

EMBRACING CONFLICT

Organizational Ombuds on Campus

Presenters:



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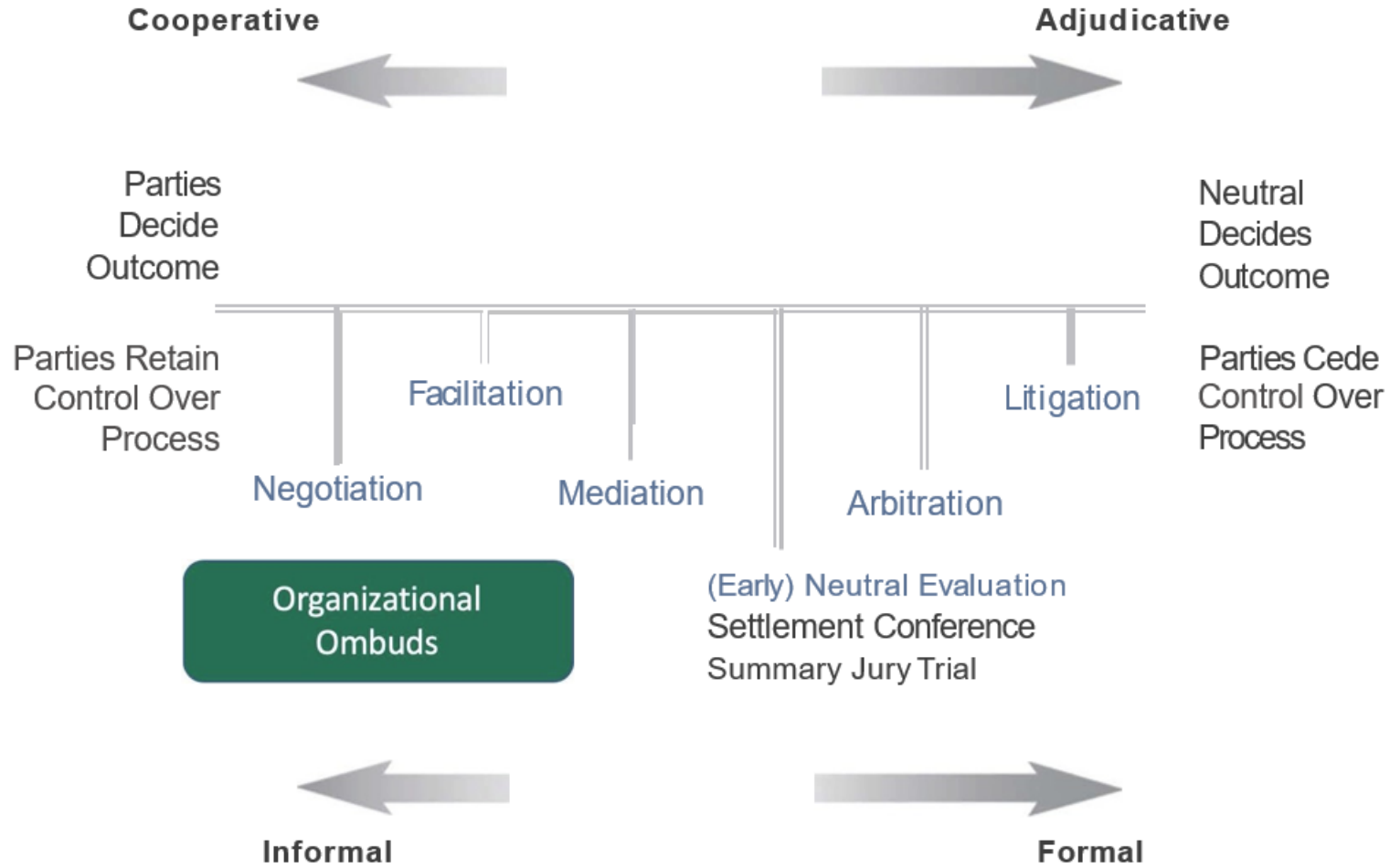


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Key Issues

1. What is an Organizational Ombuds Program?
2. Confidentiality and Imputed Notice
3. Why Create an Ombuds Program?
4. How Ombuds Function on Campus
5. Ten Reasons to Love Ombuds

The ADR Continuum



Effective Issue Management Systems

- Litigation
- Arbitration
- Neutral Evaluation
- Mediation
- Negotiation
- Administrative complaints (EEOC, whistleblower, ADA, OSHA, OCR)
- Non-judicial complaint processes (inward) (audit, HR, compliance, OIEC)
- Informal (inward) (HR, **ombuds**, conflict coaching, training, counseling)
- Customer service hotlines (outward)
- Dialogue (inward) (individual, **ombuds**, counseling)

Courtesy of the ABA DRS Ombuds Committee Law School Task Force

Avoiding Confusion— Types of Ombuds Programs

Classical

ORGANIZATIONAL

Advocate

What is an Organizational Ombuds?

An *independent* and *impartial* person with whom someone can speak *confidentially* and *informally*, to receive information, guidance, or discuss options about organization-related issues, concerns, or questions.

Dual Responsibilities

1. Help people with their issues, concerns, or questions
2. Help the organization by helping to surface issues (while maintaining confidentiality with visitors) and by identifying systemic issues

What Organizational Ombuds DO

- Listen and help sort/frame issues to help people navigate situations
- Help people address the full spectrum of issues
- Receive and provide information confidentially
- Identify options and explain process and procedures
- Develop and evaluate strategies to help people:
 - ✓ Access and navigate resources
 - ✓ Report misconduct
 - ✓ Manage or resolve conflict
- Communication coaching
- Mediation and facilitated discussions
- Trend and other reports for systemic change
- Provide early warning of issues for the organization

Organizational Ombuds Have NO AUTHORITY to:

- Receive notice of claims against the organization
- Conduct investigations
- Make management decisions or policy
- Advocate on behalf of any individual or take sides
- Substitute for formal channels
- Take corrective action to redress sexual harassment, violence or other misconduct

ABA Support for Ombuds

RESOLUTIONS: 1969, 1971, 2001, 2004, 2017

DRS Ombuds Committee:

- ❖ *Initiation of ACUS study leading to Recommendation 2016-5*
- ❖ *ABA Resolution 103 (2017)*
- ❖ *Legislative Subcommittee's Ombuds Model Act Initiative and monitoring of proposed federal legislation*
- ❖ *Awareness and training programs*
- ❖ *Ombuds Day celebrations*

Confidentiality and Imputed Notice

- Contract based on terms of the ombuds program
- Charter, brochures, FAQs should set forth the scope and authority of the ombuds and those areas in which they are not authorized to act. (No “actual authority.”)
- Organization’s policies and procedures should be consistent with charter and other ombuds program documentation.
- Wide publicity of the charter and other program documentation so that program is not seen as having authority it does not have. (No “apparent authority.”)

Recent Developments on Title IX

- ▶ **Title IX Regulations effective 8/14/2020**
 - ▶ Eliminated concept of “Responsible Party”
 - ▶ Actual knowledge now required
 - ▶ Title IX Coordinator
 - ▶ By “any official of recipient who has authority to institute corrective action on behalf of the recipient”
 - ▶ Commentary specifically mentions ombuds: Institution has discretion to determine who meets this standard

Recent Developments on Clery Act

- ▶ **Clery Act - New guidance issued on 10/9/2020**
 - ▶ Withdraws the 2016 Handbook for Campus Safety and Security Reporting
 - ▶ Department of Education determined “it created additional requirements and expanded the scope of the statute and regulations”
 - ▶ Standard is who “has significant responsibility for student and campus activities”
 - ▶ It is up to the institutions to decide who is a Campus Security Authority; reasonable determination accepted

Why Create an Ombuds Program?

- A safe place that permits confidential communications—and organizations need such a place
- Information and guidance to people to address conflict and surface issues
- A knowledgeable resource who can deal with all types of issues in all sectors
- Accessible and confidential without barriers to access
 - ❖ Uncertainty
 - ❖ Fear of retaliation
 - ❖ Sensitive and personal issues (e.g. race, equity and health)
- Identifies (without breaching confidentiality)
 - ❖ Systemic and campus climate issues
 - ❖ Patterns and trends

Why Create an Ombuds Program?

- The “Blue Uniform” problem
 - ✓ “Police” role of formal channels for the institution
 - ✓ No confidentiality; duty to report
 - ✓ Deans, HR, compliance, administration, hotlines
- Limited use of hotlines
 - ✓ Hotlines not suitable for many HR-type issues
 - ✓ Hotlines not suitable for discussing options, coaching, follow-up questions
- Need for multiple, anonymous, and confidential channels

Why Create an Ombuds Program?

- Uncertainty causes non-reporting
 - ✓ “Am I right?” syndrome
 - ✓ “What will happen to me?” syndrome
 - ✓ Inexperience and not knowing where to go
 - ✓ Diversity and different cultural approaches and assumptions

Why Create an Ombuds Program?

Fear of retaliation causes non-reporting

- Even if there is no official retaliation, there can be
 - ✓ Peer retaliation
 - ✓ "Below the radar" retaliation
 - ✓ Inhibiting "ripple" effect of hearing stories of retaliation elsewhere

Why Create an Ombuds Program?

An Organizational Ombuds Program provides a place where people can receive confidential information and guidance ***BEFORE*** acting, which makes it more likely that an issue will be surfaced even if someone is not identified as the person who raised it.

It Has Never Been More Important for:

- ❖ People to have a confidential place to raise concerns and seek information
- ❖ Leaders to learn about important, unknown or difficult to detect problems and trends, in order to better manage an organization
- ❖ Organizations to be — and to be seen as — fair, ethical, and trustworthy

How Ombuds Function on Campus



Ten Reasons to Love Ombuds

10. Liability Mitigation

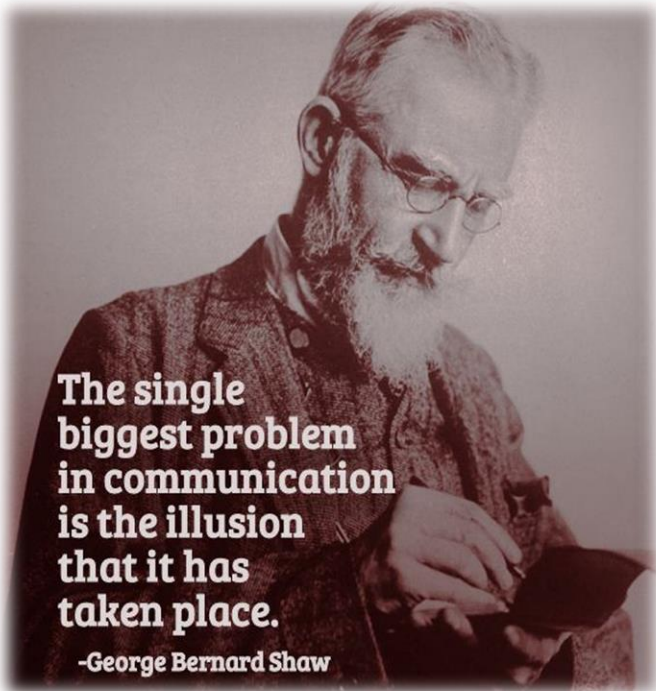
- Pre-whistleblowers can be heard and issues referred/redressed
- Claims avoidance and cost mitigation are resulting outcomes
- Resolution (even partial) yields increased efficiencies

9. Compliance Enhancement

- Share timely information with leadership
- Detect and surface compliance gaps, glitches and gaffes



Ten Reasons to Love Ombuds



8. Reputational Awareness

- Avoid unnecessary reputational damage for both organization and individuals

7. Relationship Restoration

- Restart, reframe and reboot dialogue
- Restore DIRECT lines of communication
- Facilitate “systemic” dialogues



Ten Reasons to Love Ombuds

6. Organizational Health & Wellness

- Surface conflict and equip parties to handle constructively
- Deploy useful tools, techniques and assessments
- Foster ethical organizational cultures

5. Culture Shaping & Community Building

- Facilitate authentic stakeholder dialogues
- Give voice to underrepresented and unheard interests
- Model constructive approaches



Ten Reasons to Love Ombuds

4. Identify Trends

- Discern and share significant trends
- Spotlight organizational disconnects
- Equip individuals with tools responsive to trends (e.g. de-escalation skills)

3. Bridge the “Signal Gap”

- Speak “truth to power”
- Provide credible insights (while preserving confidentiality)
- Develop communication processes and ground rules



Ten Reasons to Love Ombuds

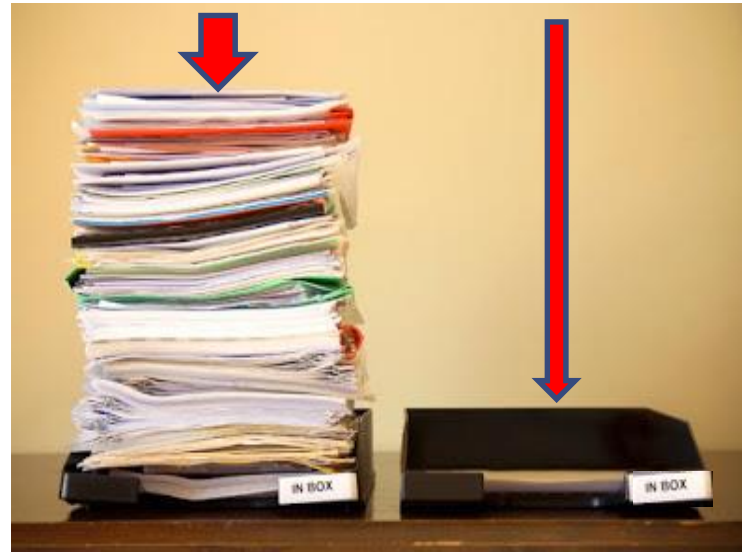
2. Strategic Communication Partner

- Illuminate where/when to focus
- Trusted sounding board

1. Healthy Conflict Engagement

- Reflective practice
- Restorative approach
- Enhanced individual engagement

Without Ombuds vs With Ombuds



YOU NEVER LOSE WARS NEVER FOUGHT



Questions?

