrates that measures of effectiveness must be established early, maintained through robust communication at all levels of the organization and evaluated through surveys. Key factors in the office's success are un-equivocal support from the leaders of the firm, the commitment to a best practices office congruent with International Ombudsman Association and American Bar Association guidance, and communication of clear expectations for the office. Steps for communication about the mission of the office and its adherence to the four pillars of independence, neutrality, confi-dentiality and informality are discussed. The charter, policies and surveys of the organization are included in the appendix.

KEY WORDS

Ombudsman, Securities and Exchange Commission, Effectiveness, Ombudsman Charter, Survey, Ombuds-man Policies

The ombudsman office at AllianceBernstein was established in August, 2004. A global financial man-agement firm, AllianceBernstein is highly attuned to measurements of performance. This case describes the development of the office, its charter and the poli-cies applying to the office, how expectations for the office were set and the nature of the methods used to evaluate whether the office met those expectations.

AllianceBernstein had long believed that the formal processes such as Legal and Compliance, Human Resources, Risk Management and Audit provided suf-ficient opportunities for employees to address their concerns if they saw a risk of wrongdoing. However, in spite of having a robust management, audit and compliance presence in the workplace, a serious ethi-cal breach occurred in 2003, and employees notified the Securities and Exchange Commission of their concerns. The Securities and Exchange Commission found that some employees had engaged in late market trading which had the effect of favoring some clients over others. Ultimately, the resolution of the issues comprised several steps, including establishing an ombudsman function. AllianceBernstein's leaders enthusiastically embraced the ombudsman concept; they understood that the firm would benefit by pro-viding an informal option to safely raise and discuss troublesome issues. They also concluded that having an ombudsman would drive positive change in the firm, as they recognized that there are structural bar-riers within the formal offices that may prevent ideas and problems from being surfaced. An organizational ombudsman could either resolve matters informally or bring them to the attention of the formal offices at the firm through trend analysis and reporting. As a result, AllianceBernstein set out to create a best prac-tices Ombudsman office.

The first and one of the most important demonstrations of commitment to the concept began with unified support from the firm's leaders. This support began at the time the Ombudsman concept was agreed upon and continues to this day. The CEO announced the decision to create the program and conveyed the firm-wide commitment to this independent, informal and confidential resource. The introduction to the program was included the firm's on-line Ethics training, and information about the ombudsman was broadcast within every business unit and global location. Local and line managers encouraged all employees to avail themselves of the Ombudsman option.

The Charter and Policies

A properly constructed charter is an important component of ombudsman effectiveness; it sets the parameters of the office and defines the role of the office to all stakeholders, internal as well as external. The AllianceBernstein Charter and the Policies for Investigation of matters reported to the Ombudsman are in the Appendix to this article. They were crafted to conform to the Securities and Exchange Commission order, the American Bar Association Standards and the Code of Ethics and Standards of Practice of the International Ombudsman Association. (See the Appendix for the complete Charter and Policies)

While the Charter provides the required framework, the ombudsman must then engage each constituency to define how the office can assist them in meeting their goals, to develop informal contacts which allow the ombudsman to understand the pressures and opportunities for each constituency and to maintain contact outside of any formal reporting channel or feedback events.

Set and Communicate the Expectations

The Charter and Policies provide an important framework for the office at AllianceBernstein. However, an ombudsman has to be engaged throughout the entire community in order to be effective. Each entity, whether college, company or non-profit organization, has its own unique culture. An ombudsman must identify and understand the operative community values in order to be effective.

Consideration of the issue of effectiveness must begin from the moment the office is occupied. In order to measure results of the informal resolution options the ombudsman provides, broad and visible agreement of its goals must first be established. Critically important topics to cover with the members of the organization include:

- the scope of the ombudsman service (who has access to the office)
- what issues may be discussed with the ombudsman (are there statutory, cultural or other factors which limit informality or confidentiality)
- the ombudsman's access to institutional information
- when and how matters brought to the ombudsman are to be escalated, and investigated in order to be resolved

Effectiveness can begin to be measured once the parameters of the office services are established, and it is vitally important for the ombudsman to engage in thorough and continuous outreach to all potential inquirers and responders to enquiries. This builds understanding of exactly what it means to contact the office and what will ensue once contact is initiated. It also allows for the ombudsman to interact with stakeholders outside of an immediate issue and build rapport for the times that an urgent matter may need to be addressed.

An ombudsman can be effective only if the community is aware of what exactly it is the ombudsman does and how any member of the organization may contact the office. It is imperative that communication about the office be frequent and strongly supported throughout the organization. Some of the hallmarks of an effective office are the ability to contact the office anonymously; ensuring that information about the office is available in a variety of formats and languages, maintaining flexibility in appointment times, and treating all those who come into contact with the office respectfully. Communication with the office must be strictly private, accessible and secure.

Because the office was new to AllianceBernstein, it was particularly important for the ombudsman to establish meaningful contact throughout the organization. Engagement with all formal and informal levels of the organization was crucial. Having met employees and leaders prior to the time they might be approached about the trends and burning issues in their domain was invaluable. It provided the opportu-

nity to set the groundwork for how the ombudsman would work absent the emotional load of particular issues which might later surface. It also allowed the ombudsman to establish a baseline understanding of the firms' goals and successes, the issues people were worried about and their outlook for the future. The fact that considerable time was taken to understand the opportunities and challenges perceived was also important in managing expectations. This allowed the ombudsman to learn more about the organization, be better prepared to listen carefully and address future issues. Numerous meetings demonstrated the commitment to be a confidential resource for all who are part of the organization.

The ways in which the Ombudsman reports to an organization is a highly significant aspect of effectiveness. It is especially important because the office operates informally. Yet all leaders and constituents want to understand the nature of issues raised and the resolutions and changes which resulted to address these issues. The AllianceBernstein office reports formally once a year and two reports are generated. One report is delivered to the Executives, the Audit Committee and the Independent Directors of the Mutual Fund Boards. A second report to all employees includes hypothetical case studies illustrating typical issues brought to the office. Throughout the year, trends are reported as needed, while informality and confidentiality are maintained. The pattern of formal and informal reporting contributes to the understanding of how the office drives changes at the individual, group and firm-wide levels.

Measure and Publish the Results

After the parameters of the office are in place, measurement of the effectiveness of outreach and resolution efforts may begin. A number of quantitative measures related to effectiveness may be determined, including the percent of the population aware of the office, of those who know what issues may be raised, and of those who believe it is an independent, neutral and informal means to discuss and resolve matters within the organization. Such measures, as well as the answers to the survey questions may allow a fine tuning of outreach efforts and improve the ability of the Ombudsman to hear from the population. An important tool in this process was a short on-line survey.

This annual on-line survey was sent to the entire population. It has the advantage of being easily accessible, and because it is a global survey it does not compromise the anonymity of respondents. It consists of multiple choice and open-ended questions, e.g. "What would you like to tell us?" "What can the office do better?" which provided valuable feedback to ombudsman.

Some potential drawbacks of such a survey are that it may not be 100% confidential. While AllianceBernstein uses a third party to collect and compile the responses, it may conceivably be possible to identify who participated in the survey, and may be subject to "crank" responses. The survey must carefully worded and reviewed to avoid biased responses or skewed conclusions.

It is useful to collect the opinion of individuals who sought guidance from the office as well as the respondents and formal offices that are contacted by the ombudsman. This will provide information to target awareness efforts to underrepresented segments of the population, and assess the perceived value of the office on the part of both inquirers and responders. It will allow for feedback to the community about the perceived strengths and weakness of the office and to disclose possible steps to improve ombudsman services. This then provides the foundation for the next incremental adjustments to expectations for the office and for the next assessment of its effectiveness. It will measure which parts of the organization felt that the office gave them information they might not otherwise have been aware of, if coaching on difficult issues was provided, and whether the ombudsman remained informal, impartial and respectful.

By targeting a survey to those who contacted the office as well as those who responded to requests from the ombudsman, one will gain a far more robust perspective. Properly constructed surveys of the organization can yield information about the Ombudsman's effectiveness as well as illuminate areas for the Ombudsman to improve. (See Appendix for sample survey questions)

Since the Ombudsman function is, by its nature, confidential and informal, it is a continuing challenge to demonstrate its value and effectiveness. Most functions in an organization are assessed by measuring what they produce. Some products of an ombudsman office may be increased harmony, strengthening of the formal reporting systems, meaningful change in

practices or policies, a reduction in grievances filed, or an increased commitment to organization. Ombudsmen often speak of the frustration of measuring what did **not** happen as a result of the availability of the informal and confidential services available through an ombudsman. One must begin by establishing a clear definition of the office, continuously communicating the goals and limits of the office throughout the organization, broadly reporting results and inviting the members of the organization to effectively provide feedback on their experiences with the office. These steps will strengthen the understanding of the office's effectiveness and will promote an appreciation of its contributions to the organization at every level.

APPENDIX

Securities and Exchange Commission (http://www.sec.gov/litigation/admin/ia-2205a.htm)

"Alliance Capital* shall establish a corporate ombudsman to whom Alliance Capital employees may convey concerns about Alliance Capital business matters they believe implicate matters of ethics or questionable practices. Alliance Capital shall establish procedures to investigate matters brought to the attention of the ombudsman, and these procedures shall be presented for review and approval by the independent directors of the Alliance Capital funds. Alliance Capital shall also review matters to the extent relating to the fund business brought to the attention of the ombudsman, along with any resolution of such matters, with the independent directors of the Alliance Capital funds with such frequency as the independent directors of such funds may instruct."

* now AllianceBernstein, LP

ALLIANCEBERNSTEIN

AllianceBernstein L.P.
CHARTER OF THE OMBUDSMAN OFFICE

I. Purpose

The Ombudsman of AllianceBernstein L.P. ("Alliance-Bernstein") provides a neutral, confidential, informal, independent, and safe communications channel where any AllianceBernstein employee can obtain assistance in surfacing and resolving Alliance Bernstein work-related issues. In addition, the Ombudsman will receive complaints from AllianceBernstein employees and others regarding accounting, internal accounting controls or auditing matters. The primary purpose of the Ombudsman is to help AllianceBernstein:

- Safeguard its reputation and financial, human and other company assets;

- Maintain an ethical and fiduciary culture;

- Demonstrate and achieve its commitment to doing the right thing; and

- Comply with relevant provisions of the Sarbanes-Oxley Act of 2002, U.S. Sentencing Guidelines, the Order of the Securities and Exchange Commission, dated December 18, 2003, as amended on January 15, 2004 (the "Order"), New York Stock Exchange Rule 303A.10 and other laws, regulations and policies.

The Ombudsman shall seek to provide early warnings and to identify changes that will prevent malfeasance and workplace issues from becoming significant or recurring. The Ombudsman has a reporting relationship to the Chief Executive Officer, the Audit Committee of the Board of Directors ("Board") of AllianceBernstein Corporation and, under certain circumstances, the independent directors of AllianceBernstein's U.S. mutual fund boards.

Any type of work-related issue or complaint may be brought to the Ombudsman, including (i) potential or actual matters involving accounting, internal accounting controls or auditing, (ii) potential or actual violations of laws, rules, regulations or codes of conduct or ethics of AllianceBernstein or its parent companies, or (iii) various other matters, including financial malfeasance, security, inappropriate business practices, compliance, unethical behavior, health and safety and employee relations. The Ombudsman supplements, but does not replace, existing formal channels such as Human Resources, Legal and Compliance, Internal Audit, Security and line management.

The effective functioning of the Ombudsman demands that inquiries be kept confidential. Accordingly, the Ombudsman will not maintain records for the benefit of AllianceBernstein and will refuse access to any confidential data maintained by the Ombudsman Office ("Office"), including seeking a protective order in legal proceedings, unless the protective order is denied and the Ombudsman is ordered by a court of law to produce the records. All conversations with the Ombudsman are strictly off-the-record.

II. Responsibilities and Duties

The responsibilities and duties of the Ombudsman include: (a) issue identification and resolution; (b) issue prevention and change advocacy; and (c) awareness and accessibility, each of which is described more fully below:

A. ISSUE IDENTIFICATION AND RESOLUTION

Issue identification and resolution includes: (i) assisting management of AllianceBernstein in early identification, surfacing and resolution of work-related issues and providing AllianceBernstein's employees with a confidential and anonymous procedure to report, and seek guidance regarding, illegal, unethical or criminal behavior, including, but not limited to, questionable accounting or auditing practices, without fear of retaliation or interference with employment; (ii) ensuring the prompt internal reporting to an appropriate formal channel of any issue brought to the Office that creates an imminent threat of serious harm to individuals or to AllianceBernstein; and (iii) ensuring that the Office's practices adhere to Ombudsman standards of confidentiality, neutrality, informality, independence, and all other modes of operating.

B. ISSUE PREVENTION AND CHANGE ADVOCACY

Issue prevention and change advocacy includes: (i) promptly reporting issue trends and impacts to senior management, the Audit Committee of the Board and, where relevant, the independent directors of AllianceBernstein's U.S. mutual fund boards; (ii) communicating with formal channels such as Legal and Compliance, Internal Audit and Human Resources to share issue trends and risk priorities, and to provide informal guidance in relation to specific investigations undertaken by formal channels; (iii) recommending changes to prevent systemic issues and issue recurrence; and (iv) identifying ways to improve the overall management and corporate governance of AllianceBernstein and its mutual funds.

C. AWARENESS AND ACCESSIBILITY

Awareness and accessibility includes taking steps to: (i) inform all employees of the Ombudsman's role; (ii) make the Ombudsman easily accessible to all employees and others; (iii) encourage employees to report illegal, unethical or criminal behavior; (iv) make all employees aware that they will not be retaliated against for making a report to, or seeking guidance from, the Ombudsman; and (v) create means for making confidential inquiries, through the use of "800" numbers, websites, visits or other methods.

III. Reporting

The Ombudsman shall make reports, while maintaining confidentiality, to the Chief Executive Officer and the Audit Committee of the Board at least annually, and to the independent directors of AllianceBernstein's U.S. mutual fund boards with such frequency as the independent directors may instruct, such reports to include:

- Types, number, trends and impact of issues brought to the Office;
- Demographics of employees using the Office;
- Identification of formal channels that addressed the issues;
- Types of changes resulting from issues surfaced and prevention opportunities; and
- Office effectiveness measures.

Throughout the year, the Ombudsman will provide to staff and business leaders periodic reports, while maintaining confidentiality, in order to inform them of what the Ombudsman is hearing from employees and other inquirers, explain the relevance of such information and provide guidance to staff and business leaders.

In addition, the Ombudsman will promptly inform the head of the relevant formal channel when the Ombudsman reasonably believes that some imminent harm may come to AllianceBernstein or one or more of its employees.

Policies and Procedures for Internal Investigation of Matters Brought to the Attention of the Ombudsman

1. THE OMBUDSMAN OFFICE

The Ombudsman Office at AllianceBernstein L.P. ("AllianceBernstein") provides a neutral, confidential, informal, independent and safe communications channel where any AllianceBernstein employee can obtain information and assistance in surfacing and resolving AllianceBernstein work-related issues. The Ombudsman may receive information from AllianceBernstein employees and others regarding business practices and conduct in all areas including accounting, auditing and internal control issues.

An objective of the Ombudsman program is to be an early warning system and to identify potential changes in business practice that will prevent malfeasance and workplace issues from becoming significant or recurring. The Ombudsman has a reporting relationship to the Chief Executive Officer, the Audit Committee of the Board of Directors of AllianceBernstein Corporation and the independent directors of AllianceBernstein's U.S. mutual fund boards. The Ombudsman will meet with each on an annual basis and at such other times as each may request.

These Policies and Procedures are designed to meet the requirements of Section IV.B.4 of the U.S. Securities and Exchange Commission Cease and Desist Order dated January 15, 2004, to which AllianceBernstein is subject.

2. POLICY STATEMENT

AllianceBernstein offers its employees a number of formal reporting channels where employees can report improper conduct and practices. These formal channels include the Human Resources Department, the General Counsel's Office, the Compliance Department and the Internal Audit Department. The heads of these business units, in addition to certain other senior officers (as set forth below), are hereinafter referred to as AllianceBernstein's "Reporting Channel Heads."

It is AllianceBernstein's policy to promptly investigate all matters that implicate ethics or questionable practices that are brought to the attention of the Ombudsman by AllianceBernstein employees, and as to which the Ombudsman notifies a Reporting Channel Head that the Ombudsman believes require investigation ("Significant Matters"). Subject to the Ombudsman's discretion as to the manner in which these matters are escalated to one or more Reporting Channel Heads (as described under Section 4 hereof), the Ombudsman shall promptly notify a Reporting Channel Head of all Significant Matters.

3. FORMAL REPORTING CHANNELS

Reporting Channel Heads are authorized to conduct investigations; the Ombudsman is not so authorized. The Reporting Channel Heads are:

Legal
Larry Cranch, General Counsel

Compliance
Mark Manley, Chief Compliance Officer

Human Resources
Lori Massad, Chief Talent Officer – Talent Development and Human Resources

Internal Audit
Chris Cheesman, Director of Internal Audit

Global Funds Business
Marc Bryant, Head of Global Retail Legal, (For purposes of these Policies and Procedures, the Head of Global Retail Legal is considered a Reporting Channel Head only if the matter relates to AllianceBernstein's retail business)

U.S. Mutual Funds
Phil Kirstein, Independent Compliance Officer, U.S. Funds (For purposes of these Policies and Procedures, the Independent Compliance Officer of the U.S. Funds is considered a Reporting Channel Head only if the matter relates to U.S. mutual fund business)

The Ombudsman's notification shall include a summary of the facts and circumstances of the matter ("Report"), but only to the extent the Ombudsman deems appropriate while maintaining the necessary informality and confidentiality of the Ombudsman Office in compliance with the Charter of the Ombudsman Office.

4. OMBUDSMAN REPORTING DISCRETION

The International Ombudsman Association Code of Ethics dictates, and effective functioning of the Ombudsman Office demands, that all inquiries directed to the Ombudsman be kept confidential. Accordingly, the Ombudsman, while committed to surfacing issues in order to meet AllianceBernstein's fiduciary and ethical standards, generally exercises discretion over how issues are escalated up to management. For example, the Ombudsman will, whenever possible, recommend that the reporting employee take the matter directly to the employee's line manager or to a Reporting Channel Head. In addition, the Ombudsman may report on a matter to Alliance-Bernstein under the following circumstances:

- The Ombudsman may inform a Reporting Channel Head of trends in a particular department or business unit of AllianceBernstein;

- The Ombudsman may inform a Reporting Channel Head of a specific employee complaint if the employee instructs, or gives permission for, the Ombudsman to do so;

- The Ombudsman may report a specific matter to a Reporting Channel Head when the Ombudsman reasonably believes that some imminent harm may come to AllianceBernstein or one or more of its employees. (In order to make such a report, the Ombudsman may breach the confidentiality otherwise required; AllianceBernstein will make every effort to maintain anonymity of the individual(s) bringing the issue forward, if so requested by the Ombudsman.); and

- Under any of the foregoing circumstances, the Ombudsman may, in his or her sole discretion, report matters directly to the Chairman of the Audit Committee of the Board and where the Ombudsman believes a matter relates to AllianceBernstein's U.S. mutual fund business, the Ombudsman may report a matter directly to the Chairman of the Audit Committee and the Chairman of the Board of Directors of the appropriate fund or funds.

5. INTERNAL INVESTIGATION PROCEDURES

When the Ombudsman reports, or causes an employee to report, a matter to a Reporting Channel Head, the Reporting Channel Head shall adhere to the following procedures:

1.1. The Reporting Channel Head who receives the Report shall promptly alert the other Reporting Channel Heads of the matter; provided, however, that if the Report involves the ethics or questionable business practices of a Reporting Channel Head or a person under his or her immediate supervision, the affected Reporting Channel Head shall not be informed of the Report until an appropriate time, as determined by AllianceBernstein's President and Chief Operating Officer.

1.2. The Reporting Channel Heads shall together determine which Reporting Channel Head is the appropriate person to conduct a prompt inquiry into the facts and circumstances.

1.3. The relevant Reporting Channel Head (in consultation with AllianceBernstein's General Counsel) shall render a preliminary assessment to the other Reporting Channel Heads and to the Ombudsman as to whether the inquiry should be escalated to an "investigation".

1.3.1. If the Reporting Channel Heads deem that no further action is required, and the Ombudsman concurs, the matter is closed. If, however, the Ombudsman does not concur with the Reporting Channel Heads, the matter shall be reported to the Chief Executive Officer for resolution and, if necessary, the Audit Committee of the Board. In addition, any matter related to U.S. mutual fund business shall be reported to the Chairman of the Audit Committee and the Chairman of the Board of Directors of the appropriate fund or funds so that the independent directors of such fund or funds can participate in the resolution.

If the Reporting Channel Heads deem that an investigation should be commenced, the President and Chief Operating Officer of AllianceBernstein shall be briefed on the matter and appropriate resources shall be coordinated as promptly as possible. Reports of the initiation, status, and results of the investigation shall be provided to the members of senior management and/or oversight committees that the Reporting Channel Heads deem appropriate. The Ombudsman shall have access to the Reports. If the investigation relates to U.S. mutual fund business, all such reports shall also be provided to the Chairman of the Audit Committee and the Chairman of the Board of Directors of the appropriate fund or funds.

OMBUDSMAN EXECUTIVE SURVEY

We are conducting a research study to better understand your experience and current relationship with the Ombudsman Office and how that relationship can evolve or improve going forward. Your feedback will go a long way towards helping us create the best possible experience for you.

The survey should only take about 10 minutes of your time. We would like to thank you in advance for your interest and insights.

1. How familiar are you with the office of the Ombudsman at AllianceBernstein?

Very Familiar

Familiar

Somewhat Familiar

Not Very Familiar *[End Survey]*

Not at all Familiar *[End Survey]*

2. How did you first hear about the Ombudsman Office?

a) Brochure

b) Word of mouth

c) Presentation

d) New employee orientation

e) Announcement from Lew Sanders

f) Announcement from my management

g) Website

h) Ethics training

i) Other: _____

3. Has the Ombudsman contacted you in the last 12 months to raise or resolve a specific issue that was brought to her office?

Yes

No *[skip to Q5]*

4. Based on your contact with the Ombudsman regarding the specific issue raised/resolved within the last 12 months, how strongly do you agree or disagree with the following statements:

Strongly Agree

Agree

Somewhat Agree

Somewhat Disagree

Disagree Completely

a) The role of an Ombudsman was clearly explained

b) The Ombudsman maintained strict confidentiality appropriate to her role in discussing the issue

c) The Ombudsman remained neutral throughout the process

d) The Ombudsman was respectful

e) The Ombudsman communicated the issue(s) clearly and in a manner to which you could respond appropriately

f) The Ombudsman helped identify opportunities to address the issue(s)

g) The Ombudsman provided coaching on difficult issues

h) You took action to resolve or investigate the issue following the discussion with the Ombudsman

5. Would you recommend the Ombudsman Office to someone else?

a) Yes

b) No

6. *[Only show if 5=b]* **In the space provided below please indicate why you would not recommend the Ombudsman Office to someone else.**

7. How strongly do you agree or disagree with the following statement: "The Ombudsman Office helps..."

Strongly Agree

Agree

Somewhat Agree

Somewhat Disagree

Disagree Completely

a) Execute our mission and business strategy

b) Fulfill the goals of the fiduciary culture

c) Build trust throughout AllianceBernstein

d) Create a work environment based on our values and principles

e) Send a strong message that AllianceBernstein wants to identify and resolve issues and make appropriate changes

f) Operate within the Code of Business Conduct and Ethics

8. How strongly do you agree or disagree with the following statement: "The Ombudsman Office provides..."

Strongly Agree

Agree

Somewhat Agree

Somewhat Disagree

Disagree Completely

a) Official neutrality

b) An informal, off the record resource for all employees

c) Complete confidentiality

d) Independence from organizational and management structures

9. Have you received reporting and trend analysis from the Ombudsman about issues brought to her office?

Yes

No *[Skip to Q11]*

10. How strongly do you agree or disagree with the following statements: "The Ombudsmans' trend analysis and reporting..."

Strongly Agree

Agree

Somewhat Agree

Somewhat Disagree

Disagree Completely

a) Provide early warning

b) Identify the types of changes taking place resulting from the issues surfaced

c) Provide an opportunity to share best practices

d) Provide information about risk priorities

e) Give you information that you may not hear any other way

f) Provide a good summary of issues brought to the Office and the demographics of the people using the Office

g) Assist the leadership & identify opportunities for improvement

11. Please use the space provided below for any other comments/feedback you would like to share regarding the Ombudsman Office.

OMBUDSMAN EMPLOYEE SURVEY

We are conducting a research study to better understand your experience and current relationship with the Ombudsman Office and how that relationship can evolve or improve going forward.

Your feedback will go a long way towards helping us create the best possible experience for you. The survey should only take about 5 minutes of your time. We would like to thank you in advance for your interest and insights.

1) How familiar are you with the office of the Ombudsman at AllianceBernstein?

Very Familiar

Familiar

Somewhat Familiar

Not Very Familiar *[End Survey]*

Not at all Familiar *[End Survey]*

2) How did you first hear about the Ombudsman Office?

a) Brochure

b) Word of mouth

c) Presentation

d) Letter from the Ombudsman

e) Announcement from CEO

f) Announcement from my management

g) Website

h) Ethics training

i) Other <specify>

3) Have you used the services of the Ombudsman Office?

Yes

No *[skip to Q11]*

4) Would you recommend the Ombudsman Office to someone else?

Yes

No

5) *[Only show if 4=b]* **In the space provided below please indicate why you would not recommend the Ombudsman Office to someone else.**

6) How well did the Office meet your expectations regarding:

Very Well

Well

As Expected

Not Very Well

Not At All Well

a) Timeliness of returned call

b) Respectfulness

c) Development of options to address your concerns

d) Confidentiality of conversation

e) Neutrality

f) Knowledge of company resources, regulations and policies

g) Explanation of an Ombuds' confidential, neutral, informal and independent role

h) Assistance in taking the issue forward

i) Keeping your anonymity

j) Helping you to deal with future concerns

7) Please indicate what you would have done without the Ombudsman Office *(Select the response that most closely represents your answer)*

a) I would not have talked to anyone about the issue

b) I would have not brought up the issues as quickly as I did

c) I would have brought the issue to another department (e.g., HR, Legal, Line, Management, Compliance)

d) I would have brought the issue to someone outside AllianceBernstein

e) I would have left AllianceBernstein

f) I would have changed positions within AllianceBernstein

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8) In the space provided below please explain in detail what you would have done without the Ombudsman Office *[Skip to Q15]*

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9) *[Only show if 7=C]* **Which department of AllianceBernstein would you have brought your issue if there were no Ombudsman?** *[Skip to Q15]*

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10) *[Only show if 7=D]* **To whom outside of AllianceBernstein would you have taken the issue if there were no Ombudsman?** *[Skip to Q15]*

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11) Although you have not used the Ombudsman Office, how strongly do you agree or disagree it is:

Strongly Agree

Agree

Somewhat Agree

Somewhat Disagree

Disagree Completely

a) An option for discussion and guidance about any work-related concern

b) Confidential

c) Informal and off the record

d) Independent of the formal organizational and management structure

---

12) Please use the space below to complete the following statement "I have not used the Ombudsman Office because…"

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13) How likely is it that you would use the Ombudsman Office (in the future) if you have a work related concern?

a) Very Likely *[Skip to Q15]*

b) Likely *[Skip to Q15]*

c) Somewhat Likely *[Skip to Q15]*

d) Not Very Likely

e) Not at all Likely

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14) In the space provided below please indicate why you are not likely to use the Ombudsman Office if you have a work related concern

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15) Please use the space provided below for any other comments/feedback you would like to share about the Ombudsman Office.

Assessing the Cost-Effectiveness of an Ombudsman: A Corporate Case Study

JANET L NEWCOMB

ABSTRACT

This article presents an innovative approach to measuring the value of an Ombudsman's case resolution services. It is based on the actual experience of a former Ombudsman over a three-year period, evaluating 752 cases. The valuation formula was derived in collaboration with the organization's legal department and substantiates cost-avoidance savings of $2,000,000 per year.

KEY WORDS

Ombudsman, Measuring value, Cost-effectiveness, Litigation Prevention, Conflict Resolution, Risk mitigation

INTRODUCTION

Cost-effectiveness is a hot issue in the current economy. Everyone is tightening their belt and large organizations are certainly no exception. Unfortunately, when it comes to cutting costs, some of the most valuable organizational programs lose their funding because it is so difficult to demonstrate a direct relationship between cost and true value.

This article presents a conceptual approach to value measurement based on the actual experience of one Ombudsman in a corporate environment.

BACKGROUND AND ASSUMPTIONS

I first encountered this measurement dilemma in 1995, when I was an Ombudsman for a major Corporation. It was a time not unlike the present — a period of downsizing, mergers and cost-cutting. Every expenditure was closely scrutinized. Intuitively, we knew how valuable the Ombudsman office was — but the financial team wanted to see proof and hard data. I therefore set out to design a way to begin to measure the cost-effectiveness of the Ombudsman function. The following topics were considered for further study of their potential for quantification:

- Prevent litigation and associated expenses
- Prevent/reduce penalties under the U.S. Sentencing Guidelines
- Reduce turnover, especially of highly-skilled employees
- Improve morale and productivity
- Reduce absenteeism
- Prevent sabotage/vandalism/workplace violence
- Save management and administrative time
- Curtail waste, fraud, theft, drug use
- Prevent safety problems

- Recommend system, policy, or process improvements
- Improve communications
- Promote cooperation and teamwork
- Enhance company image

Ombudsman contributions in many of these areas create significant value but are difficult to measure directly and therefore difficult to quantify. Litigation prevention was chosen as the singular focus for this study because we believed it had the greatest potential for significant cost savings to the organization. It is also an area which allows direct application of verifiable cost information, thereby creating a credible basis for estimates of value. The Ombudsman office frequently saves considerable time and expense by resolving conflict before it escalates to formal and costly dispute resolution processes such as litigation. The challenge presented required devising a way to think about such cost avoidance — measuring the value of something that didn't happen!

This article describes the conceptual thought process used to demonstrate a very conservative cost-savings estimate for one Ombudsman over a three-year period. Specific supporting data, while it does exist, have been omitted due to the sensitive aspects of this information and the need to honor the confidential nature of the Ombudsman role. An additional assumption was that the cost of one Ombudsman (salary, benefits, office space, etc.) was more than offset by many other savings associated with the topics which were not documented or quantified in this study.

CASE REVIEW

Fortunately, my education provided me with a general understanding of the law, so I had a good sense of what cases might escalate to litigation if not resolved. I examined 752 cases over a three-year period and determined how many were litigation sensitive, using criteria that could be applied to any Ombudsman case. Only employment-law-related cases presenting high risk for litigation were evaluated, with two or more of the following criteria required for inclusion in the study:

- Client raised a legal issue
- Intent to sue articulated by client
- Client has means to follow through on a lawsuit
- Sophistication

- Limited options
- Previous contact with attorney, EEOC, NLRB, etc.
- Financial/emotional support available
- Facts compelling in client's favor

I then determined how many of these litigation sensitive cases had been resolved in a manner satisfactory to the client. Our Ombudsman office used the following method to code cases upon closure:

Y = Yes, problem solved and client is happy

N* = No, problem not solved (or not completely solved) but client appreciates efforts made and is not indicating an interest in pursuing further remedies.

N = Problem not solved and/or client not happy. Potential risk exists.

Only cases coded Y or N* (defined as positive outcomes) were included in the study.

Considering employment-law-related cases which met two or more of the stated criteria and also were coded Y or N*, I now had identified the number of cases to use in developing a formula for actual cost avoidance. The next question was how to determine what value to apply to the cases that had been identified.

LEGAL DEPARTMENT COLLABORATION

Research regarding the potential cost of employment-law-related litigation revealed a myriad of parameters including the type of case filed, whether or not it is filed in federal or state court (and even which state court), whether or not punitive damages can be awarded, the odds that a case will be settled prior to trial, etc. Rather than attempt to construct a complex mathematical model which takes into consideration all possible outcomes and variables, I approached the corporation's legal department for some assistance with the project. They were able to share with me the average cost of each case they settled, not taking into account the possibility of a court award to the petitioner. Obviously, if cases go to trial, the risks in terms of possible costs and damage to corporate reputation are not only much greater but also much more difficult to predict. We settled on a conservative approach based on actual average costs incurred by the legal department to settle legal claims prior to trial.

An interesting side note was that the legal department had noticed an upswing in *in-pro-per* filings containing facts that did not state a prima facie legal case. The filings did catalogue personal experiences of strong feelings that the petitioner had not been treated fairly. To the legal department, *in-pro-per* filings indicated that a person did not have a strong position or a lawyer would probably have taken the case. As a result of these discussions, we agreed that regardless of whether or not someone had articulated a legitimate legal issue, once a demand letter was received and/or a case was filed, the legal department had to respond and defend the corporation.

CALCULATIONS

Without including sensitive organizational data, the conceptual formula for the three-year period can be summarized as follows:

> Number of employment-law-related cases resolved by the Ombudsman (litigation criteria satisfied and case coded Y or N*)

X
> Average cost per case if settled by Legal Department

—————————————————————————

= Cost Avoidance Achieved by Ombudsman

Using this formula, we were able to substantiate nearly $6,000,000 in cost avoidance savings, or approximately $2,000,000 per year over a three-year period for one Ombudsman. Using this conceptual approach, any Ombudsman office would be able to calculate litigation prevention cost savings by filling in the specific data relevant to their own organization.

RESOLUTION

In my experience as an Ombudsman, I often witnessed two critical underlying issues beneath the surface of most concerns: often someone had not talked to the employee at all, or had communicated ineffectively with them, thus creating a lack of trust and overall feeling of dissatisfaction with the corporation. Unhappy people frequently pursue litigation because they feel they have not been heard and/or treated fairly. With a continued sense of frustration, they see no other options available to them. How does the Ombudsman address these issues? Obviously, helping an employee resolve an issue is the preferred outcome for any case. However, there were many times when a situation could not be changed but, as a result of visiting the Ombudsman Office, the employee gained a better understanding of their circumstances or communication between them and another was improved. Sometimes they felt satisfied with just being listened to, being able to explore options available to them, and/or knowing that sincere efforts had been made to resolve the presenting matter. Under these circumstances, the case could be closed with a clear understanding, even if it was not the complete resolution an employee originally desired. Each of these positive outcomes represents significant cost avoidance.

CONCLUSIONS

Because of the confidential nature of the Ombudsman role, it is often difficult to discuss, let alone publicize, issues brought to the office. Therefore, organizational decision-makers may not understand nor appreciate the pressure-relief-valve function that an Ombudsman provides. Although substantial, the attendant benefits of this service remain invisible to many. The Ombudsman is definitely a valuable function — perhaps even more so during times as difficult as those we encounter now. There are enormous risks inherent in litigation. In addition to potential jury awards (including punitive damages), legal fees, wasted managerial and administrative time, and negative publicity can turn even a "win" into a financial loss. Being successful in today's marketplace means *avoiding* court battles, not winning them. Organizations would be wise to think carefully before removing or downsizing a service that prevents expensive and time-consuming litigation, in addition to promoting enhanced employee satisfaction and productivity. Organizations facing the current economic climate need full engagement of the hearts and minds of every remaining employee.

A Look at the Ombudsman Role in Cultural Change: Part 1

BRIAN BLOCH

ABSTRACT

This short paper raises questions surrounding the organizational ombudsman's role in cultural change. It asks under what conditions an ombuds might be concerned with culture and how he or she would deal with such concern. It also provides a preliminary list of principles an ombuds might consider when contemplating cultural change. Rather than offering many answers, the paper introduces the subject with the hope of stimulating discussion, leading to future articles in this Journal that explore this important topic in detail.

KEY WORDS

Organizational Culture; Ombuds; cultural change, change agent, neutral role, effectiveness.

An organization's culture lies at the essence of its existence. Yet there are numerous challenges associated with examining culture in organizations. The word culture itself is difficult to define, and less clear still is what the organizational ombudsman's role, if any, is in cultural change.

In this article, the first in a series, I will offer some definitions of culture, and then raise questions, list challenges, and suggest principles related to an ombudsman's role in being an agent for cultural change in his or her organization. Rather than offering answers, I hope this article stimulates thought on this important topic. Based on feedback from the ombuds community, subsequent articles in this Journal will address the subject in detail.

What is Culture?

"Organizational culture is probably the most difficult of all organizational concepts to define." (Hatch, 202)

In discussing culture in the context of social theory, Parker et al. in their book, Social Theory: A Basic Tool Kit, attempt a definition: culture, they say, is something that is transmitted nonbiologically, something learned. Culture "… consists of processes and mechanisms which enable the past to be carried into the present and future" (2003, p. 76); it is an influence that has to be applied. Culture "cannot do our living for us. Culture is a bittersweet realm of human self-determination." (p. 78)

For the purpose of this article, I would like to narrow the definition of culture to include only how it relates to organizations. A number of people have attempted to define organizational culture. Edgar Schein offers this well known definition: *"a pattern of basic assumptions—invented, discovered, or developed by a given group as it learns to cope with its problems of external adaptation and internal integration—that has worked*

well enough to be considered valid and therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems." (1985, p.9)

Jennifer Lynch, QC offers a definition that came from Mary Rowe:

> One simple (and profound) definition of culture is that it is "how people treat each other." And how people treat each other when in conflict is its essence. Thus, shifting an organization's attitudes and practices around conflict can fundamentally and positively affect the workplace and its culture. (2001, p. 208)

A number of others have also attempted to define culture[1]. Whatever the word's meaning, we can safely say that culture exists. So despite the lack of a universally agreed upon definition, I will pose questions about culture in light of the definitions listed above.

Questions[2]

What follows is a beginning list of questions the ombuds profession may ask when wrestling with the concept of culture:

- What is (what are) an organization's culture(s)?

- Should an organizational ombuds be concerned about organizational cultures? If so, with respect to what issues or topics?

- Is it ethically and organizationally appropriate for an ombudsman to consciously decide to be an agent of cultural change in his or her organization? Are there times when it would be unethical to not try to change the culture or some aspect of it?

- Is the term "change agent" synonymous with "changing culture"? If an ombuds were to help an organization change a policy, procedure or structure as a response to some systemic problem, is that kind of change agent work the same as "changing culture"?

- What would the ombud's relationship with the leadership in the organization need to be like for the ombuds to consider working in the area of cultural change? Would all the leaders have to agree that change is needed?

- If it is appropriate to be an agent of cultural change, what actually can an ombuds accomplish and under which circumstances? Is there evidence that organizational cultures can be changed by conscious action? If so, have the circumstances under which change has occurred been studied as well?

- Does an organizational ombudsman naturally have some effect on organizational cultures whether or not by conscious design?

- How do organizational cultures affect the ombuds office and its mission? How do the various cultures within an organization affect different ombuds practitioners? Do ombuds consciously or unconsciously adapt to organizational cultures in order to build trust?

- Would the same ombudsman affect two different organizations differently?

- Can an ombuds office's effectiveness be measured in part by its effect on culture(s)? If so, who is to measure that effectiveness? What is the baseline? What are the measures?

Further Questions that Highlight the Challenges of This Effort

- If an ombuds consciously attempted to change some aspect of organizational culture, and if we tried to measure the impact of that attempt, how would we account for indirect influences that may exist? Such influences are nearly impossible to measure. The organizational ombuds, for example, may "plant" memes[3] in the course of his or her interaction with visitors and other stakeholders.

- Organizations have a number of cultures, although one or more of those cultures may predominate. For example, many aspects of culture—attitudes toward women, ethnic subgroups, and class differences—may differ from one department to another. Who decides how many cultures an organization has and how they will be defined?

- One definition of culture previously mentioned is "how people treat each other." Is it possible—or is it only wishful thinking—to actually change how people treat one another? An organization can constrain behavior, and an organization can teach wonderful customer service. Does this fundamentally change how people treat each other?

- Cultures can be—and perhaps always are—in a state of flux. External and internal forces act on cultures and make it difficult to pinpoint exactly what they are, not to speak of understanding the directions they may be going in. Changes in leadership, substantial successes or defeats with respect to the mission of the organization, or external influences like a recession, may challenge a culture's status quo in fundamental ways. How would we account for these sources of influence?

- Who has the right to describe and define an organization's present cultures? Who has the right to decide on conscious cultural change? Is it beyond an ombuds' mandate to do either of these tasks?

Perhaps the most useful question is not *whether* an ombuds will be an agent of cultural change. Could it be more a question of when, with whom, under what circumstances, and why an ombuds becomes such an agent?

Principles

While subsequent articles will elaborate on the details of an ombuds's possible involvement in cultural change, below is a starting list of principles an ombuds might consider when contemplating cultural change:

- Conformance with laws and regulations

- Conformance with company policies

- The organization's espoused values and mission—and the priorities within the organization's mission

- Compliance with the organization's codes of conduct

- Attempts at addressing culture should be sparked by caseload rather than an ombuds' personal beliefs

- Consideration of appropriate timing

It may be equally important for ombuds to re-examine other principles that are often taken-for-granted. As an example, is the prescription "first of all do no harm", an essential principle for an ombuds who is contemplating cultural change? If the culture does change, might that change be costly for some stakeholders?

Culture Happens

In my mind, a discussion on an ombuds' role in cultural change will lead us to ask whether an organizational ombuds, performing to IOA's Standards of Practice, could avoid being an agent of cultural transformation. I doubt it. I would suggest that the nature of the ombuds' work impacts an organization's culture(s) even if the ombuds simply sits in his or her office waiting for visitors to arrive. Neutrality, independence, informality, and confidentiality have an unavoidable impact on an organization. And how much more so if the ombuds actively promotes the activities of the office, regularly offers upward feedback, provides informative annual reports, and intentionally works together with others as a change agent to address various problems.

Further, by enlisting Rowe's above-mentioned definition, which connects culture with how people deal with one another during conflict, it can be argued that since an ombuds deals with conflicts on a regular basis, again, he or she cannot avoid meeting the cultures of the organization he or she is serving. Something is going to happen.

Something—but what? By raising the above questions and taking a first look at guiding principles, I hope to spark some discussion about culture and cultures. Ombuds may want to help their organizations develop cultures that could benefit stakeholders. How that should be done, is a topic requiring further thought.

ENDNOTES

[1] For example, Hofstede, G. (1980) Culture's Consequences: International Differences in Work Related Values, Beverly Hills, CA, Sage Publication; Deal T. E. and Kennedy, A. A. (1982) Corporate Cultures: The Rites and Rituals of Corporate Life, Harmondsworth, Penguin Books.; Handy, C.B. (1985) Understanding Organizations, 3rd Edn, Harmondsworth, Penguin Books.

[2] Many of these questions and the later mentioned "challenges" were gathered as a result of numerous discussions with Mary Rowe.

[3] My thanks to Donald Noack for introducing me to concept of memes: a cultural unit (an idea or value or pattern of behavior) that is passed from one person to another by non-genetic means (as by imitation) (wordnetweb. princeton.edu/perl/webwn)

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Conflict Coaching and the Organizational Ombuds Field

ROSS BRINKERT

ABSTRACT

Conflict coaching is a one-on-one process to develop a client's conflict understanding, interaction strategies, and/or interaction skills. It is relevant to ombuds as they routinely work one-on-one with visitors to develop awareness of conflict interaction and future options. The article introduces the Comprehensive Conflict Coaching model (CCCM) and considers its promise in terms of a history of informal conflict coaching within the field, areas of strong fit between ombuds and conflict coaching, and conflict coaching limitations. The article includes a case and ends with suggestions for related advances in theory, research, and practice.

KEY WORDS

coaching, communication, conflict, ombuds, organization, training

Introduction

Conflict coaching is a one-on-one process to develop a client's conflict understanding, interaction strategies, and/or interaction skills (Brinkert, 2006). Conflict coaching deserves consideration within the ombuds field as ombuds routinely support individual visitors in making sense of their situations as well as identifying and possibly enacting appropriate and effective options. In writing this article, I draw on experience as a conflict coaching training development specialist with ombuds and others as well as my role as a communication scholar. While this article largely focuses on the use of the Comprehensive Conflict Coaching model (CCCM) (Brinkert, 2006; Jones & Brinkert, 2008)—a model that I have been involved in designing—I hope through that example to show the relevance of conflict coaching in general in the work of organizational ombuds. It starts with some background on formal conflict coaching and then overviews the CCCM. The remainder of the article addresses conflict coaching, acknowledges that informal conflict coaching has been used by ombuds for some time, shares an ombuds-coach case example, explores areas of close fit between conflict coaching and organizational ombuds work, points out limitations, and identifies some opportunities for further advancing the ombuds and conflict coaching intersection in terms of theory, research and practice.

Background on Formal Conflict Coaching

Conflict coaching has its most explicit roots in the dispute resolution and executive coaching fields. A one-on-one conflict process first developed in the dispute resolution field in order to provide assistance in cases in which one or both parties did not want to pursue mediation (Tidwell, 1997). Conflict coaching developed in the executive coaching field as it became clear conflict management is an important

leadership competency that an executive coach may address (Kilburg, 2000). In organizational settings, conflict coaching can be used to support any individual in working through conflict. It may also be used proactively in order to transition new members into the organization, develop future leaders, or assist virtually any individual in preparing to handle potentially sensitive issues. Conflict coach models, such as the one explored here have been shared with dispute resolution professionals working in higher education; dispute resolution professionals and EEO managers in the United States government; hospital-based nursing leadership; and ombuds working in corporate, education, government, and healthcare settings. These other models include the Conflict Education Resource Team approach at Temple University (Brinkert, 2002) that involves coaching individuals on different conflict communication modules and the CINERGY approach of Noble (2004) that involves the use of carefully crafted questions to assist individuals in self-determining next steps.

The Comprehensive Conflict Coaching Model

The CCCM incorporates prominent conflict-related literature from across disciplines, can be applied in a wide variety of situations, and is designed to integrate with organizational dispute systems. The CCCM assumes that conflict is primarily communication based (Folger & Jones, 1994). It also assumes a combined systems and social constructionist (Gergen, 1999) foundation, the latter especially as humans are seen making sense and planning action using narratives (Winslade & Monk, 2000 & 2005; Kellett & Dalton, 2001).

The CCCM also rests on a number of more practice-oriented assumptions. While it is intended to be flexible (e.g., movement among stages, time devoted to the process, types of conflicts to which it can be applied, and adaptation to a range of organizational settings), the model is certainly not appropriate as the main mode of intervention for all cases (e.g., addressing serious policy and/or legal violations). Before a coach uses the model, he or she should be clear about obligations to both the direct client (the individual

receiving coaching services) and any indirect clients (other individuals, offices, or organizations who may be arranging, hosting, and/or paying for the coaching service). The CCCM is intended to be used by coaches with a strong knowledge and skill base in conflict management so that they can work in both a facilitative manner (primary) and an expert (secondary) manner. A facilitative approach is meant to emphasize the use of questions for the client to consider and highlights the use of Appreciative Inquiry (Cooperrider & Whitney, 2005) for the client to develop future plans. An expert approach acknowledges that it is sometimes appropriate and effective for the coach to share conflict communication research and theory insights and/or organizational dispute system insights for the client to consider in selecting how to understand his or her situation and/or possibly take action. In addition, the client remains in control of whether or not to apply any coach expertise that may have been shared. It is never appropriate for the coach to force a particular course of action on the client.

The CCCM is a body of knowledge, related skills, and an overall framework that a trained coach can use with a client (or in the case of an ombuds-coach, used with a visitor-client). The model includes an initial conversation, four typically consecutive stages, and a parallel process. *The Preparatory Conversation* includes clarifying the coaching process, determining client-process fit, determining coach-client fit, and deciding whether to commit. *Stage 1: Discovering the Story* involves establishing the initial story. *Stage 2: Exploring 3 Perspectives* consists of using the topics of identity, emotion, and power (three major themes in conflict development and intervention) to gain more insight into the conflict for self and other. *Stage 3: Crafting the Best Story* invites the client to generate a desired vision of what he or she wants to have happen given the exploration that has already occurred. *Stage 4: Enacting the Best Story* is an opportunity for the client to consider skills or resource options for making the best story a lived reality in interaction with others. *The Parallel Process: Learning Assessment* includes the topics of client needs assessment, goal setting, reflection and feedback, and learning transfer that are intended to be addressed throughout the coaching relationship.

The Ombuds Field's Informal Use of Conflict Coaching

Casey (2007) provided a thorough review of the history and development of the ombuds field that is drawn upon here in acknowledging how informal conflict coaching has likely been a notable part of the work of some ombuds since at least the 1970s. Classic ombuds work dates back to the 18th century (Stacey, 1978) and consists of an independent office charged with helping citizens maneuver through government bureaucracy and obtain protection from government injustice. Beginning in the 1970s, the ombuds field experienced a surge of growth with the development of the organizational ombuds (Hill, 1974). These ombuds were put in place by management to handle the conflicts of those internal and external to the organization, particularly the large organization. Forces promoting the rise of ombuds functions included employee relations legislation, the anticipated financial benefits of reducing workplace conflict, and the development of alternative dispute resolution (Ziegenfuss, 1988). Gadlin (2000) pointed out that many issues brought to organizational ombuds were partially interpersonal or relational in nature and, accordingly, these offices provided relatively less formal means for addressing conflicts. Gadlin (2000) added that organizational ombuds were often more involved with working with visitors to clarify conflict dynamics rather than determining facts and making a formal judgment, as is the tendency with classic ombuds.

Kolb (1987) earlier found, even when focusing solely on organizational ombuds, some were relatively traditional fact-finders while others could be described as helpers. Both of these approaches can be seen to have notable overlaps with conflict coaching, with the helper approach arguably more related to it. The fact-finder can be seen to use informal conflict coaching in moving from basic explanation of the ombuds function to hearing the visitor's basic situation to explaining applicable organizational policies and procedures, including options available to the visitor. The helper can be seen to use informal conflict coaching in working with the visitor to consider his or her situation from multiple points of view and explore and possibly adopt an informal approach to addressing conflicts.

More recent work by Harrison (2004a) addressed another ombuds contrast, the design of ombuds offices as facilitating justice or harmony. For Harrison, there was a fairly sharp distinction between the justice orientation of determining truth and assigning blame versus the harmony orientation of smoothing relationships and minimizing blame. Each of these orientations was not depicted as inherently right or wrong. Rather selection ideally represented the goals of the organizational context in which a given ombuds office is embedded since Harrison's research demonstrated that justice and harmony could not be simultaneously achieved to a high degree. In this framework, conflict coaching seems considerably more in line with a harmony approach, as conflict coaching holds open the possibility of the client adopting new interpretive frames, generally considering positive dialog, and directly interacting with other conflict parties in a constructive manner either through mediation or unmediated conversation. From Harrison's perspective, most university ombuds offices were not operating from the harmony orientation and yet greater use of this orientation was conceivable given the understanding that ombuds are agents of organizational change (Wagner, 2000). Harrison's (2000a) work arguably supports additional consideration of conflict coaching within the ombuds field given his suggestions that ombuds consider more one-on-one pre-mediation support, find ways to intervene earlier in the development of conflicts, engage disputants regarding power and emotion dynamics, promote disputant perspective-taking, and generally operate with more awareness of their organizational system.

Ombuds work is closely connected to alternative dispute resolution (Casey, 2007), as is conflict coaching. Even considering the diversity of ombuds practice (Gadlin, 2000), conflict coaching has important commonalities with much of the ombuds field.

Ombuds and Conflict Coaching Case Study

The short case and accompanying description (see below: Case Study) demonstrate how the work of an ombuds can incorporate the Comprehensive Conflict Coaching model. Note that while this example shows an ombuds broadly adopting the CCCM by using it to structure the entire ombuds conversation, it is also conceivable that the CCCM could be used more narrowly by bounding conflict coaching within the larger ombuds and visitor interaction.

CASE STUDY

The initial meeting between the ombuds and student-visitor began with the ombuds explaining her basic function and the student acknowledging that he understood and wanted to go ahead with the meeting.

The student began sharing his current situation. The student sought out the ombuds because he had initially received good grades on a series of assignments (that cumulatively consisted of one third of his final course grade) but then the instructor ran the assignments through a plagiarism database and found that much of the student's work had appeared in others' prior work. The instructor consequently deducted 25% from the student's initial grades on these assignments. A number of other students in the class received similar such penalties. The student did not think it was fair that a whole series of his grades could be changed after they were issued. The student also did not think it was fair to make a claim of plagiarism given that the two or three page papers were so short and, accordingly, arguments had to be so compact virtually ensuring that that much of the paper's content consisted of purely factual information or basic opinion that had appeared elsewhere. Furthermore, the student felt that he had been wronged since no single complete sentence that he had written had appeared in any single prior source.

The ombuds inquired further into how the student made sense of his role or roles in this situation, how he felt about the situation, as well as what power he felt he had and how he was thinking about possibly taking or not taking action. She also asked him to consider these same issues from the instructor's perspective. Basically, he felt angry and even outraged that, as a serious and fairly strong student and an honest person, he ended up in this situation. He knew that he could complain to the department chairperson but was worried that this person would simply take the side of the instructor. He added that he could talk to his advisor, a full professor in the college and someone with whom he felt pretty comfortable, but he was not sure what this person had the power to do. He speculated that his instructor thought he was doing the right thing as a teacher but that the instructor probably didn't fully understand how the plagiarism software worked. Because the instructor probably felt both confident in his initial position and under attack from multiple students, the student assumed that the instructor would stand his ground.

CONNECTIONS TO THE CCCM

Preparatory Conversation: The ombuds-coach and visitor clarify role and process limits as well as visitor commitment before actually starting with content concerns.

STAGE 1

Discovering the Story: The ombuds-coach elicits the visitor's initial story to promote the visitor's own processing of the situation and provide the ombuds-coach with the basic detail needed to begin to be helpful.

STAGE 2

Exploring 3 Perspectives: The ombuds-coach invites reflection on identity, emotion, and power themes for self and other so that the visitor and ombuds-coach get a fuller understanding of the situation and what might need to be taken into account for a positive outcome to be achieved.

The ombuds then asked the student to consider his ideal outcome in the situation. The student expressed that he wanted to resolve the issue with his instructor and maintain a civil relationship with him. He also wanted to get a good grade in the course and graduate with a strong overall grade point average so that he was able to gain entry into a highly ranked and competitive graduate program.

STAGE 3

Crafting the Best Story:
The ombuds-coach invites the visitor to articulate a desired outcome given all of the previous exploration.

The ombuds felt compelled at this point to clarify some policy and procedural assumptions that the student seemed to have made in their conversation thus far. According to university policy, there was no statute of limitations on charges of plagiarism and, therefore, it was in the instructor's purview to make a charge of plagiarism after the papers had been marked and returned to the student. Regarding the issue of whether it was possible to be guilty of plagiarism even if no intact unattributed sentence could be found, the ombuds indicated that such a claim of plagiarism might still be justified, as is sometimes found with instances of patchwork plagiarism. However, even though the instructor had the authority to charge plagiarism in this case, he did not hold the authority to penalize the student to any degree without submitting formal paperwork to the university senate and triggering a formal notification to the student, including clarification of a formal appeal process. Therefore, given the facts of the case as shared by the student, the instructor in this respect made a breach, but not uncorrectable breach, of university policy. Finally, plagiarism charges were handled on a case-by-case basis and it did not matter, at least for the formal challenge process, whether others might also be formally charged for similar alleged offenses.

STAGE 4

Enacting the Best Story
The ombuds-coach's move to clarify policy and procedural assumptions is not required in this stage; however, it is generally accounted for given the understanding that the conflict coach will sometimes speak in an expert as opposed to facilitative voice. (Alternatively, the ombuds-coach could have shared these insights earlier in the conversation.)

The ombuds noted some major opportunities available to the student at this juncture in their conversation. One option was to spend additional time clarifying university policy and procedure concerning plagiarism allegations between an instructor and a student. A second option was to discuss the possibility for the ombuds to directly intervene with the instructor. A third option was to explore other third party dispute resolution options available inside and outside the university, including mediation. A fourth option was to explore the viability of the student directly interacting with the instructor regarding the issue and possibly preparing the student for a specific student-instructor conversation. The ombuds also expressed a willingness to consider other options as well, including the student's possible decisions to prepare to speak to his advisor or to simply end the ombuds visit with the insights gleaned thus far.

STAGE 4

Enacting the Best Story (cont):
The ombuds-coach's statement about the client's possible next steps is a more standard example of what would be covered at the beginning of a stage 4 conversational segment. Presumably, the ombuds-coach and client would go on to develop the visitor's directional choice.

A Close Fit between Ombuds Work and Conflict Coaching

There are some specific aspects of ombuds work and conflict coaching that are very closely aligned. Because conflict coaching is one-on-one, a client can freely "think out loud." This level of informality is one of the hallmarks and perhaps one of the key visitor and organizational benefits of an ombuds process, especially that visitors do not put the organization on record. An additional benefit of both processes is that most working in these areas would agree that conflict matters are often best handled at the lowest possible level. Using conflict coaching approaches, the ombuds-coach can assist in developing the visitor-client's knowledge and skills so that this person can appropriately and effectively take action on their own or consider the use of other processes and resources that empower the visitor through a high degree of direct involvement. Conflict coaching is desirable for many ombuds as they frequently find that only one party in a dyad seeks conflict assistance and/or as ombuds seek a sound basic structure for virtually all visitor meetings. Finally, conflict coaching may be appealing as ombuds look for knowledge, skills, and frameworks that allow them to be more proactive with visitors.

Limitations of Combining Conflict Coaching and Ombuds Work

There are certainly some hard limits and areas of sensitivity for ombuds who are considering blending their work with conflict coaching. My experience co-training a large group of ombuds at a recent IOA conference indicated that while most in the IOA embrace an organizational ombuds model, some embrace an advocacy philosophy or incorporate discrete instances of advocacy practice with visitors. Just as clarity regarding neutrality and advocacy is important for those working as ombuds so it is important for those working as conflict coaches. Given that conflict coaching, in part, arranges conflict communication knowledge and skills so that it can be shared with visitor-clients, ombuds-coaches need to make sure that they are adequately familiar with this material. Conflict coaching is most likely less relevant to classic ombuds as well as organizational ombuds working from a fact-finding (Kolb, 1987) orientation. Also, it is most likely less applicable to issues that are predominantly concerned with policy and procedure rather than communication considerations. Finally, adoption of conflict coaching by ombuds should proceed with care so that documented lack of clarity about the office (Harrison, 2007) is ameliorated rather than intensified.

Some Priorities for Advancing Theory, Research, and Practice in this Area

This article is primarily intended as a modest addition to other work from a communication standpoint (Harrison, 2004a, 2004b, 2007) that seeks to examine and develop the ombuds field. In terms of advancing conflict coaching among ombuds, the following suggestions represent a partial list. *Theory* – More can be done to elaborate the theoretical fit and possible tensions between models of organizational ombuds work and models of conflict coaching. *Research* – First and foremost, the model's effectiveness needs to be investigated (bearing in mind that success in the ombuds process is difficult to determine and requires additional inquiry (Harrison, 2004b)). Also, it would be valuable to investigate how ombuds who are trained in the in conflict coaching apply it, if at all, in their work and to document larger organizational implications when conflict coaching is formally adopted either within the ombuds function or elsewhere. *Practice* – Upon determining the best practices of ombuds who use conflict coaching, it would be helpful to, in turn, to share these with others in the field.

Conclusion

The general description of working one-on-one with a party in conflict to develop a person's conflict understanding, strategies, and skills clearly applies to the work of ombuds as well as conflict coaches. The proposal and continued development of conflict coaching is therefore relevant to the ombuds community. Conflict coaching may informally influence the practice of ombuds or be more systematically

introduced. Whether it has any impact at all on the work of ombuds and visitors, it provides an interesting new lens through which to consider the ombuds role. More ambitiously, the intersection of conflict coaching and ombuds work may be intriguing and valuable both for how the ombuds field can possibly develop through exposure to the larger ADR community and for how the ombuds field can contribute to the growth of effective conflict management beyond its own bounds. Most importantly, it may offer visitors and organizations an enhanced means of managing conflict.

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An Ethical Privilege:
The Case for a Statutory Privilege for the Organizational Ombuds

ANDREW LARRATT-SMITH

ABSTRACT

Organizational ombuds can assure confidentiality… until they are subpoenaed. Then they must attempt to convince a court that their communications are privileged — exempt from disclosure. Although ombuds are deserving of a privilege as an essential component of their ethical practice, the current legal status of the ombuds privilege is inconsistent and precarious. This article appeals to legislatures, advocating that statutes are required to secure the privilege, and considers how such statutes might be drafted.

KEY WORDS

Organizational Ombuds, Privilege, Confidentiality, IOA Standards, Ethics

I. Introduction

Organizational ombuds work within organizations to facilitate the resolution of complaints.[1] In order to perform their duties they claim a legal exemption or privilege from the requirement to disclose confidential information as evidence in court proceedings, similar to privileges extended to attorney-client, spousal and priest-penitent relationships.[2] This paper argues that legislatures should enact a statutory privilege and provides a preliminary outline of what this legislation should contain.

II. The Role of the Organizational Ombuds

Perhaps no profession is more misunderstood than the organizational ombuds.[3] In addition to the strange name, this confusion results from significant differences between organizational ombuds and the classical ombuds from which they have evolved.[4] Most classical ombuds are employed by governments to address complaints primarily from the public. In contrast, organizational ombuds work inside organizations, often large corporations or universities, to address complaints raised primarily by internal constituents, such as employees or students. These internal constituents are inherently more vulnerable, because unlike members of the public, their reputation, relationships, and status within the organization may suffer as a result of the process. Due to the greater vulnerability of internal constituents, organizational ombuds use different mechanisms from classical ombuds for solving problems.[5] They do not conduct formal investigations, but rather rely on informal methods.

A typical case begins when a complainant contacts the ombuds office with a problem or question. The organizational ombuds will meet with a complainant privately. The ombuds listens to the complainant, helps the complainant articulate goals and interests, and explores various options for seeking resolution. The ombuds avoids recommending any particular action but rather assists the complainant in evaluating options and making an informed choice. Based on what the complainant chooses to do, the ombuds may seek information, refer the complainant to other resources, coach the complainant in how to address the problem directly, engage in shuttle diplomacy, conduct a mediation session, or take some other action. Some, but not all cases involve dispute resolution.[6]

Since organizational ombuds rely on the initiative of complainants and the cooperation of management, their ability to function depends on their reputation as trustworthy and ethical professionals. Consequently, organizational ombuds adhere to a strict framework of ethical principles.[7] Understanding this ethical framework is critical to understanding the role of the ombuds and the need for a privilege.

The International Ombudsman Association ("IOA") defines four pillars of an organizational ombuds' ethical framework: 1) confidentiality, 2) neutrality, 3) independence, and 4) informality.[8]

1. CONFIDENTIALITY

Confidentiality, the commitment of the ombuds not to disclose, is central to the role.[9] Most other management-sponsored dispute resolution mechanisms lack true confidentially. Once a complaint has been made, the organization is officially on notice. Complainants have lost control and run the risk that management's response will exacerbate the problem. Consequently, complainants may choose not to use these formal channels or may wait, allowing a minor conflict to escalate into a far more damaging crisis.

Ombuds, by contrast, do not treat disclosures as formal complaints and maintain confidentiality as they assist complainants in evaluating their options or coaching them in dispute resolution skills.[10] Ombuds may engage in informal shuttle diplomacy or mediation, but only with permission from the complainant and other parties involved.[11] Furthermore, while

ombuds may issue reports to management that can then be used by management to address structural concerns and patterns, these reports must contain only anonymous aggregate or representative information. Ombuds keep no records containing identifying information.[12]

The concepts of confidentiality and privilege, though distinct, are related and often confused. Confidentiality is the commitment not to voluntarily disclose information without permission. A privilege is a legal exemption from the requirement to disclose confidential information as evidence in a formal procedure such as a courtroom trial or administrative hearing. The IOA standards assert a privilege as part of the confidentiality standards.[13] This privilege belongs to the ombuds office and it cannot be waived by other parties.[14]

2. NEUTRALITY

Neutrality or impartiality requires that ombuds offices remain unaligned in every dispute.[15] Impartiality frees parties to engage the process without concern that the ombuds will take sides. Ombuds are also discouraged from taking on additional roles within the organization that might compromise their actual or perceived neutrality.[16]

When an ombuds is forced to provide evidence in an adversarial process that will inevitably assist one side over another, the neutrality of the ombuds is undermined. The ombuds will be perceived as taking sides and thus a privilege is an important means of maintaining ombuds' neutrality.

3. INDEPENDENCE

Independence is closely related to impartiality. Ombuds are charged by the organization to remain neutral and yet are inherently vulnerable to coercion from the organization itself because the organization controls the ombuds' employment and budget. Thus the ombuds office must be granted a high degree of independence so that it will not be co-opted by other functions of the organization.[17] Best practices require that ombuds offices report directly to the highest levels of the organization.[18]

An ombuds' independence can be threatened when forced to provide evidence in an adversarial process. The ombuds may appear too closely affiliated with the organization if the evidence is sought by the

organization or if the evidence supports the organization. If the ombuds provides evidence that hurts the organization, the organization may be tempted to limit the ombuds' future independence. A privilege protects the ombuds' independence by circumventing these threats.

4. INFORMALITY

Organizational ombuds do not make determinations and do not participate in any formal processes involving investigations, adjudications, or compliance.[19] The ombuds process supplements, but does not replace other formal processes.[20] This commitment to informality represents a significant departure from the classical ombuds model that emanates from a concern that formal processes threaten confidentiality, neutrality, and independence when complainants are internal constituents of the organization.[21]

Informality has an obvious relationship to privilege. Without a privilege, ombuds cannot entirely avoid participation in formal processes. Ombuds can avoid participation in formal proceedings sponsored by the organization, but not those adjudicated by the state. Unfortunately, conflicts requiring state intervention tend to be adversarial, drawn out, and public. These are precisely the type of formal proceedings that have the greatest potential to tarnish the ombuds' reputation.

III. The Foundation for Establishing A Privilege

Though organizational ombuds assert a privilege in order to maintain ethical standards of practice, courts are hesitant to grant privileges. The general rule is that "the court is entitled to every man's evidence."[22] Thus there is a presumption against a privilege and there must be a compelling reason for granting one. To determine privilege, federal courts have embraced a test articulated by John Henry Wigmore in his famed treatise on evidence.[23] While the Wigmore test is not binding on the legislature, it provides a useful framework for analysis of the ombuds privilege.[24] The Wigmore test requires that (1) the communication must be one made in the belief that it will not be disclosed; (2) confidentiality must be essential to the maintenance of the relationship between the parties; (3) the relationship should be one

that society considers worthy of being fostered; and (4) the injury to the relationship incurred by disclosure must be greater than the benefit gained in the correct disposal of the litigation.[25] These factors are met when applied to the ethical practice requirements of organizational ombuds.[26]

A. PARTIES DO ANTICIPATE THAT COMMUNICATION WILL NOT BE DISCLOSED

Confidentiality is the hallmark of the ombuds process and the reason many complainants choose the ombuds office instead of initiating formal action.[27] However, some have argued that the need for confidentiality does not rise to the level of requiring a privilege. In *Carman v. McDonnell Douglas Corp.*, the court distinguished between confidentiality and privilege on the basis that users of ombuds services expect confidentiality, but generally are not anticipating litigation when they communicate with the ombuds.[28] This reasoning has two faulty assumptions.

The first is the assertion that parties do not anticipate litigation. Organizations know that internal conflicts produce litigation. They employ attorneys and establish budgets to support their work. In fact, a predominant reason for establishing an ombuds office is the reduction of litigation expenses.[29] If complainants are sufficiently frustrated to seek out assistance from a stranger, the potential for litigation has likely crossed their mind. Furthermore, one of the primary functions of the ombuds is to assist complainants in weighing various methods of resolving disputes, including legal options.[30] The potential for litigation is the backdrop to the ombuds process.

The second faulty assumption is that parties distinguish between confidentiality and privilege. When parties are informed that communication is confidential, they may expect non-disclosure under all circumstances, whether or not they anticipate litigation.

B. CONFIDENTIALITY MUST BE ESSENTIAL TO THE MAINTENANCE OF THE RELATIONSHIP BETWEEN THE PARTIES

Confidentiality is a central attribute of the ombuds program, and precisely what distinguishes it from formal dispute resolution processes.[31] But some, most prominently the *Carman* court, have argued that a privilege is unnecessary because confidentiality

is sufficient to assure the participation of complainants and the continued operation of ombuds offices without a privilege would seem to reinforce this argument.[32]

However, the ongoing participation of parties in ombuds programs can also be explained by an uncertain presumption of privilege. While there is currently no certain privilege, there is also currently no certain absence of privilege. Instead, an uncertain privilege exists because parties do not distinguish between confidentiality and privilege, ombuds maintain a colorable legal claim to privilege, and ombuds are not called upon to produce evidence frequently enough to draw attention to the matter. If confidentiality without privilege is truly sufficient then ombuds offices would not be impaired by a change in circumstance that results in a certain and widely recognized absence of privilege. Otherwise, the ombuds ability to function currently rests in a precarious state.[33]

Privilege cannot be separated from confidentiality and the other ethical principles because forcing the ombuds to testify publically undermines the ethical structure of the ombuds office. The ombuds' ability to maintain confidentiality in future complaints is challenged. Neutrality and informality are also compromised when ombuds are forced to provide evidence in a formal adversarial process that will inevitably assist one side over another. Independence is threatened regardless of whether the evidence helps or harms the organization, as the ombuds office either may be perceived as too closely affiliated with the organization, or may find the organization limiting its future independence.

The precarious nature of the privilege puts ombuds in an ethical bind about how to counsel parties regarding confidentiality. Perhaps they should issue "Ombuds Privilege Miranda" warnings (e.g. "I will not voluntarily share confidential information, but in the case of litigation I may be required to divulge anything you communicate to me.") Such warnings create further ethical questions. Are ombuds liable for malpractice if they do not issue such warnings? A related question is what level of warning is appropriate? An understated warning could fail to provide sufficient notice, but an overstated warning chills communications. The ombuds is torn between the competing interests of informing the party, eliciting information and avoiding liability.

The only other option is for the ombuds to commit not to disclose regardless of the circumstances. The ombuds then faces the possibility of being held in contempt out of a commitment to ethical practice.[34]

C. SOCIETAL BENEFITS OF AN OMBUDS OFFICE

Workplace conflict is costly. Negative outcomes of conflict include: sickness, stress, turnover, distrust, apathy, loss of productivity, and litigation.[35] These outcomes are not limited to the individuals in conflict but create a ripple effect impacting the organization itself, and the broader society.[36] The outcomes tend to be gradual, pervasive and difficult to measure in quantitative terms, but one survey estimates that the average American worker spends 2.8 hours per week addressing conflict.[37] By reducing workplace conflict and the ripple effect of negative outcomes, ombuds benefit complainants, organizations and society at large.[38] By confidentially assisting parties solve problems and making referrals, ombuds deliver societal benefits even in circumstances where there is no explicit conflict. For instance, ombuds deliver societal benefits when they refer employees to employee assistance programs.

The *Carman* decision questioned whether ombuds actually deliver the societal benefits they promise.[39] There are three answers to this concern.

First, a system of ensuring effectiveness is already built into the design of the ombuds program, because ombuds programs will survive only if both the organization and complainants continue to perceive benefit. Essentially each party has a veto on the program. The organization can veto by ceasing to fund the program. The complainant's veto comes in the form of usage control since the program is voluntary.

Second, requiring ombuds to prove their effectiveness before granting them a privilege is circular, because it assumes that effectiveness is not dependent upon an expectation of privilege.[40]

Finally, evidence of effectiveness is available. Despite the difficulty of identifying, tracking and quantifying benefits, which by their nature are spread throughout and beyond the organization, ombuds have conducted conservative cost-effective assessments that consider only the most easily identifiable financial saving to the organization.[41] Results range from solidly covering the cost of the ombuds office to saving nine and a half times the cost of the office.[42]

D. BALANCE OF HARM AND BENEFIT

Granting a privilege has implications. The most obvious concern is the potential loss of important evidence.[43] Another concern is the potential that a privilege could provide cover for management wrongdoing.[44]

1. The Loss of Evidence is Minimal

The quality of evidence lost by granting organizational ombuds a privilege is minimal. The ombuds process is optional, informal, and produces no specific records or findings. In other words, the locus of the conflict exists elsewhere within the organization and the conflict should follow better-documented formal dispute resolution channels before escalating to the point where the state becomes involved. Consequently, the evidence of the ombuds should provide little additional value to evidence available elsewhere within the organization.[45]

Furthermore, any relevant evidence available exclusively from the ombuds office was likely provided under an expectation of non-disclosure.[46] To compel such evidence is to destroy the grounds upon which it exists.

In exceptional circumstances, such as a threat of imminent harm, an over-riding concern outweighs the expectation of confidentiality.[47] Such exceptions already exist for the ombuds' general duty of confidentiality.[48] They have less relevance to privilege because evidentiary hearings usually take place long after the threat has passed. Nonetheless, exceptions can be specifically identified and applied to the ombuds privilege, just as they are in other privileged relationships.

2. Ethical Practice is the Best Protection Against Bias

Perhaps the greatest resistance from courts to granting ombuds a privilege is the concern that they will shield inappropriate organizational influence on the ombuds from the scrutiny of the courts.[49] This is predominantly an issue of the ombuds' independence, but it also involves broader concerns about the ethical integrity of the ombuds program design given that organizations design the programs, employ the ombuds and thus exert asymmetrical power.

A small number of organizations may try to gain an unfair advantage over their employees by deliberately appointing an ombuds who will show partiality to the interests of the organization. Other dispute resolution processes, most notably arbitration, have been similarly abused.[50] A privilege would not only shield these programs from scrutiny but could incentivize their creation. Of perhaps even greater concern is the possibility that organizations will implement ombuds programs that are well-intended but poorly designed, lacking adequate safeguards to assure the ombuds' independence, confidentiality, impartiality and informality. Such an outcome appears not unlikely given the nature of the ombuds field, namely its history of innovation and evolution, its multiple definitions and the widespread public ignorance of the field.

These concerns are real. As a practical matter, perfect ombuds independence is impossible as long as the organization is financially responsible for the program and has the ability to terminate the ombuds. However, adherence to independent professional codes of behavior, such as those published by the IOA provides ombuds sufficient independence to maintain confidentiality and neutrality.[51] These practices include shielding the ombuds from reporting relationships within the operational management hierarchy, imposing limitations on the organizations ability to interfere with the staffing and budgeting of the ombuds office and providing ombuds with independent legal counsel.[52]

Under such safeguards, direct employment of an ombuds counter-intuitively provides greater assurance of independence than hiring an "independent" outside contractor. The organization can influence an external contractor by quietly shifting work to a competitor on pretext, whereas taking disciplinary action against its own internal ombuds will have much higher visibility and cost. Consequently, outside contractors will feel greater systemic pressure to inappropriately favor the interests of the organization.

By adhering to IOA standards, ombuds remain within the established boundaries of ethical practice and organizations avoid the danger of creating a process with the name "ombuds" but without its protections. Within the confines of the IOA standards, the organizational ombuds potential for causing irreparable harm is relatively low as compared to other forms of dispute resolution. Under IOA standards the use of an ombuds is voluntary, ombuds do not participate in formal proceedings and ombuds do not make or impose decisions.[53] Arbitration by contrast is binding and obstructs access to the judicial system. In other words, the greatest danger for abuse lies in imposter

processes masquerading as ombuds' processes and not in the ombuds process itself. Adhering to IOA ethical standards addresses this imposter threat.

In summary, the application and enforcement of professional standards is the best way to ensure that evidentiary "fishing expeditions" do not compromise the benefits of the ombuds program and that organizational management does not exert undue influence.

IV. The Current State of Privilege for Organizational Ombuds

There are three possible foundations for an ombuds privilege: statute, common law and constitution. In some jurisdictions, ombuds may also qualify for a mediator's privilege.[54]

A. STATUTORY PRIVILEGE

Currently no legislature (state or federal) has enacted a statutory privilege for organizational ombuds, although several legislatures have approved privileges for classical ombuds appointed to serve those legislatures.[55]

B. COMMON LAW PRIVILEGE

The precedent for an ombuds privilege under common law is sparse, inconsistent and uncertain. Federal law does allow for the existence of common law privileges, but some states have enacted statutory provisions explicitly precluding all common law privileges.[56] In *Kientzy v. McDonnell Douglas*, the federal court for the Eastern District of Missouri applied the traditional test for privilege – the Wigmore factors, to the McDonnell Douglas ombuds program.[57] Finding that each of the factors was present, the court determined that an ombuds privilege existed.[58]

However, six years later in *Carman*, the Eighth Circuit Court of Appeals determined that the same McDonnell Douglas program, involving the same ombuds officer, failed to present sufficient evidence to establish a privilege.[59] How much of the ombuds common law privilege remains after *Carman* is open to debate.[60] The *Carman* decision includes language suggesting that an ombuds privilege might never be justified. [61] Indeed, several unpublished opinions cite *Carman* to state flatly that there is no ombuds privilege.[62] However, the language criticizing the ombuds privilege per se does not appear to be the basis of the court's decision, making it *dicta*, or mere opinion without precedential authority. Instead, the *Carman* court based its denial of a privilege to the McDonnell Douglas ombuds on the basis that McDonnell Douglas failed to present adequate evidence. This reasoning leaves open the possibility that some other ombuds program could theoretically present sufficient evidence to achieve the privilege, but what would qualify as sufficient is unclear.[63]

C. CONSTITUTIONAL PRIVILEGE

There is no ombuds privilege included in the federal Constitution. However, states each have their own constitutions. In *Garstang v. Superior Court*, the California Court of Appeals found a qualified ombuds privilege applied under a right to privacy guaranteed under the California Constitution.[64] However, the holding of privilege under *Garstang* can be read very narrowly. First, the privilege is qualified and thus does not apply if the confidential information sought is "directly relevant to the… litigation" and "there is a compelling public need" for discovery that outweighs the privacy interest.[65] Second, *Garstang* precedes *Carman*.[66] Though, *Carman* is not binding on *Garstang*, it nonetheless casts a shadow over the ombuds privilege. Finally, the communications took place during a mediation conducted by the ombuds.[67] The ombuds would have qualified for mediator's privilege except that she had failed to obtain the informed written consent of the parties to the privilege, a statutory requirement that had been eliminated by the time the appeals court heard the case.[68] Thus, one reading is that *Garstang* was simply a narrow fix to grant the ombuds the mediator's privilege she would have been entitled to under the updated statutory requirements.

D. MEDIATOR'S PRIVILEGE

Courts might determine that ombuds activities qualify for a mediator's privilege depending on how broadly that jurisdiction's mediation privilege is defined.[69] This option was not available in *Garstang*, because of the written consent requirement, but might be available now that this requirement has been eliminated in California.[70] But this theory has not been tested, and courts may distinguish between mediators and ombuds.[71]

In sum, the current status of the ombuds privilege is unclear and precarious. Organizational ombuds have various legal grounds on which to assert a privilege, but none of them is certain or universal.

V. The Need for Legislative Action to Establish an Ombuds Privilege

For the reasons listed below, the best solution to this current instability is legislative action to establish an ombuds privilege based on consistent application of ethical standards:

1. Some jurisdictions do not allow privileges to be established through common law.[72]

2. Legislation addresses the problem proactively and uniformly within a jurisdiction.

3. The legislative process allows the need for and scope of a privilege to be thoroughly investigated. Courts address only the dispute at hand and may be susceptible to general misconceptions about organizational ombuds.[73] The question of an ombuds privilege is usually a peripheral question of evidence to which an organization's legal department may be disinclined to commit significant resources.

4. Legislative action can bring predictability and stability to a field marked by judicial inconsistency.

5. Uniformity, predictability and the legislature's endorsement reinforce the benefits of ombuds programs and will encourage their use.

6. By making the privilege contingent on ethical practice, the legislature can reinforce ethical behavior.

7. A clear statutory standard would reduce the costly evidence production required to establish privilege on a case by case basis, de novo at each trial and on appeal, and according to an uncertain standard.[74]

VI. Constructing a Privilege

Any ombuds privilege will need to be carefully drafted, ideally by a committee involving ombuds experts along with other interested parties in order to create a robust statute representing a broad constituency.[75] The drafters should address the following questions:

To whom does the privilege belong?

What conditions should exist to trigger the privilege?

When should exceptions apply?

A. OWNERSHIP OF THE PRIVILEGE

A bifurcated-holder privilege, recommended by Alan Kirtley for mediators, best serves the interests of all the parties and the ombuds.[76] Under a bifurcated-holder privilege, privileges would be held by each of the parties themselves and by the ombuds.[77] Privilege as to evidence sought from ombuds would be waived only with the agreement of all the parties present and the ombuds.[78] Privilege as to evidence sought from parties would be waived only with the agreement of all the parties, but would not require the agreement of the ombuds.[79] This configuration protects the ombuds from being compelled to provide evidence, which can compromise the perception of the ombuds' ongoing neutrality and confidentiality with future complainants, but makes evidence from parties about the ombuds process available where there is unanimously agreement among the parties.[80]

B. OMBUDS PRIVILEGE CONTINGENT UPON ETHICAL PRACTICE

The ombuds' privilege should be contingent on ethical practice. The test for ethical practice should be a relatively straightforward determination by courts that avoids both disclosure of the matter the privilege is intended to protect, and the current costly, fact-intensive, showing of evidence.

The court should grant the ombuds a rebuttable presumption of privilege if the program can be shown to conform to established general standards of ethical practice.[81] The legislature should provide specific parameters as to what constitutes evidence of ethical practice to ensure consistent application. Careful thought should be given to how much discretion courts should be granted to consider factors beyond these parameters. Broader discretion would allow for greater flexibility under changing circumstances but could also generate inconsistent results.

The evidence parameters could be framed in terms of credentials, principles and/or standards. Credential-based evidence would include an ombuds charter defining standards of practice for that program, the charter's conformity with industry standards and

certification or accreditation by a reputable ombuds association.[82] Principle-based evidence would show that the program's standards sufficiently protect the principles of independence, neutrality, confidentiality and informality.[83] Standard-based evidence would establish the program's adherence to specific standards, for example the locus of the ombuds office outside the operational management hierarchy or abstention from formal investigations.[84] Greater emphasis on credential-based evidence provides flexibility by relying upon the standards maintained by associations such as the IOA and American Bar Association, whereas emphasis upon standard-based evidence provides specificity by mandating standards by statute.[85]

Once the ombuds establishes a presumption of privilege, the party challenging the privilege should have an opportunity to rebut the presumption but only by presenting substantial evidence that the ombuds program has violated its ethical standards of practice, either generally or in the relevant circumstances. Such evidence would be presented *in camera,* or in private, to preserve the integrity of the privilege.[86]

C. EXCEPTIONS

There are two categories of communications to which the statutory privilege should not apply. The first are communications that fall outside the definition of privileged communications. The second are communications that would otherwise qualify as privileged communications but are given an explicit exception.

1. Outside the Definition

The privilege would apply only to confidential communications between ombuds and other parties. Examples of communications that fail to meet this definition include:

a. Communications with an ombuds operating outside the core ombuds role. An example might be performance reviews issued by an ombuds in the role of supervisor of ombuds' office staff.[87]

b. Annual reports to the organization, containing no identifying information.

c. Testimony explaining the ombuds' job functions.[88]

2. Explicit Exceptions

Explicit exceptions may either be enumerated specifically or defined loosely under circumstances of "manifest injustice." In drafting the Uniform Mediation Act (UMA), mediators strongly resisted the "manifest injustice" alternative, concerned that it could become the exception that swallows the rule, fearing that courts would use it as a convenient excuse to admit evidence.[89] Such concerns are even greater with the ombuds process because courts are less familiar with it and have not granted it the favored status of mediation.

Enumerated exceptions that should be considered and debated include:

1. Party contracts. Parties and the ombuds could explicitly contract out of privilege in advance.

2. Information covered by an open records act.

3. Threats to inflict bodily injury or commit a crime of violence.

4. Evidence of a felony personally witnessed by ombuds staff.[90]

5. Communications used in a malpractice or disciplinary claim against the ombuds. Ombuds should be given the same opportunity as attorneys to defend themselves.[91] Also, precautions should be taken to prevent parties from tacking on a frivolous malpractice charge against the ombuds to their claims as an end run around the privilege statute.

VII. Conclusion

Organizational ombuds deliver significant benefits to organizations, complainants and society at large by providing a confidential and informal mechanism to resolve disputes quickly and inexpensively. However, realization of these benefits depends upon the necessary trust and cooperation of the parties, which is maintained by confidentiality and ethical practice. Without a robust privilege to ensure confidentiality, the profession relies upon the fragile and inconsistent protection of the court. Every state legislature should act to protect the benefits ombuds deliver by establishing a statutory privilege contingent on ethical practice.

ENDNOTES

1   Sara Thacker, Good Intentions Gone Astray: How the ABA Standards Affect Ombudsmen, 2 J. Int'l Ombudsman Ass'n, 65, 65 (2009). "Ombuds," "ombudsman" and "ombudsperson" are commonly accepted and interchangeable terms. Id.

2   The International Ombudsman Association Standards of Practice, § 3.2 (2009), http://www.ombudsassociation. org/standards/IOA_Standards_of_Practice_Oct09. pdf [hereinafter IOA Standards of Practice]; See also, ABA Model Shield Law Comm., Model Shield Law for Ombudsman § 2, http://www.abanet.org/adminlaw/ ombuds/modellaw.html (last visited Nov. 15, 2009).

3   Thacker, supra note 1, at 65.

4   Thacker, supra note 1, at 69.

5   Thacker, supra note 1, at 74.

6   Mary Rowe, Options, Functions and Skills: What an Organizational Ombudsman Might Want to Know, 11 Negotiation J. 103 (1995)

7   IOA Standards of Practice, supra note 2; American Bar Association, Standards for the Establishment and Operation of Ombuds Offices (2004). [Hereinafter ABA Standards]. The bulk of this paper will reference primarily the IOA standards as they are more narrowly tailored to the role of organizational ombuds. See, Sara Thacker, supra note 1; International Ombudsman Association, Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, Revised February 2004 (2006).

8   The International Ombudsman Association Code of Ethics (2007), http://www.ombudsassociation.org/ standards/Code_Ethics_1-07.pdf, [hereinafter IOA Code of Ethics].

9   Id., Charles L. Howard and Maria A. Gulluni, The Ombuds Confidentiality Privilege: Theory and Mechanics 1 (Ombudsman Association, 1996).

10   IOA Standards of Practice, supra note 2, § 3.8.

11   IOA Standards of Practice, supra note 2, § 3.5.

12   IOA Standards of Practice, supra note 2, § 3.5.

13   IOA Standards of Practice, supra note 2, § 3.2.

14   Id.

15   IOA Code of Ethics, supra note 8.

16   IOA Standards of Practice, supra note 2, § 2.4.

17   The International Ombudsman Association Best Practices, § 1.1, at 2 (2009), http://www.ombudsassociation.org/ standards/IOA_Best_Practices_Version3_101309.pdf, [hereinafter IOA Best Practices]
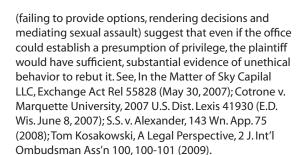
18   Id.

19   IOA Standards of Practice, supra note 2, §§ 4.3, 4.5.

20   Id., § 4.4.

21   Thacker, supra note 1, at 71, 74.

22   United States v. Bryan, 339 U.S. 323, 331 (1950).

23   In Re Doe v. United States, 711 F. 2d 1187 1193 (2d Cir. 1983) (citing 8 Wigmore, Evidence § 2285, at 527 (McNaughton, rev. 1961)).

24   Kientzy v. McDonnell Douglass Corp., 133 F.R.D. 570, 571 (E.D. Mo. 1991).

25   In Re Doe, 711 F. 2d at 1193.

26   E.g., Id.

27   Id., at 572.

28   Carman v. McDonnell Douglas Corp., 114 F. 3d 790, 793-94 (8th Cir. 1997). Note that Carman did not directly apply a Wigmore analysis.

29   Charles L. Howard, The Organizational Ombudsman 182 (2010).

30   IOA Standards of Practice, supra note 2, § 4.1.

31   Kientzy, 133 F.R.D. at 572.

32   Carman, 114 F. 3d at 793-94.

33   Scott C. Van Soye, Illusory Ethics: Legal Barriers to an Ombudsman's Compliance with Accepted Ethical Standards, 8 Pepp. Disp. Resol L.J. 117 (2007).

34   IOA Standards of Practice, supra note 2, § 3.3; Van Soye, supra note 33 at 136-37.

35   CPP Global, Human Capitol Report: Workplace Conflict and How Businesses Can Harness It to Thrive 6 (July 2008), http://img.en25.com/Web/CPP/Conflict_report. pdf; James A. Cram & Richard K. MacWilliams, The Cost of Conflict in the Workplace, http://www.crambyriver.com/ coc.html (last visited Nov. 15, 2009).

36   Cram & MacWilliams, supra note 35.

37   CPP Global, supra note 35, at 5.

38   Mary Rowe & Mary Simon, A Discussion of the Effectiveness of Organizational Ombudsmen 1-2 (2001), http://web.mit.edu/ombud/publications/effectiveness_ final.pdf.

39   Carman, 114 F. 3d at 793.

40   Christina M. Kuta, Universities, Corporations, and States Use Them—Now It's Time to Protect Them: An Analysis of the Public and Private Sector Ombudsman and the Continued Need For a Privileged Relationship, 27 S. Ill. U. L.J. 389, 404 (2003).

41   Rowe & Simon, supra note 38 at 11-18; Frank Fowlie & John Zinsser, Evaluating Ombudsman Offices: How do

You Know What You Know and a Value Model 42 (2008), http://www.icann.org/ombudsman/ioa-session4-apr08.pdf.

42 Rowe & Simon, supra note 38 at 18; Fowlie & Zinsser, supra note 41 at 42.

43 Carman, 114 F. 3d at 793;

44 Carman, 114 F. 3d at 793 (questioning the neutrality of organizational ombuds).

45 ABA Model Shield Law Comm., Rationale in Support of an Ombudsman Privilege Statute, § 9, http://www.abanet.org/adminlaw/ombuds/modellaw.html (last visited Nov. 15, 2009).

46 Kientzy, 133 F.R.D. at 572.

47 IOA Standards of Practice, supra note 2, § 3.1.

48 IOA Standards of Practice, supra note 2, § 3.1.

49 Carman, 114 F. 3d at 793.

50 E.g., Circuit City Stores, Inc. v. Adams, 279 F.3d 889 (9th Cir. 2002); Hooters of America, Inc. v. Phillips, 173 F.3d 933 (4th Cir. 1999).

51 E.g. IOA Standards of Practice, supra note 2. See also ABA Standards, supra note 7.

52 IOA Best Practices, supra note 17, § 1.1, at 2.

53 Id., §§ 4.3-.5.

54 Van Soye, supra note 33 at 143. Van Soye discusses the possible of two other privileges.

55 See Alaska Stat. § 24.55.260; Ariz. Rev. Stat. § 41-1380(C); Haw. Rev. Stat. §96-9(b); Neb. Rev. Stat. § 81-8,253.

56 Cal. Evid. Code § 911; Fed R. Evid. 501.

57 Kientzy, 133 F.R.D. at 571-73.

58 Id. at 571.

59 Carman, 114 F. 3d at 793-94.

60 Compare Van Soye, supra note 33 at 130-32 with Charles L. Howard & George R. Wratney, In Aftermath of the Carman Decision, Ombuds 'Privilege' Still Has Validity, Ethikos (May, June 1999), available at http://www.shipmangoodwin.com/files/Publication/198c94df-2761-4572-b8dd-243137957644/Presentation/PublicationAttachment/24a16039-440a-49af-bb84-285d7347cda0/carman_article.pdf.

61 Id. at 793 (noting that "evidentiary privileges are not lightly created.").

62 Miller v. Regents of the Univ. of Colo., 188 F.3d 518 (10th Cit. 1999), 1999 WL 506520 at *15; Solorzano v. Shell Oil Co., 2000 WL 1145766 (Aug. 14, 2000) at *6.

63 Carman, 114 F. 3d at 793-94.

64 Garstang v. Superior Court, 39 Cal. App. 4th 526, 532 (1995).

65 Id.

66 Garstang, 39 Cal. App. 4th (1995); Carman, 114 F. 3d (1997).

67 Garstang, 39 Cal. App. 4th at 530.

68 Id. at 531-32, Cal E code 1152.5

69 Van Soye, supra note 33 at 142-43.

70 Id.; Garstang, 39 Cal. App. 4th at 531-32; Cal. Evid. Code § 1152.5(c) (amended 1993).

71 Van Soye, supra note 33 at 143.

72 E.g., Cal. Evid. Code § 911.

73 Compare Carman, 114 F. 3d at 792-93 (characterizing the ombuds' job "to investigate and mediate workplace disputes) with The Ombudsman Association Standards of Practice, § 6 (1995), http://web.mit.edu/negotiation/toa/TOAsop.html, ("Formal investigations … should be done by others.").

74 Carman, 114 F. 3d at 793.

75 An extended version of this paper will include a draft of a statute.

76 Alan Kirtley, The Mediation Privilege's Transition From Theory to Implementation: Designing a Mediation Privilege Standard to Protect Mediation Participants, the Process and the Public Interest, 1995 J. Disp. Resol. 1, 35. For the sake of consistency and efficiency, the legislature may want to match the ownership of the ombuds' privilege to the jurisdiction's standards for the ownership of a mediator's privilege.

77 Id.

78 Id.

79 Id.

80 Id.

81 E.g., IOA Standards of Practice, supra note 2; See also, ABA Standards, supra note 7.

82 IOA Best Practices, supra note 17, at 1.

83 IOA Code of Ethics, supra note 8.

84 IOA Standards of Practice, supra note 2, §§ 2.3, 4.5.

85 Id.; and ABA Standards, supra note 7.

86 Under such a system ombuds in cases like In the Matter of Sky Capital and Cotrone v. Marquette would likely not be required to testify for charges which of behavior falling within ethical standards, namely taking no action in response to complaints and maintaining confidentiality of complainants. However, the ombuds described in SS v. Alexander might not be able to establish a rebuttable presumption if the program was responsible for receiving complaints on behalf of the university or if it otherwise differed significantly from IOA standards. Additionally, the ombuds alleged behavior

(failing to provide options, rendering decisions and mediating sexual assault) suggest that even if the office could establish a presumption of privilege, the plaintiff would have sufficient, substantial evidence of unethical behavior to rebut it. See, In the Matter of Sky Capilal LLC, Exchange Act Rel 55828 (May 30, 2007); Cotrone v. Marquette University, 2007 U.S. Dist. Lexis 41930 (E.D. Wis. June 8, 2007); S.S. v. Alexander, 143 Wn. App. 75 (2008); Tom Kosakowski, A Legal Perspective, 2 J. Int'l Ombudsman Ass'n 100, 100-101 (2009).

[87] IOA Standards of Practice, supra note 2, § 3.2.

[88] ABA Model Shield Law Comm, supra note 2, § 3(c).

[89] Richard C. Reuben, The Sound of Dust Settling: A Response to Criticisms of the UMA, 2003 J. Disp. Resol. 99, 113; National Conference of Commissioners of Uniform State Laws, Uniform Mediation Act, 2003 J. Disp. Resol. 1.

[90] A broader exception could be considered for otherwise unavailable criminal evidence but is rife with concerns beyond the scope of this paper.

[91] See Model Rules of Prof'l Conduct, § 1.6(b)(5) (2003).

Book Review

Charles L. Howard, *The Organizational Ombudsman: Origins, Roles, and Operations —*
A Legal Guide (Chicago, IL, American Bar Association, 642 pp., Jan. 2010, softcover, $89.95)

TOM KOSAKOWSKI

Many organizational ombuds are wary of attorneys, litigators in particular, and it is easy to understand why. Attorneys may be the antithesis of ombuds – they are zealous advocates who seem most comfortable working in a formal conflict system. Ombuds' mistrust of attorneys deepened when the American Bar Association (ABA) published its white paper on "Standards for the Establishment and Operation of Ombuds Offices," which seemed to tell ombuds how to do their jobs.

For their part, many attorneys – especially corporate counsel – view ombuds with equal skepticism. Ombuds work is poorly defined in the law and yet can have significant impact on an organization's liabilities. Moreover, attorneys are often hard pressed to fit ombuds into the complex legal framework applying to a large organization.

For these reasons, ombuds might be tempted to give Chuck Howard's new book a chilly reception. Howard is a litigating attorney who has never worked as an ombuds and his book is published by the ABA. Yet ombuds and attorneys would be well-advised to swallow their preconceptions because this book is an important resource for both professions.

Howard inadvertently became an advocate for ombuds nearly twenty years ago and eventually built a national practice advising and representing ombuds. His clients included some of the leaders of the profession. He has seen the evolution of the field first hand and how courts can be confused by the variation in ombuds practice. These insights give Howard considerable affinity and appreciation for the work of ombuds.

The primary purpose of the book, Howard explains, is to demonstrate why a properly constituted ombuds program should be entitled to confidentiality recognized in law. In Chapter 1, Howard starts at the very beginning, tracing the development of the organizational ombuds model from its Swedish origins two centuries ago. He thoroughly details the history

of ombuds associations and how the professional standards matured into their current form. Attached in the appendix are nearly 200 pages of materials reflecting the evolution of the ombuds standards of practice. Many of these documents from the ABA, The Ombudsman Association (TOA), University and College Ombuds Association (UCOA), and International Ombudsman Association (IOA) are difficult to locate in their entirety elsewhere.

In the second chapter of his book, Howard explains why organizations should create ombuds programs. His audience is not ombuds, but other professionals: general counsel, human resources, and executives. Howard summarizes the many risks faced by organizations with diverse and global constituents in an increasingly complex regulatory environment. He concludes that ombuds are the appropriate resource to help people resolve conflict and report misconduct with these organizations.

In Chapter 3, Howard turns his attention to practicing ombuds. Using case law and statute, he explains how ombuds can protect their most fundamental attribute – confidentiality. Howard offers specific advice on how ombuds can avoid serving as an agent of notice. He also explores some of the other legal bases for protecting confidentiality, including the common law and statutes. The advice here is very specific and originates in Howard's own practice representing ombuds. He tells ombuds how their offices should be defined to prevent litigation and then how to respond when litigation occurs.

Howard provides many "actual ombuds examples" to illustrate how ombuds can better protect the confidentiality they offer in their work. Non-ombuds are likely to find these case summaries especially insightful, especially because there are virtually no other publications that describe ombuds' work.

Chapter 4 is a collection of other information relevant to ombuds' practice. Each section is intended as a stand-alone summary, although the first section – an

overview of litigation processes – is directly related to the prior chapter. This section covers a lot of ground and includes exceptions to confidentiality and several statutes that impact ombuds practice, including the Federal Sentencing Guidelines, the Cleary Act and open records acts.

As the first true reference work on the field, The Organizational Ombudsman is destined to become a teaching resource. Indeed, it is already being used as a textbook for at least one graduate course. As a textbook, it is well-priced, thorough and readable. Students, however, will want an electronic version and professors will need ancillary materials, neither of which is currently offered. Like other legal guides and textbooks, it will also need an update or supplement in a few years.

Finally, as complete as it is, Howard's book needs a companion. The Organizational Ombudsman does not tell how to do the work of an ombuds. It offers no guidance for interviewing and coaching visitors, conducting inquiries, facilitating and mediating conflicts, or giving upward feedback. Someday, there will be a book as good as Howard's that speaks to these skills also. In the meanwhile, Howard has done the ombuds profession a great service by writing this indispensible guide.

AUTHORS' BIOGRAPHIES

Brian Bloch is the designer and director of ISKCON-Resolve, a global integrated conflict management system for the Hare Krishna community. He started his career as an ombudsman in 2002, and has traveled to over thirty countries meeting with visitors, and training regional ombuds. He is Adjunct Professor of Conflict Management and Sociology at University of Wales, Lampeter. Bloch is a founding member of the Association of Indian Mediators. He trains mediators for the Supreme Court of India Mediation & Conciliation Project. He also regularly travels to the various High Courts in India offering mediation training to judges and lawyers. Bloch's article centers on cultural change, drawn from his eight years developing ISKCONResolve's ombud's office.

Ross Brinkert, Ph.D. (Temple University, 2006) is an assistant professor of Corporate Communication at Penn State Abington. He is co-author of the book *Conflict Coaching: Conflict Management Strategies and Skills for the Individual* (Sage, 2008). Dr. Brinkert has related articles published in *Conflict Resolution Quarterly*, *International Journal of Public Participation*, and *Journal of Nursing Management*. He received an honorarium and an expense reimbursement for an IOA conflict coaching conference presentation that he co-presented in April 2008. The author is also a partner in Conflict Coaching Matters LLC. Dr. Brinkert's broad professional aim is advancing positive approaches to change for individuals and organizations. He was born, raised, and started his early career in greater Vancouver, Canada. He has lived in greater Philadelphia since 1997.

Howard Gadlin is the NIH Ombudsman and Director of the Center for Cooperative Resolution. Dr. Gadlin has been an Ombudsman for nearly 30 years, previously at the University of California at Los Angeles. He was also co-director of the Center for the Study and Resolution of Interethnic/Interracial Conflict. Prior to that, Dr. Gadlin was Ombudsman and Professor of Psychology at the University of Massachusetts, Amherst. He is the current Chairman of the Steering Committee of the federal Inter-Agency Alternative Dispute Resolution Working Group. Dr. Gadlin is also Past-President of the Ombudsman Association as well as of the University and College Ombudsman Association.

Tom A. Kosakowski is the Ombudsperson for the Center for Health Sciences at the University of California Los Angeles. Prior to that, he established the Ombuds Office for Claremont Graduate University. Previously, he was an attorney specializing in professional ethics and malpractice. He serves on the IOA Board of Directors and publishes the Ombuds Blog.

Andrew Larratt-Smith is a third-year law student at the University of California at Los Angeles. He is also a Masters in Dispute Resolution candidate at Pepperdine's Straus Institute for Dispute Resolution, where he served as a Dispute Resolution Fellow. He is a certified mediator who has mediated disputes at the Equal Employment Opportunity Commission. Andrew is the first recipient of the Annual IOA Student Writing Competition and will present his winning essay that the IOA's Annual Conference in New Orleans this April. He is a proud Canadian and a board game enthusiast.

David Miller is the current Editor of the JIOA. He was formerly the Staff Ombudsman for the World Health Organisation, UNAIDS and the Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria. He has been a faculty trainer for the IOA in Europe and Africa, and a founder member of the JIOA Editorial Board. David is a specialist in the management of HIV/AIDS, and currently works as an international public health consultant to governments and HIV/AIDS programmes in Africa and the Pacific regions. He also practices as a clinical psychologist and is presently writing a book on workplace bullying.

Janet L. Newcomb was a corporate Ombudsman from 1986 to 1995. She is now an executive coach with special expertise in career transition for individuals reinventing their careers. Co-author of *Adapt! How to Survive and Thrive in the Changing World of Work* and contributing author in *Coaching for the New Century,* she is a business owner, mentor, and trusted advisor to leaders and developing leaders in multiple industries. Her coaching and consulting company is Focused Solutions: www.focusedcoach.com.

Mary Rowe is an MIT Ombudsperson and Adjunct Professor of Negotiation and Conflict Management at the MIT Sloan School of Management. She came to MIT in 1973. She has a PhD in Economics, has been a mediator for many years, and was a founding member of the Corporate Ombudsman Association, now the International Ombudsman Association. The MIT Ombuds Office website **(http://web.mit.edu/ombud)** includes some of her articles on the ombuds profession, conflict management system design and other topics, including: *"Options Functions and Skills," "Dealing with the Fear of Violence,"* (co-authored with Linda Wilcox), *"Dealing with—or Reporting—'Unacceptable' Behavior"* (co-authored with Linda Wilcox and Howard Gadlin) and *"An Organizational Ombuds Office in a System for Dealing with Conflict and Learning from Conflict."* She has lived and worked in Africa, the Caribbean, in Europe and the US. Rowe has a number of special interests in the field of conflict management: unacceptably unprofessional behavior of all kinds, harassment of all kinds, "micro-inequities," that is, small insults that do damage; mentoring and career development, including "micro-affirmations;" dealing with very difficult people and people who "won't let go;" options for action if one sees something bad happen; mediating intellectual property disputes; work/family concerns; the role of apologies. She likes children, gardens, music, scuba, chocolate—and admires the artistic achievements of other people.

Janis Schonauer is Corporate Ombudsman for AllianceBernstein, L.P. a global investment management firm that offers high-quality research and diversified investment services to institutional clients, individuals and private clients in major markets around the world. Prior to AllianceBernstein, Janis was Ombudsman at two Universities. At the University of California, Irvine, she helped establish the Campus Mediation Program. At Caltech she worked to resolve problems and develop programs to better serve the needs of the community. During that time she served as President of the University & College Ombuds Association (UCOA). Janis teaches classes on conflict resolution and listening skills, has written articles and has been a speaker at conferences. In 2006 and 2007, she was President of the International Ombudsman Association (IOA). Jan has a BA in Psychology from Michigan State University and a Masters in Public Administration from California State University.

MISSION STATEMENT

The Journal of the International Ombudsman Association (JIOA) is a peer-reviewed online journal for scholarly articles and information relevant to the ombudsman profession. As members of a relatively new profession, we continually strive to understand, define and clarify the role and function of the professional organizational ombudsman. JIOA will help foster recognition that what we do for our agencies, corporations, colleges and universities is worthy of study. While we must vigorously protect the confidentiality of our interactions, we can still study and be studied to understand what we do and how we do it; what works well and what doesn't work; what our options are; how social, technical and legal changes may impact us; what the profile and career development of ombudsman professionals might be, and other matters of interest. The JIOA can facilitate a greater interest in ombudsing, enhance our professional standing, and serve to give us a better understanding of our dynamic roles and the impact on our institutions and agencies. The journal also will allow IOA members, other ombudsmen, and other professionals to reach out to their colleagues with their ideas, research findings, theories, and recommendations for best practices and to engage in ongoing discussions of critical issues.

INSTRUCTIONS FOR AUTHORS

EDITORIAL STATEMENT

The Journal of the International Ombudsman Association (JIOA) is a peer-reviewed online journal for scholarly articles about the ombudsman profession. JIOA aims to foster recognition and understanding of the roles and impact of ombudsman offices in a variety of institutions and sectors. JIOA is a unique publication for organizational ombudsmen and other professionals to reach out to their colleagues with ideas, findings, recommendations for best practices, and engage in ongoing discussions of critical issues.

ELIGIBLE CONTRIBUTORS

Submissions are encouraged from all responsible contributors regardless of affiliation with the International Ombudsman Association. JIOA encourages contributions relevant to the work of ombudsmen in any setting. JIOA is a peer-refereed journal and articles are accepted without remuneration. Authors wishing to discuss submission ideas are encouraged to contact the editors or a member of JIOA's editorial board.

GUIDELINES FOR SUBMITTING AN ARTICLE

Please send an electronic copy of your article as an attachment to JIOA@ombudsassociation.org. JIOA's editor will send a reply when the email has been received and the attachment(s) are opened successfully. Submissions should conform to the following guidelines.

Originality

A cover letter should be submitted with your submission and must include a statement that neither the paper nor its essential content has been published or is under consideration for publication elsewhere. It will be presumed that all listed authors of a manuscript have agreed to the listing and have seen and approved the manuscript.

Authorship

All persons designated as authors should qualify for authorship. Each author should have participated significantly to the concept and design of the work and writing the manuscript to take public responsibility for it. The editor may request justification of assignment of authorship. Names of those who contributed general support or technical help may be listed in an acknowledgment.

TYPE OF SUBMISSION

We accept submissions in the form of articles, commentaries, book reviews, essays, short reports, and letters to the editor.

Articles of any length will be considered, although JIOA is particularly interested in publishing concise scholarship generally between 1,500 and 5,000 words. Commentaries and book reviews should be no longer than 1000 words.

Essays and short reports that advance an idea, summarize a development, or initiate or engage in a discussion are solicited.

Letters to the editor are encouraged, but may be edited for length.

FORMAT

Manuscripts should be double spaced, with ample margins of at least one inch. Pages should be numbered. All identifying information should be removed from the manuscript files themselves prior to submission. Proofs for checking will normally be sent to the first author named to whom any correspondence and reprints will also be addressed. Footnotes to the text should be avoided wherever this is reasonably possible.

All manuscripts should be made anonymous by the principal submitting author. This involves the following:

1. Removing all identifiable properties from the Word file "Properties" (particularly the author name and organisation) – this can be done as a single operation in Vista, and manually in Word.

2. Ensure the manuscript contains no mention of the authors' organisations, names, or the names of key colleagues. Substitute real names with "X" throughout – they can be placed in the article after review.

3. Similarly, all those who are being acknowledged as informal reviewers, discussants or inspirations for the submitted article should be anonymised in the manuscript. Where acknowledgements are being made, a separate section for this should appear on the front page of the manuscript, along with the key words, author's name and affiliation, a brief author biography and an abstract of not more than 150 words.

4. Where author names and organisation names cannot be avoided, then authors must accept that their article will not be anonymous. This is not preferred by the JIOA but, where inevitable, authors are required to state that they waive the right of an anonymous review.

JIOA prefers submissions prepared in Microsoft Word. Word Perfect, ASCII and RTF are also acceptable.

TITLE PAGE, KEY WORDS AND AUTHOR INFORMATION: The name(s) of the author(s) should appear only on a separate title page which should also include the author(s) affiliation and mailing address. The title page should also include a biographical note of no more than 100 words. Contact information, including telephone numbers and mailing addresses, should be provided for each author. Additionally, the Title page should include up to six key words, including the word "Ombudsman" (or whichever variant of this the author has employed in the article). A sample title page is attached.

Author(s) should also submit a statement indicating all affiliations, financial or otherwise, that may compromise or appear to compromise the objectivity or unbiased nature of their submission. Such conflicts of interest may arise out of commitments involving honoraria, consultant relationships, participation in a speakers' bureau, stock holdings or options, royalties, ownership of a company or patent, research contracts or grants, and, in some instances, being an official representative of another organization. Any conflict of interest will be included as a footnote in the published manuscript.

ABSTRACT: Please supply an abstract of 100 or fewer words with your submission. The abstract should also include a word count of the article, excluding references.

GRAPHICS

Please convert all graphics to TIFF or EPS format. Line art should be a minimum of 600 dpi, and halftones a minimum of 266 dpi in resolution.

Illustrations should not be inserted in the text but each provided as separate files and given figure numbers and title of paper and name. All photographs, graphs and diagrams should be referred to as Figures and should be numbered consecutively in the text in Arabic numerals (e.g. Fig. 3). Captions for the figures should be provided and should make interpretation possible without reference to the text. Captions should include keys to symbols.

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Authors should conform to the Chicago Manual of Style. Authors will be consulted during the editing process, but are expected to permit minor standardizations and corrections (i.e., headings, alignments, citation formatting, standard American English spelling, and minor punctuation). JIOA encourages and promotes the use of gender-neutral language.

Please note that the Journal publishes manuscripts in accordance with the linguistic and grammatical conventions of the author's country of writing. This means that spelling ('colour' or 'color'; 'organization' or 'organisation') may vary, and Editorial and grammatical conventions may also vary (e.g., placement of citations). While the Journal will normally publish accepted manuscripts in the linguistic style and grammatical conventions of the author, the final say on this rests with the Editor.

CITATIONS: The author(s) are responsible for the accuracy and thoroughness of citations. Footnotes should be consecutively numbered and collected at the end of the article. References should be listed on a separate page at the end of the manuscript. Citations should follow the Chicago Manual of Style format. If the submission is accepted for publication, the author should be prepared to provide access to copies of all materials cited.

Examples of citations:

Kosakowski, T., & Miller, D. (2007). Why we get no sleep at night. *Journal of the International Ombudsman Association*, 1, 100-101.

Rowe, M.P. (1977). Go Find Yourself a Mentor. In P. Bourne & V. Parness (Eds), *Proceedings of the NSF Conference on Women's Leadership and Authority, University of California, Santa Cruz, California, 1977* (pp 120-140). Santa Cruz: University of California Press.

Miller, D. (2000). Dying to care? Work, stress and burnout in HIV/AIDS careers. London: Taylor & Francis.

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CONSIDERATION OF SUBMISSIONS

Blind Evaluations

Submissions are reviewed by at least two editors without consideration of the author's identity. Please ensure that the manuscript is anonymous by removing any link to the author. Remove reference material in any footnote that references the author of the piece for review and replace information with "Author." Note the instructions on making the manuscript anonymous in the section entitled "Format."

Timeline for Acceptance

JIOA accepts submissions on a rolling basis throughout the calendar year. The review process starts on the first day of every month. It is intended that decisions on publication will be made within three months of receipt of a submitted manuscript.

Expedited Review

JIOA will attempt to honor reasonable requests for an expedited review of submissions. However, if we are unable to give an expedited review by the date requested, you will be notified that the article has been withdrawn from consideration. To request an expedited review, please contact the JIOA Editor and provide: your name, phone number, and e-mail address; the title of the article; your deadline for a decision.

Publication Dates

JIOA is published biannually. Articles are finalized for publication in September and March.

Antidiscrimination Policy

It is the policy of JIOA not to discriminate on the basis of race, gender, age, religion, ethnic background, marital status, disability, or sexual orientation.

SAMPLE FRONT PAGE

THE WAY THINGS ARE, HAVE BEEN AND WILL BE

John Doe

Organizational Ombudsman

ABC Inc.

Contact details:
ABC Inc.
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Tel: 012 345 6789
Email: abcomb@abc.com

Key Words: Ombudsman, history, dispute resolution, nirvana

Word Count (including Abstract): 2500

Abstract:
It was the best of times, it was the worst of times, and Ombudsmen saved the day by offering ethically based, neutral, independent and confidential services to their organization ("X") and staff. This paper dissects how Ombudsmen worked in the circumstances of concern and how they might systematise future interventions, using validated procedures described in detail in the article. The outcomes are identified, quantified, and a conceptual structure for applying the lessons learned is presented.

John Doe:
John Doe is a native of Equanimity and Hard Work, and has post-graduate degrees in thinking and doing from the School of Hard Knocks in the University of Life. He has worked as an organisational Ombudsman for 30 years and in his present position (at "X") for ten.

REVIEW PROCEDURES

RESPONSIBILITIES OF EDITORS AND EDITORIAL BOARD MEMBERS

JIOA editors are designated as the Editor and up to four Associate Editors. The editors collaborate with an editorial board comprised of approximately twenty participants with IOA membership. The editorial board is intended to reflect the diversity of the association as best we can.

The primary contact for JIOA is the Editor who is responsible for the journal publication process and the journal website. The Editor directs the processing of manuscripts and maintains communication with the IOA Board of Directors, the Associate Editors, editorial board members/reviewers, and authors.

Editorial board members, and other IOA members designated by the Editor in special cases, are responsible for the peer reviews of the submitted manuscripts.

REVIEW PROCESS

JIOA uses a blind review process and all references to the author(s) and author's workplace are removed prior to the manuscript being distributed to reviewers.

The Editor and/or Associate Editors will review each submitted manuscript to determine if the topic is appropriate for publication in JIOA. Acceptable manuscripts will be distributed electronically to three editorial board members selected by the Editor for peer review.

Manuscripts judged by the Editor and/or Associate Editors as inconsistent with the general mission of JIOA or the recognized Standards of Practice will be returned to the primary author with comments and possible suggestions for revision.

Reviewers will use a consistent and systematic set of criteria to evaluate the quality and potential of a manuscript. These criteria include items related to content, organization, style, and relevance. Review forms and comments will be returned to the Editor.

Each reviewer will recommend one of the following:

- Accept for publication as is
- Accept for publication with minor revisions as indicated
- Accept for publication after major revisions by author(s)
- Revision and resubmission for subsequent review
- Reject manuscript

The final decision on whether to publish a manuscript is made by the Editor and is based upon recommendations from the peer reviewers. If there is significant variation among the reviewers regarding the status of a manuscript the Editor may:

- Seek additional input from the reviewers
- Request an additional review
- Seek additional input from the Associate Editors

Reviewers' comments will be provided to the primary author. However, the reviewers of a specific manuscript will remain anonymous. It is the policy of JIOA to work with authors to facilitate quality publications. The Editor may suggest or an author may request that a member of the editorial board be available to provide assistance at various stages of the preparation and publication process.

NOTES FOR JIOA REVIEWERS

Reviewing manuscripts for JIOA must be undertaken in accordance with the principles of the IOA — by demonstrating independence, neutrality and confidentiality. This requires that manuscripts be accorded the status of office visitors. The content of reviewed manuscripts and of reviews should not be shared with anyone other than the Editor of the JIOA.

It is important for reviews to have a forward-looking, beneficial intent – this is an opportunity to give feedback that will help nurture, guide and develop authorship. It is not an exercise in showing you know more, are wiser or more clever and literate in the subject matter! Authors should learn from reviews and take away from the review a sense of future direction and beneficial development for their paper.

The aim of the review is to strengthen contributions to the JIOA, and thereby strengthen the ombudsman profession. In this sense, a review is as much a critique of the reviewer as of the manuscript. Accordingly, it is a requirement that all reviews offer information that can help guide the author. Although reviews

are confidential (i.e., the manuscript author does not know who the reviewers are), they are best written as though the author is in the room. Accordingly, a useful test of the reviewers' assertions is the "Old Bailey" test: If they were standing in the dock at the Old Bailey, would they be able to justify their assertions to the author? Are they making statements that are justifiable, verifiable and credible, or just say-so? Does the tone of their review convey the IOA Standards of Practice in practice?

Where criticism is appropriate, it should ideally be constructive and be contextualised within a set of options given by the reviewer for modification of the text. Where there are clear mistakes, inaccuracies or errors, these should be indicated and corrections or options for alternative expression suggested. Personal criticism — whether of content, ideology, style or tone — is unacceptable.

Please note, suggestions for modification should be itemised and returned to the Editor using the "Comments to the Authors" section of the JIOA Referee Review Form, which is sent to reviewers together with the manuscript to be reviewed. Suggestions for modification should **not** be returned to the Editor in the form of "Track Changes" in the original manuscript. This would identify the reviewer to the author and, even if this does not concern the reviewer, it might concern or prejudice the author in their consideration of the reviewer's comments. Reviewing is a form of power relationship. That is why anonymity is required on both sides.

Manuscripts may come in a variety of styles — from the determinedly academic (with numerous citations and references) to the determinedly idiosyncratic and personal. All styles may be acceptable, and need to be reviewed within their own context. Opinion pieces may have been commissioned by the Editor and, where this is the case, this will be indicated by the Editor.

Please note that the Journal also publishes manuscripts that acknowledge the linguistic and grammatical conventions of the author's country of writing. This means that spelling ('colour' or 'color'; 'organization' or 'organisation') may vary, and Editorial and grammatical conventions may also vary (e.g., placement of citations). While the Journal will normally publish accepted manuscripts in the linguistic style and grammatical conventions of the author, the final say on this rests with the Editor.

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