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UCI Ombudsman: The Journal 1994

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Shirley Crawford

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Introduction

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INTRODUCTION

Ron Wilson - University of California, Irvine

This past year budget cuts, lay offs, and work-related stress caused a significant increase in the expectations of the University community members who brought their problems to the Ombudsman office for resolution. In tandem with this rise in the individual's reliance on the Ombudsman's services, the Ombudsman Offices experienced an "efficiency critique" on their intrinsic value versus their extrinsic operational costs, i.e., staff, hours, and space. Within this on-going debate, we continued to do our job.

As we attempt to uncover who and what we are versus who and what we are not (or "who we should be" as defined by persons bringing agendas that are not consistent with our roles), one reality surfaces immediately -- no matter who and what we know ourselves and our offices to be, the crux of the problem remains the adjustment of this fact to the latent hopes of those who interact with us. The task is difficult because one inclusive philosophy or one point of view cannot be formulated or advanced. Therefore, the Ombudsman's role will simultaneously remain simple and complex -- simple when our grievant leaves jubilantly, but complex when the dilemma is unassailable from all sides.

Furthermore, the assignment appears overwhelming because of the present-day conditions, i.e., workplace violence has become common place; sex harassment has almost received parity with racial and handicap discrimination; and University Administration has grown as many layers as the Armed Forces divers ranks.

Nevertheless, in the midst of this murky milieu, the Ombudsman holds to integrity; idealistically embraces the true meaning of the role; and prudently ferrets out the misuse of the office for an individual's self-serving purpose. Moreover, as "advocates for equity," ombudsmen must acknowledge that the Ombudsman office is their primary client and one who demands a strict adherence to the principles that serve as justice's foundation. Without this recognition and this allegiance to an office that stands as a bulwark of justice, the Ombudsman will lose both credibility and the authority to facilitate fair and impartial decisions.

However, the Ombudsman is not without recourse. As you will discover, the authors of the 1994 Journal articles seek to construct "avenues of conscience" that Ombudsmen might follow while treading the

paths that lead toward equitable resolutions. These different avenues describe topics as diverse as the difficulty in case preparation; the necessity for accountability of actions; the effects of office decor on clients; the importance of quality control; the formidable task of policy development; the identification of behavior patterns that escalate conflict; the interminable struggle for racial and gender equality in education; the different types, styles, and manners of mediating a dispute; the art of reflection as a tool for improving mediation practices; and the importance of installing safety measures in the Ombudsman office. Consequently, the articles that follow are worthy testimonies of the Ombudsman practitioner's desire to improve mediation skills and to share this information with colleagues:

In [A Case Study](#), Andrea Briggs prepares mentally for the difficult and unwelcome responsibility of addressing a sensitive, professional misconduct charge against a professor from a former student. In this particular incident, Andrea's dilemma lies in her professional experience "suggesting" that these types of allegations are frequently untrue versus her professional commitment "demanding" a correct response that is based on University policies and procedures. Therefore, Andrea believes firmly that an Ombudsman should answer the question that was asked and not dismiss it because of an innate sense of its legitimacy or credibility. Moreover, if the student desires to file a complaint, then the Ombudsman should provide the requisite instructions.

However, this specific issue is delicate and requires tact. Therefore, Andrea writes her script before calling the professor and attempts to stick to the facts i.e., "I received a complaint. I don't know whether it is true but I want you to know that there has been a complaint. I do not want the Ombudsman office to hoard secret information. I believe that you have the right to know what is being said about you."

The scenario is realistic and the ending is predictable -- ombudsmen will continue to worry about the final effects of sharing potentially damaging information and each case will be handled warily and prudently.

R. Adolfo de Castro, Ombudsman, Commonwealth of Puerto Rico, shares a paper that he delivered in the Spanish language at the June 1993 International Conference on the Judicial Ombudsman held at the National Autonomous University of Mexico. The Conference was sponsored by the Mexican National Commission of Human Rights.

In [The Ombudsman and the Myth of Judicial Independence](#), Castro formulates a convincing argument for the appointment of a judicial ombudsman to champion the inalienable rights of a citizen who is confronting the "powers that be!" Castro, a committed believer in the accountability of civil employees to the people, advocates strongly that an independent judicial ombudsman offers an efficient and effective tool to safeguard the citizen's control over the government. If one expects that all public employees should be held accountable to the people, then the appointment of a judicial ombudsman to hear the citizens' complaints about government gone rampant can provide a remedy to cure this usurpation of power.

However, at present, the majority of citizens' grievances about insensitive bureaucracy are heard via the

executive branch. Nevertheless, as litigation increases in society, so also will the individual's involvement with the judicial branch. Therefore, the courts should be aware of their accountability, i.e., legitimacy is not conferred on their powers by mere "fiat"; rather, their "raison d'etre" lies in rendering rational decisions and equitable judgments. Consequently, if the State's true sovereignty rests with its citizens, then the need for a judicial ombudsman becomes imperative.

Using an impressive bibliography of psychological research, Tim Griffin documents the importance of ambience during counselling in [Physical Environmental Design Factors in College and University Ombuds Offices](#). Beginning with the premise that the student might be upset on arrival, Griffin concludes logically that bright fluorescent lights, hot colors, strident noises, and physical barriers that prevent eye contact with the Ombudsman are not going to calm a perturbed person.

Employing a conclusive outline that includes examples of visual, aural, olfactory, and environmental stimuli, Griffin offers convincing evidence that the Ombudsman office should not be located in "enemy territory"; that soft, cool, soothing colors are preferable to hoisting a "red" flag in the dispute resolution arena; that incandescent lighting from lamps is preferable to bright, white fluorescent bulbs (however, natural lighting is superior unless confidentiality "exits" as the best light "enters" through the ground floor window); and that art work conveying political messages about pro-choice, animal cruelty, gun control, and military involvement might make a client with opposite viewpoints feel uncomfortable. The reader of this provocative article will discover that the old office harbors room for new possibilities a la decor.

In [TQM/CQI and Ombudstry](#), William Kennedy champions the concept of Total Quality Management/Continuous Quality Improvement that has swept through the Corporate Board Room; conquered its chiefs; and is launching an attack on Academe's Ivory Towers. As with the majority of impending invasions, the best defense is an offense, and Kennedy, a staunch supporter of TQM/CQI, supplies one by deftly outlining the movement's blueprint (complete with bibliographic back-up). In addition, Kennedy aptly defines the common ground that these seeming opponents" -- TQM/CQI and the Ombudsman office -- already share.

For example, "customer/client satisfaction" can be viewed as a similar mission for both TQM/CQI and the Ombudsman office. However, although client satisfaction is the purpose, institutional integrity remains the foundation. Therefore, buying a flawless product and earning a college degree cannot be equated in the same manner. If the consumer product is flawed, the public has the right to know. In contrast, if a student, faculty member, or staff employee confronts a grievance, the majority of issues should remain confidential. Consequently, the TQM/CQI movement cannot be incorporated into academe without ample consideration and extensive preliminary discussions. Nevertheless, in this arena, the Ombudsman office is a natural ally that is skilled in seeking and finding a workable compromise.

Michael Kerze employs philosophical humor and subtle wit to describe the possible dilemmas an Ombudsman might face as a member of a Policy-Procedure Committee. In [The Ombudsperson's Role in Policy Making](#), Michael astutely depicts the unsavory charge of designing a policy that might later

resurface as a grievance brought to the Ombudsman Office for resolution. However, prior to the arrival of this undesirable effect, the interim period will be ombudsman business as usual -- achieving a compromise among adversaries, who, in this scenario, will be the Committee Members contesting each policy point. Moreover, the scale will be grander because more participants from diverse professions will be attempting to conceive and formulate an equitable mandate for everyone.

Michael's experience transpired as the member who was appointed by the college President to draft the institution's Sexual Harassment Policy from a committee composed of 4 students, 4 professors, 4 staff, and 3 "consulting" attorneys. After 9 months of intensive discussion and extensive debate, a document was produced. In Michael's opinion, consensus emerged through the "exhaustion method," i.e., all choices being unacceptable, agreement was the only remaining prospect. Once accord was reached, the disparate group labored congenially and enthusiastically to clarify each point with a lucid, concise statement. The final product was acceptable; was passed in a faculty vote; and a Sexual Harassment Policy was in place.

In [Lessons From Mediation](#), Tom Sebok methodically examines the effects of the Disputants' positive and negative statements during the many mediation sessions that he has conducted. In Tom's opinion, some behavioral patterns communicate disrespect and escalate one issue into several while empathetic sentiments have the power to generate cooperation.

Using common, but dynamic examples, Tom illustrates convincingly that specific negative remarks will drive deeper divisions between parties in dispute. In contrast, general positive comments contain the means to diffuse hostility and ameliorate differences. Although the adage "might makes right" claims longevity, nevertheless, the innovative Mediator can encourage both parties to avoid the 16 negative phrases that guarantee failure and to utilize the 10 positive expressions that promote peace.

Glenda Simms, President, CACSW, shares a paper entitled, [Struggle for Change: The University as Arena](#), that she presented in Ottawa, Canada at the June 1994 Joint Conference of the Association of Canadian College & University Ombudspersons and the University & College Ombuds Association (ACCUO and UCOA).

Alternating between past flaws, present realities, and future aspirations, Dr. Simms describes cogently the important role that education had, has, and will continue to hold in the lives of women and minorities. Dr. Simms notes realistically that our present society easily asks sensitive questions but finds pertinent answers only with difficulty. However, the predicted majority of women in the work force by the year 2000 should ignite the flaming desire for substantive change that must occur in traditional education if rich harvests are to replace the former blights in our social, economic, and political fields.

In [University Ombuds Roles](#), James Vice provides a definitive analysis of the distinctly different approaches that an Ombudsman might employ as the "Objective Third Party" who attempts to assist in the resolution of a "Two Party" misunderstanding. (The student versus the institution's bureaucracy frequently compose the two opposing entities at a university.) Vice defines the terms "advocate,"

"mediator," and "rectifier" and identifies excellent examples of the manner in which each concept can be practiced in a university setting.

The advocate (the root word approximates the Swedish "ombuds") must be wary of straying from neutrality. The advocate might accurately assess the situation; be convinced of the unfair position in which the petitioner is placed; but, risks violating neutrality by choosing sides. (The rules and procedures which govern an institution constitute a "side," and must be upheld.)

The mediator promotes communication between two grievants who are at "loggerheads" by finding common ground on which both can stand and seek an amicable solution. However, in the university hierarchy, both individuals are not always on equal footing, i.e., student/professor; staff/supervisor. Therefore, the mediator might have difficulty in remaining neutral because of the temptation to advocate "fairness."

The rectifier tries to change the rules or procedures that are causing the bureaucratic snafu. When a change for the better actually follows and the snarl is untangled, the jubilation must be tantamount to a lawyer's triumph after a lengthy trial. In practice, -- at one time or another -- the University Ombudsman probably is all three or has successfully combined traits from each stance.

As a University Ombudsman who follows his cases into the formal arena if he cannot achieve a resolution during the informal dispute resolution process, James Vice conducted "informal" research on the issue among his colleagues. In [Relation of the Ombuds office to Formal Processes](#), Vice distributed a short questionnaire to his fellow ombudsmen and asked them whether or not they stepped on the "formal rung" of "justice's ladder." The majority of the 52 responses from the 97 questionnaires indicated that the ombudsmen continued to give advice to the petitioner and to monitor the fairness of the formal proceedings. However, when external legal forces arrived at the Ivory Towers, University Ombudsmen unanimously advised an exit.

In [Reflective Inquiry on Ombuds Practice](#), Geoffrey Wallace ingeniously extends the maxim "reflection is good for the soul" to "reflection assists in perfecting mediation methods."

Drawing upon the "deductive versus inductive reasoning process," Wallace explains artfully the function of each concept in the Model's five levels. After defining Philosophy, Basic Theory, Theory of Practice, Technique, and Moves (the five theoretical terms that are involved in the reflective method), Wallace presents an actual case as a concrete example of their practical application in mediation. Because the case involved several volatile issues; disputants from different cultures; and both a Mediation Director and an Ombudsman, "the reflective paradigm" or "the after-game analysis" provided fresh insight and applicable suggestions for salubrious solutions to future dispute settlements.

In [Setting Up An Ombuds Office - Safety Considerations](#), Linda Wilcox directs our attention to the possible danger that the Ombudsman might confront in the line of duty.

Beginning with an office visit from a "seemingly" innocuous student harboring a "supposedly" common complaint, Wilcox dramatically describes the deterioration of a serene setting into an anxious, tension-filled, potentially violent situation.

Convinced that being forewarned and forearmed are conditions which should operate in tandem, Wilcox suggests forethought in the following areas: preplan a S.O.S. to the outside world; arrange office furniture to access an "easy exit"; add office decor that exhibits a humane attitude of understanding and concern; and state the Ombudsman's jurisdiction, i.e., "What the Ombudsman Office can and cannot do for the grievant!"

Finally, with precautions in place, the Ombudsman can resume a confident attitude -- free from apprehensions -- and can concentrate on resolving the immediate problem.

In conclusion, the preceding article summaries define "avenues of conscience" as guides for the familiar paths travelled frequently by all Ombudsmen. Therefore, the signposts indicating danger and caution are recognized easily. In daily practice, the specific incidents and the circumstances in which they occur will force the Ombudsman to select the best path for the immediate journey; the most effective route to expedite the trip; and the most efficient way to smooth the bumps and avoid the potholes which we all encounter sooner or later. After all, it is these "perilous encounters" that become the justification for an Ombudsman office.

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A Case Study Andrea Briggs

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THE OMBUDSMAN AND THE MYTH OF JUDICIAL INDEPENDENCE

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1. Introduction: the ombudsman notion

"Ombudsman," "Citizen's Aide," and "Public Complaints Commissioner" are terms which mean, as we all know, a more or less equivalent concept. There are, of course, other phrases which are also used to express the same idea. But, they all enunciate the existence of a representative, a defender, or an advocate who lightens the load of bureaucratic government -- an essential characteristic of modern public administration -- carried on the shoulders of our less fortunate citizens.

This, however, does not mean that the ombudsman has the same powers and functions in all jurisdictions. As stated by Ramón A. Guzman, Professor of Law at the Catholic University of Puerto Rico, the ombudsman is a juridical institution drafted and limited by the principle of legality: "The ombudsman institution is not abstract; it cannot be evaluated from the standpoint of anti-judicial perspectives. The ombudsman is what the law says he is; his jurisdictional scope is as prescribed by law; his powers are what the law prescribe."

From this, we can discern that close scrutiny of each country's legislation must be perfected when we discuss the ombudsman concept. Nonetheless, it must be pointed out that, in all jurisdictions, the qualifications of the person designated to the position must start with his honesty and integrity as essential elements in his effectiveness. Experience shows that proper designation guarantees the success of the institution wherever it has been established.

In the democratic exercise of the right to petition the government for redress of grievances, the ombudsman I know works as a bridge which connects our most needy citizens' to the agencies and employees of the executive branch. In the Commonwealth of Puerto Rico, statistics confirm that the bridge works because redress is obtained in about 72% of all instances.

Here, as in the rest of the United States, there should be no reason why this instrument of democratic control should not be extended to the judicial branch.' After all, not only does today's modern judicature

constitute an integral part of bureaucratic government but, as in the case of its executive counterpart, the establishment of an adequate independent mechanism of control is also needed to secure the prompt repair of its administrative wrongs.

2. Concept and rationale of the judicial ombudsman Justification for the judicial ombudsman, in my opinion, does not require the formulation of complicated syllogisms and esoteric reasoning. I believe it is a question of an undeniable imperative. It is demanded by the very essence of a State whose sovereignty rests with the people. Our Puerto Rican experience, like that of the fifty continental states of the Union, evidences that public employees who are truly dedicated to serving their countrymen, do not try to elude their obligation of accountability to the people. On the contrary, they accept it and perform their work in conformity with its demands.

Professor Shinon Shetreet points out in his treatise on judicial independence that accountability is an integral part of the concept. According to his thesis, the judicature is accountable from three distinct vantage points:

a. Legal -- given that judicial determinations are reviewable before higher courts.

b. Public -- because it is constituted by the control legally allowed to the so-called political branches and to the organized groups which make up the social power.

c. Informal -- because lawyers and laymen alike, affected by judicial action, will always comment and criticize in their private circles."

It is unquestionable that the interaction between the citizen and the organs of State is most intensely found in the executive branch. Nevertheless, history tells us that in so far as our society has become more and more litigious, so has the interaction between the citizen and the judicial branch become more intense. As a consequence of this increased contact with the courts, the citizen has become more aware of the precedence that the behavior and attitudes of judges have upon him.

For this reason, we do not subscribe to the simplistic idea that "because the courts exist to protect the rights of the citizen, the judges cannot violate them." Professor Demetrio Fernandez, School of Law, University of Puerto Rico, has pointed out with particular precision, that such an idea is "false and pernicious." False, because there is no relation between the affirmation and the experiences lived daily in the courts. And, pernicious, because it unduly puts a hamper on the future development of our democratic institutions.

On occasion, judicial action may be adverse to the citizen because the judges (i) may favor "anti-judicial postulates" or (ii) because they lack the "personal sensibility and professional impartiality required to adjudicate certain controversies." The need to weed out noxious traits like these from a judicial service devoid of career training and to endow it with a mechanism of independent, external control of its administrative processes has led Professor Fernandez to state the following observation: "It

is evident that there is a need to convert our courts into really contemporary institutions, conscious of their obligation of accountability. This is so, given that the political and juridical philosophy of our times requires that the powers of the State be legitimized, not through mere fiat . . . but through proper explanation to the people (the real sovereign power) by way of their advocate, the ombudsman.""

On this subject, Professor Donald Rowat of Carleton University has enumerated several additional reasons to justify the establishment of the judicial ombudsman."

- a. The continued growth and greater complexity of the judicial branch.
- b. The poor personal and scholastic qualifications of some judges.
- c. The arrogance of many judges.
- d. The fact that the removal procedure of judges is rarely utilized.
- e. The organisms instituted by the judicature itself to hear the grievances of witnesses, parties, or their lawyers are ineffective.

But the need for an independent judicial ombudsman does not have to be seen from the exclusive perspective of the idea of overseeing or of having authority to investigate wrongs and demand redress. Both, the enabling act of the office of the Ombudsman, as well as the conduct it inspires, recognize that the ombudsman can only function adequately when an efficient public administration is present. The ombudsman has no place within an administrative chaos. The institution is not a super-administrator, but rather, a mechanism of quality control and improvement. This is the reason why the establishment of the judicial ombudsman is, first of all, an acknowledgment of the excellence of the judicial system involved.

The judicial ombudsman is also justified from the point of view of the benefit which the judicature itself, as well as the individual judges, may receive due to his enunciations:

"The existence of a judicial ombudsman, like that of the Citizen's Advocate, is not just to criticize, but, additionally, to provide alternatives for the correction and redress of the wrongs detected. In this manner, the judicial ombudsman would be the most efficacious practitioner in our judicature and he would be a great help in the diligent expedition of judicial functions. The State will have to provide our judicature with the most advanced informative apparatus and a generous portion of economic resources in order that the judicial power may be able to make the best of its human resources. "

Another observation which must be made in line with the position that the legislative establishment of the judicial ombudsman is beneficial to the judicial services is that it does not mean, in any way, either mistrust or any kind of underrating of our actual judges. It is a mechanism which, on the one hand, reinforces the idea of having the judicature strictly comply with the constitutional obligations which bind it to the protection of fundamental rights, and, on the other, procures its utmost functioning. In

Spain, where the ombudsman already has constitutional authority to oversee the administrative functioning of the courts, experience shows that it is quite possible to enjoy an effective communication between one and the other. Accordingly, its General Council of the Judicial Power regularly publishes in its Bulletin any ombudsman recommendations which may affect the interpretation of the judicature's own substantive and procedural rules of administration. Through this working process, the judicial authorities can also keep abreast of the various investigations being carried out by the ombudsman."

In Finland, as in other countries, although the parliamentary ombudsman can make recommendations but cannot give orders to the courts, only on very rare occasions have his recommendations for the correction of administrative wrongs been dismissed.

The examples of Spain and Finland serve to prove that the establishment of the judicial ombudsman is good and possible and that the judicial system is strengthened by its presence. In the end, one must concur with Finnish Ombudsman Soderman in that, ". . . it is not a wise thing to allow the judicial system to be without any kind of control or supervision," given the fact that the history of humanity ". . . evidences many examples of the unsatisfactory results produced by the exercise of unlimited power."

3. The "myth" of judicial independence

The greatest problem faced by the judicial ombudsman's overseeing of the judicature is the thought of possible interference with the concept of judicial independence. The attachment of an ombudsman to the judicial system cannot be permitted to harm, in any manner, either the dignity or the independence which the constitution confers upon all judges. As stated by Castan Tobenas, the personality of the judges themselves is, more than the legislative organization of the judicial system, the central and determining element of the healthy evolution of the rule of law.

From the start, it must be established that judicial independence "does not mean -- as Alvaro Gil-Robles has said -- that there are areas exempt from control." Neither should we think, as Professor Guzman has indicated, that our branches of government are "parallel tunnels, totally incommunicable." As stated by Guzman, "Delegations of legislative power are a frequent thing. Executive legislation -- through rules, regulations, and executive orders -- constitutes a considerable portion of our juridical system. Judges know, maybe better than anyone else, that their 'legislative function' is not that of a mere negative legislator -- as conceived by Kelsen -- limited to striking down whatever norms may be incompatible with the fundamental law. The Constitution confers upon the Supreme Court the power to legislate rules of procedure and for the administration of its functioning."

"We must also point out that modern constitutional systems do not have to box themselves into the traditional scheme of three branches of government. Today, we have the so-called constitutional entities which, albeit organized and governed by the Constitution, are not attached to any of the traditional branches. In this manner, for example, the Spanish Constitutional Court is a constitutional entity independent of the judicial branch, parliament, and the government."

As can be surmised from this, it can be stated with doctrinal purity that the juridical system of the U.S. A., more than one of "separation of powers" is one of "checks and balances" -- a system which takes for granted the inexistence of absolute judicial independence." Likewise, we can now also confirm that judicial independence is a thing on which you cannot put your finger. That is the reason why I refer to it as one of the many "myths" which surround us.

Castan Tobenas has enumerated, quite satisfactorily, the following essential components of the concept of judicial independence:

- a. A technical system of enrollment to a judicial career that guarantees the intellectual capacity, competence, and moral formation of all candidates."
- b. A technical system of uniform promotion."
- c. Guarantees of tenure in good behavior."
- d. Self government of the judicature."
- e. A salary which ensures financial independence."
- f. The establishment of a judicial association whose members may freely work toward their own betterment."

As Professor Castan puts it, these guarantees strengthen the vigorous enforcement of the following duties: a. To grant justice in accordance with the rule of law."

- b. To avoid all contact with politicians.

I can personally attest to the fact that the administration of justice in Puerto Rico is not plagued by party politics. Our judges faithfully fulfill their obligations, even to the risk of having to involuntarily abandon their positions. However, vis A vis the concept of judicial independence, the fact of the matter is that neither our constitutional precepts nor our judicial code adequately satisfy the criteria propounded by Professor Castan Tobenas. To prove this, it is sufficient to contrast the requisites enumerated by him with the juridical realities which make up our judicial practice.

In Puerto Rico, as in the U.S.A., judicial appointments are dominated by the political process." There is neither a judicial career nor any judicial school where those aspiring to judgeships may be especially trained; moreover, there is no kind of commitment, by the Governor and the Senate, to appoint and confirm those who have proven to be apt for the positions. Judicial appointments, except for the nominal requisites established by the Judicial Code, constitutionally depend only on the personal criteria of the Governor and on the political advice and consent of the Senate. Promotion is likewise subject to this same process. All judges, except those who make up the Supreme Court, whose appointments extend

until they reach seventy years of age, are generally appointed for short terms of around eight and twelve years. Their salaries, although constitutionally protected against reduction, are established by the mere will of the legislature. There is no program of periodic revision for promotion, not even, in the case of salaries, to adjust them to the normal increases in the cost of living. There is quite a difference between the salaries of federal judges and those of the various states. And, of course, the courts' administrations have no authority for self-government.

In just one phrase: the elements necessary for judicial independence are non-existent. That is why we have stated that it can be affirmed with doctrinal purity that the judicial ombudsman, rather than being an element of interference with the judicial independence of the courts, is probably the most practical mechanism that can be established to guarantee it. If each institution performs its functions in accordance with its particular juridical obligations, there should be no jurisdictional conflict between them.

As a practical matter, it should be acknowledged that judicial independence is not the least affected by the legislative establishment of an independent judicial ombudsman. Soderman candidly comments on this as follows:

"It being that, in the long run, any controversy between a judge and the ombudsman would have to be the subject of a judicial decision, in my opinion, the concept of judicial independence would never be at risk."

Summarizing, I believe that the so-called "judicial independence" of the Puerto Rican and American judiciatures, lacking so many elements to make it so, would not be affected, in any way, by the judicial ombudsman. Instead, experience shows that the institution would become a promoter and guarantor of the real judicial independence as conceived by Castan Tobenas and as proposed and supported by those who believe that all public employees must be held accountable to the people.

It has been said that democracy is the best conceivable form of government; that the essence of democratic government is its dedication to the protection of the rights and individual liberties of the governed. But, likewise, it has been forewarned that the consecration of this obligation in laws and constitutions is not sufficient, by itself, to guarantee its survival. No matter the many speeches and declarations that may be expounded to proclaim the merits of the social contract between the people and their government because, in the end, as Sir Winston Churchill stated, the existence of democracy will depend on the continuous, vigorous control provided to safeguard it. In other words, that to guarantee it, one must have at hand the remedies which prevent its usurpation. The Institution of the Judicial ombudsman is, probably, one of the most efficient tools the citizen has at hand to safeguard his control over the government.

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26. Demetrio Fernandez. Op. cit., p. 128.
27. Jacob Soderman. Op. cit., p. 105.
28. Quoted by Dr. Kreisky at the Third Ombudsman Conference held in Stockholm, Sweden, 1984.

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PHYSICAL ENVIRONMENTAL DESIGN FACTORS IN COLLEGE AND UNIVERSITY OMBUDS OFFICES

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Individuals who visit campus ombuds offices for assistance in addressing their institutional concerns are frequently stressed, angry, frustrated, and agitated. This state of mind does little to facilitate a productive interaction between them and the office staff. It is therefore incumbent upon practicing ombudspople to take all reasonable steps available to calm clients and subsequently assist them in the development of rationally linear thought processes and cogent fact patterns. If we assume the position of ombudsperson without the interpersonal communications skills to accomplish this goal, we soon find ourselves necessarily developing methods of interacting with clients to achieve this end result through practice. While these communication skills can be extremely effective with most clients, this process can be assisted and enhanced by careful and intentional design of the physical environment. The purpose of this article is to stimulate the consideration of physical environmental factors which may contribute meaningfully toward the facilitation of productive client interactions.

There is little doubt among those familiar with the research on personenvironment interaction that physical environmental factors play a significant role in the elicitation of human behavior (Banning, 1980; Conyne, 1975;

Getzels, 1974; Holahan & Wilcox., 1978; Huebner, 1979; Moos, 1986; Moos, 1987; Whisnant, 1979). This phenomenon is particularly well illustrated in work by Rapoport (1982) which discusses the enculturation process present in our society and its influence on behavior. Places such as churches, playgrounds, gymnasiums, and many other specific physical environments tend to elicit highly predictable behavioral patterns from visitors to these spaces due to this enculturation process. These often-overlooked physical environmental factors are important as they provide a constant stream of sensory inputs to people within these spaces whether consciously recognized or not (Wicker, 1979). Practicing ombudspople -- who do not take physical environmental factors under consideration in the design and decoration of their work space -- are missing an important opportunity to facilitate improved client interaction and subsequent client satisfaction.

Office Location

There are three consequential considerations regarding office location that are addressed in the existing literature: accessibility, confidentiality, and neutrality. While a practicing ombudsperson rarely has the opportunity to intentionally select his or her office space on the campus, the significance of office location is such that it warrants discussion. The importance of a centrally located and easily accessible office is mentioned by Bower (1984). This perspective was expressed particularly well by McKee and Belson (1990) who stated, "There is little point in having a university ombudsman to look into grievances and resolve problems if no one can find the office or if it is difficult to gain access to its services" (p. 201).

An ombuds office located on the fringe of the campus or in obscure, hidden, or unknown building spaces is highly problematic. As any knowledgeable retail merchant will acknowledge, a location that requires an inordinate amount of travel time or inconvenience will inevitably suffer from relatively low usage.

While travel time and distance are negatively correlated with client traffic in general, the effect has a disproportionate impact on those potential visitors whose disabilities limit physical mobility. On many of our campuses, the number of persons with physical disabilities is steadily increasing. It has been noted that, on the author's campus, the number of these individuals who have become clients in the ombuds office is substantially higher than the size of their population alone would suggest. For this reason, an office location that is easily accessible to individuals with physical disabilities is crucial.

While centrality and accessibility of location are clearly important issues, the need to balance these factors with the consideration of confidentiality is critical. Visitors must be able to utilize the services of the office without being easily identified and observed by others (Schonauer & Wilson, 1990). A significant role of the campus ombudsperson is to engender the perception of trustworthiness and confidentiality among potential clientele, and we all strive to achieve this goal with visitors to our offices. Therefore, we should keep in mind that if a potential client believes that he or she would be subjected to institutional retaliation should confidentiality be breached, the client's fear that he or she will be seen entering or leaving the ombuds office is a legitimate concern.

A final, yet far from less important, issue related to office location is perception of neutrality. Just as fear of being seen using the ombuds office by others can have a chilling effect on initial client visitations, potential clients -- who perceive a lack of neutrality or objectivity in the office, due to the proximity by which the office is placed to or within some other academic or administrative unit -- may be unwilling to utilize the services of the ombuds office. Establishing the perception of neutrality "from the outset" is an important facet in the development of realistic client expectations (Wagner, 1993). Ombuds offices that are located next to the campus newspaper or within an office suite, floor, or building that is identified solely with a particular divisional or departmental unit of the campus can greatly and negatively impact this perception. For example, clients who must visit a faculty member's office to access ombuds services will inevitably be somewhat hesitant to do so if their concerns are related to the behavior of another faculty member associated or located within the same departmental suite of offices. As stated by Wisner

(1992), ". . . it is imperative that a university ombudsman office be and appear to be independent of existing university structures" (p. 4).

The process of achieving goals related to accessibility, confidentiality, and neutrality requires careful and thorough consideration and balancing. It is possible that the most accessible location available may well be entirely unacceptable due to concerns of confidentiality or neutrality. As a result, office location usually necessitates some degree of compromise among these factors.

Visual Stimuli

View physical environment, primarily through visual non-verbal communications, sends clear messages related to safety, belonging, and equality (Banning & Bartels, 1993). A large number and wide variety of visual stimuli communicate these messages and, in many ways, the ombudsperson often has considerable control over the perceptions engendered in clients through these means. Room size and configuration, placement of furnishings, lighting, color, and (perhaps most significant of all) decorations are a few of the considerations appropriate when conducting an environmental assessment of ombuds office space.

In general, the physical appearance of both the reception area and client interaction spaces should, to the degree possible, be perceived as pleasant and secure (Schonauer & Wilson, 1990) and be "friendly and delightful places for clients to visit" (Bower, 1984, p. 48). Ahrentzen, Jue, Skorpanish, and Evans (1982) found that spaces in which students feel less crowded have the effect of reducing stress. In addition, Mehrabian and Russell (1974) found that in any environment, the more organized and neat the appearance, the less physiological and psychological stress and stimulation was produced. Therefore, care should be taken to maximize perceptions of barrier-free spaciousness and to reduce the amount of clutter within those office areas utilized by clients.

A variety of research has shown that colors elicit significant behavioral patterns that can be generalized in a predictive mode to college populations. Although these studies regarding human behavior as a reaction to color stimuli have been conducted primarily in hospital and prison settings, their findings are remarkably consistent and easily generalized (Griffin, 1990). This conclusion is also supported by Rapoport's study (1982) in which it was stated that "colors seem to have some striking commonalities in their psychological effects, such as levels of arousal" (p. 114). Macro studies in this area (conducted by Mehrabian and Russell, 1974, and others) suggest that "cool" colors such as blues, greens, and purples have a more soothing and less agitating affect than "hot" colors like yellows and reds. Since Provost and Anchors (1987), Schuh (1980), and other studies specifically focusing on higher education settings have indicated that agitation is increased by the use of strong and vibrant color tones, it is suggested that "softer," more pastel colors may produce the calming and welcoming affects desirable in an ombuds office. Light intensity and quality are two other important considerations in terms of visual stimuli. Mehrabian and Russell (1974) found that while extremely low levels of light were neither pleasurable nor productive, high levels of white light increased agitation and activity. VandenHagel (1971) achieved similar results in his study and found that negative behaviors increased in classroom settings only when

the lighting was extreme in nature (either significantly too bright or too dim). In general, these and other studies have concluded that low level fluorescent lighting can be effective as general illumination, but that increased use of incandescent lighting heightened self-reported perceptions of welcomeness and comfort. The placement of lamps (i.e., incandescent lighting) should be judicious, however, with efforts made to enable the client to maintain eye contact with the ombudsperson without squinting into a source of illumination placed directly behind the service provider.

Obviously, the most effective and economically efficient source of lighting is natural lighting via windows. VandenHagel (1971) did extensive experimentation with this form of illumination in educational settings. This study concluded that while the benefits of natural lighting are significant, consideration should be given to the potential for distraction that may be presented to the client by moving images outside the window. It also seems obvious that first floor windows which allow an outside passersby to see who is consulting with the ombuds office should be avoided at all costs due to the issue of confidentiality.

It has also been shown that tropical plants and art work displayed on the shelves and walls of the ombuds office can have a marked effect on perceptions and moods (Stratton & Zalanowski, 1989). Care should be taken, however, to minimize the chance that clients will perceive such items as a communication of values by the office staff that is threatening to the client by nature of the inconsistency with those held by the client. Items indicating support of a particular political party or a politically-charged issue should be avoided at all costs. Accoutrements showing support for or against such issues as abortion rights, gun control, military/ROTC, animal rights, equal rights for women or other minority groups, or any specific facet of the campus community can communicate unwelcomeness toward potential clients who have alternative values or beliefs. For example, a pink triangle posted in the vicinity of the office of the ombudsman may engender feelings of discomfort to a homophobic client seeking assistance. There is little doubt that "the physical artifacts of our culture are powerful non-verbal communicators of our values" (Banning & Bartels, 1993, p.2). Therefore, to avoid the client perception that spaces within the ombuds office are unwelcome due to his or her cultural background, these items should be neutral in content.

An excellent example of what not to do in terms of office decoration was recently brought to the attention of the author of this article when visiting another campus office. The office walls displayed a mounted fish, the head of a wild animal, enlarged pictures that had been taken on fishing and hunting expeditions, and various paraphernalia associated with the campus' football team. These visual stimuli clearly communicated the message that the permanent occupant was primarily oriented toward traditionally male and outdoor activities. As a result, some women entering the office may well feel from the outset as though their concerns (especially those related to gender issues) may not be well received. It is therefore suggested again that office decorations be as neutral in nature as possible regarding issues of gender, ethnicity, religious affiliation and, for purposes of perceived neutrality, other campus departments and activities. Such items should also take into account the research on color described earlier as well as exhibit physical designs that are of a generally positive (as opposed to negative or depressing) content and rounded (as opposed to sharp and angular) design. The use of potted plants can have an extremely valuable calming effect on clients. While care should be taken to avoid

over-use of this design factor to avoid perceptions of excessive clutter, live (and to a lesser degree dried) flowers and plants can have the positive effect of offsetting a cold, impersonal "institutional" appearance. Care must be taken, however, to be sure that plant life is healthy, as dead or dying plants can have a depressing, negative impact. Finally, as is frequently addressed in counselor preparation programs, the placement of a physical barrier (e.g., a desk) between the client and the ombudsperson impairs the process of the development of an initial rapport and tends to have a chilling effect on the client interaction.

Aural Stimuli

A great deal of research has been conducted regarding the use of aural stimuli (especially music) in counseling and educational environments (Deutsch, 1982; Shatin, 1970; White, 1979). It is suggested that, to the degree possible, external noise should be minimized. Obviously, clients who overhear the conversation of others can only assume that their comments are also being overheard, thereby producing undesirable perceptions related to emotional comfort and confidentiality. Noise from traffic, construction activities, airplanes, and other external sources have been consistently shown to increase stress and agitation, and create undesirable distractions.

On the other hand, "the careful use of soothing music backgrounds can be instrumental in promoting healthy university environments by evoking calm and positive mindsets" (Ortiz, 1990, p.3). While any musical background may well be counterproductive to the client/ombudsperson interaction, the use of ambient background music is strongly recommended in the reception area to reduce stress (Schuster, 1985). To maximize the effect, such music should be "classical" or "new age" in genre (Halpern & Savary, 1985) and should be kept at a very low decibel level (Wolfe, 1983). A recent advancement in technology that is becoming widely used in psychological counseling and health service settings is the random noise generator. These devices, similar to the size and configuration of a smoke detector and/or an air purification device, emit a wide frequency band described as "white" or "pink noise." Adjusted to a relatively low level, these can be effectively utilized in the spaces in which the client interaction occurs to mask undesirable environmental sounds without negatively impacting the client interactions by being intrusive in nature. Those ombuds practitioners in environments that are inadequately soundproofed can address client anxieties resulting from these intrusive noises with such a device very effectively. When combined with soft background music in the reception area, undesirable external noise can be effectively minimized.

Olfactory Stimuli

Although frequently overlooked in ecological environmental assessments, olfactory stimuli can have a marked affect on client behavior. This is especially true when it is acknowledged that nearly 20% of the population in general, and therefore of ombuds clients, may have allergic reactions to particular types of airborne particles. Considerations of general air quality were comprehensively addressed by VandenHagel (1971). A thorough evaluation of air quality in a college or university ombuds office requires the involvement of the campus environmental safety office. Ombudspeople are urged to request

such an evaluation as the ombudsperson may be less sensitive to certain types of airborne particles and, therefore, unable to detect them without such assistance.

Stale tobacco smoke is one example of an air quality condition to which clients may be physiologically or psychologically sensitive. Air fresheners, as well as colognes and perfumes, can be effectively used to create an environmental ambience that is conducive to producing the desired effect on clients although clients may be allergic to these substances as well. Such items should be used only in moderation, however, as strong odors of any type have been found to be unpleasurable and to increase stress for some people (Mehrabian & Russell, 1974). Indeed, this study concluded that agitation was heightened in direct correlation to the degree to which the odor was perceived as unusual or intense.

Room air purification systems, while not always completely effective in removing undesirable particulate matter, frequently provide the additional benefit of a noise masking effect similar to that of sound generation devices. As a result, these appliances can be useful in addressing concerns of ambient noise as well as those related to air quality. The author has experienced consistent success by burning a lightly scented candle in the ombuds office. This serves a dual role by providing a desirable olfactory stimulation as well as a visual stimulus which frequently elicits a self-supported calming effect on clients.

Other Physical Environmental Stimuli

Attention should also be given to room temperature. Numerous studies have shown that potential clients who are exposed to environments of extreme temperatures or humidity levels have lower levels of comfort. Drastic and relatively rapid changes in temperature, as well as drafts of cold air, were found to be correlated with an increased arousal rate by Mehrabian and Russell (1974).

Office seating is another factor which should be assessed in terms of physical comfort. Not only does the feel and appearance of chrome and other hard, reflective surfaces project unwelcoming visual messages, the level of actual physical comfort one experiences in one's chair can have a significant effect on behavior.

Conclusion

Based on the available research, the following recommendations can be made regarding physical environmental design in ombuds offices. Offices should be located in a convenient and accessible, yet confidential and neutral, setting. They should be well lit, but without a preponderance of bright fluorescent lighting. Wall and accoutrement colors should be cool pastels, and contrast should be kept at a minimum. Whenever possible, the hard, cold, "institutional" physical design often provided in university spaces should be softened with a variety of softer and rounded items such as tropical plants, neutral art work, and comfortable seating. Barriers, especially those between the client and ombudsperson, should be avoided. Soft background music in the reception area is encouraged, while potentially distracting intrusive noise should be eliminated in the spaces in which client interactions

occur.

Calming clients to facilitate the services being provided by the ombuds office staff is a crucial objective of practitioners. This process can be enhanced by a judicious assessment and subsequent modification of the physical environment. Taking advantage of this opportunity to facilitate client interactions can play a major role in accomplishing the goals of the ombuds office.

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TQM/CQI AND OMBUDSRY

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Debate is building on many college campuses over the merit of applying principles derived from the body of thought known as Total Quality Management/Continuous Quality Improvement (TQM/CQI) in the creation of quality improvement initiatives for colleges and universities. For purposes of this discussion, TQM/CQI refers to a generally accepted grouping of strategies, methods, and procedures being used to improve quality in the business and industrial sector. It is fair to say that the TQM/CQI hurricane which continues in the corporate sector has already become a strong breeze in tertiary education. The list of colleges and universities attempting to import TQM/CQI thinking grows, quite literally, on a daily basis.

In the higher education community, reactions to transplanting TQM/CQI practices from the corporate board room to the ivory tower range from those who rigidly insist that there is absolutely no common ground between industry and education (the "students aren't customers; they're students' crowd) to those who argue passionately that virtually every TQM/CQI concept, if reverently considered, can be applied profitably to the tertiary education setting (the "you just haven't allowed yourself to undergo a paradigm shift yet" crowd.) Scores of educational institutions, private and public, large and small, are aggressively executing massive TQM/CQI efforts through well-funded programs christened with full-blown, top-down intensive training seminars for all personnel. These university-wide orientation efforts are often guided by seasoned mentors from the corporate sector (Rockwell, Xerox, etc.) who have pledged to "spread the good word" to all who will listen. At other schools, TQM/CQI cells are growing quietly as groups of administrators, faculty, and staff attack quality issues in their own areas of concern. Large or small, formal or informal, the common theme of these movements centers on a team of faithful disciples who use the related ideas -- as set forth by one or more of the various TQM/CQI gurus, i.e., W. Edwards Deming, Genichi Taguchi, Phillip Crosby, Kaoru Ishikawa, Karl Albrecht and Glenn E. Hayes, and Joseph Juran -in their attempts to rethink the entire notion of what the institution might become if a process of continuous improvement in quality of services is launched. The TQM/CQI concepts can serve as inspiration behind the goal of improving the quality in services that are provided to all "customers" at these educational institutions.

Whether skeptics or zealots hold favor on any given campus, the amazingly rapid and pervasive penetration of TQM/CQI initiatives into the higher educational fabric suggests that the TQM/CQI

movement will be around and will profoundly shape these institutions for a long time. A recent review of the comments of a broad spectrum of "TQM/CQI practitioners in higher education" on one Internet Billboard left this Ombudsperson with the general impression that -the topics of concern for TQM/CQI adherents are not at all dissimilar to the topics one might hear in a general discussion about the College Ombudsperson's mission. As one becomes more familiar with the gospel of TQM/CQI, seeing these possibilities for crossover and exchange is a frequent occurrence. From an institutional perspective, for example, both groups face the challenge of introducing and implementing new ideas and "foreign" practices into systems that are highly resistant to change. Both groups are dedicated to improving the quality of the many levels that function within their institutions. From the perspective of methods and goals, although the scope of both groups may vary, TQM/CQI followers and Ombudspersons share related visions of what properly functioning institutions should strive to be. Finally, from the perspective of values, both groups share common opinions regarding the rights and privileges of the individual within a system. In these, and many other areas, Ombuds and TQM/CQI proponents will often find themselves pursuing related goals and objectives.

It is in the Ombudsry and TQM/CQI proponents' overlapping of interests that the potential for beneficial interaction as well as the potential for conflicts exists. The following discussion is intended to offer some preliminary thoughts on how the Ombuds community might participate in the new "quality revolution" sweeping higher education without losing sight of its own primary mission, methods, and institutional standing.

TQM/CQI and Ombudsry or TQM/CQI vs. Ombudsry

TQM/CQI advocates understand what many Ombudspersons have come to know only too well, i.e., "for any sustained quality initiative to succeed in a bureaucratic system, it must be given consistent support from the highest levels down." TQM/CQI primers discuss the need for lasting quality initiatives to have both the philosophical and the concrete support of top-level institutional leadership. We, in Ombudsry, might be properly reminded from our TQM/CQI cousins just how critically important it is for our operations to have not only administrative backing as we initiate our work and establish our charter but that we also must work to maintain an active and ongoing exchange with our supporters. This procedure will ensure that we are, indeed, involved in a continuing partnership for the pursuit of common institutional goals.

We also should recognize that many of the same institutional leaders who have historically provided ongoing support for Ombuds operations are very likely to be involved in the consideration of new TQM/CQI initiatives on campus. The point is, however, that through choosing a role of active participation in the evaluation and consideration of new quality improvement initiatives, Ombudspersons can best ensure that their primary mission continues to be seen by their supporters as a critical part of any developing quality improvement process on campus.

TQM/CQI proponents in industry have truly "converted" key corporate leaders from the self-described "fat, dumb, and happy" mind set of the seventies (i.e., next quarter's bottom line was the only bottom

line that matters) to a common agreement that genuine customer satisfaction through sustained quality improvement is now, and will increasingly be, a basic survival posture in the ever more competitive marketplace of the nineties and beyond. College and university leaders are being forced to face these same challenges, and predictably, some are rising to the challenge (admittedly, perhaps, only after going through some variation of the Kubler-Ross grieving stages). Recently, when asked what percentage of leaders survived the transition from the "business-as-usual-chain-of-command modality" to the "aggressive TQM/CQI practices" at one major American corporation, the VP of Quality Improvement replied quietly, "Oh, uh, about 20%." As an Ombudsperson, we know that resistance to change is a feature of any bureaucratic system. When you push hard on bureaucracies, they often push back harder. Typically, educational administrators who have risen to the top of their institutions using traditional management strategies and techniques do not like to be told that they will not be managing these organizations in the same manner in the future. Many of them will express privately that they did not accept the position as "team facilitator," and that they resent the sweeping and often unwelcome changes TQM/CQI has forced upon the manner of discharging their duties. Team problem-solving, one feature of most TQM/CQI programs, was recently described disparagingly in a broad stage whisper as "the management by group grope fad" by a higher education administrator who was leaving a TQM/CQI introductory training session. Frankly, it is quite natural for educational leaders not to be thrilled with the idea that many of the strategies and traits that propelled them to the top will not be part of the institutions they are expected to lead into the future.

Some educational administrators are learning the hard way that members of institutional boards of governance -- many of whom are leaders of "revolutionized" corporations who survived the shock of adjusting to the TQM/CQI invasion and saw the benefits of the shift -- have very little tolerance for those whose first reaction is to dismiss condescendingly the new ideas as just another jingoistic fad that will soon pass. Devotees tend to see TQM/CQI as a "you're either part of the solution or you're part of the problem" kind of issue. To be perfectly direct, if the support for the Ombuds function at your institution comes from a particular administrative sector, it will be prudent for you to ensure that those administrators give a "fair hearing" to the nearly inevitable wave of TQM/CQI initiatives that will come to your institution (if they have not arrived already). The good news, as I have stated previously, is that it is more than likely that someone who genuinely supports Ombudstry will be inclined to find many things to like about the TQM/CQI approach. This is especially true if these key leaders are encouraged to avoid a "knee-jerk reaction" and to devote the time necessary to read and discuss these ideas with peers. Specific strategies for Ombudspersons participating in the sensitizing of administrators to the benefits of TQM/CQI include the following: providing appropriate resources specific to the educational setting and structure; encouraging participation in related meetings and seminars; and requesting that the Ombuds Office be directly involved in the consideration of any TQM/CQI programs on campus.

The coordinated approach of TQM/CQI toward the achievement of improved customer satisfaction, fact-based decision-making, and team-based improvement of processes -- while developing the pursuit of a common vision by all employees -- represents a body of thinking that is in essential accord with the goals and practices of the Ombuds officers' function on many college campuses. In practice, at least in this writer's case, day-to-day Ombudsing breaks into a few broad areas of concern which include the following:

1. explaining policies and procedures to community members with complaints and concerns and routing them and their problems through bureaucratic structures to achieve some measure of mutually satisfactory resolution;
2. serving regularly as a neutral mediator/negotiator to settle disputes arising in the institution for any number of reasons; and,
3. becoming inevitably aware of areas of great strength and profound weakness in terms of institutional policies procedures, and personnel.

In my opinion, the hidden power of Ombudsing is not the "walking people through problems" or the mediation/negotiation functions. Rather, maximizing the power of the Ombuds function lies in fully utilizing the perspective that we gain to improve areas of institutional weakness. In the course of pursuing this quest, I predict that the fully-functioning ombuds office will quickly be identified as a resource of tremendous potential by the data-gathering wing of the TQM/CQI proponents on campus. Ironically, both groups' desire to seek out and utilize data to improve institutional processes also poses potential hazards to the continued integrity and viability of the Campus Ombuds Office. Ombudsry only succeeds in an atmosphere of trust. People using Ombuds Services need to know that they retain an agreed upon share of control over how the information they are trusting to the care of the Ombudsperson will be used. First and foremost, those utilizing Ombuds Services need to know that they will not become victims of retaliation or put at risk unnecessarily for bringing some issue of concern to the attention of the Ombudsperson. My prediction -- that the existing Ombuds operation on campus will not likely escape the critical eye of the TQM/CQI disciples looking for data to be used in their quest to identify institutional processes requiring improvement -- strongly suggests that the potential for the abuse of the confidentiality offered by Ombudspersons will also increase. The answer to the problem of losing control of the confidentiality and maintaining the autonomous functioning critical for the Ombuds operation to succeed requires the careful laying of specific ground rules that preserve the integrity of the Ombuds function before any cooperative ventures with TQM/CQI groups occur. The best way to ensure that you have a voice in setting these ground rules is for the Ombuds Officer to participate actively in the step-bystep consideration of the TQM/CQI revolution on your campus rather than joining those who choose to "hunker down," refuse to cooperate, and hope the whole mess will blow over. It probably won't. On the other hand, if mutuallysatisfactory cooperation exists between TQM/CQI advocates and Ombudspersons from the beginning, there are real possibilities that many of the complex, time-honored institutional snafu which Ombudspersons uncover and wrestle with again and again might be sorted more quickly and equitably by a "TQM/CQI Multidisciplinary Team" simultaneously attacking the problem from many different perspectives. Concerning justice and equity issues, TQM/CQI and Ombudsry share similar perspectives. In both philosophical views, all members of an academic community are seen as precious resources with rights and privileges that need to be respected and preserved. TQM/CQI is predicated on the notion that all members of the institutional community must understand, "buy into," and clearly see their particular role in the shared global mission or vision of the institutional enterprise. Ombudsry, too, is committed to ensuring that institutional policies and procedures serve the institution as well as the individuals of which it is comprised. Both movements

share the idea of empowering all members of the community to function productively in an open atmosphere that is equitable and just. Perhaps, it is from this common framework, that we might best be guided as we endeavor to establish practices which mutually encourage and empower both enterprises.

Mutually Assured Cooperation

Whether you interpret the entry of TQM/CQI to the college camp-us as a hostile invasion that will likely result in the eruption of turf warfare or as the long-awaited coming of a welcome band of reinforcements to help carry out your work, every Ombudsperson must learn a great deal about TQM/CQI in general and TQM/CQI in Higher Education, specifically. A brief bibliography of beginning resources is appended to this article to help those get started for whom this is a new topic. A "TQM in Higher Education Open Discussion Forum" is available on Bitnet and Internet (see bibliography). If you begin to look, you will quickly find that there is no shortage of material to bring you, and your administrative support network, up to speed in TQM/CQI. Realize, however, that really becoming familiar with something as complex as TQM/CQI requires a long-term, sustained effort.

In closing, it is recommended that Ombudspersons boldly suspend their disbelief and take some time to learn the language, lore, and substance of this exciting movement that has swept across the corporate landscape and is increasingly blowing through the halls of academia. Be sure that you are ready to participate fully in the process of deciding what to do with TQM/CQI when it hits your campus. Moreover, be willing to fight for the rights and privileges that you have earned as Ombudspersons as well as the capacity to continue to act as trusted advocates integral to the quality functioning of the institutions you represent. Feel free to share your thoughts and comments on these issues in the weeks and months ahead.

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TQM in Higher Education Discussion

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THE OMBUDSPERSON'S ROLE IN POLICY MAKING

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1994

Michael Kerze

Occidental College

It has traditionally been the role of a college or university ombudsperson to make recommendations about changing institutional policies or procedures when the existing ones have ceased to function efficiently or fairly. Because he or she often hears from those whom policies or procedures have harmed, the ombudsperson is uniquely positioned to identify problematic areas in the functioning of a college or university. But what is his or her role after a problem has been identified and a recommendation made -- especially if it requires a major change to an existing policy or procedure?

In the past academic year, a great deal of my attention as ombudsperson at Occidental College was spent chairing the committee which revised the sexual harassment policy. I would like to offer some reflections about that experience. As a caveat to the reader, I must explain that some of what I may say ought to be patently obvious and, by way of an excuse, all I can offer is that, in hindsight, I approached the whole task of revising the policy from what seems like now to be an almost infinite naivete about how major policies are generated in an institution such as a college or university. (Before coming to Occidental, I had been a simple academic -- either a part-time or visiting professor -- and was never involved in any policy decisions.) Perhaps the fruit of such naivete and the pain endured as it was replaced by experience will be that some ombudsperson in a similar situation will be forewarned and thus forearmed. Perhaps, too, this article may stimulate discussion about how far an ombudsperson should be involved in the creation of policy given the neutrality of the office and the inevitable political context in which policy comes into being.

In January of 1993, Occidental College became the object of a lawsuit filed by a conservative legal foundation on behalf of the members of one of the college's fraternities. The fraternity was under investigation for sexual harassment because of a misogynistic poem about a certain "Buffalo Pete" which had been circulated in the fraternity as a letter. The suit was filed under a new California state law (SB 1115) which had taken effect on January 1 and had bestowed upon students the same free speech rights that appertain in any public space. The law had been created with great legislative foresight to put a lid on "speech codes" and to circumvent the "political correctness" seemingly infecting campuses throughout the state. (That the only suits brought so far under the statute have concerned sexual harassment has taken its legislative author by apparent surprise.) The suit demanded the college to cease

any punitive actions against the fraternity which included having a sexual harassment hearing. The college's legal counsel persuaded the college that it would meet certain defeat at great expense if the suit was contested and so the matter was settled out of court. Part of the settlement was that the college would pursue no further action concerning sexual harassment against the fraternity and it would revise its sexual harassment policy. The fraternity, for its part, agreed to no longer run around naked outside the frat house. This latter agreement referred to an incident in which members of the fraternity had serenaded a college dorm with a rowdy song one night while taking off a piece of clothing at the chorus until most stood naked. A student who witnessed the event tried to file a complaint but was told it was a college tradition and that if a complaint was to be filed, it should be filed with the Greek Review Board. But didn't such a tradition create an unsafe environment for women that night?

The fact that a complaint was never filed about the incident reflected a larger problem concerning sexual harassment at the college -- the problem of the credibility of the institution's commitment to end sexual harassment and to aggressively pursue complaints. It is probably difficult to keep anything secret for long at a small college and, especially so, when the problems involve such an emotionally charged issue as sexual harassment. There had been a few other incidents in which the college's commitment seemed questionable and so the resolution of the court case and the reasons for it seemed to confirm prevalent suspicions. In addition, it did not help that the legal context was never satisfactorily publicized.

Furthermore, of the three individuals who were designated by the college to investigate and resolve sexual harassment complaints, one had abruptly left the college at the end of the Winter term; another had accepted a position at another institution and was about to leave; and the third, the Director of Human Resources, had never been utilized by either students or faculty. In addition, a student -- who wanted to file a sexual harassment complaint against the fraternity and had been unable to do so because of the court settlement -- filed a complaint with the Office of Civil Rights and claimed that her civil rights concerning sexual harassment had been violated. The sexual harassment policy and procedures were in a state of disarray.

Enter the ombudsperson. I was as confused as everyone else about what was really happening with the policy and procedures. Therefore, I initiated a survey of those involved in the procedures to learn if they had received complaints; if they had advised people; what complaints had evolved to hearings; and what complaints had resulted in sanctions. The survey results showed that people did use the process; that complaints had been solved informally; that a few of them had progressed to hearings; and that sanctions had been applied. In some cases the policy had worked successfully, but few on campus were aware that it had. However, the survey also showed a widespread distrust of the institution regarding sexual harassment and a concern about the lack of training and education about sexual harassment issues -- especially on the part of hearing panel members. In my annual report I emphasized the need for revising the policy and procedures and for rethinking who ought to be responsible for its implementation. In addition, right after commencement, I arranged for a meeting with the President and those who I thought would be most responsible or knowledgeable about these issues. At the meeting, we discussed expanding the number of designated college officers to handle sexual harassment complaints and the process by which the policy was to be revised. A representative group of the campus community would be convened; would be educated about sexual harassment issues by experts; and would generate

principles which should guide a policy for Occidental College. It was agreed that the group would consist of four students; four faculty members; and four staff people or administrators. I would facilitate the process. We were off to a good start -- were we not? Things seemed clear -- at least to this ombudsperson -- who harbored hopes that enough progress would be made to put a policy in place by the end of summer and the training of new personnel by the beginning of Fall term.

Who should be those four students, faculty members, and staff or administrators? Ah, is it here that my naivete becomes dramatically obvious? Or was it earlier, when I called the meeting with the President and those decisions were made so facilely? I inquired about "Who would be good to be on such a committee?" Those I asked gave me names of people who I contacted and was relieved when enough of them were available over the summer to constitute the group as originally planned. Did I ever ask "why" they would be good? It never occurred to me! I knew a few of them -- they all seemed reasonable people. In retrospect, one might point out that the composition of the committee empowered with the responsibility for revising or creating a policy will be fundamental to how that policy will eventually look and the nature of the process by which it will be produced. Who is on a committee is thus a crucial issue. Those who I was told "would be good" were, for the most part, individuals deeply committed to pursuing sexual harassment issues and deeply distrustful of the institution's commitment. Some had participated in the creation of the policy we now had to revise; some had been named as codefendants in the free speech case brought against the college; and some had actually filed or attempted to file sexual harassment complaints. On the one hand, there might have been no better group to draw upon for the eventual success of having the policy be approved and supported in its implementation. Certainly, the commitment to see the revision through to the end was there. But on the other hand, many of these committee members were deeply invested in similar approaches to sexual harassment; thus, diverging views were likely to go unheeded. At this point, I want to state how much I appreciate and admire those who did see the revision through to the end; who fought, struggled, sacrificed, and ached; and who now are committed to seeing the new policy implemented. But I would like to emphasize the obvious: policy formation by committee is a political process and each committee member will bring to the process a vested interest in the outcome -- except for the occasional Forrest Gump who is put in charge.

The first meeting of the committee was an "all day affair." In the morning we heard from three attorneys about sexual harassment issues -- attorneys who also "would be good" on the subject. One was a member of the legal firm employed by the college and had helped settle the free speech case. Another was the director of one of the most important feminist issues law firms in southern California and had been previously consulted by the women faculty on a number of gender issues at the college. The third was an Oxy alum and a practicing lawyer who specialized in sexual harassment issues and had conducted some of the training of those involved in implementing the policy we were now revising. We were given such widely opposing views about sexual harassment issues in such an adversarial fashion that we all agreed that what we had learned was that three lawyers, together, would never agree upon anything. In this way the committee had come together and its process was quickly taking form. It would be adversarial -- the lawyers remained on the committee; were integral to its formulations; and consensus would be achieved only through heated discussion. Is policy formed in any other way?

Another problem soon emerged and threatened to abort the whole process. We had been given the

charge to develop "principles and guidelines" for a policy at Occidental. What exactly did that mean? A list? Specific policy points? Or the actual policy representing the principles and guidelines the campus would follow? The problem became acute at the second meeting when the college's counsel stated that it had met with an ad hoc committee of top administrators and had drafted a revision of the policy which it was presenting to the committee as the basis for the future policy. Did our committee have any meaning at all or was it just window dressing for a *fait accompli*? I was certainly on the spot; was as confused as the rest of the committee; and had a difficult time managing my anger at the counsel. It did not help that the President was on vacation and unavailable for discussion -- in fact, the ad hoc committee had met while the President was away. Some weeks later, after the President's return, he met with our committee; invested it with full authority for developing a sexual harassment policy; and appointed me to prepare a draft for the committee which incorporated the concerns expressed at previous meetings. Granted that policy creation is an evolutionary and creative process and that flexibility is a must; nevertheless, the clearer and more specific the charge given to those formulating the policy, the better will be the chances for an expeditious process and a successful outcome. It seems obvious now. Had I known then what I know now, I would have insisted at the outset on exactly what "principles and guidelines" meant. From the start I was conscientious about a potential conflict of interest with the neutrality of the office of the ombudsperson. What was my vested interest in the policy? How was I to deal with the different factions in the process? I chose the following as my positions: My vested interest was to have a policy that was fair, clear, and easy to understand -- a policy in which complainant, alleged harasser, and college personnel knew what was going to happen in the process; when it was going to happen; and who was responsible for making sure it would happen.

These concerns drew upon the problematic experience of those who were involved in cases under the policy we were now revising. My role in the process was to be a facilitator. I would arrange meeting sites, open committee meetings, and do my best to make sure that all committee members, as well as the President, were kept informed of what went on at committee meetings. In this role, I became the center of communication -- taking and circulating minutes, and, later, drafts of the policy. I understood my neutrality to mean that I would ensure that all viewpoints had the opportunity to be expressed -- at times a difficult task when a lawyer or a committee member dominated discussion. My non-partisanship had important effects because I was able to meet informally with committee members and to candidly sound them out on issues as well as review the committee process. This was especially important for the students and staff members of the committee whose status in the college context is generally inferior to faculty or top administrators. I was able to ensure that those issues of greatest concern to them were heard and considered carefully. When frustration mounted over issues which appeared to be intractable or when threats were made by one group to pull out of the process or refuse to support whatever policy was produced if their demands would not be included, I was able to provide a semblance of continuity and certainty that the final product would reflect the consensus of the committee. The responsibility for drafting the policy could have presented the most difficult challenge to the neutrality of the office because, once the policy was in place, the ombuds could end up being in the awkward position of having to defend the policy rather than being in a position to observe how it didn't work, if such was the case. The President agreed with me that I would be assisted by the head of the counseling center and our new Vice President for Student Services -- two individuals with a broad spectrum of institutional experience concerning sexual harassment. In a sense, I facilitated the drafting by this subcommittee. Some of the

work had been done before, i.e., sections of the policy that we were revising referenced relevant laws and legal codes and, therefore, did not need much change. (Of course, we did have to cite the new California student free speech law.) Some of the language from the ad hoc draft -- which had been the subject of bitter debate -- was modified and included. We either followed or, in places, innovated certain principles and guidelines that had been reached. Once the draft was completed, our committee work began in earnest. We went line by line -- intensely discussing each point in the policy being fashioned. I remained conscientious of the neutrality of the office. I never made any particular point a matter of personal investment even though I had the responsibility for writing it. At times, it was very difficult to let go a part of the draft which I was convinced made far more sense than the opposition allowed. However, I let it go. And as the process went on, and eventually ground on, I learned something very significant about how consensus emerges in an adversarial process.

We began to agree through the method of exhaustion. The process seemed endless as every point was contested over and over. But the contests had an unexpected outcome -- at least it seemed that way to me. The contests had exhausted all the possible arguments, pro and con" over the issues at stake. Therefore, what was left was shorn of personal investment, ego, status, and claims to personal authority. Rather than agreement being achieved by one side finally capitulating to the other, agreement was the only choice left. In other words, it was no choice at all. This is not to say there was not "horse trading" or "wheeling and dealing" to arrive at certain mutually suitable compromises. However, there was no dissension on the fundamental issues of how we approached dealing with sexual harassment. In the final weeks before the policy was to be submitted to the faculty for a vote -- as a smaller group of the committee (which included the lawyers) worked at times on a daily basis to refine the policy -- the atmosphere was noticeably different. Instead of arguing over what the policy should be, we worked on making make it better and clearer as well as tying up loose ends. In the end, the committee was unanimous that this was the best possible policy for Occidental College. Whenever I hear about diplomatic negotiations which seem to drag on for years and years, I wonder if the method of exhaustion is at work.

The policy was put to the faculty for a vote at the beginning of Spring term. The debate in the faculty centered on academic freedom. Certain members of the faculty were concerned that under the definitions and examples of sexual harassment, the presentation of erotic or pornographic materials in the course of their teaching could be grounds for a complaint. A line about the college protecting academic freedom was inserted into the policy. The policy passed. It had taken approximately nine months since that first meeting in the President's office to the vote of approval. I felt like a midwife; I had delivered the baby.

In summary, the following points might be considered by an ombudsperson who finds himself or herself on a committee and in a policy-making position:

1. Be clear on the mandate to the committee. What precisely is the goal of the committee? How is the satisfaction of the goal to be evaluated?
2. Get to know the people with whom you will be working. Learn about the interests each committee

- member brings to the goal. 3. Work for consensus before the committee meetings begin. Preconsultations may not only expedite the committee process but may help make the dynamics of the committee more efficient.
4. Be aware of the meaning of your neutrality as an ombudsperson. What will your investment in the policy be? What will it cost the ombuds' office?
5. Consider the neutrality and confidentiality of the ombuds' office as possible tools for achieving consensus.
6. Keep in mind that consensus may be achieved in a variety of ways, i.e., seemingly intractable positions may be exhausted into consensus.

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LESSONS FROM MEDIATION

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UCI Ombudsman: The Journal 1994

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An Examination Of Disputant Behaviors During Mediation

Which Seem To Elicit Either Cooperation Or Resistance

For many people in disputes, mediation offers an ideal opportunity for engaging in constructive dialogue about their differences. The mediator attempts to establish a safe environment in which the parties can listen to and understand one another. Attention is focused on clarifying the interests of both parties in an effort to assist them in reaching mutually agreeable solutions to their disputes. Even under these "ideal" conditions, disputants sometimes engage in behaviors which seem to increase the resistance of the other party and hinder a cooperative resolution for the dispute.

Most disputants acknowledge that, in order to solve their problem(s) in mediation, they need the cooperation of the other party. During mediation, what can one disputant do to encourage the other person's cooperation in problem-solving? What behaviors will elicit their resistance to problemsolving? Most disputants can easily identify behaviors the other party could employ that would encourage their cooperation -- or those that would elicit their resistance -- in mediation. Unfortunately, disputants often fail to consider how their own behaviors might affect the likelihood of gaining the cooperation of the other party. As a result, they undermine their own success in mediation by behaving in ways that elicit resistance rather than cooperation. These behaviors appear to be habitual ways of responding to conflict rather than any planned approach designed to enhance the likelihood of problem-solving.

It may be that for most people, it simply feels "good" (in the short-run) to ventilate pent-up hostility. For some, a hostile, angry response is required when they perceive some kind of "unfairness," "offensiveness," or "disrespect." Also, these responses have been learned. "Unlearning" a behavioral response is neither "natural" nor easy.

While employed in the Ombuds Office at the University of Colorado at Boulder for the past three and one-half years, I have mediated or co-mediated dozens of disputes. During these mediations, I have observed repeatedly that, regardless of the content of the dispute, how one disputant communicates with the other usually has a significant impact on the outcome of mediation. Disputes that start with one issue

can evolve into two (or more) different issues when disputants exhibit certain behaviors in mediation. While a variety of disputant behaviors can result in increased resistance by the other party (e.g., focusing on minute, seemingly irrelevant details, or insisting on the use of a tape recorder during the mediation, etc.), one of the greatest barriers to gaining cooperation and reaching agreements is the perception that "disrespect" has been communicated by the other party. While eliminating or avoiding behaviors which communicate disrespect to the other party is no guarantee of reaching an agreement in mediation, one thing is very clear: "communicating disrespect" does not encourage cooperation! Because of cultural or other differences between disputants, their perceptions will sometimes differ about what is -- and is not -- "disrespectful communication." Individuals may also differ as to the significance attached to "disrespectful communication" within the context of a dispute. For example, in some cultures (or families), boisterous, verbally aggressive behavior during disputes is more accepted than in others. However, in the majority of people that I have observed, there is rarely an increase in their desire to cooperate and try to settle the dispute if they feel disrespect from the other party! Also, there are some behaviors that seem to be perceived consistently as "disrespectful" regardless of cultural or family background, etc.

For some participants in mediation, to avoid engaging in the behaviors which increase resistance from the other party is extremely difficult. And for some, engaging in behaviors which encourage cooperation from the other party can be equally -- if not more -- difficult. A disputant may feel offended, angry, fearful, insulted, mistrustful, defensive, or misunderstood by the other party. Additionally, he or she might have little or no genuine respect for the other party. Given these kinds of feelings and attitudes, what often seems to be a "normal" or "natural" human response is an urge to behave in exactly the opposite manner from that which seems most likely to encourage the other party to listen and to cooperate. Although a disputant might say that he or she wants the other party to cooperate and to make agreements with him or her, he or she might feel "justified" in behaving in ways that are almost guaranteed to have a different outcome. Unfortunately, even when disputants recognize in advance that engaging in these behaviors can be counter-productive, they cannot always refrain from engaging in them. The "temptation" is sometimes too great.

Common disputant behaviors which seem to increase resistance during mediation are presented below. These behaviors usually decrease the likelihood of listening and cooperation between parties. Many are often perceived by the receiving party as a sign of disrespect. Examples are provided wherever possible to illustrate the behaviors.

1. Negative labeling, insulting, or calling the other party offensive names (Example: "You are a liar.")
2. Minimizing or ignoring the other's feelings (Example: "Frankly, I don't care if you are upset!")
3. Lying about, denying, or misrepresenting information known to the other party.
4. Using "you" statements to blame the other party for the problem (Example: "You make me mad when you forget to lock the door when you leave the office!")

5. Communicating condescension (Example: "You mean to tell me that you are just now figuring that out?")
6. Questioning the other party's honesty, integrity, intelligence, or competence (Example: "How do you expect me to trust you this time?")
7. Making offensive or hostile non-verbal expressions or gestures (Examples: rolling the eyes, loud sighs, laughing, "giving the finger," sticking out one's tongue at the other, or groaning when the other party speaks)
8. Making interpretations of what the other party says based on stereotypes or prejudicial beliefs (Example: "All you people ever think about is how you can avoid working!")
9. Insisting that the other party "admit to being wrong" (Example: This is not about my perception of what happened. I saw you take my floppy disk and you damn well better admit it!")
10. Using sarcasm in addressing the other party (Example: "Well, how nice of you to grace us with your presence. I'm shocked!")
11. Making moral judgments about the other party (Example: "The Lord will punish you for these sins!")
12. Making threats to the other party (Example: "You'd better stick to your word or I'm going to talk with the boss about your behavior!")
13. Making demands of the other party (Example: "I demand that you write me a letter of apology.")
14. Refusing to shake hands with the other party when he or she offers (Example: at the beginning of the mediation session)
15. Interrupting the other party when he or she is speaking
16. Shouting at the other party

Misunderstandings can prevent disputants from identifying ways to resolve their disputes. Effective listening minimizes this problem. The behaviors which follow are examples of the type that seem to encourage listening and facilitate understanding between disputants in mediation. In general, these behaviors "communicate respect." Often, these behaviors seem to enhance the desire of the "other" to cooperate.

1. Using "I" statements rather than "you" statements (Example: "I want to respond to your questions, but

I need some time to calm down first.")

2. Conveying that the disputant has been listening attentively (Example: "It sounds as if your biggest concerns are for your longterm job security and recognition for your accomplishments. It that right?")
3. Making "appropriate" eye-contact (Note: This one is extremely culturally dependent. The key issue is for Disputant A to make eye contact with Disputant B in a way that is comfortable for Disputant B.)
4. Expressing a desire to see both parties get as much as possible of what they want from mediation (Example: "I'd like to see both of us walk out of here happy.")
5. Acknowledging responsibility for part of the problem whenever possible (Example: "You know, I hadn't seen it before, but I think I did make some mistakes in the way I approached you.")
6. Acknowledging the other party's perceptions whenever possible (Example: "I haven't considered this matter from that perspective before, but I think I can see how it looked that way to you.")
7. Identifying areas of agreement with the other party whenever possible -- especially if he or she does not recognize that such areas of agreement exist (Example: "You know, Conrad, I agree with you that we ought to make Time Management more of a priority for our office in the f uture. ")
8. Allowing the other party to "let off steam" (Note: This requires extreme self-control, but if the other party has not previously expressed him or herself, this can be extremely valuable.)
9. Avoiding assumptions (Example: "Could you help me understand why having these specific days off is so important to you?")
10. Indicating that the other party "has a good point" when he or she makes a point you believe has merit (Example: "You're absolutely right about

Given the negative consequences of the behaviors on the "Resistance List" (even in the "ideal" circumstances of mediation), it is very likely that these kinds of behaviors have similar effects in disputes that do not involve a mediator. These examples would seem to suggest a number of specific behaviors to avoid when seeking to gain the cooperation of another in resolving a dispute.

Mediators can assist disputants by allowing them to "ventilate" hostile or angry feelings prior to mediation. While this ventilation is often helpful (and sometimes necessary), this often is not enough. Given the goal of "gaining the cooperation of the other party," it is often useful to engage disputants -- particularly angry ones -- in evaluating the potential effects of their own behaviors on gaining the cooperation of the other party. The foregoing lists for "Cooperation" and "Resistance" would seem to be

useful tools for mediators to utilize in engaging disputants in these pre-mediation, evaluative discussions.

The suggestions outlined previously will not, by themselves, settle or resolve disputes. However, it seems fairly evident which kinds of behaviors prevent escalation of disputes and which promote a civil climate in which thoughtful, meaningful discussion can take place. Additionally, because the two lists included here are not necessarily complete, mediators might add their own observations to the lists and share them with disputants and other mediators.

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STRUGGLE FOR CHANGE: THE UNIVERSITY AS ARENA

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Introduction:

All major institutions of Canadian society, including universities and colleges, are operating in a society that is dramatically changed by patterns of immigration and by the increasing participation of women in the work force. Universities are still regarded as esteemed places of meaningful scholarship; they have the reputation of being the innovators of ideas and contributors to social change; and they are recognized as places where ideas and opinions have been investigated, debated, and tested.

However, recent events and published reports have brought different aspects of the role, the administration, and the effectiveness of our universities into public scrutiny and debate.

Some significant events:

Just over a week ago, a report was released from Statistics Canada which confirmed to some degree what we have been hearing at the Canadian Advisory Council on the Status of Women (CACSW) over the past three years -- that women were bearing the brunt of the recession. According to the report, women's overall participation rate in the work force fell for the first time in nearly four decades from 58.4% in 1990 to 57.5% in 1993. But a surprising finding was that young women aged 15 to 24 were the hardest hit. Their participation rate tumbled from 67.4% in 1989 to 63.3% in 1993.

Predictions are that the effects of this trend will be felt in our colleges and Universities -- as an article in the Financial Post indicated. The article discussed the dilemma of a 28 year old university graduate who, upon losing her accounting job, assessed the competitive job market, concluded that she stood a slim chance against chartered accountants and MBA's, and decided to return to the university.

The author of the report, Penny Basset, suggests that with the present situation of rising unemployment, the job search has become discouraging and many may choose to enter or re-enter post-secondary studies to improve their prospects later.

The role of the university is, therefore, key to the identification of the social and economic trends as well as to the establishment of the learning environments that can promote excellence and build confidence in our young. Some recent incidents on university and college campuses have dramatically illustrated the monumental task that all Canadians face in the restructuring of our society.

The incident involving Krista Scott, a student of the College of New Caledonia in Prince George, British Columbia, is one of the extreme examples of the overwhelming evidence that discrimination against women still exists in our universities. Krista Scott was brutally attacked and beaten on her college campus by an assailant who cursed her for being a feminist. This was for many of us a graphic and chilling reminder of that horrible day in 1989 when 14 young women were gunned down simply because they chose to become engineers. Last month, a front page article in the Winnipeg Free Press described the backlash against courses in Gender Studies at Winnipeg's Tec Voc High School.

The newspaper reports about incidents at Tec Voc reveal that there are institutions where women are under attack because they dare to put forward their perspectives.

Also, there has been much attention on recently released reports on the Concordia University's handling of problems related to the tragedy brought on by the action of engineering professor Valery Fabrikant. Sadly, this tragic demonstration of dissatisfaction reminded us of the occupation of the Computer Centre at Sir George Williams University in 1969. The occupation was mostly by Black students who had complained that they were being treated unfairly because of their colour and race. Education and the role of universities:

In spite of these tragedies which have occurred in our Canadian universities, education has, and still, is recognized as the avenue for dynamic social, political, and economic change and is key to the empowerment of women, racial minorities, and the poor. It is, therefore, quite understandable that in contemporary society, educational institutions continue to be the sites for the struggle and conflicts related to class, race, gender, and religion. The manifestation of such struggles are quantitatively different from those of the 60's and 70's, but the underlying dissatisfactions are the same. In Canada, from kindergarten through the university level, the following serious questions are being directed towards the educational system:

- In Ontario, significant amounts of money have been invested in the form of a Royal Commission enquiring into the state of learning in the province.

In Manitoba, the Roblin Commission on Universities has just completed its own inquiry.

In addition, we have also seen the following "Task Forces" and "Studies" come and go:

- a. a Task Force on Aboriginal Education;
- b. a Task Force on Disabled Persons;

- C. a Task Force on Gifted Education; and
- d. various "Studies on Women in Universities."

(We even have coined a new phrase called the "chilly climate" to describe the poisoned atmosphere experienced by many women faculty and students on universities campuses.)

So, we do not lack bodies or mechanisms for asking the questions. We are a society that is very capable of asking questions but a society almost paralysed by our inability to find answers.

We ask ourselves whether our present system is equipped to keep pace with the educational, social, economic, and political needs of the ever-changing and diverse population. Are we equipped politically and psychologically to deal with the aspirations for self-determination of our First Nations? How will we cope with the increased participation and expectations of all women in the workplace?

There is pressure on our educational system to meet the needs and aspirations of these various groups in a coherent way; to help students to conceptualize a future that is qualitatively different from the past; and to produce men and women who can make profound changes. These are the bases on which we hope to build and maintain a civil society that can guarantee social stability and economic prosperity into the next century.

In our pursuit of these laudable goals, we continue to look to our colleges and universities to produce leaders for business, politics, public administration, the professions, and also for family and community life. Is it any wonder, then, that there is a rising crescendo of dissatisfaction with the education system on the part of women, racial minorities, and First Nations citizens? These groups are increasingly frustrated with the following situations:

- with governments and institutions that fund numerous task forces on issues of equity and education and then shelve the reports;
- with the development of employment equity plans without effective measures of implementation;
- with the relegation of women and minorities to the dubious category of "special interest" while Chambers of Commerce, the elites of universities, and, politicians are never seen as "special interests";
- with the continuing undereducation and miseducation; and
- with the sexual and racial harassment endured by women and minorities at all levels of organizations and institutions.

Against the rising levels of frustration, women, racial minorities, and First Nations citizens continue to struggle for institutional and attitudinal changes, while they seek to share the leadership of a longed-for equitable society.

I believe that colleges and universities have a vital role to play in the shaping of our contemporary society. In addition to preparing people for a changing work force and to dealing with new technology, our tertiary institutions must exhibit leadership in the re-definition of what is humane in our society. They have a role to play in the development of the finest aspects of human potential -- intellectual,

social, economic, and political. They have to keep reinventing themselves to be all-encompassing and inclusive while they continue to strive for excellence.

Our institutions of higher learning also need to establish partnerships with the communities in which they exist; partnerships with governments; and partnerships with the society as a whole. Because, these institutions -- in spite of their historical relationship to the elite and elitism -- cannot be entities apart from society. They must evolve -- keeping the best aspects of their history and giving up those that have kept them fossilized, irrelevant, and under attack.

In Canada, for example, the concept of academic freedom, which universities hold dear, historically, has been the subject of intense public debate and question as a result of the following recent controversies:

- The ideas about date rape expressed in a student newspaper by Professor Matin Yaqzan, University of New Brunswick.
- The protest which prevented Professor Harold Lief, University of Pennsylvania, from giving a public lecture on "False Memory Syndrome" at McGill University.
- The ongoing attack on feminism, feminist ideology, and Women's Studies programs by those who benefit from the status quo.
- The debate in Ontario about the plan to stamp out harassment and discrimination on university campuses and the opposition to the introduction of harassment policies at some of our universities.
- In the USA, it is difficult to ignore the controversy which has arisen between Blacks and Jews on many campuses.

Women, minorities, and the backlash:

In fact, women and racial minorities have challenged the irresponsible, sexist, and racist use of this academic freedom and the freedom of speech that our societies in North America cherish. For this, feminists are regarded as the "politically correct brigade." Some academics suggest that feminism, which is supposedly entrenched in universities and institutionalized through Women's Studies programs, has become a threat to academic freedom.

Feminists are also portrayed as being against the family and against traditional values of free speech and good will. our efforts towards equity in the workplace has been attacked as being against the principles of merit and succession thus rendering men powerless -- in spite of evidence to the contrary.

These are some of the preemptive strikes that seek to stop women long before they reach the finish line. Dr. Jean Baker Miller, Feminist Psychologist, has suggested in her writings, that a backlash may be an indication that women really have had an effect. She also says that "backlashes occur when advances

have been small, before changes are sufficient to help many people . . . It is almost as if the leaders of backlashes use the fear of change as a threat before major change has occurred."

Women and racial minorities in the academy face a continual struggle to deal with the disparity between academic pursuit or achievement and the limited expectations because of ascribed characteristics like sex and race. Sexism and racism are indeed normalized in people's collective

consciousness.

But, women can now enroll at any university we choose and we are doing so, often in large numbers in certain faculties and programs. In some faculties such as Law, women students have almost reached the 50% level. Any many more women are entering these "non-traditional" faculties -- "non-traditional" meaning those that exclusively served the intellectual, social, and economic needs of men.

Change in this area has meant more women in Political Science, Agriculture, Mathematics, Chemistry, Economics, and Dentistry. Reports indicate that even Engineering has begun to recognize the following realities:

- a. they can't do without one half of the population if their profession is to survive, and
- b. women have something to contribute to the discipline.

Today women account for 56% of all bachelors degrees granted by Canadian universities -- even if we still earn them in the traditional areas like Education and Nursing.

Of course, in spite of the broadening participation of female students in the various disciplines, full-time faculty membership remains disproportionately male-dominated. A survey done by the Canadian Federation of University Women found, among other things, that the numbers of female faculty members are down and that women still encounter barriers to getting promotions to senior faculty and tenure track positions. Consider, then, the difficulties faced by the few minorities who are students or members of faculties in the universities.

Carl James, a Ph.D. in Sociology and a professor in the Faculty of Education at York University writes:

"That I am a professor does not make me immune to the stereotypes and concomitant issues and problems that go along with being a racial minority and a Black person in particular."

Dr. James also observes that his power and privilege as a Black male educator must be seen in relation to how Black males are socially constructed in today's Canada.

Roxana Ng, Ph.D. and President-elect of the Canadian Research Institute for the Advancement of Women (CRIAOW) and of Asian heritage writes: "As a racial minority and a woman, I have no authority

despite my formal position. . . The knowledge I embody and transmit is also suspect These are two minority educators talking about their experiences in the classroom -- the lack of respect, the suspicion that they are not real academics, and the undermining of their work by student and peers.

The value of change:

Fear of change has characterized many of our institutions but I believe that educational institutions have a responsibility to make a difference in the lives of all students and to encourage excellence. This means being responsible to the students; giving them the opportunity to learn from the brightest and best; and exposing them to a wide variety of ideas and truths.

To this end, and as a result of the surveys done by Maclean's magazine, the CACSW wrote to 88 universities expressing concern on a number of issues surrounding the status of women in universities -- issues which had been ignored in the surveys. Among other things, we pointed out the need to balance male and female perspectives and to give attention to the research and knowledge needs of racial minority faculty, staff, and students.

We believe that only through systematic change will educational systems be at the forefront in dispelling many of the myths and stereotypes which fuel the racists, anti-feminist, and xenophobic thinking of today. We also believe that support systems must be put in place for change to be effective. The responses we received from 27 institutions indicated that some universities are definitely making an effort, and that there are university leaders who will leave an impression on history because of their contribution to the process of change.

For me, the establishment of the first Chair for Black Canadian Studies at Dalhousie University is an important initiative. Whether or not the university itself has changed enough to enable the Chair to make a difference remains to be seen. However, I give credit where credit is due and say that Dalhousie University has taken the first important step. Some institutions have established solid Women's Studies programs, not just with soft money but at the core of their academic agendas.

The University of Ottawa Law School has established an Educational Equity Program which, though not perfect, has attracted significant numbers of Aboriginal students, racial minority students, and mature women. Those students now form a "critical mass," which is essential to the maintenance of their levels of participation in the program.

The University of Regina, under the leadership of past president Dr. Barber, created an opportunity for the Aboriginal peoples of Saskatchewan and Canada by establishing the first Aboriginal-controlled institution of higher learning in Canada -- the Saskatchewan Indian Federated College which is an essential beginning.

In Winnipeg, the success of Children of the Earth a High School created expressly for native students -- is a source of pride.

if course, there always will be controversy around these issues, but we have seen leadership in the form of Deans and Presidents who have stepped forward to make a difference.

Looking to the future:

We are now witnessing dramatic changes in our world which are shaping our visions for the future. As an integral part of the international community, we need to take a good look at the human potential in our respective countries. There is untapped potential in our women, in our racial minorities, in our Aboriginal peoples -- potential that needs to be harnessed and developed for positive change in our workplace and economic growth in the next century.

Women must move away from fitting into the victim mold. There are social forces which seek to limit our experiences to the role of victim -- thus circumscribing our varied abilities and our vision. We women must reclaim our history and acknowledge the invaluable contributions we have made to the history and development of North America and the world. We women of the world must acknowledge our spirituality and value the relationship of the land to our being. We must value our impact on the culture of the workplace and our educational institutions. We must validate our holistic approach to change and development.

Demographers, both in Canada and the United States, have predicted that by the year 2000 the majority of the work force will be made up of women and minorities. This reality is a clear challenge to our educational institutions, our organizational hierarchies.- and our political will to lay the groundwork in preparation for a new century -- the century of women; the century of minorities; and the century of hope in a sometimes hopeless world.

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UNIVERSITY OMBUDS ROLES

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1994

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An ombudsperson is probably most frequently asked, "What is an ombudsperson?" or the variant, "What does an ombudsperson do?" The job description of a college or university ombudsperson varies to some extent from campus to campus. Responses to both the introductory questions, though, probably include reference to "the resolution of individual problems." Other persons in a college or university organization also assist in the resolution of individual problems. Therefore, some further, differentiating characteristics should be cited.

In the course of his or her work, the ombudsperson does a lot of listening, some investigating, and some counseling or advising. The latter is chiefly about institutional organization, procedures, and behavior -- not "psychological" counseling. These roles, too, are common to other offices in the college or university. Unlike other "administrative" offices, all the ombudsperson does is shielded by a special effort at confidentiality (though this does not yet have the full protection of the law). The position is distinctive in reporting outside the regular hierarchy of offices and in focusing on problems created by conflict or "glitches" within the institution. But what is it the ombudsperson does about these problems which is distinctive? From my experience, it appears that the university ombudsperson is perceived as doing things or intervening in three rather distinct roles. Let me say at the beginning that each ombuds practitioner approaches these roles as he or she finds appropriate in terms of the demands of local job definition, professional background and orientation, and client expectations. The approach may not fit the client perceptions or expectations. The first role discussed here, for example, is assiduously avoided by some practitioners. (One may recognize a possible role only to eschew it.) Where a practitioner plays more than one role, there are differences in the priority assigned to the roles, and tensions may develop between the demands of the different roles.

Clients may approach the ombudsperson to have the assistance of an advocate for the underdog. This is perhaps the most immediate and understandable role, and it is one which is easy to play. We all recognize the problems that bureaucratic complexity create for individuals, and it appeals to the romantic in us (whatever intellectual justifications we also have) to fight for the individual against the bureaucracy.

A second role is a mediator of disputes. Ombudsing is a form of alternative dispute resolution (ADR),

and many problems can readily be seen as conflicts between potentially negotiating parties. Mediation, as practiced in labor management negotiations, is the classic form of ADR in the United States. The third role is that of a rectifier of rules and procedures. While an ombudsperson is not an inspector general, he or she may identify many situations which arise from misapplication of rules, ill-suited procedures, or anomalies falling between administrative stools and may -- as a result -- suggest changes in rules or procedures.

Each of these roles has its advantages and pitfalls, and the following are not exhaustive:

One of the positive aspects of the advocate is helping the client to develop and articulate his or her position more fully. The underdog may fall short of the person or office who is the focus of difficulty in resources, allies, education, and/or verbal skills. The position which the underdog needs to put forward may previously have suffered from its formulation rather than its rightness. Another important service concerns what is now widely referred to as "empowerment." The underdog may not feel important enough or be confident enough to put forward his or her position and may need to feel confidence and competence. The ombudsperson can assist in cultivating these characteristics. But persons are not remade overnight. A person with a good case may, indeed, need an advocate to put the case forward in a persuasive way, whether or not the ombudsperson is that advocate.

Pitfalls abound for the advocate. Playing this role violates the asserted neutrality of the ombudsperson. Moreover, he or she may not have been given, and indeed often has not been given, all of the pertinent information by the client. The client may be inadequately informed, in error, or biased. Even if the client is right, there may also be right on the other side -- including legitimate institutional concerns which, on balance, may have led an administrator to make a judgment which runs counter to the client's preferences.

Even a Jeffrey Dahmer or a crime kingpin is entitled to a lawyer to "defend" himself. one function of a good lawyer is to find and put forward the most comprehensive, valid arguments on behalf of his or her client. As a dean and now as an ombudsperson, I have found myself occasionally in an analogous situation in helping with the construction of arguments: "If I were deciding this, I would decide against you; but I think your strongest line of argument is X, Y, and Z; and the person responsible for making the decision may find this line of argument persuasive." Unlike the lawyer, however, the ombudsperson is not likely to make such a case directly to a decision-renderer.

The mediator plays an important role in explaining each side of the controversy to the other, both intellectually and emotionally. It is all too easy not to take the other person seriously or to treat that person as a stereotype, especially when we think the other person is wrong. Seeing things from the other person's point of view is an important part of seeking an "objective" assessment of the situation. A mediator can assist in promoting communication, and that may lead to finding some common ground or to constructing a "compromise." The mediator may even play the more active role of suggesting "compromises."

Pitfalls abound for the mediator, too. Mediation functions best when the parties are approximately equal in status or options. This is often not the case in a university setting. The mediator, moreover, may have a strong opinion about what is right or fair in a case. Compromise, lying as a middle ground between the two positions, may be neither fair nor wise -- especially since other parties may have an interest in the outcome. In another context, it is said that "the squeaking wheel gets the grease." others eventually come to resent too much of the grease going in one direction simply because the boss finds it more comfortable to compromise than to say no. When one person complains bitterly about the application of a rule and the boss compromises (perhaps under the influence of a mediator), other persons operating under the rule feel unjustly treated. Fairness is likely only if the process is fair and the rule is changed as it applies to everyone.

The rectifier may be perceived as the opposite of the advocate for the underdog -- as taking the institution's point of view. By focusing on changing the rules or procedures, the rectifier may forget to assist in achieving a satisfactory outcome in the individual case from the client's point of view. An institution, including a university, is a system of offices, rules, and procedures -- an organization for cooperation in a defined area or areas by defined rules and procedures. A community grows up around the institution, however; and the characteristics of the community may blur the rules and procedures and even the areas in which the institution is perceived to function. In any institution, unforeseen situations arise, rules are distorted or misapplied, and established procedures are not followed in the appropriate way. As a rectifier, the ombudsperson tries to assess, in as fair and disinterested a fashion as possible, the characteristics of the client's problem and the institutional context (the relevant part of the organization, rules, and procedures) in which the problem has arisen. After this assessment the rectifier may pursue resolutions. It may well be, however, that the individual client decides that it is not in his or her best interest to press an issue. An ombudsperson, unlike an inspector general, has an obligation to respect the client's confidentiality, and thus may be left holding a bag of residual issues marking places at which the university's operations need to be improved. Some of these can be addressed, perhaps at a later time, without compromising confidentiality; but others may be left like unexploded bombs under the floor of the ombuds office.

In discussing the advocate, empowerment was mentioned. Consideration of empowerment suggests one further tension in the ombuds role. To what extent should the ombudsperson try to solve the problem presented and to what extent should he or she help the client feel empowered to solve the problem for himself or herself? It is not clear to me (at least as yet) that there is any general answer to this question. Surely people should be encouraged to help themselves. Acting on this tends to place the focus on the character of the client. However, that may not be modified easily. Not every staff client will be prepared, for example, to give the boss the feedback necessary to the resolution of the problem nor to take the step of going over the boss's head. The ombudsperson may have to take such a step (with the client's permission).

One of the major challenges facing the ombudsperson in the performance of his or her role(s) is that of maintaining neutrality or of cultivating fairness.: "Neutrality" seems to be the more frequently used word among alternative dispute resolution professionals. I am somewhat more inclined to "fairness" in the university setting; but both terms, if distinguished, can play an important part in clarifying the ombuds role.

As a first approximation, "fairness" suggests the presence of some social or institutional context and standards shared in common (though not necessarily present to the consciousness at all times) by all the participants. When someone says, "that's not fair," he or she expects the auditors to recognize the common ground. "Neutrality," on the other hand, suggests someone who stands between competing positions and in a position to draw out possibilities to help them create common ground for the resolution of the specific dispute.

At the October 1992 Pittsburgh meeting of the Society of Professionals In Dispute Resolution (SPIDR), "neutrality" was addressed in a number of ways. From an historical point of view, professional "alternative dispute resolution" in the form of mediation began with labor-management negotiations. In such negotiations, a mediator is sought who is indeed neutral, disinterested, and with no vested interest in either side. This is of course an "ideal" since the person mediating may have or develop subtle preferences between the parties based on philosophy, class identification, or purely personal likes and dislikes. Nonetheless, neutrality, in this view, can and should be sought and can be more or less achieved. At the other extreme is a position which apparently came to alternative dispute resolution from the participatory democracy of the 1960's and may at some points or in some persons be influenced by aspects of marxism. It sees ADR as a new type of resolution which treats problems more fully than the two-party, adversarial approach of the law-courts (or labor-management negotiations). It recognizes the inequalities of the participants and is concerned to give voice to and empower the disadvantaged and unorganized. In its democratic aspect, ADR may help to organize communities or interest groups and may even help to manufacture disputes in anticipation that their resolution may help to reform society. In this context, "neutrality" may be a "cop out" because one can never escape the need for justice (or, in the marxist sense, one's class identification). In the work of Sara Cobb, University of Connecticut at Storrs, and Janet Rifkin, University of Massachusetts at Amherst, reported at the SPIDR Conference, the "paradigm of neutrality" is replaced by the "paradigm of narrative- derived from rhetorical theory. The situation of conflict is analyzed in terms of plot, character, and themes. The mediator (who, in fact, must in any case make lots of "judgments") seeks to find "access points" or "key words" by which to open up the conflicting narratives preparatory to the construction of a new narrative. A kind of neutrality is achieved in a story which permits each of the participants to find a common ground on which to build. This is, of necessity, a brief and incomplete treatment of a stimulating and productive approach. However, it appears to me that issues of "fairness" must still remain.

This novice left the SPIDR conference with an assortment of neutralities as multiform as the roles described in Part I. The experience sharpened the need to clarify the position of the ombudsperson as an intermediate in the university community and to relate a position of neutrality to one of fairness. A homely situation may help to clarify fairness.

In a pick-up basketball game, the participants display a rather exact sense of fairness (of fouls, out-of-bounds, etc.) without any referee or even detailed rules. This appears to depend upon some bonds of community, even if only temporary. The players constitute an in-group, and a feeling of what is fair serves as the criterion of justice for the group. There is also a sense of fairness in larger communities or societies (cf., the "Anglo-Saxon sense of fair play" taught "on the playing fields of Eton"). But some persons or groups feel themselves to be outsiders and do not think their perceptions or feelings are accepted as contributing to the common sense of what is fair. This is frequently commented on by women (who are not a part of the "old boy network") and racial minority persons (who are "outsiders" or "invisible").

The ombudsperson who appeals to the "common American sense of fairness or fair play or the way the game is played" is not appealing to something in which all the participants in the modern university feel a part. He or she reveals himself or herself as "just another bureaucrat." I suggest that this does not mean, however, that there is no sense of fairness relevant to the situation. An institution is defined by a large number of objectives, rules, procedures, and standards, and its constituencies include many with elaborate professional standards. I suggest that this network or set of systems provides the ground on which a sense of fairness -- tentative and exploratory as it must be in particular cases -- can rest. Inconsistencies and inequities stand out against the background of all the expectations on which the university rests. All the participants in the university share their university affiliation. The institution, in this respect, is a stand-in for a comprehensive community or society.

The ombudsperson, in "finding" this fairness, is doing something comparable to what the Common Law judges do, or did, in "finding" the law. We have grown so accustomed to saying that judges "make the law" that we have forgotten that when they do so, they are violating, not fulfilling, their responsibility. (Perhaps this failure is the common lot of humanity, but it is a failure.) This is a complex subject with a vast literature, and perhaps introducing the comparison will confuse rather than clarify the ombuds task for some readers. The important point of similarity is that fairness relates to something external both to the participants and to the ombudsperson and that "something" will make the resolution seem fair to other persons in the institution. Unlike the Common Law, there is no accumulation of public case records to which the ombudsperson, the participants, or the interested observer can refer. The fair solution of the ombudsperson, when enunciated, must appeal directly to those who participate in the institution for its validity. In view of the demands of confidentiality, the respondents may be only those immediately involved in the case. However, one should feel confident that -- if there were a "leak" - others would respond similarly.

When one distinguishes neutrality from fairness, the former becomes productive in a special way. Neutrality is especially important in the university setting when people coming from different communities or different cultures" are in conflict. Then a "neutral," who can mediate to assist the parties in creating a common ground for resolution, is needed. The ombudsperson can take the labor mediator as a model; identify with neither party; make no special claim to "find" fairness; and work toward a mutually satisfactory "compromise." The result need not look "fair" to third party observers so long as the resolution does not directly impact third party interests. (This is admittedly difficult in a university

setting where people find it difficult to distinguish between "be interested in" -- as an intellectual matter -- and "have an interest in.") There may be a variety of pressures to achieve a "generally acceptable fair resolution" as well as a neutral resolution" that is acceptable to the immediate participants. These pressures may make the ombuds task a good deal more difficult.

The reference to different cultures implies no absolute definition of cultures" "Diversity" is the object of a good deal of discussion at present, and there is a temptation to attempt to enumerate all of the "multicultures." As the violence in the former Yugoslavia reminds us, self-differentiation easily becomes an issue. The question in the university setting is, "Does one individual or do both parties feel that they come from different cultures?" It is important not to fixate on the word "culture" or "multicultural" and bring our own assumptions to bear but rather to focus on the feelings which differentiate the participants as well as the traditions and communities which promote those feelings. What the mediator needs for neutrality is not a scientific definition of culture but a broad acquaintance with, tolerance of, and delight in the varieties of human communities and traditions. one of the most complex and challenging aspects of this situation is the possibility that the English language proves to be not as "neutral" as we may assume. Persons coming from different language backgrounds bring those backgrounds with them to their understanding of English, i.e., though they translate "correctly," the overtones of meaning and the relative importance of terms may differ. Thus, it might be productive to examine "neutral" and "fair" and the words which are translated as "neutral" and as "fair" from other major language constituencies. This also suggests that the roles of intermediates in other societies are of relevance to the university ombudsperson.

The ombuds roles are to me, as I am sure they are to all practitioners, challenging and demanding. They are also more complex than is implied in the traditional role of the mediator or in the phrase "designated neutral." In the multicultural" multiversity (to employ a useful term which has fallen from favor), the ombudsperson is likely to play an increasingly important set of roles. We now hear frequently of diversity in the workplace, and that diversity alone requires the best of our skills. The diversity of ends served by the multiversity compounds the challenges.

NOTES

In private conversations and in comments on drafts of this paper, several university ombudspersons have spoken eloquently against advocacy as an ombuds role. Yet in listening to the discussion of ombuds' case studies, I have felt some participants predisposed to side with the student or staff client. I confess that I often find the same predisposition by introspection. My personal impressions were reinforced by an independent observer, another ombudsperson, commenting to the same effect an reactions to a case study presented at a recent conference.

Some University ombudspersons have restricted clientele -- students, for example. Advocacy may be more tempting or common in such situations. The Fall 1992 UCOA News: University and College Ombuds Association, Inc., contains an "Ombudsman Creed" written by Dr. Barry Culhane, Student Ombudsman, RIT, 1992. Following are three of the ten provisions:

- "Students are the most important part in any university."
- "Students are not an interruption to our work. They are the purpose of it."
- "Students are people who bring us their needs. It is our job to fill those needs." (Emphasis in the original.)

I find all of this admirable, but it does not seem to me that one approaches a student as a "neutral" from this Creed.

While my contacts within The Ombudsman Association (formerly The Corporate Ombudsman Association) have been limited, it would appear that some of the public sector ombudspersons more closely approach being citizen-advocates. From what I have been told by linguistically sophisticated friends, this is true to the Swedish origins of the word: "Ombuds" is very like a "loan translation" of "advocate," with the "om" serving the function of the Latin "ad" and "bud" meaning the same as the Latin "voc" -- that is, "speak."

2. "Compromise" is sometimes looked upon with disfavor in educated circles and other words substituted for it. The original meaning of the word is simply "to promise together" -- to reach an agreement by which the parties would abide. It was recognized early in the use of the word (according to the Oxford English Dictionary) that each party might have to "give up" some parts of its initial demands/wishes to reach an accord. Perhaps part of the negative connotations which the word carries is explained by another dictionary entry -- "to compromise one's honor." The challenge to the compromiser may be to find a formula which both deals with specific items in dispute and "saves face" on each side by permitting each to claim he or she is standing by his or her "principles." This may require a joint effort of discovery and imagination.

It is curious that "compromise" is in disfavor while "toleration" is in high favor, often in the same circles. "Toleration" -- an agreement, often tacit, to disagree -- came into importance in a context of compromise, i.e., the English Protestants and Catholics each agreed to stop trying to extirpate those subscribing to the other catechism.

For a good book on "negotiating" (without a mediator) which avoids the word "compromise" and seeks to persuade the parties to "separate the people from the problem" and to "insist on using objective criteria," see Roger Risher and William Ury. *Getting to Yes: Negotiating Agreements Without Giving In*. Boston: 1991.

3. My examination of "neutral" has been influenced by explicit discussion of it at the October 8 - 11, 1992 SPIDR Conference in Pittsburgh.

Some light was also shed on neutrality by the closing plenary session, "Taking Stock: Are the Rest of Us Unprincipled? Defining Real Mediation." The opening question asked each of the panelists to explain

how they identified "success" in their work. (I must confess that the panelists might not recognize themselves in my topology.)

There appear to be four kinds of success in dispute resolution involving four identifications of the participants:

- A. Success may mean a total transformation implicating everyone involved in any way, the whole society, or the world.
- B. Success may depend upon identifying particular problematic elements which can be separately resolved and combined into a satisfactory mediation for various persons involved in varying ways.
- C. Success may reveal itself through the mutual development of parties who make progress toward community through the resolution process.
- D. Success may mean the simplest and cheapest conclusion satisfying the immediate presenters.

Neutrality shifts from its most immediate "traditional" meaning on a rough continuum from D to B to C to A. ("A" might be seen as a "revolutionary" understanding.)

4. It was not clear to me from the presentation, but would appear to be an interesting question, whether the "paradigm of narrative" assumes that the adversarial stories will remain basically intact but only modified enough for compromise (reaching agreement on concrete actions) or whether there will be (with the assistance of the mediator) a basic blending of the stories (which may encourage a new or restored comity between the former antagonists).

An analogous question was examined at length on the philosophical level in the writings of Richard P. McKeon, especially in the following form: "Is it possible for two philosophically opposed systems (the U. S. and the U.S.S.R.) to reach peaceful agreement on particular divisive issues without first reaching comprehensive philosophical agreement?" McKeon thought the answer to be "yes" and spent decades developing devices to assist persons of differing philosophical persuasion to understand one another and to find mutual advantage in resolving particular practical disputes. McKeon, whose work bore fruit in the formation of UNESCO and in the drafting of the Universal Declaration of Human Rights, published mostly in essays which remain largely uncollected. However, see R. P. McKeon. *Rhetoric: Essays on Invention and Discovery*. Woodbridge, CT: Ox Bow Press, c1987 and *Freedom and History and Other Essays*. Chicago: University of Chicago Press, 1990.

5. The relevant literature is so extensive that I do not even attempt balanced, let alone comprehensive, citation. The view taken here is best formulated, to my knowledge, by F. A. Hayek, especially in *Law, Legislation and Liberty, Volume I, Rules and Order*. Chicago, 1973. See especially Chapter 5, "Nomos: The Law of Liberty."

6. See essay by James W. Vice. "To Promote Understanding." In *The Journal* -- 1992. Ed. R. Wilson, Asilomar, CA: California Caucus of College & University Ombudsmen, 1992.

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RELATION OF THE OMBUDS OFFICE TO FORMAL PROCESSES

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Late in the last session of the 1993 Asilomar Conference of the California Caucus of College and University Ombudsmen, one of the participants noted that she ceased all involvement in a case once it was advanced into any sort of formal proceeding. This stirred a brief flurry of response from other ombudspersons who noted that, from time to time, they followed cases through formal proceedings and even included a critique of the fairness of such procedures in their responsibilities.

Having never thought about not including formal proceedings in my ambit of concern, I was curious to find out how common such limitations are. A questionnaire entitled, "Relation of the Ombuds office to Formal Processes" (see Appendix A), was mailed to the members of the University and College Ombuds Association. There were 52 responses (including my own) to the 97 mailed questionnaires. Two responses came from associate members who are not affiliated with an educational institution, and they are not included in the following summary:

1. Nine of 50 respondents cease involvement in a case once a "formal appeal or formal complaint proceedings" begin. I asked about reporting lines and constituencies to see if the limitation was more common among those reporting to someone below the president or among those dealing with only one constituency. Although the numbers are too small for statistical validity, there does not seem to be any such pattern.

2. Most (32) -- of those whose involvement need not cease with the beginning of formal procedures -- both advise persons as they are using the formal proceedings and monitor the fairness of such proceedings. Eight persons limit their work to advising those in such proceedings. only one limits himself or herself to monitoring fairness without giving individual guidance.

3. As the combined Tables One and Two reveal, 32 respondents (64%) serve students, faculty, and staff. Ten serve only students. Twenty include "other" among their constituencies. Twenty (40%) report to the president or other chief executive officer, while another 10 report to someone immediately below the chief. Two report above the president to a governing board. The remaining 17 report further down the

hierarchy or to a lesser board. (One respondent did not answer this.)

4. Comments reveal that respondents handle formal processes with care and included the following caveats:

- trying to resolve problems at the lowest level possible;
- being careful not to make the problem the ombudsperson's grievance;
- focusing assistance on coaching and facilitating the fairness of process;
- and, of course, withdrawing when legal or processes external to the institution begin.

Appendix A

RELATION OF THE OMBUDS OFFICE TO FORMAL PROCESSES

I. Which more closely resembles the operating principle which your ombuds office follows? (Circle either A. or B.)

A. Our function ceases when the person or persons consulting us begin formal appeal or formal complaint proceedings.

B. Our function does not cease when the person begins formal proceedings. (Circle one or both).

1. Our function includes advising persons as they are using formal proceedings.

II. This dichotomy is not applicable to our operation because:

III. Comments:

IV. For classification purposes:

A. We serve the following constituencies: (Circle all which apply.)

1. Students 2. Staff 3. Faculty 4. Other

B. We report to (title):

Table One Our function ceases when the person or persons consulting us begin formal appeal or formal complaint proceedings. A Pres. Sub Pres. Other No Ans. Total Stu 1 1 2 Stu/Staff 1 1 Stu/Fac Staff Staff/Fac 1 1 Fac All 3 1 1 5 Total 5 1 3

Table Two Our function does not cease when

the person begins formal proceedings. B Pres. Sub Pres. Other No Ans. Total Stu 2 1 4 1 8 Stu/
Staff 1 1 Stu/Fac Staff 1 1 Staff/Fac 1 2 3 Fac 1 1 All 13 6 8 27 Total 15 9 16 1 41 Code
Reporting Lines

"Pres" = President "Sub Pres" = Officer immediately below the President

Constituencies "Stu" = Students only "Stu/Staff" = Students/Staff "Stu/Fac" = Students/Faculty
"Fac" = Faculty

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REFLECTIVE INQUIRY ON OMBUDS PRACTICE

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Reflective inquiry is the process of review of the way that practice informs theory and theory informs practice in professions like the Ombuds. There is a reflexive, self-aware model which can offer insights that inform and potentially improve practice when employed in a supportive environment.

The practice of being an Ombuds is enhanced by reflections on the lessons of systematic review. There are several models of reflective inquiry on practice that provide a backdrop for a model that could be of value to the Ombuds profession. Psychology, for example, is informed by the development of a small body of work on the role of reflecting on one's practice.

Karl Menninger in his work, *The Theory of Psychoanalytic Technique* (Menninger, 1958), presented one of the early influences of theory on technique in practice which preceded Schon's work, *The Reflective Practitioner* (Schon, 1983). This work suggested that reflection in practice occurs both during and after events. Later works addressed the need to be specific about what informs practice. In addition, they emphasized supportive reflection in practice after the events and using supportive climate. Another added component is the need to make clear the meta-position (Bateson, 1972) that informs practice after the event. This recent view on reflective inquiry is presented in Shapiro and Reiff in *Reflective Inquiry on Practice* (Shapiro and Reiff, 1993).

In *Reflective Inquiry on Practice*, there is a systematic means of going from theory to practice and from practice to theory. The model suggests that philosophy is at level one; basic theory is at level two; theory of practice (the theory of technique) is at level three; technique is at level four; and moves is at level five. The model holds that "theory to practice" is levels one to five; is deductive; and is explanatory. In contrast, "practice to theory" is levels five to one, and is inductive. The following chart illustrates the processes:

Deductive: "Theory to Practice" - __ (downward)

1. Philosophy
2. Basic Theory
3. Theory of Practice

4. Technique S. Moves

Inductive: "Practice to Theory" - upward)

It is evident that the steps are the same -- but in inverted order "theory to practice" or "practice to theory" sequences.

The philosophical level includes values, religion, ways of knowing, life meanings, professional ethics. The philosophical level has a great influence on some practitioners.

The level of basic theory concerns theories that inform practice, yet are less over-arching than global philosophy. Theories about how people know the world, interact, and have differences are within basic theory and inform the theory of practice. The lines between these levels of abstraction are not in the absolutely clear when used. The process of examining the philosophy and basic theory levels is valuable in looking at what informs and influences practice. By examining these influences, the practitioner looks at other ways of accomplishing one's practice and benefits their practice through awareness. The theory of practice or the theory of technique is the organizing principle to the daily pattern of the practice. In clinical psychology, the theories of technique could be those outlined by Menninger or Schon (1987). Level four is technique which is the level of deliberate professional behavior. Skills used in the daily life process are the techniques of practice. Level five is moves, or interventions, and is a level of behavior or action that are moves within the given technique. This is the immediate level of behaviors.

In the model of Shapiro and Reiff, the concepts of alignment, congruence, and flow are considered informative in examining how these five levels of practice interact. Alignment is the way the levels have consistency; congruence refers to the consistency within levels; and flow is the amount of movement between the levels.

This process could be of value in analyzing Ombuds practice in an environment provided at places like Asilomar, California or in other calm reflective environments. This model is for professionals in a protected environment. If this model is of value, the test would be in the extent to which it improves one's practice or helps the practicing Ombuds.

Ombuds Case Reflection

This incident takes place in 1994 in an Ombuds Office that is 25 years old and that has two Ombuds, one Mediation Director, two assistants, and thirty volunteers trained in mediation. The incident is examined after it is concluded and resolved. The complainant, Mr. K., is an African American male and the other disputant, Mr. S., is an Asian American male.

The first party to contact the office.. Mr. K., states that he has a dispute about subletting campus housing from Mr. S. Mr. K., whose shoulder is in a sling, states that he had to stay in a hotel because Mr. S. had become delinquent in the rent payments which he, Mr. K., already had paid to sublet. Therefore, he wanted the money returned that he paid in rent during the period that he had not been able to stay in the sublet apartment. When Mr. S. said that he would not pay, Mr. K. butted Mr. S. However, in the process, Mr. K. dislocated his own shoulder and had to pay \$630 in medical costs. Mr. S. felt that the rent money was a nominal figure, while Mr. K. thought that the total amount represented a serious sum.

When Mr. K. called the Ombuds office with an off-campus peer dispute, he was referred to the Mediation Director. (Based on an office protocol, the Mediation Director called the Ombuds Office and said that because there had been violence, he would only proceed if the Ombuds approved it. Therefore, the Ombuds interviewed the first party, Mr. K., and concluded that it was an unusual case with promise from mediation.)

Mediation began and several issues were weighed. The first issue was whether the judicial system had an interest in the issue. The judicial system was not involved because no one wanted this dispute to escalate. The second question was whether the dispute was such a mess that Small Claims Court was appropriate. However, Small Claims Court didn't appeal to the disputants unless the Ombudsman could not sort things out. Therefore, that afternoon, the Mediation Director had a note carried to the second party, Mr. S., who called back and made an appointment to see the Ombuds the next morning.

The Ombuds in the office -- who had not been involved with any component of the case -- met with both parties the following morning. During the process, both parties almost irreparably disrupted the process. Using the typical listening and order-keeping techniques that are a small, but indispensable component of the Ombuds' skill, the resolution was reached within two hours with the following solution: Mr. S. would give \$40 to Mr. K. They would drop the issue and leave each other alone, other than forward looking, positive interactions. They chose to sign an agreement and to settle the financial agreement by noon that day.

Later, the Ombuds who did the intake; the Mediation Director; the Ombuds who mediated the dispute; and the staff had the following discussions about the issues of practice in the case:

The questions were short and evocative, i.e., What, if any role, did philosophy, basic theory, theory of practice, technique, and moves, or intervention play? How can these principles inform future practice?

Philosophy is the most general and overarching issue. The desire that all people treat each

other fairly and non-violently -- possibly an "I - Thou" sense Of the importance of institutions having concern for the individuals as valuable and worthy of attention and concern. The central idea that a system is only as good as it is to humanity and not just elites.

Basic Theory -- in this instance -- is that theoretically a problem might be transformed under the right conditions. Conceptualizations of the problem will differ according to the two views of the disputants and the third view of the neutral party. Each of these views contains a potential account which may transform the conflict into an opportunity for redefining events and relationships and arriving at a new account that involves peace and reintegration.

The Theory of Practice includes several issues of broad professional roles, goals, and resource arrangements. In this instance, the model of entry, introduction, story telling, and resolution structured the events. The parties felt that the place and the people were the setting and the opportunity to change an ongoing problem. Everyone involved had a basic sense that there was a transformation that might make them subjectively feel better. The three entry persons were setting the ground work for the changes that followed. The acceptance of the idea that sitting with someone else who can make the issue workable was a similar role concept that most of those involved held.

Techniques were drawn from the broadest set of possible tools. The first was expertise, i. e., that the Ombuds ought to know what to do. This case is very unusual because it allows the Ombuds the rare opportunity to use a very wide range of skills. It is unusual in that the Ombuds -- within the appropriate role -- is able to act as a mediator in the very last section of the complaint. The first issue of Ombuds technique was to determine the appropriate standing for the Ombuds to intervene, given the invitation and the number of issues, i.e., housing, discipline, hospital bill, and damaged clothing. The Ombuds had to define what it meant to bound and manage the conflict. The boundaries of the issue were derived both through defining, i.e., both parties and the Omubuds could limit the issues to ones within their control and through subjecting the issues to a controlled process with the Ombuds as the process monitor and assisted negotiations expert.

The discreet Moves were to keep the process clean and ongoing; to limit interruptions; to model respect; to help the pacing when parties were losing their control; and to allow for the transformation from the disputants. While the result was an agreement to get along and to exchange one portion of the dispute (the financial transaction), the resolution could have been anything that was clear and durable.

The reflective inquiry on practice clarified the issue of an appropriate entry into the dispute as well as the array of concepts, theories, and techniques. In addition, it raised issues about the disputants for the practitioners. At the end of the process, there were

issues that the model and the inquiry illuminated but had not answered, e.g., whether the conflict pacing and the socioeconomic status of the two students were of greater influence than other cultural differences. The notion that both persons felt violated, one for pocket money and the other for significant cash, was a major difference between the disputants and was recognized as such in the process. However, was there a means of leading each grievant to a conclusion that was based on an understanding and a respect for the position of the other person?

In summary, the models offered by Shapiro and Reiff provided a useful method for "teasing out" valuable reflection. In this particular case, the model left unanswered, provocative questions; provided some clarity and several possible reasons why these two disputants agreed to return to what was important in their lives; and demonstrated that reflection can assist the Ombuds' manner of practicing which ultimately will benefit the client.

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SETTING UP AN OMBUDS OFFICE - SAFETY CONSIDERATIONS

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Case Example:

J. S. recently applied to a doctoral program at a university. He contacted the University's Ombudsperson to discuss his feelings about the process. The meeting was held in the Ombuds office. From the onset, it was apparent that J. S. was ill-at-ease. He fidgeted in his chair. On two occasions, he opened the door to the outer hallway to see if someone was eavesdropping. He asked if the room was wired, and if the people working above or below the office could overhear conversations. An electric heater was turned on. It provided just enough of a hum to comfort J.S. that no one was likely to hear what he had to say. Feeling better, he began to talk about his situation.

J. S. was a 31 year old Caucasian male with a master's degree in Art History. He had held a number of jobs since graduating. He had particularly liked one job, in a museum, but after working there for six months, he was not promoted. He concluded that he was not progressing adequately, his colleagues misunderstood him, and his boss was jealous of his abilities. Consequently, he left. He was presently employed at the institution in an entry level clerical position.

Recently, J. S. decided to change directions and applied to a doctoral program in a totally new field offered at the school where he worked. He had interviewed with several of the faculty and met with the Department Chair. J. S. confessed that he was worried about not being accepted because he was an older applicant. He was also concerned that his lack of past accomplishments might suggest that he would not be a committed student. This, he assured the Ombudsperson, was most definitely not true. J. S. emphatically stated that he always did his best and was not responsible for the poor judgment of some of the people with whom he had come in contact over the years. He left the meeting reluctantly agreeing to apply to several other schools. Though painful to entertain, he stated that he knew he might not be accepted in the program he coveted.

A short time later, J. S. called from a phone booth at a gas station near school to speak to the Ombudsperson. He announced that he was being followed. When asked who might want to follow him,

he said he was sure it was the Chair of the department to which he had applied. The Ombudsperson asked why he thought this person would be following him. J. S. immediately responded that he knew that the Chair didn't want to accept him in the department. The Ombudsperson suggested the possibility that if the Chair didn't want him in the program, he needed only to reject J. S.'s application. Following J. S. would not be necessary. J. S. calmed down. He admitted that he had likely just imagined being followed. He agreed that the Chair could just reject his application without following him. The Ombudsperson suggested he might want to speak to someone in Health Services as his desire to change career directions seemed to be making him quite anxious. J. S. was polite, but did not want to do this. He said he had to leave and hung up.

A few days later, J. S. called again. This time he told the Ombudsperson that his landlady was opening his mail. When the Ombudsperson asked him why his landlady might do this, J. S. reported that he thought she wanted to know if he had been accepted into the Ph.D. program. As he sounded very upset, it was again suggested that J. S. might want to speak to someone in Health Services. The Ombudsperson provided him with a name and telephone number. He essentially ignored the suggestion, but asked if he could meet again with the Ombudsperson. An appointment was set for one week later.

J. S. entered the office in a huff, carrying a book bag. He seemed quite agitated. He sat in a chair and immediately started rummaging through the bag while he spoke. First, he announced that he had been rejected by the program he had wanted most. Then, he accused the Ombudsperson of having contacted the Chair of the department to which he had applied. He insisted that the Ombudsperson had told the Chair not to accept him into the program. He demanded to know why the Ombudsperson had told his landlady to check his mail to learn and confirm whether he had been rejected. He said that his landlady specifically told him the Ombudsperson had called her. While accusing the Ombudsperson, he continued to rifle through the bag. occasionally, he would stop rummaging and would stare straight into the face of the Ombudsperson, apparently looking for answers, but his hands remained in the bag.

The Ombudsperson began to feel very uncomfortable. She had never spoken to the Chairman of the department to which J. S. had applied. She did not know where J. S. lived nor the name of his landlady. His accusations were out of touch with reality and the Ombudsperson began to feel frightened. She did not want to further agitate J. S. by trying to leave the office or by becoming visibly upset, but she began to wonder if he might become violent. What was he looking for in the depths of his book bag? Did he have a gun or knife in it? The Ombudsperson wished she had the ability to contact someone in case she decided that she needed help.

Safety Considerations:

Like J. S., many of the people who come to see an Ombudsperson are under severe stress. They are unclear about where they should turn for understanding and help. Many are unsure who they can trust. One cannot predict or choose who will visit the Ombuds office or how that person will behave when experiencing high levels of frustration or feeling angry, humiliated, or ashamed. The safety of the Ombudsperson may be at risk during these occasions. Most Ombudspeople, however, appear to take

actions to protect themselves only after having had an uncomfortable experience such as the one described. For most of us, danger to ourselves while doing our work is hard to imagine or take seriously because most of the people coming to see us pose no such threat. Yet, some Ombudspeople have reported being held prisoner in their office; being named as someone a dissatisfied individual intends to harm; or having received death threats.

one value in sharing experiences with colleagues is using the learning of others to avoid similar difficulties. The topic of personal safety was discussed recently by the East Coast Ombuds Group. Based on the shared stories, and exemplified by the experience with J. S., it does seem prudent for an Ombudsperson to plan for one's own safety. Here are four suggestions which may be helpful in creating a comfortable and safe office environment. First, you can set up a method of accessing help should you need it. Second, you can arrange your office furniture in a lay-out that is not threatening or confining. Third, you can decorate your office to suggest a safe, caring place. Fourth, you can provide people with a clear explanation of what the office can and cannot do. These suggestions deserve the following explanations:

Easy access to attaining help when needed:

Some Ombudspeople have installed a "Panic Button" in a location that is easily accessible, though hidden from view. The button engages by the press of a finger, knee, or toe. If an Ombuds suspects that danger is imminent, it may be easier to move to the hidden button without further agitating the individual than it will be to attempt to "run for the door." Some people have two buttons. One alerts the police. The other summons a support person who has been instructed to interrupt a meeting primarily to break the tension. If you choose a multi-button system, consider the location of the buttons so they will not be confused. The police button should be selected only if it is obvious that all attempts to stop the potentially violent behavior seem to be useless and you believe that you may be harmed as a result.

A prearranged plan for a designated person to stay in the area if you suspect trouble can also be helpful in allaying your fears. If you are anticipating a problem, consider contacting Building Security or the Campus Police. Alerting others who can help in the event of a disaster may sacrifice the confidentiality of your meeting, but this action does not breach the confidentiality of the discussion taking place at the meeting. If you can, it might be helpful to establish relationships with the Campus Police or Security Guards prior to any problems. You can describe to them the nature of Ombuds work so they understand the potential for difficulties to arise and why you may need to call upon their assistance. Having safeguards in place, such as the ones mentioned here, can enable one to think more calmly in times of high tension and uncertainty.

2. Office furniture and lay-out that is not threatening or confining: Design a floor plan which allows the individual an unobstructed exit way. it may also be wise to have the individual sit nearer the door. An agitated person who has come with no intent to harm, or who has second thoughts about doing so, may find it easier to leave if no object or person is in his or her way. If you are anticipating a problem and if it is possible, leave the door slightly ajar. Usually this is difficult to do. However, you can easily make

sure your door, while closed, is unlocked. This would at least allow someone to open it from the outside should the need arise. Finally, avoid leaving implements around which might prove dangerous if grabbed by an angry person.

3. Decorations that might be suggestive of a safe and caring place: People coming to the office are often very anxious. They may be feeling helpless and view the visit as very risky. They may be suspicious about what you can do to help them. You will need to establish trust in order to proceed effectively. How you communicate your service is critical and the physical appearance of the office can help to create an environment that suggests safety and respect. Having personal memorabilia -- such as pictures, art, or crafts -- can help establish a more humane and less institutional interaction. Imagine how difficult it is for people to muster up the courage to share a serious and painful problem with someone they have never met, or about whom they have heard only through a flyer or word-of-mouth. To help visitors feel comfortable, one Ombudsperson keeps a sculpture of a dinosaur holding onto a small bird. This sculpture manifests a place that will be understanding and caring. The same Ombudsperson keeps a replica of Don Quixote standing very visibly on the desk. This is often the focal point of a visitor's attention and provides an easy first dialogue. Symbolically, the character suggests someone who cares and will persist in helping even if the chances for change may be slim. (You may recall that Don Quixote spent his life tilting at windmills, as do many Ombudspeople.)

Wall hangings can also say much about the office and its safety. For instance, ethnic pictures or calendars can suggest an open-mindedness and respect for all people and cultures.

4. Managing expectations:

Clients with a clear understanding of what to expect are less likely to react negatively if their hopes are not realized. You can provide a clear, simple explanation of the role of the Ombudsperson in a brochure or other written document. Giving people a brochure or handout statement about the office upon their arrival can help explain the role of the office and specify its limitations. The information should include what can and cannot be done through the office. For instance, it might be useful to tell someone that the Ombudsperson can help an individual help him or herself, speak to someone else on behalf of the individual if given permission, or engage in some informal interventions such as shuttle diplomacy or mediation when all parties agree. At the same time, one should emphasize that an Ombudsperson cannot act as an advocate or as a judge. Moreover, an Ombudsperson does not have the authority or power to force others to take any particular action no matter how reasonable and fair it may seem.

It may not be sufficient to provide this information only at the onset of a first meeting. It may be wise to remind individuals of these facts a number of times during the course of the relationship because when people are under stress, they often do not process the many things they are being told at any one time.

Conclusion:

At this point, you may be wondering what happened to the Ombudsperson who interacted with J. S. She

managed to remain calm and asked J. S. why he had made another appointment to see her if he thought she had called the Department Chair and his landlady. He ignored the question. J. S. seemed to have found the thing he sought from the bottom of his book bag. The Ombudsperson held her breath when he stopped talking. He stared at her wide-eyed and frazzled. Cautiously, he began to lift his hands from the book bag. Up came . . . a sheet of paper! Excitedly, he announced that he had been accepted by a different school, one with rolling admissions. He confessed that he was feeling overwhelmed and hadn't gotten enough sleep for the past two days. He had been making arrangements to move out of state as he was expected to report for the spring semester. J. S. handed the Ombudsperson the paper that held his new address. He wanted her to know where he would be going and how he could be reached if she wanted to write. Several months later, he sent her a postcard thanking her for listening.

Probably most Ombudspeople will never experience a serious threat while performing their work. However, imagining the worst possibilities and having no recourse if help is needed inhibits providing the individual with the most effective help. It may be possible to prevent the anger felt toward others or the organization from being misdirected by creating a place that will not further threaten or upset someone, and by being able to alert others for help if the need arises. An Ombudsperson will likely feel better and perform his or her function better if they know that the necessary steps have been taken to promote safety when interacting with those who come to the office.

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Andrea has served as the Ombudsman for the University of California, Riverside, since 1981. She has served three times as the Conference Convener of the California Caucus of College and University ombudsmen. Andrea is a member of the Ethics Committee in the Society for Professionals in Dispute Resolution (SPIDR), and is Chair of the Ethics Committee in the University and College Ombuds Association (UCOA). In addition, Andrea is a Member at Large on the UCOA Board of Officers. Andrea writes and speaks on ethics, ombuds practice, and sexual harassment.

R. Adolfo de Castro

Adolfo, a former trial lawyer, turned "Ombudsman" nine years ago. Adolfo's present position is the Ombudsman, "Defensor del Pueblo," for the Commonwealth of Puerto Rico. His past experiences as a state attorney and as a judge have contributed in shaping the manner in which he carries out his present responsibilities. Adolfo has written several articles on the Ombudsman as an "institution" and has discussed the subject in forums around the world. In addition to his Ombudsman duties, Adolfo is a Member of the Board of Directors of the Latin American (Caracas) and International (Edmonton) Ombudsman Institutes; President-Elect of the Ombudsman Forum of the International Bar Association (London); and President of the United States Association of ombudsmen (Juneau).

Tim Griffin

Tim, a 21 year veteran serving in the roles of counselor, mediator, and dispute resolution specialist within the conflict mediation arena, originally earned a B.A. in Music and a M.A. in Counseling from Western Michigan University. These contrasting studies were followed by a Ph.D. from The Ohio State University in Higher Education with an emphasis in Higher Education Law. Tim's academic experience is as diverse as his degrees -- administrative posts at six universities in four states and professorial appointments at three institutions. The positions included five years as High School Band Director and Music Department Chair; President of a local union; Resident Assistant; Residence Hall Director; Director of Campus Union and Student Activities; Assistant Vice President for Student Affairs; and Director of Judicial Affairs. Tim also taught in the Higher Education Graduate Program at The Ohio State University and spent four years as a full-time faculty member teaching undergraduates. In addition, Tim served as an Intern in the Western Michigan University Office of the Ombudsman; worked four years as the Student Ombudsman at the University of Alabama in Huntsville; and is presently serving his fourth year as the University Ombudsman at Northern Illinois University.

William A. Kennedy

William combined a Ph.D. in Communication, Rhetoric, and Public Address from Wayne State University, Detroit, Michigan, (1978) with a Master of Divinity in Pastoral Ministry from Ashland Theological Seminary, Ashland, Ohio, (1990) to become the Ombudsperson, Chaplain, and Professor of Communication at the GMI Engineering & Management Institute in Flint, Michigan. In summary, William has been teaching since 1978 and serving respectively as Chaplain and ombudsman since 1990 and 1991. From this diverse background, workplace ethics and conflict resolution emerged as likely areas of interest. William is currently focussing on conflicts which arise from one's attempt to hold consistent ethical positions while engaging in complex organizational behavior fraught with political overtones.

Michael Kerze

Michael carries two titles in his current position at Occidental College, Los Angeles, California -- Director of the Herrick Memorial Chapel & Interfaith Center and College Ombudsperson. After completing his B.A., M.A., and Ph.D. studies in History at UCLA, Michael held teaching appointments at California State University, Los Angeles; California State University, Northridge; and the Loyola Marymount University. Subsequent training for the ombudsman profession was taken in negotiation and mediation workshops sponsored by the Pepperdine Center for Dispute Resolution and an Employee Relations Law Seminar at the Institute for Applied Management and Law, Inc. Michael's publications reflect his concentration in Religious History and include: "Binary Numbers," "Copernicus," "Euclid," and "Ptolemy" in the Encyclopedia of Religions and An Early Journey: The Los Angeles Catholic Buddhist Dialogue.

Tom Sebok

Tom is beginning his fifth year as the Associate Ombudsman at the University of Colorado, Boulder. Prior to the Ombudsman position, Tom spent 11 years in academic, career, and personal counselling at the following community colleges: Chesapeake College, Wye Mills, Maryland; Salem Community College, Pennsgrove, New Jersey; and Northampton Community College, Bethlehem, Pennsylvania. Tom earned a Bachelor of Arts and Master of Education at the University of Delaware. The participants at the Asilomar Conferences will remember Tom's strong interest in music -- writing songs to play on his guitar -- which they enjoy annually at the Camp Fire Celebration. In his spare time, Tom continues to improve a Recording Studio that he is building in his home.

Glenda P. Simms

Glenda Simms has been serving as President of the Canadian Advisory Council on the Status of Women (CACSW) since 1989. In this position, Glenda strives to ensure that women's perspectives from all sectors of the community are sought, heard, and incorporated into plans that are comprehensive and result-oriented.

The winding path to her present assignment began in 1966 when she left a teaching position in her native country, Jamaica, and taught among the Metis and Cree Aboriginal peoples in northern Alberta, Canada. From 1977 to 1980, Glenda taught Native Education at the University of Lethbridge. In 1980, she became the Director of the Native Education Department at the Saskatchewan Indian Federated College. From 1985 to 1987, Glenda served as the Supervisor of Intercultural Education, Race, and Ethnic Relations for the Regina Public School Board. In 1987, Glenda was appointed an Education faculty member at Nipissing University in North Bay, Ontario, where she taught until her present position with CACSW.

A founding member of the National Organization of Immigrant and Visible Minority Women of Canada, Glenda served as President of the Congress of Black Women of Canada. Glenda attended "Forum '85" in Nairobi, Kenya as a member of the Canadian non-governmental delegation -- an event marking the end of the United Nations Decade for Women. Glenda earned a B.Ed (1974); a M.Ed. (1976); and a Ph.D. in Educational Psychology from the University of Alberta, (1985).

James W. Vice

Jim is serving his fourth year as Ombudsperson at Loyola University Chicago. An alumnus of the University of Chicago, Jim remained at his alma mater for several years as an administrator in various student affairs' areas and as a Professor of Social Science. In 1975, he became Dean of Students at the Illinois Institute of Technology. In addition to his administrative duties at IIT, Jim taught Political Science. Jim's academic interests focus on the general nature of practical reasoning and the specific ways people reason together through institutions -- areas in which he has 25 years of teaching. These concentrations, combined with his administrative experiences, have sharpened his commitment to improving communication and community understanding within a university. In Spring '94, Jim was elected a Board Member of the Chicago Chapter of SPIDR.

Geoffrey Wallace

After 24 years as the Ombudsman at the University of California, Santa Barbara, Geoffrey holds the distinction of being the senior full-time University Ombudsman in the U. S. and Canada. Moreover, his Ombudsman position is at his alma mater where he earned a B.A. in Anthropology and Philosophy and a Ph.D. in Sociology. A prolific writer, Geoffrey has written the chapter on "The Ombudsman in Education" for the International Ombudsman Handbook and recently delivered a paper on "Multi-Cultural Conflict" to the American Sociological Association. Bicycling 250 miles per week, Geoffrey's "extracurricular" activities have gained him fame and glory among cyclists as a Bronze Medalist and Regional Cycling Champion in the "Pursuit," "Time Trial," Road Race," and "Criterium" races.

Linda Wilcox

As the Ombudsperson at the Harvard Longwood Campus for the past four years, Linda hears concerns

from the faculty, staff, and students in the Medical, Dental, and Public Health Schools. In her previous positions, Linda served as a spokesperson for a school system in their union negotiations and as a mediator for a Massachusetts Court "Mediation Program." An active participant in the ombudsmen organizations, Linda is presently a Board Member of the University and College Ombuds Association and The Ombudsman Association. Linda earned a B.A. from Boston University and a M.A. and C.A.S. from the Harvard Graduate School of Education. She also holds a Program on Negotiation Certificate from the Harvard Law School.

Ron Wilson

A 16 year veteran ombudsman, Ron Wilson has directed the UC Irvine Ombudsman Office since 1979 after leaving the position, Director, Student Affirmative Action, at the University of California, Riverside. During his UCI tenure, the title has evolved from Campus Ombudsman/Associate Dean of Students to the current title, Assistant Executive Vice Chancellor-University Ombudsman. Concurrent with these title changes, his increased responsibilities include the jurisdiction of the Faculty & Staff Assistance Program and serving as the Ombudsman for the California College of Medicine and the UCI Medical Center. Active in several ombudsmen organizations, Ron is a past President of the University and College Ombuds Association, and this is his fifth contributing effort as the Compiler/Editor of the CCCUO Journal. Ron received a B.A. in English Literature from Bard College, New York in 1975; a Certificate of Administration and Analytical Skills from the Center for Public Policy & Administration, California State University, Long Beach in 1980 and a M.P.P.A. in Public Policy and Administration in 1983.

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