

# Journal of the International Ombudsman Association



INTERNATIONAL  
OMBUDSMAN  
ASSOCIATION

VOLUME 3, NUMBER 2, 2010

# TABLE OF CONTENTS

**Editorial Staff ..... 5**

**Introduction ..... 6**  
**JENNIFER L. MOUMNEH, PRESIDENT, IOA**

**Editorial: Bullying — What Can Ombudsmen Do? ..... 7**  
**DAVID MILLER**

**Some Things You Need to Know but may have been Afraid to Ask:  
A Researcher Speaks to Ombudsmen about Workplace Bullying ..... 10**  
**LORALEIGH KEASHLY**

**Abstract:** Workplace bullying is repeated and prolonged hostile mistreatment of one or more people at work. It has tremendous potential to escalate, drawing in others beyond the initial actor-target relationship. Its effects can be devastating and widespread individually, organizationally and beyond. It is fundamentally a systemic phenomenon grounded in the organization’s culture. In this article, I identify from my perspective as a researcher and professional in this area current thinking and research findings that may be useful for ombudsmen in their deliberations and investigations as well as in their intervention and management of these hostile behaviors and relationships.

**Key Words:** Ombudsmen, workplace bullying, workplace aggression

**Cases Involving Allegations of Workplace Bullying:  
Threats to Ombuds Neutrality and Other Challenges ..... 24**  
**TOM SEBOK AND MARY CHAVEZ RUDOLPH**

**Abstract:** Organizational ombuds who assist constituents in cases involving allegations of workplace bullying face a number of challenges. Some of the most significant challenges involve potential threats to ombuds neutrality. This article will briefly review ombuds neutrality and then explore many factors which can promote bias, and threaten ombuds neutrality. It will also identify a number of organizational dynamics which can increase the difficulty in these cases. It will conclude with a review of considerations and strategies intended to help ombuds avoid or minimize the possibility of acting on these biases and, to the extent possible, protect ombuds neutrality.

**Key Words:** Ombudsman, Ombuds, workplace bullying, neutrality, challenges

## **Tackling Systemic Incivility Problems: The Ombudsman as Change Agent ..... 34**

**JAN MORSE**

**Abstract:** Developing a model to address destructive behaviors such as bullying or incivility within organizations can be accomplished by ombudsmen looking to go beyond individual cases to address this vexing problem at a systems level. This paper describes the process whereby the ombudsman at the University of Minnesota was able to use a systems approach and data collected in a survey of more than 10,000 graduate students to help launch an organization-wide cultural change effort focused on establishing a shared vision for a positive academic and work environment free from offensive, hostile, and intimidating behavior.

**Key Words:** Ombudsman, incivility, systems thinking, change agent, work group

## **Dealing with Bullying Behaviours in the Workplace: What Works — A Practitioner’s View ..... 39**

**BARBARA McCULLOCH**

**Abstract:** The issue of how to deal with bullying behaviour in workplaces is a vexed one and many varied views have been published on the subject. This article is written from the perspective of a Mediator employed in a tertiary academic institution who has developed a process of mediation specifically to address issues of concern about workplace bullying and harassment. The article draws on the author’s experience over the last 5 years and sets out her process and conclusions as a practitioner in this field. It is intended to elicit comments, questions and discussion amongst readers.

**Key Words:** workplace harassment, mediation, addressing problem behaviours, compassion, protocols

## **Bullying: A View from the Corporate World ..... 52**

**MIM GAETANO**

**Abstract:** What behaviours define Bullying and why do these occur? When is a behaviour not Bullying? More importantly, what can an organisation do to minimise the potential for Bullying to occur in their workplace? This paper seeks to answer these questions using the experiences of a corporate ombudsman.

**Key Words:** ombudsman, bullying, corporate workplace, culture, Australia

## **Experience From Japan ..... 57**

**NORIKO TADA**

**Abstract:** Noriko Tada, an Ombuds in Japan with Guidea, shares her thoughts on workplace bullying in the light of the results of a recent Japanese survey on the topic.

**Key Words:** Power harassment, bullying, workplace, ombudsman, Sangyo-Counselor, Japan

## **The Several Purposes of the OO Crystal Ball ..... 60**

**MARY ROWE**

**Abstract:** The Crystal Ball began, in 1984, as a device to help Organizational Ombudsmen (OOs) to anticipate problems that are new to their organizations. This came about by collecting wisdom from many OOs about “new things.” Each OO may collect bits of new information from a whole organization—the Crystal Ball then pulls these ideas together. Over the years the Crystal Ball has proven useful in helping OOs in the important OO task of seeking, identifying, assessing and communicating issues new to their organizations. Crystal Ball discussions have in turn helped OOs to think about how to help their organizations to learn about and manage emerging issues, how to foster and collaborate on systems initiatives when appropriate—and how to follow up. The issues enumerated in this article have included many of the serious problems of our times. The Crystal Ball illuminates one important source of organizational ombudsman effectiveness.

**Key Words:** Crystal ball, organizational ombudsman, predicting problems, organizational change, disruptive problems, wisdom of crowds

## **The Importance of Relationships for Ombudpersons ..... 66**

**TIM GRIFFIN**

**Abstract:** Interpersonal relationships between ombudspersons and other people within their organizations are both inevitable and invaluable. It is wise to carefully consider opportunities within our respective organizations for both informal and formal interactions with others that will best facilitate the development of relationships that are crucial to the performance of our role. This article identifies some of the people within our organizations with whom an ombudsperson might establish beneficial relationships and offers some strategies and techniques that may be useful in forming those relationships.

**Key Words:** Ombudsperson, relationships

## **The Organizational Ombudsman as Change Agent for Organizational and Social Capital ..... 72**

**BRIAN BLOCH AND NANCY ERBE**

**Abstract:** Dispute resolution scholars from outside of IOA are noting the organizational ombuds’ potential for building workplace democracy. At its best, such democracy is equated with social capital — the value of loyal employees who feel great about their employer and thus, give generously to their work, each other and their organization. Determining how exactly IOA members contribute to such capital requires further study. Here, several seasoned IOA members and one IOA researcher share their experience and findings regarding the IOA member role in promoting and catalyzing important organizational change.

**Key Words:** Ombudsman, Change agents, memes, Organizational Social Capital, Organizational change

## I WAS JUST THINKING

### **Some Thoughts on Bullying in International Organizations ..... 76**

**JAMES LEE**

**Key Words:** bullying, impunity, harm, retaliation, agents of change, organizational ombudsman, international organizations

### **Some Considerations for Ombuds Dealing with Allegations of Bullying ..... 78**

**MARSHA L. WAGNER**

**Key Words:** “bully,” “victim,” labeling people, multi-party collaboration, organizational ombuds, organizational dynamics

## RECENT DEVELOPMENTS

### **A Legal Perspective ..... 80**

**TOM A. KOSAKOWSKI**

**Abstract:** This article summarizes significant developments in U.S. legislation and litigation relating to Organizational Ombuds from February 2009 through August 2010. Since the last legal update, major financial reform legislation created three new Federal Ombuds programs. In a most significant case, the Fifth Circuit Court of Appeals found that a University Ombuds’ investigatory report raised significant issues of fact in a free speech case. A handful of decisions from trial courts indicate that lawyers and judges continue to struggle with the legal standards applicable to Ombuds.

### **AUTHORS’ BIOGRAPHIES ..... 84**

### **MISSION STATEMENT ..... 87**

### **INSTRUCTIONS FOR AUTHORS ..... 88**

### **REVIEW PROCEDURES ..... 92**

### **PUBLICATION AND TRANSFER OF COPYRIGHT AGREEMENT ..... 94**

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# Introduction

## **JENNIFER L. MOUMNEH, PRESIDENT, IOA**

I was delighted when Editor David Miller asked me to provide an introduction to the 4th edition of the Journal of the International Ombudsman Association (JIOA).

As IOA continues to evolve and grow as an organization, so has the JIOA. IOA and the organizational ombudsman profession have benefited greatly from the scholarly contributions of the Journal thus far, so it is wonderful to see the continued growth of the JIOA. In fact, as only the 4th issue to be published, this is also the first year the Journal is being published twice — so we are thrilled with this progress and momentum.

The JIOA serves as another resource for those individuals or organizations who are considering creating an organizational ombudsman function in their institution, as well as a resource to educate those interested in learning about the value of the role. It brings legitimacy to the intricacies of the organizational ombudsman role and builds a common vocabulary about our work. Also, it provides an additional forum for our tradition of sharing best practices amongst each other and learning in the process. Overall, the material from the Journal helps IOA advance many aspects of its mission.

This edition of the JIOA has been written with a focus on bullying — a topic which has surfaced in recent years as a major area of concern for organizations around the world. Discussions have been held at conferences regarding the subject, legal matters have resulted from this increase in “bullying” in the workplace, and policies are being created to address the subject — so the material in this Journal is certainly timely.

On behalf of the IOA Board of Directors, I thank those who have contributed to the growth of this Journal, through researching materials, writing articles and editing submissions. The Journal certainly welcomes new additions and new authors to contribute work. Please read and enjoy the following articles and consider adding your own contributions in the future.

## EDITORIAL

# Bullying — What Can Ombudsmen Do?

DAVID MILLER

Welcome to the fourth issue of the *Journal of the International Ombudsman Association*. This is a landmark event for the JIOA, as it sees us entering a new publishing cycle of two issues yearly. We are especially grateful to those authors and reviewers who have so graciously contributed significant effort to see this new schedule of publication realised.

The main theme of contributions to Volume 3(2) is that of bullying in organisations. The importance of this topic for ombudsmen cannot be overstated, and demands engagement from all of us. The sheer volume of information on bullying, the absolute destructive potential that is described in often harrowing media reports — usually after disastrous and sometimes fatal reactions to reported bullying — and the extraordinary paralysis that seems to meet reported bullying on organisational and professional levels underscores the crucial importance of our profession equipping itself to address bullying. As experienced colleagues often note, the issue requires us to ask “what can ombudsmen do?” when receiving visitors who report bullying. Do we even understand common terms when bullying and harassment are discussed? Can bullying be a single instance, or is a trend or pattern required to demonstrate malicious intent? Is intimidation or aggressive management necessarily bullying? Does “acting mean to keep them keen” constitute harassment, or optimal motivational management? As ombudsmen, in order to establish a broader platform of options for management of bullying should we be investing time and effort in training ourselves in psychology and human motivation, in law, in organisational dynamics, in other things?

Too often, mismanagement and an absence of management lie at the heart of bullying cultures. Complicity is key — bullies need space in which to act and organisational structures frequently provide them where managers are not managing effectively, or where mechanisms for internal monitoring and

temperature-taking for organisations are absent or dysfunctional. A willingness to confront bad behaviour is a minimum condition for managing bullying in organisations, though the when and how of such decisions can challenge the most skilful of managers.

Ombudsmen have crucial advantages in enabling characterisation, definition and responses to reported bullying in organisations, as this Journal has maintained in its discussions of bullying since its first issue. The office of the ombudsman is a safe place in which truths can be spoken about reported experience. Our ‘smoke-watching’ role provides a crucial vector for orienting organisations to their own secrets or aspects of their culture they’d prefer were absent. But what else can ombudsmen really do? As was asked in Volume 1, “should we be inoculating ourselves with repertoires for self-preservation? Growing thicker skin instead of applying numerous grafts after reported bullying events and their consequences?” In an IOA survey some time ago, I suggested that our ethical principles and standards of practice “serve as guide rails and lighthouses to keep us on the rails and off the rocks” when engaging the issue and multifarious manifestations of bullying, harassment and simple human meanness. The translation of our fine principles into principled, relevant action is the enduring challenge, however. We are very lucky to have so much reported experience in this issue which, as with all our themed issues, gives crucial suggestions on how to respond to all parties and which is designed to serve as a conversation starter within the profession.

**Loreleigh Keashly** provides an extremely valuable review of research on bullying, and in a way that hopefully saves time for ombudsmen who need to know the essentials (and where they are leading). Keashly’s review is especially useful for helping to clarify definitions, illuminating distinctions between European and North American researchers, while also linking usefully to ombudsman literature — it should be required reading for all ombudsmen.

**Tom Sebok** and **Mary Chavez Rudolph** have provided a wonderful review of threats to the neutrality of ombudsmen that can snare us, especially when emotive elements in cases such as those aroused by reports of bullying arise. Their paper concludes with essential reminders on minimizing (perceptions of) ombudsman bias.

**Jan Morse** has written a compelling account of challenging incivility by taking a systems and evidence-based approach to addressing the culture in which bullying behaviour had been able to thrive. Those remembering reviews of articles in Volume 1, and papers presented in Volume 2 of *JIOA* will recall the often impotent demands for cultural shifts to take away the managerial or cultural indifference that nurtures bullying behaviour. Morse has shown how this can actually be done.

**Barbara McCulloch** provides a personal anecdotal account of how she has managed bullying behaviours in the academic workplace. She describes a process of mediation and contextualises this in 5 years of experience in that setting.

**Mim Gaetano** has also provided a personal account of managing bullying, in a corporate culture. Starting with some context and definitions, Gaetano then describes how his organisation has worked to use its “unique” cultural values as the vehicle for asserting a “fair treatment” workplace ethos.

Another corporate workplace presentation is from **Noriko Tada**, working as an ombudsman in the corporate sector in Japan. In the context of recent national surveys that describe significant levels of “power harassment” and denial about it, Tada raises questions that are regularly faced also by ombudsmen in more apparently responsive corporate cultures — it seems our challenges of bullying and harassment are universal.

In related areas, **Mary Rowe** has provided a short history of the development and themes emerging from the Crystal Ball presentations to our annual conferences, since 1984. Rowe’s account illustrates how the Crystal Ball is both a window and a mirror with which organisational ombudsmen both view the worlds of their constituencies, and reflect those worlds to the organisations in which they operate.

**Tim Griffin** has written of key pathways for formal and informal connectivity within organisations for ombudsmen. He has identified some of the people/offices in organisations with whom the ombudsman may develop “beneficial relationships”, as well as suggestions of how to do so.

**Brian Bloch** and **Nancy Erbe** have written about the roles of organisational ombudsmen in the development of organisational and social capital. They explicate the ombudsman’s role as a change agent, and describe the ways that “seasoned and respected IOA members” work proactively within that role.

In the “*I was just thinking...*” column, we have two presentations. **James Lee** has written reflections from decades of observation and management of bullying in international organisations. His contextualising of our constructive professional potential in the often unstated, multiple organizational agendas sometimes silently defining our milieus is extremely relevant — and his warning to know our operational environments equally so. **Marsha Wagner** has provided some key considerations for ombudsmen addressing allegations of bullying — they are reflected throughout this issue but, in this pithy summary, act as a form of checklist for those dealing with such allegations.

Our second column, “*A Legal Perspective*”, features a summary from **Tom Kosakowski** of significant legislative developments since February 2009 that may impact on organisational ombudsmen.

Finally, in this long list of contributors I wish to thank IOA President, **Jennifer L. Moumneh** for graciously introducing our fourth issue, marking the evolution in our Journal’s publishing cycle.

I mentioned earlier that this themed issue on bullying was the start of a conversation on this subject. For example, although reference is made to cyberbullying in the articles of **Keashly** and of **Rowe**, this is clearly an issue with major destructive potential in increasingly connected and computer-savvy constituencies. We hope to explore this more, along with definitions and discussions of characterising the bullies, in the next issue. Those who might wish to contribute to such discussions are warmly invited to contact me directly.

Looking backwards a little, since the previous issue was published in March 2010, the Editorial Board of the Journal has taken care to anonymously poll both authors and reviewers about the process of submitting and reviewing articles. The idea was to learn from those who do the hard work about how to improve our processes and the management of the submission and review and feedback processes. For the author survey (n=7), the responses were happily very positive with respect to the nature of the review process, the communications with the editor and willingness to make future submissions. The Reviewers' survey (n=16) was similarly positive in outcome, with a high willingness expressed to continue in the role of reviewer. As a result of reviewer feedback, we hope to run a workshop at the next IOA conference on **"How to be a JIOA Reviewer"**, using some notable examples of reviews as case studies for constructive reviewing that appropriately nurtures and strengthens received manuscripts.

The JIOA is a team effort. In addition to our distinguished authors, we have a brilliant Editorial Board who routinely provide excellent and constructive reviews against often unreasonable deadlines. Similarly, the Associate Editors are the beating heart of the Journal — their efforts consistently strengthen our profession and provide immense support (and good humour) to the curmudgeonly editor. To them and to you all, warmest greetings and thanks.

## *Some Things You Need to Know but may have been Afraid to Ask:* A Researcher Speaks to Ombudsmen about Workplace Bullying

**LORALEIGH KEASHLY**

### **ABSTRACT**

Workplace bullying is repeated and prolonged hostile mistreatment of one or more people at work. It has tremendous potential to escalate, drawing in others beyond the initial actor-target relationship. Its effects can be devastating and widespread individually, organizationally and beyond. It is fundamentally a systemic phenomenon grounded in the organization's culture. In this article, I identify from my perspective as a researcher and professional in this area current thinking and research findings that may be useful for ombudsmen in their deliberations and investigations as well as in their intervention and management of these hostile behaviors and relationships.

### **KEYWORDS**

Ombudsmen, workplace bullying, workplace aggression

### **ACKNOWLEDGMENTS**

The author is grateful to the three anonymous reviewers for their comments and suggestions. The author is also grateful to Joel Neuman for his thorough and insightful review of an earlier draft of this manuscript

In the early 1990's, I became interested in understanding persistent and enduring hostility at work. That interest was spurred by a colleague's experience at the hands of her director. He yelled and screamed at her (and others), accusing her of not completing assignments, which she actually had. He lied about her and other subordinates. He would deliberately avoid when staff needed his input and then berate them for not consulting with him. At other times, he was thoughtful, apologetic, and even constructive. My colleague felt like she was walking on eggshells, never sure how he would be. Her coworkers had similar experiences and the group developed ways of coping and handling it. For example, his secretary would warn staff when it was not a good idea to speak with him. And yet his behavior took its toll on all of them. She called asking for my advice as a dispute resolution person. I gave her some ideas, all things it turned out she had tried already. So like any good academic, I went to the literature to find out what was there. At that time, there was very little about what I had come to view as emotionally abusive behavior as described in the domestic violence literature. I undertook some research to see if emotional abuse was a workplace phenomenon (Keashly, Trott & MacLean, 1994; Keashly, Harvey & Hunter, 1997). Unfortunately, I discovered that it was. As I broadened my search in terms of disciplines and countries, I came across other constructs like bullying (Adams, 1992; Einarsen, 1999; Rayner & Hoel, 1997), mobbing (Leymann, 1996; Zapf & Einarsen, 2003), harassment (Brodsky, 1976) and abusive treatment (Bassman, 1992) that in essence described the same phenomenon: systematic and prolonged mistreatment of others at work (Keashly, 1998).

Since that time, there has been a virtual explosion of research in these areas and the addition of related constructs and terms such as workplace harassment (Bowling & Beehr, 2006), abusive supervision, (Tepper, 2000), social undermining (Duffy et al, 2002), incivility (Andersson & Pearson, 1999; Gill & Sypher, 2009;), interpersonal mistreatment (Lim & Cortina, 2005; Price-Spratlen, 1995), ostracism (Ferris, Brown, Berry, & Lian, 2008), emotional tyranny (Waldron, 2009), workplace victimization (Aquino & Thau, 2009), and disruptive practitioner behavior (Joint Commission, 2008). As exciting as this is, I believe it has become confusing because it is hard to wrap one's arms around this area when the terms and their associated definitions multiply. Thus, it is hard to understand this phenomenon and therefore how to address it. Fortunately, several very good reviews of the literature that have come out that can be helpful in summarizing research on these constructs (e.g., Aquino & Thau, 2009; Einarsen, Hoel, & Zapf, 2010; Griffin & Lopez, 2005; Hershcovis & Barling, 2007; Kelloway, Barling, & Hurrell, 2006; Martinko, Douglas & Harvey, 2006; Tepper, 2007). The challenge is there are so many of those reviews that the construct proliferation and its accompanying confusion continues. For professionals who are faced with addressing these persistently hostile behaviors and relationships, it is often difficult to know where to begin and what to include. Also, the professionals' timeframe is often such that there is little time to distill the essence of what is known and not known from the empirical research literature. In this article, I will identify from my perspective as a researcher and professional in this area, the current thinking and findings that may be useful for ombudsmen in their deliberations and investigations as well as their management of these hostile behaviors and relationships with appropriate and timely interventions. To accomplish this, using the term workplace bullying, I will discuss what is known about the nature, prevalence and effects of these hostile relationships as well as current thinking on antecedents and processes of development. Throughout this discussion, I will note the implications of different findings for the work of ombudsmen as they investigate and address workplace bullying. I will end this paper with a brief discussion of the value of taking a contingency perspective on the development and implementation of interventions for the prevention and management of bullying.

## WORKPLACE BULLYING: THE NATURE OF THE BEAST

Workplace bullying is a special case of workplace aggression. Workplace aggression refers to efforts by individuals to harm others with whom they work (Neuman & Baron, 1997). Before addressing workplace bullying's unique features, it is important to discuss aggressive behaviors more generally. I never cease to be amazed at the range and type of behaviors that fall within this domain. To more completely map out this behavioral space, Neuman and Baron (1997) utilized Buss's (1961) approach of three dimensions to define the space. The dimensions are:

- 1) physical (deeds) — verbal (words, tone);
- 2) active (doing a behavior) — passive (withholding or "failures to do"); and
- 3) direct (at the target) — indirect (at something or someone the target values).

This approach describes the "methods of attack". While much research (e.g. VandenBos & Bulatao, 1996; Kelloway, Barling & Hurrell, 2006) and public attention has been paid to physical, active and direct behaviors such as shootings and assaults, i.e., physical violence, Neuman and Baron's (1997) work and that of others (e.g., Cortina, Magley, Williams & Langhout, 2001; Keashly & Neuman, 2004; Rayner, Hoel & Cooper, 2002; Richman, Rospenda, Nawyn, Flaherty, Fendrich, Drum & Johnson, 1999; Schat, Frone & Kelloway, 2006) have demonstrated that the more frequent kinds of behaviors in workplaces, particularly among organizational insiders, are often passive, indirect and nonphysical. These types of behaviors have been labeled as psychological aggression. For example, in their representative survey of American workers, Schat, Frone and Kelloway (2006) found the 41% of workers report experiencing psychologically aggressive behavior at work while 6% experienced physical aggression. Workplace bullying actions are predominantly psychologically aggressive (Keashly, 1998). Rayner and Hoel's (1997) categorization of bullying behaviors provides a concise illustration of specific behaviors. This is not a comprehensive listing of all possible behaviors but it will give an idea of ways in which bullying can be conducted.

**1. Threat to Professional Status:** Questioning competence, belittling opinion, professional humiliation in front of colleagues, negative comments about intelligence, questioning a person's ability to supervisors; spreading rumors or gossip. These are primarily active behaviors.

**2. Threat to Personal Standing.** Name-calling, insults, verbal abuse, tantrums, intimidating behaviors, devaluing with reference to age, gender, race/ethnicity or appearance, hostile gestures. These are predominantly active behaviors

**3. Isolation.** Exclusion from work-related gatherings, silent treatment, withholding information, ignoring contributions, not taking concerns seriously, preventing access to opportunities or promotion, poisoning others against the target. These behaviors tend to be passive in nature.

**4. Overwork / Unreal Expectations.** Undue pressure, impossible deadlines, unnecessary disruptions, setting up to fail, unreal or ambiguous expectations; more so than for others in the same environment.

**5. Destabilization.** Others take credit for work; assigning meaningless tasks, removing responsibility, denied raise or promotion without reason; excessive monitoring.

I have several observations regarding these behaviors. First, what is particularly unique about workplace bullying is that it is often about what people **do not do** rather than what they do, i.e., "lack of action" such as withholding information, excluding from meetings, the silent treatment (Rayner & Keashly, 2005). This poses particular challenges for the target, bystanders, managers, and third parties to whom these concerns are brought. Thus, it is important for ombudsmen to note that most aggressive behavior at work is psychological in nature and often passive or "failures to do" behaviors.

Second, the nature of the relationship between the target and actor will influence the specific expressions of hostility (Aquino & Lamertz, 2004; Neuman & Keashly, 2010; Hershcovis & Barling, 2007). This has to do with the means and opportunity available to the actor (Neuman & Keashly, 2010). For example, a supervisor due to his/her control over rewards and job assignments has the opportunity and the means to bully through overwork and destabilization types of behaviors. Opportunities available to peers may have more to do with information sharing and other working

relationships. Thus, behaviors falling under threats to personal and professional standing as well as isolation are more likely under their control. Subordinates, due to their less powerful organizational position, may engage in more indirect kinds of behaviors such as rumors or gossip or withholding of information. These examples of actor means and opportunity illustrate that bullying is not limited to one type of relationship. Indeed, bullying can be top-down (boss-subordinate), horizontal (peer-peer) or bottom-up (subordinate-boss) (Rayner & Keashly, 2005). Thus, workplace bullying is considered to be **relational** in nature — harming others through purposeful manipulation and damage of relationships. This is important for ombudsmen to know as it requires that the relational context of the experience be assessed. Thus, investigations will need to involve at the very least assessment of target and actor and consideration of the nature of their relationship organizationally, e.g., the kind of contact that is typically required for this type of relationships.

Third, identifying the behaviors, while necessary, is insufficient for understanding workplace bullying (Leymann, 1996). Indeed, in isolation, each of these behaviors may be seen as minor and people may wonder what all the fuss is about (So he glared at you? So what?). What makes these behaviors more than they appear is their **frequency** and the **duration of exposure**. Workplace bullying and its related constructs are **repeated** and **enduring** forms of workplace aggression. **Persistency** is the core feature that distinguishes workplace bullying from more occasional aggressive treatment (Leymann, 1996; Einarsen et al, 2003). The defining characteristics are as follows:

**1. Negative actions that are repeated and patterned.** This element captures both frequency of occurrence (daily, weekly, monthly) and variety (more than one type of behavior). Regardless of the construct, it is the frequency of exposure to hostile behaviors that has been directly linked to a variety of negative individual (health, job attitudes and behaviors) and organizational (productivity, turnover) outcomes, i.e., the greater the exposure, greater the impact (Keashly & Neuman, 2002). Being exposed to a number of different hostile behaviors contributes to this sense of frequency. We found that the number of different events uniquely contributed to negative individual outcomes beyond the mean frequency of exposure (Keashly, Trott, & MacLean, 1994). But

the number of behaviors and the frequency of occurrence do not adequately capture the nature of exposure. Frequency of exposure must also be considered in terms of the overall frequency of contacts with the actor. For example, perhaps the boss only yells at an employee once a month but if the employee only sees him/her once a month that is 100% of the time. The implications of that for a target are very different than for a target whose actor behaves this way once a month but they see him/her daily, i.e., they are exposed to other behaviors, hopefully positive, that will influence their overall experience. Further, the frequency of exposure can be created (or enhanced) by the target reliving the experience, i.e., rumination (Harvey & Keashly, 2003). Finally the repeated nature of exposure may be linked to the involvement of more than one actor, i.e., mobbing (Zapf & Einarsen, 2005). The repeated and patterned nature of these behaviors highlights the importance of investigating a pattern of behavior rather than each incident as a separate item (Rayner & Keashly, 2005). Further the frequency of contact that would be required organizationally "normally" for the relationship is also important to consider in any assessment.

## **2. Prolonged exposure over time (duration).**

It is duration that is particularly distinctive about workplace bullying. Researchers have used timeframes for assessing these actions ranging from six months (which is typical in the European literature, e.g. Einarsen et al 2003) to a year (e.g., Keashly & Neuman, 2004; Schat, Frone, & Kelloway, 2006) to 5 years (e.g. Cortina et al, 2001). These timeframes pale in comparison to the reports of those who self-identify as targets of workplace bullying. They report exposure ranging up to 10 years (Burnazi, Keashly & Neuman, 2005; Zapf, Einarsen, Hoel & Vartia, 2003). Zapf and Gross (2001) report that average duration of those who were bullied by one person was 28 months, for those who were bullied by two to four people or more than 4 people (i.e., mobbing), it was 36 months and 55 months, respectively. Thus, the question of "how long is too long" is important to consider in this discussion of workplace bullying. While researchers often specify at least one event weekly for a minimum period of 6 or 12

months, this timeframe does not necessarily appeal to those for example, in Human Resources or indeed, ombudsmen who will want to be able to address a developing hostile situation as quickly as possible, before irreversible damage sets in. Thus, codifying a specific minimum duration in policy may hamper reporting of problems and ultimately effective management. It is sufficient to note that bullying tends to occur over an extended period of time.

Fourth, while persistence or chronicity is the important marker of workplace bullying, it is also important to recognize that the nature and intensity of behaviors directed at the target do not stay the same throughout. Long-standing bullying situations will often show a progression or escalation of aggression from covert and indirect behaviors to increasingly overt, direct and in some situations physical (Einarsen, 1999; Glomb, 2002). Research suggests that such escalation will have the effect of rendering target attempts to constructively and actively respond ineffective (Richman, Rospenda, Flaherty & Freels, 2001; Zapf & Gross, 2001). This puts the target at increased risk for injury psychologically, emotionally, and physically (see further discussion below). The failure of constructive methods also may promote target resistance and retaliation behaviors (Liefoghe & Davey, 2010; Lutgen-Sandvik, 2006) that may further an escalatory spiral. Such spirals can result in drawing others into the situation, often as actors (Zapf & Gross, 2001) and may even result in secondary spirals or cascades of aggression elsewhere in the unit or organization (Anderson & Pearson, 1999) i.e., the development of a hostile work environment.

Given the above description, a question is often raised as to how workplace bullying, particularly at advanced stages is different from an escalated conflict between employees. What appears to distinguish bullying from "normal" workplace conflict is the existence of a power imbalance (Einarsen et al, 2003). This imbalance can be pre-existing in the structure of the workplace (boss-subordinate) or it can develop as a conflict escalates and one party becomes disadvantaged relative to the other. The importance of the imbalance is the potential impact on the target's resources and ability to defend him/herself as well as the actor's ability to continue their actions (Keashly & Jagatic, 2010). This has implications for the nature and

intensity of negative effects and highlights the importance of prevention and early intervention, as well as the necessity of strategies for remediation of effects.

Taken together, the prolonged exposure to repeated hostile actions with an inability to defend creates a situation in which the target becomes increasingly disabled (Keashly, 1998). Further such a relationship, if allowed to continue, has the potential to not only spread its impact beyond the immediate dyad to others in the organization (e.g., witnesses) but it also has the possibility of creating hostile work environments where many workers are now “behaving badly”. The bullying process with its progression and its span of impact illustrates the **communal** nature of workplace bullying (Namie & Lutgen-Sandvik, 2010). That is, a variety of different parties are involved in or impacted by workplace bullying. This communal nature requires that ombudsmen will need to engage a number of people in the investigation and ultimately the management of the bullying.

**Cyberspace: The next (and current) frontier.** Before leaving this section on bullying’s nature, it is important to acknowledge modern technological devices as the new medium for bullying, e.g., bullying through the internet, email, text messaging, video/picture clips and social networking sites. Lois Price Spratlen (1995) ombudsman for the University of Washington at the time was among the first to identify how email was being used to bully and harass others. Known as cyberbullying or cyberaggression (e.g., Slonje & Smith, 2008; Weatherbee & Kelloway, 2006), several unique features of the medium conspire to make it a particularly virulent and destructive forum for and form of bullying. Some of these features are:

- a) the ability of the actor(s) to be anonymous making it more difficult for both targets and those investigating to identify the source. By reducing detection, actors may become emboldened to engage in more extreme and destructive attacks on the person’s reputation (Bjorkqvist, Osterman, & Hjelt-Back, 1994);
- b) span of impact from a few organizational members to millions of new media users globally; and

c) once these messages or images are released, they are difficult to expunge from cyberspace, creating a situation in which exposure can be continually renewed and thus relived, increasing damage to the target and others.

It is critical that researchers and professionals focus their efforts on understanding the nature and impact of cyberbullying and to seek ways to manage its use and impact.

## THE FACES OF HARM

The consequences of workplace bullying have been demonstrated at individual, group and organizational levels. At the individual level, direct targets show disruption of psychological, emotional and physical well-being as well as decrements in cognitive functioning (e.g., distraction, rumination), poor job attitudes, problematic job behaviors, and decreased performance (see Einarsen et al, 2003). Of particular note is the evidence of genuine trauma associated with prolonged mistreatment. Some targets manifest symptoms characteristic of Post-traumatic Stress Disorder (PTSD) such as hypervigilance, nightmares, and rumination (Glomb & Cortina, 2006; Hauge, Skogstad, & Einarsen, 2010; Janson & Hazler, 2004). Witnesses/bystanders to workplace bullying manifest similar symptoms and outcomes (e.g., Hoel, Faragher, & Cooper, 2004; Vartia, 2001). At the work group or unit level, there is evidence of destructive political behavior, lack of cooperation, and increasing incidence of interpersonal aggression (e.g., Glomb & Liao, 2003; Lim, Cortina, & Magley, 2008). At the organizational level, bullying’s impact is manifested in organizational withdrawal behaviors of targets and other employees such as increased sick leave and presenteeism, lowered organizational commitment, increased turnover and loss of talent, retaliation behaviors such as theft, sabotage and violence, and reputational damage in the broader community (Lutgen-Sandvik, 2006; Rayner & Mclvor, 2008; Tepper, Carr, Breaux, Gelder, Hu, & Hua, 2009). Recent research has begun to expand the victim net beyond organizational boundaries to include friends and family members who experience distress and strain as support for the targeted loved one (Barling, 1996; Hoobler & Brass, 2006). Clearly, workplace bullying left unchecked can have profound implications both inside and outside the organization.

## HOW BIG IS THE PROBLEM?

So workplace bullying is hurtful and its effects are expansive. Just how big a problem is this? The prevalence depends on how workplace bullying is assessed, the nature of the sample (convenience, organizational or representative of the nationwide workforce), and the country. Regarding measurement, there are two methods by which researchers assess exposure to bullying: operational (objective) or self-labeling (subjective). The objective approach identifies someone as bullied based on whether they have experienced at least one hostile behavior weekly or more often for a period of six months (characteristic of European research) or 12 months (typical in American studies). This method measures **exposure** to workplace bullying by means of a behavioral checklist. For example, a person will indicate whether they have experienced someone at work withholding critical information from them. The self-labeling method provides people with a definition of bullying and asks if they have had such an experience in the past six months, year or longer. This method measures experience of victimization. It is the **experience of victimization** that targets will provide to an ombudsman, not simply exposure to specific behaviors (Keashly, 2001). Thus, ombudsmen need to prepare to probe for the fullness of the target's experience as well as help the target provide specifics of incidents.

Typically, rates of exposure are generally higher for the operational method than for the self-labeling method that requires a person to acknowledge s/he has been a victim, which sometimes people are reluctant to do. So the self-labeling method can be considered a conservative estimate while the operational is a more liberal estimate. European literatures show rates ranging from 2-5% (in Scandinavian countries to 55% in Turkey (see Nielsen, Skogstad, Matthiesen, Glaso, Aasland, Notelaers & Einarsen, 2009 for fuller details) while US literature reports from 10-14% (labeling) to 63% (operational; see Keashly & Jagatic, 2010 for fuller details.) These rates apply to direct targets. If we extend the victim net to include witnesses, the rates of exposure to workplace bullying jump dramatically. For example, in a representative sample of over 7000 US workers (Lutgen-Sandvik, Namie, & Namie, 2009) 12.3% of respondents indicated they had witnessed others being bullied at work in the previous 12 months. Adding to this the 12.6% who said they had been bullied during this same period, almost 25% of the American working adults are exposed to and

affected by workplace bullying in a 12-month period. These rates refer to general working populations. Exposure may be higher or lower in different organizations and occupations. In short, workplace bullying is part of many adults' working lives.

## WHY BULLYING? ANTECEDENTS AND PROCESSES.

Discussion of the causes or contributions to workplace bullying requires the recognition of the multi-causal nature of this phenomenon (Zapf, 1999). Characteristics of the target, the actor, the work environment, and the organizational context all play a role to varying degrees and often in interaction in the manifestation of (and on the flipside, the prevention and management of) workplace bullying (Einarsen, Hoel, Zapf & Cooper, 2003 for review). A useful framework for considering what some of these antecedents are and how they may combine with one another comes from Baillien, Neyens, De Witte, and De Cuyper (2009) who propose three interrelated processes that may contribute to the development of bullying: intrapersonal, interpersonal, and intragroup/organizational. Individual and work-related antecedents are implicated in either being the source of these processes or influencing how employees cope with the challenges created by these processes. I will briefly describe these processes and how different factors are linked to them.

**The Intrapersonal pathway** is one in which workplace bullying is a result of stressors and frustration and how employees cope with them. Research in this area focuses on individual characteristics that may enhance vulnerability to be a target or propensity to be an actor. Relevant target characteristics are those that may affect what the individual **perceives** as occurring (i.e., interpreting ambiguous behavior or situations as hostile) or may provoke affective and behavioral reactions that are provocative to others or make them seem as "easy" targets for displaced aggression (De Cuyper, Baillien & De Witte, 2009). Individuals with a propensity to experience negative affect such as anger, fear, worry, anxiety, sadness and depression and associated traits of neuroticism reported higher levels of hostile treatment (Aquino & Thau, 2009; Bowling & Beehr, 2006; Coyne, Seigne, & Randall, 2000; Milam, Spitzmueller & Penney, 2009). Similarly, relevant actor characteristics are ones associated with anxiety or anger and hostility such as negative affectivity, trait

anger, poor self-control, emotional susceptibility and irritability, dispositional aggressiveness, (hostile) attributional bias and unstable self-esteem (Martinko et al, 2006; Neuman and Baron, 1998; Zapf & Einarsen, 2003), all of which have been associated with increased aggressiveness. An actor's lack of self-reflection and poor perspective taking ability has been linked to engaging in bullying behaviors (Parkins, Fishbein, & Ritchey, 2006; Zapf & Einarsen, 2003).

What is interesting is that characteristics broadly characterized as negative affect and anxiety appear relevant to both targets and actors. So the question becomes what may explain an employee becoming either target or actor? Baillien et al (2009) suggest that it is ineffective coping behavior in response to frustrations (which can come from both interpersonal and group level circumstances) that may provide the key. Specifically, in their analysis of 87 workplace bullying cases, they found that an employee might become vulnerable to victimization by others when they cope with frustrations in a passive-inefficient way (e.g., by withdrawing, becoming helpless, or reducing productivity). Such behavior may be perceived as violating existing norms (not carrying one's load) and result in other workers responding negatively towards them. When an employee copes with an experienced frustration in an active-ineffective way, they may displace their frustration onto an "innocent" coworker, resulting in bullying (e.g. Tepper, Duffy, Henle & Lambert, 2006). Bullying grounded in these dynamics can be viewed as a form of "predatory bullying" (Einarsen, 1999). To the extent this process is operational, strategies for prevention and management would focus on developing more effective stress and emotional management strategies on the part of workers.

**The Interpersonal pathway** is one where workplace bullying may result from interpersonal conflict that is ineffectively managed and escalates, i.e., dispute-related bullying (Keashly & Nowell, 2003; Zapf & Gross, 2001). In escalated conflicts, everyone engages in increasingly hostile and damaging actions. These conflicts become bullying situations when one party becomes notably unable to defend themselves yet the other continues on an increasingly punitive path. Indeed attempts by the target to actively address the issues are often unsuccessful and such failure is often tied to increasingly negative impact on the target (Richman, Rospenda, Flaherty & Freels, 2001). In this process, the more powerful employee becomes the actor and the less powerful employee becomes the

target. These can be challenging situations to assess as their genesis may have been mutually determined but the balance has swung. To the extent these processes were predominant, prevention efforts would focus on the development of constructive conflict management strategies and conflict intervention strategies for third parties (e.g., managers, bystanders).

**Intragroup/organizational pathway** is one in which workplace bullying is viewed as a result of unit or organizational features that enable or directly stimulate bullying. These can be particularly challenging to deal with as they are grounded in the way of doing work. Salin's (2003) model of enabling, motivating, and precipitating organizational features helps clarify how these factors may influence bullying development. Briefly, **enabling** features are structures and processes whose existence or nonexistence affect whether bullying is even possible. These include **power imbalance** which, as noted earlier, affects both the ability of the target to respond and defend and the means and opportunities available to an actor to mistreat; **low perceived costs and risks** to engaging in bullying behaviors as reflected in organizational cultures in which harassment is equated with way to do business styles of leadership linked to controlling (authoritarian) and uninvolved (laissez-fair) leadership. Also, lack of a clear and enforceable policy suggesting these behaviors are not problematic; and the **qualities of the working environment** that create stress and frustration for employees such as unfair or inequitable treatment (perceived injustice), lack of autonomy and decision control, poor communication, role overload, conflict and ambiguity and uncomfortable physical environments (e.g., Neuman & Baron, 2010). As noted above, bullying may be the result of inefficient coping with these stressors. **Motivating** features are structures and processes that "make it rewarding to harass others" (Salin, 2003; pg. 1222). These are conditions that promote the functionality of bullying, i.e., as a rational response to those perceived as "threats" or "burdens" (Hoel & Salin, 2003; Felson, 2006). This includes internally competitive environments, where employees are promoted or rewarded for outperforming other coworkers so it could be construed to be in an employee's interest to undermine or sabotage another, i.e., micropolitical behavior (Zapf & Einarsen, 2003). Bullying can also be a response to perceived norm violation on the part of a coworker such as a "rate buster" in an effort to bring them "back into line"

with production norms. Bullying behavior can also be a way of establishing social dominance. Bullying can be used as constructive dismissal where the work environment is made so uncomfortable for someone that they leave. Westhues (2002) talks about mobbing by professors against another as just such a strategy. Finally, **precipitating factors** are structures and processes that may actually trigger an episode of bullying assuming other factors as noted above are in place. These factors are typically associated with some organizational changes such as changes in management or work group, restructuring, downsizing, and increasing diversity (Baillien & De Witte, 2009; Neuman & Baron, 2010). The argument is that these changes create stress, anxiety and frustration, which can lead to aggressive responding as discussed above. Salin (2003) argues that bullying is a result of an interaction among at least two of these factors if not all three. This set of processes are perhaps the most challenging to address as we are in essence talking about re-designing a work environment and changing its culture and resultant climate.

### THE CHALLENGE OF ADDRESSING WORKPLACE BULLYING.

As can be seen from this admittedly brief and selective presentation of research on workplace bullying, this is a phenomenon that is dynamic, relational, and communal in nature. Its dynamics can spiral to encompass and impact other organizational members and extend its reach outside the organization. While played out by individuals, it is the organization's structure and processes that play pivotal roles in whether and how bullying is manifested, i.e., bullying is fundamentally a systemic problem (Keashly, 2001; Namie & Lutgen-Sandvik, 2009). It is this belief of the systemic nature of bullying that has researchers and professionals calling for organizational leaders and managers to take responsibility for leading the efforts in prevention and management of workplace bullying. Recent scholarship has begun to identify and assess what organizational and management efforts are important for developing a culture and climate that are antithetical to bullying (for detailed discussion see; Einarsen & Hoel 2008; Fox & Stallworth, 2009; & Giga, 2006; Keashly & Neuman, 2009; Osatuke, K., Moore, S.C., Ward, C., Dyrenforth, S. R. & Belton, L., 2009; Rayner & Mclvor, 2008; Salin, 2006).

Organizational culture change, however, is a long-term process. In the meantime there will be workplace bullying and the question is how to intervene to effectively manage and mitigate its impact. As is hopefully clear from the research, there are different points in the process at which action could notably change its course. There are also a variety of actions that could be undertaken at each of these points. What I have found useful as a way of thinking about how to ameliorate workplace bullying is applying the contingency approach of conflict intervention. While full exposition of this approach is beyond the scope of this article (See Keashly & Nowell, 2010 for more detail), I would like to briefly describe its fundamental principles and what it highlights about addressing bullying.

The contingency approach is grounded in the idea that effective intervention in a conflict depends upon matching the action(s) to the phase of conflict development (discussion, polarization, segregation and destruction) and different issues that are prominent in each stage. For example, in the early phase of a conflict, parties while disagreeing are still openly communicating and see value in maintaining their relationship. Thus, a useful action might be helping parties have constructive discussions through negotiation or if somewhat heated, through mediation. At a much later stage, where parties are polarized, communication distorted and behavior is becoming destructive, initial action involves stopping the destructive behavior and if successful, then perhaps utilizing a version of shuttle diplomacy to focus on more substantive issues. The other aspect of a contingency approach is the recognition that de-escalation cannot be accomplished by a single action but requires coordinating a sequence of activities over time to move parties back down the spiral. Applying this perspective to workplace bullying, highlights a number of important considerations:

1. The need to thoroughly and critically assess the history and current status of the bullying situation. This knowledge makes it possible to select methods of intervening that increase the chances of at least minimizing damage and at most (re) building the parties, particularly the target, the working relationship as well as the working environment for others.

2. Individuals observing the actor and target interactions can play critical roles in helping to manage the situation. As revealed by research documenting span of impact, other people have a stake in this situation being resolved constructively. Bystanders represent a critical yet untapped group that could have profound influence in bullying situations, particularly in the not-yet-bullied phase (Ashburn-Nardo, Morris, & Goodwin, 2008; Keashly and Neuman, 2007; Scully & Rowe, 2009)

3. The need to view dealing with bullying as a comprehensive and coordinated effort of a number of different activities and a number of different parties. It highlights the importance of coordinating short-term crisis management interventions such as separation of the parties with longer-term methods directed at fundamentally altering the parties' relationship specifically and the system generally. Such coordinated and comprehensive efforts require organizational awareness of bullying and a commitment to dealing with it directly. Ombudsmen's location in the organizational system positions them well for developing and facilitating these types of efforts.

4. It provides an explanation for why some actions may fail, i.e., they were inappropriate for the circumstances. For example, mediation has been recommended as an approach for addressing workplace bullying (e.g., Hoel, Rayner, & Cooper, 1999; Schmidt, 2010). Critics argue that in cases of severe bullying, the target is not able to participate fully as an equal party. Further, mediation's focus on the future can be a way for the actor to avoid having to take responsibility for their actions. Thus, mediation may be more appropriate early on but less effective and even detrimental in later stages.

5. Recognition that damage inherent in severe bullying limits the means of handling such situations. As discussed under harm, long term exposure to bullying effectively disables and damages the target and often others so that a "return to normal" is highly unlikely. This highlights the importance of preventive measures addressing harmful interactions early (not-yet-bullied; Rayner, 1999) before more damage occurs and when there is a chance for (re)building productive relationships. Individual skill development on the

part of all parties such as communication, anger management, stress management, perspective taking and conflict management skills) may be relevant in these relationships preventing bullying from becoming entrenched. While enhancing individual skills is important, the organizational context can either support or undermine them (Salin, 2003). So any efforts must acknowledge organizational culpability and focus change at this level as well.

## CONCLUSION

Workplace bullying is persistent relational aggression. It has tremendous potential to escalate, drawing in others beyond the initial actor-target relationship. Its effects can be devastating and widespread individually, organizationally and beyond. It is fundamentally a systemic phenomenon, grounded in the organization's culture. Ombudsmen are in a unique position organizationally to become aware of these types of relationships and to provide leadership in assessing and responding effectively and constructively to the benefit of all organizational members. It is my hope that the research discussed in this article has provided information and insight that will help ombudsmen in their efforts to address this devastating phenomenon and to develop a culture of respect and dignity for all employees where bullying has no place.

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# Cases Involving Allegations of Workplace Bullying: Threats to Ombuds Neutrality and Other Challenges

**TOM SEBOK AND MARY CHAVEZ RUDOLPH**

## **ABSTRACT**

Organizational ombuds who assist constituents in cases involving allegations of workplace bullying face a number of challenges. Some of the most significant challenges involve potential threats to ombuds neutrality. This article will briefly review ombuds neutrality and then explore many factors which can promote bias, and threaten ombuds neutrality. It will also identify a number of organizational dynamics which can increase the difficulty in these cases. It will conclude with a review of considerations and strategies intended to help ombuds avoid or minimize the possibility of acting on these biases and, to the extent possible, protect ombuds neutrality.

## **KEYWORDS**

Ombudsman, Ombuds, workplace bullying, neutrality, challenges

## **ACKNOWLEDGMENTS**

The authors are grateful to Carolyn Noorbakhsh for the interesting discussions when we first began discussing our thoughts about bullying in the workplace as well as her ideas and continued collaboration on this topic.

## **ORIGINALITY**

Neither the attached paper nor its essential content has been published or is under consideration for publication elsewhere.

*A graduate student tells the ombuds of being reprimanded and hollered at for over a half hour in the hallway by a senior faculty member who was both her dissertation advisor and employer. At one point, when the student attempted to walk away, the professor told her that she was not to move until he allowed her to move and monitored his watch as if timing her punishment. The professor was so loud and aggressive that another faculty member called the campus police. After the incident the student had to be taken by her family to be treated for an anxiety attack, which she had never previously encountered. Even after she met with the Dean and he assigned her a different professor to work with and told her that the original faculty member would not be able to retaliate against her, she discussed having real difficulty focusing on her studies, constantly thinking about the exchange, and having headaches and stomachaches. She was extremely angry and frustrated because to her knowledge the professor was not reprimanded and continued to serve in a leadership role in the department.*

## **INTRODUCTION**

Anyone who reads this account of a graduate student's experience with her advisor and supervisor is bound to be affected. Ombuds are not immune to the emotional effects of hearing alleged targets describe demeaning encounters. Bullying cases provide many challenges — they particularly provide potential challenges to Ombuds neutrality. The authors were reminded of this recently when former University of Hawaii Ombuds, Susan Park made a similar observation while speaking at a summer 2010 Werner Institute webinar on the topic of workplace bullying (2010). As the authors' own experiences had led them to arrive at a similar conclusion, they decided to

explore some of the underlying sources of these challenges. This article will briefly review ombuds neutrality and then explore many factors which can promote bias. It will conclude with a review of considerations and strategies intended to help ombuds avoid or minimize the possibility of acting on these biases and, to the extent possible, protect ombuds neutrality.

## Ombuds Neutrality

Organizational ombuds, like everyone else, have their own unique life experiences, values, perspectives, preferences, and opinions. These affect how they think and view the world. Ombuds inevitably like, trust, and respect some people they meet more than others and they relate to and identify with some more readily than others. And, just like everyone else, they also have biases. Their challenge, of course, is to act neutrally – which means being aware of and refraining from acting on their personal biases. The extent to which an ombuds is perceived by others as “neutral” is largely a result of how the ombuds acts. But, even if an ombuds acts in ways she or he believes will convey neutrality she or he has no control over how these actions will be interpreted by others. Thus, ombuds neutrality is often an elusive goal to which ombuds aspire but only sometimes achieve. In circumstances involving allegations of workplace bullying ombuds may find this goal even more elusive than usual.

In their 1997 booklet entitled, *“Neutrality: What an organizational ombudsperson might want to know,”* Howard Gadlin and the late Elizabeth Walsh Pino (1997) suggest that neutrality means “we do not take sides during conflicts . . .” They add that neutrality means ombuds should act in a “non-partisan, open-minded and unbiased” manner. The International Ombudsman Association (IOA) Standards of Practice (2009) use such words as “impartiality,” “fairness” and “objectivity” in attempting to clarify the meaning of neutrality. Standard 2.4 indicates the importance of avoiding actual or apparent conflicts of interest. And, Standard 2.5 reminds organizational ombuds of a “responsibility to consider the legitimate concerns and interests of all individuals involved” in matters in which they become involved. While absolute neutrality is simply impossible to achieve, these Standards make clear that ombuds must try to recognize their biases while functioning in the ombuds role and, above all, avoid acting on them in interactions with constituents.

## Potential Threats to Ombuds Neutrality

Many factors that are fairly unique to bullying cases can create ombuds biases which challenge an ombuds’ ability to function neutrally. Some are rooted in human nature and others are more organizational or systemic in nature. Each of these— and their potential effects — will be explored below.

### OMBUDS CORE VALUES AND IDENTITY ISSUES

All ombuds practitioners have core values which support their professional identities as ombuds practitioners. Many ombuds are selected for their positions because they are seen as approachable, fair, respectful, sensitive, and/or empathic. They often take pride in having cultivated these characteristics and are pleased to be recognized for them. By contrast, people who are accused of bullying are often described as mean, unfair, disrespectful, insensitive, and/or uncaring. Thus, the potential exists that, upon hearing these descriptions of the behaviors of an alleged bully, an ombuds may be personally predisposed to dislike the person exhibiting bullying behavior. And, of course, this tendency can be exacerbated for any ombuds who, as a child, an adult, or both, was bullied or otherwise abused. In addition, most ombuds have a passion for fairness and justice and these core values can appear to be at risk the moment an ombuds hears an alleged target say, “I am being treated unfairly!”

### WORKING WITH ALLEGED TARGETS

Attempting to help someone who cries from the moment she or he begins to talk about a problem can be an intimate, bonding experience between an ombuds and a visitor. And it can be heartbreaking. When a visitor returns multiple times to the safety of an ombuds office to share additional details of humiliating, frustrating, and painful experiences, an ombuds can vicariously experience a high level of emotional pain. For some, prolonged and repeated exposure to this pain – and to an alleged target’s helplessness in dealing with it – can create an emotional “hook.” The anxiety attacks, headaches, and stomachaches reported by the graduate student in the example above are not uncommon. The impact of an alleged target’s story can be powerful and can lead an ombuds to feel self-

doubt. She or he may think, “This sounds urgent! Am I capable of helping someone in this much distress?” Or, she or he may experience role confusion (e.g., “What are my responsibilities here, given that this person’s situation sounds so terrible?”). Maintaining neutrality, as well as positive mental health, requires an ombuds to avoid perseverating on other people’s problems or ones inability to alleviate their pain. But, for some, this may be much easier said than done.

While interactions with an alleged target can lead an ombuds to develop partiality toward her or him, as is true in many other kinds of cases, ombuds neutrality may be challenged in a different direction — against an alleged target. This can occur for several possible reasons. One reason is that listening compassionately to people experiencing emotional distress can be exhausting and an ombuds can experience “compassion fatigue” (Figley, 1995). Another reason ombuds neutrality may be challenged is if an alleged target has visited the office many times with a variety of issues (i.e., a “frequent flyer”). Finally, ombuds may find some targets more challenging than others.

Most ombuds understand that practicing with neutrality means they must refrain from acting impulsively (e.g., urging a visitor to take a particular course of action, contacting and accusing an alleged bully of wrongdoing, demanding that an alleged bully’s supervisor take disciplinary action, etc.). But, after prolonged exposure to an alleged target’s highly emotional story, replete with rich supporting details, a more realistic possibility is that an ombuds will feel sympathy for and, as a result, develop partiality toward an alleged target — and/or bias against an alleged bully. This could lead her or him to make inappropriate evaluative comments to an alleged target such as, “That’s terrible and it needs to stop!” or “No one should be treated like that!” Whether intentional or not, these kinds of comments signal, “I am on your side.” Even subtle non-verbal cues (e.g., laughing at sarcastic remarks made by an alleged target about an alleged bully) can send this signal. This partiality towards an alleged target may affect the way an ombuds assists an alleged target. For example, when reviewing options with an alleged target, an ombuds with a bias might emphasize the advantages — and de-emphasize the disadvantages — of an alleged target writing a letter to request that an up-line manager administer disciplinary action to an alleged bully. Such an attempt at influencing the option(s) a visitor chooses suggests that some degree of neutrality has been lost.

## WORKING WITH ALLEGED BULLIES

While the authors’ experience suggests the majority of ombuds contacts are with an alleged target, in a few instances an ombuds will talk with an alleged bully, for example when an alleged target requests a mediation or shuttle diplomacy or when an alleged bully initiates a request for ombuds assistance (perhaps after being threatened with or receiving formal disciplinary action for engaging in bullying). Very often alleged bullies tell ombuds they do not view their own behavior as “bullying.” If they are supervisors they may say they have “high standards,” “hold people accountable for mistakes,” or that they communicate in a “direct” fashion. Some of these individuals have been promoted because they are technically competent and viewed as indispensable by leaders. As a result, their bullying behaviors are sometimes overlooked and, occasionally, rewarded.

Keeping an open mind while talking with someone who has been portrayed so negatively can certainly be challenging, especially if she or he admits to engaging in these behaviors but minimizes them and/or fails to recognize their impact (e.g., “What’s everyone getting so worked up about? So what if I raised my voice a few times?”). In these situations, if an ombuds recognizes having such thoughts as, “You got what you deserved” or “That was really out of line,” such thinking can easily translate into subtle non-verbal behaviors that convey a bias. And it is very possible a visitor in this circumstance could pick up on this judgment and leave the office feeling that the ombuds is biased, prejudiced, and of no help.

One of the authors worked for a time on a rape crisis hotline. During the training for this position, the trainees encountered a counselor who worked with rapists. Her initial reaction was “why would anyone want to work with rapists?” But, upon reflection, she came to realize that working effectively with rapists was critically important because success in this endeavor could prevent future victims. The authors recognize that workplace bullying does not equate to rape and that the ombuds role is certainly different from that of a counselor who works with offenders. However, the ombuds role does sometimes provide the opportunity to work with those who engage in workplace bullying. If an alleged bully leaves the office feeling the ombuds was biased against her or him, not only has an ombuds “crossed the neutrality line” but she or

he has also missed a potentially rich opportunity to help someone to recognize — and possibly change — behaviors which have damaging impacts on others.

An ombuds may receive multiple complaints over a period of time about the same alleged bully. Or, an ombuds may meet with a group of individuals who complain about one. Sometimes after one person from a department approaches an ombuds to disclose a workplace bullying problem, others make appointments individually to talk about the same problem. For any organizational ombuds, hearing multiple complaints can pose a serious threat to her or his ability to remain neutral — especially when those complaints portray a consistent picture of the alleged bully's aggressive, demeaning conduct. And this neutrality challenge is amplified if the ombuds had previous difficult interactions with someone an alleged target describes as a bully; especially if the ombuds felt disrespected or dismissed by the way that person treated her or him. On the other hand, if an ombuds has had previous positive experiences with an alleged bully, it could cause her or him to react skeptically to any allegation that she or he had engaged in bullying. This partiality— especially if acted upon — can be as much of a problem for ombuds neutrality as negative bias.

## INFLUENCES FROM THE LARGER CULTURE

Ombuds are likely to gain exposure to many sources of information related to bullying. The topic of bullying has gained significantly more attention in recent years and, in the U.S. with a growing number of attempts to introduce legislation (all of which having failed as of the date of this writing), the topic will continue to receive attention. A few cautions for ombuds will be presented below regarding much of the information related to bullying.

### Popular Literature.

Professional development for ombuds includes reading books and articles about topics related to their work. There is a growing body of literature devoted to the topic of workplace bullying. Most of the authors of these publications (e.g., books, articles, websites, blogs) take an unapologetic “anti-bully” stance and some use highly value-laden language in describing “bullies” (e.g., jerks, backstabbers, manipulators, etc.). Many books about this topic have been published including such titles as: **The No Asshole Rule** (Sutton,

2007), **Jerks at Work** (Lloyd, 1999), **Corporate Heyenas at Work** (Marais & Herman, 1997), **Crazy Bosses** (Bing, 1992), **Snakes in Suits** (Babiak & Hare, 2006), and **Brutal Bosses and Their Prey** (Hornstein, 1996). While these authors are bringing needed attention to this topic, these titles, obviously created to sell books, tend to demonize alleged bullies. Some of their “explanations” about what motivates their behavior (e.g., they are jealous of the people they bully) appear to be based only on their own speculation or on the reported perceptions of people who say they have been bullied. And their use of language is far from anything resembling neutrality. While these authors are bringing serious attention to a topic they see as having gone unaddressed for far too long, none of them are organizational ombuds who are obligated to follow the IOA Standards of Practice. Blanket acceptance by an ombuds of negative assumptions about alleged bullies could create bias, and thus a threat to ombuds neutrality.

### Media Coverage.

Exposure to media coverage of several recent tragic events seemingly related to workplace and other bullying could also undermine ombuds neutrality when working with cases involving workplace bullying. For example, the recent suicide of a University of Virginia employee — and the corresponding allegations that this tragic event occurred as a result of bullying by his supervisor — was presented in a segment on NBC's “Today Show” on August 23, 2010. While the “Today Show” segment did reveal that the suicide victim had been clinically depressed, much more attention was given to the possible role of his supervisor and the alleged lack of responsiveness by officials at the University of Virginia to the victim's numerous requests for their help during the last two weeks of his life. This dramatic story may focus more attention on the potentially devastating effects of workplace bullying but a six minute clip edited for television may not provide the rich, nuanced treatment such an important topic deserves.

In fact, much of the public discourse about this topic seems to exhibit the dualism of two opposing narratives (e.g., “It must be either bullying or a performance problem.” Or, “It must be bullying or the person was severely depressed.”). The media and the public, in general, want a simple answer but as ombuds we often learn the “both-and” truth (e.g., an individual has a performance problem and is being bullied or an individual is severely depressed and is being bullied).

## Potential Threats to Perceptions of Ombuds Neutrality

When dealing with specific cases involving allegations of workplace bullying, ombuds interactions with supervisors of alleged bullies and/or other organizational leaders provide very specific threats to the reality as well as the perception of ombuds neutrality. The most obvious of these is in being perceived as biased against an alleged bully because the ombuds has initiated a discussion with a supervisor or leader about the alleged bully's behavior. In their article, *"Shared Global Interest in Skillfully Applying IOA Standards of Practice,"* Nancy Erbe and Tom Sebok (2008) acknowledged this threat facing an ombuds.

The ombudsman may be perceived as aligned against the alleged bullying supervisor and advocating for those who have complained. At the very least, approaching management in this situation risks appearing to be in violation of SOP 2.2 (an ombudsman "does not advocate on behalf of any individual in the organization") and SOP 2.5 (an ombudsman "... has an obligation to consider the legitimate concerns and interests of all individuals affected by the matter under consideration"), especially if the manager trusts, respects, and regularly depends on the supervisor in question.

Should an ombuds be perceived in this way her or his neutrality, credibility, and effectiveness is at risk.

## Other Challenges for Ombuds when Assisting In Cases Involving Bullying

Besides the challenges to neutrality bullying cases present other challenges for ombuds that can make these cases more difficult to manage and resolve. These challenges include the lack of a common definition of "bullying", the absence of laws and policies prohibiting bullying behavior, leadership's lack of awareness of bullying, a history of unresponsiveness to bullying behavior, and power imbalances. Each of these factors will be explored below.

## NO COMMON DEFINITION OF WORKPLACE BULLYING

Currently, there is no commonly accepted definition of "workplace bullying." Charlotte Rayner (2002) suggested that, for someone to be bullied, she or he needed to have had negative experiences, these negative experiences must have been repeated and persistent, she or he must label herself or himself as a target of bullying, and there must be an imbalance of power between the parties. The draft legislation known as the "Healthy Workplace Bill" which is available on a popular anti-bullying website ([www.workplacebullying.org](http://www.workplacebullying.org)) defines bullying as: "... repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms: verbal abuse, offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating, or work interference — sabotage — which prevents work from getting done" (Workplace Bullying Institute, 2010). Visitors to ombuds offices describe workplace bullying as behaviors they see as inappropriate for the work or school environment and cite a variety of different examples such as hollering, restricting someone's movement, cursing, banging on tables, reprimanding others in public, isolating, overworking, not providing support, and engaging in behaviors that violate another person's personal dignity.

This lack of a clear, universally understood definition leaves everyone in an organization in the position of Supreme Court Justice Potter Stewart who famously commented about "obscenity" in the 1964 case *Jacobellis v. Ohio*, "I know it when I see it." Unfortunately, what different people "recognize" is not the same. For example some males may be less apt to label themselves as a target of bullying. And when two employees are being treated in the same aggressive manner by the same supervisor, if one is devastated and the other only annoyed, is it bullying in both cases? Might a supervisor who identifies a mistake or a professor who negatively evaluates a student's performance be engaged in bullying or simply providing appropriate supervision? Opinions vary. Thus, the absence of a common definition as well as differences in culture, gender, values, personalities, and life experiences, etc. create ideal conditions for conflict about what actually constitutes workplace bullying.

## FEW LAWS OR POLICIES

Although recent research suggests that workplace bullying may be four times more common than sexual harassment (Zogby, 2007), and more destructive (Hershcovis, 2007), in most countries in the world there are no laws against it. In the present litigious climate and in the absence of case law precedents, legal counsel, whose influence is often significant, may advise against developing anti-bullying policies — even if they recognize it as a problem. They are concerned about protecting the organization from being sued by people against whom disciplinary action was taken for engaging in behavior which may be viewed by courts, in the absence of any other law, as “free speech.”

The absence of a policy often limits Human Resources departments from formally investigating, even if they recognize that workplace bullying is a serious problem. Complaints by members of protected classes (e.g., gender, race, age, religion, etc.) who say they have been bullied may be formally investigated if they label the bullying as “harassment” and say they believe it occurred because of their protected class status — yet 75% of employees experiencing the identical treatment do not have this option.

Ombuds are likely to observe the sharp contrast in organizational responsiveness to bullying complaints as compared to charges of discrimination. This can be very unsettling and, frankly, seem very unfair — especially in cases where bullying has been alleged to be particularly egregious. David Yamada, a professor at Suffolk University Law School, looked at another possible option for targets of bullying behavior - Intentional Infliction of Emotional Distress (IIED). IIED has been introduced in tort law but Yamada found that the threshold for holding the employer liable is unrealistically high. Yamada is the author of the “Healthy Workplace Bill” which defined “workplace bullying” in the section above. To date, no federal or state “anti-bullying” laws have been enacted in the U.S. although there are laws in Sweden (“Victimisation at Work,” 1994), Australia has anti-bullying laws, and the Canadian province of Quebec has a law against “psychological harassment at work” enacted in 1994.

## LEADERS’ LACK OF AWARENESS

Many leaders are unaware that bullying occurs. This could be true because: 1) no one bullies leaders due to their status and authority, 2) they don’t observe others engage in bullying because subordinates tend to be on their best behavior around them, 3) some leaders have a conflict avoidant style and the ability to be “unaware” of bullying allows such a leader to avoid the problem, 4) if those experiencing or witnessing bullying are far below a leader in the organizational ladder, they may be too intimidated to talk to the leader about a problem of bullying, and/or 5) some leaders have a highly competitive conflict style and may even engage in bullying and, as a result, do not recognize it as a problem.

A combination of two additional structural factors can allow workplace bullying to remain invisible to leaders. The leader’s physical separation from subordinates occurs in large organizations where leaders work in different buildings or in executive suites — away from departments where bullying might be occurring. Also, the direction in which communication occurs in hierarchies can contribute to workplace bullying. If one of a top administrator’s direct reports bullies her administrative assistant, the top administrator is unlikely to hear about it because the top administrator gets most of his or her information from the person being accused of bullying. Thus, leaders are not in a location to see bullying occur and they are not being told about the problem so they remain unaware of it.

## HISTORY OF UNRESPONSIVENESS TO BULLYING BEHAVIORS

A graduate student told one of the authors, “Other students warned me not to work with this professor because he has a reputation for mistreating his students — yet no one ever tells him to stop because he brings in huge research grants.” An employee said, “Several people have told me to weather it out as he’ll find someone else to pick on soon.” Another employee said, “Over half of the people in our unit have resigned or transferred since Ms. Vicious arrived 18 months ago. Isn’t anyone paying attention? They didn’t all just happen to find other opportunities within the same

short period of time!" Many alleged targets actually have multiple complaints: 1) "I have been bullied by John," 2) "John has been bullying people in our department for a long time," and 3) "Although those with authority have been repeatedly told about it, no one will do anything to stop him from engaging in this behavior." And, of course, many employees talk to one another. If it is a common belief that no one will address bullying, the willingness of people experiencing or witnessing bullying to complain about it will be negatively impacted. And when alleged bullies receive promotions it is likely to be interpreted as proof that the organization doesn't care about bullying, and even more disturbing, that bullying is rewarded.

### POWER IMBALANCES

For the graduate student in the above example, the stakes were exceedingly high. Her advisor was, technically speaking, her employer. Moreover, he had enormous power over her academic and professional future. Yet, a tenured professor who acts this way is unlikely to face any consequences for her or his actions. As John Frazee observed, "Ceding only limited authority to their chairs and deans (who are not their bosses), professors are essentially free agents. Their free agency is a by-product of two of the most distinctive attributes of the profession, tenure and academic freedom" (2007). Thus, as is often the case when bullying is alleged, the "playing field" for graduate students is far from "level." In a 2007 study based on self-report data provided by people who said they had been bullied, in 72% of the cases, it was a supervisor who had engaged in this behavior. Thus, power imbalances appear to play a significant role in workplace bullying. This combination of challenges to ombuds neutrality as well as other challenges to recognizing and responding to workplace bullying can lead an ombuds to conclude that, within an organization, the "deck is stacked" against people who wish to raise concerns about bullying and to advocate for those who allege bullying.

## Strategies to Avoid or Minimize Ombuds Bias (as well as the Perception of Ombuds Bias)

When workplace bullying is alleged the three kinds of people with which an ombuds is likely to interact are alleged targets, alleged bullies, and/or supervisors of alleged bullies. Practicing with neutrality means listening and speaking to all of these constituents in ways that suggest an ombuds respects them, has an open mind, and wants to understand their perspectives without rushing to judgments. Carrying this out in real time requires skill and practice. Specific skills and a few reminders about key components of the ombuds role will be presented below.

### MANAGING ONES' OWN EMOTIONS

Regardless of the mental and emotional reactions felt by an ombuds, it is critically important that she or he be honest with herself or himself about what she or he is feeling and thinking. This acknowledgment is a first step in managing one's own emotions. Any ombuds who does not do this runs the risk of being disconnected from her or his own thoughts and/or feelings; thus increasing the risk she or he may develop and act on unconscious biases.

### LISTEN AND ASSIST VISITOR IN IDENTIFYING OPTIONS

Bob Fink, a now retired faculty ombuds from the University of Colorado at Boulder, was once asked by a new department chair if he had any suggestions to help him in his new role. After thinking about it for a moment, Fink said, "Well, you probably can't get into too much trouble by listening to people" (Fink, 2005). This, of course, is an exceptionally useful reminder for an organizational ombuds, too. When talking with others who express intense emotion it can be helpful for a practitioner to remind herself or himself to focus primarily on listening. Paraphrasing, reflecting feelings, and summarizing, as well as open-ended questions are exceptionally valuable tools at this point. And it may also help to remember that listening often allows a visitor to better understand her or his own experience and clarify her or his most important interests, priorities, and goals. Finally, if the emotion-

ally-charged aspects of such an interaction become overwhelming, two things may be helpful to remember: 1) there are likely to be other, more appropriate resources (e.g., EAP) available to provide emotional support and to assist visitors in managing their emotions and 2) an ombuds only has control over her or his own choices and behaviors.

While it is useful to remember that providing ongoing emotional support and psychological counseling is not a requirement of the organizational ombuds role, it is equally important to remember what the role does require. IOA Standard of Practice 2.6 suggests ombuds help people to “. . . develop a range of options to resolve problems and facilitate discussion to identify the best options.” Ombuds also help visitors to evaluate the advantages and disadvantages of various options to meet their interests and goals. And, it may also help to remember that this is rarely a linear process. Often, the discussion seems to take a circuitous route and a visitor’s deeper concerns and priorities are not always clear — either to her or him or to an ombuds — until various options are being discussed.

### ASSIST ALL VISITORS AND BE CURIOUS

When ombuds encounter alleged bullies who deny engaging in bullying behaviors— especially if one or more alleged targets and/or bystanders have provided rich details which contradict her or his version of events — an ombuds may feel mistrust and or dislike toward her or him. Again, remembering that the ombuds role is not to judge her or him is vitally important. The role requires an ombuds to listen and try to understand her or his point of view, concerns, interests, and goals. An ombuds also has the opportunity to carefully explore with her or him the extent to which she or he understands the impact of her or his behavior on the alleged target and/or the extent to which she or he cares about that. As was referenced earlier, it may be useful for an ombuds to remember she or he may have an opportunity with some (but definitely not all) people who have been accused of workplace bullying to help her or him recognize these impacts and/or, if she or he has concerns about them, to help her or him to identify alternative and more appropriate and effective approaches. And, remaining curious may be especially helpful in working with alleged bullies. This is especially true if, in the safety of a confidential conversation, this curiosity can stimulate an alleged bully to begin to wonder why she or he be-

haves this way, what other alternatives might exist for gaining others’ cooperation, or how alleged targets have been affected by this behavior.

### BE A SAVVY CONSUMER OF INFORMATION (FROM ALL SOURCES) AND SEEK OUT UNBIASED LITERATURE

Whether an organizational ombuds is meeting with an alleged target or with an alleged bully (or for that matter, when meeting with anyone who has initiated a meeting to request help) a very useful (self-talk) mantra is, “I have only heard one perspective” and “I wonder how the person about whom this visitor is complaining sees this situation.” The “wonder” part is very important because maintaining curiosity is another strategy for avoiding making judgments — and maintaining neutrality.

With respect to minimizing the effects of the aforementioned popular literature, it is useful for ombuds to question the data. While self-report data provided by individuals who perceive they were bullied can be compelling (and much of it may be accurate), it is important to remember where the data is coming from and seek data from a variety of sources.

Alternative — more balanced— literature may be hard to find but one book the authors recommend is called **“Taming the Abrasive Manager”** by Laura Crawshaw (2007). It does not focus on demonizing people (specifically managers) who may engage in bullying but rather in understanding them and using tools designed to help them recognize the negative impacts of their behavior and, more importantly, the sources of it and strategies they can use to operate differently and more effectively in the workplace.

### CLARIFY THE OMBUDS ROLE AND COMMUNICATE NEUTRALLY

While communicating with an alleged bully’s supervisor or other organizational leaders, Nancy Erbe and Tom Sebok offered a number of suggestions intended to address the possible perception a supervisor or leader may have that an ombuds is biased:

The ombudsman can preface any conversation with a manager by reminding her or him that, while she or he needs to discuss a pattern of concerns that have been brought to her or his attention, as an ombudsman, she or he is a designated neutral. Therefore, she or he is not an advocate for — or against — anyone in the

organization — even though raising this kind of concern about alleged behaviors involving a single individual may make it look that way (Erbe, 2008).

They also anticipate the likely question an up-line supervisor or leader may have about why an ombuds is not talking directly with the alleged bully, which they suggest can be “explained” by referring to IOA Standard of Practice 3.1 on Confidentiality, which says, in part “...nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual’s express permission...”).

Erbe and Sebok also suggest reminding “...the manager that the information (the ombuds has) is only anecdotal, not scientific...” and they recommend suggesting to her or him that “... in order to be fair to the supervisor, it might be beneficial to use 360 degree evaluations and/or exit interviews to get a fuller and more accurate picture.” And finally, they recommend that if the manager uncovers evidence of bullying:

...as a matter of fairness, the manager might want to present the information to the supervisor, give her or him an opportunity to respond, discuss her or his expectations of appropriate supervisory behavior, and if she or he feels it appropriate, consider giving the supervisor assistance (e.g., coaching, counseling) for improving this important area of her or his work performance (Erbe, 2008).

### ADVOCATE FOR FAIR PROCESS NOT FOR AN INDIVIDUAL

Many of the factors which can affect how allegations of bullying are perceived and responded to (e.g., lack of definition, absence of laws and/or policies, leadership’s lack of awareness, history of unresponsiveness, and power imbalances) could lead an ombuds to partiality toward those alleging they have been bullied. A more appropriate option would be for an ombuds to engage leaders and other stakeholders in recognizing the impact of these factors through informal discussions and/or workshop presentations, or by sending them relevant information. In doing this it is important for an ombuds to remind herself or himself that the roles these leaders occupy are likely

to affect the information they have and how they view allegations of bullying.

In separate discussions unrelated to individual cases in which bullying is alleged, ombuds may elect to engage legal counsel, Human Resources, and organizational leaders in discussions about how this problem might best be addressed, given the lack of laws prohibiting it or perhaps in recognizing and considering possible indices that it is a problem (e.g., an excessive number of people leaving a department, excessive use of sick or vacation leave, etc.). If an ombuds learns of anti-bullying policies and leadership statements developed in organizations— especially for a similar kind of organization (e.g., a large research university) — sharing this information with leaders can be useful as well.

### INCREASE AWARENESS

Some ombuds provide workshops about conflict-related topics within their organizations. General conflict management workshops for supervisors can include this topic. In addition, a stand-alone workshop on workplace bullying can be an excellent opportunity to present important information about the topic. Both of these kinds of workshops also provide an opportunity to underscore the neutral ombuds role. For example, an ombuds might present the 2007 Zogby – Workplace Bullying Institute survey of nearly 8000 people which revealed a number of very disturbing findings. But, in addition to presenting this information, a cautionary note might be added explaining that the research findings were based entirely on self-reports of those who said they had been bullied.

### CONCLUSION

Organizational ombuds who become involved in cases involving allegations of workplace bullying face many factors which can threaten their neutrality as they attempt this difficult work. Ombuds bias, whether perceived or real, can seriously damage the effectiveness of an ombuds with all parties involved – alleged targets, alleged bullies, and up-line supervisors. Despite these numerous factors and their potentially negative impacts, there are skills, strategies and practices an organizational ombuds can use that will help her or him protect ombuds neutrality.

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# Tackling Systemic Incivility Problems: The Ombudsman as Change Agent

JAN MORSE

## ABSTRACT

Developing a model to address destructive behaviors such as bullying or incivility within organizations can be accomplished by ombudsmen looking to go beyond individual cases to address this vexing problem at a systems level. This paper describes the process whereby the ombudsman at the University of Minnesota was able to use a systems approach and data collected in a survey of more than 10,000 graduate students to help launch an organization-wide cultural change effort focused on establishing a shared vision for a positive academic and work environment free from offensive, hostile, and intimidating behavior.

## KEYWORDS

Ombudsman, incivility, systems thinking, change agent, work group

## ACKNOWLEDGMENTS

The author wishes to acknowledge the assistance of Tom Sebok, Ombuds at the University of Colorado at Boulder and Karen Starry, Director of Graduate Student Services and Progress at the University of Minnesota for their thoughtful insights and helpful feedback throughout the development and production of this article.

## “It’s about time someone did something about this...”

In recent years, many ombudsmen have noticed a growing trend in the incidence of negative and destructive behaviors — referred to by terms such as bullying, incivility and academic harassment — as a central feature of their caseload. The quote above, along with others throughout this article, is taken from a survey of graduate students regarding their experiences with such behavior. The comment conveys impatience with the environment where graduate students feel vulnerable to those who would use their position or power to intimidate or harass them.

As an ombudsman at the University of Minnesota (U of M), I work with over 200 graduate and professional students a year who are seeking assistance with a problem. Those problems are increasingly related to experiencing or witnessing hostile behavior in the academic or work environment. The issue may concern an adviser delaying their student’s degree progress in order to retain a cheap source of labor, a faculty member taking advantage of a student research assistant who fears losing their visa status, or one graduate student taking credit for another student’s work. And while ombudsmen are long familiar with dealing with these issues on a case by case basis, this paper focuses on how to use the information gleaned from individual cases to initiate and promote an organizational collaboration to address incivility concerns systemically.

**“The harassment problems I’ve seen in my department appear to be the result of structural issues. While those in authority are aware of the problems, there doesn’t seem to be a real means of satisfactory resolution.”**

The problem of toxic behavior in the academic environment is an important issue for many reasons. Through our work, I and my colleagues have seen both the significant personal toll that such behavior takes on individuals, as well as the negative impact it can have on departments and the larger organization. A disturbingly high number of students who experience or witness harassing behaviors report serious consequences such as emotional and physical problems or academic difficulties. In some cases, students are so distressed that they’ve had thoughts of suicide or decided that their only recourse is to leave their graduate program or the university. Universities can ill afford to ignore such repercussions of destructive behavior. Strong graduate programs contribute to the overall reputation of research institutions, and the competition among universities for the best graduate students is costly and intense. Prospective students get information through electronic social media even before arriving on campus, and from current students during campus visits. Culture and environment are among the criteria used by students when selecting a school for their graduate studies. Even otherwise stellar graduate programs risk losing top prospects when programs or institutions are known for tacitly permitting academic harassment.

As ombudsmen, we are uniquely positioned through our experience, training, and access to institutional resources to address academic harassment. Some ombudsmen may wish to simply report on the number of cases, or trends of incivility, to the responsible authorities and rely on the administration to “fix it”. This may be an option if there is sufficient interest and support among administrative leadership; organizations, however, can be reluctant to acknowledge that the distasteful problem of bullying exists on their campus. There is much, however, that the ombudsman can accomplish. Informed by case and survey

data, the ombudsman, as a neutral, can work across the institution to build a web of connectivity among those individuals who are interested in the topic.

**“In some ways, I will never forgive those who knew of this situation to continue to allow helpless graduate students to work with this person... How many times have you heard this before? You need to make mentoring skills a valued part of the tenure process, and graduate students need to feel they have rights and power to not be abused.”**

Please note that the ombudsman does not serve as a ‘champion’ of a cause, but instead acts as a catalyst — serving as an equal member of a group of knowledgeable and committed stakeholders who worked collaboratively to develop and implement a cultural change effort. The main thrust of this article is how the U of M work group used our connections, organizational resources, and “systems thinking” to clarify the emergent problem of academic incivility on our campus, identify systemic conditions that foster uncivil behavior, design and implement action steps to address such behavior, and evaluate outcomes. The group also promoted a campus-wide discussion to increase awareness about the importance of a positive learning and working environment and the costs of toxic behavior, and provided written materials and workshops to support the development of the skills that it takes to tackle this very difficult problem.

Part of the ombudsman’s role is to address ‘systemic issues’ within their organization — this work goes beyond the level of the individual problem and tries to get at the origins of a problematic issue. The approach outlined above provides the opportunity to make a more significant impact on a systemic problem than simply noting an uptick in cases of academic harassment in a report, and is consistent with the IOA Standards of Practice which describe an informal process whereby the ombudsman “...looks into procedural irregularities and/or broader systemic problems.”

**“I think this is a very worthwhile study on your part. The kind of harassment you’re asking about is far more common at most universities than most people realize, and it should be taken seriously.”**

I began by reviewing the existing literature and collaborating with U of M graduate students, faculty, and staff to develop the working definition of academic incivility as: “harassing behavior that is offensive, intimidating, or hostile, and which interferes with the ability to work or learn”. I then developed and administered a survey in Fall 2007 to our 10,000 registered graduate students to assess the scope and nature of academic incivility at the U of M. The administration and analysis of the survey cost about \$3,000, and was paid out of the Student Conflict Resolution Center (SCRC) budget. This investment was an essential part of ‘making the case’ to the administration, faculty, and staff, i.e. that destructive behavior exists in virtually every department of this university, and that there are high costs to both the graduate students and the organization. The survey results also helped to legitimize and create a sense of urgency around the initiative. Out of the results came the message that improving the culture will benefit the community, everyone can contribute to this change, and we should not wait to take action.

Of the 2,000 students who responded to the survey, about 20% reported experiencing harassing behavior. Eighty-three percent of those students said that it somewhat or completely kept them from performing to their ability, while almost 50% said that the behavior caused them to consider leaving the university. Fifteen percent of the total number of respondents reported witnessing another graduate student being harassed, and half of those students changed their program, adviser, or classes as a result of witnessing the harassment. Almost a third of witnesses considered leaving the university as a result of the harassment they observed.

After seeing the results of the survey, I decided that I needed to take action and expand my effectiveness by trying to address the problem at the systems level. The survey results and anecdotal evidence of the SCRC case load provided a strong argument to address academic incivility at the institutional level. Before taking on such a project, however, it was neces-

sary to assess the capacity, in terms of commitment to the goal, resources, and support by key colleagues to foster success. Once academic incivility was identified and data collected, it could be framed and reframed from the perspective of the various stakeholders. After presenting the issue and gaining the support from key institutional leaders, a work group was formed in 2008 to develop a shared vision and affect positive change.

**“...Harassment is a taboo subject and there needs to be more dissemination of information and adherence to good policies concerning the way professors treat students...”**

The Academic Civility Initiative work group comprised 15 U of M faculty members, administrators, and graduate students formed a “community of practice” — key stakeholders and opinion leaders who hold the attention and the trust of their colleagues, and who have the capability to connect with them to gain their commitment to positive change. Participation by well-known and respected professors, deans, and program chairs was essential to give the work of the group a measure of legitimacy within the community. As ombudsman I have established close working relationships with key “creative problem solvers” through our work on individual cases, and I started building the core of the work group with those colleagues. Directors of offices working with international students, GLBT students, and staff from the EEO/AA office were also included. Convening the work group was done informally; there was no formal ‘charge’ nor was the goal to write a new policy to be enforced. We came to see ourselves as simply responding to a felt need within the community; we were a group of volunteers, coming together to work through informal channels to promote a climate that was free from academic harassment. The work group developed the following vision statement: “We envision a university culture that fosters academic excellence and promotes civil and respectful relationships through effective prevention of, and response to hostile, offensive or intimidating behavior.”

Once the work group was convened and our vision statement was adopted, we agreed upon our objective — to develop a model to address academic incivility at the U of M. We needed a way to explore

and identify goals, strategies, and actions to address the issue. To help us make sense of this complex issue, where everything seemed to be interconnected with everything else, we used a strategic mapping method. The group was able to identify specific goals related to: envisioning new cultural norms around behavior; building and sustaining support for the new norms throughout the university; and integrating the new norms within our academic community. More details on this method can be found in the book *Visible Thinking* by John Bryson, et al.

To build our strategy map, work group members were asked to propose action steps that would meet two criteria. The question was asked “In order for us to accomplish the objective of addressing academic incivility, what are some actions that would first, help to meet that goal, and second, that you are willing to work on?” We were asking for everyone to contribute all of their good ideas, and those ideas had to be something which they considered important enough to commit to working on themselves. The exercise garnered about 60 ideas such as “develop workshop for graduate students,” “communicate with directors of graduate study,” and “meet with senate committees.” Each idea was written on a 3x5 post-it note and then affixed to a large sheet of paper, with similar ideas grouped together. The group then discussed various options, and each member voted for their top 10 action steps. The culmination of our initial meeting was the adoption of the following slate of 12 prioritized goals:

- Send a letter to Directors of Graduate Study and DGS assistants with a Quick Reference Guide, the Graduate Student Advising Guide, and a draft of the letter to graduate students.
- Send a letter to faculty apprising them of the work of the group, asking for their help and support.
- Present information at the new faculty orientation.
- Develop and present an orientation session to all incoming graduate students.
- Send letter to all graduate students the 3rd week of classes.
- Develop a workshop on civility for departments.
- Present to new faculty department chairs.
- Presentations will be made at the Center for Teaching and Learning’s (CTL) teaching enrichment series

entitled “Incivilities in the Learning Environment.”

- Prepare two podcasts — one for students and one for faculty — that will be added to the Student Conflict Resolution Center (SCRC) website.
- Post the survey data on the SCRC website.
- Set up meetings with the university’s Educational Policy and Equity, Access, and Diversity senate committees.
- Develop a document to assist departmental chairs in handling reports of incivility.

Because there were only six weeks before the beginning of the academic year, the group moved quickly to assign tasks to small groups of 2-3 individuals. The work group met every other week for a period of eight weeks to launch the initiative, then kept in touch via email and met as needed over the year, with a total of six meetings. All 12 action steps were completed during the 2008-2009 academic year. A list of the group members and all documents developed, as well as complete survey results can be found at: [http://www.sos.umn.edu/staffaculty/academic\\_civility.php](http://www.sos.umn.edu/staffaculty/academic_civility.php).

It is interesting to note that not one of the 60 ideas was to “develop a policy.” Because the group was an informal and voluntary activity for all of the participants, every effort was made to use our time as efficiently and effectively as possible. Therefore, we focused on implementation of action steps and relied on a strategy of development of tools and communication with key stakeholders — faculty, directors of graduate studies, deans — that offered a different vision. The critical importance of a positive learning and work environment was emphasized as key to the success of graduate and professional students. And the group developed tools and resources to those interested in working with us to help address the systemic problem of academic harassment.

The Academic Civility Initiative is essentially an attempt to ‘disrupt’ the existing academic culture by proposing new values, setting new standards, and introducing new ways to respond to longstanding problems. The initiative also invites people to commit to the best practice of civil behavior toward and among graduate students. It empowers members of the community to be personally responsible for their choices rather than to be reliant upon an external control or hierarchical directive.

**“I encourage you to communicate with the highest levels of the administration — they need to be leaders and are currently not doing what they must on this score.”**

A central goal of the change effort was to persuade members of the community that it was in their best interest to do their part to improve the environment for graduate students — and also for themselves — by promoting a more civil standard of interaction. One indication of the success of this initiative is the heavy use of the materials on the SCRC website. The Academic Civility page has been the most frequently referenced page over the past year than any other page on the site — including the home page. In addition, qualitative feedback has been obtained through ongoing conversations with members of the community. Discussion of this issue has gone from being almost a taboo topic to one that is being more openly acknowledged and discussed. Perhaps this initiative has made a contribution to the shift in dialogue.

The academic civility work group is planning to review, revise, and administer the student survey in fall 2010; it will be informative to compare data with the fall 2007 results. And while the number of cases featuring academic harassment continues to rise, the students who are coming forward are more aware of resources and options, and are looking to take action rather than resigned to enduring the problematic behavior or contemplating leaving their program or the university.

**“The University must take this matter seriously. It affects many more than the faculty member and the student; it affects all who have worked and will work with them in the future.”**

Our institutions can do a better job of protecting graduate students from the kind of behavior that prevents them from doing their best work and inhibits their achievements. The community has a moral and ethical responsibility to do so. As ombudsmen, we have the opportunity to use our knowledge and expertise to play a significant role in organizations working to address the destructive forces of academic harassment.

# Dealing with Bullying Behaviours in the Workplace: What Works — A Practitioner's View

**BARBARA McCULLOCH**

## **ABSTRACT**

The issue of how to deal with bullying behaviour in workplaces is a vexed one and many varied views have been published on the subject. This article is written from the perspective of a Mediator employed in a tertiary academic institution who has developed a process of mediation specifically to address issues of concern about workplace bullying and harassment. The article draws on the author's experience over the last 5 years and sets out her process and conclusions as a practitioner in this field. It is intended to elicit comments, questions and discussion amongst readers.

## **KEYWORDS**

workplace harassment, mediation, addressing the problem behaviours, compassion, protocols

## **DISCLAIMER**

The views expressed in this article are the professional views of the author and do not necessarily reflect the views or policies of the University of Auckland.

This article is a contribution to the many others available on the topic of workplace bullying; it is based on my experience as a practitioner rather than scientific or academic study. When you google workplace bullying there are 489,000 sites which come up but, as most deal with aspects other than "what works", I hope that this contribution will add value. The article is in two parts; the first part deals with the use of Mediation and the second is an appendix and suggests a tool for Organisations to use as an initial decision making tool when complaints or concerns about harassment are received.

The first part of the article is based on the process I have developed as a Mediator to deal with such concerns and complaints and as I have had some success and satisfaction from that I've recorded it for discussion. My description is intended to be conversational rather than didactic. I hope that readers may respond to me and with each other.

## **THE LEGISLATIVE LANDSCAPE IN NZ IN RELATION TO HARASSMENT: A LAY PERSON'S GUIDE**

In my view the most relevant piece of legislation to consider is the Health and Safety in Employment Act, 2000. It sets out the following provisions:

- a) If an Employer identifies a hazard in the workplace then the Employer must take all practicable steps to remove the hazard. (Bullying is identified in the definition of hazards).
- b) If the hazard cannot be removed, then the Employer must take all practicable steps to minimise harm, including psychological harm.

My suggestion is that instigating a Prevention of Bullying Policy is a simple practicable step which any Employer, regardless of size, can implement. An effective Policy should provide a definition of bullying, a range of options to deal with concerns depending on the level of seriousness involved in the accusation and

the preferences of the complainant and an ability to address the most serious cases with the most serious consequences.

Since 2005 part of my job description has been to devise ways of defining harassment and bullying and working to minimise the impact of this behaviour. I base my conclusions on interviews and various interventions over the last 5 years using 143 “cases” and follow ups. In conversation with others working in similar environments I think this number is probably “normal” and I have included staff-staff, staff-student and student-student examples and concerns.

While I conclude from my own observations and the writing and studies of others that there are structural and systemic factors which make bullying behaviour more likely to occur, (e.g., there is good research available to suggest that strongly hierarchical or feudal organisations are more likely to have an inherent structure which invites, tolerates and supports bullying behaviours) I also conclude that with some good interventions, the behaviours which cause concern can be minimised despite these factors.

I note particularly the work which has been done by the Australian Defence Forces to alleviate bullying within a hierarchical organisation.

### A WORKING DEFINITION OF HARASSMENT AND BULLYING

- Bullying and harassment are ways of behaving. The behaviours are unwanted and unwarranted and have a detrimental impact on the target/s or victim/s.
- Many people who are accused of bullying would not agree that the term (bullying) is an accurate description of what they do; some people do behave inappropriately without having a clear idea of the impact their behaviour has on others. These people also often believe quite genuinely that they are well intentioned or “just doing my job”. However:
- Harassment is the term I have used as the “umbrella term” for the concerns referred to me as a Mediator. Bullying, which is one version of harassment, involves an abuse of power and authority but is not always defined by hierarchical structures. It is of course possible to bully across hierarchical lines and rely on other than positional power to do so.

However, most of the cases referred to me which are allegations of bullying are hierarchical, i.e., staff complaints of bullying from their managers.

- Many of the cases which are referred to me are allegations of harassment (as distinct from bullying). Sexual and racial harassment are again sub-sections of harassment. Interestingly, there are similar numbers of sexual harassment claims from academic staff about students as there are from students about academic staff. There are greater numbers of women who complain of sexual harassment against men than vice versa. There have been very few claims of racial harassment referred to the Mediation Service. (Three in five years.)
- Bullying usually occurs over time; it is a pattern of repeated behaviour and the pattern of behaviour usually escalates (if it is not recognised and dealt with quickly). It humiliates, excludes, demeans, offends or intimidates. It can be verbal, it can occur by publication and, very occasionally, it can be physical.
- There has been a noticeable increase in the last 5 years of claims about electronic bullying and most of these allegations have occurred in the student community.
- While both racial and sexual harassment are defined in legislation in NZ (The Human Rights Act 1996 and the Employment Relations Act 2000) there is no similar definition for bullying. One of the strengths of current legislation is that the legislation actually defines some of the harassing behaviours and, for clarity, I think that if we are to create helpful legislation, it should follow these precedents and actually list (some of) the most common ways that bullying can occur in the workplace, whilst ensuring that the codicil of “repeated behaviours” rather than “one off” or incidental behaviours is stressed. It is the pattern of repeated behaviours which has the detrimental effects.
- In NZ we have a Criminal Harassment Statute and various other pieces of legislation e.g., relating to Domestic Violence but none specifically pertaining to workplace bullying. One conclusion, shared by various writers and contributors to this discussion is to ponder “why not” since defining the behaviour, clarifying that such behaviours are not acceptable and then providing processes to address the behaviour and minimise its repetition are shown to have the greatest positive impact.

My recommendation, then, is that Organisations be advised to adopt "Prevention of Harassment" Policies and to provide a range of nominated staff and possible interventions to deal with concerns. The Policy needs to be consistent in that it should define bullying behaviours, it should clarify that bullying and harassing behaviours are unacceptable and then it should seek to address the behaviours and to support all parties during that process. There are two main reasons for this recommendation: one is so that the Organisation is compliant with the Health and Safety in Employment legislation and another is that "bullies" often have a high regard for authority and may therefore be less likely to use bullying tactics if a Policy exists to forbid it.

### WHY IS IT IMPORTANT TO DEAL WITH BULLYING BEHAVIOURS?

It may be useful to consider first why we should deal with workplace bullying and harassment; as an HR manager commented, "Isn't bullying just another name for people who can't get on with each other?" However, there are well researched and documented articles on "The Costs of Workplace Bullying" and so I've summarised these points:

To begin, workplaces exist to be productive in some way. Workplace bullying is documented to reduce productivity through absenteeism, low morale, poor relationships and teamwork, and low trust/ high conflict cultures.

*"Targets will spend a lot of time just trying to deal with the abuse....Bullies remain glib and credible and continue to manipulate with uncanny guile....Rather than listen to the victim and deal with workplace bullying it is easier to threaten the victim with termination unless they tolerate the abuse....eventually this happens and the victim's employment is terminated once their mental, physical and emotional health is destroyed..."* — (Quote from "The Business Case against Bullies"; Anton Hout)

- There is a financial and relationship cost each time a person leaves their employment and has to be replaced; the costs relate to downtime, recruitment and training. It is rarely "the bully" who voluntarily leaves.
- Some employees leave and take out personal grievances against the employer, particularly if the employer has insufficient policies and procedures in place to deal with workplace bullying; litigation has financial and reputational costs.

- A long standing "culture of bullying" creates a reputation which makes recruitment of the best people more difficult.
- In a "culture of bullying" people quickly adapt to obedience and conformity and relinquish ideas of creativity or taking risks to avoid making mistakes and being punished.
- There are often severe and long standing problems for the targets or victims of bullying; these include health and psychological problems. Sometimes these are so severe that there are downstream consequences, e.g., failed relationships and unemployment requiring medical or psychological intervention and the associated costs which are personal and societal.

*"In isolation, a single insult might appear trivial, but it is the cumulative effect that is so devastating. Far from being easily shaken off, the literature shows that bullying can induce lasting trauma, for it can rob a person of self confidence and self worth."* – Corrosive Leadership (Or Bullying by another Name): A Corollary of the Corporatised Academy, Margaret Thornton)

- There can be costs to the families of victims:
 

*"Being the partner involved in this kind of ongoing bullying and then of course, the stonewalling that has come after has actually taken a much worse toll than I thought. I am normally a pretty strong person, emotionally and physically, but the drain of being in a constant state of dread, day after day, has made me a wreck. Every day, I spend worrying about what the next incident will be, the worry of how long my husband will keep his job under these circumstances, and of course the over-riding fear of his health — of blood pressure, stroke, and whether I am going to be left alone to raise our young son. All of which would sound melodramatic if it weren't for the grinding pressure of it all — each day brings more weight, more burden, and more pressure.*

*Eventually everything else in life gets sidelined to the work situation, because that becomes all-absorbing. So relationships and children lose importance in comparison to the all-encompassing relationship with the work-place bullier. It may be a toxic relationship, but that is the one that is most pre-eminent in his mind because it worries him constantly. I think he wouldn't mind me saying our marriage has been put under terrible strain. It's also important to consider the time frames of this — Pretty much since our son was a baby, we've been under this pressure. He has never*

*known a father free of worry, or who is not brought down and miserable by his work situation. My husband sleeps very little, and as a consequence is tired and often not in the mood for play, or to give the kind of attention and affection our child would love.*

*Finally of course, my husband's worry is my worry. I have lost 4 kilos and I know he has too and it sounds silly but I spend all my time cleaning the house, sometimes till eleven at night. I bake constantly food that no-one eats, just for the sake of having something to occupy my time so I don't think about things. I find the only way to avoid worrying constantly about our future, my husband's career, and our financial security is to tire myself to the point of exhaustion. At the beginning of the bullying and the process I was a supportive strong wife, and now I am just exhausted by it. It has all been so long, and so relentless, and there is never any sense of escape. I am in tears at the drop of a hat, and I snap at my son and husband. The whole process has now made me also a failure as a wife and a mother and I resent this." — Quote from the partner of a person being bullied*

### HOW TO ADDRESS THESE BEHAVIOURS: WHAT HAS WORKED IN MY PRACTICE

A key component of addressing the bullying behaviour is to have an agreed triage stage, nominating a range of staff and processes available. In the first instance, the complainant chooses who to approach. It is often important that the original recipient has an ability to discuss the situation, on an anonymous basis if necessary, with another nominated staff member to ensure that, as far as possible, there is clinical agreement on how to proceed. In my work, this has been shown to reduce risk to both the aggrieved party, the accused party and the employer.

I have a suggested sequence of questions which can be asked, not in any kind of scripted format but in a more conversational tone. They enquire about what has happened, how long and how often the problem behaviour occurs, who else might have noticed this and what the impact is on the person reporting the concern. Best practice suggests that at the end of each series of questions, the interviewer summarises with the client what they have heard and then proceeds having a mutual understanding of the client's perspective.

### TRIAGE QUESTIONS

What happened?

What happened before that?

What happened next?

How often does this occur?

Do you notice that similar things happen to anyone else?

What were you trying to achieve at the time?

Was there anything else?

Were you trying to avoid anything at the time?

Was there anything good in terms of what happened?

What was the worst part? (Summarise)

Which values of yours do you think were "trespassed on"?

Which needs or expectations of yours do you think went unmet?

How do you think your sense of your identity was challenged?

(Sometimes people find these questions quite challenging at the time, but I've noticed they always come back with an answer at a later time if that happens.) (Summarise)

How might "the other" be contributing to the problem? (Summarise)

Which values of theirs might have been trespassed?

Which needs or expectations of theirs might have gone unmet?

How do you think their sense of identity might have been challenged?

How might you have contributed to the problem? (Summarise)

If you were in a similar situation again what might you do the same?

What might you do differently?

If they were in a similar position, what might they do the same?

What might they do differently?

What is your best learning from this? (Summarise)

What might their best learning be? (Summarise)

In lengthy or complex situations I then use a narrative technique of writing to the person and summarising again what my understandings are from our discussion. Once the client is happy with the written summary, we then discuss the options available for dealing with the problem. In simple terms, the options are to do nothing at the moment and see what happens; to ask the other to come to a facilitated meeting or mediation; to make a formal complaint or to make an external complaint. We often suggest that people seek advice prior to making a decision about which process to use.

I have observed a number of things which lead me to conclude that there are broad categories of bullying:

Firstly there are people who behave badly at some times but who are able and willing to accept feedback, apologise for any distress caused and take steps to change their behaviour.

These people might behave badly on a regular basis or on an occasional basis. They probably understand at some level that their behaviour is unacceptable and so they often engage in justifying thinking in order to continue the bad behaviour. They may comfort themselves when they reflect that the other person deserves to be bullied. They probably don't use the term "bullying" but they might describe their own behaviour in other ways. However, they tend to concentrate on depersonalising "the other" and defending their response in their own minds. The key requirements are the ability of the mediator to elicit insight, compassion and the taking of responsibility in the accused person.

Secondly there is a category of people for whom bullying behaviour starts out as un-planned but because it has a desired effect (i.e., desired by the person perpetrating the bullying) it is learned and then repeated. I don't think that we can subscribe to a theory of accidental bullying over any prolonged period of time but we can probably accept that the bullying was, initially at least, unintended.

In such situations, the person accused of bullying is often stressed, stuck, anxious, poorly trained and prepared for people management, lacking emotional intelligence and feeling overwhelmed and under siege but they are still well intentioned and believe,

however delusional this might prove to be, that they were trying to "prevent something worse from happening".

Again, the key requirements to address and change the pattern of bullying behaviour are the skill of the mediator and the willingness of the accused person to reflect with insight, compassion and responsibility.

I consider that there is a third category which includes people who bully each other in reciprocal fashion and people who bully in chain gang fashion, i.e., I bully you so you bully someone else who bullies someone else who goes home and kicks the cat. This can easily develop into a "culture of bullying" which can then be perceived as "normal" or, in the words of Michelle Le Baron, "what we do around here". The skill of the mediator in dealing with this category of bullying behaviours (and my experience is that this is by far the largest category) is twofold; we strive to create a desire in both parties to take responsibility for their own behaviours and to show compassion for the other's situation. To achieve this, the notion of impartiality becomes of paramount importance.

The most valuable understanding of impartiality comes from a narrative context and says that impartiality is not neutral but non aligned; being engaged with balance and showing systematic intuition. As mediators in this situation we need to keep in mind a whole picture approach (to a greater than normal degree) and we need to be willing and able to "stay with conflict" (Mayer).

To successfully address reciprocal bullying, the mediator has to be trusted sufficiently by the parties that they are willing to become vulnerable and articulate their own failings and mistakes. To achieve this the Parties have to know that such an articulation can never be used against them, e.g., when applying for promotion or a salary increase, and so, of course, cannot be done by an HR professional. Even when HR perceive themselves to be acting impartially in the individual situation, they cannot be perceived as systemically impartial; they will always have an ongoing relationship with the parties and they are not non aligned. (I address the issue of HR involvement later in the article).

I think it is important to acknowledge here that some people describe themselves as "repeated targets for bullying" and, if we fail to assist them to change their own "inviting" behaviour, we collude with the future perpetrators. Using EAP or another referral to psycho-

logical assistance prior to engaging in any mediation process to address bullying is an important aspect of what works.

Lastly, there is a category of people who have been described as “workplace psychopaths” (Giles St John Burch, University of Auckland 2010) and to recognise that these people are different; they are not stressed, stuck, anxious or poorly trained and prepared for people management, they do not feel overwhelmed and under siege and they are certainly not well intentioned. They do lack emotional intelligence in that they lack the ability for insight and compassion and they sometimes derive pleasure and satisfaction from inflicting pain and distress on others. Interestingly, in most of the situations I have dealt with, the targets or victims of bullying will often very accurately, be able to differentiate between the “workplace psychopath” and the others. Lacking insight and compassion, workplace psychopaths are unable to complete the questions in the triage process. My suggestions for dealing with bullying behaviours in the workplace do not apply to “workplace psychopaths”

I further acknowledge that it is also possible to bully by making unsubstantiated and malicious claims of bullying against another person. I am reminded of a comment by Justice Finn in the Australian Supreme Court who said, “It is not workplace bullying for managers to manage.”

### WHAT DOESN'T WORK IN THE MANAGEMENT OF WORKPLACE BULLYING

The role of HR professionals in the process of dealing with allegations of workplace bullying has been debated and discussed in various articles (some of which provided resource material for this piece). It was also discussed in recent NZ research referred to in the bibliography.

One concern is that a number of HR professionals (and other managers) simply assume that accusations of bullying are in some way a code for “I’m not coping with my work” or “I can’t get along with this person” and therefore disregard concerns which are raised without enquiring in an impartial manner about the concern.

While there may currently be a more generic use of the term bullying, and while this probably does undermine the more serious cases, the available research confirms that bullying is a real problem in the

workplace and we need to pay attention to it at the earliest possible opportunity.

*“Employer responses to reports of bullying have consistently been found to be inadequate. . . . Targets may seek assistance from HR to deal with bullying. Evidence on the effectiveness of HR in dealing with bullying is mixed. (Ferris 2009). HR personnel may feel that bullying is an issue they are untrained and unprepared to deal with and may find that their role is to support management expectations rather than employee welfare. (Ferris 2009). A lack of effective organisational responses to counter bullying can mean that the practice is normalised as permissible.” (Heames, Harvey and Treadway, 2006).*

Not so very long ago, concerns about child abuse or domestic violence were similarly ignored or treated as private and those victims often felt and sometimes still feel re-victimised by this response. Acknowledging that you feel bullied leaves most people feeling deeply vulnerable and ashamed; few of us would put ourselves in a position like this if we weren’t feeling powerless to deal with the matter ourselves and without help. Admitting to another adult that someone else is bullying us cannot be an easy task so, if we are informed of this, we need to respond “as if it was true” and offer support.

*“Human beings are so made that the ones who do the crushing feel nothing; it is the person crushed who feels what is happening. . . .” (Simone Weil)*

For this reason, some research suggests that bullying concerns are addressed at least initially, through another channel than the HR channel since the HR function is structurally, systemically and strategically linked to the Employer and one of HR’s primary purposes is to minimise risk to the employing organisation.

If we concur with this assertion, then HR cannot be perceived as impartial. Given that Mediators (and Ombudsmen) are impartial by definition as well as perception, we can allow for concerns about bullying to be addressed safely if they are addressed (by Mediation or Investigation by an Ombudsman) and we can prevent the anxiety or perception on the complainant’s part that raising the concern will “haunt you” at some future date, e. g., increasing the HR view of someone as “not a team player” or “not up to it”.

Larger organisations can employ, or separately contract, a mediator who is trained to deal with workplace bullying issues. That in itself suggests an aware-

ness of the problem and shows staff that workplace bullying will be taken seriously. Acknowledgement is a major first step in the process of combating the problem.

*"I actually feel that the experience of making a complaint and having it ignored or brushed aside is more damaging than the bullying itself. The sense of hopelessness and powerlessness when the employer does nothing is psychologically worse than the bullying, as with the latter alone there's hope that it can be stopped. Furthermore, targets are much more likely to suffer a loss of self esteem if they think that what has been done to them is acceptable."* – Quote from a person being bullied at work.

*"Findings from the Managers' Survey indicated managers' perceptions of the scale of the stress and bullying problem were out of line with evidence from the Survey of Work and Wellness, with most managers believing that bullying occurred infrequently in their workplace.....Human Resources activities related to...the management of bullying appear inadequate in many participating organisations..... The report.....notes the urgent need for intervention research in the education and health sectors, where bullying and stress appear particularly relevant....."* — "Understanding Stress and Bullying in NZ Workplaces"; Final Report to OH&S Steering Committee; Professor Tim Bentley et al, 2009

## THE VALUE-ADDED USE OF MEDIATION TO DEAL WITH WORKPLACE BULLYING

The suggestion that we might use mediation to deal with workplace bullying has sometimes been met by astonishment; one party asked if mediating accusations of bullying meant that they would agree to "only being bullied on Mondays, Wednesdays and every second Friday?" However, someone else in that group announced that for her, this would be a big improvement and she would agree to that! So, classic issue based mediation is not what I am recommending. Instead, I use the term "Mediation" in the context of a mediator remaining non aligned and compassionate, facilitating a safe process, assisting parties to address real concerns and to find mutually agreed solutions. It also implies that that Mediator is trained in working with these problems, can work with high emotion, can provide actual safety and is flexible enough to "educate" parties about bullying behaviour and its impact. (In much the same way that Mediators can educate Parties in family mediation about the impact of fighting and hostility on the children.)

In the successful (or somewhat successful) mediations to deal with workplace bullying I have considered the following format (and acknowledge that this relates to an ideal world rather than always an actual world):

- Being able to confidently rely upon support from the employing organisation for the mediation process. Being able to confidently rely upon an agreed set of protocols with "stakeholders" who understand the triage process and work with the mediator to categorise as well as possible what kind of bullying behaviours are involved and how best to approach the problem.
- Relying on "other parts of the Organisation" (including HR) to do their job effectively if mediation is not considered to be the best approach.
- When mediation is considered to be the best approach, meeting separately, usually more than once, with each Party and "coaching them" to have sufficient resources available to deal with the issue.
- Using co-mediation to ensure that everyone involved is carefully assisted to deal with the issues.
- Maintaining "separateness" until the Parties are willing to meet directly and using a form of "shuttle mediation" to maintain safety.
- Using an HR manager to "give HR advice to all Parties" and/ or to implement any disciplinary procedures which may be required if the matter is deemed to be sufficiently serious or if a party declines to attend Mediation or subverts the Mediation process.
- Ensuring that access to additional support, e.g., counselling is available for any Party who needs this.
- Using a "narrative approach" to create a "new conflict story". Narrative philosophy is useful for helping people who are "stuck" in victim/ villain life stories, who tell "always/ never" tales, and who have lost sight of solution focussed outcomes or who have lost contact with "temporality" and the role of time passing to create a new perspective.
- Again, I stress that this approach is not helpful if you have identified that the accused person is someone you consider might be a "workplace psychopath".

While much of the research available concentrates on and advocates for a singular approach to bullying where "the behaviour is named as bullying", my approach is different.

As an analogy, it occurs to me that if, for example someone accused me of being a “bad mother” my most likely response would be to deny this and defend myself. I could carry on this defence to an extreme level of litigiousness. The “naming and shaming” process will be counter productive, because any insight I might have in secret moments will be firmly squashed down at any cost.

Being accused of “being a bully” is likely to have the same impact and result in the same defensive behaviours. Few of us will respond constructively to such an accusation because of the shameful and one dimensional attribution involved.

However, if I am asked to reflect on a specific behaviour, especially if it can be described in factual and observable terms, I am much more likely to allow my insight to prevail, even if I initially deny it. If, for example someone says to me, “I’m concerned that you have left your children unsupervised at night while you go out and I’m wondering if there’s something going on for you?” then I’m much more likely to “share” my situation and be open to any help or assistance that may be offered. Similarly if someone says to me, “I’m concerned that at our last three meetings you have shouted at “Sally” and been very critical of her time keeping in public; is something going on here?” that I might also be more open to a constructive discussion. Having this information, of course, is dependent on using a good triage process and gaining good information. It is also dependent on an approach of enquiry for everyone’s benefit rather than “a disciplinary hearing of facts” or to the approach of “rescuing” someone by taking their side and being partial to their version of the problem story. In this scenario, victims stay victims, villains stay villains and “nothing changes” except that each side recruits believers and engages in a wider and more destructive process.

In my discussions with people who raise concerns about bullying behaviour, I am impressed by the numbers who specify that “I don’t want ‘Fred’ to get into too much trouble but I want him to apologise and stop ....”

If we then ensure that they, as complainants, feel supported and respected, if we then keep them safe and as far as possible follow their desired process, we can often achieve satisfaction. If we also manage to maintain a respectful and compassionate relationship with the accused person, despite the accusation, my experience is that this in itself is useful.

## THE VALUE OF COMPASSION: HOW TO STAY COMPASSIONATE WITHOUT COLLUDING

Professor Kenneth Cloke writes beautifully about this and asks the question “*How can we be compassionate without colluding?*” He concludes that the best and most compassionate approach is one which is “soft on the people and hard on the problem.”

Compassion does not imply agreement. It does not imply approval. It implies the notion that we are all human beings who can support each other in our humanness and struggle for integrity, despite disagreement or disapproval of certain behaviours or attitudes.

If someone feels stuck and comes to me as a Mediator for assistance or simply to feel heard, and I give my time and listen to them, I am showing them compassion. If I then ask gentle questions which open up their thinking and have them reflect differently I am showing even greater compassion. If I do this without judging them as human beings but I ask them to consider a different way of being in the particular circumstances they describe I am showing them even greater compassion.

If that person then has an ability to go away and do that for another human being, even one they were previously at odds with or in conflict with, we have greater compassion in the world. We are being compassionate.

I have sometimes shown this to friends as a figure 8. In the top circle I show compassion to another. The other then stops being “stuck”, is able to flow, and can go away prepared to show the same compassion to another in the bottom circle; the compassion 8 has occurred.

If I hear a story of being bullied from one person (or a group of people) and I listen with compassion they are likely to feel better. If I then ask the “bully” to hear their distress about the behaviour and ask the “bully” to reflect on how that might be and what they intend to achieve and how they might achieve that intention in a better way, and I listen to their intention with compassion, they are also likely to both feel better themselves and to engage more constructively with their “targets” and to modify their behaviour. They may even explain their intention and apologise sincerely for their (unintended) impact. A more compassionate culture exists at that point in time.

I need to stress that this approach works best with individuals in conflict with each other and less well with individuals in conflict with Organisations. Organisations tend to be immersed in and familiar with “problem focussed narratives” which rely on power and a rights based approach to problem solving and winning/ losing binaries rather than “solution focussed narratives”; this is possibly because Organisations are anxious about being sued or because that is indicative of an “organisational culture”. I encourage Organisations to try the Mediation process when faced with accusations of systemic workplace bullying or cultures of bullying because the process works; few people want to leave their place of work, especially in straightened economic times or when there are few choices of employers available, e.g., in academia or in smaller locations.

*“Organisational culture reflects market pressures. This has led to the notion of the organisation as a bully in which organisations are not necessarily seen as the cause of the bullying but as conducting bullying directly by means of their power structures as organisational interests conflict with those of individuals. In this view, organisational bullying facilitates interpersonal bullying....”*

And,

*“It is possible that stress leads to bullying and bullying leads to stress.”* — (“Understanding Stress and Bullying in NZ Workplaces”; Final Report to OH&S Steering Committee. Professor Tim Bentley et al 2009)

And,

*“I had a concern that the employer would either just support the bully because he was higher up in the system or, that they would try to use us as bait to catch him. I felt like there was a tiger loose in the jungle and we were about to become the goats tethered to a stake.”* — Quote from a complainant

Working with individuals within an organisation can, however, over time influence the “organisational culture”, or, as Cinnie Noble describes it, “Peace building one person at a time”.

Of course this approach takes time and skill to achieve. My response is that it is better to put resources into peace making because then you don’t need to spend them on peace keeping.

It is also important to keep in mind a wider responsibility:

*“While antibullying legislation can impose societal constraints and require Organisations to intervene, simply terminating abrasive leaders will not solve the problem of workplace abuse- they will only go on to work (and cause distress) elsewhere. Despite our understanding that domestic abuse towards children, spouses and elders requires a comprehensive approach encompassing legislation and rehabilitative help for abusers, why has it taken so long to apply this same thinking to workplace abuse?”* — (Coaching Abrasive Leaders; Louise Crawshaw 2010)

Some detractors use this as a reason to not engage in a mediation process. They want a quick fix despite the fact that the problem situation is often long standing. Often these people have no idea how long and protracted litigation can be or sometimes they don’t like to feel as if they are standing on unfamiliar ground. “Fighting your corner” or taking an aggressively defensive stance can be so “normal” a response that it goes unquestioned.

I advocate for this value added approach because in my view it works better and saves resources; time, money, energy....It also preserves and enhances relationships. It saves costs in recruiting new staff. (Again, this is especially important in an industry like tertiary education where there are very few employers and so the preservation and enhancement of relationships may be of greater importance.)

It requires people to function at a very high level of emotional intelligence. Once this kind of functioning is practised, it becomes more normal and therefore cultural change occurs. It increases the compassion quotient in the world.

Some of my thinking has been motivated by the writing from the Arbinger Institute. Some of my thinking and practice has been motivated by the writing of Kenneth Cloke and Bernie Meyer. Some of my thinking and practice comes from studying the “Conflict Coaching” method of CINERGY.

I am aware that none of the strategies I have proposed will work with the small but dangerous percentage of the population we might describe as ‘workplace psychopaths’. I acknowledge that without insight there can be no compassion and that people who lack insight are highly unlikely to change. They

are unable to take responsibility. Their presence in workplaces creates legal and human problems. The methods I suggest are not successful in dealing with these people or their victims.

The assessment of these people as “workplace psychopaths” is somewhat subjective (although anyone who has met a psychopath can identify them as such). In an Organisation which understands the phenomenon of workplace bullying, there may be a greater opportunity for a structural response. In workplaces which don’t understand the phenomenon, I’d advise people to leave if at all possible. I remain hopeful when I consider that only one generation ago, we dealt badly with domestic violence and child abuse and now, we deal with it better.

I wonder if perhaps there is a connection between the two, given the increased number of hours many of us spend at work, and the increased amount of stress resulting from work expectations. I consider that there are strong parallels between domestic violence and workplace bullying but that’s a topic needing more research and consideration.

I’m aware of the arguments against using mediation to resolve allegations of workplace bullying. I’m clear that “power differences” are a factor in mediation but would argue that this is almost always the case. I’m aware that there are strong arguments to say that mediation risks re-victimising the victim and my response is that victim-villain binaries are usually unhelpful in analysing and resolving problems.

I remain convinced that the methods I have described do, in my experience, deal with the vast majority of workplace bullying situations despite the risks. I’m hopeful that my thoughts on this contribute in a meaningful way.

## APPENDIX: A PROTOCOL FOR ORGANISATIONAL DECISION MAKING IN CASES OF ALLEGED BULLYING

1. The purpose of this tool is to assist the person who first hears the concern or complaint to decide which process is likely to be best to:

- Prevent the situation from escalating;
- Address the concerns of the complainant;
- Allow the respondent (i.e., the person complained about) their rights to “natural justice”;
- Consider the needs of the University where applicable;
- Consider the likely level of seriousness involved and therefore the risks involved to the parties and to the University.

2. The complainant makes a choice when they first approach someone for help to trust you and therefore in the first instance we need to consider **what kind of confidentiality we can offer**; in making this decision and communicating it to the complainant we need to consider the following:

- What is my role here?
- Who, if anyone, do I need to inform?
- How do I clarify this with the complainant so that they can choose whether or not to continue to talk with me or to take the matter up with another person?
- Who might I refer them to if I am not the most appropriate person?
- If, during the course of the initial conversation it arises that you have or may have a conflict of interest, this needs to be disclosed immediately to the complainant, who needs to be referred on, and any notes which have been taken then need to be destroyed and replaced by a note which reads: “person X came to see me today about a concern/ complaint and during the course of listening to them I discovered a conflict of interest. I disclosed this fact to person X and referred them to Y. I have destroyed all notes from the conversation.”

3. Providing that you are an appropriate person to hear the initial concern or complaint, the following process can be followed:

- Listen to the person without making any judgments but reflecting, asking questions and summarising what you hear;
- Write up notes and send them to the complainant for checking;
- Once the notes are accurate from the perspective of the complainant, and then set out their options for dealing with the matter. The options would include the following:
  - Being coached to deal with the matter themselves, (self help);
  - Attending an assisted dispute resolution process;
  - Making a formal complaint and
  - Doing nothing at this point.
- There is always an option of whether the matter needs to be referred to another authority, e.g., if the allegations are criminal. The complainant always has the option of taking their concern to another authority e.g., the HRC or ERA. The procedures for each option should be discussed with the complainant who then gives their preference.
- As far as possible we would prefer that any internal processes available can be used prior to using an external process for resolution.

4.1 If you have a different preference for dealing with the matter than the complainant, you can advise them of this but only when there is a clear and identified risk involved can you “impose your preference” over theirs. Before you do this, you should consult with another recipient, e.g., if you are an HR person you should consult with a recipient from outside of HR; if you are a mediation person, you should consult with someone from outside of mediation (and so on). The purpose of this step is to ensure that two different “disciplines” consider the issue.

4.2 If two people from different disciplines consult and agree that there is good reason to override the complainant’s preferences, then a further meeting with the complainant and both discipline representatives needs to occur. The complainant is invited to the meeting, the purpose of the meeting is clarified and the complainant is invited to bring a support person or representative prior to attending.

4.3 If the complainant still disagrees with your recommendation, then a further consultation should occur, this time including external legal advisors (or at the University) the Registrar in (his) role as General Counsel.

In general terms, only where there is serious risk to either person or to the University can a complainant’s preferences be overridden.

5. Once the complainant’s decision about the process to be used has been made, then the matter should be brought to the attention of the respondent and the steps above repeated.

6.1 If the complainant has preferred an “informal” process and the respondent does not agree to take part in good faith, then the consequences of that need to be discussed (e.g., if this is not resolved informally, a formal complaint may be lodged and investigated and taking part in that process is not voluntary).

If there is no agreement to an informal process then the complainant needs to be informed and make a decision about whether or not to make a formal complaint.

6.2 If a formal complaint is made it should:

- Be received within 30 days of the incident which caused concern;
- Be in writing and signed by the complainant;
- Name the respondent and state the nature of the complaint;
- Name any other people who may be involved;
- State the complainant’s preferred outcome.

6.3 Any formal complaint must be investigated and any Investigator must be completely impartial. (In a University setting, if an HR person investigates a complaint, they should not be attached to the Faculty in which the complaint arises.) In some countries, an Ombudsman can be called upon to investigate a complaint but in NZ, Ombudsmen only become involved after all of the available internal processes have been exhausted and dissatisfaction still exists. In serious cases, and as far as possible there should be two Investigators. The role of the Investigators is to firstly decide whether either or both Parties need to have safety procedures invoked or need to be suspended

during the Investigation and then to hear all of the information and consider whether:

- There is, on the balance of probabilities, sufficient information to uphold the complaint, or
- There is insufficient evidence to uphold the complaint, or
- The complaint is unfounded, or
- The complaint is malicious.

6.4 Based on their conclusions, the Investigators then make a recommendation to the decision makers. The recommendation should be one or more of the following:

- An apology be made and the Parties be referred back to mediation;
- Training and or counselling be undertaken by either/ both Parties;
- A disciplinary action be imposed on either or both Parties;
- Other people need to be informed.

6.5 The decision maker/s are under no obligation to follow the recommendations of the Investigators but they should consider the following:

- That the Parties are entitled to a copy of the Investigators' report;
- What reasons they have for not following the recommendations;
- How to communicate their reasons to the Parties.

7. Timeliness is essential to provide a service which as far as possible creates safety for all concerned, allows any "rights" to be exercised but which treats the matter/s raised with the degree of urgency required. Restoration of respectful and functioning relationships and productive work habits needs to be a priority. Availability of time would therefore be a primary consideration when considering which process to use and/ or who to appoint as Investigators.

The following timeframe would be acceptable:

- Initial appointments to meet with a complainant within 3 working days (and a maximum of 5 working days be allowed); in any situation where a matter is urgent, an appointment should be pro-

vided within 24 hours. If this timeframe cannot be met, consider referring the complainant to another recipient.

- Notes of the initial conversation should be forwarded in confidence to the complainant within 2 working days.
- The Respondent should be notified of the concern or complaint as soon as the notes are confirmed and the complainant has chosen their preferred process.
- In situations where there is a potential difficulty, e.g., the recipient has good reason to disagree with the complainant's preferences the "next steps" outlined should take priority and be concluded within 5 working days.
- In any Investigation a set of conclusions and recommendations should be available to the Parties and Decision makers within one month; if not then a message to all Parties explaining the delays and setting a new reporting date must be provided.
- A decision must be made and delivered to the Parties within 5 working days, with a further 5 days allowed for any submissions from the Parties to be considered.
- Once a final decision has been made it should be actioned and all Parties need to have a closing statement, e.g., "as you are aware, an Investigation was completed and the conclusions and recommendations from that have been provided. The decision of the University is X and under the provisions of the Employment Relations Act 2000 any further information is confidential between the employee and the University as employer.
- After 6 weeks a "checking in" call or appointment should be scheduled to either "close the file" or provide further support or intervention which may be required.

8. Any internal process should have a right of appeal (In University situations, to the Vice Chancellor within a specified time frame. In other organisations, the right of appeal can exist to whoever has final decision making authority.)

All internal decisions can of course be reviewed or reconsidered by an external authority, e.g., a court or ombudsman or tribunal.

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# Bullying: *A View from the Corporate World*

MIM GAETANO

## ABSTRACT

What behaviours define Bullying and why do these occur? When is a behaviour not Bullying? More importantly, what can an organisation do to minimise the potential for Bullying to occur in their workplace? This paper seeks to answer these questions using the experiences of a corporate ombudsman.

## KEYWORDS

ombudsman, bullying, corporate workplace, culture, Australia

## INTRODUCTION

If we believe some of the reported research findings in Australia<sup>1</sup>, as many as 70 per cent of employees are currently being bullied or have been bullied in the past. Thirty-eight per cent indicated that the bullying activity had occurred for periods longer than six months. Of the remaining sample, just over 13 per cent claim they will have witnessed workplace bullying. Even if only half of these figures are true these are staggering numbers. The Labour Council of New South Wales (Australia) claims that workplace bullying is the number one occupational health and safety issue in New South Wales<sup>2</sup>. As a corporation that has many workplaces in Australia including two in the state of New South Wales why, as an ombudsman for this company, have I not seen these high levels of bullying? To be able to answer this better, I have reviewed firstly what workplace bullying is and isn't, and secondly, when it is most likely to occur. Using this information as a reference, I have compared what our corporation does in relation to these factors and how I believe this contributes to lessening (but from experience not eliminating) the opportunity for workplace bullying in our organisation.

## WHAT IS WORKPLACE BULLYING?

Although this is an Australian definition I have seen similar definitions for other parts of the western world.

*'Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.'*<sup>3</sup>

Unpacking this definition there are four key elements that are important to recognise:

- (i) workplace bullying has its origins in a workplace conflict
- (ii) it is repeated in nature and can be long lasting
- (iii) it is inappropriate behaviour that can be aggressive
- (iv) it results in a level of (physical and/or psychological) distress that can linger long after the bullying has ceased

### EXAMPLES OF WORKPLACE BULLYING

Bullying behaviour can be *obvious* such as abusive or offensive language right up to criminal activity such as physical assaults or unlawful threats. It is this type of behaviour that often springs to mind when we think of bullying.

However, workplace bullying can also be *subtle* and may include behaviour such as deliberately excluding a person from normal workplace activities or intimidating a person through inappropriate personal comments or unjustified criticism.

And finally *covert* behaviour that undermines, treats less favourably or disempowers others is also bullying. Examples of this would be overloading a person with work; setting timelines that are very difficult to achieve or unfair treatment in relation to accessing workplace entitlements such as leave or training.

### WHAT IS NOT WORKPLACE BULLYING?

According to the act<sup>4</sup>, the following does not constitute workplace bullying.

**Reasonable** action taken in a **reasonable** manner by an employer:

- to transfer, demote, discipline, counsel, retrench or dismiss an employee
- to not award or provide a promotion, transfer, or benefit in connection with an employee's employment
- to carry out reasonable administrative duties in relation to that employee's employment

### HOW DOES BULLYING DIFFER FROM MOBbing?

There are many similarities in bullying and mobbing behaviours and the resulting impacts but there is a very important differentiator between the two. Bullying involves the inappropriate behaviour of *one* person toward another person or groups of people. Mobbing on the other hand is the inappropriate behaviour of a *group* of people toward one person (the victim).

### WHY DOES WORKPLACE BULLYING OCCUR?

There are a variety of reasons why a person may bully another person in the workplace. These reasons may include:

#### (i) Power

A bully abuses their power to hurt, demean, or take advantage of others who do not feel they are in a position to protect themselves. For bullying to occur, both parties have to perceive the disparity of power and the paucity of alternatives. Bullies need victims. These are generally people who are weaker, insecure, or feel they can't fight back (whatever their reasons). That power can often be used in some of the following.

#### (ii) Self-esteem

Bullies may put down others to boost their own self-esteem and confidence to help deal with personal feelings of inadequacy.

#### (iii) Difference

An individual or group may become targets of workplace bullying because others perceive them as being new or different.

#### (iv) Perceived Threat

Some people bully others because the other person is perceived as a threat to them personally, or a threat to their position within the company.

#### (v) Organisational Culture

The culture of a workplace is often shown by its values, beliefs and what is considered to be normal behaviour. If the inappropriate behaviours and attitudes are encouraged or condoned by management then bullying is seen as normal behaviour for the majority of the workplace.

### (vi) Organisational Factors

People may harass or bully others due to dissatisfaction with organisational factors such as job insecurity, restructuring or downsizing, change in ownership or poor skills and practices in people management.

### (vii) Working Arrangements

Some working arrangements have individual employees or workgroups separated from supervisors and others in the workplace. This can allow bullying to go undetected and prevent effective monitoring and leadership.

## WHAT DOES OUR COMPANY DO THAT HELPS MINIMISE WORKPLACE BULLYING?

The above seven factors give us reasons “why” workplace bullying occurs so they can also be used as guides as to “what” needs to be done to stop the practice. I will review them through the lens of a typical workplace in our corporation.

The first four factors of “Power, Self-Esteem, Difference and Perceived Threat” all link to our ways of working. Our corporation has a strong belief in what we call the Associate Concept. Our employees are called “associates” and there is a strong egalitarian approach to working relationships. We have very flat organisation structures which minimise the “hierarchical” power available to managers. Part of the Associate Concept speaks strongly about treating each other with dignity and respect irrespective of race, religion, age or gender.

Of course, putting words together to demand certain behaviours is the easy part. Ensuring those behaviours becomes the fabric of the organisation in its day to day workings is much harder to achieve. This requires significant efforts especially by those in management positions. See below under “Organisational Culture”.

The fifth factor mentioned was “Organisational Culture”. Our company is very much a values driven corporation with a distinct and unique culture. It places a huge importance on its people and demands very inclusive ways of working especially from its managers. Bullying behaviour is so at odds with this culture that when it does occur, it can be very obvious and so can be addressed early on.

There is also significant investment in time and resources towards training and development of our people especially in our unique culture and expectations of behaviour as a company associate. In Australia there are regular “Fair Treatment” training sessions for all associates to ensure there is clear understanding on what is and isn’t acceptable behaviour. Our senior managers are expected to role model these behaviours and take seriously any allegations of improper behaviours. It is made very clear through these sessions as well as through disciplinary measures that improper behaviour will not be tolerated.

“Organisational Factors” was the sixth element of reasons why bullying occurs. We pride ourselves on having very open internal communication channels. Any level of management is available to all our associates to discuss, debate or challenge whatever is on their minds. There are regular communications on business updates and the frequencies of these communications are increased in times of significant change such as re-organisations, acquisitions or expansion activities. Where possible and practical, every effort is made to keep our associates up to date with factors that impact their workplace.

We understand the importance of people in the success of any business and so we go to great lengths to ensure we attract, train and retain high calibre associates into our business. A key element of the training is not just on technical / functional delivery of their roles, but also on the softer people skills that are required to fully engage and motivate their teams.

The final reason for bullying mentioned above was “Working Arrangements”. A long standing practice at our sites is the open plan office. A typical office will have the desks of the General Managers and their teams positioned in the middle of the office surrounded by the desks of their respective functional teams. In this layout it would be quite difficult for any obvious workplace bullying to occur.

## WHAT ELSE IS NEEDED TO STOP WORKPLACE BULLYING?

All the activities mentioned above are certainly important in helping to eradicate the bullying practice. However, life is never perfect especially when you are dealing with people. So even with all the above, there is still a need for both formal and informal grievance procedures to be in place so that any workplace bullying can be reported, investigated and actioned.

Formal grievance procedures that have the option to escalate grievances where necessary are very important. However, due to the sensitivity of many bullying incidents, wherever possible, the agreed procedures for “formal” investigations should be conducted as informally as possible, in confidence, and with fair procedures to minimise conflict and stress for the individuals involved.

### WHY IS AN OMBUDSMAN CHANNEL SO IMPORTANT HERE?

Given the nature of the behaviours and in particular the high likelihood for retaliation, it is important to have informal channels as well. This is where an internal ombudsman can really make a difference. Whilst an ombudsman is able to capture feedback on all forms of workplace bullying, it can be vitally important in capturing the subtle and covert forms of bullying that will generally not be seen by witnesses. These forms rely on the person being bullied to raise the complaint in some fashion. As noted above, victims of workplace bullying are likely to be suffering some form of psychological impact due to the bullying and the thought of going through a formal channel can be quite daunting. Fears of retaliation and job insecurity can exacerbate the psychological trauma. For example, research shows that the action deemed most successful by respondents to dealing with bullying was to “take no action” or “seek a new job”<sup>5</sup>. It is here that the confidential element of the ombudsman channel plays a huge role in helping to surface these types of bullying. It can be the safe haven that they need to help them work through their options.

Our corporation has well established formal grievance procedures and an ombudsman channel has been in place now for the past 13 years. In my time as an ombudsman I have certainly had to deal with workplace bullying and undoubtedly a key driver to why the employee was raising the issue with me was the fact that they felt “safe” talking to me.

Another positive element of an ombudsman channel with workplace bullying is the “early warning” element of their roles. The ombudsman has the potential to identify any “hotspots” in an organisation; be it a particular person, a particular department or a particular site earlier than might be the case with the formal channels. As mentioned above, there is likelihood that

not all bullying will be reported via the formal channels. So with fewer examples to consider, the ability of these formal channels to identify these “hot spots” early on can be limited. Having the confidential channel available is likely to encourage more employees to speak up, which in turn provides more examples of the bullying which in turn can surface the practice earlier. Having the extra examples can also be used to strengthen the feedback and recommendations for change back to the organisation.

For example:

Employee A is working on the night shift and is being systematically bullied at work by two of his co-workers. Being on night shift the practice is not readily visible to management who work during the day. Employee A is suffering stress, depression and anxiety attacks and his work performance is starting to suffer but he cannot bring himself to report the behaviour. He resigns because he can't take it anymore but gives the reason that he's found another job that suits him better. Having left and started working somewhere else, he summons up the courage to contact the ombudsman from the previous company and relays the real reason why he left. He just wanted to make sure that no one else would have to go through what he went through. Unbeknownst to employee A his story is now the second the ombudsman has heard of similar behaviours from that site and so, with the approval of the contact, is able to use this added information to strengthen the recommendations to management on what can be done to address the behaviours.

### SUMMARY

Workplace bullying is prevalent in our workplaces and is a serious issue. It can cost corporations significantly in lost time and money due to absenteeism, staff turnover, medical costs and legal settlements. With the current challenging corporate times of acquisitions, downsizings, outsourcings and increased competitive pressures, the stage is set for increased levels of workplace bullying. Corporations that want to address this issue are encouraged to take a holistic approach and consider implementing tools and practices that address the various reasons as to why workplace bullying occurs. This will involve:

(i) A clear and decisive top down approach that bullying will not be tolerated

(ii) Adequate training and education of all employees on what is and isn't bullying

(iii) A review of current practices including working arrangements that might be harbouring workplace bullying

(iv) The establishment (or beefing up) of both formal and informal channels of communication and grievance procedures that employees feel "safe" to use.

Given the unique attributes of an ombudsman (especially the confidentiality aspect) an ombudsman channel is an ideal, dare I say it, an essential "informal" channel for any organisation that seriously wants to tackle workplace bullying.

## ENDNOTES

<sup>1</sup> [http://www.psychology.org.au/publications/inpsych/workplace\\_bullying/](http://www.psychology.org.au/publications/inpsych/workplace_bullying/)

<sup>2</sup> [http://www.psychology.org.au/publications/inpsych/workplace\\_bullying/](http://www.psychology.org.au/publications/inpsych/workplace_bullying/)

<sup>3</sup> section 55A (1) Australian Occupational Health, Safety and Welfare Act 1986

<sup>4</sup> section 55A (2) of the Australian Occupational Health, Safety and Welfare Act 1986

<sup>5</sup> [http://www.psychology.org.au/publications/inpsych/workplace\\_bullying/](http://www.psychology.org.au/publications/inpsych/workplace_bullying/)

# Experience From Japan

**NORIKO TADA**

## ABSTRACT

Noriko Tada, an Ombuds in Japan with Guidea, shares her thoughts on workplace bullying in the light of the results of a recent Japanese survey on the topic.

## KEY WORDS

Power harassment, bullying, workplace, ombudsman, Sangyo-Counselor, Japan

In December, 2007, the Japan Industrial Counselors Association (JICA) conducted a survey about workplace bullying, gathering the responses of 440 industrial counselors.<sup>(1)</sup> Industrial counselors are not always independent counselors as with an Employee Assistance Program. Some Industrial counselors are HR staff or managers in the organization. Japan Industrial Counselors Association (JICA) founded in 1960 offers training courses, seminars and certification exams. Industrial Counselors need to take certain training courses and pass the certification exams. Industrial Counselors support workers to solve the issues/problems which they have by themselves. Industrial Counselors specially work for 3 areas: 1. mental health 2. career development 3. workplace human relationship development.

According to the result of this survey, 81% of the industrial counselors were approached about workplace bullying concerns. The issues raised included the following: Power harassment (78%)<sup>(i)</sup>, bullying caused by human relationship conflict (59%), bullying against people who made mistakes/low performance (44%), and sexual harassment (36%).

The types of bullying behaviors included using profanity, yelling and intimidating (68%); ignoring and excluding (54%); and making someone feel bad (50%). Eighty-five percent of survey respondents received concerns about bosses bullying subordinates. Fifty-six percent heard concerns about bullying among colleagues and forty-three percent heard bullying concerns that were between members of the same sex.

In 2008, the JICA conducted a detailed survey<sup>(3)</sup> about workplace bullying, receiving responses from 177 industrial counselors who are also HR personnel

## FOOTNOTE

<sup>(i)</sup> In Japan, "Power Harassment" is well known expression as one form of workplace bullying. The phrase "Power Harassment" was created by Yasuko Okada in 2002. She defined that "When a person exerts the status and power of their position over an employee by demanding performance exceeding the original job description, through continual verbal/non-verbal abuse aimed at destroying one's character and dignity, damaging the work environment or pressuring the employee to quit or get fired." Power refers not always to managers and subordinates ranking difference. Sometimes subordinates have more information or longer experience in certain field than their bosses, then, subordinates have more power than their bosses. (\*2)

or labor management related personnel. One focus of this survey was what barriers prevent addressing and solving the workplace bullying problem. Thirty-percent of the time, according to these respondents, the assailant did not admit his/her bullying behaviors, and 29% of the time, top management and managers did not cooperate with efforts to improve or change the situation.

In the case of alleged “power harassment,” it is reported that managers often justify their behaviors toward subordinates, and they believe that their behaviors are not power harassment, but necessary training/education. For example, Mr. A was overpowering his assistant Ms. B. Because of that, Mr. C who was the boss of Mr. A tried to stop Mr. A from misusing power over Ms. B. However, Mr. A’s behavior did not change. So Mr. C started to overpower Mr. A and escalate toward power harassment. However, Mr. C believed that this was a reasonable exercising of authority over his subordinate — not power harassment.

This dynamic can be seen in situations in which employees have low performance and make errors in their job duties. Supervisors begin to try to improve that employee with strict training which escalates into power harassment; however, the supervisor sees his behavior as training designed to improve the employee’s performance and support the goals of the organization.

When the manager believes that there are good reasons for their behaviors toward their subordinates, even though their behaviors are not effectively improving the situation, and even though subordinates suffer mentally, it may be difficult to stop the manager’s behaviors. The manager may believe his or her behaviors should be accepted and support the organization, but the negatively affected subordinates believe that the manager’s behaviors should not be accepted. Then, which is right? Who decides? Moreover, how do people around them think about it?

The consequences of peoples’ behaviors for those around them are very important. The actions of bystanders may make all the difference. Bystanders’ responses can influence a manager’s unacceptable behavior, either to escalate or calm down. In one situ-

ation, a colleague in the same department tried to go between people in a dispute and let them calm down on the spot. Some colleagues took care of the person who was overwhelmed by his/her boss; others will sometimes even try to take care of the boss. If those responses happened, many times the behavior and the dispute would not escalate. The group/department will have taken care of their group dynamic. However, if people around them closed their eyes and ignored it, a targeted subordinate may become isolated, allowing the manager to escalate the bullying behavior. Worst case scenarios sometimes arise when people around the target join the boss and create alleged mobbing situations. They justify their behavior by pointing to the boss’ behavior as permission. This joining also let the manager justify his/her behavior. If no one in the group stops it, the behavior spirals out of control causing an ever-widening circle of damage.

What is unacceptable behavior? What is bullying/power harassment? Certain behaviors that were accepted 10 years ago are not accepted now. Depending on the kind of relationship people have, each behavior is perceived to have a different meaning. There are no clear common/shared criteria yet. This is one of the reasons it is difficult to cope with claims of unacceptable behavior. As Ombuds, we need to look beyond right/wrong.

The JILPT survey asked a question: what are the characteristics of the workplace which had bullying? Multiple answers were given: lack of communication among employees (66%), lack of management skills of managers (64%), more individual work than group work (36%), change from seniority based payment system to result/performance-based payment system (28%), overloaded work situation (24%), high rates of turnover through resignation or transfer (22%).

Some ways to address this behavior are to improve a variety of skills: communication skills, relationship-building skills, and management skills of leadership. Why is communication among employees important? Bullying and power harassment are also issues of “human relationship”<sup>(4)</sup>; the better the communication, the greater the trust between employees. Furthermore, communication builds relationship among employees.

The survey said that managers should have leadership skills to help them cope with bullying situations effectively. What kind of management skills are needed in these situations? How can an organization recognize the necessary skills? What can organizations do to support managers? The issue of recognizing and providing these management skills is an organizational issue. The organization also has a responsibility and does have options to alleviate the damage bullying can do.

The JICA survey results highlighted the tendency in Japanese organizations to use transfer as a solution to the problem. Employees (except for certain assisting workers) are regularly transferred as a part of management strategy. The point of the transfer in a bullying situation is to keep the parties from communicating with each other. Sometimes this approach works very well. However, it does not always resolve the problem. Some people do not want to be transferred. Some people may face similar situations again in the next place, or if the organization is small, there is no place to transfer to.

When the people involved trust communication and choose to communicate with each other, a second option is available. Shuttle-diplomacy or mediation will be useful options.

It should not be overlooked that bullying and power harassment affect people's mental health and in the worst cases, it is possible to lead to suicide. October 2007 saw the first legal case in Japan which recognized the relationship between a worker's suicide and power harassment. The district court of Tokyo authorized worker's accident compensation insurance<sup>(5)</sup>.

When I cope with alleged bullying and power harassment, I try to find ways to keep any person from being isolated in the organization, while I try to find options for him/her. Even though it is difficult to cope with workplace bullying, it has to receive attention and resolution. As an Ombuds, I am struggling with the challenges posed in each case and trusting it can be transformed by all parties involved.

## ENDNOTES

<sup>(1)</sup> Press release: "Sangyo-Counselor ga mita syokuba: Ankeito cyosa kekka" December 12, 2007

<http://www.counselor.or.jp/pdfs/071212.pdf>

<sup>(2)</sup> Resource: Okada, Yasuko (2004). *Jyoshi to Buka no Fukai Mizo: Power Harassment Kanzen Rikai*. Tokyo: Kinokuniya shoten

<sup>(3)</sup> Press release: "Sangyo-Counselor ga mita syokuba: Ankeito cyosa kekka" May 21, 2008

<http://www.counselor.or.jp/media/kekka/pdf/080521.pdf>

*Another resource: (1 and 3)*

Watanabe, Yuko (2008). *Shinkokuka suru Shokuba no Ijime: Pawa Hara ga Top ni*. *Business Labor Trend*, July, 2008, 34 – 35, Tokyo: the Japan Institute for Labour Policy and Training  
<http://www.jil.go.jp/kokunai/blt/bn/2008-07/032-037.pdf>

JILPT is a government-related organization. The objective of JILPT is to contribute to the planning of labor policies and work toward their effective and efficient implementation, as well as to promote the livelihood of workers and develop the national economy by conducting comprehensive research projects on labor issues and policies, both domestically and internationally, and capitalize on the findings of such research by implementing training programs for administrative officials. (From: <http://www.jil.go.jp/english/index.html>)

<sup>(4)</sup> Okada, Yasuko (2004). *Jyoshi to Buka no Fukai Mizo: Power Harassment Kanzen Rikai*. Tokyo: Kinokuniya shoten

<sup>(5)</sup> Pawa Hara Jisatu: Rosai Nintei, *Nihon Keizai Shinbun*, October, 16, 2007 Newspaper

# The Several Purposes of the OO Crystal Ball

MARY ROWE

## ABSTRACT

The Crystal Ball began, in 1984, as a device to help Organizational Ombudsmen (OOs) to anticipate problems that are new to their organizations. This came about by collecting wisdom from many OOs about “new things.” Each OO may collect bits of new information from a whole organization—the Crystal Ball then pulls these ideas together. Over the years the Crystal Ball has proven useful in helping OOs in the important OO task of seeking, identifying, assessing and communicating issues new to their organizations. Crystal Ball discussions have in turn helped OOs to think about how to help their organizations to learn about and manage emerging issues, how to foster and collaborate on systems initiatives when appropriate—and how to follow up. The issues enumerated in this article have included many of the serious problems of our times. The Crystal Ball illuminates one important source of organizational ombudsman effectiveness.

## KEYWORDS

Crystal ball, organizational ombudsman, predicting problems, organizational change, disruptive problems, wisdom of crowds

## ACKNOWLEDGEMENTS:

The author would like to thank David Miller and three anonymous reviewers for their wisdom and considerable help with this article.

The Crystal Ball began, in 1984, primarily as an aid to Organizational Ombudsmen (OOs) in anticipating how to deal with specific conflicts. The Crystal Ball, in addition, has turned out to be an important example of additional functions of an OO and additional aspects of OO effectiveness: identifying and assessing new concerns and conflicts — and areas for systems change — as well as helping to deal with specific problems.

## CONFLICT MANAGEMENT TASKS

**Identify concerns, especially those that seem to be “new” to the organization or unrecognized by the organization, and, especially, disruptive concerns<sup>1</sup>**

**Assess concerns**

**Provide timely information to managers in ways consonant with confidentiality**

**Help to resolve and manage concerns, as appropriate**

**Follow-up on specific concerns, as appropriate**

**Help to support systems change to prevent problems**

In the past many employers simply hoped that OOs would help in *managing* specific conflicts. (Some still just consider OOs as an “ADR mechanism.”) However, in modern times many employers are looking to OOs for help in *identifying, assessing and communicating* concerns that are new to the organization. (Sometimes the concerns are not really new but the organization has not yet begun to deal with the given issue.)

Modern employers are especially asking for help in swift identification of new, disruptive and illegal concerns and conflicts. They need early warning of problems that can be addressed through interest-based (ADR) channels — as well as through formal channels.

The Crystal Ball has been a feature of many organizational ombuds conferences for more than twenty-five years. This article presents the history of Crystal Ball discussions, and an illustration of the modern-day, broader significance of the Crystal Ball. It also includes a non-scientific list of topics picked up by ombuds professionals over the years — topics that appeared to OOs to be “new” to their organizations, or largely unrecognized by their organizations.

### HISTORY AND PURPOSE OF THE ORGANIZATIONAL OMBUDS CRYSTAL BALL

The Crystal Ball began in 1984 as several OOs sat planning the first sizable Corporate Ombudsman Association Conference<sup>2</sup>. The group talked about topics where OOs thought they needed to know more from each other. As an early example of the “wisdom of crowds<sup>3</sup>” — and as a delightful example of the Crystal Ball itself, since ombuds were seeking “collective wisdom” about the future very early on — OOs decided to put together what they were seeing. *It quickly became apparent that ombuds professionals were picking up some problems very early, in their organizations, and that this might be useful to their managers and others.*

There has been much discussion about *how* and *why* ombuds practitioners are proving useful in picking up new things. We believe we are sometimes able to do this because we strive to be “zero barrier” practitioners, *safe and accessible*. And we sometimes can do this because we are one of the few offices with a view of the whole organization. At times of increasing complexity, when many senior officers have become specialists or regional experts, the OO may be able to pick up *small bits of information from all over the organization — and fit them together in a pattern* — before the pattern is obvious to everyone. And of course one of the purposes of OOs is to be scanning the organization for good ideas and good practices to share.

Over time OOs learned that it is especially important to be on the lookout for any new issue that might be *disruptive* to an organization in terms of needing new policy, new procedures or structures. The list below provides examples.

In the 1980’s, Crystal Ball issues were collected by word of mouth and telephone calls, and on the basis of consulting calls from practitioners who wanted to discuss some new problem. Since the advent of the worldwide web, I have sent out an annual query to organizational ombuds around the world — to ask about “new things” and about issues the profession will face in the coming year. As ombuds responded I have typically sent out further queries about issues that seemed especially interesting to those who wrote in.

In 2010 there were a great many responses to the Crystal Ball query. And, in 2010, there was a “new aspect” to the responses. Along with sadness and grief and concern about the state of the world, ombuds appeared to have dug their heels in, resiliently determined to work for a better world. At least 80 ombuds, of the hundred plus respondents, described systems initiatives where they were working with in-house colleagues to address one or major issues. [[http://www.ombudsassociation.org/conference/2010/Crystal-Ball\\_2010.pdf](http://www.ombudsassociation.org/conference/2010/Crystal-Ball_2010.pdf)]. It appears that the “systems” task in conflict management (see **Conflict Management Tasks** above) has become more important.

### A FEW TOPICS AS INFORMALLY RECALLED BY UNITED STATES ORGANIZATIONAL OMBUDSMEN<sup>4</sup>

At the turn of the century I tried to remember when I had first heard of an issue in my office. I started with my own first list from 1973. At times of increasing complexity I then sent the list to long-term OOs for additions and comments. The list below was drawn from informal recollections from many OOs. Some issues of course had been well known for years — but OOs have helped to illuminate and even to name a few issues (*like micro-inequities, sexual harassment, and integrated conflict management system*) and to encourage organizations to establish policies and procedures to deal with them.

**1973**

- Sexual and racial harassment, anti-Semitism, pornography, offensive ethnic images, racial assault and sexual assault, homophobic discrimination, advisories for “targets” of discrimination; many kinds of civility and free speech concerns in a rapidly changing workforce
- Subtle and covert discrimination, which were dubbed “Micro-inequities;” mentoring systems, which were found to be built on “Micro-affirmations;” networks of minorities, and of women — also built on “Micro-affirmations”
- Affirmative action and job posting systems in organizations; equal pay for equal work, equal pensions for men and women with the same record of work
- Non-exempt staff issues — professional job titles, safety in the office, respect, privacy, compensation, career development
- Cafeteria benefits, flexible work-hours, shared jobs, leave without pay — voluntary furloughs (for example, for employees to take exams;); many dependent care issues — parental leave, support for adoption, day care, elder care issues
- Illegal drugs and designer drugs
- Concerns about the welfare of low-income students and employees
- Workplace and supervisory abuse and mistreatment issues, later called “bullying;” managers who would not or could not deal with human resource issues

**1974**

- Graduate student and post-doc mistreatment issues
- Coordinated non-union dispute resolution “systems” — later called “conflict management systems;” and “integrated conflict management systems;”. “Accompaniment” of disputants in complaint and disciplinary channels, later (on and off) a Weingarten right
- Trans-gender, bi-gender concerns

**1975**

- Federal contract concerns and alleged crimes—including behavior that was later called waste, fraud and abuse, see also 1986
- Smokers vs. non-smokers

**1976**

- Systems recognition of academic, scientific, and research misconduct, plagiarism, and interference with the integrity of the work of others
- Whistle-blowing
- Mistreatment concerns from international graduate students

**1977**

- Conflicts of interest — supervisory, familial and sexual conflicts of interest added to emerging understanding of financial conflicts of interest
- Hazing
- Anorexia and other eating disorders

**1978**

- Workplace safety concerns with respect to air, fluorescent light, water, early computers, extensive travel, etc.
- Non-union formal grievance channels; complaint channels “parallel” to the line of supervision, for example through HR

**1979**

- Concerns about some racist acts by international graduate students

**1980**

- Computer-related crime and mischief
- Beginning to train the workforce not to harass

**1981**

- Beginning to train supervisors on harassment
- Tensions with government agencies about dispute resolution options

**1982**

- Fear of GRID, later fear of AIDS
- Computer related strain injuries, later called RSI
- Cutbacks — demand for higher productivity with fewer emotional and financial resources; decline in “loyalty” in the workplace

- Quality Assurance and Total Quality Management as responses to poor service and low productivity, including some “employee involvement”
- Obsessed following behavior, including behavior later referred to as “stalking”
- More focus on building internal conflict management systems with mediation

### 1983

- Backlash against feminism and women’s programming; attacks on “political correctness”
- Downsizing problems with extensive layoffs
- Concerns about whistle blowing and retaliation

### 1984

- Religious discomforts and harassment alleged by adherents of many religions; concerns about providing prayer time for Muslims, and tensions between secular and devout Muslims concerning the behavior of women
- Concerns about Satanic cults
- Fear of AIDS
- Fear of violence in the workplace, fear of “lone offenders” and sabotage
- Genetic testing and drug testing

### 1985

- Cross-culture on the team, miscommunication on international teams; new free speech concerns
- Learning and mental disabilities being given more attention in the workplace; discussions of Asperger’s syndrome

### 1986

- Domestic violence receives much more attention; discussion of qui tam claims

### 1987

- Concern about abuse of foreign nationals as students and employees — later discussed as concerns about “internationals”
- Tension reported among and from Asian-Americans

### 1988

- Challenges to confidentiality of neutrals

### 1989

- Identity impersonations, later called “identity theft”

### 1990

- “Political correctness” becomes more salient
- Religious harassment — especially of Muslims, see also 1984
- Beginning to train “active bystanders” about harassment

### 1991

- Intra-team conflicts as they affect team productivity
- Intellectual property and patent conflicts

### 1992

- Outsourcing and more cutbacks; offshore cost-savings and lay offs
- Pornography on computers and nets
- “Bullying” in the workplace, now including groups, later called “mobbing”

### 1993

- Concerns about “Re-engineering” begin
- “This function does not work well” — poor service within the organization

### 1994

- More “changing workforce” — part timers, different work ethics, many generational tensions; managers with little knowledge of rules and policies
- Unionizing graduate students
- More backlash against affirmative action
- Anonymous vicious attacks (on posters, graffiti, soon to be joined by anonymous attacks on the web, later called “cyberbullying”)
- Racism from and among international students and international managers
- Mergers and acquisitions problems of every kind

- *Integration* of internal conflict management systems becomes a goal
- Distance-learning related disputes; increased stress from high turnover and from extensive travel
- Binge drinking discussions

### 1995

- Email and voicemail privacy issues
- Poor service, poorly functioning individuals including managers, people “breaking down,” long, slow uptick in mental illness in organizations seen to be quickening

### 1996

- Intra-organizational computer privacy issues worsened by hacking
- Overwork and overload
- Poor function in whole units (manufacturing and services); more concern about re-engineering
- Conflict of commitment tensions

### 1997

- Stress, depression and exhaustion
- Scarce experts problems—new technologies sharply increasing the need for rare expertise; complex computer systems problems

### 1998

- Very complex intellectual property problems
- Conflict of interest problems in start-ups
- Resurgence of concern about every kind of harassment and abuse; gross, insubordinate, uncouth behavior toward supervisors and faculty

### 1999

- Concern about cynicism increasing in the workplace; “morale is dropping,” people trust much less and report much more bullying

## IN THE 21ST CENTURY THUS FAR

- Very difficult intellectual property, research misconduct and plagiarism problems; layoffs, concerns about overwork and acute family problems caused by economic upheavals; fear of violence, terrorism, sabotage; free speech issues; much more religious and ethnic tension; grief and exhaustion; wide generational differences in the work force. Privacy issues and cruel interpersonal attacks have become much more serious with the advent of the internet and social networking. Lack of resources and deferred maintenance have led to many difficulties with “poor service,” and costly errors.
- There are now many more “complex” cases: with multiple cohorts and many issues; with people from different ethnicities, languages, tribal and clan groups, races, genders, ages and various generations, involving inconsistent laws and regulations across multiple national and organizational boundaries, and long-term conflicts. There are more anonymous cases and group cases. Boundaries appear to be blurring with more problems coming in from people outside the organization and members of the organization concerned with outsiders. Bullying and mobbing issues, and high tech crimes — some sophisticated, covert, and vicious — are reported worldwide.

## LOOKING BACK AND LOOKING FORWARD

Crystal Ball reports now appear to have several purposes and several functions. These reports help each OO with the Conflict Management Tasks described above. And they help to affirm the usefulness of the ombuds profession.

- Crystal Ball reports help to demonstrate the wisdom of having a safe place in organizations to express concerns — a place for members of an organization to say, early on, what is giving rise to worry, and what vulnerabilities are being endured. The platform of principles upon which the OO resides is what makes this possible.
- Crystal Ball reports have reflected vital societal concerns, whether they relate to gender, human rights, or cafeteria policies. Computer-related issues emerged as early as 1980 — when the new-fangled ‘Personal Computer’ started becoming more avail-

able in work- and study-places. The Crystal Ball reports through the decades have anticipated and reflected technological and other societal developments. For example:

**Health:** AIDS, mental health, stress, depression

**Ideology and interpersonal issues:** gender, religion and race, micro-inequities, religious harassment, affirmative action, bullying, intellectual property

**Integrity issues:** waste, fraud, fabrication, plagiarism and all academic and research misconduct, crimes of all kinds

**Computers and the internet:** computer crime, pornography, cyber-bullying

**Job security:** international vulnerabilities, cynicism, economic fear and want

**Internationalism:** economic interdependence, cross-cultural dependence, terrorism

- The Crystal Ball has benefits for organizations:

Collective wisdom provides a 'weather vane' for policy lacunae and defects and development;

Collective wisdom enables OOs to share and learn from each other when facing new challenges — to assess "new" issues — and to share good ideas and good practice;

The Crystal Ball supports OOs to give early warning to organizations about what matters to its workforce, and enables evidence-based data for policy development;

Collective wisdom enables organizations to take more timely action, where structural and administrative responses may be advisable.

Crystal ball discussions illuminate OO ideas and methods that are working well.

OOs are sleuths, weather vanes, periscopes, and diviners. The structure and principles of the office make divination of future issues possible. We become repositories of organizational vulnerability, and can more easily detect future vulnerabilities as a result. And we can see and share what is going right when the organization may be consumed with what went wrong.

The platform of principles upon which the OO rests may actually, in view of the Crystal Ball outputs, be more of a springboard. By showing where initiatives are required to ensure difficult situations are responded to appropriately, the OO also has, in the Crystal Ball, an impetus for broader professional evolution. Our relevance is determined in part by the degree to which we can engage with our organizations. The Crystal Ball is more than a mirror of discontent — for the Alert, Complete Ombudsman, the Crystal Ball — a collective gift from OOs to OOs — may help us also to divine our future professional directions.

## ENDNOTES

<sup>1</sup> There are of course very few concerns that are really brand-new in the world. An OO may however identify concerns that an organization appears not have dealt with before. It is especially important to take note of "new" concerns that may be disruptive for managers and employees. Laws and policies often follow behind changes in norms, technology, values, and problems. OOs can sometimes help with swift identification.

<sup>2</sup> There had been only small meetings of COA in 1982 and in the summer of 1983. (COA was a precursor of The Ombudsman Association, which in turn then became the International Ombudsman Association.) I raised several "new" issues: Fear of people with HIV, and unusual religious complaints. I said I had maintained a list since 1973 of issues that appeared to be at least somewhat new to my organization — this list appears below. Carole Trocchio, the OO from Southland Corporation (who at the same meeting proposed the Code of Ethics which has largely stood the test of time) immediately called for a "Crystal Ball" at all conferences. She suggested that it was important for all OOs to identify and communicate problems that appeared to be new to our organizations.

<sup>3</sup> *Wikipedia* describes this concept in this way: The wisdom of the crowd refers to the process of taking into account the collective opinion of a group of individuals rather than a single expert to answer a question. This process, while not new to the information age, has been pushed into the mainstream spotlight by social information sites such as *Wikipedia* and *Yahoo! Answers*, and other web resources that rely on human opinion. This process, in the business world at least, was written about in detail by James Surowiecki in his book *The Wisdom of Crowds*.

<sup>4</sup> This list has been substantially corrected, revised and edited from an earlier list sketched out in 2000.

# The Importance of Relationships for Ombudpersons

TIM GRIFFIN

## ABSTRACT

Interpersonal relationships between ombudspersons and other people within their organizations are both inevitable and invaluable. It is wise to carefully consider opportunities within our respective organizations for both informal and formal interactions with others that will best facilitate the development of relationships that are crucial to the performance of our role. This article identifies some of the people within our organizations with whom an ombudsperson might establish beneficial relationships and offers some strategies and techniques that may be useful in forming those relationships.

## KEYWORDS

Ombudsperson, relationships

## ACKNOWLEDGMENTS

Special thanks to Mary Ann Erickson who provided crucial assistance in the development and production of this article and to Amber Michlig and Will Petsche who provided comments on an early draft.

Organizational ombudspersons have a wide array of documents that establish their offices and define their roles. These charters, mission statements, and/or job descriptions typically describe the role of the ombudsperson in a manner consistent with the values and needs of the organization. In addition, professional organizations like the International Ombudsman Association delineate codes of ethical behavior and standards of practice which further clarify the appropriate and acceptable parameters within which the ombudsperson is to perform the function. These are, however, only words on paper. It is ultimately the perceptions of the people within the organization that determine whether and how the office is utilized, enable the ombudsperson to perform his or her duties, and ascertain the degree to which the office is a valued element of the organization. These perceptions are formed and sustained not by words written in obscure documents, but through the relationships developed between the ombudsperson and other people within the organization. The term “relationship” is used broadly in this article to encompass any rapport developed through personal observation and/or interpersonal communication.

Any time we interact with someone in our organization, we establish a new relationship or modify an existing one. While we strive to maintain formal independence from our organization, our interpersonal relationships with people within our organizations can significantly impact the accomplishment of our professional goals. The familiarity and trust that can be established through these relationships provides us with easier access to people and information than would be otherwise possible. This article identifies some of the people in our organizations with whom it is advisable to develop and maintain positive relationships, and suggests some approaches that may be beneficial in achieving that goal.

## SUPPORT STAFF

Those who provide our maintenance, custodial, clerical, and information technology services are the primary people with whom it is essential to establish and maintain positive relationships. Individuals who keep essential support functions operating smoothly, like those who repair heating and cooling systems, elevators (I once visited a colleague in her 27th floor office), door-locks, plumbing, and many others, can also be included in this group depending upon the specific physical environment in which we do our work. If our relationships with these important people are not mutually respectful and positive in nature, we can expect significant challenges in fulfilling our mission.

Such support staff are frequently ignored by the “professionals” in their environment. They subsequently feel unappreciated and that they and the crucial, difficult work they perform are not valued. Getting to know these individuals by name, smiling and greeting them when our paths cross, and occasionally taking the time to verbally acknowledge them and their work is the least we can do as caring members of a community. It is also essential to the maintenance of an environment necessary for the performance of our roles.

## CONSULTEES AND POTENTIAL CONSULTEES

Positive perceptions of the ombudsperson are inculcated mostly through first-hand knowledge of the specific human being who serves as the ombudsperson. Without that familiarity, many who seek assistance from us are reluctant to share sensitive matters. They may have initially come to see us, in part, because a trusted acquaintance said the ombudsperson could be trusted; but they will only make important and sensitive aspects of their professional and personal life available to the ombudsperson after they have developed their own sense of the degree to which he or she can be trusted to use that information in a beneficial way that is selfless, helpful, and caring.

The issue of confidentiality is perhaps the most critical and obvious consideration of potential consultees. If the ombudsperson is not trusted to maintain confidentiality, many of these people will not share

sensitive information that could cost them their job, their grade, their degree, their marriage, and their relationships with supervisors and co-workers. Merely seeing words on a piece of paper that indicate an ombudsperson will keep matters confidential provides insufficient reassurance for most consultees to take these risks. Only by trusting the ombudsperson personally will they feel sufficiently at ease to share sensitive information with him or her.

Similarly, if the ombudsperson is not perceived as able to offer a neutral and independent perspective to issues, constituents will assume that the options offered by the ombudsperson will instead reflect a particular bias. Consultees who perceive such a bias might suspect that the ombudsperson’s suggestions are somehow designed to achieve some purpose other than the outcome desired by, and in the best interest of, the consultee.

Yet another important element that helps promote positive rapport between the ombudsperson and consultees is the perception that the ombudsperson truly cares about other people. It is frequently and correctly stated that listening is the single, most important thing we do. But simply hearing what people tell us is not enough. In order to achieve the desired therapeutic effect and inculcate the perception that we actually care about the consultee, we must engage active listening techniques that communicate empathy. (Carver, 2010) (Griffin, 2010)

In short, personal trust of the ombudsperson is a necessary pre-condition for many people to fully utilize the services of the office. It is not the office and associated documents that foster this confidence and trust; rather, it is the consultee’s (or potential consultee’s) belief that the human being who currently serves as ombudsperson (1) can be trusted to keep sensitive matters confidential, (2) will provide advice that is unbiased and wise, and (3) cares about others. It would be great if we had the access and the time to personally speak with every new employee and student during the orientation process in order to engender this perception. Unfortunately, that is not feasible for most of us. How then can we engender a level of trust in these individuals so that they feel adequately comfortable to contact the ombudsperson?

## REFERRAL AGENTS

A recommendation from a friend or trusted advisor can provide adequate assurance to someone that it would be “safe” and potentially helpful to contact the ombudsperson. Such a recommendation usually allows the potential consultee to feel adequately comfortable to engage the ombudsperson in an initial evaluative conversation that allows the consultee to make his or her own determination regarding whether or not the ombudsperson can be personally trusted. The importance of these referral agents cannot be overstated. Despite numerous and varied marketing techniques used by the NIU Office of the Ombudsman (Griffin, 2008), when visitors in that office complete the intake form, the typical response to the question “How did you hear about our office?” is “from a friend.” As a result, that office employs some marketing efforts to specifically target those within the organization who are most likely to be the first line of assistance sought out by those who might benefit from the services of the ombudsperson. Those frontline responders include residence hall staff members, academic advisors, personal counselors, department chairpersons, teaching assistants, faculty colleagues, co-workers, fellow students, union stewards, shared governance system leaders, and others. Department meetings, training sessions, and orientations provide a means to introduce the ombudsperson and the services of the office to such individuals.

## DECISION MAKERS

If the ombudsperson is to effectively serve as a change agent by impacting the organization’s policies and procedures, he or she must have adequate rapport with those who are in position to amend policies and procedures to allow for their receptiveness to the ombudsperson’s input. Moreover, relationships with key decision makers within the organization (and with those who may influence them) are important to ensure the continuation of ombuds services despite economic and/or political conditions that may create pressure to reduce institutional budgets.

The process for developing this type of important relationship begins with the identification of the individuals who are likely to be in a position to make decisions, or those to whom these decision makers listen or from whom they accept advice. While this may seem like a simple act of reviewing the organizational flow chart, people who are familiar with human

organizations and organizational behavior know that the individual who is in the formal position of authority may or may not be the one who truly influences a decision. That individual also may or may not be amenable to meeting with the ombudsperson. It pays to know who really has influence on organizational decisions, whether they are in positions of apparent power or not. Once those with influence are identified, the ombudsperson can think about what types of messages might enhance the perception of the value of the office on the part of the power broker.

One strategy is to present the person with information (like broad trends observed in his or her area of responsibility) that will allow the ombudsperson to engage in a personal interaction. Annual, or perhaps more frequent, private and formal meetings with such individuals can allow the ombudsperson to demonstrate the value of the office and also to develop a relationship adequate to establish receptiveness.

The identification of opportunities for less formal relationship building with decision makers and with those who influence them should also be explored. I once knew an ombudsperson who went to the campus bowling alley monthly during the noon hour to bowl in an employee league with the university president. Another ombudsperson made a point of occasionally joining a group of advisors to the organization’s chief financial officer when they took their morning coffee break in the employee cafeteria. Encountering people in employee or student lounges, assisting them with the building of a Habitat for Humanity home in the community, or engaging them while they take their daily constitutional on the jogging path are just a few of the ways that informal contact can be made to further establish relationships. It pays to spend some time thinking of ways to meet important people in informal venues. (Griffin, 2004) (Rowe, 2010)

## REFERRAL ASSOCIATES

We often refer the people who utilize our services to other offices or people within the organization for further assistance (sometimes including advocacy) in accomplishing their desired outcomes. We also contact individuals in some departments who are able to clarify current departmental procedures so that we can provide the most current information and options to our consultees. For these reasons, it is important to have relationships established with these individuals and office staffs.

Such departments at institutions of higher education might typically include the Admissions Office, deans' offices, the Bursar's Office, the Financial Aid Office, Registration and Records, Housing, Parking Services, and others for those ombudspersons serving students; and offices like Human Resources, the Employee Assistance Program, and the Affirmative Action Office for those who serve employees. Knowing which offices are appropriate sources of assistance for the specific circumstances and desired outcomes presented by a consultee, and also knowing which persons in each of those offices are likely to be the best point of initial contact, is vital for the most efficient resolution of the concerns and invaluable to the work we do.

The ombudsperson who adheres to the standards of the IOA is precluded from assuming an advocacy role. But sometimes the people who contact us for assistance are psychologically or politically unable to accomplish their desired outcomes and need the assistance of someone to advocate on their behalf regardless of the amount or type of coaching we give them. (Brinkert, 2010) Having a broad knowledge of the people in the organization who are willing and able to effectively serve as advocates for particular types of people (like those with disabilities, racial minorities, women, those with non-Christian religious practices, and even vegetarians) can be an essential referral for such consultees. It is appropriate for the ombudsperson to develop a relationship with potential advocates that will adequately determine their fitness for, and willingness to perform, an advocacy role for particular types of people or in particular types of situations.

Another important referral, especially for those of us who are the sole practitioners in our organizations, is that of volunteer surrogate ombudsperson. When we must recuse ourselves from serving an individual who seeks our assistance due to a conflict of interest or some other factor, we need to be able to refer the consultee to an alternative source of similar assistance. Selecting, training, and securing the willingness of a few other people in our organizations who can perform this function if necessary is essential to our ability to make sure that the consultee receives the services to which he or she is entitled. The ombudsperson must maintain on-going relationships with

these surrogates to ensure their continued willingness to serve, remind them of the crucial aspects of the role, and apprise them of any recent organizational or professional developments that might impact their role.

It is very helpful to have a pre-existing rapport with all these types of referral associates who can then be prepared to amicably assist us or the consultees we refer to them. A brief, face-to-face meeting or phone call to verify their appropriateness and willingness to perform such a role is necessary to feel confident in referring someone to them or calling on them for assistance. Subsequent occasional contact to communicate gratitude and verify continued availability is also beneficial in maintaining this type of relationship.

## PROFESSIONAL MENTORS

The development of relationships with professional mentors has been of invaluable assistance to many of us in the profession. It is extremely helpful to have a relationship with a small group of seasoned professionals with whom one can consult in difficult times to talk through a problem which is impossible to discuss with anyone in our own organization. Essentially, an ombudsperson's ombudsperson. These colleagues can offer sage advice from their experiences to supplement our own thinking. Similarly, I firmly believe that experienced practitioners have an ethical responsibility to offer themselves as mentors to new colleagues in the field.

These relationships can be cultivated through formal mentoring programs like those offered through the IOA or the new ombudsperson workshop offered at the Annual Summer Meeting of College and University Ombudspersons and through informal interactions at other professional conferences. They can also evolve by reaching out to other individuals because we think they might benefit from our help or be able to assist us based on a listserv posting, a presentation they gave at a conference, an article they've written, or a referral from a colleague.

## PERSONAL SUPPORT

We should never allow ourselves to become so isolated in our professional role that we compromise the necessary relationships of friends, family, counselors and therapists, and others who nourish us personally and provide us with the emotional stability we all need. Colleagues who provide professional mentorship can provide empathy which contributes to our emotional and psychological health. Most of us, however, need relationships with people outside the field as well to provide us with all the various types of personal support and assistance we need to sustain ourselves in our professional lives. In addition to family and neighbors, many of us find valuable relationships in civic or religious organizations, in the pursuit of our hobbies, or through volunteer work. Obviously, while each of us has unique techniques for meeting these needs, we all need to make a conscious effort to develop relationships outside our professional circle that help to sustain us personally since this foundation is essential to our professional performance.

## OTHER TECHNIQUES AND CONSIDERATIONS

One way we can develop appropriate professional relationships within the organization in which we work is through participation in informal activities. The opportunities to accomplish this vary widely from one organization to another. They may include such things as participating in community service projects, staffing a table at organizational exhibitions, and attending athletic contests or other events. These activities offer an opportunity to meet people in an environment that allows for the formation of an acquaintanceship. Such an acquaintanceship may be all that is necessary for that individual to recommend that someone take a chance and contact the ombudsperson. ("I met the ombudsperson. He/She seems like a trustworthy person to me.")

While we are bound by our professional code of ethics to organizational roles that are informal in nature, there are formal activities in any organization that allow for the ombudsperson to be observed and simultaneously allow for interactions sufficient for the formation of perceptions in others. On a college or university campus such events include graduation ceremonies and academic convocations where

one can meet people and engage in small talk with other participants both before and after the rituals in places like the changing rooms. The same can be accomplished before and after meetings of shared governance groups like the faculty senate or other university committees. Every organization will have its own unique events and rituals that may allow for the ombudsperson to interact with members of the organization outside the formal scope of the event. Thinking about what activities in the organization might provide such opportunities is time well spent.

Another type of activity that allows for the formation of perceptions, and one that many ombudspersons use regularly, is the group workshop or presentation. Such activities can be topical presentations on organizational policies and procedures (like grievance procedures or grade appeals, or how to avoid them) or training sessions on topics like civility or conflict resolution. The people who attend such sessions develop at the very least a perception of the ombudsperson giving the presentation. They see and hear the ombudsperson interacting with those asking questions and may sometimes even talk personally with the ombudsperson after the session. This exposure and subsequent impression could result in a recommendation that a friend might consider utilizing the service of the ombudsperson and/or an endorsement of the incumbent's trustworthiness, empathy, and wisdom.

One should also not overlook the importance and value of the "little things" in the maintenance of relationships. The author keeps a supply of note cards in his desk to send to people when they win an award, pass an employment milestone, or successfully complete a major project. The note cards are also used to express gratitude whenever appropriate. The impact of a physical card in this era of electronic communications is hard to overestimate. A recent recipient recounted his appreciation and excitement in receiving the card; and said he had taken the card up and down the hall to share with his colleagues. "I didn't know anybody still sent real cards;" he said, "how very nice!"

The author also takes the time to forward copies or links of articles that might be of interest to colleagues, administrators, or others. Just the thought and simple communication can help to sustain positive rapport.

Finally, the use of the internet is one of the recent technological developments that can allow for the development of at least a minimal perception of the ombudsperson. For example, the office web page can offer pictures of the ombudsperson and may even include a brief recorded presentation to provide the opportunity to be both seen (making eye contact via the screen) and heard. A “Facebook” account is another way to promulgate the services of the ombuds office and offer an opportunity to develop perceptions of a sort. At this time, however, there seems to be a lack of consensus in the field as to the appropriateness of this approach.

## CONCLUSION

The intentional development of relationships with others in our organizations, including support staff, potential consultees, referral agents, decisions makers, referral associates, and professional mentors is strongly encouraged. At the same time, in order to maintain perceptions of ethical appropriateness, we must be wary of relationships with those in our organization that may be perceived as potentially compromising to our confidentiality, neutrality, or independence. Striking an appropriate balance in our intra-organizational relationships is something that we must constantly evaluate and adjust, always keeping in mind the potential perceptions of others.

The very nature of our interactive existence in our organizations inevitably results in relationships with others. These relationships are crucial to our success. We are wise to give consideration to those persons with whom we associate and develop relationships and to also carefully consider the manner in which the relationships are established and maintained. It is only through such intentionality that we can minimize the chances that our relationships will be perceived as inappropriate, while at the same time developing and nurturing those relationships that will maximize our effectiveness.

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# The Organizational Ombudsman as Change Agent for Organizational and Social Capital

**BRIAN BLOCH AND NANCY ERBE**

## **ABSTRACT**

Dispute resolution scholars from outside of IOA are noting the organizational ombuds' potential for building workplace democracy. At its best, such democracy is equated with social capital — the value of loyal employees who feel great about their employer and thus, give generously to their work, each other and their organization. Determining how exactly IOA members contribute to such capital requires further study. Here, several seasoned IOA members and one IOA researcher, share their experience and findings regarding the IOA member role in promoting and catalyzing important organizational change.

## **KEY WORDS**

Ombudsman, Change agents, memes, Organizational Social Capital, Organizational change

## **INTRODUCTION**

At the IOA conference in St. Louis, a few years ago, scholar Richard Reuben spoke on workplace democracy ("sharing strengths for mutual gain")<sup>1</sup>, having recently published a Harvard Negotiation Law Journal article linking organizational ombuds and workplace democracy.<sup>2</sup> After this presentation, he encouraged author Erbe to research IOA members' contribution to organizational social capital.

In brief, from an employer perspective, organizational social capital encompasses awareness of and responsiveness to internal priorities. Anything that helps employers become more attuned to their employee needs and interests arguably builds capital. Harvard political scientist Robert Putnam, along with other researchers of democratic governance, developed the concept to distinguish between effective and ineffective organizational governance. At its best, social capital generates organizational trust and reciprocity. As a result, employees, students, faculty and other constituencies demonstrate strong organizational citizenship, or "civic virtue." They are motivated to give generously to each other and their organization. In contrast, weak social capital correlates with distrust, unhealthy competition, alienation and likely complaint. Only minimal capital can be mandated. Human capital must be inspired and nurtured rather than forced.<sup>3</sup>

With IOA board support, author Erbe proceeded in researching IOA members' ways of learning and responding to organizational need. After hearing from several through survey research, a noteworthy pattern emerged — one that stimulated the writing of this article. About fifty percent of the survey respondents described their role as welcoming visitors to their office and hearing their complaints — essentially a receptive and reactive role.<sup>4</sup> The other fifty percent described what initially appeared to be

the opposite: a strong proactive and systemic role with a variety of means to gather information and survey organizational climate, present this systemic information to leadership, and otherwise work as organizational change agents. Are the latter organizations necessarily more conscious of and responsive to their stakeholders' most important needs and interests? This article can only raise this question for future research and discussion. For now, exploring the ways seasoned and respected IOA members are able to effectively adopt and exercise the proactive change agent role is important to reaching full organizational ombuds' (hereinafter "OO") potential and value. One possible reason that some OO are keeping a relatively low profile and even "flying under the radar" may be lack of confidence and knowledge regarding effective strategy. Responses to the 2008 survey of IOA members were relatively equally divided between those with less than three years experience and seasoned OOs. This article will present the experience of the latter, ranging from deliberately noting the systemic issues implicit in every visitor's complaint and continuous reflection on systemic improvement, to acting as a stubborn mirror of important organizational truth even when leadership is denying and resisting acknowledgement, to, at leadership's request, facilitating the cultural transformation necessary to embrace the OO's potential for organizational contribution.

### THE CHANGE AGENT ROLE

One of the authors' co-presenters in New Orleans, Marsha Wagner, reminds us that hearing visitors' concerns, coaching them regarding options, spontaneously embracing teachable moments, facilitating dialogue, and mediating conflict on request, are all ways of contributing to organizational responsiveness and health. The OO change agent role, however, goes further, seeing the OO as an independent and collaborative partner with organizational management.<sup>5</sup> In earlier surveys of IOA membership, acting as a early warning mechanism through upward feedback and otherwise acting as a change agent was named as the OO's most important role.<sup>6</sup>

Perhaps the OO's most important and distinctive role is that of organizational "ear". As a result of confidence, an effective OO may literally have more information about their organization than anyone else.

Optimally, leadership and OO recognize their mutual dependence on each other. Leadership needs OO as a

trusted sounding board who reminds them of organizational values. OO are also rich resources for consultation on policies and procedures. OO can easily share best practices from peer organizations. In turn, OO need leadership to visibly support their role through listening and responding to feedback.

In David Miller's words, the OO role involves "deep dives" for information. Because of confidentiality and independence, OO can conduct surveys, assessments and conversations that no one else can and thus ensure that all voices are heard and considered; not "just the loudest".<sup>7</sup> Simply sharing employee ideas with upper level leadership helps build social capital. OO also can provide oversight to promote tangible responsiveness.

Another of the authors' co-presenters, Danielle Fischer-Lebailly, reminds us that Gilles Paquet of the University of Ottawa goes so far as to describe OO as the 'agent provocateur' who "shakes" the organization. OO have the ability to literally see what others do not and understand the "roots" of issues rather than simply symptoms.<sup>8</sup>

Of course, strategically, the OO does not automatically choose the toughest route. Instead, they seek the lowest possible level where needed change can be enacted. The authors' other co-presenter, Carolyn Noorbakhsh, suggests beginning by asking leadership how OO can be most helpful to them.

Once change occurs, OO can also offer essential oversight and evaluation. Specific roles may include suggesting adjustment, evaluating satisfaction, identifying unanticipated consequence, and recommending additional change for continuous improvement.

Carolyn Noorbakhsh also recommended demonstrating the success of OO work through data collection. If as previously suggested, the OO has determined that it is important to the key stakeholders in the organization that the OO reaches all levels and corners of the organization, then data collection can demonstrate that visitors to the Ombuds Office do in fact represent all structural levels, departments and offices in the organization. Or, if leadership suggests that it is important that the OO have a finger on the pulse of organizational morale, then reporting on themes of stress around change, bullying, and so forth — whatever themes can be gleaned from data collection — provides the information that leadership has identified as important.

## RATIONALE FOR OO AS CHANGE AGENT

Arguably, the OO is the best position within an organization to act as change agent. By virtue of their confidentiality and informality, OO often receive important information that others within the organization do not, including important “heads up” to suggest early prevention or intervention. Over time, OO data reveals important patterns that may not be obvious to anyone else within the organization. Because of their specialized training in conflict resolution work, OO can often simply see and understand what others cannot. Many are schooled in integrative negotiations and reframing. They can identify underlying needs and interests when stakeholders unskilled in conflict resolution only see contentious problems or resistance to change.

Through strict adherence to confidentiality, impartiality, and independence, the OO is in a rare position to act fairly on behalf of all organizational interests; thus, optimally not threatening any concerned with a particular change. Once again, OO skills can facilitate consensual and collaborative response, with critical buy in from multiple stakeholders. With patience and persistence, OO who are informal internal members of the organization, rather than an external consultants, may be ideally suited for this important work.

Of course, acting as an effective change agent is much “easier said than done,” especially for a newer OO who has yet to educate organizational stakeholders about the OO role and protections and build strong trustworthy relationships with all concerned. Author Brian Bloch, as well as his co-presenters at the IOA conference in New Orleans, share over seventy years of collective experience and wisdom (working in transnational corporate, non profit religious, federal and academic environments).

## CHANGE AND CONFLICT AS OPPORTUNITIES FOR ORGANIZATIONAL TRANSFORMATION

David Brubaker, an IOA consultant and friend, introduces five roles related to organizational transformation that likely will sound familiar to IOA members: 1) thinking systems, 2) noticing and monitoring patterns, 3) conducting assessments, 4) coaching leadership, and 5) advocating for processes that put people

first.<sup>9</sup> Even apart from these roles, at the authors’ presentation in New Orleans, author Bloch asked an intriguing question: Does an OO naturally have some effect on organizational culture whether or not by conscious design? He suggests that as a mediating institution, the OO office does indeed have a natural influence on organizational culture and identity.<sup>10</sup> The nature and extent of that influence, however, varies greatly depending on certain variables not the least of which is the mandate of the office — has the OO been charged with that work?

Author Bloch went on to describe his participation in culture change as an OO. He had much latitude provided in his job description as his work was the only ADR process “formally” available in the organization. He put much effort into building the credibility of the office through developing strategic relationships — not only with designated leadership, but with key people on all levels (and on all continents). He further stressed the importance of several early, high profile successes that brought the usefulness of an OO office to the forefront.

At the same time, he sees the OOs work as a cultural change agent to sometimes go unnoticed. He mentioned the planting of “memes” that evolve and fructify later. Others may get credit (or blame), but those memes can have an impact on the organization! Bloch told of a recent decision his Governing Body’s Executive Committee made to have a presentation on polarity management for all its members. For years Bloch had suggested to managers: “Perhaps this is a polarity to be managed rather than a problem to be solved”. Curious, he asked an EC member where the idea for its proposed presentation originated. The member replied: “We’ve been hearing about ‘a polarity to be managed rather than a problem to be solved’ for the longest time. We finally decided our Governing Body needs to know more about this.” Bloch asked around more. It became clear that his mention of this concept to visitors and managers over the years had finally resulted in decision! In earlier surveys of IOA members, one respondent described the patience, persistence and creative effort required for such effort, particularly if an organization has historically lacked trustworthy impartial services or has a climate that stresses and rewards conflict avoidance and inaction as the preferred conflict management strategies.<sup>11</sup>

## CONCLUSION

Each OO's organization is its own complex and dynamic case study for evaluating and enhancing the sharing of "strengths for mutual gain," building networks of trust, and promoting the best of humanity. Nevertheless, seasoned OOs who have effectively exercised moral courage and otherwise initiated conversations around important organizational change have accumulated sophisticated discernment to offer all. The practicalities needed for successful diplomacy in the toughest and trickiest of situations are likely only mastered through hard-earned wisdom "on the job." If the most experienced ("savvy") of IOA members, however, continue to offer their reflection and analysis of their successes, a growing body of practice-based insight can only serve to enhance the OO's role with organizational good will.

## ENDNOTES

<sup>1</sup> Reuben, R. (2005). Democracy and dispute resolution: systems design and the new workplace *Harvard Negotiation Law Review*, 10 (11), 12-66.

<sup>2</sup> *Id.*

<sup>3</sup> See references and further discussion in Reuben article cited above.

<sup>4</sup> IOA Survey (2008).

<sup>5</sup> See Wagner, M. (2007 on-line). The organizational ombudsman as change agent *Negotiation Journal* 16.

<sup>6</sup> *Id.*

<sup>7</sup> Thanks to Danielle Fischer-Lebailly for many of these insights.

<sup>8</sup> Danielle Fischer-Lebailly offered much of this section's perspective at the IOA conference in New Orleans.

<sup>9</sup> David Brubaker, IOA 'Advanced Course' 10/2008.

<sup>10</sup> See Fort and Shipani (2000). Competitive corporations with moral integrity *Vanderbilt Journal of Transnational Law*.

<sup>11</sup> IOA Survey (2007).

## I WAS JUST THINKING

# Some Thoughts on Bullying in International Organizations

JAMES LEE

### KEY WORDS

bullying, impunity, harm, retaliation, agents of change, organizational ombudsman, international organizations

From my study, I get a close-up view of the birds at the feeder on the table just outside the door. On a recent morning, there were as many as a dozen starlings chirping and hopping away as they breakfasted on the seeds, occasionally pushing one another around but not engaging in any major altercation. Suddenly, a resplendent cardinal swooped down and landed smack in the middle of the feeding dish. How elegant he was, the rich red of his plumage aptly reflecting his name. How he seemed to know how very grand he was! The first thing on his agenda was to chase away all the other birds, thrusting angrily at them and clicking loudly to banish them from the food. The starlings moved away towards the edge of the table, waiting for Mr Cardinal to eat his fill. Then I noticed the strangest thing: occasionally, he would go to the edge of the seed dish and, reaching across the rim, would offer some food from his beak to Mrs Cardinal (a rather drab-looking bird), whom he did not allow into the dish. Once he was sated, he flew off as dazzlingly as he had arrived, Mrs Cardinal meekly behind, and the starlings returned to what was left of their breakfast.

Very shortly afterwards, David Miller called to invite me to write something for this issue of the Journal — on bullying! I was still thinking of the cardinal, comparing him to the many powerful human bullies (often clothed in robes of office or bearing titles as impressive as the plumage of the cardinal) with whom I have come into contact both as an ombudsman and in other professional and personal circumstances. If what appears to be bullying takes place in the animal world, I wondered, am I to conclude that bullying may be a naturally occurring part of the human spectrum,

too? Despite this depressing thought, I asked myself whether those who are bullied can fight effectively against it. Most importantly for us as ombudsmen, what can we do to help to protect people from bullies and bullying behaviour?

In focusing on bullying in this issue, JIOA is not alone in facing the awful reality that bullying has become a part of all aspects of life: October is national anti-bullying month in the USA and other countries have established similar events, joining in efforts to establish new laws and provide help lines for those affected by bullying. There is a growing moral stocktaking of bullying worldwide — at local and national levels, in social and faith-based communities, in educational arenas and in the workplace — which is reflected in the increasing focus of the international media on this issue. Saddest and most compelling of all, young people across the world who have been subjected to the destabilizing effects of cyber bullying are losing their lives. This is as serious as it gets. Society has begun to take action and ombudsmen do indeed have a role to play.

We all have some idea of what a bully is — what a surprise to learn that etymologically, in English, the word started out meaning quite the opposite of what it signifies today. From a term of endearment for both sexes in the sixteenth century, it has come to designate, in the OED definition, “a tyrannical coward who makes himself a terror to the weak”.

Some of the organizations of the United Nations system established the ombuds function over forty years ago to address work-related problems in an informal manner. As in other workplaces all over the world, bullying in the United Nations has been near the top of the list of issues to be addressed. Sexual harassment has been another grave issue; here, progress can be seen in the measures that are now in place in most organizations of the United Nations system to

minimize its occurrence and to deal with it effectively when it does arise. Establishing those measures was not an easy task and the lessons learned can be of great value in dealing with bullying. Even calling bullying by its proper name, not concealing it under the guise of “tough managerial style” or “professional harassment”, is an important step forward as is not trying to explain it away on supposed cultural grounds or gender proclivity.

One of the disturbing facets of increasing decentralization in international and multinational organizations is the impunity that can accompany authority: managers become tyrants, cowing staff into obedience until someone has the courage to speak up. Well into my third decade as an ombudsman in the United Nations system, I have no hesitation in saying that dealing with bullies – men and women at all levels at headquarters and at duty stations – has been one of the biggest challenges I have faced. The United Nations has made some significant attempts to improve managerial standards but the problems are huge in a hierarchical, decentralized structure.

As ombudsmen, we are used to helping people in disadvantaged positions to explore their options. What options are there for those tortured by bullies? Is it reasonable or even possible to try to reach an informal resolution in a situation where people may have suffered great emotional and psychological harm from a bully?

In my experience, the visitor who has been bullied is often very scared to talk, even to an ombudsman. Keeping in mind the terror — but also the courage — that bring bullied visitors to the office, the first step is to help them to understand the bullying mentality. Handouts prepared by the office can be supplemented by the wealth of information and advice available online. While an ombudsman can certainly explain the bully’s psyche, corroboration from other authoritative sources can reinforce the message that the visitor should receive. If the visitor can grasp why someone bullies, it can be much easier to examine practical options.

It is sometimes possible to empower the visitor to take steps to confront the bully – to tell the bully exactly, either verbally or in written form, what personal damage the bullying is causing and ask the bully to stop. In my experience, this can be effective and the bullying does sometimes stop. Unfortunately, however, there is often too much at stake for the visitor to take the plunge, especially in international organiza-

tions, where work permits, visa status and family welfare may be placed at risk. Bullies often retaliate. An ombudsman, at the request of the visitor, may speak with the alleged bully, but the situation could deteriorate even further if the bully does in fact retaliate.

Is it a good idea to explore with the visitor the option of lodging a formal charge? Suppose that the alleged bully is in turn being bullied – to meet unreasonable deadlines with insufficient staff, say – and doesn’t interpret his or her behaviour as bullying but as the organizational norm. Only the affected staff may realize that in efforts to mobilize phenomenal resources, a manager may destroy the office spirit by bullying staff to reach the goals. Furthermore, in some instances, the organization overlooks — even rewards — bullying behaviour because the bully has excelled in meeting important organizational goals. Often, it does not regard disciplinary action as an option and may prefer to move the bullying manager to another office, perhaps with a warning, sometimes with a promotion, so that it can continue to benefit from the manager’s expertise. This enables, even encourages, the bully to continue bullying and sends a very discouraging message to the staff.

What if a manager is trying to reorganize an office according to new organizational requirements and some people on the team do not like the change and regard it as bullying? What if the ombuds discovers that the charge of bullying is false? What about those times when, in a shift of power (facilitated these days by electronic communications), it is the manager who is bullied by supervisees?

To be effective in all these circumstances, it is vital for the ombudsman to know as much as possible about the organizational environment. Precipitate action can have disastrous consequences. In the same way that ombudsmen worked with organizations to change the culture that condoned sexual harassment, we must now use our strengths as trusted agents of change to bring about a fundamental transformation that will enable organizations to decrease cases of bullying in the workplace and to act swiftly and decisively to hold bullies responsible for their actions. We can make recommendations in our reports and convene — and inspire — stakeholders to establish mandatory training in how to recognize bullying, how to prevent it and how to report it. In other words, the catalytic role of the ombudsman is to raise awareness of the scourge of bullying and help to empower organizations to root it out.

## I WAS JUST THINKING

# Some Considerations for Ombuds Dealing with Allegations of Bullying

MARSHA L. WAGNER

### KEY WORDS

“bully,” “victim,” labeling people, multi-party collaboration, organizational ombuds, organizational dynamics

Situations described as “bullying” are likely to be highly charged emotionally — feelings of fear, insecurity, and vulnerability may be experienced by the alleged target, the alleged bully, the bystanders, and the supervisor(s) of the alleged target and/or the alleged bully.

The label “bully” may be interpreted in various ways, and the use of such a general pejorative term, like the use of other stereotypes, may objectify a complex human being, freeze in time a potentially dynamic situation, or limit the options for reframing, dialogue, and empathy. Use of judgmental terms such as “victim” and “bully” may create perceptions, expectations and biases that undermine ombuds neutrality and limit insight into resolution options.

Emotionally intense conflicts can be fluid. The alleged “bully” may feel misunderstood and exhibit characteristics of a “victim.” Conversely, the alleged “victim” may feel angry, and display aggressive or blaming behavior associated with a “bully.” Description of actual behavior is more accurate and reliable than use of over-simplified role labels like “bully” and “victim” or “target.”

Attitudes and actions in the role of “bully” and “victim” are learned behaviors, perhaps reinforced by a lifetime of short-term gains. But these repertoires are

very limited, which provides the ombuds with abundant opportunities for coaching in reframing, alternate communication skills and expanded approaches to conflict resolution.

The attitudes and behaviors that are often identified as an abuse of power that can be called “bullying” range across a very broad spectrum. It is helpful to describe offensive or hurtful behavior specifically, rather than using a loaded but vague cover-term like “bullying.” It is essential to understand the facts of each unique situation to create appropriate remedies: interventions that may be effective in addressing angry outbursts may not be so effective in addressing behaviors such as spreading negative information about another or deliberately excluding someone from group activities.

The ombuds perspective takes into consideration all the interests of all the stakeholders, and not just the interplay or power dynamics between primary parties. The organizational context — including people, policies, structures, and organizational culture — may be contributing factors. The ombuds should probe to identify the contributions of all parties and organizational dynamics to a situation described as “bullying,” and thus seek opportunities for change from various perspectives.

“Bullying” is rarely private. Multiple stakeholders are likely to be aware of the situation, even if others’ responses have been conflict-averse. Isolation of the primary parties (for example, in a complainant-respondent disciplinary procedure) may further polarize or escalate the conflict. A multi-party approach may not only reduce intensity by de-personalizing the situ-

ation, but may also provide a wider variety of options for support, adjustments, remedies, enforcement, and change in root causes.

The ombuds may explore alternative sources of power for the primary parties, as well as for bystanders and supervisors. By focusing on each stakeholder's interests and goals, it may be possible to identify alternative interactive modes and broader systemic structures for conflict resolution.

The ombuds should seek durable resolutions, involving collaborative commitment from all participants rather than merely the imposition of short-term or only punitive consequences. Collaborative approaches are enhanced by a clear identification and understanding of the particular factors involved in the conflict; inclusion of multiple parties; focus on shared organizational values and goals; and a neutral approach to embrace, affirm, and satisfy as many individual and organizational interests as possible.

## RECENT DEVELOPMENTS

# A Legal Perspective

TOM A. KOSAKOWSKI

### ABSTRACT

This article summarizes significant developments in U.S. legislation and litigation relating to Organizational Ombuds from February 2009 through August 2010. Since the last legal update, major financial reform legislation created three new Federal Ombuds programs. In a most significant case, the Fifth Circuit Court of Appeals found that a University Ombuds' investigatory report raised significant issues of fact in a free speech case. A handful of decisions from trial courts indicate that lawyers and judges continue to struggle with the legal standards applicable to Ombuds. As a general rule, trial court decision cannot be cited as legal precedent. Only appellate decisions (including state and federal supreme courts) establish legal authority. However, trial court decisions can help create expectations within the legal community, especially in areas where there is scant case law.

### DISCLAIMER

*The information and opinions provided in this article are solely those of the author. They have not been adopted or endorsed by the International Ombudsman Association or the University of California. Nothing contained herein is intended to address any specific legal inquiry, nor is it a substitute for independent legal research to original sources or for obtaining the advice of legal counsel with respect to legal problems.*

### FINANCIAL REGULATORY REFORM WILL CREATE NEW OMBUDS PROGRAMS

The **Dodd-Frank Wall Street Reform and Consumer Protection Act**<sup>1</sup> signed into law on July 21, 2010 will establish Ombuds programs for the Securities and Exchange Commission concerns and two programs within the new Consumer Financial Protection Bureau.

The new SEC Ombuds will be named by the head of the Office of the Investor Advocate, who is appointed by the SEC Chair. The Investor Advocate will be responsible for assisting individual investors with issues involving the SEC or other self-regulatory organization such as the New York Stock Exchange. The new Ombuds would serve as a confidential liaison for the same population. The bill does not provide any guidelines for implementing the Ombuds program, so details need to be worked out. The bill does state, however, that the new Ombuds office will not replace or diminish any existing agency Ombuds.

The reform bill also establishes two Ombuds programs in the Consumer Financial Protection Bureau. The first serves as the Agency Ombuds for the Bureau — essentially a confidential liaison for individuals with problems relating to the activities of the Bureau, resulting from the regulatory activities of the Bureau. The details of this new Ombuds program are undefined.

In addition, there will be a separate Ombuds program to mediate disputes between student borrowers and private lenders. Here again, there are few details, but it is expected that the new Ombuds will resemble the existing Ombuds at the Department of Education which serves students with federal student loan issues.

It is clear that these new Ombuds programs need to be further defined by the respective agencies. So far, there is no indication that any individual Ombuds or any Ombuds association is participating in the process. On the positive side, the Coalition of Federal Ombudsmen has been an important resource for new Ombuds programs in the federal sector in the past.

## OMBUDS PROGRAMS CONTINUE TO BE PROPOSED BY LAWMAKERS

Over the past year and a half, several other pieces of legislation sought, unsuccessfully, to create Ombuds offices for other government agencies including:

- **Transportation Security Administration** — for issues relating to the Federal Air Marshal Service<sup>2</sup>;
- **Department of the Treasury** — for stakeholders of community financial institutions<sup>3</sup>; and
- **Office of the Director of National Intelligence** — for issues arising out of applications for intelligence community security clearances<sup>4</sup>.

These efforts indicate that legislators will continue to consider Ombuds programs of some kind for Federal agencies. The failure of these bills should not be taken as a legislative rejection of Organizational Ombuds — these bills merely met the same fate as the vast majority of proposed laws. Indeed, the Ombuds programs created by the Dodd-Frank Act had been proposed many times in prior congressional sessions.

## LITIGATION

### Report by Ombuds Becomes Critical Evidence in Lawsuit Against University

In the case of **DePree v. Saunders**, the University of Southern Mississippi (USM) was largely successful in defeating the claims of a tenured professor, Chauncey M. DePree.<sup>5</sup> The US Court of Appeals for the Fifth Circuit upheld the ruling of the trial court, which had dismissed nearly all of DePree's allegations that USM wrongly stripped him of his teaching duties and evicted him from his office because he had criticized the university. On the issue of whether the university

had violated the professor's free speech rights, however, the appellate court returned the case to the trial court for further hearing. The appellate court found that the case presented complex First Amendment issues, particularly in light of a report prepared by USM's Ombuds.

According to the court's summary, the case arose when faculty from the business USM business school complained about DePree's allegedly negative and disruptive behavior, and failure to engage in scholarly or professional activities. The University President relieved DePree of his teaching obligations and barred him from the campus. DePree, however, retained his title, tenure and salary despite USM's actions.

USM's President then requested the Provost to have the Ombuds investigate the charges against DePree. The Ombuds produced a report containing what the court characterized as, "wholly dispassionate conclusions and recommendations."<sup>6</sup> It was this report that gave the court a reason for the appellate court to remand the case for further development. The court said, "the late intervention of the Ombudsman report and [the President's] response to it have created a factual moving target."<sup>7</sup> For these reasons, the court remanded the case, allowing DePree to pursue an injunction against USM on his First Amendment retaliation claim.

Organizational Ombuds, especially those in higher education will be quick to point out that they do not conduct investigations on demand, nor do they issue written recommendations regarding the resolution of specific cases. These actions are clearly contraindicated by IOA Standards of Practice. Moreover, the USM Ombuds was not an IOA member and did not follow the Organizational Ombuds model.

Unfortunately, for Ombuds practicing in Mississippi, Louisiana and Texas, the Fifth Circuit did not consider these standards in its decision and the decision creates citable precedent. Should Ombuds issues come before federal courts in this jurisdiction in the future, judges may look to the **DePree** case as the best description of Ombuds practices. Organizational Ombuds would then have a more difficult task of asserting a privilege or arguing that IOA standards should apply.

### EEOC Requires Two Employers to Adopt Ombuds Programs to Settle Class Action Discrimination Suits

In two separate cases, the Equal Employment Opportunity Commission required employers accused of gender discrimination to establish Ombuds programs as part of a court-approved settlement. In November 2009, the **Cheesecake Factory, Inc.**, a nationwide restaurant chain, settled charges that six male employees were subjected to repeated sexual harassment at an Arizona restaurant.<sup>8</sup> In addition to a monetary settlement and other measures, the Cheesecake Factory agreed to designate an Ombuds to, “receive and forward complaints of discrimination from employees.”<sup>9</sup> The standards for the new Ombuds position were otherwise undefined.

In a similar case, the EEOC settled a major gender discrimination lawsuit against **Pitt Ohio Express**, a trucking firm with 2,700 employees headquartered in Pittsburgh, Pennsylvania.<sup>10</sup> Under the terms of the settlement, the company was to pay compensatory damages and provide other remedial relief to resolve claims of unlawful discrimination against women. Among other steps, Pitt Ohio agreed to designate an in-house Ombuds to informally resolve workplace issues that may arise from women filling driver and dockworker jobs.<sup>11</sup> Here again, the court failed to incorporate any standards for the Ombuds position. Additional details for the new Ombuds program would have given the parties more guidance in creating and evaluating the Pitt Ohio Ombuds office.

These two cases indicate that the EEOC views Ombuds programs as effective tools in addressing dysfunctional workplaces. As settlement orders of trial courts, however, these cases do not establish any legal precedent.

### Update: Jury Returns Verdict in Rape Case Involving University of Washington Ombuds

The case of *S.S. v. Alexander*<sup>12</sup> was detailed extensively in a prior issue of the Journal of IOA.<sup>13</sup> In that case, the Washington State Appellate Court imputed knowledge of gender discrimination to the University of Washington after a female student disclosed her claims of rape and harassment by another student to the campus Ombuds who tried to resolve the case through mediation. The court further found that the

University’s Ombuds was an “appropriate person” under Title IX (i.e., an official “with authority to take corrective action to end the discrimination”). This meant that the University Ombuds was an agent for notice for gender discrimination issues. Following the appellate court’s decision, the case was returned to the trial court in Seattle.

In November 2009, the jury hearing the case returned a verdict for the defendants. According to the Seattle Times, the jury found UW not liable on the narrow reasoning that the plaintiff’s educational opportunities had not been sufficiently harmed because she remained in school, kept a high grade-point average, and graduated. Nonetheless, jurors sought to amend their verdict to include a statement scolding UW for its handling of the matter. Although she did not prevail, the plaintiff expressed satisfaction with the lawsuit.<sup>14</sup> The state appellate court decision therefore will remain a published decision with implications for Organizational Ombuds in Washington State. Most significantly, it has become much difficult for an Ombuds to argue for a privilege in a Washington court.

### Federal Court Orders Production of Ombuds Records From IBM

A federal trial court in Oklahoma hearing two related cases, **Accounting Principals, Inc. v. Manpower, Inc.**<sup>15</sup> and **Pinstripe, Inc. v. Manpower, Inc.**<sup>16</sup>, ordered IBM to produce files from its Ombuds office. The cases arose out of a contract between IBM and two firms for accounting staff, Accounting Principals, Inc. (“API”) and Pinstripe. When IBM sought to end the contracts, API and Pinstripe were referred to IBM’s Global Procurement Ombudsman — an objective and impartial office that assists in resolving procurement-related concerns and issues. At the direction of IBM’s general counsel, the Ombuds conducted an investigation and submitted a report. IBM initially restored the contacts with API and Pinstripe, but later transferred the work to another vendor, Manpower, Inc.

After filing suit, API and Pinstripe sought to compel production of a report by IBM’s Ombuds. IBM objected on the grounds of attorney-client and attorney work product privileges. In evaluating these arguments, the court characterized the role of the IBM Ombuds using the standards enunciated by the American Bar Association:

Generally, an ombudsman works outside of normal line management structures and directly to upper management. An ombudsman is not an advocate for the complainant, nor is his role to defend the corporation he works for. His role is that of an impartial neutral, seeking the best resolution of the dispute.<sup>17</sup>

The court therefore concluded that the primary purpose for which the documents were created was not anticipation of litigation, but a separate business purpose (fostering a more open, effective, and productive relationship with suppliers). In addition, the court observed that none of the Ombuds documents appeared to contain communications seeking legal advice. IBM did not raise any other legal arguments that would have protected the Ombuds' work. The court therefore ordered IBM to produce most of the materials produced by its Ombuds.

This was, therefore, a "mixed" result for Ombuds. The court did not consider the Ombuds to be a tool of counsel and favorably referenced the ABA Standards (which are largely in line with IOA Standards). But, the court did not find any bases to protect the Ombuds' work product and communications. For better or worse, this trial court decision does not create any precedent.

### Complaint to FBI Ombuds Does Not Satisfy Prisoner's Exhaustion Requirement

In **Rider v. Goldy**, a Federal trial court in California ruled that a prisoner cannot satisfy a requirement to exhaust administrative remedies by sending a letter to the Federal Bureau of Investigation Ombudsman.<sup>18</sup> The plaintiff in the case, Christopher S. Rider, complained that California prison officials violated his civil rights while in custody. In order to satisfy the legal requirement that he had previously sought and exhausted all forms of informal or formal relief from the proper administrative officials, Rider alleged that he had written to the FBI Ombudsman asking for an investigation of the defendants' alleged conduct. The court summarily rejected the argument.

The decision on this issue is reassuringly predictable because the FBI Ombudsman deals only with work-related concerns of FBI employees and has no connection to prisoners, especially those in state custody. However, as the decision of a trial court, this case creates no legal precedent

### ENDNOTES

<sup>1</sup>111 P.L. 203.

<sup>2</sup>Transportation Security Administration Authorization Act, H.R. 2200, 111th Cong. (2009).

<sup>3</sup>Administrative Support and Oversight for Community Financial Institutions Act of 2009, H.R. 2676, 111th Cong. (2009).

<sup>4</sup>Intelligence Authorization Act for Fiscal Year 2010, H.R. 2701, 111th Cong. (2010).

<sup>5</sup>588 F.3d 282, 2009 U.S. App. LEXIS 24969 (5th Cir. Miss. 2009), cert denied, 130 S. Ct. 3450; 177 L. Ed. 2d 353; 2010 U.S. LEXIS 4970 (2010).

<sup>6</sup>588 F.3d at 289.

<sup>7</sup>Id.

<sup>8</sup>Consent Decree, EEOC v. Cheesecake Factory, Inc., CV 08-1207-PHX-NVW (Nov. 5, 2009); available at <http://www.gentrylocke.com/files/Consent%20Decree-EEOC%20v.%20Cheesecake%20Factory.pdf>.

<sup>9</sup>Id. at p. 8, ln. 2-3.

<sup>10</sup>Consent Decree, EEOC v. Pitt-Ohio Express, Inc., 1:2006 cv 00744 (October 19, 2008); available at [http://op.bna.com/dlrcases.nsf/id/kmgm-7nkjld/\\$File/pitts.pdf](http://op.bna.com/dlrcases.nsf/id/kmgm-7nkjld/$File/pitts.pdf).

<sup>11</sup>Id. at p. 9, ¶ 32.

<sup>12</sup>143 Wn. App. 75; 177 P.3d 724; 2008 Wash. App. LEXIS 333 (2008).

<sup>13</sup>Tom A. Kosakowski, A Legal Perspective, 2 J. Int'l Ombudsman Ass'n 100, 100-101 (2009).

<sup>14</sup>Ken Armstrong, Jury upholds UW in handling of rape allegation against ex-player, Seattle Times, Nov. 5, 2009; available at [http://seattletimes.nwsource.com/html/huskies/2010212537\\_alexander06.html](http://seattletimes.nwsource.com/html/huskies/2010212537_alexander06.html).

<sup>15</sup>2009 U.S. Dist. LEXIS 66428 (N.D. Okla. July 28, 2009).

<sup>16</sup>2009 U.S. Dist. LEXIS 66430 (N.D. Okla. July 28, 2009).

<sup>17</sup>Id. at \*17 (the language was identical in both decisions).

<sup>18</sup>2010 U.S. Dist. LEXIS 12360 (E.D. Cal. Feb. 11, 2010), vacated on other grounds, 2010 U.S. Dist. LEXIS 44332 (E.D. Cal. May 5, 2010).

## AUTHORS' BIOGRAPHIES

**Brian Bloch** is the designer and co-director of ISKCONResolve, 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 also trains mediators for the Supreme Court of India Mediation & Conciliation Project.

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**Barbara McCulloch** is the principal mediator and manager of the Mediation Service at the University of Auckland; a service she set up in 2005 and has been developing ever since. Her roles include mediation which is provided to staff and students, "conflict coaching" so that participants can learn ways to manage conflict situations differently themselves, training in conflict management for staff groups and dealing with harassment issues using mediation as an

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**Tom Sebok** has been an Ombuds at the University of Colorado at Boulder since 1990. He serves as associate editor for the Journal of the International Ombudsman Association and as an instructor for the IOA Ombuds 101 course. He is the author of numerous publications on ombuds practice, mediation, workplace bullying, and restorative justice.

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## 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.

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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.

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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 burn-out in HIV/AIDS carers. London: Taylor & Francis.

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## SAMPLE FRONT PAGE

### THE WAY THINGS ARE, HAVE BEEN AND WILL BE

John Doe  
Organizational Ombudsman  
ABC Inc.

#### Contact details:

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**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.

#### Acknowledgements:

The author is particularly grateful to A, B, and C for their stimulating discussion and ideas that led to the development of this article, and to D, E and F for reviewing earlier drafts of the manuscript.

# REVIEW PROCEDURES

## RESPONSIBILITIES OF EDITORS AND EDITORIAL BOARD MEMBERS

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- Request an additional review
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