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Keywords: ombudsman, perceptions of fairness, healthcare

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Keywords: Ombudsman, justice, fairness, equity, restorative

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Keywords: Fairness, mediation, ombudsman, self-evaluation, scales.

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Keywords: Ombudsman, Conflict Management, Conflict Cost Controlling

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Keywords: ombuds, conflict, recovery

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EDITORIAL

Is Life Fair?

DAVID MILLER

The IOA Standard of Practice 2.2 includes the following sentence: *“The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.”* This Volume of the Journal of the International Ombudsman Association has embraced the overall theme of “Fairness and Equity”, occasioned in part by the probing enquiry of Tom Sebok during one of the JIOA Editorial Board meetings in which he asked of this SoP, “How do we reconcile Ombudsman neutrality with being ‘advocates for fair and equitably administered processes’”? In the spark of his question this Volume was born, together with a new tradition (see below).

In this Volume, we benefit from some experienced contributions reflecting on Ombudsman fairness and equity, all of which point to the centrality of perceptions of fairness in how our Ombudsman roles are conceptualised and operationalised. Yet, happily, they do so in different ways. **Ariel Avgar** notes the limited research on the role of Ombudsmen and employee perceptions of fairness and asks how we as Ombudsman influence such perceptions. Using a case study, Avgar asserts that organizational Ombudsmen can influence fairness by delivering different outcome gains for different stakeholders.

Robert Shelton examines the notions of justice as a basis of Ombudsman practice, explicating ideas and writings on commutative, distributive, social and restorative justice. **Gerald Papica** then explores notions and features of fairness. Writing from the perspective of a government Ombudsman, Papica asserts that fairness characteristics are relevant beyond work sectors, providing many starting points for further enquiry.

In the regular “I was just thinking...” column, **Tom Sebok** and **Howard Gadlin** contribute on the issues of ‘neutrality’ and ‘fairness’ respectively. Sebok asks ques-

tions about what criteria we might use to determine if a process is fair and equitably administered, and how we advocate for such processes without inadvertently appearing to take sides. He asks if we should not be clarifying this Standard of Practice and addressing the ambiguities it represents. Gadlin gives strong endorsement to the notion of reviewing IOA Standard of Practice 2.2, suggesting that boundaries between advocacy for people and for processes can be very unclear, and that there are times when exercising our discretion may appropriately require us to assert such advocacy.

Christopher Honeyman addresses the question of how we know if and when we’re being fair, and proposes a scale for assessment of fairness coming from his long experience in the realm of mediation. His approach offers an empirical possibility for Ombudsmen — as a profession we need more data on the application and impact of our roles.

It is satisfying to see how some of our contributions maintain conversations started in earlier Volumes, which was our intention when they commenced.

Helmut Buss presents data on conflict cost research based in an international organisational environment. Buss proposes a “cost visibility and measurability matrix” that enables organisations to identify and measure costs associated with conflict (and costs therefore saved with appropriate conflict resolution).

Cynthia Joyce has asked the question of what to do for Ombudsman office visitors who cannot recover from conflict — a familiar scenario for many. The overlap between the role of Ombudsman and the role of psychologist or psychotherapist can be very significant or, to put it another way, the boundaries between the two can sometimes seem vanishingly small. Joyce provides useful and realistic advice for Ombudsmen that recognises and works with those boundaries.

The Ombudsman profession needs more empirical research. An ability to characterise our profession, its methods and outcomes in ways that admit the potential for replicability, critical self-regard and development is a crucial part of building an enduring professional foundation. **Alan Lincoln** follows on from the assertion of the IOA Research Agenda published in this Journal in 2008 with an overview of research processes and methods, the aim being to stimulate more of us to adopt knowingly empirical approaches to our work.

Last but not least, **Tom Kosakowski** has reviewed *The Ombudsman Handbook: Designing and Managing an Effective Problem-Solving Program* by James T. Ziegenfuss and Patricia O'Rourke. Thanks go to Tom, as always, for acting as book reviewer for JIOA.

The new tradition I alluded to earlier has been sparked by the critical reflection on one of our SoPs herein. Accordingly, for the next two issues, the JIOA will be addressing the Standards of Practice on *Confidentiality* (with emphasis on possible exceptions), and on *Informality* and the challenges that raises. Those with insights, wisdom and experiences to share on these topics are encouraged to sharpen their pencils — we aim to maintain the current publishing cycle of two Volumes per year.

Given the experience of having moved to twice-yearly publication, a number of people have found themselves with twice the work. I particularly wish to thank our patient reviewers, whose commitment, professionalism and discipline in reviewing for the JIOA has remained a major strength as it continues to grow and evolve. The Associate Editors have also been extraordinary in their constructive curiosity and creativity — producing the Journal is hard work, but they make it truly enjoyable. And most grateful thanks, of course, to our contributors. You are the vital parts of our on-going professional conversation and we appreciate you all the more for that.

This piece is entitled “Is Life Fair?” and, as I write this Editorial for Volume 4(1) of the Journal of the International Ombudsman Association, I am also in correspondence with an Ombudsman colleague in Japan who is living first-hand with a scale of disaster unparalleled in our lifetimes. Although we are familiar with the often diverting and sometimes alarming concerns of visitors, and with the fabrication of disaster as entertainment, the jump from a TV screen to life as we know it involves emotion and stress that few can anticipate. On a personal note, I want to send my heart-felt thanks to all in the IOA who so generously expressed kind concern and solidarity during our recent disaster in New Zealand — such expressions have a vital, nurturing, physical and emotional impact for the vulnerable. I am sure you would wish to join me in sending similar sentiments to our colleagues in Japan at this time.

The Ombudsman's Ability to Influence Perceptions of Organizational Fairness: Toward a Multi-Stakeholder Framework

ARIEL C. AVGAR

ABSTRACT

This article explores the relationship between the roles and responsibilities of the ombudsman and perceptions of fairness. The article develops a multi-stakeholder framework for understanding the organizational ombudsman's role and the potential effects on workplace fairness. Findings from a case study of a large U.S. teaching hospital ombudsman are documented. Building on these findings, it is argued that an effective ombudsman influences different gains for different organizational stakeholders. This framework provides a lens to better understand how the ombudsman can enhance perceptions of procedural, distributive and interactional fairness. The ombudsman in this case study engaged in activities that resulted in different gains for frontline staff, middle and top management, which the author links to distinct dimensions of organizational fairness. By addressing stakeholder needs, the ombudsman can contribute to an organization's fairness climate. Enhancing perceptions of fairness, therefore, requires a multi-stakeholder focus across a range of ombudsman activities.

KEYWORDS

ombudsman, perceptions of fairness, healthcare

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The author wishes to thank Eunkyung Lee for her insightful comments and suggestions. Sincere thanks to "American Medical's" employees, managers, union leaders, and administration, and to their very dedicated ombudsman.

INTRODUCTION

The ombudsman has long been recognized as a powerful institution that is, at its best, capable of addressing a host of critical organizational challenges and employee needs (Kolb 1987). Formally structured to resolve workplace conflicts and tensions, the ombuds function has been shown to have a broader range of potential benefits for different stakeholders (Rowe 1995). Thus, for example, in addition to managing and resolving conflict, the ombudsman can act as a conduit through which important organizational information is transferred and metabolized (Kolb 1987; Rowe 1995). The ombudsman has also been shown to enhance organizational learning and effectiveness (Wagner 2000). One of the areas that has received less attention in this context is the ability of the organizational ombudsman to facilitate workplace fairness. More specifically, there is limited research on the relationship between the ombudsman's organizational role and employee perceptions of fairness.

Given that perceptions of fairness are central to the very legitimacy and sustainability of the ombudsman's key organizational roles, this absence of research is somewhat puzzling. The ability of the ombudsman to perform her tasks is, to a large extent, contingent on the belief that procedures, interactions and decisions are all conducted in a manner that upholds basic notions of fairness. Furthermore, fairness perceptions are important for individual and organizational level outcomes. Thus, a better understanding of the effects of ombudsman related activities and perceptions of fairness would benefit scholarship and practice in this domain. In fact, Section 2.2 of the International Ombudsman Association Standards of Practice states, "The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people

and the consideration of issues...” If fairness is central to the work of the ombudsman, why don’t we know more about this organizational dimension? How does the ombudsman influence perceptions of organizational fairness?

It is likely that difficulty in assessing the relationship between the ombudsman and organizational fairness rests, among other reasons, on the tremendously varied roles, responsibilities and outcomes associated with this increasingly important workplace institution. An effective organizational ombudsman is engaged in a wide range of activities that entail different modes of communication and interaction. As such, the ways in which the ombudsman is likely to affect perceptions of fairness are dynamic and shift as a function of the specific role being played and the outcomes for organizational members. Furthermore, one of the complexities associated with the ombudsman role is the need to address and balance different stakeholder needs and interests. Here too, this variation in ombudsman-affected stakeholders is also likely to create a more dynamic relationship between the ombudsman and fairness perceptions. Finally, fairness itself is a multi-dimensional construct. Among the core dimensions identified by organizational justice and fairness scholars are procedural, distributive, and interactional (Greenberg 1990). In other words, in addition to the need to assess fairness as a function of different ombudsman roles and responsibilities, the relationship between the ombudsman and perceptions of fairness needs to also account for these different faces.

To be clear, this linkage between the ombudsman and organizational fairness departs from the traditional focus on the ombudsman’s role vis-à-vis an individual disputant, employee or manager. The proposition set forth in this article is that in addition to the importance of focusing on the imperative that the organizational ombuds engage members in a manner that is fair, scholarship needs to assess the extent to which this institution affects a broader climate of fairness in organizations. In fact, recent fairness scholarship supports the notion that organizational members’ perceptions of fairness can be directed toward multiple entities, such as an individual, the unit, or the organization (Lavelle, Rupp, and Brockner 2007). In other words, the ombudsman’s activities and interactions

are likely to influence perceptions of fairness that go beyond the specific individual relationship at hand.

This paper develops a multi-stakeholder framework for understanding the ombudsman’s role. More specifically, this article documents findings from a case study of an ombudsman office in a large U.S. teaching hospital (referred to here as American Medical) to propose that an effective ombudsman affects different gains for different organizational stakeholders. Furthermore, this stakeholder framework provides a lens through which to better understand how the ombudsman can enhance perceptions of procedural, distributive and interactional fairness. Taken together, it is argued that enhancing perceptions of fairness requires a different focus across the range of ombudsman activities and responsibilities. In what follows, three central organizational fairness dimensions will be reviewed. Next, the article provides an overview of the American Medical case study. Finally, evidence for a multi-stakeholder ombudsman framework is provided, highlighting implications for organizational fairness.

Three dimensions of organizational fairness

Over the past five decades, organizational scholars have amassed a large body of research on the antecedents and consequences of perceptions of fairness (for recent reviews see Colquitt 2008; Roch and Shancock 2006). Employee perceptions of justice or the fairness of the treatment they receive from an organization and its members, have been shown to influence both individual and organizational level outcomes (see for example Simons and Roberson 2003). For example, employee perceptions of organizational fairness have been linked to employee health and wellbeing, turnover intentions and organizational citizenship behavior (Colquitt et al. 2001). Although scholars conceptualize fairness differently, there has been, for the most part, consensus regarding some of its key dimensions. First, justice scholars have made a distinction between *procedural* and *distributive* fairness. *Distributive* fairness, which received a great deal of attention by early justice scholars, refers to the fairness of the ends achieved or the content of

an organizational decision or action (Colquitt et al. 2001; Greenberg 1990). **Procedural** fairness, on the other hand, refers to the fairness of the means used to reach a specific distributive end (De Cremer et al. 2010; Greenberg 1990). Thus, in assessing fairness of a given decision or action, individuals are likely to be examining both distributive (content) and procedural (process) elements.

In addition to the distinction between process and content, more recent justice scholarship has introduced a third fairness dimension that focuses on the interpersonal treatment and interactions, referred to as **interactional fairness** (Anderson and Patterson, 2010; Luo 2007). Interactional fairness has been shown to be affected by interpersonal justice or the extent to which individuals feel that they are treated in a manner that is respectful and dignified during a decision process. In addition, interactional fairness is influenced by informational justice, which captures the extent to which individuals are provided with information regarding decisions made, processes used, and actual distributive outcomes (Colquitt et al 2001). Recent research has supported the relationship between organizational characteristics, such as structure and design, and employee fairness perceptions. For example, the level of centrality and size of an organization have been shown to influence employee perceptions of distributive, procedural, and interactional fairness (Schninke, Cropanzano, and Rupp 2002).

How can the organizational ombudsman affect these different fairness dimensions? This paper examines the potential linkages between the work of the organizational ombudsman and each of these dimensions of fairness. The argument set forth below is that by addressing different stakeholder needs, the ombuds function also affects workforce perceptions of fairness. Responding to different needs of frontline, middle and top management stakeholders leads to the facilitation of distributive, procedural and interactional perceptions of fairness.

Case study background

In an effort to examine antecedents to and outcomes associated with the adoption of a conflict management system as part of a broader research project, case study research was conducted at American Medical, a large U.S. teaching hospital. American Medical was a unique setting in which to examine the issues discussed above due, among other things, to the conception, design and implementation of an organizational ombudsman as part of a dispute resolution system piloted by the Federal Mediation and Conciliation Services (FMCS) in 2004. In the summer of 2003, American Medical was contacted by the FMCS concerning the possibility of serving as a site for a pilot dispute resolution program.

The pilot dispute resolution systems initiated by the FMCS in 2002 included a number of common features. First, they were implemented parallel to at least one collective bargaining agreement that covered a portion of the organization's workforce. Second, the systems included the implementation of a number of conflict management options which, in this case, included union and nonunion processes for addressing employee grievances alongside a wide range of ombudsman responsibilities (Robinson, Pearlstein, and Mayer 2005). This characteristic is in line with the general literature on conflict management systems (see Lipsky, Seeber, and Fincher 2003). Third, all pilot programs included an interest-based resolution option that focuses on the needs and interests of the disputing parties as opposed to contractual or statutory rights (Robinson et al. 2005). Fourth, the FMCS decided that one of the necessary characteristics of a dispute resolution system in the unionized setting is the presence of an internal ombudsman, as opposed to the using of a roster of external neutrals.

Following introductory meetings with labor and management stakeholders, American Medical and the FMCS set up a design team in January 2004. Key and relevant stakeholders were identified during meetings with the unions, top management and the human resources department. The team included five representatives from management, five representatives from each union and five representatives from the nonunion hospital workforce. There was also a wide array of additional hospital stakeholders beyond those formally selected. This composition played a

key role in the design process and implementation (Field notes, December 2005). Two FMCS mediators facilitated the monthly meetings.

At the conclusion of a year-long design process during which the team grappled with issues of structure, division of authority and procedures, an ombudsman office and joint operating committee (JOC) were established. In February 2005, the dispute resolution program, referred to here as RESOLVE, got underway at American Medical (Field notes June 2005; Archival hospital information on the program and its evolution).

Reflecting the general excitement with which the unique initiative was pursued, the vice president of human resources sent the following announcement:

As most of you know, we have had a committee comprised of equal representation from management, non-union non-management, [unionized] employees at work for over a year on the development of an alternative dispute resolution program. We are the first of some 25 employers across the country targeted by the FMCS ... to look at and try to find better ways to deal with conflict. What makes this approach unique is that it has been developed exclusively through collaboration and consensus. ... The committee members are coming before you as a group with great enthusiasm to roll out the program.

Methodology

Following correspondence with the hospital ombudsman in June 2005, I was granted research access to the hospital and specifically to activities and material dealing with conflict and conflict management. I participated in monthly JOC meetings in which important discussions took place regarding the program, and in management and professional meetings, all of which provided important contextual information about the hospital culture, pressing issues and considerations and the strategic mindset.

Qualitative and quantitative data were collected at American Medical over a period of approximately fifteen months between July 2005 and November 2006. The qualitative methodology included some 75 interviews with employees and managers throughout the hospital, including the chief executive officer, the

chief operating officer, an array of middle managers and frontline employees from different hospital departments. In addition to formal, semi-structured interviews with a sample of employees across different occupational groups and hospital units, data was also collected through: group discussion with frontline staff from different hospital units; observations of top management meetings; observations of ombudsman office meetings; trainings and dispute resolution sessions; observations of the program's Joint Operating Committee; and the use of archival material, including the hospital newsletter and transcripts from hospital meetings. Many of the observations focused on the ombudsman's work throughout the organization and relevant meetings and discussions.

With regard to quantitative data, I was granted access to archival information on complaints that were filed through the ADR system. In addition, a specially designed survey was used to measuring employee attitudes and perception toward the conflict resolution system. Of the 3,300 surveys administered, 820 surveys were completed and 791 were useable (a response rate of close to 25%). A comparison of the survey results with documented dispute resolution activity provided an opportunity for an analysis of the extent to which various conflicts are dealt with through different conflict resolution outlets. In sum, access granted by American Medical to both qualitative and quantitative data provided unique possibilities for studying a dispute resolution program in an industry that was relatively understudied in this regard.

What Have You Done for me Lately?

A stakeholder perspective on ombudsman outcomes and their potential effect on an organizational fairness climate

Much of the literature on dispute resolution and conflict management systems, including the adoption of an organizational ombudsman, has been limited in its discussion of associated outcomes. Dispute resolution practices have been assessed in terms of their effect on organizational turnover or exit of employees (see for example Batt, Colvin, and Keefe 2002; for a recent review see Colvin, Klaas, and Mahony 2006).

Other studies have examined the effects of nonunion dispute resolution procedures on the career progression of the employee who filed the complaint and the employee against whom the complaint was filed (Lewin 1987). Finally, researchers have examined outcomes from a litigation perspective, such as win rates and ADR-to-courtroom cost comparisons (for a review see Colvin et al. 2006). Short of these general-outcome categories, there is a gap in the research on organizational and individual-level outcomes of alternative dispute resolution strategies.

In an effort to highlight the broad array of outcomes associated with an ombuds-headed conflict management system, three stakeholder groups were examined: frontline employees, middle managers, and top management. As demonstrated below, the organizational ombudsman and the associated system had vastly different effects on each of the groups. Although the formal function of a dispute resolution system is to resolve micro-level conflicts between individuals, this case study highlights that, in fact, the system provides a mechanism through which broader organizational outcomes, such as communication and coordination, are achieved. As will be discussed, by addressing these three types of stakeholder level outcomes, the ombudsman is able to, among other things, enhance organizational actors' perceptions of fairness.

FRONTLINE EMPLOYEES OUTCOMES: INDIVIDUAL LEVEL CONFLICT RESOLUTION

Research at American Medical included observations of a number of sessions conducted by the ombudsman with frontline employees. For the most part, these sessions addressed conflicts arising in a given unit among employees or with a supervisor. The ombudsman was called in to develop strategies for dealing with conflict and its underlying causes. In such instances, the presence of a dispute resolution system provided an alternative outlet for the unit supervisor through which persistent problems that were usually interpersonal could be addressed.

What the sessions highlighted in particular was the potency of such individual-level conflicts and the dramatic effects on the way in which frontline employees

carried out their responsibilities. Employees described the effects of conflicts with peers and supervisors in their unit as unbearable and paralyzing in terms of their ability to conduct routine work. One frontline nurse described the effects of ongoing conflict with a unit employee as follows:

There are mornings when the thought of coming into work and dealing with all of this makes me sick. I sometimes need to stop on the side of the road I get so sick. To throw up I mean. I will call in and say, I am going to be late, I had to stop on the side of the road again. It just gets to me that way. I don't know why (Dispute resolution session, April 2006).

This visceral effect of conflict described by this licensed practical nurse (LPN) was not unusual. Employees spoke about spending large portions of their time dealing with conflicts that arose on their floors and the physical and emotional consequences (Field notes, April 2006). At this level, the dispute resolution system provided a mechanism for resolving persistent conflicts and, more importantly, provided tools and skills for dealing with such situations. In short, the program represented an institutionalized vehicle through which to confront deep-rooted interpersonal and professional conflicts.

Clearly, by addressing individual level frontline conflicts and disputes, the organizational ombudsman is potentially affecting multiple dimensions of fairness, including procedural and interactional ones. Nevertheless, the resolution of these conflicts goes to the heart of the distributive face of fairness. As noted in the review above, distributive fairness is concerned with the content of decisions or actions. The involvement of the organizational ombudsman with workplace disputes that would otherwise probably go unaddressed, allowed for American Medical's dispute resolution system to serve as a vehicle through which to deliver substantive remedies to its frontline employees. Thus, it is proposed that the organizational ombudsman has the capacity to enhance an organization's distributive fairness climate by addressing substantive individual level conflict and tensions on the shop floor.

MIDDLE MANAGEMENT OUTCOMES: COORDINATION IN THE MIDST OF RESTRUCTURING

Existing literature on hospital restructuring has presented empirical evidence on the consequences associated with this process in terms of conflict and its resolution. Interviews conducted with middle managers at American Medical provide additional support for the claim that structural changes experienced by most U.S. hospitals have had dramatic organizational consequences, particularly for middle management. Thus, for example, the manager of the hospital's practice sites and physician practices stated:

We are going through a major overhaul and we need buy in. I want to redesign the way we work and implement system changes, but there is tremendous resistance... Restructuring creates mistrust which makes our job in changing things around here very difficult (Interview, Hospital practice site and physician practice manager, June 2006).

In response to employee resistance to the restructuring process, this manager turned to the RESOLVE program for assistance and support. The ombudsman was brought in to assist in what became a multiparty restructuring negotiations arena. As the unit's managers found themselves negotiating with the physicians, nurses and allied professional staff over the contours and implications of the unit restructuring, the presence of an in-house neutral proved highly beneficial (Field notes, June 2006).

One of the interesting aspects associated with the restructuring of this particular unit was the strong resistance on the part of physicians to the anticipated changes. Although physicians were not active users of the system, in the case of the restructuring of the unit and negotiated change with this strong hospital stakeholder, the dispute resolution program extended into their domain. The physician director of this radiology unit referred to the dynamics as follows:

Some people around here have a lot of power in resisting change. If the doctors are not supportive of us, employees will not listen to us. We need the program's help to negotiate status, power and control (Interview, physician unit director, June 2006).

The administrator of this same unit stated:

You are never going to get consensus out of doctors. We need to develop consensus over restructuring and need assistance in this negotiation (Interview, Hospital practice site and physician practice manager, June 2006).

What emerged from this specific example and from interviews with other managers throughout the hospital is the role the dispute resolution system and the ombudsman played as a coordinating and consensus-building mechanism in the service of managers confronted with the challenges of restructuring. Thus, although the resolution of conflict is integral to this system role, it is not the only component. The ombudsman helped managers build alliances and develop trust in the changes necessitated by intense restructuring pressures (Field notes, June 2006).

Often what appears to be interpersonal workplace conflict is actually a problem of coordination that stems from uncertainty regarding organizational structures and roles. In this sense, the dispute resolution program not only treated workplace conflicts, but also assisted managers in handling structural issues that might otherwise have led to conflicts. As the ombudsman reported:

One group of employees had been laboring for years under a faulty understanding of their organizational structure. Discussions clarified, for example, who reports to whom. This new information helped them understand behavior about which they had been resentful and angry. They continue to refine their organizational understanding and are moving forward to create an excellent team that provides excellent patient care (Ombudsman report on office cases, December 2005).

With increased institutionalization of the RESOLVE program, the role of restructuring coordination became more prominent. The ombudsman was asked to attend a number of unit retreats intended to ease the restructuring process and to discuss the ways in which unit members dealt with the fears, frustrations

and conflicts associated with this process. In addition, a growing number of middle managers began turning to the program for assistance in dealing with colleagues and supervisors around restructuring issues.

This coordinating role became especially vital in early 2007, when rumors of a possible merger with a large and well-established hospital became prevalent. Despite attempts on the part of top management to dispel these rumors, employees and middle managers began using the RESOLVE program as a mechanism to voice and process merger implications. Significantly, those making use of the program in this regard were overwhelmingly middle managers.

In the summer of 2007, the hospital announced that, although there were no concrete plans to merge, the two hospitals were engaged in discussions of ways to cooperate. This announcement triggered an even greater usage of the RESOLVE program by hospital managers. The increase was so dramatic that the ombudsman began devoting much of her time to these stakeholder issues (Interview with hospital ombudsman, June 2007). Participation of managers in the program jumped from 8% of all users in 2005 to 38% of all users in 2007.

If the resolution of shop floor individual conflicts and disputes is likely to play a key role in enhancing perceptions of an organization's distributive fairness, the ombudsman's coordination-related outcomes go to the core of the procedural dimension of fairness. As reviewed above, procedural fairness refers to the extent to which organizational members believe that decisions and actions taken were arrived at through an inclusive and transparent process. By getting deeply involved and engaged in structural unit level changes, the organizational ombudsman provides the process-related elements that are likely to increase members' perceptions of procedural fairness. This is especially crucial in organizational environments, like healthcare, where large-scale changes and decisions are common and fast-paced. Thus, it is proposed that the organizational ombudsman has the capacity to enhance an organization's procedural fairness climate by addressing managerial coordination issues at the unit level.

TOP MANAGEMENT OUTCOMES: STRATEGIC COMMUNICATIONS AND ORGANIZATIONAL CULTURE

Over the course of the adoption and usage processes of the RESOLVE program, the hospital leadership became increasingly aware that being vested in the dispute resolution program had the potential to convey top management communications down to middle managers and frontline employees and to receive communications from these groups through the ombudsman. Of special note in this respect was the Chief Operating Officer (COO) who seemed to intuitively sense that the program could be used in this capacity.

On a number of occasions, the COO relied on the RESOLVE program to disseminate information about leadership directions and vision. This was an important function, given the emphasis that hospital leadership and the COO, in particular, placed on organizational communication. For example, when asked in a hospital "town hall meeting" what could be done to improve the organization, the COO stated, "We need to continue to improve communications and interaction between leadership and direct care providers and support staff" (Hospital town hall meeting, November 2005). Regarding the program's role in promoting organizational communication, he remarked:

One of the things that the program does is keep me apprised of the culture, the things that are setting people off, the issues that we need to fix. Having someone who is close to the action and who can help me take the bigger picture approach is very good. It is not that I don't trust other individuals, but they have vested interests (Interview, December 2005).

In addition to articulating leadership messages through the dispute resolution program, top management and especially the COO and vice president of human resources used the program to learn about other stakeholder problems and concerns in a more direct manner. One of the areas where this was clearly exhibited, related to fears and frustrations about hospital restructuring. As mentioned above, the program came to play an important role in both support and coordination as well as conflict resolution related to restructuring. When such issues arose, they were routinely communicated to the hospital leadership.

Apprehensions regarding a possible hospital merger are a good case in point. Although the CEO and COO may have been aware of the unrest this was causing at all levels, the actual evidence provided by the dispute resolution program sensitized them to the extent of the problem. By briefing the hospital COO on emerging issues related to restructuring in various hospital units, the ombudsman was able to connect top management to the perspectives and perceptions of managers and employees that may not have been clearly understood or articulated. Over time, the ombudsman's office came to recognize its role as a facilitator of organizational communication. The ombudsman framed the program's role in the following manner:

Having a confidential, independent program like RESOLVE allows employees an avenue for having the kinds of discussions that keep them engaged in change processes. Especially in the hierarchical and fast-paced environment of health care, clear communication can be compromised even by the best communicators with the best intentions. At [American Medical] maintaining excellent and easy channels for communication is an important goal, not only for employee satisfaction but also for patient safety (Phone interview hospital ombudsman, June 2007).

A second and related outcome associated with the RESOLVE program for top management was the reinforcement of the espoused organizational culture, one that emphasizes and creates embedded trust. It was hard to miss the organizational culture sought after by its leadership: large banners and signs boasted the trustworthiness of the hospital and its staff. One of the advertised slogans prevalent throughout the hospital stated, "Never underestimate the power of trust." Another banner stated, "We will never take your trust for granted." Finally, an advertisement for hospital awards stated, "awards are nice, trust is better." The strong emphasis on trust as an organizational value was evident throughout my interviews with the hospital CEO and COO. Both articulated the need, in the highly competitive industry, to create an environment that fosters trust with patients (Interviews with hospital CEO and COO, December 2005).

Although the emphasis on trust pertained in many ways to the relationship between the hospital and its client base, the culture of trust set forth by management is not solely a hospital-patient attribute. In interviews, I would regularly inquire about the meaning of the trust-focused slogans. Many, including top managers, interpreted these to include trust between the hospital and its employees and more specifically between management and frontline employees. One employee stated, "you can't expect to have trust with the patients if you don't have trust with the employees" (Interview with LPN, June 2006).

While a culture based on trust between different stakeholders was a goal for top management, it was not evenly diffused across the hospital. Some managers and frontline employees treated aspirations for trusting relationships and the slogans that marketed these in a rather cynical manner. Not everyone felt that awards took second place to trust. Furthermore, many of the pressures placed on hospitals today and the associated responses have been empirically linked to outcomes that are in tension with organizational trust, such as stress, decreased satisfaction and increased conflict (see for example, Weinberg 2003).

In this sense the RESOLVE program played an unanticipated role in strengthening both the actual level of organizational trust and perceptions of the hospital as genuinely committed to this core value. The RESOLVE program assisted in trust-building in four central ways. First, by resolving actual conflicts and disputes, the program assisted in mending relationships and increasing interpersonal trust. Second, it played a central role in facilitating unit and hospital restructuring in a manner that provided employees and managers with more information and tools to confront fears, concerns, and frustrations. In doing so the program enhanced unit-level trust. By influencing these two outcomes for frontline employees and managers, the program was also achieving a third outcome—providing support for the organizational culture.

The president of the hospital's local union articulated this linkage by stating "Decisions made and actions taken by the conflict management system have to enhance the trust we have in each other" (JOC meeting, March 2006). In a 2005 hospital report to the community the local president is quoted as stating "Our RESOLVE program is helping improve communications with each other and to further strengthen

our work environment by building a culture of mutual respect and trust." Coming from the union president, this was a strong endorsement of the program's role in advancing a managerial-centered objective and illustrates the broader role played by the dispute resolution system. The very showcasing of the RESOLVE program in the annual report as a way in which the hospital has been striving to achieve the desired culture further underscored the program's role.

Since perceptions of interactional fairness are affected, among other things, by the dissemination of information (see for an example, Shaw, Wild, and Colquitt 2003), then providing top management with an impartial mechanism through which to enhance vertical organizational communication has the potential to provide a foundation for greater levels of this fairness dimension. Unlike distributive or procedural dimensions, interactional fairness is supported through improved information sharing and perceptions of interpersonal treatment. Outcomes delivered to top management as a result of the adoption of an organizational ombudsman at American Medical appear to have strengthened both of these core interactional fairness components. Thus, it is proposed that the organizational ombudsman has the capacity to enhance an organization's interactional fairness climate by improving macro level communication and infusing managerial slogans with meaning.

Conclusions

For the most part, when practitioners and scholars refer to fairness in the context of the organizational ombudsman, they are referring to the quality of specific level interactions. The IOA's Standard of Practice 2.2 is a good case in point. The underlying assumption inherent to this standard of practice and to the traditional view of the ombudsman is that this organizational institution affects fairness at the point of contact with individual disputants, employees and managers. This article sets forth the argument that in addition to this conception of the ombudsman's fairness role and responsibilities, there is also the potential for a broader and more macro level relationship to the overall fairness climate in an organization.

Volumes of fairness and justice scholarship have documented the multidimensional nature of this central organizational phenomenon. Different faces of fairness, distributive, procedural and interactional,

are affected by different antecedents. Furthermore, perceptions of each of these fairness dimensions have been linked to important organizational outcomes. Thus, increasing levels of perceived fairness is likely to both benefit employees and managers, alongside the organization in general. As such, it is not surprising that scholars and practitioners have sought to better understand the factors that influence fairness perceptions in general and those that affect each of its dimensions, in particular. Interestingly, despite the intuitive linkages between the organizational ombudsman's central roles and each of these dimensions of fairness, there has been almost no empirical research around these relationships. The well-established fairness research provides a unique foundation on which to highlight the organizational ombudsman's role in a new, underexplored, and more nuanced light. Instead of merely assessing the relationship between the ombudsman and a general notion of fairness, linkages can be made between the inner workings of this institution and delineated perceptions of fairness.

Building on evidence from the American Medical case study, it is argued that the organizational ombudsman can influence fairness by affecting different gains across different key stakeholder groups. In the American Medical case, the ombudsman engaged in different activities that resulted in gains for frontline staff, middle and top management. Frontline staff relied on the ombudsman to address individual level conflicts and disputes. Resolving these disputes is likely to contribute to organizational perceptions of enhanced levels distributive fairness, in addition to other types of fairness. Middle managers relied on the ombudsman as a powerful facilitator for organizational coordination in the midst of intense restructuring. In doing so, the ombudsman was, among many other benefits, providing for a foundation for improved perceptions of procedural fairness. Finally, this study documented the ability of the ombudsman to improve communication channels between top management and the organization. This outcome, which appears to improve the knowledge and information flow across the organization, is likely to have a positive effect on the perceptions of interactional fairness.

Taken together, it is proposed that the organizational ombudsman, when addressing multiple stakeholder needs, is likely to contribute to the overall fairness perceptions of employees, supervisors and managers in an organization. Clearly, this proposition requires additional empirical support. Furthermore, future

ombudsman research should also continue to unpack the complex relationship between this increasingly prevalent organizational institution and multiple measures of fairness. More specifically, there are a number of issues that call for additional attention.

First, the case study documented in this article highlights the positive relationship between ombudsman activities and perceptions of fairness. This is largely due to the best practice nature of this study. Nevertheless, if, as is proposed above, the ombudsman can enhance perceptions of fairness, it should follow that this institution can also have a negative effect on such outcomes. In other words, where the ombudsman does not address multi-stakeholder needs, it is possible that perceptions of fairness are damaged. Evidence supporting this possible negative relationship would contribute the discussion regarding the need to focus on the skills and abilities of the ombudsman and the associated quality of their performance.

Second, it is also possible that existing perceptions of fairness will affect the ombudsman's ability to perform their core duties and responsibilities. In other words, there is likely a reciprocal relationship between the ombudsman and organizational perceptions of fairness. Evidence supporting this relationship would assist in explaining variation in ombudsman adoption levels and implementation and usage quality.

Finally, this study has focused on perceptions of fairness as opposed to more objective measures of organizational fairness, such as resource allocations and equity across members. Clearly, perceptions of fairness are an important measure in their own right and can serve as a proxy for a more objective assessment of organizational fairness. Nevertheless, it is important to incorporate additional and more concrete measures of fairness that can complement and extend the evidence provided above regarding the relationship between the ombudsman and organizational fairness.

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Justice as Basis of Equity and Fairness in Ombudsman Practice

ROBERT L. SHELTON

ABSTRACT

Selected authors provide careful thought and understanding of various meanings of justice. Justice as a basis of ombudsman practice is explored, considering commutative, distributive, social and restorative justice as well as burdens of justice and responses to injustice. The interaction of power in community functions is included.

KEYWORDS

Ombudsman, justice, fairness, equity, restorative

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INTRODUCTION

During my tenure as University Ombudsman from 1985 to 2003, I often attended meetings of persons in similar roles throughout the U.S.A. and Canada. In our discussions about our work, it was common to hear the word, "Justice"; and as an academic with primary focus on religious ethics, I occasionally spoke up on various meanings of the term. This led to presentations at Asilomar and UCOA national meetings, including a 1999 UCOA conference in Portland, Oregon, where I spoke of "Justice and Injustice — Definitions, Inclusions, and Difficult Issues." Again, in San Francisco, California, in 2000, I led a Forum on "Justice: Understanding a Fundamental Value." Ombuds colleagues who participated in some of those sessions urged me to do this article on "justice," particularly relating to the International Ombudsman Association emphasis on "fair" and "equitable" in its Code of Ethics and Standards of Practice. This article draws on some outstanding scholars who have published work on meanings, categories and applications of "justice". It includes applications to ombuds work, and also assumes that thoughtful readers will reflect on many ways that these concepts relate to their work.

The University and College Ombuds Association, one of the organizations that preceded the International Ombudsman Association, adopted a statement of ethical principles which began with the assertion that "An ombudsperson should be guided by the following principles: objectivity, independence, accessibility, confidentiality and justice; justice is pre-eminent."¹

After discussing the other principles, the statement moved to its “pre-eminent” concern, proposing that the person assigned the ombuds role “should be guided by a concern for and commitment to justice. Justice requires that individual interests be carefully balanced with the consideration of the good of the larger academic community. ...(this) commitment to justice should include the understanding of power, identification of the use and misuse of power and authority, and recognition of the need for access to power by the members of the institution.”² Those of us with ombuds experience are certainly familiar with attempts to “balance” many types of individual interests with varieties of understandings of needs and goods of the community within which those individual interests are attempting to be lived out. “Use and misuse of power and authority” as well as “recognition of the need for access to power....” are not at all uncommon features in discussions in the ombuds office. Many claims about abusive use of power were brought to my office. Discussions often moved to also recognizing power available to the complainant and constructive uses of such power. “Justice”, of course, involved careful consideration of uses of power in ways that seemed more acceptable to the “victim” than had been experienced. These, and many related conversations, involved various understandings of “justice.”

This paper primarily draws on studies of justice featured in writings by Mohammed Abu-Nimer, David Hollenbach, Karen Lebacqz, James Smurl, Douglas Sturm, and Howard Zehr. In exploring aspects of the ombudsman functions and experience, it is helpful to consider the basic historical understandings of types of justice developed by David Hollenbach — commutative, distributive, and social justice.

Commutative Justice, he wrote, “demands fidelity to agreements, contracts, or promises made between persons or groups outside the political or public process.”³ The source of obligation felt by parties to such understandings is in “freely formed mutual bonds and ... fairness in exchange.”⁴ The fundamental equality of persons is assumed, allowing free beings to enter into relations of mutual interdependence, just as is the reality of the environments within which ombudsmen are functioning. “Commutative justice, then, is an expression in the sphere of private interaction of both

the genuine dignity of all persons and the need for a mutuality based on equality in their relationships and agreements.”⁵

Much of what is done in ombuds work requires the exploration of assumptions and expectations held by a grieving party or parties regarding informal or unofficial “contracts”, agreements or promises. Often the grievant assumes an equality in the relationship, and expects fairness in interaction with others in daily efforts. What he or she has experienced, however, is the response or action of others to be an attempt to deny or abrogate that equity and the accompanying fairness within interdependence. Academic, governmental, business and community institutions, with their widely differing power positions and relationships, offer many opportunities for confusion about equality and mutuality, as well as opportunities for differing perceptions of what is required for recognition of and response to dignity of persons.

Distributive Justice, according to Hollenbach, assumes participation by all in the “common good”. It “specifies the claim which all persons have to some share in those goods that are essentially public or social.”⁶ This tradition “establishes the equal right of all to share in all those goods and opportunities that are necessary for genuine participation in the human community. It establishes a strict duty of society as a whole to guarantee these rights.”⁷ Especially crucial in the academic institution is assurance of access to opportunities and resources that are basic to the being, as well as potential productivity, of the institution and its members. A major portion of any Ombudsperson’s day may well be spent in aiding persons in learning of the opportunities and resources, “coaching” them in how to access and use them, and helping to open up avenues for their utilization of what is there for them. This may also involve finding ways to hold the institution and its officials accountable for adequate protection of such rights, and for assuring they are extended to persons often excluded from full participation.

A crucial consideration of justice in relation to ombudsing is that of **Social Justice**. It is here that we come to the institutionalized patterns that are necessary to realize distributive justice. Hollenbach suggests that, in some traditions of moral philosophy, social justice is a “political virtue.” It leads to citizens being obligated to “aid in the creation of patterns of societal organization and activity that are essential

both for the protection of minimal human rights and for the creation of mutuality and participation by all in social life.⁸ The ombuds office is often involved in attempts to formulate or restructure regulations and formal procedures that are more adequate reflections of the institution's "political virtue." An ombudsman's position description may include the ombudsman's recommendation of policy and procedures that will alleviate circumstances *that lead to persons' filing of grievances*. When involved in such a task, one is involved in social justice.

BURDENS OF JUSTICE

A fascinating recent work by James Smurl, *The Burdens of Justice*, is a discussion of distributive justice, but he gives it what Douglas Sturm, in the book's Foreword, calls "an illuminating twist."⁹ Where distributive justice is usually considered as concerned with allocation of goods and privileges, Smurl has chosen to focus on the allocation of pains and burdens, " ... since the common life created by social goods is shaped decisively by its harmful features."¹⁰ Thus, he is pushing the questions not only of the "just order of social advantages," but also of social "disadvantages."¹¹ His own description of his central theses are, "... first, that justice is the chief personal and social moral virtue and the persons and communities bear the burden of cultivating it; second, that a just allocation of the advantages and disadvantages of social goods is the chief virtue of communities and that striving to achieve distributive justice is one of the burdens that fall primarily on community leaders; and, third, that the decisive test of distributive justice is how the disadvantages and burdens are arranged."¹² The productive functioning of a university, social institution, business or government agency certainly requires that individual persons as well as the diverse communities which make up the larger community, "bear the burden" of cultivating justice.

What it means to "bear" that "burden" is seldom articulated within the institution, although "practical insights," "narratives," and "normative inferences" abound and can, when properly reflected upon, contribute to just decisions and actions. The "community leaders" are seen by Smurl as having direct responsibility, or "burden," for consciously moving toward the just arrangement of disadvantages and burdens. The

"burdens" or "pains" of administrators or others with authority and power over others is sometimes acknowledged among those in such positions, but usually ignored or discounted by others who must live with their decisions. An intriguing development in my experience as university ombudsman was the increasing number of contacts by administrators or instructors struggling with a decision that would definitely arrange or re-arrange burdens and disadvantages for others while, it was assumed, meeting certain community values and expectations. They might phone me, or seek me out informally at a chance meeting, or refer the person most directly effected by the action to me for counsel and await my call to them. However it happened, the conversation eventually focused on dilemmas faced by one who must respond to external expectations — in our case, the State as well as the University. Often these expectations were expressed in certain procedural rules, which may well be in conflict with generally recognized institutional values and/or that person's own sense of justice. It was apparent that the ombudsman was seen as one with whom it was "safe" to expose the pain or discomfort of decision and action, and who would assist in holding the justice commitments squarely in place while practical social requirements were considered, carefully thought through with possible alternatives, and dealt with. Very helpful was Smurl's observation that

*... participants will need to identify community habits that restrict their freedom. Not all members of the community are equally well suited for the task of negotiating such impediments. ... some may bear the burden of changing their habits to show that they stand for the public interest as well as for wanting their views to be respected.*¹³

Standards for justice decisions "must be discoverable within the community," and "public policies cannot be governed by appeals to norms that are extrinsic to the participants."¹⁴ Ombuds often have to listen carefully for the norms and values of the participants that will allow them to move toward justice. In a situation of a student charged by an instructor with plagiarism on a paper turned in near the end of the semester, it was clear that the student had used "unauthorized sources." It was also clear that some circumstances

that were offered by the course structure for resource assistance had somewhat confused what was and was not “authorized.” When the instructor expressed a “wish” that the issue had happened earlier in the semester so that the student could simply have been required to re-do the paper, the conversation was directed in such a way that the instructor had an opportunity to hear herself express that desire again, as well as to discuss some of the values involved. This led to exploration of the distribution of disadvantages and burdens that would be required if the student were allowed to re-do the paper although the semester was over, as well as the ways in which the instructor’s and the institution’s values regarding plagiarism would be clearly interpreted to, and understood by, the student. Although Smurl probably had more weighty community issues in mind, one of his closing observations is particularly relevant to this case, as well as to much that requires an ombuds response:

We will take actions of one sort if our aim is to harmonize relationships among imperfect or contentious persons. We will take actions of a distinctively different sort if we seek to prevent some groups from shifting their burdens onto other groups. To make lasting corrections, we must count on people’s willingness to revise their moral concepts, judgments, and decisions, as well as their actions and the situations in which they encounter each other. However we encounter each other, we always encounter one another’s moral understandings about allocating social goods.¹⁵

FROM INJUSTICE TO JUSTICE

After having explored *Six Theories of Justice*,¹⁶ Karen Lebacqz began her more recent book, *Justice in an Unjust World*, with the insistence that

My reflections on justice must begin with the realities of injustice. I have long been convinced that injustice is our lived reality, and that it is therefore the primary category. Justice emerges as the cry of revolt against injustice. An approach to justice must therefore begin with injustice.¹⁷

A commonly heard phrase in the ombuds office, usually expressed with considerable emotion, is “It just isn’t FAIR!” or only somewhat less often, “This is a real injustice!” It is only with an adequate understanding

of how that person is experiencing a reality deemed to be unfair and/or unjust that a beginning move can be made toward the possibility of at least some justice. In Lebacqz’s opening lines it is acknowledged that her “every breath is a compromise with injustice;” thus she asserts the claim, which many ombuds’ experience would certainly confirm, that injustice is somewhat *built into* the hierarchical structure of the institution. Most clients who confer with an ombudsman will sooner or later voice that reality. Those persons are living within, functioning within, structures that require many different kinds of activities, forms of interaction, and uses of power. Participants are required by aspects of the system to pursue what become competing interests in an environment that is not prepared to productively utilize the competition.

Among the many rich insights offered by Lebacqz in this study is a distinction between the two worlds in which persons live, described by a peasant leader as birds flying freely and rapidly in the air, and fish swimming more slowly within the confines and obstructions of the sea.¹⁸ Lebacqz asserts that although she is sometimes among the fish, she is in most of her life one of the “birds,” and must consciously adopt a “new logic” to be sufficiently in touch with — to feel with, to think with, to experience life as — the “fish” in order to approach justice. The openness to such a “new logic” is a regular requirement for one doing the ombuds task, and is a challenge that is constantly put before other “birds” flying more or less freely within the institution.

Lebacqz’s first “rudiment” of a theory of justice that emerges from taking injustice seriously is that the theory must be very broad, and can stand on nothing less than “right relationship.”¹⁹ What is the “right relationship” between instructor and student, between manager and employee? The second “rudiment” insists that justice “will reside in responsibilities and duties, not in rights.”²⁰ Persons in community are bound together by a covenant of mutual responsibility, one that implies “care for one another.” An ombudsman’s discussion with a student, or employee, about anything other than “rights” can sometimes be difficult. In the university, helping the student understand the student role as one in which there are responsibilities toward other students and the instructor can be a challenge. Likewise, how an instructor facing a class with hundreds of students can do so with covenantal “care,” in recognition that the “welfare of each depends on the other” is a test of daily pressures over

against what is probably a strong internal motivation very close to that ideal. Lebacqz's third "rudiment," that the "primary injustice is ... exploitation" recognizes domination and oppression as "violations of a covenant of mutual responsibility."²¹ The hours spent in listening to the pain of those in various forms of minority power status, and attempting to work with them in their part of the "covenant" while encouraging others who are an active part of the breach of covenant to attend to their responsibilities, have brought alive what she says about the necessity for both "rescue/resistance" and "rebuke/reparations". Her fourth "rudiment" insists that:

*The struggle for justice by the oppressed ... consists in resistance to forms of oppression and in actions consonant with liberation as the goal. ... justice for the oppressor consists in rebuke and requisition. Those responsible for injustice have the duty of redress — of making amends, setting things right. This includes not only ending the exploitation or oppression, but making reparations for the harms caused by past injustices. Both together participate in the restoration of the proper order of relationships in which exploitation and domination would not exist.*²²

Those who perceive themselves as having been oppressed – harmed, improperly treated, cheated, held back (so many terms are used to describe the experience) – may seek rescue, or, in many cases, suggestions and support for resistance that aids one's self-empowerment. The ombudsman may also be urged to assist in arranging rebuke and provision of reparations in whatever form is appropriate to the situation. Occasionally, the person who has become aware of serving as oppressor through institutional expectations asks the ombuds for guidance in moving out of this status and restoring covenant in the community, and within the suffering victim.

Lebacqz's final "rudiment" acknowledges that justice is always incomplete and partial, leading to the requirement for "self-analysis and self-correction" as crucial in any theory of justice, as well as in attempts for just decision and action. Such recognition is of some solace when, in the midst of "jubilee" following the seeming resolution of an unjust circumstance, the reality remains that the institution's history strongly suggests the likelihood of the situation's reoccurrence. Nonetheless, ombuds have clearly seen the two levels of "jubilation" about which she writes. In a specific in-

stance of a student struggling with bureaucratic and human staff entanglements that produced a major course credit issue threatening her scheduled graduation, her "renewal" was clearly apparent in the midst of the struggle as she claimed her identity, repudiated her oppressors, "seeing the truth and moving toward it."²³ This "joy of resolve and resistance" allowed her to stay after what seemed to be impenetrable odds, and to request assistance in the formulation of language for her appeal as well as consideration of the work circumstances of those with whom she must deal. When her problem was resolved justly for (and with) her, she entered the joy of "relief" and "delight" described by Lebacqz, and clearly emerged an even stronger person while at the same time expressing her confidence in and love for the community whose covenant had somehow remained a vital reality for her.

JUSTICE AS INDIVIDUAL AND COLLECTIVE IDENTITY

Douglas Sturm has contributed, in brief form, some basic notions about justice that are particularly helpful in thinking through the realities of conflict management. In his Foreword to the Smurl volume, he notes that

*...justice is, in the philosophical language of the Western intellectual tradition, an ontologically grounded principle. It is a statement of our identity, both individually and collectively. It betokens something about our fundamental condition as denizens of a cosmos in which we all belong together. The obligatoriness of justice is grounded in the most basic character of our life. ... To be ourselves, in the fullest and most complete sense, is to be just. In the presence of justice, we are all enriched; in the absence of justice, we are all deprived. Justice is a quality of human stature; injustice is indicative of human failure.*²⁴

It is not unusual in the ombuds' experience to find oneself in the position of "giving permission" for someone who wants to "do the right thing", to do so. Persons who are "functionaries" in a complex organization often find themselves torn between what seem to be compelling requirements of their function and their own innate sense of justice, their identity with

others, their need to be as full a self as possible. When an institution specifically establishes an office — outside the hierarchical structure and with access to the entire system, with the expectation that this person is to keep an eye on the whole, rooted in the values and conscience of the institution — persons will turn to that office to relieve the tension produced by their role in the organization and help them to be just.

In an earlier writing, a book entitled *Community and Alienation*, Sturm briefly described four meanings of justice that he has found most important in examination of community. His discussions of justice as liberty, as equality, as community and as wisdom,²⁵ have a number of parallels with the work of Smurl and Lebacqz, in that the apparent contradictions between the varying meanings of justice nonetheless come together in “human nature.” Sturm concludes his discussion of justice by pointing out that “justice is not only a virtue of social institutions ... it is as well a primary virtue of personal character.”²⁶ He then translates the principles of justice into “attributes of character — creativity, respect, empathy and humility, which constitute the substance of *civility*.”²⁷ When many are bemoaning an increasing absence of civility in society as a whole and on higher education campuses and workplaces in particular, the ombudsman is aware of increasing opportunities to explore these attributes and their accompanying actions with a variety of persons in the midst of their lives as citizens of the community.

LOSS AND SACRIFICE IN SEEKING JUSTICE

One who serves in the ombuds position has undoubtedly listened to experiences of “loss”, both from persons with less power who are in pain over their inability to gain what they know they have coming to them, and persons whose power positions have led them into actions they realize are producing difficulty for others. The less powerful person is carrying the burden of actual loss, and the more powerful person wants to explore what form of loss or sacrifice he (or she) can take on, to be of desired benefit to the other.

Each of our authors has given attention to the experience of loss that is inescapable in the search

and struggle for justice. Whether one is oppressed or oppressor, the movement toward productive and positive change will involve inevitable aspects of loss. Sturm especially notes the importance of “sacrifice” inherent in Smurl’s analysis of balancing burdens, and reminds his readers that “sacrifice” in its “sacral” nature is an act of giving. Lebacqz’s work warns that we must be careful who does the “sacrificing”. At the same time, it is clear that any comprehension of justice in its fullness will include the experience of “intentionality of sacrality in relationships” with “a loss whose intent and effect constitute a gain in our solitary existence.”²⁸ Each of these writers sets a particular goal for anyone assigned the ombuds role in an institution, articulated by Sturm:

*.... we acknowledge and respect our deep differences, yet are brought together in a community committed to walking in justice with one another and to sharing in the joys and to allocating the burdens of our common life in such a way that the lives of all are enriched with qualitative meaning.*²⁹

RESTORATIVE JUSTICE

In recent decades, the concept of “restorative justice” has become significant in many aspects of human conflict, from “Truth and Reconciliation Commissions” to many types of community methods for dealing with human damages to and from others. Often drawing on ancient traditions throughout the world, people have identified ways to meet the needs of victims, offenders and community members in the face of injustices.

A number of publications are available for consideration of this topic, including a very useful text by Howard Zehr, *The Little Book of Restorative Justice*.³⁰ The book is full of important considerations applicable to many aspects of the ombuds function, as are others in the “Little Book” series on justice and peacebuilding.

More than is often recognized, a person with position-provided “power” over others takes action that is experienced as harm by persons over whom responsibility is being exercised. The co-worker, or student, is thus a “victim” who, usually with others, sees the more

powerful person as “offender.” Attempts to restore positive relationships and productivity in the system require considerable insight and understanding. Zehr, along with Harry Mika, concludes the brief summarative text with “Fundamental Principles of Restorative Justice,”³¹ similar to their “Signposts of restorative justice,”³² both of which draw on Susan Sharpe’s *Restorative Justice: A Vision for Healing and Change*.³³ Emphasizing the difficulty of defining this topic because of its variety of complex factors, Zehr offers a “working definition”: “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”³⁴

Among the “Standards of Practice” adopted by the International Ombudsman Association, is included “The Ombudsman advocates for fair and equitably administered processes...” As many have experienced, a restorative justice approach may sometimes provide steps needed to assure or regain processes of administration within the system that are experienced as “fair” and “equitable” by participants at various levels.

CONCLUSION

As asserted by UCOA, Justice is, indeed, “pre-eminent”!

ENDNOTES

- ¹ “Ethical Principles for University and College Ombudspersons,” adopted by the University and College Ombuds Association, 1991.
- ² Ibid.
- ³ Hollenbach, D. *Justice, Peace and Human Rights* (New York: Crossroad, 1988), 26.
- ⁴ Ibid.
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Ibid., 27.
- ⁸ Ibid., 27.
- ⁹ Smurl, J.F., *The Burdens of Justice* (Chicago: Loyola University Press, 1994), xi, Sturm’s very brief contribution to the book is extremely insightful and well articulated.
- ¹⁰ Ibid., 2.
- ¹¹ Ibid., 12.
- ¹² Ibid., 47.
- ¹³ Smurl, 24.
- ¹⁴ Ibid. 24-25.
- ¹⁵ Ibid., 148.
- ¹⁶ Lebacqz, Karen, *Six Theories of Justice: Perspective from Philosophical and Theological Ethics* (Minneapolis, Augsburg, 1986).
- ¹⁷ Lebacqz, Karen, *Justice in an Unjust World* (Minneapolis: Augsburg Publishing House, 1987),
- ¹⁸ Ibid., 11, from Mang Juan, quoted in Charles Avila, *Peasant Theology* (Bangkok, Thailand; World Student Christian Federation, Asia Region, 1976), 13.
- ¹⁹ Ibid., 155.
- ²⁰ Ibid..
- ²¹ Ibid.
- ²² Ibid.
- ²³ Ibid., 133
- ²⁴ Smurl, ix-x.
- ²⁵ Sturm, Douglas, *Community and Alienation- Essays on Process Thought and Public Life* (Notre Dame, Indiana: University of Notre Dame Press, 1988) 97-108.
- ²⁶ Ibid., 109.

²⁷ Ibid., 109-110.

²⁸ Sturm in Smurl, xiii.

²⁹ Ibid.

³⁰ Zehr, Howard (2002) *The Little Book of Restorative Justice*. Intercourse, PA, Good Books

³¹ Ibid., 64-69.

³² Ibid., 40-41.

³³ Sharpe, S. (1998) *Restorative Justice: A Vision for Healing and Change*. Edmonton, Alberta, Canada.

³⁴ Zehr, Ibid., 37.

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The Ombudsman's Guide to Fairness

GERALD R. PAPICA

ABSTRACT

The manuscript is a suggested guide to handling ombudsman-related cases with an emphasis on fairness. This was done by introducing a collection of features enunciated by seasoned ombudsmen and a selected literature review. As a guardian of equitableness, it is necessary for the ombudsman to know what it entails and how this principle is applied. Fairness, ethics and justice from the perspectives of Confucius, Aristotle, King Solomon, and other scholars are examined. A handful of checklists and criteria about the topic were extracted from established ombudsman offices' websites. Prominent researchers on equitableness and transparency also became parts of this project.

KEYWORDS

Ombudsman, fairness, equitableness, fairness checklist, administrative fairness, procedural fairness, outcome fairness, transparency

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INTRODUCTION

The objective of this manuscript is to identify the ingredients of fairness according to various ombudsman organizations' websites and a selected review of the literature on this topic. The desired goal is for others to recognize the importance of fairness and use it as part of a blueprint for best practice. A good framework and broad understanding of this sensitive and important issue are the very first steps to take before an ombudsman becomes an effective watchdog of fairness.

The words "fairness" and "equitableness" are used interchangeably throughout this document. The reader should be aware that the citations, examples, and websites about equitableness have a **government ombudsman** orientation. In spite of this, the author strongly believes that fairness characteristics can be universally applied and equally relevant to other ombudsman associations or groups, including organizational ombudsmen.

The concept of universal application was resonated by John Rawls' "Justice as Fairness: A Restatement" in 2001. He revisited the pluralism in society regarding morality, religion, and philosophy. Rawls championed that society should organize a system where its populace would experience fair and just outcomes without prior consideration of race, religion, and philosophy. He argued that if individuals really differ on these things, then how is it that people are able to live together in a democratic society? Rawls, a well-recognized Harvard philosopher, originally presented this idea during a thought experiment in 1971. His research study resulted in a publication entitled, "A Theory of Justice." Maiese (2003) heralded the fact that justice and fairness, in the context of intractable conflict, are mutually inclusive in many instances.

The questions pertaining to fairness affect most, if not all, types of ombudsmen. Who decides what is fair and by what criteria are some of the issues discussed in this profession. In essence, it does not really matter

whether work is in a government, organizational, corporate, or educational ombudsman setting. The overarching goal of an ombudsman is problem resolution or addressing the issue(s) at hand. The noticeable variances among ombudsmen are the tools used and the outcome(s) they are trying to achieve. The function, jurisdiction, method, and product are some of the basic traits that differentiate one ombudsman from another.

An experienced ombudsman knows that the subject of fairness lies in the eyes of the beholder. Its implementation, however, is in the hands of the administrator or company employee. What is seemingly an equitable solution to a provider of a service may not be the same to its recipient. Applied in the workplace, this observation was shared by Ken Buch (2010) when he stated, "What each person deems fair... is interpreted differently on the perspective of who is viewing the situation..." In most cases, the etiology of the problem is the gap between what was said in a conversation and how it was applied. This is the basis of contention among aggrieved citizens and dissatisfied customers. Therefore, an ombudsman has a mandate to ensure that the entire process was applied fairly — that is, from the point the referral was received to the moment the issue was resolved.

Fairness is all about the right thing to do and may not always correspond with doing things right. Good organizations balance policy implementation and its impact on others. As harbingers of fair treatment, how will the ombudsman uphold an aura of equitableness between the individual with concerns and the agency that defers to policies and procedures to justify why certain decisions were made? To answer these questions, action steps based on prudence and sound evidence are needed.

Juries in civil courtrooms resort to settling disputes by awarding successful litigants with a "fair" financial remuneration. This situation has been the bastion of the judicial system in the western world for many decades. Buch (2010) stated that people aim for compensation through litigation in situations where equitable treatment was not present.

In 1988, Sam Zagoria's "The Ombudsman: How Good Governments Handle Citizens' Grievances" recognized that some complainants focus more on the fundamental problems connected to the "fairness of the policy itself or its implementation in general" (p. 5). He stressed that the government has ongoing struggles

to treat constituents "equitably" and "effectively" to earn their support (p. xiv). Zagoria encouraged that time spent with an ombudsman is a wise investment for many individuals instead of settling differences and grievances in the courtroom. During his academic research, Zagoria observed that ombudsmen are eager to help other people and strongly believe in what they are doing.

The positive psychological effect of perceived fairness is difficult to measure because research about this issue is scarce (Tabibnia, Satpute, and Lieberman, 2008). Guth, Schmittberger, and Schwarse (1982) posited in a study called "the ultimatum game" that people are naturally "sensitive to fairness over and above its consequences for material gain" (Tabibnia et. al 2008 p. 339). Tabibnia and his cohorts argued that individuals are intensely in tune with this topic. These researchers suggest that people naturally seek and expect fair treatment.

Social scientists have concluded that seeking equitableness or justice is a basic human yearning. To a practitioner, it is a complex issue requiring a middle-of-the road strategy and maturity. In the ombudsman profession, rigidity or inflexibility do not belong to the arena of fairness. The ombudsman has a crucial role to seek, encourage and facilitate equitableness in a skillful, empathetic, trustworthy, and confident manner.

Traditions of Fairness

Individually and collectively, society has gained knowledge about the concept of fairness by learning from wise men and scholars. Such wisdom germinated in the form of parables, anecdotes, and stories that have withstood the test of time. Just like The Bhagavad Gita and The Ramayana, Confucius, Aristotle, and King Solomon have taught countless men and women from varied backgrounds how to lead life from birth to death justly and fairly.

The Golden Rule is a globally respected practice dating back thousands of years. Doing unto others what you would have others do unto you is encouraged by many cultures, religions, and philosophies. It is found in The Bible (Matthew 7:12), Buddhism, and Ancient China where Confucius (551 B.C.) was attributed with popularizing this idea. (Constitutional Rights Foundation, 2008). The Golden Rule is a great example of how fairness could be embodied in everyday life.

Allesandra and O'Connor (1996) co-wrote a book and coined an idea they called "The Platinum Rule." Treating other people in a manner that they want to be treated is the backbone of their seminal work. According to these authors, this practice is preferable and an alternative to The Golden Rule because it factors in the feelings of other individuals.

It is rather difficult to talk about equitableness without mentioning ethics and justice. These principles are closely interconnected. Aristotle's (334 B.C.) *Nicomachean Ethics* on law and morality guided men on how they should live in a civil society and assist them to become outstanding citizens (Anastaplo, 1983). He stressed that moral virtues in their truest form are practical through the deeds of men. Aristotle explained that morality is dependent on the law to institute justice and fairness.

During biblical times, the wisdom of King Solomon exemplified justice when he settled a dispute between two women both claiming to be the mother of an infant (*The Book of Kings, Melachim 1 3:12*). His decision to cut the baby in two and give one half to each woman was extreme and appeared heartless. Nevertheless, it was also fairness in its literal and symbolic forms. King Solomon did not take much time to figure out the real parent of the child. The resolution of the problem and the essence of the story is a lesson that permeates many social settings. Confucius, Aristotle, and King Solomon demonstrated equitableness during various eras. They proved that fairness is not something temporal or exclusive to a specific period of time or civilization.

Fairness in Negotiations and Justice

Heslin (1988) of the Australian Graduate School of Management listed four types of fairness issues during negotiations (*Journal of St. James Ethics Society, 1988*). They include structural fairness, process fairness, procedural fairness, and outcome fairness. He emphasized that equitableness "entails judgments about whether principles of ethical justice" were taken into consideration (p. 1).

Structural fairness is all about the physical, social, and issue constraints where negotiations are happening. Physical constraints include the location of the meeting, access to information, technical support, and public probing or scrutiny in regard to the Freedom of Information Act. Heslin included parties' representation, setting the agenda, communication between vested individuals and the outside world, and deadlines or time limits as structural impediments.

Process fairness imposes honestly implementing agreements without resorting to deception or coercion. Heslin posited that it is fair to misrepresent one's interest and offer alternatives. This is contingent upon sufficient stakeholders' notification along with implicit as well as explicit understanding from them that the rules are being modified. In this context, "misrepresenting one's interest" really implies introduction of a different solution compared with what the client originally wants as an outcome.

According to Heslin, procedural fairness dictates that integrative (differentiating interests and positions) and distributive procedures (allocation of the disputed resource) are active components (p.4). If procedural unfairness is perceived, it has the capacity to dismantle the process and undermine the outcome. If implemented properly, the principles of equity (proportional), equality (impartial or comparable), and need or redistributive justice (the least fortunate gets the most share) lead to outcome fairness.

Velasquez, Andre, Shanks, and Meyer (*Issues in Ethics, 1990*) suggested three kinds of justice as it relates to fairness. They are:

- 1. Distributive Justice:** Ensuring that benefits and burdens are distributed among society in a just and fair way.
- 2. Retributive or Corrective Justice:** The extent to which punishments are fair and just.
- 3. Compensatory Justice:** The extent to which people are fairly compensated for injuries suffered.

Ombudsman Fairness Checklist

The Forum of Canadian Ombudsman first annual conference in April 2003 was held in Ottawa, Ontario. Howard Kushner, the former Ombudsman of British Columbia, was the speaker for a session called "Ombudsman Fairness Checklist." He enumerated these criteria to determine if equitableness has transpired:

1. Communication

Information is available and understandable, forms are in plain language, clients are provided with information they need, and clients are treated with courtesy.

2. Facilities and Services

Telephones are answered timely, other means of communication are available, the office is easily accessible, environment is safe and healthy, and client's privacy is observed.

3. Decision Procedures

Decision makers have a chance to give information and evidence to support their stance, decisions are done within a reasonable amount of time, and reasons for the decisions are explained.

4. Appeal, Review, and Complaint Procedures

People are told immediately of any existing appeal or review, complaints procedures are clearly defined, and solicitation of ideas from the public to improve services.

5. Organizational Issues

Staff are given clear titles for the role that they assume in the organization, agencies consider if reorganization would amplify the quality of service, and inter-agency cooperation is nurtured.

6. Agency Review and Planning

Public participation in program planning is encouraged, explanation is provided from the beginning about how decision-making process is reached, and provision of data needed to evaluate and improve performance is archived.

Unlike organizational ombudsmen who function as designated neutrals, public sector ombudsman offices

advocate for their constituency and make the autonomous decision about the complaints presented to their attention. The web page of the ombudsman office of the Northern Territory Government in Australia delineated clear commitments that focus on fairness. When complaints are received, the ombudsman complies with the following practices:

1. You will be treated fairly and with respect.
2. You will be given the right to be heard during the complaint process.
3. Our decisions will be balanced, taking into account all available evidence and points of view.
4. We will explain our decision and reasons to you.
5. You can request a review of any decision or conclusion we have reached about your complaint.

Promoting Fairness by the Saskatchewan Provincial Ombudsman

This section is most beneficial to government ombudsmen who plan to herald fairness by using as a model the Office of the Provincial Ombudsman in Saskatchewan, Canada. A few years ago, the office released a 21-page booklet entitled, "Fairness: A Brief Explanation." It identified specific items that will help the ombudsman assess if the government acted fairly in accordance with Section 24 of "The Ombudsman and Children's Advocate Act." The list includes "unreasonable, contrary to law, unjust, oppressive, improperly discriminatory, and based on a mistake of law or fact; or wrong."

Unreasonable describes inconsistency in decisions made in similar cases, inconsistency with the significance of the evidence, decisions that cannot be explained, and unintended effect or consequences. The booklet recognized that having outcomes contrary to law is one of the most complicated subject matters to resolve because legislation is involved. Inappropriate punitiveness is a criterion for being unjust. The consequence of decisions might exceed the circumstance surrounding a case. Oppression happens when expectations have overwhelmed or overburdened an individual to the point that compliance becomes impossible. Discrimination occurs when a government adds requirements that are unnecessary to meet the goals.

In a reverse circumstance, it also transpires when the government fails to treat individuals with the same situation equally. Here, the contrast between mistakes of fact and law are important but they do not have much influence on the ombudsman when fairness is being considered.

The Saskatchewan Ombudsman Office has produced a 62-page workbook called, "The Fine Art of Fairness: A Guide for Fair Practice." It can be downloaded via their website at: <http://www.ombudsman.sk.ca/uploads/document/files/fair-practices-workbook-3e-en.pdf>.

The website exists to encourage its users to freely access information about fairness and to apply them in their respective offices. Another intended product of the website is to foster public awareness how equitableness is applied.

USOA, IOA, and IOI

When it comes to supporting fairness expressed in core standards, there are tenets common among the United States Ombudsman Association (USOA), International Ombudsman Association (IOA), and International Ombudsman Institute (IOI). The USOA (North America's oldest public sector ombudsman organization), IOA (corporate, educational, government agency, international, and non-government organization), and IOI (international group of government ombudsmen) have similar missions but each group operates differently. Hence, the daily function and ultimate goal for ombudsmen in these organizations also varies. They were selected by the author as examples because of their jurisdiction, prominence in the community, and shared features.

This observation was reflected in Frank Fowlie's 2008 thesis where he indicated that the standards of both USOA (United States Ombudsman Association) and IOA (International Ombudsman Association) are similar. Autonomy, neutrality, and confidentiality are guiding principles of both organizations. He documented that USOA and IOA agree on three of four basic standards (p. 103). The point of divergence transpires with the fourth standard (credible review process). Fowlie explained that USOA has a classical ombudsman outlook and the IOA has an organizational persona. While

the former is heavily reliant on formal investigation, the latter uses an informal approach. He stressed that IOI has "dual or multidiscipline office" whose task "may also include Human Rights Ombudsman in tandem with governmental Ombudsman" functions (p. 107).

Administrative Fairness Plus Procedural Fairness Equals Outcome Fairness

In accordance with the review of the literature and websites of several government ombudsman offices in Canada, Australia, Hong Kong, England, and the USA, there are common attributes when it comes to sound principles and best practices concerning fairness. Ombudsman organizations work under the core assumption that the achievement of equitableness is founded on well-crafted administrative guidelines and efficient, dignified procedures to implement action plans. Fairness is the true spirit of ombudsman-ship. To maintain this ideal, the ombudsman must be adept in what to look for and be tactful at offering resolutions or alternatives in a timely fashion. Seizing the moment or *carpe diem* are the axioms in the ombudsman arena.

Based on the review of the literature, fairness implies three phases or components that can be expressed in this equation:

AF + PF = OF

This formula simply translates to a coordinated, balanced, and harmonious combination of Administrative Fairness and Procedural Fairness, which in turn will produce Outcome Fairness. As proper steps (procedures) follow the dictum of sound policies (administrative), they consequently point towards a good outcome. In other words, wise administrative decisions that were procedurally executed via proper conduits almost always result in a fair, satisfactory outcome. The succeeding pages embellished what these ideas entail.

In the Office of the Ombudsman City of Toronto's web page, administrative fairness means that individuals or agencies have the right to know what is the nature of the complaint against them, to make sufficient no-

tification, to foster the right to presentation (hearings or meetings), and to explain why certain decisions are finalized. Administrative unfairness is about unreasonable delay, failure to implement the planned course of action, not adhering to established procedures, not disseminating adequate information, misleading or imprecise statements, and problematic application of policy, procedure, and practice. The web page defined maladministration as “acts, omissions, decisions, and recommendations” that produce “inefficiencies, improprieties, poor service, and bad management.”

The Alberta Ombudsman firmly believes that “natural justice and administrative fairness” are the precursors of an investigation. Their web page listed the following Administrative Fairness Guidelines:

- Chain of Legislative Authority
- Duty of Fairness
- Participation Rights
- Adequate Reasons
- Reasonable Apprehension of Bias
- Legislative Expectation
- Exercise Discretionary Power
- Reasonable Decision

The Office of the Ombudsman in Hong Kong also enumerated the criteria that make up the agency’s Administrative Ethics Checklist:

- Sense of Responsibility and Accountability
- Making of Decisions
- Honesty and Integrity
- Professionalism and Public Interest
- Courtesy, Equality, and Equity
- Loyalty and Dedication
- Economy and Environmental

Administrative fairness includes acknowledging the rules of the games and tools used in addressing or resolving issues. The duty to be fair and offer equal treatment as well as opportunity to all complainants regardless of their color, ethnicity, creed, religious belief, political affiliation, gender orientation, economic strata, etc. are some of the more pronounced

traits embedded in administrative fairness. Common courtesy, civility, responsibility, honesty, integrity, accountability, public interest, and participation are characteristics that belong to administrative fairness.

The Ombudsman Western Australia described that procedural fairness is interested in actions used by decision-makers and not the outcome per se. Their web page stressed that equitable procedures have precedence over the actual end-result. This principle suggests that if a service provider employs fair procedure, it will naturally lead to a just decision.

The Ombudsman Western Australia adheres to the following procedural rights:

- Opportunity to reply that is appropriate to the situation.
- Responses to be received and considered before any final decision.
- Receive pertinent information in preparation for a reply.
- Reasonable chance to consider one’s decision and response.
- Genuine consideration of everything that was written or stated.
- Receive information that the case is being heard and what is being considered.
- Genuine chance to reply to the case being heard before final decisions are rendered.
- After all valid information is gathered, the right to respond about decisions made.
- Open-mindedness of decision makers when reading, listening, and making decisions.

The Manitoba Ombudsman web page identified these features exclusive to procedural fairness:

- Individuals are given advance notification.
- Individuals are told what information will be used in the decision.
- Individuals are provided with real opportunity to present one’s case.
- Individuals are given a chance to challenge or dispute any decision.
- Decision-makers review the case thoroughly and thoughtfully.

- Decision-makers are impartial and unbiased without a personal interest or stake.
- Decision-makers offer insightful and understandable reasons for the decision.

Zagoria (1988, p. 20) argued that cases normally start from issues about “fairness of decisions made through established procedures.” Procedural fairness describes the series of action plans and how they were carried out every step of the way. This begins from the moment the complaint was received and ends with how the situation was resolved or addressed. Logging the referral, doing initial research or fact-finding, notifying agencies or individuals, gathering information, convening meetings, making decisions, distributing findings, and writing recommendations (if applicable) all encompass procedural fairness.

Outcome fairness is the natural by-product of fair policies and procedures. To ensure the equitableness of a desired result or expected outcome, the sequential steps or process involved in the arrival of a solution need scrutiny by the ombudsman. Closely examining the process gives more significance to a just or fair outcome (Williams, 1998). Williams posited that if agreed upon rules were followed as well as implemented without bias and there was voluntary or team participation, any outcome is justified.

According to Skitka, Winqvist, and Hutchinson (2003), there is perception out there that outcome fairness is similar to outcome favorability. A meta-analytic review of the justice literature proved otherwise. These researchers learned that there are empirical differences or distinguishable traits between them. They presented the following study impressions (p. 329):

1. The fair process effect is significantly weaker when the criterion is outcome fairness than when it is outcome favorability.
2. Outcome fairness consistently explained significantly more variance than did outcome favorability across various measures, including organizational commitment, organizational citizenship, and job satisfaction.
3. Outcome fairness for the most part had as strong, and sometimes stronger, effects than voices and procedural fairness across different dependent measures.

Skitka et. al (2003) identified marked differences between outcome fairness and outcome favorability. The former has significant variances that are free from the influence of the latter. Additionally, outcome variables trump procedural variables and not vice versa. It is not recommended nor a good idea to confuse these two topics as one and the same. The researchers suggested that outcome fairness should receive equal, intense attention just like procedural fairness.

Conclusion

Transparency is the foundation of fairness. It is virtually impossible to be equitable without being open and honest. The public and consumers of services should have the ability to see through as well as understand what is going on. There has to be congruence between what you are doing (action) and what you are accomplishing (outcome). Now more than ever, transparency is widely encouraged and gaining popularity and public support, especially with regard to the expected behavior of public servants and service providers.

The newly elected governor of Tennessee in 2002 created his own spreadsheet and crunched the numbers as the public watched him in action. This example of transparency and financial management style reportedly instilled public confidence, and resulted in two gubernatorial terms. Exemplified by many other progressive-minded politicians in this country, proactive as well as open governments are good, acceptable indicators of fairness.

As stated in a White House memorandum to heads of executive departments and agencies, openness in government is a major commitment of the current administration. The President mandated that the executive branch work together in order to gain public trust via a system of transparency, public participation, and collaboration. He indicated that transparency promotes accountability and offers information about what the government is doing. As ordered, this memorandum is published in the US Federal Register.

In November, 2010, a 115-page “Review of the Children’s Commissioner (England)” by John Dunford named the Paris Principles and U.N. Convention on the Rights of the Child as bulwarks for ensuring that rights of children are safeguarded. In his report, which

was presented to the British Parliament, Dunford documented that children and young people reported feeling that they are not fairly represented about decisions that influence them (p. 85). He recommended that it is “equally important that the business planning process is transparent and involved external people” (p. 67). Dunford further encouraged that the Children’s Commissioner should always be aware of personal responsibility and accountability.

From the federal to the state level and beyond, transparency is becoming an expected and common practice. This is where the ombudsman can play a pivotal role. The need to become the guardian of fairness could not come in a more opportune time. Protecting the best interest of society and individuals is a worthwhile mission. This task fits the ombudsman regardless of jurisdiction and methodology.

In summary, the pros and cons or differences about the issue of equitableness dwell in the implementation of its characteristics. Filing a grievance that fairness was not practiced is a relatively easier move to make. However, finding a resolution based on consensus is a harder end-result to achieve. As forums on equitableness take shape, the locus of the discussion should be on the desired, fair outcome acceptable to the aggrieved party. Preserving sound agency policies and encouraging best practice are challenges for many ombudsmen whose duty is to remind everyone that fairness rules.

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I WAS JUST THINKING

I Was Just Thinking About Neutrality

TOM SEBOK

KEY WORDS

advocate, impartiality, neutrality, fair and equitably administered processes, Standard of Practice 2.2

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The author would like to thank Mary Rowe, Alan Lincoln, Brian Block, David Miller, and Laurie Paterson for their support and encouragement to write about Standard 2.2 of the International Ombudsman Association Standards of Practice. He would also like to thank Mary Chavez Rudolph for reminding him that he actually did understand and practice according to Standard of Practice 2.2 in several specific situations.

I just had an enlightening experience. I re-read an article I wrote 20 years ago, during my first year as an ombudsman. It was called “Reflections of a First-Year Ombudsman.” I wrote it in 1991, about nine months into my first year on the job (Sebok, 1991). As I re-read this article I could see that, even back then, while I was learning a lot as a new ombudsman, I was also confused about some specific aspects of neutrality. And, sadly, it was clear that I assumed that all of this confusion would probably clear up once I had a little more experience. The truth is 20 years simply hasn’t been enough time for the confusion to dissipate . . . But one thing 20 years of experience has led me to believe is that it is very likely I am not alone in this confusion. That is a significant reason why I found a sense of community with colleagues in the University and College Ombudsman Association (UCOA), the California Caucus of College and University Ombuds (CCCUO), and in the International Ombudsman Association (IOA).

In spite of my long-standing awareness of feeling confused about neutrality (more about that later), I could not resist saying “yes” to the request of such an esteemed colleague as David Talbot a few years ago to consider joining an outstanding group of colleagues who serve as instructors for IOA’s Ombuds 101 course. After all, despite my confusion about neutrality, I did feel I had learned a great deal about the role of organizational ombudsman. And I have always heard the best way to really learn something is to teach it. I suppose it was inevitable that, sooner or later, I would find myself teaching the section on neutrality. That happened last summer when the 101 course was taught as a part of the Strauss Dispute Resolution Summer Institute at Pepperdine University. While preparing for that presentation I reviewed IOA’s Standards of Practice on Neutrality/Impartiality and one phrase seemed to jump off the page, laugh in my face, and accuse me of being an imposter! It was IOA

Standard of Practice 2.2, which said: “The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization” (IOA, 2009). As usual, reading this left me scratching my head. As I read and re-read it I began to wonder how I was going to teach anyone anything about *this* when I really didn’t understand what it meant.

As I continued to wonder how I would teach new and prospective ombudsmen about this aspect of neutrality, it occurred to me that, aside from our Standards of Practice document, there was another document to which I might refer – IOA’s “Best Practices” document (IOA, 2009). I knew this document had been developed after much thought and discussion by some very experienced colleagues whom I have always admired. But when I read the document, which did a fine job of operationalizing many other aspects of the ombuds role, I found nothing relating to Standard of Practice 2.2. So, I began to realize I had no answers for the following questions:

- If ombudsmen are supposed to decide what are — and are not — “fair and equitably administered processes,” what criteria do we use to make these decisions?
- If, after deciding a process has not been “fair or equitably administered,” what are “best practices” for communicating to others that I am advocating for a “fair process” — and not for any individuals or groups of individuals — especially in situations where an individual’s (or a group’s) complaint is the basis for my taking action?

I also wondered why IOA has not had conference presentations, professional development courses, or journal articles dedicated to explaining it (at least none that I remembered). Further, if, after 20 years on the job, I was still confused about this, I suspected a few other colleagues — especially new ones — may be confused as well. And, with great respect to the fine colleagues who tackled the difficult task of creating it, I wondered why this wasn’t addressed in our “Best Practices” document, especially given that other aspects of this Standard 2 were operationalized very clearly. Was this an oversight? Was it assumed everyone would simply know how to recognize “fair and equitably administered processes?” Or, was it confusing to these colleagues, as well?

As I tried to unpack the sources of my confusion, I talked to a few colleagues and did some journaling,

too. I looked at the other parts of the Standard on Neutrality/Impartiality again and recognized that I understand most of this Standard quite well. I could readily see how all of the other aspects of Standard 2 have guided my own ombuds practice. And after talking with one colleague, I was reminded of two kinds of situations in which even Standard 2.2 had guided my choices:

- 1) when procedures I thought would be helpful did not exist (e.g., formal grade appeal procedures) or
- 2) when there had been an apparent failure to follow existing procedures.

However, I also realized that when *individuals* were the focus of a pattern of complaints — and the classic example involved allegations that a supervisor or professor had engaged in bullying of an employee or graduate student — I was much less sure about how to avoid conveying the appearance of advocating on behalf of the individual who had complained — while simultaneously appearing to advocate *against* the supervisor or professor. Since I occasionally found myself in discussions with administrators about these sensitive issues, I developed a checklist of points to cover when talking with them. I acknowledged this checklist in an article I co-wrote with Nancy Erbe in the Inaugural *Journal of the International Ombudsman Association*. It included things like:

- Remind her or him that I am a designated neutral and while it may appear that I am advocating for the individuals, that is not my intention;
- Say that none of those who have complained have given me permission to speak with the alleged bully because they all fear retaliation;
- Tell her or him that the information I have is only anecdotal in nature;
- Recommend that, in order to be fair to (the alleged bully), it may be helpful for her or him to gather independent data using tools such as a 360 degree evaluation instrument or exit interviews;
- Suggest that the administrator consider presenting the findings to the alleged bullying supervisor and give her or him an opportunity to respond; and
- Tell her or him that, depending on the findings, it could be helpful to consider providing coaching or counseling for the alleged bullying supervisor or professor to help him improve in this area of his performance. (Erbe & Sebok, 2008)

At first I thought the risk of conveying the perception of advocacy only existed when I had not even spoken to the alleged bullying supervisor or professor and was going “around” her or him to speak to someone with more authority. But later I found that, if I had spoken to her or him before speaking with an administrator, it seemed to set up an even greater risk that my actions would be seen — especially by the person about whom complaints had been made — as advocacy on behalf of those who had made complaints.

When I became an ombudsman neither The Ombudsman Association (TOA) nor UCOA had Standards of Practice. UCOA did have a “Statement of Ethical Principles” (UCOA, 1991) that, in some ways, I found rather inspiring. Unfortunately, I could not always find the guidance I was seeking involving neutrality in this document either. Among a number of principles identified as important for ombudsmen, “justice,” was cited as “preeminent.” I was never clear about whether “justice” was intended to be interchangeable with “fairness” or “fair process.” At some point I also remember a few UCOA colleagues asserting that ombudsmen should start with an open mind (as neutrals) but, like judges, when the facts were revealed, they could draw conclusions and need not be “neutered” by the obligation to function as neutrals. I liked the way this sounded but, eventually it sounded like more appropriate guidance for one who conducts investigations than one in which a practitioner has the obligation to avoid the reality or the appearance of advocating for (or, I assumed, against) individuals.

When TOA, and eventually UCOA developed separate Ethical Standards and Standards of Practice, this did create a rationale for certain decisions I made about how to best function as a neutral. But, I found that operationalizing these Standards was never as easy as following the “manual” I probably secretly wanted. I assumed then — and still do now — that it was simply too difficult to anticipate every possible scenario and create a standard to address it.

In most cases “advocating for a fair process” seems to have very little to do with my day-to-day practices as an organizational ombudsman. Most of the time I engage in one-on-one conversations with visitors

engaged in something very similar to what is now called “conflict coaching” (Jones & Brinkert, 2008). More than half of the time I meet only with individual visitors who typically bring issues that rarely involve allegations that a policy or procedure does not exist or was not followed. “Investigating” to determine whether “maladministration” occurred is not requested, required, or appropriate to help them. These are individual interpersonal disputes involving perceived violations of trust and/or respect and, almost always, poor or miscommunication. The disputes involve either colleagues and/or those in “evaluative relationships.” And, according to initial research conducted by the IOA Uniform Reporting Categories Task Force this is a very common experience among organizational ombudsmen working in educational institutions. Fifty-two percent of the issues, questions, or concerns with which those reporting assisted individuals involved conflicts in “Peer” or “Evaluative” relationships (Dale, Ganci, Miller, & Sebok, 2008). In my own practice the percent of these cases — particularly among faculty and staff — is probably closer to 80%. Typically, I listen and help these visitors clarify their interests and goals. And I help them identify and weigh the advantages and disadvantages of various options. On rare occasions I contact another party and mediate these disputes. But I am rarely asked to render a judgment about whether a “fair and equitably administered process” has occurred.

Of course, unlike the description of modern day “conflict coaches” (Jones, 2008), because I am employed inside an organization, I have developed and use knowledge about the institution’s organizational culture in assisting visitors in recognizing its norms and values and their obligations, rights, and options. Also, when agreed to by all involved, I engage in mediation — where I have rarely experienced much confusion about how or whether to operate as a “neutral.” On a few occasions, I have functioned as a shuttle diplomat. But I describe my role to visitors as one who helps students, staff, and faculty to manage conflict and, if possible, to resolve it. I do not describe the role (nor do I consciously act) as one who judges who is right or wrong and then advocates for the person who I think is right.

I certainly enjoy my work and feel extraordinarily fortunate to have found my way into a profession with such a terrific group of talented colleagues from a wide variety of backgrounds. I find it enormously satisfying to assist visitors in seeing options when they saw none previously. I have been grateful for the privilege of engaging with students, staff, and faculty who may be scared, sad, angry, and/or confused and helping them find hope and (on good days) resolution to what are often quite challenging problems. But Standard 2.2 (and prior to its existence) seemingly contradictory messages about how and even whether organizational ombuds should “advocate for fair processes” has often left me feeling as if I were standing in a hall of mirrors. And, I am guessing I am not alone. Isn’t it time we clarify what we really mean by this Standard? In spite of my observations here about Standard 2.2, I believe the IOA Standards of Practice and Best Practices Committee did an outstanding job in creating our Standards of Practice and developing the “Best Practices” document. The clarity provided by these documents places us light years beyond where we were when I started in 1990. At this point, I believe it would be very useful for the IOA Board to temporarily revive this committee or appoint a Task Force with the specific charge of reviewing and clarifying SOP 2.2.

By the way, if you’re wondering what I did in my presentation about Neutrality at Pepperdine, thanks to some well-developed materials by previous instructors, I found those with which I was most comfortable and focused on them. I confess that I pretty much ducked Standard 2.2 altogether. And, in an effort to inject some levity into the presentation I started by singing my spoof version of “Act Naturally,” (Russell & Morrison, 1963), a song, made famous by Buck Owens and later recorded by the Beatles. The lyric is as follows (with apologies to the songwriters).

ACT NEUTRALLY

They’re gonna put me in an office
They’re gonna make an ombud out of me
I’ll listen to the fussin’ and the fightin’
And all I gotta do is . . . act neutrally

They tell me that I’ll be independent
Folks can see me confidentially
They think I’ve got just the right prescription
To solve all these disputes so magically

So I hope you’ll come and see me in the office
You can do it anytime for free
Just spill your guts and pour your heart out to me
And all I gotta do is . . . act neutrally

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I WAS JUST THINKING

I Was Just Thinking About Fairness

HOWARD GADLIN

KEY WORDS

advocacy, fairness, procedural justice, process, outcomes, judgment

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FROM THE INTERNATIONAL OMBUDSMAN ASSOCIATION'S STANDARDS OF PRACTICE

2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time.

In my opinion standard 2.2 cited above is mistaken and ought to be reconsidered. If we think about how we actually do our work we are forced to acknowledge that the boundary between advocating for a fair process and advocating for a person is not always clear, and in some circumstances exercising our discretion includes advocating on behalf of a person or even an outcome. In such circumstances not to exercise our discretion in that way would be to short-change our role as well as the people who come to us for help.

Now of course I agree that we cannot at the outset of any case offer ourselves as advocates for those who come to us for help or counsel. Nor should we define ourselves as advocates for any specific group within our organizations (e.g., students or employees). And although section 1.3 reserves for us "...sole discretion over whether or how to act regarding an individual's concern," we would never present ourselves as "representing" a person or group that has come to us in the way a lawyer might represent them. But to my mind there is an important difference between the initial posture we assume when working with someone and the sort of posture we might take after we have looked into or worked on a particular case. As I see it,

there are circumstances when, using our discretion, it is appropriate for an ombudsman to advocate not just for a fair process, but for a person or even a particular outcome.

Discretion means exercising judgment. Certainly we are not judges; we have no decision making authority to exercise nor do we desire that authority. However, the fact that we are not judges does not mean that we do not make judgments. Thinking of my own experiences and observing my colleagues, it seems clear that we evaluate situations all the time and we frequently make judgments about both situations and people; those judgments affect how we handle situations and how we react to people. Luckily though, as ombudsmen, we cannot impose our judgments on others and, in almost all circumstances, it is inappropriate for us to offer our judgments directly, even when asked by those who come to us. Indeed, our effectiveness lies in the fact that because we cannot impose our judgments on others we must find more collaborative ways (asking questions, discussing, presenting alternative perspectives, facilitating better communication between disputing parties) to engage with people so that they might alter the way they see a situation or interact with a person. We analyze cases along many dimensions, but any way you look at it, there are times when there is a link between the judgments we make about fairness and the sorts of interventions we undertake. As ombudsmen our primary focus has to be on the fairness of processes, even if the people who approach us are questioning outcomes, but I would argue that our interventions are also guided by our judgment that an outcome is fair or unfair.

I also believe that there are instances of unfair outcomes and unfair processes in which we might want act as advocates. I believe both are worthy of ombudsman attention. Let us begin with **unfair outcomes because it presents the greatest challenge to our perception of ombudsman neutrality**. Consider a circumstance which I believe is fairly common in the work of most ombudsmen; certainly they have been common in my experience: someone comes to us when they want an exception to a rule because the application of the rule will create a hardship for them due to some highly individualized circumstances. The

person is not looking to challenge the rule; in fact the person may even acknowledge the reasonableness of the rule but still believe that the consequences of applying the rule in their situation are unreasonable or unfair. Having directly but unsuccessfully appealed to the office that applies that rule, they come to the ombudsman for help in obtaining that exception. It is my belief that in such a situation it is appropriate, and even valuable to an organization, for an ombudsman to become an advocate for that person in that circumstance. Bureaucracies are not noted for their great flexibility, and I believe one important function of an ombudsman can be to help expand an organization's ability to adapt to individual needs when circumstances warrant. When do circumstances warrant this? When in the judgment (exercising discretion) of the ombudsman, not allowing an exception to the rule will lead to an unnecessarily unfair outcome.

Let me give a case example, drawn from my own work experience, where I advocated for someone. A first-year graduate student came to see me because she was very upset about her student ID number. Student ID numbers were randomly assigned and because so many people have lucky numbers, unlucky numbers and a range of other numerical preferences, the university had a very firm rule that students had to keep the number they were assigned. Clearly this is a "fair" process unbiased and applied even-handedly. The student who came to me understood the rule but she was a member of an apocalyptic church in which the number 666 was the sign of the devil. Having that number in her student ID caused her considerable anxiety and she was unable to get past that anxiety and concentrate on her work. With my intervention the office that oversaw the assignment of numbers and related matters made an exception and gave her a different student ID number.

I suppose one could say that I was arguing for fairness, not arguing for this student, but in actuality I wasn't making a general argument that that there ought to be exceptions to the rule about student ID numbers, nor was I suggesting that the University rethink its process for assigning student IDs. I was arguing that there ought to be an exception for this student who was negatively affected by the rule and suffering undue hardship. In many circumstances, unfairness comes to our attention in the form of a particular person (group) who has been treated unfairly; whatever principles might underlie our intervention

when we attempt to bring a wrong to the attention of those who can correct it, we are directly or indirectly advocating for the person (group) who has been wronged. Mind you, I am not saying that in every instance where a person feels wronged we become their advocate, or even that in every instance where we agree the person has been wronged we should become their advocate. Certainly an instance of organizational wrongdoing can lead us to address the policy, procedure, or practice that led or contributed to the wrongdoing without advocating for a different outcome for the person who brought the matter to our attention.

Here is an example of an **unfair process** where an individual instance led me to advocate for modifying a rule, while in no way advocating for the individual. At NIH, tenured and tenure-track scientists are reviewed every four years by a committee of outside scientists. The guidelines for those reviews stipulate that the members of the review committee should not communicate directly with the scientist they are reviewing but rather should communicate through the scientific director (like a dean) of the institute where the scientist works. For years this has been widely understood to mean that it is also improper for the scientist being reviewed to directly communicate with the scientists who are conducting the review. However, one scientist who was under review initiated many communications with his review committee, much to the dismay of his scientific director and many of his colleagues. In this instance, the focus of my intervention was to bring the flaw in the written procedure to the attention of the appropriate scientific administrators of the review process and to suggest that they rewrite it to remove ambiguity in the written policy. I did not even have to make any reference to the individual case that led to my recommendation. However, the commitment to fairness was among the factors that led to my engagement in this issue: If an evaluative procedure is ambiguously worded such that it allows some individuals to obtain different treatment than others, that procedure opens up the possibility of unfairness as well as the potential for conflict.

Although for the purposes of this discussion I have drawn a distinction between unfair process and unfair outcome the difficulty in separating a process from outcome becomes clear when we turn our attention to the complexities of addressing procedural fairness (fair and equitably administered processes) in an organizational context. Nick Diehl, Deputy Ombudsman at the American Red Cross, and I prepared a handout years ago (drawing heavily on the work of NYU's Tom Tyler) in which we listed four major dimensions to **procedural justice** (Tyler's term):

1. The fairness of an organization's formal decision-making rules.
2. The quality of treatment people receive under those rules.
3. The fairness of decision-making by each person's supervisor.
4. The quality of their treatment by that supervisor.

Tyler's work has suggested four criteria for assessing **procedural justice**:

1. **Consistency** – like cases should be treated alike.
2. **Unbiased** – those implementing procedures must be impartial and neutral.
3. **Participation** – those affected by decisions should have a voice and representation in the process both in providing information and appealing a decision.
4. **Transparency** – processes should be transparent; procedures should be open, without secrecy or deception, including the criteria on which a decision is based.

Notice that this framework is relatively easy to apply when we are discussing formal procedures, processes, evaluation methods, and decision making. One can see how an organization might assess procedural fair-

ness and also how an ombudsman might confidently evaluate whether or not the criteria of procedural justice have been met. Sometimes on the basis of an individual case we can identify a flaw in an organizational procedure (as in the example of scientists under review cited above). As ombudsmen we have to be alert to procedures or processes that regularly create unfair outcomes or violate some fundamental rights or values of the organizational members using or subjected to that procedure.

For many of the issues or matters that come to our attention, however, there are not and cannot be formal rules, procedures, or processes. In educational settings and workplaces, many tension points and conflicts arise within the context of relationships and work-related interactions. In these situations assessing fairness is extremely complex and highly subjective; complex because it is confounded with other factors and subjective because there may not be common standards against which to assess actions. There is no single correct way to be a department chair or a lab chief or a teaching fellow. What is the boundary between power abuse and leadership style? When is criticism delivered in an unfair way? When is it unfair not to provide critical feedback? We could list dozens of similar questions. But I would argue that when we as ombudsmen work with these sorts of issues we regularly assess and evaluate both the situations and the people involved and make judgments about them; and some of those judgments are about fairness, so that our subsequent dealings with the people or the issues are shaped in part by those judgments. I am not saying this is the only dimension along which we evaluate and assess; just that it is one of the major dimensions along which we respond.

In a note to me after reading an early draft of this paper Tom Sebok, Ombudsman at the University of Colorado, Boulder, one of the most thoughtful people in our profession said *"To be honest, our SOP on 'advocating for a fair process,' frankly seems pretty unrelated to most of my work. Every issue people bring to us clearly involved conflict but many fewer seem to involve 'fairness' or 'justice' in any obvious way. For example, when colleagues fight there are often hurt feelings, bad*

communication, a lack of trust and/or respect. Often one dislikes what the other has said or done or has a strong values difference with her or him. But in these cases... fairness is not much of an obvious issue."

I'm not sure I completely agree, because I think hurt feelings and loss of trust are almost always connected to issues of fairness, but the important point is that in many cases issues of fairness are embedded in and confounded by other dimensions of a situation.

We all know that in conflict matters of fairness take on special significance and the successful resolution of conflict depends on establishing fair conditions for working out the conflict. For these same reasons process and outcome are not easily separated and we can only advocate for fairness by taking into account the complex, multidimensional nature of the conflict.

Let me give another case example, one not at all built around advocating for a person. Let me frame it around another aspect of the ombudsman role-informality. But here I want to speak about an aspect of the informality of the ombudsman function that I think is not well represented in our standards of practice. One of the most important features of the ombudsman is that s/he is able to address issues for which there are no formal policies laws, rules, procedures, guidelines, or processes. In any organization, whether it is a governmental agency, a university, or a corporation, innumerable opportunities for wrong doing, unfairness, injustice, mistreatment, and conflict present themselves. The ombudsman is an important part of an organization precisely because s/he is someone to whom members of the organization can come with issues that are not covered by any aspect of the organization's governance mechanisms.

In the case I discuss here (some specific details have been altered for reasons of confidentiality but the essential dynamic remains the same), I was visited by a tenured faculty member who had attempted to rescind her resignation from the university and had been refused by the department chair. Her resignation had been submitted many months earlier when she was told she was suffering from a progressive medical condition that would severely impair her ability to continue her academic career. At the time she was the most successful academic in the department

in terms of publications and scholarly reputation, and one of the better teachers. However, she was not well liked by her colleagues, in part because she thought the department could improve its reputation both in scholarship and in teaching. When she learned of her medical condition she approached the department chair, with whom she had a so-so relationship and explained her circumstances.

The department chair responded sympathetically but also made a request of the faculty member. Like her he was interested in improving the department's reputation so he asked her to formulate her letter of resignation as an expression of her dissatisfaction with the current state of the department rather than as a response to her personal medical condition. That would allow him to use her resignation to argue for increasing the department's resources so they could improve their reputation and keep from losing other valuable faculty members. Dedicated academic that she was, she agreed to this plan and wrote her resignation letter accordingly. She then went ahead with the resignation and over the next several months filed all the appropriate forms. The department meanwhile was given money to replace her and to bring in additional faculty.

Just when the department was advertising its new positions and before the faculty member's intended retirement date, she learned that her progressive medical condition was in fact caused by a reaction to medication she was receiving for an entirely different medical problem. If she stopped taking that medication the progressive medical condition would reverse itself over time. As one can imagine she was overjoyed and went to tell the good news to the department chair and to ask for him to reinstate her faculty position. The chair, although agreeing that it was good news that her medical condition could be reversed, was not open to reinstating her faculty position. He was excited about the possibilities for recruiting new faculty and the wheels were already turning for her retirement (the date for rescinding the retirement request had passed, although I did learn that it might be possible to stop the process). At that point she came to my office. This was one of those instances where we hear someone's story and our initial reaction, even when we know there is at least one side to the story, I said to myself: "This is wrong" even before I could fully articulate why I had that reaction.

Now of course I did all the things that Ombudsmen do in a situation like this: I listened to her story, reviewed the relevant rules and procedures and discussed a full range of options by which she might pursue her case. At her request I spoke with and then facilitated a conversation between her and the department chair. The chair confirmed all the essential features of her story — they did not disagree about what had happened. However, they were not able to come to an agreement; the chair just did not want to have her back in the department. She then appealed to the dean who sided with the department chair even though he heard the full story of the circumstances under which she had resigned and about the resolution of her medical problems. The dean was a strong supporter of the department chair and was also enthusiastic about the direction in which the chair was moving the department. At her request I also facilitated a conversation between her and the dean, but the result was the same as the conversation with the department chair.

Keep in mind there was no formal procedure or rule to address this sort of circumstance. In fact, the resignation and request for additional faculty had all been done properly according to university policies and procedures. The appeals she made were not formal; they did not make reference to rules broken or procedures violated. The appeal was personal; it was grounded in the narrative she told. Her last hope was the provost, who was quite new to the campus and to the position. When she asked to bring the matter to him he expressed a reluctance to interfere in the affairs of a department (especially so early in his tenure) and when the dean had already reached a decision. At that point, and telling both the dean and the department chair in advance what I intended to do, I went to see the provost and asked him to meet with the faculty member and hear her story. Now I suppose I could claim that I was not advocating for her, rather for a fair process but I think that would be a misrepresentation of what I did. I believe, to this day, that I did the right thing. It is true that I did ask the provost to hear her story, but in making the case for him to meet with her I had to make clear that I thought she had not been treated fairly even though no rules had been broken. I am certain I communicated that I believed an injustice would be done if he did not at least review the situation, even though I never said explicitly said so. There was no way I could make this case without indicating

to the provost that I believed the Dean and the department chair had made an “unjust” decision. Let me be clear — I did not say “this was a wrong decision” or “you should rule in her favor;” but everything in my demeanor and in the way I pressed the issue, not to mention the way I told the story, must have made clear that I thought there was an injustice that should be addressed. In short, I advocated for her.

Looking back on my conversations with the department chair, and then with the dean, I did not take her side, I acted like a mediator. However, before the conversation, in making the case for each of them to participate in the facilitated conversation, I must have communicated that there was a good reason to do so. And the good reason, even if I never said this using these words, was that I believed that they “might want to reconsider their decision,” and that they “might want to try looking at this situation in a different way” than when they made that decision. Although I can no longer remember my specific words, I’ll bet that if you had overheard me speaking to the dean or to the department head you would have heard more than, “Professor X would like a chance to meet with you again regarding your decision about rescinding her resignation.”

When Tom Sebok wrote me after reading this, he wrote “...what I find missing ... (and what I think would greatly strengthen it) is an explanation about how you decided what was ‘fair.’ It may be incredibly simple, but what criteria did you use? I believe it would help a lot to articulate these criteria.... that led to conclusions that what was occurring was “unfair” or unjust.”

Of course he was exactly right. His question is more challenging. First, I had to acknowledge to myself that I did not and do not have a fully worked out set of criteria whereby I made judgments about whether an outcome was fair or not. For process fairness, Tom Tyler’s work provides dimensions and criteria for assessing fairness, especially for formal procedures and decision-making processes. But for the complex conflicts and situations like the one with the faculty member above, if I am honest, I have to admit that I cannot specify what the criteria were although I do recall how clearly I felt that this was ‘unfair.’ Both process and outcome factors contributed to that judgment. After years of practice, my intuitive response, I realize,

should indeed be framed through a Donald Schoen-like reflective practice discussion that helps us make implicit knowledge explicit. Tom Sebok is asking an incredibly important question and he points us toward some work we need to do:

1. Begin an expanded discussion about criteria for outcome and procedural fairness (I’m told Bob Shelton, former Ombudsman at the University of Kansas, has a discussion of fairness elsewhere in this volume but I deliberately kept myself from asking to see his paper).
2. Begin developing best practices and persuasive strategies (Tom again) for advocating for fairness. Even those who disagree about advocating for people can consider approaches to advocate for fair process.
3. Support or initiate research that examines what ombudsmen actually do rather than what they say they do.
4. Develop approaches by which ombudsmen can raise or address issues of fairness even when the people who bring their situations to us are reluctant or afraid to do so.

This is a fairly tame conclusion given that my argument challenges parts of one of our most cherished standards. I do this because I believe that our standards as currently written do not provide full support for the organizational ombudsman to serve as an advocate for fairness and justice in the organizations within which we serve. Andre Marin, the legendary ombudsman for the Province of Ontario occasionally calls out his colleagues for being the “lap dogs” of the institutions within their jurisdiction. That is a harsh accusation but I believe it is a hazard of working as an organizational ombudsman, and a danger of which we need to be aware. I think it is time to revisit our Standards of Practice and to assess whether or not they adequately support the essential qualities of the ombudsman role.

Fairness and Self-evaluation

CHRISTOPHER HONEYMAN

ABSTRACT

Much of the work of ombuds practitioners involves mediation, making it possible to use 25 years' experience with developing and adapting assessment tools for mediators to devise such tools for ombudsmen. This article argues that fairness is a composite product of a whole series of different skills and actions. Since actual human beings have, at best, some of the requisite skills to a high degree, a balanced — i.e. fair — performance can only be maintained by making extra effort at the skills each respective mediator or ombudsman finds hardest to apply. The article closes by proposing a tool for self-evaluation which ombudsmen might collectively develop.

KEYWORDS

Fairness, mediation, ombudsman, self-evaluation, scales.

How can you know if you're being fair to everyone? Personally, I'm quite sure that in the course of 35+ years of mediation, arbitration and other cases, I have been unfair to at least some of the parties. But with rare exceptions in which later reflection convinced me that I had made the wrong decision in a case that *required* a decision, I don't know which ones.

As this suggests, I should offer a caveat up front: I am not, nor have I ever been, an ombudsman. Also, I have never had the opportunity to study ombudsmen formally. I have been a mediator and arbitrator, however, and have held several other "neutral" roles, to an aggregate total somewhere over 2000 cases involving many kinds of organizations; and I have known a few ombudsmen. (The strongest impression I have of their practices is that they vary greatly, though, so that in itself doesn't help much.) For purposes of this discussion, I'm going to address primarily the aspects of an ombudsman's work that are closest to mediation, because mediation, at least anecdotally, seems to me a very important element of the job, and it's one that I *have* studied.

More than many mediators or quasi-mediators, of course, ombudsmen operate within institutional settings. And in many institutional settings, there is an existing and basic device for assessing fairness: the individual complaint, or rather, a pattern of them. A second common device is a standardized survey which parties are asked to fill out at the conclusion of the case. But the surveys I have seen almost never break down the questions presented in such a way as to pinpoint exactly what a mediator (or ombudsman) did particularly well or particularly badly, among an inevitably complex matrix of skills and approaches — any of which could have fairness implications. And even if someone complains, does that necessarily mean you were unfair in that particular case?

For example, many years ago, I managed to offend *both* parties in a relatively large labor mediation case, to the level that they jointly went to the state agency which had appointed me, and demanded a replacement. The three Commissioners for whom I worked invited them in for a meeting to explain their complaints. The parties (relatively big organizations) both described me as, essentially, failing to show appropriate respect for their weight and station — one form, perhaps, of unfairness. The Commissioners asked some questions and retired to discuss the matter. But when they returned, the Commissioners informed the parties that in their joint view, the parties *deserved* me as mediator. No replacement would be made. (After the parties left, though, the Commissioners trenchantly informed me that I was never again to put them in that situation, on pain of great personal suffering which they would arrange.)

The relevance of such a story here is that I strongly suspect that despite the difference in circumstances, I have a great deal of company among ombudsmen in one respect: I was totally unaware, until informed that a formal complaint had been lodged, that the parties had any particular beef with me at all (as distinguished from the customary you're-not-doing-enough-for-our-side). Could I have been more perceptive? Perhaps. But I don't think it's just me: for a variety of reasons, a reliable feedback loop has simply been missing from much, if not all, of our field. I can imagine many circumstances in which the parties dealing with an ombudsman — or any other variety of mediator or quasi-mediator who has ties to "the system" — might be dissatisfied, and yet think twice or three times before registering any overt complaint.

The converse is to be praised when you don't deserve it. That's another phenomenon I have observed personally. In cases where minimally conscientious endeavor had revealed that the parties were much closer than they thought they were, so that no great effort or talent was necessary to bring them to agreement, the parties might well remain unaware of that happy circumstance. Cases of this kind, in a busy labor mediation practice, were seen often enough that they had a generic classification in the mediators' shop talk: they were known as "bunny" cases. (No, I can't give the term's provenance; it was already in use when I arrived in the late 1970s, and its origins are now shrouded.)

It seems likely that an ombudsman would find accurate and forthright evaluation by parties even harder to obtain than I did, when I set out to analyze what made some mediators better than most.¹ After all, an ombudsman is not only directly employed by the very organization within which the dispute takes place, but typically at a level and in a role which implies some degree of power.

So, let's try another approach. I am prepared to argue that for you to act fairly, you must apply an appropriate *balance* of skill and effort, among definable criteria. If either your skills or your efforts are not in balance, one party — the party whose point of view is most dependent for its effective explication on whichever particular element of skill or effort has come up short — is liable to be disadvantaged. One of the reasons fairness is so hard to nail down is that it seems to be a composite product of a whole range of actions and attitudes, all of which are difficult and all of which seem to have both situational and cultural components. Thus a mediator or ombudsman might act unfairly in one given situation by not trying hard enough to be empathetic. A second, in a different situation, might act unfairly by pressing for closure on a basis that seemed to be obvious, while another, under still other circumstances, might be unfair by not trying hard enough to *invent* a workable solution, at least when the parties seemed incapable of doing so for themselves.

If you accept these premises, it becomes possible to use some 25 years' experience in assessing mediators, a closely related occupation, to at least begin outlining in a context-sensitive way what the skills that you must balance might be.² With that in hand, you are equipped to get a handle on how to assess yourself as to whether you are balancing them fairly. It might even be possible to create a system that would encourage people who have dealings with you to come forth and be heard in a way that would preserve their comfort and their sense of privacy.

Carried out in various branches of the field and with significant academic and user-group input, experiments with performance-based assessment of mediators have by now resulted in a number of statements, which characterize different aspects of a mediator's performance *in at least some settings*. One

sample set of such criteria is listed in the Appendix to this article; three others can be found in Honeyman et al, 1995. Each element among them, however, is malleable: not one of these skill definitions was ever intended to be taken universally, because they inevitably contain value-laden judgments of what the word “good” means, which must be adjusted to fit the goals and proper expectations of widely varying programs, not to mention different cultures. There are many variants in use. One common factor, however, is that with properly constructed scales, *no one* has ever been found to “ace” the full range. One of the best mediators in the US, upon first seeing the initial set, remarked to me that he thought that on a good day he could hit the top note on two or three of them. That’s as it must be, if sufficient room is to be allowed for different approaches.

Yet a demanding statement of these criteria remains, in my view, the best starting point available for adaptation. And adaptable they have proven. Following a “somewhat controlled” study of a group of mediators I performed in the mid-1980s (see Honeyman, 1988), I developed the initial set of such evaluation scales for an oral performance-based examination of prospective labor mediators, using actors to play the parties. Subsequently, using cases and evaluation criteria drawn from the variously appropriate settings, the basic idea has been found adaptable to internal agency functions, intra-company disputes among individual employees and managers, and a wide variety of court-based mediation programs, among others. The evaluation scales have been reformulated for different cultures and languages. They have also been adapted to certification needs, evaluation by supervisors, self-evaluation, and training, as well as “mediator shopping” by parties. So the set shown in the Appendix, which is one of the more subtle ones extant and postdates by about 15 years the initial version of such evaluation scales, is the beneficiary of a good deal of experience.

Among all the *uses* of such scales, meanwhile, one seems particularly relevant here. After I had been working with this general scheme for a few years, one of the more famous mediators in the US remarked to me that he had found his own use for the (first set of) evaluation scales. He said that he had written down the key points on an index card, which he kept in his

wallet — and every time he felt that his case-of-the-day was not going well, he would go out in the hall by himself, pull out the card, and ask himself which of these skills had he *not* been exercising.

I believe any ombudsman could rewrite the scales as appropriate to her or his particular institutional mandate, and then do essentially the same thing. Furthermore, in my experience, the mere act of redefining the skill definitions for a new setting can prompt a bout of real soul-searching as to what the key elements of “good work” in that setting — including fairness — ought to be. In other words, I believe this exercise alone would help an ombudsman sharpen her perception of fairness or its absence, in parts of her work which over hundreds of cases may have become somewhat routine.³

Several objections present themselves. How can an ombudsman respond to a perceived deficiency in one or more of these skills? What about the improbability of a perfect separation between Standard of Practice 2.2’s demand of advocacy for “equitably administered processes” and its demand to avoid advocacy “on behalf of any individual”? (After all, addressing an existing inequity, by definition, advances individuals’ interests which have been suppressed in the past.) What about selection bias among those who bother to fill out a questionnaire? Will the opinions of the resulting anonymous, and perhaps highly selected, group actually help an ombudsman improve practice? What other methods might there be to figure out how well a given ombudsman is doing? And does thinking about evaluation actually help an ombudsman *understand* fairness?

I can offer only imperfect answers. But it seems to me that many people in many walks of life overcome whatever deficiencies of skill they have by a conscious and focused application of extra effort (perhaps including skill-specific additional training). Hence the focus I advocate on thinking about a *balance* of effort and skill, among a host of difficult-to-achieve elements such as those listed in the Appendix. For what it’s worth, while I have no research basis for this belief, on a practical level I’ve known one particular, quite stable, population of mediators and parties quite well over many years. The mediators in that group are generally considered quite fair by the parties they work with. Still, they are seen working at the skills that individually don’t come natural to them.

Similarly, the tension between the two kinds of advocacy is likely to be most fairly addressed by an ombudsman who is self-aware both of the risks and of any propensity she may have toward attacking problems with one tool rather than another. (I have often found even talented mediators lacking in such self-awareness. There is also careful research to the same effect.⁴) And while I would be delighted to see other writers in this issue presenting dependable alternative ways to figure out how you're doing, I am personally unable to offer any alternatives that I believe to be at all reliable.⁵

I also believe, however, that it might be possible for ombudsmen collectively to do something more than one ombudsman can do by herself, which would perhaps help enlarge the reporting group to something reasonably representative. It would also provide a good opportunity for some ombudsmen to grapple as a group with reformulating the "starter" set of evaluation criteria, which experience elsewhere suggests would be even more rewarding than the solo effort advocated above.

To my knowledge, nothing like what I will propose has previously been attempted on a large scale by any other kind of mediation community, so I offer it in all humility. Because of the interest in this subject by the International Ombudsman Association, however, there is effectively an institutional player which, by taking an active role, might solve the problem of maintaining confidentiality of parties who might well wish to register an opinion, but might fear repercussions.

With these caveats, suppose a low-cost service were to be organized by or in conjunction with IOA, with an anonymous form that parties to a dispute could be invited to fill out online, a few days after the ombudsman's work was over. The form could include some version of the evaluation scales above, though for best response rate it might be necessary to compromise on the level of detail, and for convenience it might be necessary to compromise on the level of local tailoring, so that the same form could be used for multiple institutions. Parties could be told by each participating ombudsman that the purpose of the questionnaire is purely for self-improvement by ombudsmen in general, and that no one but the ombudsman in question would ever see the answers.

But the most important element would be an explicit undertaking, built into the programming, that the answers for any particular ombudsman would be *aggregated* over some appropriate period of time — perhaps a year, perhaps more or less — so that no individual questionnaire could be picked out.

Technologically, this is child's play compared to much of what is now on the Web. It seems possible, therefore, that such a structure could be created at very low cost, perhaps with a single startup grant and with IOA then housing what in today's terms would be a relatively simple website. The result might well be the ability to flag to a given ombudsman — privately — an area in which otherwise strong performance seemed in need of help or further study, in the view of a significant number of respondents.

Of all the fields within or close to mediation, it seems to me, ombudsmen are among those best fitted for this kind of approach; for one thing, they tend to have large caseloads compared to most mediators, making it likely that even with something less than a 100% response rate, individual identities would truly be protected. For the same reason, the aggregate responses would likely reflect enough of a pattern that anomalous cases and outlier opinions would not distort the picture very much. And finally, the ombuds practitioners I have known (who admittedly may or may not be representative) have been a rather more intellectual and rather more intellectually principled group than some otherwise excellent mediators I have known in other contexts. That suggests that within this community, there might be the will to take such a venture seriously, and make it happen.

And finally, in response to the question "Does thinking about evaluation help us to *understand* fairness?", I have a straight answer: if, as seems probable, confidentiality and expense preclude bringing in specially trained observers, *how else* do you propose to understand whether you are being fair to actual human beings, if not by some combination of querying them (and in a fashion that more seriously attempts to encourage them to answer thoughtfully than the so-called "happy sheets" routinely distributed by mediation programs) — and querying yourself?

Appendix

The particular set of evaluation scales shown here is a latter-day adaptation which has the unusual feature of giving equal weight to “facilitative” and “transformative” approaches. It was designed for a Pennsylvania state program which mediated special education disputes, and which had made a policy decision to evaluate its mediators (some facilitative in intent, others transformative) within their respective professed styles. See D’Alo (2003).

The Mediation Process Is Successful When the Mediator Is Able to:

1. MANAGE THE STARTUP: Effectively begin a productive relationship with the parties.

- 9, 8, or 7 Evidence of pre-planning and “homework done” (where appropriate) was strong. Opening statement was thorough, clear, concise, and set a tone encouraging collaboration.
- 6, 5, or 4 Some evidence of forethought and preparation. Opening statement was adequate but could have been more thorough, clear or concise.
- 3, 2, or 1 Mediator did not appear to have prepared for the case or to have read the file (if applicable). No opening/closing statement, or the explanations given were cursory or inaccurate.

2. GATHER AND COMPREHEND FACTS: Effectively identify and seek out factual information relevant to the case, and sift and organize information that has been gathered.

- 9, 8, or 7 Asked neutral, open-ended questions. Summarized and paraphrased parties’ statements. Succeeded in generating information about the most sensitive issues.
- 6, 5, or 4 Asked the obvious questions. Generally appeared to discover the case facts, though not with great depth or precision. Understood obvious aspects of the facts and reasons with both sides.
- 3, 2, or 1 Asked few, mostly irrelevant, or overly directive questions. Appeared at a loss as to what to ask in follow-up questions. Disorganized or haphazard questioning, filled with gaps and untimely changes in direction. Was easily overwhelmed with new, complex information or confused by data. Missed important aspects of facts or reasons of one side or the other.

3. UNDERSTAND UNDERLYING POSITIONS AND INTERESTS: Draw out and understand the parties’ essential concerns and needs, whether or not verbal or articulated in factual information.

- 9, 8, or 7 Encouraged disputants to focus on concerns and interests. Demonstrated an in-depth understanding of the scope, intensity, and contentiousness of the case, and of problems and interests not explicitly stated by parties. Clarified and reframed the issues and assisted parties in identifying priorities.
- 6, 5, or 4 Listened to disputants describe concerns and interests. Understood obvious aspects of the underlying reasons or interests of both sides. Some success at clarifying and reframing the issues.
- 3, 2, or 1 Avoided discussion of underlying concerns and interests. Missed important aspects of reasons or interests of one side or the other.

4A. EXPRESS EMPATHY VERBALLY:**Be consciously aware and considerate of the needs and values of others.**

- 9, 8, or 7 Conveyed interest and respect to the parties. Questions were neutral and open-ended; listened respectfully. Helped parties improve their understanding of each other's concerns. Conveyed conspicuous sensitivity to cultural and other misunderstandings and addressed them effectively.
- 6, 5, or 4 Listened to others and did not antagonize them. Conveyed some appreciation of parties' priorities. Conveyed some sensitivity to cultural and other misunderstandings.
- 3, 2, or 1 Came into the discussion abruptly to challenge others. Disregarded other's warnings. Saw other's problems as of their own making and did not want to be bothered. Displayed insensitivity to cultural and other misunderstandings.

4B. EXPRESS EMPATHY NONVERBALLY: Be conspicuously aware and considerate of the needs and values of others, in body language and other ways not captured by Scale 3.

- 9, 8, or 7 Manner conveyed interest and respect to the parties. Non-verbal communication (gestures, body language, voice/tone, eye contact) was appropriate throughout. Manner conveyed conspicuous sensitivity to cultural misunderstandings and addressed them effectively.
- 6, 5, or 4 Manner conveyed some appreciation of parties' priorities. Non-verbal communication (gestures, body language, voice/tone, eye contact) was generally appropriate, but not consistent. Manner conveyed some sensitivity to cultural misunderstandings.
- 3, 2, 1 Appeared to see other's problems as of their own making and did not want to be bothered. Non-verbal communication (gestures, body language, voice/tone, eye contact) was inappropriate. Manner displayed insensitivity to cultural misunderstandings.

5. CONVEY IMPARTIALITY: Convey a sense of neutrality to the parties.

- 9, 8, or 7 Manner of introductions and initial explanations showed equal respect for all disputants. Listened to both sides. Asked objective questions, conveyed neutral atmosphere. Demonstrated that he or she was keeping an open mind. Verbal and non-verbal communication did not favor either party.
- 6, 5, or 4 Generally showed respect for all disputants but questions and non-verbal communication sometimes showed he or she was more comfortable with one party than the other. Maintained a balance, but showed a better understanding of one party's goals and beliefs than the others.
- 3, 2, or 1 Asked misleading, loaded or unfair questions exhibiting bias. Engaged in oppressive questioning to the disadvantage of one of the parties.

6. MANAGE THE PERSONALITIES: Effectively cope with strong personalities and conflicts between clients and professional representatives.

- 9, 8, or 7 Had effective techniques for redirecting parties' focus away from sullen or otherwise unproductive colloquies. If humor was used, the use was appropriate to both the situation and parties' cultural and other perceptions. Managed all client/representative relationships effectively. Used effective techniques to deal with manipulative, domineering and/or destructive behavior.
- 6, 5, or 4 Generally recognized signs that discussion had turned sour and took action to try to redirect it. Not always effective at lightening the atmosphere. Did not allow bullying by clients or representatives.
- 3, 2, or 1 Made little or no effort to provide perspective on the parties' problems or to engineer lighter moments. Allowed clients or representatives to control process in ways counterproductive to resolution. Use of humor was culturally or otherwise inappropriate.

7A. ASSIST PARTIES IN GENERATING OPTIONS: Pursue collaborative solutions, and assist parties in generating ideas and proposals consistent with the facts and workable for opposing parties.

- 9, 8, or 7 Assisted the parties to develop their own options and to evaluate alternative solutions for themselves. Demonstrated commitment to allowing full play to parties' own values. Vigorously pursued avenues of collaboration between the parties.
- 6, 5, or 4 Made some attempt to get parties to think about their dispute on a deeper level. Showed parties how some proposals and compromises interrelated with ideas of other party. Allowed collaborative problem solving, but did not stimulate it.
- 3, 2, or 1 Made little effort to let parties have control over their fate. Ideas on collaboration-building were ineffective and unworkable. Blocked efforts at seeking collaborative solutions.

7B. GENERATE OPTIONS:

Generate ideas and proposals consistent with the facts and workable for opposing parties.

- 9, 8, or 7 If and when mediator generated options directly, options were responsive to parties' concerns, were timely, and were put forth only after making strong efforts to focus on and stimulate the parties' collaborative problem solving. An option was never presented with such force that parties would be likely to interpret it as the only one.
- 6, 5, or 4 If options were generated directly by the mediator, this was only after allowing for collaborative problem solving, and options put forth were responsive to parties' most obvious concerns. Showed parties how some proposals and compromises interrelated with ideas of other party.
- 3, 2, or 1 Tried to come up with solutions individually, without letting parties have control over their fate. Ideas on substance were ineffective and unworkable. Prematurely tried to come up with solutions, pushing parties toward compromises prior to establishing essential fact.

8A. ASSIST PARTIES IN GENERATING AGREEMENTS: Effectively help the parties move toward finality.

- 9, 8, or 7 Emphasized areas of agreement. Clarified and framed points of agreement. Assisted parties in evaluating alternative solutions. Showed tenacity throughout mediation. Packaged and linked issues to illustrate mutual gains from agreements. Clearly conveyed limitations to possible agreement and consequences of non-agreement for each party.
- 6, 5, or 4 Choices of what to present and manner of presentation did not compromise goals of resolution. May not have effectively helped parties get at some tough issues, thus sidestepping putting self and others in difficultly situations at the cost of missing possible opportunities for joint gains.
- 3, 2, or 1 Failed to allow full opportunity for parties to find their own solutions prior to indicating any evaluation of the case. Presentations not well related to goals of resolution. Was difficult to understand or unclear in expression. Appeared flustered and uncomfortable most of the time; little or no confidence expressed.

8B. GENERATE AGREEMENTS: Effectively move the parties toward finality and "close" an agreement.

- 9, 8, or 7 Asked questions to highlight unacceptable and unworkable positions. Consistent use of reality testing. Effectively helped parties to move past apparent impasses. If substantive suggestions by the mediator were necessary, the suggestions demonstrated expertise, were not premature, and were convincing.

- 6, 5, or 4 Choice of when to press for action did not compromise primary goal of party self-determination. Generally demonstrated understanding of information the parties offered. Avoided advising parties on some tough issues even when no reasonable hope remained that parties could achieve results without this help. Had significant difficulty moving the parties past apparent impasses.
- 3, 2, or 1 Did not initiate suggestions even when no grounds remained for believing that (within a reasonable time in the context of the case) parties could yet make mutually acceptable suggestions without direct intervention. Suggestions were premature or factually or legally questionable. Readily withdrew when challenged or questioned. Little or no confidence expressed.

9. MOVE THE PARTIES TOWARD AN IMPROVED RELATIONSHIP: Effectively help the parties move toward better relationships with each other and third parties.

- 9, 8, or 7 Encouraged and facilitated constructive interactions directly between the parties. Established atmosphere in which anger and tension were expressed constructively. Emphasized areas of improved mutual understanding. Progress of discussion demonstrated that mediator had helped improve the way the parties viewed each other. Helped the parties to understand the limitations of possible immediate agreements and consequences of a superficial approach for each party.
- 6, 5, or 4 Provided some opportunity for parties to interact constructively. Choices of what to present and manner of presentation did not compromise goals of relationship-building. Avoided asking some significant questions, thus sidestepping putting self and others in difficult situations at the cost of missing possible opportunities for improved understanding between the parties.
- 3, 2, or 1 Failed to lead parties toward greater mutual understanding. Did not initiate help; was inert rather than actively listening. Presentations not well related to goals of relationship building. Little or no confidence in the parties' ability to interact constructively, or to improve their future relationship, expressed.

10. MANAGE THE INTERACTION AND CONCLUSION: Effectively manage the concluding process

- 9, 8, or 7 Made all decisions about managing the meeting, including caucusing, order of presentation, etc., consistent with rationale for progress toward resolution. Concluding statement accurately conveyed necessary information regarding compliance and follow-up, in language appropriate to parties' culture and education.
- 6, 5, or 4 Controlled process, but decisions did not reflect a strategy for resolution. Did not dominate, but was not overwhelmed by factual or legal complexities. Concluding statement was adequately expressed and did not contain obvious gaps or inaccuracies.
- 3, 2, or 1 Encouraged discussion of issues or proposals with little relevance to potential agreements. Decisions on procedure and presentation were unjustified. Was confused or overwhelmed by factual or legal complexities.

ENDNOTES

- ¹ In one article, I reviewed three common methods of evaluating mediators, and found them all deeply flawed. See Honeyman (1990). See also Moffitt (2009), which offers a recent and bracing critique of some other approaches to mediator evaluation.
- ² See Honeyman (1988); Honeyman et al (1995); International Mediation Institute (2011).
- ³ For discussions of how vulnerable to “routinization” many parts of the conflict management field may in fact be, see Honeyman (2003) and the 16 accompanying articles in the special issue of the Penn State Law Review on this topic.
- ⁴ See e.g. Greatbatch and Dingwall (1990).
- ⁵ For why this is, see Honeyman (1990).

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Controlling Conflict Costs: The Business Case of Conflict Management

HELMUT BUSS

ABSTRACT

Badly managed (negative) conflict in the workplace results in substantial financial, human and credibility costs to the organization, its employees and its clients. However, few organizations measure those costs. This article presents data from conflict-cost research and provides selected related conflict-cost data from a case study conducted in an international organization. The article argues that effective conflict management requires some form of cost measurement and proposes a cost visibility and measurability matrix as a tool to assist organizations in identifying relevant conflict costs, to start collecting such data and to build organization-wide ownership to address conflict management as a business case.

KEY WORDS

Ombudsman, Conflict Management, Conflict Cost Controlling

INTRODUCTION

Some experts believe that unresolved conflict represents the largest reducible cost in many businesses, yet the financial, human and credibility costs of conflict in the workplace are not measured in most organizations nor pro-actively managed.

This article discusses the link between conflict management and conflict cost control, presents an analysis of costs of badly managed conflict and proposes tools to illustrate and measure such costs. A case study conducted in the United Nations High Commissioner for Refugees (UNHCR), provides additional empirical, quantitative and qualitative conflict data to illustrate such costs in an international organization.¹

I. Positive and Negative Conflict

This article discusses negative implications of unmanaged or badly managed conflict (“negative conflict”), that is those elements which impact negatively on human relations and the efficiency of an organization.² This distinction is important as conflict is a reality of our daily lives and conflict is thus inevitable in a human workplace.³ Disagreement occurs even in the best working relationship and challenging another’s ideas can strengthen an outcome. Though the claim that well-managed conflict (“positive conflict”) automatically results in efficiency gains is challenged by some⁴, it is generally accepted that the right kind of friction and constructive confrontation and arguments over ideas in an atmosphere of mutual respect can help any organization and has the potential to drive greater performance and creativity and help produce major innovations.^{5,6} The question how well conflict is managed and how conflict is addressed can either add to or take away from an organization’s bottom line. A KPMG Conflict Cost Study

published in 2009 distinguishes between *functional* and *dysfunctional* conflict costs. *Functional* costs are “positive” conflict costs which benefit an organization and *dysfunctional* costs refer to detrimental and avoidable “negative” conflict costs.⁷

Well-managed conflict⁸ in an enabling environment allows for issues to be tabled and discussed with objective language. Each party is empowered to state his or her position with confidence that the other party is genuinely listening, wanting to understand. Possible solutions are explored with open minds. In badly managed conflict, personal attacks are common. People can get visibly angry and feelings get hurt. Words can become weapons that leave nasty scars.

II. No Management Without Measurement

Effective conflict management requires measurement to determine its impact on an organization’s “well-being”, be it in terms of its financial situation, the well-being of its workforce or its reputation. Without measurement, conflict management risks being limited to addressing individual cases of workplace conflict, without identifying the underlying causes or providing data which would allow for a systemic and verifiable analysis of changes in the organization’s conflict-management culture.

As management guru Peter Drucker said: “If you can’t measure it, you can’t manage it”.

Many employers have introduced policies and tools over the past years to hold employees more accountable for their behavior at work. Such tools include zero-tolerance policies for wrongdoing in areas such as workplace harassment or fraud, protection against retaliation for whistleblowers and codes of ethics with accompanying sensitization and learning programs. Tools have been introduced to assist the workforce in dealing with workplace conflict management, such as the Ombudsman Office or Mediators. It remains unclear, however, whether such policies and structures have helped in effectively addressing some of the underlying causes of conflict let alone in strengthening organizational conflict management culture.

It is striking to note that while significant efforts have been made over recent years to increase the level of accountability for personal behavior, and to increase efficiencies through various forms of cost reduction, the cost of conflict in the workplace is in most organizations not considered a variable worth measuring nor is it pro-actively managed. Many leaders brush off incidents of low morale and unhealthy conflict as the unavoidable result of “doing business”.⁹ The problem is compounded in not-for-profit organizations, which build on their staff’s motivation for “the good cause”. The same applies to international bodies such as the United Nations.

Is it the discomfort, fear and negative associations surrounding conflict that keep organizations from addressing costs of conflict at work? Or are the costs just not visible enough to gain the attention they deserve?

Some experts believe that unresolved conflict represents the largest reducible cost in many businesses, yet it remains largely unrecognized.¹⁰ Slaikeu and Hasson consider that conflict management represents the “**greatest opportunity for cost control [for organizations] in the next century**”.¹¹

The question arises of how to alert organizational leaders to these apparent untapped opportunities for achieving better efficiency. This can be done by addressing conflict management as a business case. Addressing conflict in the workplace through integrated conflict cost management systems should be viewed as a *sine qua non* in achieving organizational effectiveness and enhancing productivity.

Recognizing the costs and underlying cost drivers will motivate change. If the underlying dynamics of badly managed conflict are understood and their related high financial and human costs established in a measurable way through qualitative and quantitative data as opposed to anecdotes, organizations will be able to develop tools which will allow them to:

- Clarify which data to collect and to measure.
- Measure the efficiency of its conflict-management efforts.
- Detect and address in a timely manner actual or potential costs of badly managed conflict.

III. Three Conflict Cost Categories

As stated above, unresolved conflict can create serious and quite varied consequences involving high financial and human costs.¹² All conflict costs can be allocated to one or more of the following three categories: organization, employees, and clients.

A. Costs to the Organization

By way of example a study conducted by the UK based **Centre for Effective Dispute Resolution (CEDR)**¹³ reveals that 80 percent of disputes have a significant impact on the smooth running of business.¹⁴

1. PRODUCTIVITY

Productivity suffers when unhealthy conflict persists.¹⁵ Research findings show that as much as 30 to 70 percent of a manager's time is spent simply dealing with employees in conflict.¹⁶ Those percentages are possibly inflated when compared to a survey conducted with 5,000 employees in various countries in Europe and the Americas by OPP, an international business psychology consultancy, jointly with the UK-based Chartered Institute of Personnel and Development (CIPD). The survey found that employees spend, depending on the country in which the survey was conducted, between 0.9 hours and 3.3 hours a week dealing with badly managed conflict, amounting to respectively 2.3 percent and 8.3 percent of the weekly working hours.¹⁷ The survey conducted by the author in UNHCR found that employees spend 2.7 hours a week in badly managed conflict. For UNHCR that means potential annual efficiency losses of some 30 million US dollars. These findings are not restricted to UNHCR. A similar survey conducted by the World Food Programme (WFP) resulted in comparable findings. Time spent in dealing with badly managed conflict, is time not valued and which does not contribute to achieving operational targets.

Productivity also suffers when a company redesigns workflow only to avoid people having to interact with one another.¹⁸ The resulting changed procedures or structures are rarely more efficient.

2. ABSENTEEISM AND PRESENTEEISM

"Absenteeism" in the context of this analysis is a cost, which stands for the number of unscheduled personal days taken off work by individuals affected by badly managed conflict. Research has shown that a high correlation exists between absenteeism, stress and needing a break from fighting with co-workers.¹⁹ Studies have shown that health care expenditures are nearly 50 percent higher for workers who report high levels of stress. While differences in individual characteristics such as personality or coping style need to be taken into account, there are working conditions that are stressful to most people, a work environment characterized by unresolved conflict being one of those conditions.²⁰ It appears, however, that few organizations engage in pro-active health-productivity management to allow for early detection of workplace-related health problems.²¹ Among the reasons for such lack of attention are a silo mentality in managing health care of staff, the lack of insight into the link between workplace conflict and health problems, or the absence of integrated data on staff health problems.²²

While absenteeism is the failure to report to work, "presenteeism" consists of showing up at work while ill or otherwise not completely fit for work and the productivity decline that can result from this condition. The term also refers to employees who "retire on the job" or people who have simply given up. They do not do the work expected from them and as a result cause additional workload for others in their area. It is only recently that research in occupational medicine has begun to suggest that work lost due to absenteeism is only the visible tip of an iceberg and that the hidden cost of presenteeism may be much greater.²³

3. TURNOVER

Researchers studying exit interview data on voluntary departures state that chronic unresolved conflict is a decisive factor in at least 50 percent of all such departures.²⁴ A work-life conflict study conducted in Canada found that it costs about 150 percent of one trained employee's salary to replace him or her.²⁵ Conflict accounts for up to 90 percent of involuntary departures, with the possible exception of staff reductions due to downsizing and restructuring.²⁶ In the United Nations, however, unresolved conflict seems to have less relevance in voluntary departure decisions.²⁷

4. REPUTATION

Badly managed conflict can seriously tarnish the reputation of organizations and companies. Lower motivation, productivity and service levels impact on competitiveness. Frustrated and poorly treated employees generally tell people inside and outside the organization and spread the word, often intentionally. Research has shown that nearly 80 percent of an organization's employees who are impacted by negative conflict tell other people inside and outside the organization. Today, social networks increase the risk of employees venting their anger.²⁸ Reputation affects an organization's ability to retain top talent and to secure stakeholder support, including from clients and shareholders or, in the case of many not-for-profit organizations, donor support.

5. OTHER COSTS

The amount of theft and damage in a company has a direct correlation to the level of employee conflict.²⁹

An internal analysis of costs of unresolved cases of harassment in the United Nations identified the following three quantifiable counts: (a) full pay for victims while absent on sick leave, (b) salary of employees assigned as replacement, (c) salary of colleagues providing support or (d) counsel to victims during working time.³⁰

B. Costs to the Employee

As we have seen above, unmanaged or badly managed conflict is stressful, reduces confidence levels, and produces anxieties and frustration. It leads to lowered job motivation, humiliation, and stress-induced psychological and physical illness³¹ with often dramatic consequences for the employee, family and friends and long term career hopes.

People involved in conflict experience a break in their interpersonal connections, and often feel alienated from each other and self-focused. They may avoid or attack each other in a number of different ways: withdrawing from each other, interrupting, not listening, or finding unnecessary fault with each other. This is

detrimental not only to the working relationship, but also to those with whom they work, as energy is used in fuelling the conflict rather than in furthering the performance of the individuals or the team. Aggravating conflict leads parties to avoid contact, relations are limited to the minimum, communication is not open, information withheld or wrong information provided.

"Presenteeism" is impacting negatively on employees in that it might worsen existing medical conditions, damage the quality of working life, and give impressions of ineffectiveness at work.

In the UNHCR survey two thirds of the respondents agree with the statement that badly managed conflict affects their efficiency at work and their personal well-being. A staggering eight in ten respondents feel stressed. Almost seven in ten respondents state that they suffer from burn-out as a result of conflict. Over half of the respondents feel that conflict changes their mood, makes them less friendly and balanced. The survey data confirms the findings from other research identifying a close relation between workplace conflict, emotional exhaustion and stress and potential for resulting absenteeism and employee turnover.

C. Costs to the Client

Clients are rarely referred to in the literature describing cost implications of workplace conflict. This is surprising as the implications of workplace conflict on the quality of products or services seems to be evident. Particularly in highly competitive industries, the negative implications on client satisfaction and a company's reputation can be substantial and become a question of survival. Most of these costs are hidden and difficult to qualify. However, there can be very visible consequences in cases of reduced motivation of staff leading to lower quality products or services, or mistakes that can even threaten clients' lives, be it due to faulty products or lower quality service in life and death situations. By way of example, refugees risk suffering or even dying if humanitarian workers cannot function properly and are unable to provide the required assistance in a timely manner due to unresolved workplace conflict.

IV. Cost Visibility & Measurability

Linking conflict cost visibility and measurability can help organizations to start gathering easily visible and measurable costs of conflict.

A. Cost Visibility

Visibility is defined in this analysis as how easily negative consequences can be spotted or recognized as a result of conflict in the workplace. The most visible negative consequences of conflict include easily noticeable costs such as legal fees and increased health costs.

As explained above, for many people the experience of badly managed conflict is alienating and disempowering. They feel themselves to be “not ok”, and experience a downward spiral into negative thinking and feeling. Physically people become ill, suffering from a range of stress-related illnesses. Resulting visible consequences include absenteeism, reduced motivation, increase of wasted time in dealing with unmanaged or badly managed conflict, and the departure of employees.³²

There are other less-visible consequences which tend to be the cumulative result of unmanaged conflict in the workplace, such as sabotage, damage to the company’s brand, the diminished ability of a company with a questionable reputation for treating its

employees fairly to attract top talent, the drain of the company’s intellectual capital as a result of turnover, missed opportunities, and the loss of key business³³ with damaging and long-term adverse impact on the company’s productivity. Many of these costs are typically overlooked because they are not immediately associated with conflict and are accounted for as part of the normal cost of doing business.³⁴

B. Cost Measurability

While there exist well developed analytical tools to monitor and analyze organizations’ income, expenditure and other financial data, most organizations lack systems monitoring cost of conflict. Most conflict theory literature only states that unresolved conflict leads to very high costs, without providing methods to measure those costs.

At the same time, there is an increasing amount of research based on empirical data from surveys among different groups of employees in different industries which attempt to quantify cost of conflict.³⁵

What is really needed is a tool which assists organizations to start measuring easily visible costs of conflict.

C. Matrix

The conflict visibility and measurability matrix below provides an easy overview of some of the more important negative consequences of conflict developed

Figure 1. Conflict Visibility and Measurability Matrix



above while relating them also to the measurability of cost implications, building on the research data presented.

The matrix shows: 1. That easy visibility of negative consequences of conflict cannot automatically be equated to easy measurability of the resulting costs (e.g. loss of motivation) and 2. That some of the more "hidden" negative consequences of conflict are easily measurable (e.g. accidents at work).

The matrix provides a flexible tool which should allow any organization to develop its organization-specific conflict visibility and measurability scenario, which might include another set of consequences of negative conflict and thus look different from the set of consequences presented in Figure 1.

V. Tools for Measuring Costs

A number of online sites offer tools to assist in measuring costs. Dana has developed a formula for organizations to calculate the soft financial costs of conflict.³⁶ Dana's formula builds on data such as the number of individuals involved in a particular conflict, average number of hours per week each individual spends involved in unproductive participation in conflict, including time distracted from productive work by thinking about or worrying about conflict, average annual salary of the employee involved in the conflict, and duration of the conflict in weeks per year.

Without assessing the use and precision of such assessment tools, they require information which is rarely readily available as companies are seldom tracking this kind of data. Furthermore, they require the existence of time management systems which are mostly unavailable outside the corporate sector. By way of example, most not-for-profit organizations do not use time sheets.

However, what is important is to start collecting and analyzing a selected set of easily visible and measurable data on consequences of unmanaged conflict. Those steps will assist the organization to obtain more precise data on conflict-related costs and allow taking targeted action to reduce those costs. It also carries the potential of initiating a domino effect that will draw organization-wide attention to the relevance of conflict cost controlling for the organization's efficiency and productivity.

Promotion of the need for conflict cost controlling in organizations requires the close association of Finance and Budget Departments to build ownership and to eventually include related efficiency gains or losses on the organizations' balance sheets. In most organizations the debate on conflict management appears to be too limited to HR Departments or conflict managers such as Ombudsmen.

Building on the above described nature of the costs and their potential relevance for conflict prevention or identification of efficiency gains, data which should be systematically collected and analyzed include (a) cost of employment-related legal proceedings and judgments against the organization, (b) sick leave records including analysis to which extent unmanaged conflict has contributed to the sickness or absence from work and related trends in specific sectors of an organization, (c) cost of bringing in temporary staff to cover for absentee staff, (d) systematic interviews with employees applying for relocation in the organization or leaving the organization to establish to which extent the action could have been the result of unmanaged conflict, (e) cost of recruitment and training of staff replacing colleagues who have left the organization as a result of badly managed conflict, (f) monitoring of theft, sabotage, fraud cases including the monetary value involved and possible linkage with unmanaged conflict and (g) monitoring of productivity in conflict prone work environments, e.g. operations subjected to change such as relocation and/or staff reduction (h) periodic surveys on conflict culture, sources of conflict and assessment of impact of unmanaged conflict on decision-making.

While some of the data collection can consist of using archival work measures such as counting the number of reported complaints of workplace harassment or days of absence from work due to conflict situations, other data can be collected by surveys such as periodic global staff surveys using self-reporting including the impact of conflict on work productivity.

For those who still believe that costs of conflict, or at least some of them, cannot be measured, Albert Einstein can provide some form of conciliation with his concept that "Not everything that counts can be counted, and not everything that can be counted counts".

CONCLUSION

Though it is impossible to calculate the exact cost of conflict, some of the related costs are measurable or can at least be estimated. The exercise of calculating an organization's relevant cost of conflict drivers is not only an instructive way to think about the costs of putting up with badly managed conflict, but also a basis to measure effectiveness of conflict management and to visualize the added value of conflict management tools including the Ombudsman Office. Another reason for trying to "cost the conflict" in a seemingly rational and number-driven business world is that no matter how compelling a case on cost of conflict might be, people from accounting, finance and other quantitative backgrounds prefer to make decisions on the basis of financial estimates before accepting conflict cost management as a business case.^{37 38}

ENDNOTES

- ¹ UNHCR was established on 14 December 1950 by the United Nations General Assembly. It is a subsidiary organ of the United Nations and mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. In more than five decades, UNHCR has helped an estimated 50 million people restart their lives. Today, a workforce of around 6,300 in more than 110 countries continues to help some 33 million persons. The research data is based on a survey sent to 500 UNHCR employees (response rate 42%), exploring the perceived frequency and causes of conflict in the workplace, reactions to conflict and its impact on work and personal well-being as well as mediation as a conflict management tool. For the complete research data see: Buss H. (2009), *Measuring and Reducing The Cost of Conflict in UNHCR*, Sion, cf. www.vdbio.ch/downloads/konfliktmanagement/The-sis_FINAL_180209.pdf
- ² Other authors refer to healthy/ unhealthy conflict; negative/ positive conflict; unproductive/ productive conflict or destructive/ constructive conflict: Capobianco S., Davis M. and Kraus L., Good conflict, bad conflict: How to have one without the other, *Mt Eliza Business Review; Summer 2004 – Autumn 2005; 7,2; ABI/INFORM Global*, 31.
- ³ Townend A. (2007), *Assertiveness and Diversity*. New York: Palgrave Macmillan, 58.
- ⁴ Beer Klaus P. (2007), *Was ist ein Konflikt?* (Extract from Klaus P. Beer, *Konfliktmanagement. Grundlagen und*

Zusammenhaenge, Bad Harzburg, www.beer-management.de/www.beer-management.de/docs/was_ist_ein_konflikt.pdf

[30 January 2011]: Beer does not question that under certain conditions conflicts can have positive results. He challenges, however, the position that conflicts are required and an essential condition for human development.

- ⁵ When asked to comment on positive outcomes of conflict, nine in 10 HR managers in Canada have seen conflict lead to something positive including: better understanding of others (77 percent), better solutions to problems and challenges (57 percent), improved working relationships (54 percent), higher performance in the team (40 percent), increased motivation (31 percent), major innovation/ idea was born (21 percent), see: Psychometrics Canada Ltd. (2009). *Warring Egos, Toxic Individuals, Feeble Leadership, A study of conflict in the Canadian workplace*, page 13, http://www.psychometrics.com/docs/conflictstudy_09.pdf [25 January 2011]; Sutton R. I. (2007), *The No Asshole Rule*. New York, Boston: Warner Business Books, 17.
- ⁶ Although the lesson itself is quite valid, the notion that the Chinese written character for conflict is composed of symbols for both danger and opportunity seems to be an American invention, cf. <http://www.pinyin.info/chinese/crisis.html> [25 January 2011]. http://chineseculture.about.com/library/symbol/np/nc_conflict.htm [25 January 2011].
- ⁷ KPMG-Studie (2009): Konflikte in Unternehmen verursachen hohe Kosten, see <http://www.kpmg.de/Presse/14276.htm> [10 February 2011]
- ⁸ Bobinski D. (2006), *The Hidden Costs of Conflict*, <http://www.hodu.com/conflict-cost.shtml> [25 January 2011].
- ⁹ The soft or indirect financial costs of conflict to organizations are typically overlooked because they are not immediately associated with conflict and are accounted for as part of the normal cost of doing business, cf. <http://www.conniebarnaba.com/costofconflict.html> [25 January 2011];
- ¹⁰ Cram J. A. and MacWilliams R. K., *The Cost of Conflict in the Workplace*, <http://www.crambyriver.com/coc.html> [25 January 2011].
- ¹¹ Slaikeu K. A. and Hasson R. H. (1998), *Controlling the Costs of Conflict: How to Design a System for Your Organization*. San Francisco: Jossey-Bass, xii.
- ¹² Pearson C. & Porath C. (2009), *The Cost of Bad Behaviour*. New York: Portfolio/ The Penguin Group, 51-109. A non-exhaustive list with reference bibliography can be found at: http://www.conflictatwork.com/conflict/cost_e.cfm [25 January 2011]
- ¹³ www.cedr.co.uk [25 January 2011].

- ¹⁴ "Conflict costs business £33 billion every year" (25 May 2006), cf. http://www.cedr.com/?location=/library/articles/20080916_262.htm [25 January 2011].
- ¹⁵ A loss of productivity of 25 percent reduces an average working week to fewer than 20 hours, see Cram, J. A. and McWilliams, R.K, The Cost of Conflict in the Workplace, <http://www.crambyriver.com/coc.html>, [25 January 2011].
- ¹⁶ There are a number of studies that estimate that 30 to 70 percent of a manager's daily activities are devoted to dealing with some form of conflict: up to 30 percent: Thomas, K. and Schmid, W (June, 1976). A survey of managerial interests with respect to conflict, *Academy of Management Journal*, June, 1976; 42 percent: Watson, C & Hoffman, R. Managers as Negotiators, *Leadership Quarterly* 7 (1), 1996; Some CEOs spend 70 percent of their time on conflict, see Taylor, R., Workplace tiffs boosting demand for mediators. *National Post* Mar. 17/03, see http://www.conflictatwork.com/conflict/cost_e.cfm [25 January 2011].
- ¹⁷ The project questioned 5000 full-time employees in nine countries around Europe and the Americas. The results of the survey are published in the report 'Fight, Flight or Face it' (July 2008); the average number of hours per week spent on dealing with workplace conflict, by country, ranges from 0.9 hours in The Netherlands to 3.3 hours in Ireland and Germany, cf. <http://www.opp.eu.com/conflict.aspx> [25 January 2011]; See also: Survey report October 2008, Leadership and the management of conflict at work, OPP, Chartered Institute of Personnel and Development (cipd), <http://www.cipd.co.uk/NR/rdonlyres/E426E492-7AED-46A6-B8F5-92B9CF9725C5/0/4545Leadershipconflict.pdf>. [25 January 2011]; the survey provides analysis from 660 organizations in the UK. The majority of those questioned were HR professionals and practitioners. The average number of hours per week for conflict management in that group ranges between 3.4 and 3.8 hours; S. Schlager proposes the model of the "5:4 – Effekt" stating that badly managed conflict amounts to a loss of 20 percent of working hours, resulting in loss of 20 percent of annual salary costs, see Schlechtes Arbeitsklima ruiniert Unternehmen, *presstext*, Wien, 17 September 2008, cf. <http://www.presstext.ch/pte.mc?pte=080917003> [25 January 2011]; Mediator P. Derfler found that employees waste 25 percent in dealing with conflict, cf. So gelingt der erste Schritt, *Berliner Morgenpost*, 21 December 2008, cf., http://www.morgenpost.de/printarchiv/karriere/article1003041/So_gelingt_der_erste_Schritt.html [25 January 2011].
- ¹⁸ Dana assesses the cost to amount to 10 per cent of staff costs, cf. Dana D. (2001), The Dana Measure of Financial Cost of Organizational Conflict, cf. <http://www.mediationworks.com/dmi/toolbox.htm> [25 January 2011].
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- ²¹ Multinational companies affected by reduced productivity and increased costs caused by chronic disease amongst the workforce have started to promote a culture of health making wellbeing of staff inseparable from business objectives and long-term mission. A conservative estimate of the benefits from improving staff general wellbeing indicates a likely annual return of three to one or more, cf. World Economic Forum (2007), Working Towards Wellness, Accelerating the prevention of chronic disease, cf. <http://www.pwc.com/extweb/pwcpublications.nsf/docid/4d1fb58eae85b71852572c600707c0c> [25 January 2011].
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- ²⁴ Duxbury & Higgins, Work-Life Conflict in Canada in the New Millennium: A status report, 2003, cf. <http://www.phac-aspc.gc.ca/publicat/work-travail/report2/index-eng.php#exec> [25 January 2011].
- ²⁵ Ibid, The sample consisted of 31,571 Canadian employees. The turnover cost for an employee is anywhere between 75 percent and 150 percent of the annual salary, see Philips, D.T. (1990), The Price Tag of Turnover. *Personnel Journal* 2162 (12), 58 - 61. Another more conservative estimate suggests that the cost of replacing an employee ranges from 29 percent to 46 percent of the persons annual salary, see ILO, The Economics of Health, Safety and Well-being, Barefoot Economics, p 15.
- ²⁶ Dana D., The Dana Measure of Financial Cost of Organizational Conflict, 2001, cf. <http://www.mediationworks.com/dmi/toolbox.htm> [25 January 2011].

- ²⁷ An attitude survey covering 15.000 United Nations officials showed that unresolved conflict ranks low in the lists of reasons for departure (cf. International Civil Service Commission (ICSC), 2008 Global Staff Survey on Recruitment and Retention, <http://icsc.un.org/> [25 January 2011]). However, as the survey is based on responses from serving staff and not on exit interviews, unresolved conflict as a reason for departure may be higher.
- ²⁸ Pearson C. & Porath C. (2009), *The Cost of Bad Behaviour*. New York: Portfolio/ The Penguin Group, 100-103. Pearson & Proath refer to their practice where they found that nearly 80 percent of a company's employees who are treated poorly tell people inside and outside the organization.
- ²⁹ Dana assessed the cost to be 2 percent of staff costs, cf. Dana D., *The Dana Measure of Financial Cost of Organizational Conflict*, 2001, cf. <http://www.mediationworks.com/dmi/toolbox.htm> [25 January 2011].
- ³⁰ (Source: UNHCR internal).
- ³¹ McClure, L. (2000). *Anger and conflict in the workplace: spot the sign, avoid the trauma*. Manassas Park, VA: Impact Publications.
- ³² http://www.conflictatwork.com/conflict/cost_e.cfm [6 August 2008].
- ³³ Including, in the context of UNHCR and other international not-for-profit organizations, donor relationships.
- ³⁴ http://www.conflictatwork.com/conflict/cost_e.cfm [25 January 2011].
- ³⁵ For an extensive compilation of recent surveys on costs or workplace conflict, violence and harassment conducted in European countries see: Di Martino V., Hoel H. and Cooper, Cary L., *Preventing violence and harassment in the workplace*, European Foundation for the Improvement of Living and Working Conditions, 2003, cf. <http://www.eurofound.europa.eu/publications/htmlfiles/ef02109.htm> [25 January 2011].
- ³⁶ The "Dana Measure of the Financial Cost of Organizational Conflict", Mediation Training Institute International, Prairie Village, Kansas, USA, <http://www.mediationworks.com/mti/cost.htm> [25 January 2011].
- ³⁷ Sutton, R. I., *The No Asshole Rule* (2007), New York: Warner Business Books, 45.
- ³⁸ Awareness of costs and a better ability to measure costs does, however, not provide an answer to the question how to reduce costs of conflict. A review of options to reduce costs of conflicts will be provided in the second part of this article.

Understanding the Research Process: A Guide for Conducting Ombuds Research

ALAN JAY LINCOLN

ABSTRACT

The article provides an overview of the research process and definitions of basic terms and methods that are common to most research projects. This discussion builds on the Research Agenda of the International Ombudsman Association. Several types of research are summarized and the strengths and weaknesses of each are discussed. Ethical treatment of participants also is addressed. The discussion of the research process is designed to increase awareness and encourage ombuds to initiate research designed to answer questions raised in the agenda.

KEYWORDS

Ombudsman, research process, International Ombudsman Association, research agenda, research goals and objectives, research ethics.

INTRODUCTION

The current paper was solicited by the Editors with several objectives in mind. We hope to provide an overview of the research process and define some of the basic terms and methods that are common to most research projects. This serves as a follow up to the IOA Research Agenda that first appeared in the second issue of JIOA. We also are hopeful that this discussion will increase awareness of the research process and encourage ombuds to initiate research designed to answer some of the questions raised in the agenda. This certainly is not a comprehensive review of everything there is to know about research. There is little discussion of the literature search, project design, data analysis, and interpretation of findings. We hope that what is presented serves as a good starting point for those who have not been active researchers but who might be ready to address the questions raised in the Research Agenda.

IOA Research Agenda. The IOA Board of Directors met in Houston in August 2007 to consider the draft of the IOA Strategic Plan. The plan included a section on Research and Scholarly Activity which highlighted two goals: 1) Be the leading clearinghouse for research and scholarly activity in the Ombudsman field and 2) Be recognized as the foremost subject matter experts and leading source of knowledge on the Ombudsman profession. These aspirations led to the request for an IOA Research Agenda “that would benefit IOA and its members and advance the profession.” The Research Agenda was approved by the board in the spring of 2008. An abbreviated version follows.

1. Information/research about the ombuds professional:

- Where did we come from (*academically, professionally*)?
- What attracts people to the profession?
- What can we learn about our personalities, values, interests and personal work habits?
- How do we differ from other professionals?
- How and why do we leave the profession?

2. Information/research about the ombuds profession:

- How are we perceived?
- Do ombuds have power? What kinds?
- How are we trained and socialized?
- What are the possible effects of certification?
- What are salary patterns like?
- What challenges do we face as a profession?

3. Information/research about ombuds practices:

- What tools and skills do we use to assist constituents?
- How do we apply SOP's and the COE in practice?
- What are "best practices" and why?
- How do we define and measure effectiveness?
- What value do our practices bring to our organizations?
- What is our impact on others?

Is It Research?

Human inquiry and research. Have you ever wondered how or why your colleagues became Ombuds? Are you curious about other Ombuds' workloads, salaries, stress levels, or office support? Have you wanted to know about the short and long term outcomes for the visitors involved in a particularly intense and difficult case? Do you think you may have spotted a pattern to the abusive or hostile emails and communications coming from many different bullying workers? Have you considered making a small change in your procedures and strategies, but are unsure of the possible impact on your visitors'? Are you curious about or mandated to demonstrate how your services are perceived and evaluated?

These are reasonable, interesting and useful questions that have something in common. Each one can be studied or investigated using one or more scientific research strategies. Being inquisitive is a valuable and probably a natural human quality. While inquiry is continuous, natural and useful, not all inquiry is scientific. We might seek answers to some pressing questions by drawing upon our own experiences or seeking answers from those with some perceived expertise. Our own experiences and casual observations about ombuds training may be limited or atypical and our memories may be faulty. Information gathered from perceived experts is fine as long as our perceptions about or their claims to expertise are legitimate. A scientific research approach, or research methodology, can help us avoid making many of the common mistakes of more casual inquiry including overgeneralizing and drawing premature conclusions. Understanding the research process not only helps guide our own research efforts; it also makes it easier to understand, interpret and apply other relevant research studies.

As we continue our discussion there will be an opportunity to become more familiar with the components of the research process. We will highlight some of the research strategies most relevant to the kinds of research that ombuds might carry out, some strengths and weaknesses of these methods and strategies, and examples of existing research and potential research projects from the IOA Research Agenda that focus on our ombuds colleagues, the ombuds profession, and ombuds practices.

The Building Blocks: Research questions, concepts, operational definitions, and variables.

RESEARCH QUESTIONS

The research question or questions help organize and focus a study into a narrow and manageable topic. The questions influence every part of the research project, from the literature search and study design to the data collection, analysis and interpretation of the findings. The research question helps us focus on “What do I need to find out about by the issue or topic”? Our Research Agenda basically is a list of potential research questions.

As an additional example, Harrison’s study of an organizational ombuds office (2004) presents the first research question this way:

“Thus we pose research question one: How successful are ombuds processes on conventional measures of success such as number of cases handled, decrease in litigation, student turnover, case disposition, and disputant satisfaction?”

CONCEPTS

If we are interested in studying the frequency of bullying behavior we might begin by identifying the concepts of interest. “Bullying behavior” is a term we use to describe a particular way of behaving. It is a shortcut to describing all the behaviors that could fall into that category. Since different people are likely to have different definitions of bullying behavior we need to define how we are using this concept in our own particular research. Do we want to include insults, threats, yelling, unwanted physical contacts, ridicule in front of others, the silent treatment, and so on? It is up to the researcher to make these choices which might be different in a previous or subsequent study. The important point is that what we mean by bullying should be clear to all. All readers will now know how we distinguish bullying from other behaviors.

OPERATIONAL DEFINITIONS

Once we have identified our concepts of interest we need to specify the observable and measurable conditions or events that guide the researcher’s measurement of that concept. Typically, there are several

potential operational definitions for the concepts we are interested in. Looking at our Research Agenda, we might use an operational definition of power that looks at the amount of change in specified behaviors of interest such as changes in the number of total emails sent, the number sent to a particular person, or the number of times an employee was on time. Think about the number of ways we might try to operationalize effectiveness. The operations chosen will have an immediate impact on the research process, including the methods used and the results. Schonauer (2010) provided this approach to an operational definition of effectiveness. “A number of quantitative measures related to effectiveness may be determined, including the percent of the population aware of the office, of those who know what issues may be raised, and of those who believe it is an independent, neutral and informal means to discuss and resolve matters within the organization.”

Operational definitions must be valid — do they truly measure what we claim they are measuring? Operational definitions must be reliable — the results of repeated measures will be the same if nothing has changed.

VARIABLES

When a concept has two or more identifiable levels it can be treated as a variable. The concept of gender has two obvious levels, male and female. IOA membership has four levels: member, associate, affiliate, and retired. There are measurable and observable indicators for each of these levels. For example, a member is defined as:

“A practicing organizational ombudsman who:

1. Adheres to the Standards of practice and Code of Ethics
2. In instances where the Ombudsman has other job functions for the organization, fulfillment of those duties must not compromise the independence, neutrality, confidentiality or informality of the ombudsman role; and
3. Has no job function which would make him or her an agent of the organization for the purposes of notice”

Harrison's (2004) measure of success included the number of cases, change in litigation, and student turnover. The levels of several of these variables are fairly obvious. Cases and turnover can be tabulated and change in litigation either can be tabulated (one in 2008, three in 2009, two in 2010) or perhaps measured as a percentage increase or decrease. Measurement of case disposition and disputant satisfaction are not as obvious. There are several possible levels of case disposition. Disputants' satisfaction will be even more difficult to identify and measure. He chose to link this to whether the students claimed that they got all, some, or none of what was desired. This was measured as part of the interview process.

Imagine for a moment that we want to study the frequency and intensity of bullying that a visitor is experiencing. Both intensity and frequency are concepts that vary from time to time and place to place, they are variables. We could measure frequency simply by dividing the levels into none or some. We could be more specific by classifying the frequency of bullying into more distinct categories such as less than once a week, two to five times a week, six to ten times a week, and more than ten times a week.

Perhaps another example would be helpful. The Friday Poll from The Ombuds Blog (2/12/11) asked readers about their own review process — when is it done and who does it. Notice how they have decided to measure the frequency of evaluations and the identity of the evaluator — both are variables.

How often does it occur?

- No set schedule
- Annually
- Every 2 years
- Other time period

Who evaluates?

- Direct report
- Ad hoc committee
- Standing committee
- Stakeholders (survey)

Research Goals and Objectives

PURPOSE OF RESEARCH

The general purpose of research is to find useful answers to our questions while using one or more of the appropriate scientific procedures or methods. When we choose to use a scientific approach to collecting data or finding answers we do so hoping that the data or information collected will be relevant, unbiased and reliable.

Our new information should be relevant so that it relates to the actual question or questions being asked. It should be reliable which implies that if the information were collected again it would be the same if there were no changes in the situation. A scale is reliable when it provides identical measures when the same, unchanged object is weighed again. Using scientific research strategies also helps us avoid intentional and unintentional biases in the information we collect. If we wanted to find out about the range in the number of years of professional experience of fellow ombuds we should not ask only those ombuds we know personally or who happen to be at the same conference session. These particular groups of ombuds might not provide us the best representative portrait. Perhaps younger ombuds are over or under represented at a conference. If so, the data likely would be unintentionally biased. Proper research strategies will also minimize any unfortunate tendency to intentionally bias the results by collecting data that is certain to support a particular opinion or viewpoint. Imagine that someone is hoping to find supporting evidence for the overall cost savings that an ombuds office can provide an institution. We might increase the chances of showing these potential savings by intentionally selecting only organizations that we know had multiple employee law suits prior to establishing an ombuds office. These intentionally biased selections could highlight the differences in potential legal costs before and after establishing an ombuds office. It is similar to assessing the public's view of a particular policy by interviewing only members of one political party or by demonstrating we are underpaid by only collecting the salaries of ombuds with over twenty years of service. For those interested in minimizing these particular problems, the section below on sampling might be helpful.

SELECTING A TOPIC FOR RESEARCH

Our IOA Research Agenda included a wide range of projects and research questions. This agenda provided one possible framework to guide potential research as we continue to learn more about ombuds, their work and the impact on their organizations. Some of these questions are exploratory, investigating an issue that we know very little about. There are few, if any, relevant studies in the literature to guide us. For example, if we want to find out what our colleagues' professional position was just before they became ombuds we are unlikely to find prior studies to build upon or to examine trends across time. Perhaps we are interested in the impact of work related stress on ombuds. In these situations our early research initiatives might simply try to identify key issues and factors, suggest possible patterns, and test the feasibility of conducting more sophisticated studies. Despite the scarcity of existing research on these topics with ombuds, we may not have to start from scratch. Are there studies that have asked the same question about other occupations? Can we find research showing what clinical psychologists, attorneys, nurses or clergy did prior to their current profession? Similarly, we can draw upon the relevant theories and methodologies that other stress studies incorporated. The first IOA survey that obtained salary information likely was an exploratory study. There may have been attempts to fine tune questions, assess whether respondents would divulge information, decide how to handle part time workers, and so on. Exploratory research can help us familiarize ourselves with an issue, satisfy our curiosity, and help refine the strategy to conduct a more careful and focused study.

Descriptive studies attempt to show us the patterns and range of the findings related to specific questions. By now the IOA has conducted repeated membership surveys looking at a number of issues related to our work...years on the job, salaries of men and women, size of office staff, the nature of our organizations. Identifying regularities and patterns helps us understand what is occurring at a given point in time or across a specified time span. Now we can describe patterns and trends in salaries of men and women in similar positions. Perhaps we find that men still are being paid 15% more than women, but the gap is closing over time. Being able to describe a situation or pattern is essential to taking us to another level of understanding about the issues in question.

Explanatory studies attempt to tell us why something is occurring or why the patterns look the way they do. If our descriptive studies showed us that male ombuds earned 15% more than women ombuds, we probably want to take the next step and attempt to find out why this is occurring and why the gap is closing. Perhaps we should find out if senior, higher paid employees who retire are disproportionately male thereby closing the gap over time. Perhaps women have approached their supervisors or Human Resources with requests for salary adjustments. These are two reasonable hypotheses that can be tested. With knowledge about patterns and trends we can focus on the reasons for change or lack of change. If we can develop what appear to be reasonable explanations of patterns and behaviors then we are in a better position to start using the research findings to consider impacting future patterns and behavior.

Applied research can be helpful in evaluating our programs. How well (what we mean by "well" needs to be specified) is a particular strategy working? Would visitors use our services again? Why or why not? As the data and information we gather through various kinds of research continues to grow and become more reliable we may be in the position to ask how we can change a situation. That is, can we intervene in a way that brings about desired outcomes?

Applied research not only provides information and guidance for possible policy changes but can be used to assess the impact of these changes. What might happen if we initiated civility training workshops, relocated our office, or added mediation to our available services? Providing an option for ombuds' certification is another example. We might anticipate the benefits of the new option but will need to verify the range and scope of the impact with follow up investigations.

You may have noticed that there has not been a discussion of values. It is difficult to answer the question "What should be done?" Even if we find that moving our office or adding mediation services would increase the use of our office, the decision to make those changes rests on more than the data generated by our research. If we actually found that women are still being paid less than men should we advocate for equity reviews? What are the possible impacts of an equity review? What other relevant factors need to be considered and addressed?

Given this wide variety of options, in practical terms, how do you choose a research topic? Most choices for potential research are influenced by one of the following:

1. Continuing work on issues from earlier studies
2. Personal experiences and professional concerns
3. The potential for research support and funding opportunities
4. Unusual events that spark our curiosity or need to know

Selected Research Methods

OBSERVATION

Most but not all behavior can be observed. In the majority of recent observational studies, the participants are aware that they are being observed. There are a variety of observation strategies that can be useful for ombuds related research. We will discuss three briefly.

Unobtrusive observation occurs when the people being studied are unaware that they are part of a research project. This technique might be considered when there is a concern that knowing about your observations might change the activities in question. While this is a legitimate concern, covert observation raises a number of ethical issues including the participants' anonymity, confidentiality, informed consent, use of data, and possible negative impact. Even if the behavior being observed typically is open to public view, the question about how the information will be used remains an issue. The more you can insure the anonymity of the participants and minimize potential negative impact; the more likely an Institutional Review Board (IRB) would approve the project. Ethical issues are addressed more fully later in this paper. While unobtrusive research might seem like an easy way to gain access to individuals or groups that are unlikely to agree to being observed, we should avoid this temptation.

What might be a legitimate use of unobtrusive observation? If our workplace has an increase in reported bullying or offensive communications we

could learn more about the workplace culture by observing employees' or students' language patterns, use of personal space, and casual physical contact in the cafeteria — behaviors open to public view. These findings might give us a sense of what is common behavior or perhaps considered appropriate in our setting. Knowing this we might have a better sense of what the boundaries are and what specific behaviors and activities might be perceived as harassing, bullying, or vulgar in the same organization.

Direct observations avoid some of these ethical dilemmas because the people being observed are told you are there and know what you are doing. They have the option of agreeing or refusing and can stop the observation at any time. Even if your presence is altering the typical behavior patterns, that effect may decrease over time as trust is developed. We certainly need to avoid any deception or misinterpretation about what we actually are doing in the study. With direct observation we can observe people in their natural settings. If we are interested in how employees in a small unit resolve minor disagreements and keep them from escalating we could seek approval to observe for a day or two. The employees would know we are there, what we are studying, and how we will treat their identity and the information gathered.

Participant observation involves the researcher taking part in the activities and the setting. Again, this may be direct or unobtrusive and the same ethical issues need to be considered. As an ombuds you participate in a variety of activities with colleagues at work, visitors, and other ombuds. If your participation also includes a research component or data gathering then others should be fully informed about your purpose, strategies, and possible use of the information. Maintaining confidentiality and anonymity is essential and consistent with our SOPs. In these situations you have an opportunity to have the same or similar experiences as the other participants. This is a good way to assess perceptions and experience the group dynamics. However, the researcher needs to focus on maintaining objectivity. As ombuds we participate in numerous mediations, negotiations, and discussions. If we want to know what strategies work best or how visitors react to different kinds of questions we can make these assessments as a participant observer.

Strengths of Observation

- Can help reveal the complexity and context of behavior in groups
- Allows for the development of behavior over time
- Helps us identify patterns of behavior
- Helps us understand why things are the way they are

Weaknesses of Observation

- Researcher's interpretation of what is observed may be biased
- Background information may be unavailable
- The group may be atypical
- Being observed may alter behavior
- Difficult to gain participants' trust
- Difficult to replicate most observational studies

CASE STUDIES

Case studies are most appropriate when the goal of the research is to get extensive information about the history or current state of a single unit. Research can be carried out not just with individuals but with a single group, organization, community, or even a specific culture. Newcomb (2010) provides us with a case study of one ombuds office.

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

Case review. I examined 752 cases over a three-year period and determined how many were litigation sensitive, using criteria that could be applied to any Ombudsman case. Only employment-law-related cases presenting high risk for litigation were evaluated, ...

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

Y = Yes, problem solved and client is happy

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

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

Only cases coded Y or N* (defined as positive outcomes) were included in the study." (Newcomb, 2010)

Strengths of Case Studies:

- Case studies can help us generate hypotheses.
- They provide detailed information on individuals or organizations.
- We may get a better understanding of process, change and relationships.

Weaknesses of Case Studies:

- Vital information may be missing with a particular case.
- Personal memories may be faulty.
- The case may not be representative of others and it is difficult to generalize.

SURVEYS

Even people with little or no interest in research have had experience with surveys. There are several types of surveys including written, oral, and electronic. As more people use the Internet, electronic mail, and personal communication devices electronic surveys are becoming more common. Various websites provide assistance in developing, distributing, and analyzing the survey. Recently JIOA used an emailed survey to ask all of our reviewers and authors about their experiences with the journal. Oral surveys often are used when there may be a need to follow up with specific questions since the interviewer can make anticipated and spontaneous adjustments on the spot. Oral surveys can be administered in several different

ways including face to face or by phone. The important issues to consider when conducting a survey are the format of the questions, whether the questions meet the goals of the study and answer the research questions, the appeal of the survey and process to potential respondents, and the cost. Palmquist (2011) suggests several strengths and weaknesses of surveys.

Strengths of Surveys:

- Surveys are useful in describing the characteristics of a large population.
- Surveys are relatively inexpensive and many questions can be included.
- They can be administered from remote locations using mail, email or telephone.
- Standardized questions make measurement more precise and allows for comparison between groups

Weaknesses of Surveys:

- Surveys are inflexible in that they require the initial study design (the tool and administration of the tool) to remain unchanged throughout the data collection.
- The researcher must ensure that a large number of the selected sample will reply.
- It may be hard for participants to recall information or to tell the truth about a controversial question.

SAMPLING

Probability sampling relies upon a random selection from all the different units in the research population. Each unit has an equal chance of being chosen. Our JIOA reviewer and author survey population was small enough that we did not draw a sample. We had a complete list and contacted the entire study population (all reviewers and authors). There are several types of probability samples including simple random, stratified random, systematic random, cluster, and multi stage

Simple Random Sampling is a good way to select a sample that will help us generalize about the results. It is an unbiased way of choosing who or what will be in a study. This may be done by drawing names or numbers, using a list of random numbers, etc. The important point is that every item has an equal chance of being selected. If there is a list of employee names, telephone or ID numbers we simply randomly select as many as we need for the sample.

Stratified Random Sampling involves dividing the population into similar subgroups (men/women; or faculty/staff/students; or medical staff/administration/patients) and then selecting a simple random sample from each subgroup. This helps insure that even subgroups that are very small will be represented in the study. We also will be able to make better comparisons across groups.

Systematic Random Sampling occurs when you select every nth unit until you have the sample size you need. This approach assumes the list of sample units is randomly arranged. If you have 1000 employees and only need 100 in the sample then, starting at a randomly selected point in the list, every 10th employee is selected. Starting at a randomly selected location, you could choose every fourth or fifth office in a large facility to fill a systematic random sample.

Cluster Random Sampling can be helpful when the study population is dispersed over a wide area and the researcher would have to be present at each site. If the surveys are being completed electronically or by mail, then this is not an issue. Rather than rely on a simple random sample which might require visiting each city, county, state, or country the population can be divided into clusters and then a random sample of clusters is selected for the study and all members of those clusters are contacted. A cluster sample also is helpful when there is no complete listing of every unit in the population or compiling a listing would be too costly. Cluster sampling is valuable when cost savings are more important than some losses in precision.

Cluster sampling is used when “natural” groupings occur in the population such as counties, city blocks, schools, hospitals, comparable groups of people, and so on. The sampled clusters ideally reflect the total population.

Multi-Stage Sampling. At times we may need to use several sampling techniques in the same project. Imagine having to sample all students in a state university system or all employees in a chain of hospitals for interviews. We might begin selecting a random cluster from the list of schools or hospitals. There may still be too many people to interview so we might consider a simple random sample within each cluster. In this case, we would have a two-stage sampling process.

Non-probability sampling does not provide a representative view of the population being studied. We do not know the probability of any particular item

being included in the sample and some items may be more likely than others to be selected. At times, these samples may be useful or the only option available. Non-probability samples include several variations. A convenience sample uses whatever cases are available. We might ask the first twenty people we see at the cafeteria if they have heard about the ombuds office. We could ask everyone at a conference session if they ever experienced sexual harassment. Here is one creative example that uses a convenience sample and at the same time avoids having to directly re-contact ombuds' visitors. "The Northern Illinois University campus newspaper recently announced the annual performance review of its Ombudsman, Tim Griffin. Pursuant to the NIU Bylaws, the University Affairs Committee of the University Council will conduct the review and is soliciting information and comments from students, faculty and staff before March 1." (Ombuds Blog, 2/12/11)

Purposive samples are chosen with the hope that they will be somewhat representative of the population of interest. We try to select who or what we think is typical. This involves making judgments about the characteristics of the sample without always having a history to review. Pollsters have learned over the years that certain precincts are better predictors of districts or states than others so they purposively look at those election polls or results to make predictions.

Quota samples try to replicate the full population on certain important characteristics. If we know that our professional organization membership is 40% male and 60% female then we could use a non-probability sample that mirrors those distributions. That convenience sample of colleagues at our conference session also could include 40% male and 60% female. While quota samples may reflect some important characteristics or patterns of the study population, they will not reflect all.

CONTENT ANALYSIS

Earlier we mentioned that an ombuds might have spotted what she thinks is a pattern in the abusive and bullying emails that targets are receiving. How can we verify that there really is a pattern? If a pattern does exist, how should we describe or characterize it? In this situation we need to examine the actual content of the messages. Berelson (1952) defines content analysis as "a research technique for the objective, systematic, and quantitative description of manifest content of communications." The technique can be used to identify words, themes, phrasing, images and concepts that appear in almost any type of media or communications. While we are interested in email content we could examine speeches, television shows, organization policies, graffiti, advertising and so on.

Content analysis is a way of coding information by dividing the content into manageable categories. Ideally, the categories should be mutually exclusive and exhaustive. Usually there is some pre-testing to develop the code list or categories. We might start our analysis of bullying emails by listing the varieties of bullying messages we have seen or heard about. What possible categories come to mind in this single example of a bullying email?

"You think you're so smart... well you're not. Everybody knows that you get by on your looks. You keep showing off your stuff and things could happen. Half the time your work is crap and I have to cover for you. I'm watching you and waiting for the day you screw up."

This and other messages might be threatening, degrading, vulgar, sexual, refer to personal appearance, and so on. As we read through some of the material of interest we revise as needed. If our collection of material is too large to include all the messages then a random sample of the material will work quite well. Content analysis of a bully's correspondence can help us gain some understanding of the intentions, style, motives, attitudes, and emotional state.

According to Palmquist (2011) content analysis has several strengths and weaknesses including:

Strengths of Content Analysis:

- looks directly at communication via texts or transcripts, and hence gets at the central aspect of social interaction
- can allow for both quantitative and qualitative operations
- can provide valuable historical/cultural insights over time through analysis of texts
- is an unobtrusive means of analyzing interactions
- when done well, is considered as a relatively “exact” research method

Weaknesses of Content Analysis:

- can be extremely time consuming
- often disregards the context that produced the text, as well as the state of things after the text is produced
- can be difficult to automate or computerize

EXPERIMENTS

The methods we have already discussed tend to lack control over the research setting. The experimental method introduces control and enhances the ability to infer cause and effect. Typically the researcher conducting an experiment changes one variable and maintains the other study variables. Any observed differences should be the result of the manipulation or change. This is not foolproof; the quality of the research design may impact the ability to determine causal effects. Several good overviews can be found by doing a web search of “experimental design”. The research setting also may impact the quality and power of an experimental study. A brief discussion here of three basic experimental settings may be helpful. Experiments can be conducted in a laboratory setting, in the field, or there may be opportunities for naturally occurring experiments.

Laboratory experiments control most aspects of the research and change only one variable (independent variable) to assess the impact of that change on another variable (dependent variable). If our theory or hypothesis is correct changes in the dependent variable (DV) are caused by the manipulation of the independent variable (IV). If we can be certain that only the IV is changing then it is the source of change

in the DV. While this may be a limited option for ombuds work, it does provide a model for other forms of experimentation. We might use a laboratory setting to study the impact of the room temperature (IV) on the speed of decision making in small groups (DV). We could select one hundred participants and randomly assign them to groups of four. Each of the groups would be observed in the exact same setting and asked to recommend a solution for the same problem. In half of the randomly selected group trials the room temperature is left at the normal 70 degrees and in the other half we set the temperature at 85. Nothing else is changed. Are there differences in the time it takes the two types of groups to reach a decision? If there is, then we have a reasonable explanation for the cause of these differences. Randomly assigning our participants to the groups maximized matching on important factors such as age, gender, expertise, and so on.

Strengths of Laboratory Experiments:

- Help us determine cause (IV) and effect (DV)
- Maximizes control of important variables
- Provides opportunities for replication

Weaknesses of Laboratory Experiments:

- The situation may be artificial which limits the ability to generalize
- Participants may try to do what they think the researcher wants them to do (demand characteristics)
- Participants (often students) may not be representative of the general population

Field experiments can minimize some of these problems while still retaining some of the strengths. The realistic setting allows for greater generalization and participants are less likely to react to the demand characteristics. When my office computer was upgraded I was able to listen to a variety of streamed music. I noticed that when light classical music was playing, not only was I more relaxed, but my visitors appeared to be as well. This suggested a possible research question that would work well as a field (my office) experiment. Social psychologists have designed experiments to study issues as diverse as aggression, shopping, and donating behavior in the field. We do

lose some control, but gain reality. When we manipulate people or situations that impact people and they are unaware of the intrusion in their routine we need to be vigilant of the guidelines for ethical conduct in research.

Natural Experiments might follow from events that occur outside of the research but lend themselves to follow up study and analysis. An advantage is that the setting is untouched by the researcher but replication is an unlikely option in most cases. We might measure the number of employee complaints that are filed with human resources on a rainy day, a day when it has rained two or more days in a row, and a day with no rain. If a university changes its residence policies by increasing the proximity of men and women in a dormitory or on a floor we may want to know what happens to the number of sexual harassment claims. We can look at the number of claims before and after the change and even add additional dorms or floors that did not change as a control. Adding the control dorms or floors would help us rule out changes that occurred due to the passage of time and other extraneous events. University housing is not a situation we would normally manipulate solely for research purposes but may occur naturally or as part of policy change. What happens when an organization announces that ten per cent of the workforce will be cut in the next ninety days; does bullying increase or decrease, do grievances rise or fall, does absenteeism increase or decrease, etc? Following the 9-11 attacks (or other significant events) we could have studied the number and types of complaints from or against international students or employees. The findings after 9-11 could be compared with the comparable data before 9-11. These suggested studies will not be as powerful as a fully controlled experiment because we cannot control all the relevant variables but we do have a real setting and an opportunity to measure the impact of a change in the environment on significant workplace behaviors.

Ethical Considerations

Research participants must be treated with dignity! IOA should consider establishing guidelines for the ethical treatment of research participants in any research conducted by or about Ombuds. We, as ombuds, should consider our role in reviewing and monitoring research by or about our colleagues. Articles published in JIOA that use data collected from or about the people we work with should conform to both recognized practices for ethical research and our SOPs. Most health, educational, and other institutions receiving any federal support also have Institutional Review Boards to examine and approve or exempt all research conducted by employees, students and others affiliated with the institution. What needs to be done when that is not the case? IOA guidelines for ethical research would be helpful. In their absence the responsibility for publishing research that adheres to ethical standards rests with the Editors.

The generally accepted guidelines for ethical research are presented here.

“Guiding principles, accepted as essential requirements for the ethical conduct of human participant research are outlined in the 1979 Belmont Report: Ethical Principles and Guidelines for the Protection of Human Participants of Research by the National Commission for the Protection of Human Participants of Biomedical and Behavioral Research.

- **Respect for persons:** incorporates the ethical convictions that individuals are treated as autonomous agents and persons with diminished autonomy are given protection. The conditions that follow from this principle are requirements for voluntary consent to participate in research, informed consent to participate in research, protection of privacy and confidentiality, and the right to withdraw from research participation without penalty. [Also see Lincoln, Rowe, and Sebok (2009).]
- **Beneficence** (do no harm): implies an obligation to protect human participants from harm by assessing the risks and benefits of the research, designing studies so risk is minimized and potential benefits are maximized.

- **Justice:** requires that the potential risks of research should be born equally by the members of society that are likely to benefit from it. To apply this principle, the [researcher] must evaluate the characteristics of the study population and ensure that (1) the research project does not systematically select specific classes or types of individuals simply because of their ease of availability or their compromised position as opposed to reasons directly related to the problem being studied and (2) the research project does not systematically exclude a specific class or type of person who is likely to benefit from research participation or in whom the results of a specific kind of research are likely to be applied." (UMass Lowell IRB, 2011)

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Recovery From Conflict

CYNTHIA M. JOYCE

ABSTRACT

Some visitors to ombuds offices are deeply traumatized by a conflict, the resolution process, and/or the aftermath, and may continue, sometimes for decades, to seek satisfactory solutions to their problem. A challenge for ombuds is how to help these visitors by supporting their recovery from the damaging experience of their conflicts and preparing them to move beyond the situation. This article offers ideas on how to identify this type of visitor, explores possible causes for the inability to recover from conflict, and provides strategies that may help these visitors.

KEYWORDS

ombuds, conflict, recovery

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A visitor contacts the ombuds office upset about disrespectful behavior by a former employee 20 years ago. The visitor has taken numerous steps over the years to try to address the problem, including contacting a variety of individuals and offices on and off campus, without satisfaction. The visitor has been unable to recover emotionally from the situation.

Many people come to ombuds offices after having taken a variety of informal and/or formal routes to resolve their conflicts. Despite these efforts, a number of visitors do not feel their conflicts have been resolved or are unsatisfied with the outcome. A few exhibit significant psychological symptoms as a result of the conflict, the resolution process, and/or the aftermath and continue, sometimes for decades, to seek solutions to their problem. The challenge for ombuds in these situations is how to help this latter group of visitors recover from the damaging experience of their conflicts and prepare to move beyond the situation. Although these visitors may need some form of psychological intervention to truly recover, and referral to therapists is one tool ombuds have in this type of situation, there are other steps ombuds can take that might help visitors.

The conflict resolution literature, including that on international, violent, and/or intractable conflicts, apologies and forgiveness, offers ideas on how to understand the inability to recover from conflict and how to help visitors in this situation; in addition, a number of concepts may be helpful from the realms of psychiatry and emotional intelligence. This is intended to be a preliminary, exploratory overview of the issue. As always in ombuds work, more in-depth research would be enlightening. Some case vignettes are offered to try to connect theory with actual ombuds experiences.

Initial Indicators of Inability to Recover From Conflict

A former graduate student calls, distraught over treatment by a faculty member over 30 years ago and the effect this treatment has had on his life.

The first indication that an ombuds might be dealing with a visitor who has been unable to recover from a problem is how long ago the problem happened; these problems may have occurred decades previously. The visitor also frequently exhibits strong emotions, including anger, frustration and hurt, and often insists on re-telling his/her story during every interaction with an ombuds. As mentioned above, the visitor may have taken a number of steps to address the problem, and in some cases, apparent resolutions may have occurred (for example, a formal process may have been completed). Sometimes, these visitors are labeled as “frequent flyers” or “forum shoppers,” as they keep trying different offices to get a satisfactory resolution to their problem. Often the repeat visits and multiple phone calls by these visitors means that ombuds spend more time on these cases than on many other cases combined.

One concept that may be useful in understanding these visitors is that of a “high-conflict personality,” as described by Bill Eddy of the High Conflict Institute. These individuals often have difficulty getting over conflicts. Eddy (www.highconflictinstitute.com) gives the following clues to help a third party identify that a high-conflict personality may be involved:

“when...

..... you find yourself reacting strongly or outside your normal behavior

..... it seems that no matter what you do, the conflict never gets resolved

..... you are personally and repeatedly attacked or criticized in an intensely negative way

..... you feel you have to defend yourself...”

Why Can't People Recover?

A faculty member believes she has been the victim of discrimination and harassment by administrators, colleagues and staff in her department. Over the course of years, she has contacted numerous individuals and departments on campus and has filed numerous complaints internally and at the state level. Email exchanges have been constant, vitriolic, and addressed to the highest levels of administration and government.

A number of factors may contribute to a visitor's inability to recover from a conflict, including the effects of conflict itself, personal characteristics of the individual, and the responses the visitor gets from others. It may be helpful to think about these visitors as having experienced a traumatic event that has led to psychological damage; in its most extreme form, this can result in post-traumatic distress disorder (Volpe 1996). Even though psychological trauma and PTSD usually result from extremely serious events (natural or human-caused disasters, accidents, etc.), visitors who are unable to recover from difficult conflicts can share some of the characteristics of victims of more obvious trauma.

1. EFFECTS OF CONFLICT

In general, the experience of conflict has negative effects on the people involved, especially in situations with identity challenges, helplessness, and/or unfair treatment. Aaron Beck, in his 1999 book *Prisoners of Hate: The Cognitive Basis of Anger, Hostility, and Violence*, describes a tendency of people to fall into “primal thinking” in conflict situations. In this type of thinking, the threat of the offender and the vulnerability of the victim are often highly exaggerated, with the victim tending to perceive “the adversary as wrong or bad, and the self as right and good” (p. 26). A negative, rigid, irrational and distorted perception of the other person leads to what Beck calls the trap of a “prison of hate” (p. 8). This type of thinking is exacerbated by mental illnesses such as paranoia.

Building on Beck's work, Bush and Folger state in their book on transformative mediation, *The Promise of Mediation* (2005, p. 49), that “conflict brings a sense of relative weakness...: a sense of lost control over the[ir] situation, accompanied by confusion, doubt,

uncertainty, and indecisiveness." Conflict also produces "a sense of self-absorption;" people become "more suspicious, hostile, closed, and impervious to the perspective of the other person" (Bush 2005, p. 49, italics in original).

Clearly, these effects of conflict can make it more difficult for people in general to engage productively in conflict and recover from the experience of conflict.

A more serious effect of conflict is when it threatens the identity of the people involved. Stone, Patton and Heen (1999, P. 112) write about identity challenges in the context of difficult conversations and describe identity as "the story we tell ourselves about ourselves." They hold that threats to identity can be deeply unsettling and, through a rush of adrenaline, can result in feelings of anxiety, anger, depression, hopelessness, fear, and a desire to flee the situation. Threats to identity may even cause individuals to let go of a part of their self-concept, which can lead to intense emotional effects akin to mourning. Kraybill (1995, p. 7) affirms that "painful conflict" damages the identity of participants and affects self-esteem.

Northrup (1989, p. 55) states that "threats to identity may cause or escalate conflict" and goes on to discuss the role of threats to identity in the "development, maintenance, and transformation of intractable conflicts." In particular, Northrup and other authors discuss the need of humans to be able to predict and control their lives. Northrup describes identity as an:

"abiding sense of the self and of the relationship of the self to the world. It is a system of beliefs or a way of construing the world that makes life predictable rather than random. In order to function, human beings must have a reasonable level of ability to predict how their behavior will affect what happens to them. The alternative, a random world with no rules, would be deeply frightening and impossible to operate in." (p. 55)

He points out the "tendency of human beings...to establish, maintain, and protect a sense of self-meaning, predictability, and purpose" (p. 63) and how stressful, threatening and frightening threats to identity, sense of self, and an inability to anticipate the future are (p. 66).

Volpe describes one kind of trauma as resulting from betrayal by institutions on which people depend, which can violate expectations and, like other traumatic events, be unexpected and uncontrollable.

In the same vein, Seligman (1975), an early researcher into helplessness, defines it as "the psychological state that frequently results when events are uncontrollable" (p. 9). He goes on to state that helplessness results in a lack of motivation, reduced ability to learn, depression and anxiety. Goleman, in *Emotional Intelligence* (1995), also discusses the deleterious effects of helplessness, which can be emotionally overwhelming and contribute to permanent changes in the brain (p. 204).

Lack of power can lead to less predictability, more helplessness, and more threats to identity. As a result, an unequal distribution of power can contribute to the intractability of conflicts and to the inability of individuals to recover from conflict.

Finally, a visitor's perception that he/she has been treated unfairly or unjustly can contribute to an inability to let the situation go. A visitor can experience intense frustration and long-standing resentment through a lack of understanding about what happened or why, disbelief that appropriate policies and procedures were followed, and a perception of inequities in treatment or outcomes. The problem is compounded when, in the absence of clear information about why a decision was made, a visitor makes the assumption that the situation was handled inappropriately.

Two long-time, experienced, highly regarded employees learn that a new hire in their department was given a significantly higher salary than they receive despite less experience in the work. Pursuing informal and formal options does not produce any change in the situation, despite what they perceive as obvious unfairness.

2. PERSONAL CHARACTERISTICS

Reconciliation after Violent Conflict: A Handbook (Bloomfield 2003) points out that each person's response to trauma is highly individual and depends on his/her "pre-traumatic personality structure, personal resources, coping strategies, understandings of the cause of the event, resilience and extended community support structure" (p. 79); Bloomfield adds that gender and age also may be relevant factors. Other factors that can increase the likelihood of a visitor's inability to recover from conflict include the high-

conflict personality pattern described by Eddy, a visitor's inability to assess a conflict situation accurately, a victim mentality, a fixation on the problem, mental illness, brain chemistry, and brain changes.

The ability of a visitor to understand a conflict and assess it realistically is critical in laying the ground work for successfully resolving a problem, and lack of this ability can contribute to a visitor becoming locked into the problem. Issues that interfere with effective assessment include:

- Lack of insight into the situation; inaccurate perceptions of the problem
- Inability to understand others' perspectives on the situation
- Unwillingness to consider his/her own contribution to the problem; denial
- Extreme focus on unfairness and/or inappropriate treatment
- Unrealistic expectations for the outcome, such as a desire for revenge.

How the visitor sees the situation can affect recovery from conflict. One approach to conflict management, narrative mediation, holds that people think about their experiences in stories and tend to develop "conflict-saturated" stories about difficult situations that can become entrenched in their minds (Winslade 2000). People may portray themselves as victims in these stories; as the discussion above on helplessness suggests, it can be particularly difficult to recover from a conflict situation if a visitor has a victim mentality and sees him/herself as completely vulnerable, with no control over the situation and no responsibility for what happened. Some personality disorders, such as narcissism, may exacerbate this pattern by making a victim mentality more likely.

It also can be problematic when a visitor's identity is based, at least in part, on remaining angry and/or not letting go of the situation. Tint (2010) points out that people who focus on the past or who have fixed perceptions of past events may be less able to let go of the past and participate effectively in conflict resolution efforts.

Underlying problems such as mental health issues or addictions may contribute to ineffective assessment of conflict situations, and given the frequency of

these diagnoses, they can affect a significant proportion of the populations ombuds serve. A large study in the United States revealed that 50% of respondents reported at least one of 14 psychiatric disorders, including mood disorders and substance abuse, over the course of their lives (Kessler, 1994). Grant (2004) presents data indicating that almost 15% of adult Americans have one or more personality disorders.

Psychiatric disorders can affect responses to conflict in a variety of ways, depending on the disorder. Schizophrenia, for example, which can affect visitors in academic settings, in particular, can include disorganized thinking, diminished contact with reality, and hallucinations. Narcissistic personality disorder is noted for the difficulty in seeing other viewpoints. Paranoid personality disorder involves distrust of others, which can lead to negative assumptions about the cause of a conflict and steps taken toward resolution. Borderline personality disorder can have profound effects on interpersonal relationships, including a tendency to idealize or demonize others; this can disrupt effective assessment of conflicts.

Eddy's description of high-conflict people includes intense and variable emotions, insistence on blaming others, a victim mentality, refusal to take responsibility for the situation or a solution, inflexibility, inability to see shades of grey, inability to see others' points of view and even contempt for others, and self-centeredness. He also points out the inability of this personality type either to accept a loss due to a conflict or recover from it. To add to the challenge, high-conflict people often have personality disorders that exacerbate the situation.

Differences in brain chemistry that might not reach the level of a mental health disorder may affect someone's response to conflict. For example, reduced levels of serotonin, a key neurotransmitter in the brain, have been associated with depression, anxiety, and increased "perceptions of unfairness" (Canul 2008, p. 6), which can affect accurate assessment of a conflict situation.

Bartlett (2010) points out that a failure to forgive a past wrong can lead to repetitive thoughts and dwelling on the past. Just the act of thinking about a negative incident in the past reduces brain functioning, creativity and executive function, defined as the "cognitive-control center that organizes thought and regulates behavior" (p. 2).

Conflict itself may cause changes in the brain, at least in part through the inevitable emotional responses to conflict situations. In addition to emotional scarring from earlier life stresses, which may make individuals more susceptible to changes in the brain due to traumatic events later in life (Goleman 1995), damage may be done to the brain by revisiting a negative experience over and over again. Beck (1999) and Luskin (2000) describe a process in which someone takes personally an action that hurts him/her, blames the offender for his/her emotional responses, and then creates a narrative that casts him/herself in the role of a victim, all while under the influence of stress-related hormones. "Every time we remember a hurt, we release stress chemicals into our bodies," which prepare us to take fight or flight action (Luskin 2000, p. 23). In the short run, these chemicals affect the ability to think clearly; in the long run, these chemicals can change the brain and also affect physical health. When emotions, which predispose us to take action, are combined with an inability to take "constructive action," they can cause feelings of repeat victimization, and our bodies suffer without the outlet of action (Luskin 2000, p. 23). In the extreme case of post-traumatic stress disorder, there may be an over-secretion of the primary stress hormone that mobilizes fight/flight responses (CRF, or corticotrophin-releasing hormone) (Goleman). Through this mechanism, the body is prepared for an emergency that does not exist. This mechanism also can result in hyper vigilance, or increased sensitivity to possible threats (including psychological) to the individual (Goleman), which can precipitate or worsen conflicts.

An employee had a negative interaction with a coworker and insists on re-telling the story at every meeting and during every phone call. Everything that has happened in the workplace since the incident is colored by the event. The visitor firmly believes that he has been a victim and has no responsibility for the situation. The visitor's preoccupation with the situation and the stress the employee feels seem to contribute to a reduction in job performance, a breakdown in interpersonal relationships, damage to the visitor's reputation, and eventual job loss.

3. PREVIOUS RESPONSES BY OTHERS

Certain responses by third parties can increase the likelihood that a visitor will not recover from a conflict. A number of authors (e.g., Bloomfield, Hale) describe common responses by third parties to a visitor struggling with conflict recovery as "get over it and move on." Third parties may respond in this way in part out of frustration with these visitors, especially if a number of steps have been tried already to resolve the problem. In addition, third parties may not recognize the emotional impact the conflict has had on the visitor. Unfortunately, the suggestion to move on from the conflict is unrealistic and just exacerbates the situation, as a visitor feels unheard and disrespected and loses trust in others.

Another dynamic that can be especially difficult occurs when the other person in a conflict does not believe anything inappropriate was done, but the visitor feels seriously harmed. An example of this would be when an employee loses his/her job during a probationary period due to poor performance. The visitor may feel personally damaged by this experience, which may have significant ramifications for the future, while the supervisor believes that the action taken was reasonable and appropriate and followed all guidelines and procedures. In particular, if the visitor sees him/herself as a victim but others in a situation do not, this can make recovery even more difficult, since inevitably the visitor will not get responses from others that are satisfactory.

What Can Help People Recover from Conflict? What Can Ombuds Do?

Bloomfield points out that, just as someone's response to conflict is very individual, the path each person's healing needs to take is unique. The questions ombuds face in situations involving visitors unable to recover from conflict include: What can help someone heal? How can the individual let go of the wounding experience in order to move forward with his/her life? How can the ombuds help with these processes? Sometimes the other people involved in a conflict situation are unavailable or unwilling to help in these processes, in which case the ombuds may

need to work with the individual to develop options for emotional recovery on his/her own. In other situations, the other party is willing and able to help with steps toward recovery from the conflict.

1. HELP FOR AN INDIVIDUAL VISITOR

A number of approaches may help someone recover from conflict by addressing damage to identity and feelings of helplessness, and by mitigating previous unsatisfactory responses by third parties. Some important elements of an effective approach include:

- Recognition of the perspective of the visitor; allowing the visitor to talk about what has happened
- Recognition of the emotional trauma experienced by the visitor
- Understanding the visitor's concerns about justice and unfair treatment
- Responding to concerns about reputation and dignity
- Helping the person develop options for next steps, especially options for helping the visitor change his/her perspective on the situation.

Eddy talks about "EAR," or "empathy, attention, respect," as a useful approach for high-conflict people. In this approach, a third party focuses on expressing empathy for the visitor's situation, giving the visitor time and attention with patience, and showing respect for the visitor and his/her perspective. Interestingly, Eddy suggests that a diagnostic tool to identify when the "EAR" approach is most important is noting when a third party, such as an ombuds, does not feel empathetic and interested in offering attention and respect due to the challenging characteristics of the visitor.

In "History, Memory, and Conflict Resolution," Tint points out the importance of allowing people in conflict to talk about the past and the emotions they feel about past events. In particular, helping visitors remember not only the painful past but more positive memories can help them move out of experiences of loss and a victim mentality. As third parties in conflict management know, it can be extremely difficult for

visitors to think about a positive future without giving them time to explore the past; in fact, encouraging people to focus on the future prematurely can cause resistance and further "entrenchment in the conflict" (Tint 2010, p. 395). Tint also points out that people with more power in a situation may be more willing to look ahead to the future, so allowing a visitor to discuss the past may help to address power inequities that may be present.

The transformative mediation approach includes recognition of the damage done to the parties by conflict and suggests empowering visitors by helping them gain control of the situation, make decisions, and take action (Bush 2005). Ombuds can help by brainstorming ideas with a visitor that may help him/her move past the conflict, such as meeting with the other person, writing a letter to the other person expressing the visitor's concerns, asking for an apology, or asking for some sort of restitution. A pointed question that can help is "What can help you feel better about this situation?"

In particular, it can be very helpful for ombuds to provide information to visitors on how decisions were made that adversely affected them; this can counter the negative assumptions people often make about decision-making processes that have negative consequences.

Psychotherapy may help a visitor trying to recover from conflict, and ombuds can provide a list of mental health providers in their community. Treatment for psychiatric disorders that might contribute to the situation and the individual's perception of the situation is very important, but therapy also can help a visitor come to terms with a situation that is not going to change. Northrup and Bloomfield point out that psychotherapy can help with changing the identity of someone caught in conflict, for example, by helping someone move from a self-concept as a victim to one of a survivor or by helping someone whose identity is built around the conflict recognize this and possibly change it. Luskin encourages a process that includes recognizing that the other person did not cause the visitor's emotional response, acknowledging that humans make mistakes, changing the visitor's emotional response, and changing the visitor's identity as a victim.

Since the story a visitor tells him/herself about the conflict can contribute to entrenchment of his/her views, the narrative mediation approach suggests ways to help visitors develop a new, more positive narrative about the situation through the following steps:

- Ask the person to tell his/her story.
- Help the person see the history of the problem, implying that there were experiences before the problem started and a possible conclusion in the future.
- Demonstrate compassion for the person and his/her story and respect for the person's ability to take control over his/her story.
- Show the ability to see contradictions; avoid simplifying the people involved.
- Talk about the effect of the conflict on the person.
- Help the person "deconstruct" the conflict story by asking questions about the story, helping the person see the problem as external to the parties involved (thereby reducing blame), re-assessing roles assigned in the story (to move away from a "victim/offender" mentality), and asking if the person wants the conflict story to continue in his/her life, given its effects on him/her.
- Help the person develop a new story by looking at exceptions to the conflict story (e.g., examples of incidents where interactions went well) and looking forward to the future (Winslade 2000).

There is significant literature on forgiveness as an individual process that can help someone recover from traumatic experiences including conflicts. Enright clarifies that forgiveness is not forgetting and is not the "diminishing of angry feeling across time;" rather, forgiveness is "active and takes energy" (p. 3, online version). He also states that forgiveness involves mercy and letting go of the need for justice. Hartwell describes forgiveness as involving acceptance of pain that should never have happened, empathy toward the other person, and a letting go of resentment, and points out that an apology is not essential for forgiveness to take place (p. 3, online version). (See more on apologies, below.)

Hartwell also suggests that "anger...is the root emotion of both forgiveness and revenge...[which are] opposite side[s] of the same coin" (p. 3, online version). When faced with a visitor who seeks revenge, rather than forgiveness, ombuds can voice this visitor's interest and talk about the practicality of revenge, the possible consequences for the visitor and the other person, and the appropriate limits of the ombuds role.

A visitor believes that a colleague made false accusations about sexual harassment against him. He has contacted a number of departments on campus to complain about the situation, with the ultimate goal of revenge by having the colleague lose his/her job.

2. INVOLVEMENT OF OTHERS IN THE CONFLICT

Apologies and reconciliation are two options that involve others in the conflict situation and that can help individuals recover from conflict. Ombuds can assist by facilitating these processes.

If the other person in a conflict is available and willing, an apology can help someone who feels wronged recover. Schneider (2000) points out the paradox that an apology cannot actually change the past and undo past damage, yet it still has the potential to repair the damage to the victim in a way that nothing else can. What makes it work in Schneider's view is role reversal; in an effective apology, the wrongdoer gives up power and puts him/herself at the mercy of the other person. Schneider considers important elements of apologies to be sincerity, an acknowledgment of wrongdoing and an acceptance of responsibility for the harm done, visible emotional effect on the wrongdoer, expression of the vulnerability of wrongdoer, the wrongdoer not offering a defense of his/her actions, a promise that the situation will not reoccur, and sometimes restitution. Even if the person who may have taken the hurtful action is not available or willing to apologize, sometimes the ombuds can arrange an apology from someone else in the institution that might serve the same purpose.

Reconciliation is a well-known concept, especially in international conflicts, and is a conflict resolution process designed to promote healing and restore peaceful relationships. John Paul Lederach (1997), a highly-

regarded writer and practitioner in international conflict resolution, defines reconciliation as a process that involves four often contradictory elements: truth, mercy, justice, and peace. In contrast with forgiveness, which is an individual process, Enright describes reconciliation as a “coming together by two people,” (p. 3, online version). Bloomfield states that reconciliation refers both to a process and the end goal and “redesigns the *relationship* between us” (p. 12, italics in original).

Reconciliation may help address many of the reasons why visitors are traumatized by conflict, such as strong emotions and challenges to reputation, dignity, self-esteem, and identity. Kraybill sees the key part of reconciliation as restoring identity, which involves recognizing emotions, especially of hurt and anger, then reclaiming self-worth and “the validity of one’s needs.” “Sometimes the[se] needs are emotional or symbolic,” for example, acknowledgement of mistakes and/or apologies (p. 8). Hauss (2003) sees reconciliation as an opportunity to help the parties “explore and overcome the pain brought on during the conflict...” (p. 1, online version).

Reconciliation often refers to cases with clear-cut offenders and victims. This is rarely true in ombuds work, but the principles of reconciliation may guide facilitation of meetings to resolve a situation. It is difficult to move towards reconciliation when only one party to a conflict is willing to engage in the process, which can happen, for example, if the situation happened in the distant past, but sometimes another representative of the organization can participate.

Lederach points out that whenever only one of the elements of reconciliation is emphasized by the parties involved, it can be challenging to resolve the situation. This can occur, for example, when a visitor only focuses on justice; it can be difficult for others in the situation to meet the visitor’s needs around this element of reconciliation, when the other elements are ignored.

Lederach highlights a key paradox of reconciliation: the simultaneous acknowledgment of a painful past and a vision of a positive future. Acknowledging this with visitors may help, as ombuds recognize the visitor’s pain, accept that changing the past is not possible, and help move the visitor to envisioning what a positive future might look like and how to get there.

CONCLUSION

Greater understanding of why some visitors are unable to recover from conflict can enrich ombuds practice and imbue standard elements of the ombuds skillset, such as listening with empathy, supporting discussion of the past, and brainstorming action steps, with greater importance. The concepts and strategies outlined here may help ombuds personally, as we deal with visitors unable to recover from conflict; may help these visitors, even partially, move on with their lives; and may help our institutions as they grapple with these often intractable situations. There is hope that ombuds, as one resource involved among many, can make things better, tempered by a sober realization that the extensive time and energy these situations demand may not lead to improvement. Despite substantial efforts on the parts of many people, none of the examples cited in this article have been resolved.

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Book Review

James T. Ziegenfuss, Jr., and Patricia O'Rourke, *The Ombudsman Handbook: Designing and Managing an Effective Problem-Solving Program* (Jefferson, NC, McFarland & co., 204 pp., 2011, softcover, \$38))

TOM KOSAKOWSKI

Last year, Chuck Howard's book gave legal context to the work of organizational ombudsmen in the United States. However, there has not yet been a comparable guide for practice and management issues of organizational ombudsmen, the booklets and study binders created by IOA and its predecessors notwithstanding. *The Ombudsman Handbook* by James T. Ziegenfuss, Jr., and Patricia O'Rourke aims to fill this gap. The book is written specifically as, "a manual for those establishing the position" and it offers a management view of the profession.

It must be noted initially that the authors do not focus on organizational ombudsmen alone. Instead, the book is intended for ombudsmen more broadly, even those ombudsmen that go by other titles, such as patient advocate, complaints officer and customer satisfaction manager. Moreover, the book is written not just for practicing ombudsmen, but also managers and executives, especially in human resources, and professors and students in business and public administration programs.

The scope of the book reflects the backgrounds of its authors. Ziegenfuss's consulting experience and research has focused on external ombudsman programs that serve patients and customers. O'Rourke's background is in public relations and communications and she has worked as an ombudsman at a large teaching hospital, McGill University Health Centre. They see ombudsmen primarily as a tool for improving customer care, either directly or via improved employee satisfaction and efficiency.

The book is organized into three sections. The first section gives some context to the current ombudsman landscape. Chapter One identifies the internal and external factors that are driving more organizations and industries to develop ombudsman programs. The second chapter discusses mechanisms for handling complaints and how ombudsmen are involved in those processes.

Chapter Three tracks the development of ombudsman programs in several different industries and marks the first mention of organizational ombudsmen. Here, the authors acknowledge the skepticism that many classical, government and legislative ombudsmen have toward the purported independence and confidentiality of organizational ombudsmen. In Chapter Four, the authors define the three core activities of ombudsmen: complaint processing, education and training, and consultation. This gives the work of ombudsmen context and sets up the application of other management theories later in the book.

The second section of the book is a guide for human resources managers on implementing an effective ombudsman program. Chapter Five illustrates the development of a formal ombudsman program within a corporation, from assessment through design and startup. Chapter Six explores how ombudsmen derive and use authority and power. Many practicing organizational ombudsmen assert that they do not have any actual power, but the authors identify six distinctive sources of power that underlie the work of ombudsmen.

Chapter Seven offers a glimpse into a formal corporate ombudsman's typical day. Here, organizational ombudsmen will recognize many aspects: initial case consultations, background research, visitor counseling, meetings with senior executives, networking with other ombudsmen, making referrals, and facilitating meetings. The next chapter will be useful for prospective ombudsmen as it summarizes 14 different cases that further exemplify ombudsman work with customers and employees. Chapter Nine identifies seven critical leadership competencies that ombudsmen support to provide value to their organization.

The third and final section of the book provides information for practicing and aspiring ombudsmen. Chapter 10 deals with practical considerations such as office location, reporting lines, independence, for-

mality and confidentiality. In Chapter 11, the authors survey ethical and legal issues, with particular focus on the IOA Code of Ethics.

Chapter 12 considers how organizations evaluate and control their ombudsmen using the framework of Peter Drucker's theories on management. Chapter 13 reviews the impact of an ombudsman on the various subsystems of an organization revealing wide-ranging effects. Chapter 14 wraps up a number of additional topics including the job benefits for practitioners, and concludes with a forecast of continued growth in the ombudsman field.

The book may not be an appropriate introductory text for the organizational ombudsman field because there is no clear summary of the important differences between the several kinds of ombudsmen. The index, for example, does not have an entry for either 'organizational ombudsman' or the 'United States Ombudsman Association,' the primary professional group for classical and legislative ombudsmen. It is not until the second chapter that the authors begin to draw any distinctions between types of practice and then it is only between 'formal' and 'informal' ombudsmen. Although there are several references to IOA Standards of Practice and Code of Ethics, there is no explanation of how or why these differ from other ombudsman standards. For this reason, readers without some basic understanding may be confused.

True to its subtitle, the book is most relevant where it offers new perspectives for creating and administering an ombudsman program. The analysis of how ombudsmen should be evaluated, for example, is especially valuable. The authors apply Peter Drucker's approach to management control to create a guide for ombudsman program designers and supervisors using seven design characteristics. (i.e., ombudsman managerial controls should be economical, meaningful, appropriate, congruent, timely, simple and operational.) The authors conclude that, because an ombudsman's work is personal and people-based, a control system should reflect the basic nature of the work. Similarly, the book provides an innovative analysis of the various positive effects an ombudsman has on an organization's subsystems — those 'unquantifiable' benefits that concern many ombudsmen. Practicing organizational ombudsmen will gain new insights from the authors' analyses and the book is destined to become an essential resource for the field.

AUTHORS' BIOGRAPHIES

Ariel Avgar is an Assistant Professor at the School of Labor and Employment Relations at the University of Illinois. His research examines the relationship between organizational arrangements and practices, including conflict management, and multi-stakeholder outcomes in healthcare organizations. Dr Avgar's work has been published in the Ohio State Journal on Dispute Resolution, the Industrial and Labor Relations Review, the British Journal of Industrial Relations, and Medical Care, among other outlets. He holds a Ph.D. in Industrial Relations from the Cornell University School of Industrial and Labor Relations and a B.A. in Sociology and an LL.B in Law from Hebrew University.

Helmut Buss works as Ombudsman for the United Nations Funds and Programmes (UNDP, UNFPA, UNICEF, UNOPS). Prior to his appointment as Ombudsman in early 2010, Mr. Buss worked for over 20 years for the United Nations Office of the High Commissioner for Refugees (UNHCR) in various functions including as a Head of UNHCR's Legal Affairs Service. Mr. Buss holds a Law degree from Hamburg University, an MBA degree from the Open University Business School in the United Kingdom and a Masters degree in Mediation from the Institut Universitaire Kurt Boesch (IUKB) in Sion, Switzerland. He did extensive research on conflict cost controlling. "Measuring and reducing the cost of conflict at work in UNHCR" is the title of his Masters thesis.

Howard Gadlin has been Ombudsman and Director of the Center for Cooperative Resolution at the National Institutes of Health since the beginning of 1999. From 1992 through 1998 he was University Ombudsperson at UCLA. He was also director of the UCLA Conflict Mediation Program and co-director of the Center for the Study and Resolution of Interethnic/Interracial Conflict. Prior to coming to UCLA, Dr. Gadlin was Ombudsperson and Professor of Psychology at the University of Massachusetts, Amherst.

An experienced mediator, trainer, and consultant, Dr. Gadlin has years of experience working with conflicts related to race, ethnicity and gender, including sexual harassment. Currently he is developing new approaches to addressing conflicts among scientists. He co-authored "Collaboration & Team Science: A Field Guide."

Dr. Gadlin is past President of the University and College Ombuds Association (UCOA) and of The Ombudsman Association (TOA). He is currently the chairperson of the federal Inter-agency Alternative Dispute Resolution Working Group steering committee.

Christopher Honeyman is managing partner of Convenor Conflict Management, a consulting firm based in Washington, DC and Madison, Wisconsin. He has served as mediator, arbitrator, or in other neutral capacities in more than 2,000 disputes since the 1970s, and as a consultant to numerous academic and practical conflict resolution programs in the United States and other countries. He also directed a 15-year series of Hewlett Foundation-funded research and development programs in ADR, of national or international scale. Chris is co-editor of *The Negotiator's Fieldbook* (ABA 2006), which is widely regarded as the most thorough reference work in the field; co-editor of *Rethinking Negotiation Teaching*, (DRI Press 2009) and *Venturing Beyond the Classroom* (DRI Press 2010); and author or co-author of more than 60 published articles, book chapters, and monographs on dispute resolution ethics, quality control, and infrastructure development. He has held a variety of advisory roles for professional organizations, and is currently vice-chair of the Independent Standards Commission, International Mediation Institute, The Hague, Netherlands.

Cynthia Joyce has been University Ombudsperson at The University of Iowa for five years and has been a member of IOA since 2005. She works with a half-time faculty colleague to provide ombuds services to a population of 50,000 students, staff and faculty. She has been a mediator for 20 years and also provides meeting facilitation and workshops in conflict management concepts and skills, emotional intelligence, and difficult conversations.

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.

Alan Jay Lincoln served as the first Ombuds at the University of Massachusetts Lowell and is Professor Emeritus of Criminal Justice and Criminology. Alan served as Special Assistant to the Graduate Dean and on the Institutional Review Board for human subject research. He is the Founding Editor of the Journal of the IOA. Alan earned master's degrees in both social psychology and sociology and a doctorate in sociology. He completed an NIH Postdoctoral Program in Family Violence and also held a Fulbright Professorship in the Netherlands. He is the author of numerous articles and three books on crime and violence, and is a former journal editor of Library and Archival Security. Alan is a certified mediator and currently holds a five year appointment as a member of the Fulbright Specialists Roster. He now works as a Consulting Ombuds.

David Miller is the 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 recently joined the International Committee of the IOA, 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.

Gerald R. Papica received his Ed.D. from Nova Southeastern University specializing in Child and Youth Studies. He also has a Master's of Public Administration from TN State University. Gerald assumed the ombudsman position with the TN Commission on Children & Youth in 2001. He has been a civil service employee for the last 24 years. Gerald has backgrounds in Child Protective Services cases, mediation, and program evaluation. He is an active board member and a conference organizer of the United States Ombudsman Association (USOA).

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.

Robert (Bob) Shelton is a native of Kansas, and has post-graduate degrees from Boston University in religious ethics, as well as graduate study in Switzerland and travel in the Middle East. A professor in Religious Studies at the University of Kansas, he chaired the department for ten years, and is a key faculty member of the Peace and Conflict Studies Program. He served as K.U.'s University Ombudsman for 18 years, and was very active in the University and College Ombudsman Association. He was President of UCOA in 1993-1994, and assisted in development of their Ethical Principles of College and University Ombuds.

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

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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.

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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

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- Accept for publication with minor revisions as indicated
- Accept for publication after major revisions by author(s)
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- Seek additional input from the Associate Editors

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Editor, JIOA
David Miller, Ph.D.
384 Decanter Bay Road
RD3 Akaroa 7583
New Zealand
+64 3 304 7567
decanterbay@gmail.com