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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-











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 over ridden.

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:

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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, Compleat 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 ombudpersons 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 ombudperson might establish beneficial relationships and offers some strategies and techniques that may be useful in forming those relationships.

## KEYWORDS

Ombudperson, relationships

## ACKNOWLEDGMENTS

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Organizational ombudpersons 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 ombudperson 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 ombudperson 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 ombudperson 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 ombudperson 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.nsource.com/html/huskies/2010212537\\_alexander06.html](http://seattletimes.nsource.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.

**Mary Chavez Rudolph** has served in the role of Ombudsman in a university setting for the past 10 years — currently at the University of Colorado Denver. She serves on the International Ombudsman Association Certification Professional Practices Committee, the Mentoring Task Force, and as an instructor for the IOA Ombuds 101 course. Dr. Chavez has made many presentations at regional and national conferences on the topic of conflict and collaboration as well as Bullying in the Workplace and Bullying in Academia.

**Nancy Erbe** is Associate Professor of Negotiation, Conflict Resolution and Peacebuilding at California-State University Dominguez Hills where she teaches classes including the Ethics of Conflict Resolution. Most recently, she was guest professor at Cornell School of Law. She has also taught at the Straus Institute for Dispute Resolution at Pepperdine School of Law (Education and Dispute Resolution), University of California Berkeley, University of Denver and University of Oslo. She began external-contract ombuds work with universities and government agencies in the mid 1990s after several years of mediating a range of disputes. Her clients include U.S. Office of the Interior, U.S. Office of Personnel, Colorado State Commission on Indian Affairs, Colorado State Department of Corrections, Bay Area Rapid Transit, City of Boulder Human Relations Commission, Wu Yee, and the County of Los Angeles. Previously, she represented the Minneapolis Public Schools. In 2005 she was added to the Fulbright roster of Senior Specialists in Peace and Conflict Resolution. Rotary International

has designated her a Paul Harris Fellow in appreciation for furthering better understanding and friendly relations among peoples of the world. Her clients and students to date represent seventy different countries. Her B.A. is in non-profit administration.

**Mim Gaetano** is one of 4 ombudsmen for Mars Inc. and he covers the regions of Asia-Pacific and Africa, India and the Middle East. He has been an ombudsman for 8 years and has been with Mars Inc. for almost 24 years. Prior to his current assignment, he has had roles in R&D, Finance and Commercial. Gaetano has a Bachelor of Science from RMIT (Melbourne, Australia) and has recently completed a postgraduate diploma in Conflict Resolution at La Trobe University in Melbourne, Australia. He has completed Ombudsman 101 and Mediation and Advanced Mediation with the Trilium group throughout his time as an ombudsman. To unwind and to recharge his ombudsman batteries, Gaetano likes to indulge his passion of sea fishing, vegetable gardening and cooking.

**Tim Griffin** has been the University Ombudsman at Northern Illinois University since 1991. In that position he serves all members of the university community. His degrees include a Bachelor of Music, a Masters in Counseling, and a Doctorate in Higher Education with a cognate in Law. He has published extensively in the field, and has presented or served on panels on twenty-nine different occasions at UCOA and IOA conferences. He is the convener of the Annual Summer Meeting of College and University Ombudspersons, now in its ninth year.

**Loraleigh Keashly** is an associate professor in the Department of Communication at Wayne State University, Detroit. Her focuses on conflict and conflict resolution at the interpersonal, group and inter-group levels. Her current research focus is the nature and effects of emotionally abusive and bullying behaviors in the workplace with a particular interest in the role of organizational structure and culture in the facilitation or prevention and management of these behaviors. Her work has appeared in *Work & Stress*, *Journal of Emotional Abuse, Violence and Victims*, *Employee Rights and Employment Policy Journal*, the *Journal of Management and Organizations*, and the *Journal of Healthcare Management*. Book chapters

have appeared in *Bullying and Emotional Abuse in the Workplace* (Taylor & Francis), *Counterproductive Work Behavior* (American Psychological Association), *the Handbook of Workplace Violence* (Sage), *The Destructive Side of Organizational Communication* (Routledge/LEA) and *Insidious Workplace Behavior* (Routledge/LEA). She has been an expert witness on cases of workplace bullying.

**Tom A. Kosakowski** is the Ombudsperson for the Center for Health Sciences at the University of California, Los Angeles. Tom serves on the IOA Board of Directors and is a member of the IOA Legal and Legislative Affairs Committee. He publishes the Ombuds Blog (<http://ombudsblog.blogspot.com>) and has been an attorney in California since 1996.

**James Lee** has been an ombudsman in the United Nations system for over twenty years, following a career in university teaching and administration in Africa, Europe and North America. He joined the United Nations in 1985 as Chief Editor, UNDP, and shortly thereafter was appointed a member of the Ombudsman Panel, serving as its Coordinator for many years. He established the Joint Office and became the first professional ombudsman to serve a number of UN funds and programmes, including UNDP, UNFPA, UNICEF, UNIFEM and UNV. He is now an independent consultant, addressing the whole range of ombudsmen services, working mainly through the UN system. A former IOA Board Member and Co-Coordinator of the International Committee, he interacts closely with management, staff associations and other ombudsmen throughout the world. Dr. Lee holds M.A. and Ph.D. degrees from Vanderbilt University and a B.A. Honours degree from Durham University, UK. He is married to Dr. Barbara Brewka, a consultant editor.

**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

intervention. Barbara is particularly interested in using mediation to assist people who have long standing relationships and who want or need to remain in relationship with each other. To this end she has created a training programme for mediators who engage in similar work. Barbara is a senior panel member of LEADR NZ. She has a long standing partner and two grown up children from a previous relationship.

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

**Jan Morse** is the Ombudsman and Director at the Student Conflict Resolution Center at the University of Minnesota, and has a post-graduate degree from the HHH Institute of Public Affairs. She has worked as an ombudsman for over 20 years, and currently serves on the IOA Board of Directors.

**Jennifer L. Moumneh** currently serves as Associate Ombudsman for the University of California, Irvine (UCI), addressing issues involving staff, faculty and students. She has spent the past 11 years in the dispute resolution industry — serving as a mediator for the court and university systems, as an ombudsman for both UCI and UCLA, and as Director of Operations for a private dispute resolution provider. Jennifer holds a Masters Degree in Dispute Resolution from the Straus Institute at Pepperdine Law School, as well as an MBA from the Paul Merage School of Business at UCI. She currently serves as President of the International Ombudsman Association (IOA), and has previously been a member of IOA's Finance Committee and Strategic Planning Committee, as well as one of the inaugural members of the Board of Certification for Certified Organizational Ombudsman Practitioners (CO-OP).

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

**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.

**Noriko Tada** is an Ombudsperson with Guidea for Eisai. Co., Ltd. in Japan since 2006. She has been an intercultural communication and intercultural conflict resolution trainer for 12 years in Japan. She is also an adjunct professor at the Institute for International Education of Students (IES), Tokyo center and the continuing education program in Temple University Japan. She has worked and studied in the US, Switzerland, Germany and India.

**Marsha L. Wagner** has been Columbia University ombuds officer since 1991, when the Ombuds Office was first established. Experienced in mediation, she has led many training workshops on conflict resolution, and she has designed national professional development programs for organizational ombuds. Her publications include *"The Organizational Ombudsman as Change Agent"* (**Negotiation Journal** 16, no. 1 [January 2000]: 99-114). She served three terms on the Board of Directors of The Ombudsman Association, 1993–99 and 2004–05, and one year on the Board of Directors of the International Ombudsman Association (IOA), 2005–06. She currently serves as President for the Board of Certification for Certified Organizational Ombudsman Practitioners (CO-OP<sup>SM</sup>).

## MISSION STATEMENT

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



# INSTRUCTIONS FOR AUTHORS

## EDITORIAL STATEMENT

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

## ELIGIBLE CONTRIBUTORS

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

## GUIDELINES FOR SUBMITTING AN ARTICLE

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

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

### Authorship

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

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

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

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

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

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

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

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

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

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

### Publication Dates

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

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

## SAMPLE FRONT PAGE

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

John Doe  
Organizational Ombudsman  
ABC Inc.

#### Contact details:

ABC Inc.  
1122 Washington Square  
Washington, DC 12345  
Tel: 012 345 6789  
Email: abcomb@abc.com

**Key Words:** Ombudsman, history, dispute resolution, nirvana

**Word Count (including Abstract):** 2500

#### Abstract:

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

#### John Doe:

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

#### 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

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

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

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

## REVIEW PROCESS

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

Each reviewer will recommend one of the following:

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

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

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

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

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

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

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

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