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California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

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Last Updated: 02/21/97

DEDICATION

California Caucus of College and University Ombudsman
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DEDICATION

Christine McKee-July 17, 1941 - May 4, 1995 - Former ombudsman, University of Manitoba, Canada

Many of us have worked in the Ombudsman profession long enough to encounter individuals who are truly remarkable, and we have the privilege of calling these individuals "colleagues." However, for a select few, we have the good fortune to call them "dear friends." Christine "Mum" McKee was both -- a dedicated ombudsman and a dear, reliable friend. When Christine retired from her position as ombudsman at the University of Manitoba, she continued to remain my dear, reliable friend.

The following thoughts were written after Christine's passing as I reflected on my ombudsman colleague and my dear, reliable friend. I penned my words the day after Christine passed away. I want to share my personal sentiments with all of you because I believe that those of you who knew Christine will understand the depth from which my feelings rose, and you will be able to share my feelings. However, for those of you who were not fortunate enough to have known her, I hope my written affections will provide some insight into a truly wonderful and unique woman.

Dance with the Leprechauns

for Christine "Mum" McKee

A lovely lady died yesterday. I heard about it this afternoon. Christine "Mum" McKee has gone to "Dance with the Leprechauns." I cried slowly at first because I did not want to believe what I heard. Therefore, I held back the tears. Then, realizing the truth in the sadness, I let the tears fall completely -- or rather, almost completely, because I believe one or two puddles remain somewhere within me. Perhaps, this remaining residue of sorrow is a tribute to our friendship -- the long-standing, genuine, and reliable bond that existed between "Mum" and me.

During the many years that I knew "Mum" and called her my friend, my only regret was that our conversations did not last longer; that our laughter ceased too soon; and that the distance between our families was too far for us to meet frequently and share our dear, reliable friendship. "Mum" and I spoke often about our families -- updating each other about the growth of our children; about the benefits of having our respective spouses; and about our mutual love of travel.

The year that my wife, (C.D.) and I mentioned that we were going to Ireland, "Mum" immediately offered her home at Cashel-by-the-Sea and suggested that we should go, enjoy, and "Dance with the Leprechauns." Christine described Cashel-by-the-Sea as the epitome of tranquility, harmony, and genuine peace. "Mum" was correct because Cashel-by-the-Sea was a complete and total reflection of herself. Indeed, how could the environment be anything less because it was the place to which "Mum" and her husband, Jasper, voyaged often and loved dearly.

From the moment that C.D. and I arrived, we discovered that Cashel-by-theSea was exactly as "Mum" had depicted -- the charming white cottage; the piled stones; the handkerchief-covered haystacks; the sheep grazing in the meadows; the hospitable caretakers who cared for both the land and the visitors during her absence; and the neighbors -- especially the warm wonderful folk who reflected "Mum's" own charisma, warmth and sincerity.

I shall never think of Ireland without remembering "Mum" and Cashel-by-theSea. Already, I miss her deeply with a poignant regret that is inherent in the experience of having known a person who became a dear, reliable friend. Thank you "Mum"; God bless you always; enjoy your new surroundings; and have a "Dance with the Leprechauns" for me.

Ron Wilson 05/05/95

[INTRODUCTION](#)

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Ombudsing: A Ten Year Assessment of Principle John J. Binder

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ACADEMIC INTEGRITY IS A COMMUNITY RESPONSIBILITY

California Caucus of College and University Ombudsman
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ACADEMIC INTEGRITY IS A COMMUNITY RESPONSIBILITY

Mary Gallwey-Washington State University

Faculty throughout the United States note increasing divergence between their values and those of students with respect to academic integrity. A recent study of business students found that 80% acknowledged having cheated within the past five years, either in high school or in college, for example. Washington State University has developed a new policy, restating that academic integrity is a core value and setting forth definitions of and procedures for handling academic integrity violations. This policy replaced a more general one which had been in effect for most of W.S.U.'s hundredyear-plus existence.

W.S.U. had worked on its new statement of policy and procedures for several years. A group comprising academic and student personnel administrators, an Assistant Attorney General, representatives of the undergraduate and graduate students, and the University Ombudsman developed a statement of policy and procedure which was widely circulated for comment, revised, and approved by the Faculty Senate and Board of Regents. It was printed in the Student Handbook effective Fall, 1994. Faculty, however, with the exception of department chairs, do not receive the Handbook.

Fortunately, the Editor of W.S.U.'s faculty and staff newsletter (WSU Week) had agreed the previous spring to print a column "From the University ombudsman" on an occasional basis. Three columns were devoted to the new academic integrity policy and its implementation during 1994-95. These columns had several major purposes. The most urgent was to inform the faculty of its new responsibilities under the policy. However, my experience in handling cases under the previous policy had taught me that, even among faculty, there were differences of opinion about what behaviors constitute violations, what standards of proof are appropriate, and other practical questions, such as what the faculty member should or could do to reduce cheating, how to investigate and judge suspected cheating, what range of consequences might be available, and what the faculty member should do about reporting cheating. ("Cheating" is used here to cover the whole range of academic integrity violations.)

Perhaps most urgent was to inform faculty members that they were now required to report confirmed academic integrity violations to an officer in Student Affairs. This had previously been possible, but was

little known among faculty. Repeated violations may occasion bringing the student before the Conduct Committee for possible disciplinary sanctions. However, it was equally important to educate faculty about what behaviors constitute violations under the code, especially since previous cases brought to the ombudsman had made apparent the existence of varying definitions of cheating among the faculty. Justice requires that the faculty member accord suspected violators academic due process, but -- again -- previous cases had revealed considerable variation in concepts of due process, standards of proof, burden of proof, opportunity to respond to charges, and so on. Finally, as educators, we have a responsibility to educate students about the core values - including academic integrity -- of the University and to take reasonable steps to promote the realization of those values.

The three articles were: "Academic Integrity -- New Responsibilities for Faculty to Report Violations," "Academic Integrity Is a Community Responsibility," and "Preventing Academic Integrity Violations -- and Responding to Them." The first of these gave a brief history of the development of the new policy and emphasized the importance of reading the new policies and procedures, pointing to three ways of obtaining the document. It also made clear that investigating suspected violations, determining the academic consequences, assigning an appropriate grade, and reporting the violation to the appropriate student affairs officer were all faculty responsibilities. Many students (and some faculty) erroneously believe that the faculty member must prove guilt beyond a reasonable doubt and that the accused has the right to remain silent. Neither is the case! W.S.U.'s Conduct Code requires students to answer questions truthfully and the faculty member has to meet only a "preponderance of the evidence" standard of proof.

The second article emphasized the values underlying the policy and that upholding these values is a responsibility of every member of the academic community:

> Academic integrity cases are distressing to all parties. The search for truth and the speaking of truth, insofar as we can know it, is at the core of being an academic person. When we discover evidence of violations, we are hurt, offended, angry, sorrowful, betrayed. We have to make decisions we would rather never have to make about what to do, and we must carry them out in ways that may be personally distasteful. Even informing a student that there is evidence of a possible violation is unpleasant. Carrying through important due process steps (such as providing opportunity for the student to present exculpatory or mitigating evidence) can be very trying, especially when evidence of guilt is overwhelming but the student denies guilt. The urge to punish may become very strong and the desire to educate may fade in such circumstances. (WSU Week)

This article went on to outline some of the most important, fundamental aspects of academic due process:

> First of all, we should have the same definitions. For illustration, some instructors define plagiarism as "exact reproduction of published work," without acknowledgment. This definition is at once too broad and too narrow. Exact reproduction is not necessary -- and neither is prior publication. The important thing is whether or not the ideas or work are

falsely presented as one's own, for example, by close paraphrasing. On the other hand, work that has become common knowledge in a field so that it is part of a general background need not be attributed; even when the exact words of some author are employed we no longer need to cite sources for statements such as "the earth orbits the sun" or "people repeat behavior which has been rewarded in the past." (See WAC 504-25-310 (6) Plagiarism in the Student Handbook, 1994-95.)

Second, we should have the same list of violations of academic integrity. The most frequent problem here is that many students and some faculty do not regard multiple submission as a prohibited behavior. The student who has submitted a piece of work for credit in one course cannot receive credit again for it. This should be made clear. When students are encouraged to bring work from one course into another (for example, in a writing course which requires re-writing assignments from some other course), students should understand that it is the work of editing and revision which earns the new credit. (WSU Week)

The article went on to emphasize that we are members of a community, whose senior members, the faculty, have a responsibility to each other and to students to maintain the community's core values by example and by not putting students in temptation's way. Because not every person reads WSU Week every week, the new responsibility to report confirmed violations was reiterated.

The final column stressed prevention. It was based, in part, on the observation that faculty, themselves, may not define violations in the same way. The previous years' cases in the Ombudsman's office had pointed to two particularly troublesome areas. The advice about defining plagiarism was repeated with some additional examples of specific practices such as submitting someone else's term paper as one's own, incorporating passages from a reference book into a take-home exam, paraphrasing a published work or making only minor changes, such as varying examples, in homework assignments, or after studying with others, and reaching a consensus to have everyone copy or memorize it, or even simply to aggregate individual responses to sub-sections of an assignment and print out copies for everyone.

The second most frequent problem is multiple submission. The rule here is that one can't get academic credit, even for one's own work, more than once. The credit was earned and awarded in, say, anthropology or management; it can't be legitimately had again in, for example, education or psychology. A paper written at one institution should not be expected to fulfill a requirement at another. Students get confused about this because "it is my work; it's not a copy." They may also become confused when they are encouraged to bring a previously written draft (or submitted assignment) as a basis for further work, for example in an EXCEL (a tutorial for at-risk students) or a technical writing course. It must be made clear that the EXCEL or writing credit is for additional work, not the original paper. It would probably help students if faculty would be careful not to say things like "you can use a paper you've already written" or "you'll get credit in (other course name), too" in such situations. (WSU Week)

This article concluded with a great deal of practical advice on preventing academic integrity violations. Suggestions included making a vigorous explicit statement of the instructor's commitment to academic integrity and intention to deal appropriately with violations. Examples of the range of appropriate sanctions were provided, but without suggesting exactly how any particular instructor might, in a specific case, decide to act. A substantial list of specific techniques for minimizing the opportunity to cheat was also provided. This included some discussion of ways also of reducing the motivation to cheat (e.g., not grading "on the curve," a practice which puts students in competition with each other, rather than comparing each student's work to an absolute standard).

The most immediate apparent result of the articles was an increase in calls from faculty. Some wished only to express appreciation or request reprints or to inform the author that the caller had enlarged the articles and posted them on the student bulletin board. Most of the callers, however, wanted advice on how to handle a current suspected violation properly. One called for permission to reprint in a journal published for recipients of a leadership award, citing appreciation for the emphasis on values which were made explicit in the articles and the policy. Clearly the series met a need, which many faculty recognized, for clear, specific guidance in addition to information that, unfortunately, would not have reached some of them otherwise.

What remains to be done? The author is exploring with the Faculty Development office the possibility of a teacher's manual which would aggregate both policies and practical advice in a range of areas, from field trips to cultural diversity to amorous relationships to protection of human subjects in class-related research. It is an aim of the Ombudsman at W.S.U. to prevent problems, not just to try to achieve a just solution after the fact. Already the need for reprints of the series has become clear. A meeting with the Council of Deans is in prospect. Should the office of the University ombudsman begin to offer in-service training for teaching assistants? For new faculty? Clearly the implementation of the policy is a work in progress and, probably, it always will be as new instructors and new students join the community of scholars.

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Last Updated: 02/21/97

THE OMBUDSPERSON AS A CHANGE AGENT

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THE OMBUDSPERSON AS A CHANGE AGENT

Helen Hasenfeld-California Institute of Technology

"There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things." Niccolo Machiavelli

An important part of Ombudsry is to help our workplace help itself in developing mechanisms to deal with larger institutional problems and/or to foster institutional change while remaining neutral ourselves. working on an institutional level often helps resolve issues that have been contentious and perceived as either unfair or problematic. It is also an opportunity to instigate change which is seen as potentially positive to the campus. Although helping an organization change old policies or adopt new policies and programs is neither easy, nor does it produce instantaneous results, ombudsmen should consider this task as potential resolution of issues at an institutional level rather than deal with the same issue again and again with individuals.

Taking on the task of institutional change may feel daunting. To work in this arena is to put yourself "out there" for everyone to see. However, there are certain opportunities which present themselves in the life of an 0 that can be taken advantage of with a minimum of risk and a maximum of success. When these arise, it is important to recognize them as such and it is helpful to have some tools to think about before and during such a project. The objective of this paper is to begin to look at what these tools are and how to fashion them to fit your own style and the style of your institution.

I will illustrate the use of these tools by drawing upon three projects that have recently emerged at Caltech: a revised sexual harassment policy and procedures), the institution of T.A. training, and the newly appointed Work and Family Life Committee. The bold words or phrases pertain to the concepts within that section.

1. Understanding Organizational Context: Diagnosis

A. Know your organization. Understand its history and mythology. Think about "sacred cows". What are the chances for success in such a project? Who can you depend on to listen? Who will the beneficiaries be? Will such a project compromise your neutrality?

B. Think about "turf" issues. Is this really something for the Ombuds office to tackle or is this really a suggestion to make to the correct person? Whose toes might feel stepped on if this plan of action comes from you?

C. Think about others who have some interest in this area of concern. Have some off the cuff discussions with him/her to test the waters. "I've been thinking of something we talked about a while ago" is a good way to open such a discussion.

Example

Caltech uses T.A.'s quite differently than larger schools. Most courses are taught by faculty, T.A.'s are used as graders, lab assistants and section discussion leaders. These roles were not seen as needing much preparation, except for some safety issues in lab. (**History** and **Mythology**)

Two summers ago, I received a call from the Dean of Students saying that too many under-grads were complaining that their Teaching Assistants were attempting to date them, causing a great deal of discomfort among the under-grads and setting them up in a "catch 22" position. I was asked to talk to all of the new graduate students about our sexual harassment policy and the issue of power that T.A.'s have over the students in their sections. This seemed appropriate to me (**Role of the 0**) and I called the different Division Chairs to ask permission to do so. (**Interest of others/test the water**) Each one had the opinion that we should really do more for T.A.'s and this was a good first step. No one offered to take on the task of organizing further training, but did not seem hostile to the idea. (**Turf**)

I gave some thought to this issue and decided that Caltech graduates will be leaders in industry, academia and government, and that as such, it is important for them to learn good communication skills. (**beneficiary**) I returned to the Dean of Students with feedback from his colleagues and my observations of why our students should have these skills. (**General concern of the institute**) We both visited the Dean of the Graduate School (**others who have interest, or should have interest**) to discuss our thoughts. He showed some interest in this, and I offered to do a survey of current grad students to test the waters. (**Chances of Success?**) The results were resoundingly positive. We crafted a position to take to the faculty Graduate Students Committee for their approval, (**Turf/stepping on toes**) and received it.

I made it clear to the Graduate School Dean that I would help design and implement the program, but that it was a give away to his office. We are currently working on a revised curriculum based on evaluations of the first training, and are now in the transition phase of the Graduate School taking total responsibility for the project. A possibility has arisen to appoint an ESL instructor as the coordinator of the whole project on an ongoing basis. I've strongly supported this idea and plan to do a presentation at "their" training.

2. Initiating the process

A. Begin with the realization that some organizations are more amenable to change than others, and that

the sort of project that you have in mind needs to make sense and fill a perceived need by the powers that be.

B. Start small. Organizational change works best when you can tackle a project in which there is some modicum for success. A series of small successes generally enable you to attain the support you need to tackle something on a larger scale or more controversial.

C. Make a decision to "do no harm" (or as little as possible). An Ombuddie needs to show the institutional constituency that she/he possess the skills to be effective and to work as much as possible within the existing parameters of the institution.

D. Choose a project in which you will remain neutral. The objective should help the institution as a whole. Frame it in this way if or when you write a proposal.

E. Consider the appropriate climate/weather on campus for your project. Can you defend this idea as being a help to the campus community, or certain segments of same? What about the timing?

F. See if you have "allies" who will work with you in planning and presenting a new project. Having colleagues who are excited about a project cannot hurt!

Example

Caltech has had a sexual harassment policy since the early '80's, but was unable (**unwilling?**) to craft a set of procedures for the faculty. (**ability to change?**) There was a good deal of dissension on campus (**appropriate climate**) because of this by both staff and students for which procedures did exist. When it became clear to the Provost that something needed to be done to rectify this omission, he set about doing this himself. Each draft was "edited" by individuals who he chose to make comments. It was pretty clear to me that this task was quite intimidating. The Provost did not seem to want to make any commitments to procedures because the faculty had always seen itself as immune from such constraints. (**institutional history**) my suggestion of a committee to discuss and formulate procedures (**neutrality**) ended in a fiasco. (**my INTENT was to do no harm**)

I let a year go by (**timing**) before indicating my discomfort at not having these in place to several well placed people on campus, including General Counsel, Director of the Women's Center and Director of Employee Relations. (**allies**) We caucused and decided to recommend another committee, one hand picked by the Provost with full campus representation, to attend to this task. (**does this make sense? is it possible to succeed?**) I made it clear that my role was to make sure that all of the procedures were consistent and fair. (**neutrality**) The committee was formed, it met over a period of 6 months, all of the campus constituencies were represented, and we hammered out procedures that are consistent to the point of adjudication. (**institute parameters**) A "conflict of interest" statement was inserted into the policy to deal with consensual relationships (**and non-consensual relationships**), (**controversial issue**) the faculty board asked one or two questions, passed the procedures, (**institutional parameters**) and we

have had no further displeasure from anyone as to unfairness/unbalance of process. (**help the institution as a whole; success of the project**)

By waiting a period of time,

1. The first debacle was somewhat forgotten,

2. Faculty became interested in knowing how the law really did apply to them,

3. We developed a constituency to approach the Provost with a true plan of action and recommendations of committee structure.

By having the committee made up of respected and knowledgeable people who were committed to change, we were able to hammer out a revised policy and procedures that have been embraced by the whole campus. (**timing, institutional parameters, collaboration, success**)

3. <u>Implementing the Change</u>

A. Test your assumptions! Because you think something is beneficial does not mean that it is seen the same way across the campus. Don't begin a project unless you have some information and/or data from the community that can be used as a basis for your proposal. This might mean doing a survey, reviving a plan whose time is now more appropriate, etc. If you can piggy back a larger plan onto a request made of your office, all the better. This was the case with the T.A. Training.

B. Having collected data on need, feasibility, cost, plan of action, write a proposal with this information as it's backbone. Again, if a committee is available to help with such a proposal, so much the better. Your task is to show why the proposal will benefit the community and to sell it to the powers that make such decisions.

I have found a proposal for a "pilot project" to be an excellent tool to use in attracting affirmative results. No one is then tied down to something forever, and the continuation of the project can be based on its actual merits.

C. Be creative with the proposal. Try to incorporate existing programs, materials, think of several ways to carry out such a proposal, etc. Be ready and willing to listen to feedback from members of the community and take it back to the drawing board. Don't take it up the chain until you have received feedback from people whom you trust to be honest and give constructive criticism.

D. Cite what other peer institutions are doing along these lines. many of our institutions are very attuned to being competitive in many realms of campus life, not only academics.

E. Have plans to give your program away. It is fine to help coordinate, plan, produce what is needed for

a project to go forth the first time, but what you do not want is to increase your job description and/or take responsibility for someone else's job. Therefore it is wise to think about whether or not this project will stress the system and become either a time or financial burden for the new "owner".

F. Don't be overly disappointed if a project or program does not fly. Perhaps it needs to "sit" until:

1. its time has come,

2. it becomes clear to another person that this is necessary,

3. someone else comes to you about this same issue,

4. enough time has passed to "neutralize" a project that might have been too scary to tackle in the past.

Example

Caltech has had a child care center for 25 years. It has always had a loose affiliation to the Institute. It has its own board, but receives "in kind" services from Caltech worth quite a bit of money. The memo of understanding states that 85% of children attending be Caltech affiliated. Because of the high tuition cost, this number fell below 40%. (**data**)

The cost of the center has been a thorn in the side of staff, grad students and post-docs for many years. (**timing not right for change**) A Quality of Life survey done in 1989 quantified this issue as being one that disgruntled large numbers of the Caltech community.(**data**) A small coalition of staff, including myself, decided it was time to bring the new utilization numbers to the attention of the President. He was not pleased. At the same time, a number of issues regarding Family and WorkLife surfaced, ranging from Cafeteria Benefits to Elder Care. (**campus climate, timing**) This seemed like a perfect time to present a **proposal** to the Administration to consider a discussion of these issues as well as some **coordination of existing benefits and services that already existed** on campus, but were not well known. In addition, the proposal spoke to the issue of recruitment and retention of world class scholars and competent support staff. (**rationale**) A list of **peer institutions** and what they had in place for staff, faculty and students to make work/study life more congruent with family life caught the attention of the Administration.

To my amazement, I found myself on a standing committee of the Institution, chaired by a faculty member, (**give away**) to look at Family and Worklife issues and make recommendations based on our discussions with the Caltech community. This has resulted in:

1. An increase to 90% of Caltech families signed up for the '95-96 school year at the Child Care Center. (**demonstrated success**)

2. A subcommittee working with the center to promote designation of United Way money to the center

to build up a scholarship program. (**potential success w/no cost to institution**)

3. A summer child care program for K-5 children that began this summer with an emphasis on science. The science curriculum is developed and executed by work-study students. (**demonstrated success**)

4. The possibility of this program increasing to an after school latchkey program. (**has its time come? are there available resources now?**)

5. The organization of existing Caltech services and facilities, as well as those in Pasadena and the surrounding areas that will be "on-line" in Sept.'95. (**service w/no cost to institution**)

6. A recommendation to the Administration for a 3 tier child care program, utilizing existing facilities in the general Caltech area and including infant care. (**has its time come?/ are there available resources now?**)

In conclusion, I want to stress that without having others on the campus to help share the "risk" of institutional change, I'd probably be much more office-oriented. These projects have come to fruition because I like to collaborate, I don't mind giving things away, I have enough to do without "owning a project" and I am always challenged to look for natural opportunities upon which to build a wider solution. For me it is also a way of balancing my worklife. When one deals with the difficult and complex inherent in the Ombuds job, working on larger issues with potential positive impact for the entire community gives me another perspective of the community and puts me into contact with people who I might never had met. Try it, it's fun!!

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Last Updated: 02/21/97

TQM AND OMBUDSRY: REVISITED

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TQM AND OMBUDSRY: REVISITED

William A. Kennedy-GMI Engineering & Management Institute

It has been two years since I sat down to write "TQM and Ombudsry" (1994 <u>JOURNAL</u>) which sounded a warning to ombuds operations regarding the imminent onslaught of total quality management/ continuous quality Improvement (TQM/CQI) initiatives sweeping across college and university campuses both here and abroad. The article predicted, among other things, that many ombuds operations might be subjected to various degrees of scrutiny by roving ad-hoc TQM problem solving teams which, in their relentless searches for disharmony and dysfunction, might see the ombuds office as a valuable source for identifying institutional problem areas. In this previous article, I suggested that ombudspersons might want to become familiar with basic TQM literature and lore so that they might prepare key administrative ombuds supporters for what might likely be coming across their desks in the name of quality improvement.

Since the appearance of "TQM and Ombudsry" and the presentation of related materials at the 1993 UCOA convention and in other professional forums, the form that the actual challenges of such quality improvement initiatives have taken has become clearer to me. It turns out that I sorely underestimated the potential peril that TQM inspired reformation practices pose to those whose professional efforts are dedicated to mediation, conflict resolution, and advocacy activities. My prediction regarding wellintentioned, if overzealous, teams of inquisitors desiring to look through ombuds files never seemed to materialize, at least not in my realm of experience. What has materialized, however, is that successive waves of massive and protracted variously motivated TQM/CQI campaigns christened "institutional re-engineering efforts" or "operational transformations' have effectively left many ombudspersons out of the loop while administrators frantically scurry about trying to "wheel-and-deal" to preserve some vestige of their previous empires. In short, what has happened in a number of organizations, is that ombuds or advocacy offices have been forced to function in a state of institutional paralysis, and worse, some ombudspersons have found their roles on campus becoming increasingly irrelevant. As a result, some, like myself, have chosen to remove themselves from that role and to apply their advocacy and mediation skills in other venus.

In the 1994 article I described the emerging role of the academic ombudsperson as a three-fold function: 1) explaining policies and procedures to aggrieved parties and assisting them with bureaucratic complexities; 2) serving as the mediator/negotiator to facilitate settlement of heated issues; and 3)

influencing the development of new policies and procedures to meet changing institutional needs. The period of institutional chaos which accompanies typical TQM/CQI initiatives seems to effectively put an end to the third, or heuristic, function of the ombudsperson while it seriously impairs the first two.

If I understood him correctly, this is what Howard Gadlin was alluding to during his keynote speech at the 1993 UCOA convention when he warned of the danger of the ombuds office becoming sort of an institutional shock absorber to protect the administration from being confronted with the legitimate claims of persons who feel that they have been grossly wronged by the institutions they serve.

In the experience of this writer, no ombuds operation is adequately staffed and prepared to deal with the onslaught of legitimate concerns that result from the institutional shuffling which hides behind the name "operational transformation," or some other benign-sounding euphemism. In fact the entire notion of refining policies and procedures goes out the window when all policies and procedures are put up for grabs during a TQM/CQI revolution with dubious motivations.

In reviewing a number of such TQM/CQI initiatives, I have concluded that for the most part there is a huge gap between the intentions of the truly evangelical TQM'ers and the line administrators who typically put these ideas into practice and manage the process along the way. Institutions have various reasons to undertake TQM/CQI conversion programs. Some large corporations that have undertaken TQM/CQI initiatives have done so as a matter of absolute survival. Classical examples of legitimate TQM/CQI revolutions include those occurring over the last decade at Xerox and Motorola both of which essentially reconstituted themselves from the ground up as a means of combatting sophisticated and successful foreign competition. Fundamental to these efforts was the relentless identification and elimination of waste, careful analysis of the competition, and the entire restructuring of the work force and work processes from the top down. Some of these pioneering companies experienced a turnover of 80% of management personnel in developing a team that could embrace the new "quality" functioning. Those who underwent these changes early on realized that it might take 8-10 years before their quality efforts would bear fruit in the marketplace. Such longterm commitments had to be truly embraced by top leadership and by the various boards which oversee the operation of such corporations. Even among this group of firms, that are sincerely pursuing the long and difficult path of quality improvement, there have been several who have not survived long enough to see if the changes would have borne fruit. one thing is clear, radical organizational transformation such as that undertaken by these firms requires leadership that is very knowledgeable, very committed, and very sincere. The integrity of the entire effort rests in the dedication, sincerity, and longevity of the leadership.

Another tier of schools and companies seem to have decided to get on the TQM/CQI bandwagon for somewhat less noble reasons. Typically, these institutions may be struggling with the competition but do not truly believe that they are fighting for their very lives. Like most institutions in the industrialized world, these schools perceive themselves as having to provide more and more services with less and less financial support from their customers (students, taxpayers, grants, etc.). These firms look to TQM/CQI not as a radical means of reforming the company from the ground up but adopt portions of the gospel of TQM as a means of neatly cutting corners to improve the bottom line. Specifically, these institutions adopt the rhetoric of the TQM/CQI aficionados as a means of capitalizing on some of the by-products of

genuine quality improvement initiatives.

One of the axioms of all TQM/CQI programs involves the elimination of institutional functions (and the employees associated with those functions) which do not "add value,, to the final product. Another TQM/ CQI aphorism suggests that organizations should eliminate layers of management as a means of bringing the voice of the customer closer to the ears of top leadership. Both of these principles are sound parts of a legitimate TQM/CQI reformation and have been successfully implemented by Xerox and Motorola. Both, however, can also be used to serve the political needs of administrators who feel the need to eliminate employees as a means of staving off real institutional change or simply to free up money for discretionary spending. In my experience, it is such half-hearted attempts to adopt the vocabulary of legitimate TQM/CQI efforts while pursuing alternative ends that pose the greatest risk to the well-being of an institution, those who depend upon it, and those who work to insure the equitable application of its policies and procedures.

A cursory review of TQM/CQI initiatives in higher education would suggest to me that most are motivated by other than the loftiest intentions. In fact, a pattern of pseudo-TQM/CQI management practices seems to be emerging in colleges and universities, health care systems, and in many corporations. These pseudo-quality improvement initiatives seem to share some common fea- tures:

1. Top leadership does not practice what it preaches. TQM'ers say "they talk the talk but they don't walk the walk." Austerity initiatives are spread throughout the institution but the perks and the salary increases of top administrators are not touched. Another manifestation of such hypocrisy is the severe trimming of the labor force from the bottom through middle-management while top management is not similarly trimmed and may even be increased in scope. Top managers may even reward themselves financially for "making the hard choices. " An example is the management team that claimed that it cut its own budget by 20% to meet corporate-wide targets. Upon examination, the "cuts" were actually savings computed from the benefits packages of employees laid off in other divisions.

2. Ad hoc quality improvement teams are composed and their output is carefully controlled by senior management. Team decisions are only acknowledged when they meet the political needs of top management. "Problem teams" are quickly disbanded or fall into disrepute while teams supporting management's inclinations are given expanded roles.

3. Operational problems are assigned to problem solving teams allowing management to avoid dealing with difficult issues. In most cases, the hardest decisions are farmed out to expensive consulting firms who take the heat for difficult calls like layoffs and changes in employment practices and classification systems. A common strategy used by consulting firms to help management avoid employee litigation is to phase out an entire employee category and require employees in that category to interview for a much smaller number of redefined jobs. Such initiatives effectively set employees against one another and destroy morale.

In my estimation, these kinds of pseudo-TQM/CQI and operational transformation efforts put the

organization into a virtual state of paralysis. All operation decisions are effectively suspended as nearly every concern is answered with "we've got a team looking into that at this moment." Employees struggle to do their regular jobs as well as to serve on numerous TQM teams. The resulting confusion eventually begins to trickle and then to gush through the doors of the ombuds office. In other institutions, the situation is so disheartening and demoralizing for employees that they don't even bother to seek out assistance.

In my perusal of TQM/CQI literature, even the most idealistic TQM zealots tend to ignore the basis upon which ombudsing and related advocacy activities are founded: namely, that big institutions, by their very size and complexity, inevitably evolve bureaucratic structures that cause unnecessary hardship or even direct harm to those who comprise or depend upon the proper functioning of that bureaucratic structure. The "continuous improvement," and "quality is a journey not a destination" rhetoric does little to protect the interests of the employee or the customer who is intentionally or unintentionally wronged by the system. The very idea that teams of employees can evolve systems that are immune from dysfunction runs counter to our experience as ombudspersons.

The ombudsperson's role is built upon the enlightened notion that all leadership is less than perfect. Responsible leadership knows that an internal system of checks and balances, especially one which is free and independent to seek redress for those who are wronged, goes a long way towards humanizing the monolithic structures which control many critical aspects of modern living.

I would conclude this discussion by issuing a warning to ombudspersons regarding the pernicious advance of pseudo-TQM/CQI practices in institutions of higher learning. Unfortunately, I have little to offer in the way of countering the profound effects that such institutional practices have upon ombuds operations. Perhaps this article might spark some discussion to that end.

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Last Updated: 02/21/97

Ombudsmen and The Shield Laws

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

Ombudsmen and The Shield Laws

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As an undergraduate student at the University of California, Irvine, I had the opportunity to work for two years with our University Ombudsman's Office as Peer Ombudsman. In this position I was able to work with various campus constituencies and individuals in addressing a variety of issues and grievances ranging from date rape to academic dishonesty. At the core of our ability to work with these issues, and for myself as a student, was the confidence that we could serve the campus community as outlined by the University and College Ombuds Association Ethical Principles of "objectivity, independence, accessibility, confidentiality, and justice; [and where] justice is pre-eminent." Over the past two months, three years departed from the UC Irvine campus, I had the opportunity to return to the UCI Ombudsman's office to assist in researching what could conceivably have a significant impact on the Ombudsman field. The issue is confidentiality and the extension of privilege to ombudsmen in their work, in effect, shield laws. The purpose of this paper is to provide a glimpse of current "shield laws" in California and at the federal level, how they may or may not protect California's University and College ombudsmen, and how such laws may impact the effectiveness of Ombudsing. In preparing this paper I received tremendous support and insights from various persons across the field, and would like to thank in particular Jan Schonauer and Ron Wilson at the UC Irvine ombudsman's Office, and Geoffrey Wallace at the UC Santa Barbara Ombudsman's office.

In their discussion of "Conceptualizing the Ombudsman Office," Schonauer & Wilson describe the ombudsman's primary roles on a university campus as, "that of a 'truth teller' and that of an 'institutional conscience'...the ombudsman becomes an advocate for equity who owes allegiance to neither an individual nor a particular segment of the campus..." (pg. 1) In its function, unfortunately, Ombuds Offices continuously find themselves in the precarious position of having to pay as much attention to perceptions, as they do to realities. As the principles state, and in most cases the reality of the Ombuds practice, ombudspersons are guided by "objectivity, independence, accessibility, confidentiality, and justice." These principles, as fundamental as they may be to the profession, paradoxically make the profession and the effectiveness of an ombudsman extremely vulnerable.

In their discussion "Maintaining The Confidentiality of Communications," Kandel & Frumer write, "Critical to the success of any ombudsman program is that it be used by employees. Most significant in structuring the ombudsman role is to ensure not only maximum protection of confidential information,

but also the <u>perception</u> among prospective clients (the employees) that maximum protection is available from disclosure or retaliation." (pg. 588) In other words, if people do not trust in the confidentiality of an office, the purpose of an Ombuds office is rendered ineffective. In addition, Kandel & Frumer argue that ombudspersons must overcome two major disadvantages: being on the institutional payroll where the ombudsman must report to someone, and having to disclose enough to justify the office's existence; and a dependency on confidentiality without direct and blanket legal protection of privileged communication. The tenet of confidentiality, whether real or perceived, is critical to the ability of an Ombuds Office to effectively achieve its purpose.

The perception of confidentiality is especially fragile on our University and College campuses. Tensions and conflicts are inherent processes within any setting where human interaction takes place. As microcosms of our larger society, these tensions and conflicts may be compounded and exacerbated as our Universities and Colleges are forced to deal up front with the complexities brought about by a diversity of peoples, interests, and roles bottled up in an insular environment, where the purpose is to explore and challenge oneself and, in that process, challenge those around you. Where the university and its decision-making processes have been described by organizational theorists as an organized anarchy, the Ombuds office serves a vital role in assisting the campus community through the cracks and pitfalls created by the ambiguities of anarchy. In order for the Ombuds Office to effectively assist the campus community through these processes, persons must feel secure that their communications will remain protected and kept confidential.

In California the state legislature has passed what could be considered as shield laws for Ombudsmen; however, the language of the statute calls for the protection of communication within a mediation process. California Evidence Code 1152.5 provides, "evidence of anything said or of any admission made in the course of mediation is not admissible in evidence or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given." One can certainly see where this statute protects Ombuds offices in their work at mediating and resolving campus conflicts; however, a College and University Ombuds office does not only deal with mediation. In effect, the laws in California are more narrowly tailored to suit mediation processes.

In the larger context a campus Ombuds Office serves as a confidante to the campus community and as a vehicle by which the pressures of everyday campus life can be vented. University and College Ombuds offices provide an ear to frustrated and sometimes disgruntled students, staff, and faculty who just want to talk. Ombuds offices provide a refuge where the campus community can take their concerns, as individuals or groups, about the institution with the confidence that the Ombuds Office can relay these concerns to the "Administration" without any form of retaliation or disclosure of their identity. In addition, Ombuds Offices serve as consultants to Administration in times of institutional ambiguity without trying to push an agenda. In short, the campus Ombuds office, in many instances, and well before the need for a mediation process, serves the institution as an internal consultant, facilitating and enhancing communications throughout the campus. It is through this function that the role of "institutional conscience" can be truly applied. Whether the University or College is portrayed and perceived as a "faceless bureaucracy" or "organized anarchy," or both, the Ombuds Office is the only

campus office which not only serves to mediate for the campus, but also to mitigate the harshness of the institution. The campus Ombuds Office serves to not only protect persons from the institution, but to protect the institution from itself. Information shared by students, staff, and faculty is not always within the context of a mediation process and it is to this end which California's mediation laws fall short in protecting the Ombuds profession.

In the California Evidence Code 1152.5, privileged communications can be disclosed if all parties involved in the mediation consent to such disclosure. There are two issues raised with this provision which relate to Ombudsmen: the first is the assumption that the breach of confidentiality, whether voluntary or not, only affects the outcome of the specific case. Unfortunately, as discussed earlier, the Ombuds Office, to be truly effective, must rely a great deal on how their work is perceived, and in particular, whether their work is truly confidential and perceived as confidential ... no matter what. Were an Ombudsman to disclose privileged information, even if all parties consented, the Ombuds Office leaves itself open to all forms of interpretations as to how and why information was disclosed. This can be even more damaging, if those who sought assistance from the Ombuds Office are not "victorious" because in their resentment and bitterness, they may turn on the office and publicly point blame at the Ombuds office as not protecting their interests.

The second issue raised by the provisions in the California's mediation laws is the paradox that is exposed between the principles of justice and confidentiality. Is justice served by disclosing privileged information in the efforts to see justice served in an individual case? Or is it just to violate the tenet of confidentiality and in the process endanger the profession and its overall benefit to the institution for the sake of an individual case? The federal courts have assisted the Ombuds profession in this paradox in two federal cases -- Monoranjan Roy v. United Technologies Inc. and Kientzy v. McDonnell Douglas Corp. The courts used four factors in determining whether information shared with the Ombudspersons should be privileged: 1) whether the parties believed that the communications were confidential; 2) the need for confidentiality; 3) whether society would recognize the value of the confidential relationship; and 4) a comparison of the benefits of disclosure compared to the injury that might result.(pg. 661) These four factors all weigh the tenets of confidentiality and justice within the larger context of whether the overall good outweighs the individual good, and they are right in step with the principles and doctrines of the Ombuds profession.

Most importantly, federal courts have recognized the benefits and needs of an Ombuds privilege. However, although these two cases extended Federal Rule of Evidence 501 to protect communications for ombudsmen, the courts stopped short of extending blanket privilege. As with the California code, the Federal code extends privilege to Ombuds communications on a case by case basis. That is, an Ombuds office has to prove a mediation process was taking place for communications to be considered privileged. Thus the Ombuds Office could conceivably find itself having to either defend itself against the party who sought the assistance in the first place, or the ombudsman's own superiors ... the institution. In either case, much credibility could be jeopardized in the Ombuds, attempt to quash a subpoena. It would only be a matter of time before the campus community's trust and confidence so critical to an Ombuds Office is lost if time and time again the Ombuds Office had to return to court to protect one of the most fundamental principles of the profession ... confidentiality. one could only

imagine the moral, ethical, and professional predicament if an Ombuds was compelled to testify by the courts. At any rate, in the short term interest, California and Federal Evidence Codes 1 152.5 and 501 can be used to protect Ombuds communication. However, mediation as a process is only part of the ombudsman's function on a campus or organization. In the long term, the limited focus of current "shield" laws on mediation process, and not Ombuds processes, can result in an Ombuds Office function becoming limited in scope and effectiveness as Offices may choose, without blanket protection of communication, to not risk the profession and the principles by which it depends for fear of legal repercussions.

In summary, current California and Federal evidence codes do provide some protection for University and College Ombuds offices. Both at the state and federal level, Ombuds communications appear to be well protected when all parties consensually agree to a mediation process. However, these codes only apply to that area of the profession which is involved in mediation processes. This in mind, it is imperative that University and College Ombuds Offices in California have a direct and clear communication line with the highest levels of administration in efforts to ensure institutional support and backing when communications are challenged. The institutional powers that be must agree and express their support (if possible in writing) of their commitment to protecting the communications shared by and to an Ombuds Office. Simultaneously, Ombuds Offices would be wise to post the codes of ethics and principles to which they are committed and work under in literature dispersed outside the office and within the office. In addition, University and College Ombuds Offices must urge their institutions, local legislators, and state legislators to seek proper and direct legislation aimed at protecting Ombuds communications. As the field of mediation grows, it is equally important for Ombuds Offices to work closely with mediation associations and organizations in the analyses and deliberations of laws, regulations, and legislation which pertain to the practice of mediation, and, at the same time, educating the larger mediation profession to the particulars of the Ombuds profession which call for specific protections of Ombuds communications.

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Last Updated: 02/21/97

HOW TO RESPOND TO A SUBPOENA

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

HOW TO RESPOND TO A SUBPOENA

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October 6, 1989, my first day as an Ombudsman, one of the policies handed to me was a copy of "Procedures for Accepting and Responding to Subpoenas Duces Tecum and Notices of Deposition." These procedures are a part of the Irvine Campus Policy and Procedure Manual, Section 700-11. Included are instructions for verifying the signature on the request, ensuring that at least five days have been allowed to respond, and the proper means of notification to the server and institution. The last item even instructs you to request the court for reimbursement @ 20 cents per mile and for clerical and copying costs. Not surprisingly, since this was a University policy, there was not a word about privacy, confidentiality, or the role of the Ombudsman.

I perused the document wondering what on earth it meant to me. After all, the Ombudsman is informal, confidential, neutral; <u>everyone</u> knew that on this campus where the office had been active for over thirteen years. That policy was quickly buried in the flood of visitors who find their way to the office at the start of the Academic year. I did not know I would be subjected to a subpoena last year. Today, I feel a little like Lyndon B. Johnson showing off my post-subpoena scar in the shape of a bent scale of justice. This paper will review my crash course in learning to respond to a subpoena. It is my adaptation of the excellent advice I received from Elizabeth Clark, Sandra Cooper, Mary Lou Fenelli, Helen Hasenfeld, Harley Johnson, Susan Neff, Mary Rowe, Ella Wheaton, and others. Any omissions or errors are mine, however. I will identify options for you to consider should you be served a subpoena for your testimony or records. So, with 20/20 glasses firmly affixed to the back of my head, and my wounds healed, here are some points to consider when a subpoena arrives:

1. Prior to the subpoena, meet with your boss. Discuss the University and College Ombuds Code of Ethics. Describe the connection between objectivity and confidentiality. Craft an understanding of the neutrality, privacy, confidentiality values which are the foundation of the Ombuds office. Strive for agreement on these issues. Get that agreement in writing in the form of your Memorandum of Understanding, Terms of Reference, Job Description, whatever it is that describes your relationship to the institution. Have your boss provide the framework for legal counsel to follow in defending your office's right to confidentiality. Understand that counsel for your institution will not easily accept that you need to be different from everyone else. Advertise your confidential, informal status in office publications, inform the people who visit your office of your standing.

Raise hypothetical cases where you might be subject to a subpoena, elicit the institution's response. Provide copies of existing "shield laws" and case decisions which have sheltered mediators and Ombuds from responding to a subpoena. Help your leadership develop an understanding of the value of an informal and private means of addressing the institution's problems. Determine if the institution will hire separate counsel for you in the event of a subpoena. Meet with the University counsel, faculty, and administrators who oversee the formal appeal mechanisms in the institution. Explain your informal, confidential standing which precludes you from appearing before or speaking in any formal process within the Academic Senate, Human Resources, or Student Policies.

2. Review your record keeping. Are you comfortable with the type and amount of information you keep? Do you need to keep records at all? Are you prepared to have the records become public? If you ever act in a role which requires formal records, such as investigator or fact finder, write a note to your files and to the parties to whom you report that indicates you are, in this instance, acting outside your Ombudsman role.

3. When a subpoena does appear, ask to see the original subpoena to determine who is named; what records are requested; and where and when you are required to appear. Do not rely on secondhand information about the subpoena. You may not be named in the subpoena. Notify your legal counsel that the subpoena has arrived and restate your intent to remain confidential Provide counsel with your job description.

4. Resist the deposition, do not testify at the first request. As mentioned in step one, be certain that your job description includes that you are a confidential and informal problem solver and mediator. Refer to the evidence codes 1152.5 (California) and 501(Federal) which refer to mediators. offer to speak to the role of the Ombudsman, without revealing specific names, dates, or cases. If your records are subpoenaed, and you are unsuccessful in defending them, offer to write a summary. Get your boss to intervene and explain the reasons why a case must be developed without the Ombuds' direct involvement.

5. If you must go to the deposition, bring the Code of Ethics, your job description, and literature which describes your office, and, at least at the first deposition, talk only about the general operations of the office.

6. Call on Ombuds organizations, use the Ombuds E-mail, Cal Caucus members, The Ombudsman Association, and the University and College Ombuds Association, for support, letters, hand holding and ideas. Read the literature. One excellent article is "Employment Litigation ---- The Corporate Ombudsman and Employment Law: Maintaining the onfidentiality of Communications" by William L. Kandel and Sherri L. Frumer in Employee Relations Law Journal, Vol. 19, No. 4, Spring 1994.

7. If these tactics do not convince those seeking information that they need to go elsewhere, write to the judge. Explain your role as a informal, neutral mediator and request that you be allowed to limit your testimony to the general duties of the Ombudsman. A judge may more likely understand the role of a

neutral third party if your counsel or the counsel for the plaintiff are still pressuring you for information.

8. Consider hiring your own legal counsel. This has the advantage of protecting you from an assault on the confidentiality. But it can escalate the conflict if you are hiring an attorney to protect your office from your own institution. You should think carefully and consult with other Ombuds about the risks involved before proceeding with this option. The California Shield Law (for mediators) provides that the person requesting disclosure may have to pay for the attorney fees incurred by the party fighting that disclosure. You may want to work out an agreement with your institution to provide you with outside counsel.

9. Maintain your sanity, get advice and support from your friends, partner, family and colleagues. Take care of yourself, meditate, stay healthy, get away from the fight every day. Take a walk, sing out loud, tackle a project which nurtures you. Remember Alinsky's organizing principles, do something "immediate, specific, and realizable'! Adopt a dog from the pound and tell all your troubles to her. It worked for me, and I <u>know</u> she can keep a secret. Find a way to forgive the person (or institution) subpoenaing you. I harbored a fair amount of anger and hurt at the thought that someone whom I had sheltered and helped would "turn" on me. This was a colossal waste of time and completely beside the point. The individual always has recourse to the legal system; sometimes it is the only way to address the wrongs suffered. Create a way to discharge any negative emotions which arise when you believe your neutrality has been compromised and your integrity challenged. Keep the lines of communication to your boss open.

10. Finally, discover a way to use your experience to protect the office in the next case. If you were called and did have to testify, try to gauge the damage done to your office's credibility and determine how to repair the harm. Use your influence to improve support for the informal and confidential nature of the office. Apply the knowledge you gained in your struggle to strengthen other Ombuds offices. Work toward developing a shield law for Ombuds.

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Last Updated: 02/21/97

The Vonnegut Degree James W. Vice

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RESEARCHING CAMPUS CONFLICT MANAGEMENT CULTURE(S): A ROLE FOR OMBUDS?

RESEARCHING CAMPUS CONFLICT MANAGEMENT CULTURE(S): A ROLE FOR OMBUDS?

Bill Warters-Nova Southeastern University

Ombuds as Researchers?

The late Jim Laue, one of the conflict resolution community's most beloved practitioners and theorists, described a range of roles that conflict intervenors may play in any given dispute. The primary roles Laue (1978) identifies include those of activist, advocate, mediator, researcher, and/or rule enforcer. Each of these roles entails a different relationship to the parties involved in the conflict, and a different stance regarding the desirable conflict intervention process and outcomes. Discussions and written materials on college and university ombuds most often describe the ombuds as filling either the mediator, or perhaps less commonly, the advocate role, and tend to downplay or make invisible the researcher role, except as it manifests itself as fact-finding prior to engaging in other problem solving efforts.

My assumption is that ombuds practitioners don't often think of or describe themselves or their colleagues as researchers (in the more traditional academic sense) because this concept is potentially threatening to people who are counting on the confidentiality of the office and who fear exposure when research is shared with others. While good research preserves confidentiality when necessary, this reluctance is understandable given the type of sensitive cases ombuds often deal with. Ombuds may also be hesitant to define themselves as researchers due to concerns about clearly differentiating their role from that of members of the faculty, who typically see research as their domain. Finally, ombuds may not emphasize research simply due to time constraints created by the demands of managing all the other activities usually associated with an ombuds office.

For whatever reasons, I would argue that ombuds are not commonly thought of as researchers, and they do not picture themselves in this role. However, as the very existence of the ombuds journal suggests, ombuds are actively observing, reflecting on, theorizing about, and writing up their work, and appropriately sharing these ideas with colleagues. My purpose in this article is to briefly explore a

somewhat expanded role set for the ombuds, one that includes the ombuds as researcher, a role that I think has tremendous potential value.

Building on the notion of "reflective practice" as discussed by Schon (1983) and Wallace (1994), I would like to suggest that we work on developing collaborative projects that bring together faculty in the field of conflict resolution with campus ombuds practitioners, wherein in the ombuds assist the faculty researchers in exploring some specific aspects of campus life and culture, and the researchers assist the ombuds in reflecting on their practice and refining their knowledge of their working environment.

This idea for more collaboration between ombuds and researchers is inspired in part by my current position as chair of the Higher Education Committee of the National Association for mediation in Education (NAME). In this role, I interact with a wide range of campus conflict intervenors, and also with faculty and staff from the growing number of academic programs in dispute resolution. Recently I have become interested in exploring ways that these two groups can do more to support and learn from each other, since they share much in common, and bring unique strengths and perspectives that complement one another.

Why Study Campus Culture(s)?

While colleges as institutions are influenced by powerful external factors such as demographic shifts, economic changes, and political realignments, they are also shaped by strong internal forces. More and more, researchers and practitioners are looking at the social environments existing within organizations for clues for better understanding and improving their functioning. In a 1985 review of contemporary organizational studies, Ouchi and Wilkins stated that: "The study of organizational culture has become one of the major domains of organizational research, and some might even argue that it has become the single most active arena, eclipsing studies of formal structure, or organization-environment research, and of bureaucracy." (Ouchi, 1985, p. 458)

While the study of organizational culture (and a related concept known as climate) has become quite common in organizational research on businesses, there remains a relative lack of organizational culture research on higher education, especially as it relates to conflict and conflict management. A collaboration between ombuds and organizational researchers could help fill this gap.

Culture is important because it structures the way people perceive situations, and it effects the range of choices they consider when approaching conflict. Culture also tends to be somewhat invisible and taken for granted, so we may not recognize its influence until we have transgressed certain codes or conventions and have experienced negative outcomes as a result. Higher education researcher William Tierney (Tierney, 1988a) uses an interesting methaphor to discuss this issue. When asked for his advice on acting, Spencer Tracy once remarked, "Just know your lines and don't bump into the furniture." However, as Tierney correctly points out, "On the stage of organizational culture, such advice is wholly inadequate. Participants within collegiate cultures have few if any written scripts prepared by an author to go by. And as for the furniture, the most visible props--role and governance arrangements--are not the

ones we tend to bump into. Rather, we most often trip over perceptions and attitudes, the intangibles that escape our attention even as they make up the fabric of daily organizational life." (Tierney, 1988a, p. 2)

The Research Approach

Anthropologist Clifford Geertz explains that, "Man is an animal suspended in webs of significance he himself has spun. I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law, but an interpretive one in search of meaning." (Geertz, 1973, p. 5)

Following Geertz, given the subtleties of campus life, and the necessarily interpretive approach needed to study culture, I will advocate here for an ethnographic and qualitative approach to research that uses techniques developed by sociologists and anthropologists for studying people's "lived experience.,, According to Tierney, "An analysis of the organizational culture of a college or university must occur as if the institution were an interconnected web that cannot be understood unless one looks not only at the structure and natural laws of that web, but also at actors' interpretations of the web itself." (Tierney, 1988b, p. 4) This reality requires researchers to use techniques that get at people's perceptions and ways of making sense out of their interactions with others.

I suggest here that the ombuds is in a unique position to serve as a guide or "primary informant" (kind of like the character "Doc" in william F. Whyte's 1943 classic ethnography Street Corner Society) to researchers interested in campus organizational culture and subculture, especially as it relates to conflict-related behaviors and beliefs. Given their placement in the organizational structure and their function as problem investigators, interpreters or translators of policy, and referral sources, ombuds are in an unparalleled position to observe and understand organizational life in many different campus domains. Chaney and Hurst (Chaney, 1980) and Robbins and Deane (Robbins, 1987) both note the special position ombudsman programs occupy as environmental sensors. Chaney and Hurst write that "ombuds programs are in a unique position as one of the most revealing unobtrusive measures of stressors in the campus community, " and Robbins and Deane conclude that "Data supplied to managers is normally filtered and condensed; not only is the process imperfect but information may be distorted for the purposes of influencing decisions. The ombuds receives unfiltered raw data from all levels and locations in the organization and does not have management responsibility. In our opinion, the potential usefulness of ombuds to an 'early warning system' has been under-utilized..."

Focus on Campus Subcultures, Not University-wide Culture

It has long been noted that colleges and universities contain quite a range of relatively strong subcultures that are based on groupings marked by differences in age, ethnicity, discipline, work responsibilities, social affiliations, and organizational location. I would suggest that, rather than primarily focusing on case studies of conflict (which we all know can be quite instructive), or working to further document the basic activities of the ombuds office (a seemingly popular thesis topic in the early years when ombudsing was still somewhat "exotic"), we focus instead on developing greater understanding of the various subcultures on campus and how these groups manage conflict within their own networks and

with others who fall outside their primary identity group. A few interesting examples along these lines (there aren't many yet) include Kay Harman's (Harman, 1989) examination of conflicts arising from tensions between professional versus academic values in professional schools, and Jim Schnell's (Schnell, 1985) look at conflict resolution within a greek letter organization.

Ombuds can provide a valuable window on the way conflicts get played out within universities, as well as a vantage point for exploring how the introduction of various dispute resolution services may in fact effect an organizational climate and culture over time. While I am not arguing that ombuds can ever truly know these various subcultures, they are certainly in a good position to explore what they do know, and then introduce the researcher to the right cultural informants to help them find out more.

Existing Research

There is already a small but growing base of general campus culture research that we might draw on as we develop our questions and approaches. A good summary of this work can be found in Tierney's (Tierney, 1988b) and Peterson and Spencer's (Peterson, 1991) reviews of this area of study. As they point out, the earliest work (in the 1960's) focused largely on the study of student cultures, and then in the 1970's, on distinctive colleges as cultures, the role of belief and loyalty in college organizations, and function of organizational sagas. more recent work has focused on the study of various academic cultures, leadership in different cultural settings, and the system of higher education itself as a culture.

It appears that interest in organizational culture on campus continues to develop. For example, New Directions for Institutional Research published a special "campus culture,, issue in 1991 (Winter) encouraging university research officers to pay more attention to campus organizational cultural issues and use more cultural research approaches.

Areas for Further Study

A brief discussion of a number of potentially fruitful avenues for research are suggested below, although many more could be developed as well.

Campus Subcultures

As I have discussed above, a particularly fertile and relatively undeveloped area for research is the exploration of conflict management approaches used by various campus subcultures. As anthropologists and historians interested in dispute processing have noted, cultural subgroups have often developed internal methods of resolving disputes to protect their group from involvement by outside "authorities" or systems of laws that don't take into account their norms and values. Jerold Auerbach's book Justice Without Law (Auerbach, 1983) provides a facinating account of alternative dispute resolution methods used in colonial America. These non-judicial approaches were successful as long as they involved individuals or groups who shared certain basic beliefs and who subscribed to shared norms of behavior. When conflicts emerged between individuals from different groups, or as group unity broke down, the

use of lawyers and the common law became more prevelant. As Auerbach argues, "Law begins where community ends." Because of the existence of multiple subcultures on campus, the need for "organizational spaces" for cross-cultural (in the broadest sense) problem-solving forums such as ombuds programs or campus mediation centers may become even more clear as our understanding of campus subcultural norms for conflict management become better understood.

Indigenous Resources

Another interesting area of related research, and one where I think ombuds would play an important role, is in the identification of the "indigenous" problem-solvers who are found within various campus domains. within any community, one can usually find individuals who, based on their interpersonal skills or social position, are frequently approached by people seeking problem-solving assistance. Ombuds often have contact with these members of the community, and could very likely assist researchers in identifying and then gaining access to these individuals for interviewing. Finding out more about how these parties do their conflict management work may provide ombuds with additional insight into how they might improve their own practice, and how they might further address supporting and empowering "homegrown" approaches to problem-solving.

Patterns of Conflict

Another important area where ombuds have access to useful knowledge is around patterns of conflict on campus. Because many ombuds programs already produce annual reports that share aggregate statistics, ombuds are likely to be quite familiar with and interested in patterns of conflict on campus. Careful interviewing by researchers might encourage ombuds to further reflect on their practice, exploring in more detail their perceptions of the patterns of conf lict on campus, be they temporal, topical, or structural in nature. Increased understanding of these patterns should prove quite valuable when considering the development of conflict prevention efforts.

Potential Problems

While I am enthusiastic about the potential value of an increased research role by ombuds, I am aware that a number of potential problems could effect the success of such efforts. These problems might include the creation of suspicion and/or potential alienation of "clients" whom the ombuds decides to invite into the research, who are unhappy with the suggestion. Another difficulty might involve struggles between academics and ombuds over the focus of the research agenda, with academics attempting to usurp the agenda, leaving ombuds feeling somewhat taken advantage of. Another possible problem, familiar to ombuds, is the creation of additional time demands on already overtaxed ombuds staff who are asked to regularly reflect on their practice in the presence of a collaborating researcher.

Potential Benefits

I believe that the potential benefits of having ombuds more involved as researchers outweighs the

potential problems. Potential benefits include improved practice, increased selfawareness, and perhaps additional legitimacy for ombuds practitioner, who often work in environments that priviledge research. The collaborative approach I have started to outline here can also help to strengthen ties between ombuds and the growing number of academics interested in dispute processing.

Conclusions/Next Steps

In order to pursue this possible expansion of the ombuds role, a number of next steps might be considered. These include a greater elaboration and specification of the research agenda, compilation of a more complete bibliography of existing campus culture studies as they relate to conflict, and the development of dialogues on this issue between qualitative researchers and ombuds, either via email, or in person at some kind of workshop or conference session. Ombuds would need to identify additional areas of concern, and help develop research practices that respect existing campus relationships. Also, some decisions about how central a role the ombuds should play in the research will have to be worked out, as the ombuds could play an active role conducting interviews and gathering observational data, or they could serve in more of an informant and guide role, as seems appropriate given their individual situations.

As ombuds well know, conflict is a regular part of life on college and university campuses. Hopefully, more research and greater understanding of the dynamics of campus conflict will help us improve the delivery of dispute resolution services, learn from existing conflicts, and reduce the amount of time lost due to conflict that could be better put into the pursuit of teaching and learning.

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Last Updated: 02/21/97

THE SOCIAL WORKER A'S OMBUDSPERSON: SIMILARITIES AND DIFFERENCES

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

THE SOCIAL WORKER A'S OMBUDSPERSON: SIMILARITIES AND DIFFERENCES

Annette Werk and Estelle Hopmeyer-McGill University, Montreal, Canada

Ombudspersons bring to their work many different personal characteristics and skills as well as many different professional backgrounds. Social Work training is particularly well-suited for the tasks of the Ombudsperson, most notably in work with "troubled" students. This paper will discuss the similarities and differences between the skills used by ombudspersons and social workers through the presentation of a theoretical framework and case examples.

Assessment:

A thorough assessment is required by both professionals. While doing the assessment, the Helper remains neutral and asks questions which help to elucidate the problem under discussion. Who, what, when, and where are important questions. When did the problem start? Who is (was) involved? etc. This first phase is called information gathering.

While asking the necessary questions, the "worker/ombudsperson" makes empathic remarks to indicate that she is listening. She clarifies, summarizes, and reflects back in order to ensure that she has a clear and accurate understanding not only of the facts but of the meaning behind them that is being attributed by the "client-student." It is essential that the student feel she is being heard. Sometimes this creates the most change of all, as both students and clients frequently report that no one listens to them. The attentive "listening" validates their concerns.

The helper must be nonjudgemental and neutral in this first phase. She is simply trying to ascertain the facts and understand them in the context of the situation being described. Sometimes she requests that the 11helpee" give her permission to contact others in order to complete the information gathering phase. When she feels she has gathered enough data to proceed, the next stage begins. It is then time to clearly **outline the problem for work.** Accurate **Problem definition and specification** are crucial to the success of the work. This assessment and problem definition phase can be more complex with "troubled" students as the following case example illustrates.

Case Example:

Joanne is a year old full-time undergraduate student enrolled in the Faculty of Arts. She called in great distress, requesting an immediate appointment. When she arrived for the appointment, she handed me close to 20 typed pages, requesting that I read these. After getting the necessary demographic data, I asked her to tell me "her story." As I listened, my "antennas" went up and I soon realized this was not solely an academic problem as she had earlier identified it. She began to share her concerns about being followed, spied upon in the subway and in her student housing. While remaining focused on her academic concern that she might be asked to withdraw due to academic misconduct, I gently asked her who else she had contacted about these concerns. The list included the Dean, Associate Dean, etc. She then admitted that the Associate V.P. had given her the telephone number of the head of the Mental Health Services. After some discussion, she agreed that a mental health appointment might be helpful. Together we walked up to the clinic where she received an appointment for two days later, to which I again accompanied her. She felt she could not manage this without my support. She called me after seeing the Doctor and many times subsequent to that.

As Joanne was to state later, "When I needed to speak to someone I might call and leave a message for you, even in the middle of the night. I had confidence and trust that you would call back as you always felt my problems were important."

Problem for Work/Goal Setting:

At this point, it is essential that "helper" and "helpee" decide together what they would like to accomplish. In other words, what are the goals they are working towards in their joint encounter?

For example, the problem may be defined as "the student states that the professor has refused to let her see her exam paper." The university rules state that she is allowed to do so. Thus the problem is an appropriate one to work on. The goal is, obviously, for the student to be able to convince the professor that she is entitled to see her exam and for him to agree to this. En route to this goal, there may be several steps. The ombudsperson may decide (with the student who has already unsuccessfully talked to the prof) to call the professor herself and discuss the problem. If this is successful, no further intervention is necessary. If a three way meeting is requested by the professor, then the ombudsperson may want to rehearse with the student the best way to approach the situation. This may include role playing the potential situations. A very similar sequence would be followed between a social worker and her client. Another **goal** this student may want to work on is for her to gain the skill and confidence to challenge the mark the professor has given her, if after seeing her exam, she feels the mark is unfair. Although the ombuds herself cannot intervene re marks, she can help the student plan the best way to make this request. We have now moved into an expansion of both the problem for work and the original goal.

Once Joanne was receiving weekly psychiatric help, our weekly meetings together focused on academic issues. We identified several areas for work and I repeatedly refocused our efforts in an attempt to

ensure that she complete her academic course requirements. I reached for her strengths ... her healthy part ... (an important social work technique) while not being afraid of, or diverted, by her bizarre thinking.

This can be called the **work phase.** A very important role of the helper is to help the student/client successfully negotiate. Often students (and clients) approach their opponents with anger and with a lack of tact, thus pushing them to a defensive position. By discussion and role playing the ombuds (worker) can help avoid this pitfall and this can frequently lead to greater success. The goal is to achieve a "win-win" situation if at all possible by identifying realistic options that can be acceptable to both parties. Compromise may sometimes have to be considered, but only if the student/client feels comfortable with the agreement.

Contracting:

At this point the ombuds (worker) makes a tentative beginning contract with the student (client) . This includes the problem for work, the time frame, the type of interventions to be made by each party and with whom. It is based on the goals agreed upon by both ombuds and student. Needless to say, this contract (which is generally verbal and not written) can be modified with the agreement of both parties as the work proceeds. There are times when an agreement may be in written form. This is particularly useful to ensure that all parties clearly understand what they have agreed to.

As time went on, Joanne was able to begin planning for future academic work and we agreed to continue to meet regularly to concentrate on those issues and on the goals we had agreed upon. I changed the times of our meetings to early morning and invited Joanne for coffee and muffins. Joanne flourished with this "shift from academic to more human encounters" and confessed that our first breakfast together was the first meal she had eaten with another person since leaving home!

Tasks:

One of the social work techniques which can readily be applied to ombudsing is the use of tasks. Each party undertakes to accomplish certain things between one interview and the next. By clearly outlining these, the work can move forward at a faster pace, i.e., the **ombuds** agrees to contact the professor and discuss the rules re seeing exams; the **student** agrees to write a clear resume of the actions she has taken re this to date and to make a statement re why she wants to see her exam.

Joanne and I identified several tasks that she had to undertake. For example, she wrote several letters and brought them for review before submitting them.

Evaluation and Referral:

When the interventions have been completed, it is important to evaluate the success (and or failure) of what has been accomplished. Was the problem solved to the satisfaction of the parties? If not, what part

was left undone? Can anything more be done? If so, by whom? Sometimes a **referral** is required.

In reviewing our work together, Joanne stated that she felt that she had been treated with respect, not as a "student with a problem" but as a valued person. She claimed that the breakfast meetings and a subsequent lunch meeting oriented her back to the human world versus her world of books and helped to put her feet back on the ground." Our work together lasted over four months. At our last meeting, we moved on to more personal matters and she shared what she had learned about herself and her future life goals. She expressed how much she had benefitted from her ongoing contact with both the Ombudsperson and the Psychiatrist and looked forward to her return to employment in the fall.

The **referral** process must only be done with the explicit agreement of the student/client. Due to issues of confidentiality, no information can be transmitted to another without this agreement. When the helper feels she has done all she can within her mandate, then sometimes a referral is indicated. It is important that contact with the referral source be maintained to ensure that the transfer goes smoothly. At times, this becomes a collaborative venture between the referee, the helper, and the helpee. In the case of students, the systems to which referrals and collaboration are effected include things like legal information services, office for students with disabilities, associate deans, etc.

Work with Joanne involved considerable systems work. The most significant was negotiation with the Director of Student Housing. Joanne was asked to move due to a petition from her house mates. We went together to discuss this and achieved an equitable solution although she did have to move.

Confidentiality:

Confidentiality is the key note of both professions. In all cases we are entrusted with important personal information and are expected to reveal facts only with explicit permission. Written consent for release of information to outsiders is a requirement in social work, while verbal consent is accepted in most ombuds situations. However, release of any information after the file has been closed requires written authorization. It is only by upholding the promise of confidentiality that both professionals can continue to receive the respect and trust of their constituents.

Conclusion:

We hope that this paper has clearly illustrated the overlapping skills and roles of the social worker and ombudsperson. Particularly in cases where the student manifests psychiatric troubl es, the training one receives as a social worker helps one to recognize where the ombudsman role begins and ends and where outside referral can be made while continuing to help the student deal with his/her life on campus. Since ombudspersons continue to come from many diverse backgrounds, it would be interesting to assign a hypothetical case to two or three ombuds from these differing professions and discover whether they would approach the problem from different perspectives.

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Last Updated: 02/21/97

GETTING STARTED

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

GETTING STARTED

Linda Wilcox-Harvard Medical School

The question of how to best "get started" when hired as an Ombuds at an institution where no such position has previously existed was discussed at a recent East Coast Ombuds Group (ECOG) meeting. The discussion focused on the interpersonal obstacles Ombudspeople find as they begin performing their jobs rather than on specific operational details (such as the designing of an office or purchasing equipment). Discussion was divided into two parts. The first dealt with the areas where problems were likely to arise. The second offered suggestions for preparing oneself for the role in light of potential problems.

Likely Problems

Frequently the Ombuds function is created and designed by a small group of "concerned citizens" who are involved in hearing about institutional problems and are frustrated by how these problems are being resolved. After exploring alternatives, they learn that the informal methods offered by the Ombuds profession may provide quicker and more confidential resolution to people's concerns and can involve many fewer people than formal grievance procedures. Sounds great! Unfortunately, the vast majority of people in the organization will not be familiar with the Ombuds role. Just like the group that studied and recommended it, the rest of the organization will need to be educated. However, most will not be able to devote the same amount of time to learning. Consequently, most people will not have a clear understanding of who the Ombuds serves (the administration or the individual) , or how the Ombuds functions (as an advocate or adjudicator). Once told that the Ombuds acts as an independent problem-solver who does not take sides and has no authority to dictate a course of action, they may question how another person with "no power" can benefit the organization.

Constituent Responses

If you are the first Ombuds in your institution, there will be no template. Expectations and fears will reflect both ignorance and uncertainty about how much trouble you are likely to cause as you surface individual problems and organizational difficulties. Many will answer your telephone call with dread or hostility, even if your intentions are to gather information, ask for advice, or offer suggestions or help.

Supervisors will fear employees will be airing their group's "dirty linen" to you and that a query or complaint will reflect poorly on their management style. Many Ombuds have reported responses to a call such as, "Who?", and then, "Oh, no," or the hesitant groan of, "What's wrong now?" Some will refuse to believe that there can be any problems in their department and feel that the complaining person should be punished for bringing the matter forward. Most will not want to investigate the issue because investigations take time away from the really "important" things.

Potential clients will worry about their confidential information surfacing unexpectedly. People have been known to call and hang up if the voice mail answers, feeling too afraid to leave a name and telephone number -- even when the message assures confidentiality. When speaking directly with the Ombuds, people have given false names and workplace locations to insure that they will not be identified while they gather information about their problem.

The organization's legal counsel may be leery about honoring Ombuds' confidentiality when successfully forcing disclosure might mean winning a case. (Though Ombuds organizations are working toward getting a shield law accepted for the profession and many Ombuds have successfully refused to testify, presently an Ombudsperson can be subpoenaed and required to testify.) Some institutions that fully understand the position and see the benefits that can be derived from it, have fought hard and have successfully protected the confidentiality of the position, but a few others have been less understanding or cooperative. Since some clients may be considering legal alternatives as they explore options for informal resolution, the institution's lawyers may be worried about an Ombudsperson further complicating a legal complaint.

When it comes to solving people problems, human resource (HR) personnel may feel that an employee choosing to speak with the Ombuds implies either that the HR office is being viewed as untrustworthy or that the Ombuds is considered more expert than they in managing employee/employer relations (which is what HR is hired to do). For example, it can be difficult for HR people to see the value of an employee "letting off steam" in an Ombuds Office instead of the HR office so that the employees internal or external job search will not be hampered. This kind of problem suggests that some of the Ombuds Office's work overlaps with that of the HR department. If HR's image is threatened, they may respond by vehemently guarding their turf.

The Ombudsperson must operate without threat to neutrality or confidentiality. This is best achieved when an Ombuds is responsible to and has the backing of the person in the highest position of leadership in the organization. Though this is not always the reporting structure, it is difficult to carry out the duties of the position without this, even when the functions are explained, understood, and accepted. For example, if an Ombudsperson is responsible to and evaluated by someone at a lower level, there may be instances when the Ombuds is subjected to inappropriate pressures when there is a difference of opinion about maintaining confidentiality on a particular issue.

Finally, even when an Ombudsperson is responsible only to the most powerful person in the organization, some people have cynically expressed concern that the office exists only to keep people

from filing law suits against the institution.

My Own Experience:

At my institution, I was asked to develop an Ombuds Office from scratch. I recall having struggled with many of the issues that were discussed at the ECOG meeting. After lengthy study, the Faculty Council requested that there be an Ombudsperson at the school. The administration complied, but many high-level managers were leery. Early in my tenure, I remember discussing a particular case (without identifiable information) with a much more established Ombudsperson than myself. I was seeking advice on how to approach the problem. It was suggested that I speak directly with the highest level manager in charge of this particular problem area. I remember feeling awkward and inadequate. I knew that my existence was not welcome by all senior management, including this individual, and that the Ombuds role was presently being uneasily tolerated. I felt that it would not work for me to request discussion of the problem at this level. Even with permission to do "something," I felt that I needed to do "something" that would work in an organization where the Ombuds position was not well-established, understood or welcome. Based on my understanding of the organization at that time, I felt that its culture required that I establish credibility for the office before the highest levels of the organization would see my interventions as potentially helpful. So, I sought (and thankfully succeeded at finding) another way to bring the problem forward.

At that time, I felt I had failed. I felt I had been weak. I was afraid to tackle the senior management problem and use the situation as a vehicle for explaining my role. Some months after this event, and many, many problems later, a crisis arose that required interaction with a member of senior management. As I entered the room, the individual welcomed me and asked that I be as helpful as I could be within the context of the confidentiality I had promised the person about whom the meeting had been called. It was then that I realized that my decision to build credibility, slowly, through consistent and reliable behavior while taking the time to educate the organization about what to expect, had been an effective strategy for me within the context of my organization.

"Outsmarting the Problems"... Some Practical Suggestions:

There are several Ombuds professional organizations. The Ombudsman Association (TOA) serves corporate, government, higher education and others. The University and College Ombuds Association (UCOA), and The American Association of Canadian College and University Ombudsmen (ACCUO) serve Ombudspeople working in higher education settings. These organizations have established codes of ethics and standards of practice that can guide an Ombudsperson's actions. Within this framework, it may be helpful to remind ourselves that, just as we help create and develop options for others to solve their problems, we can do the same for ourselves. By doing so, we too can choose which options are appropriate to our individual circumstances and comfort level, all the while remembering that there is no one "right" way to solve a problem.

Here are specific, practical steps you can take:

1. TOA and UCOA each have developed a handbook with suggest ions about the Ombuds role. Each has a section on "Getting Started." The American Express Company has created a notebook on how to select an Ombudsperson, which includes comprehensive recommendations on how to search for and hire an Ombudsperson. All three manuals explain Ombudsmanry. ACCUO has information and suggestions for helping people define their terms of reference in the University setting. Using such guidelines, the institution can become familiar with what to expect and the Ombudsperson can learn from the guidance and suggestions they provide on how to perform the function. Ombudspeople can benefit from joining professional Ombuds organizations and developing relationships with other Ombuds. It is often helpful to find those more experienced than yourself, with whom you are comfortable, to call for advice, support, or to be "an ear" as you tackle a problem.

2. If you are new to the profession and/or the role is new to your institution, it will be important to be clear about who and how you will serve as an Ombudsperson. You will need to explain your role numerous times both as you introduce yourself to the community and later. It may be helpful to develop a brochure to explain your job, which should be made available and disseminated often to your constituents. This can both serve to advertise your services and explain the scope and limitations of the Ombuds function. Another way of having your job better understood is to accept invitations to meet as many people as possible to explain the position and describe the range of services you can provide (i.e. listener, information gatherer, option-builder, mediator, etc.).

3. You should make a list of and develop a rapport with those people in the organization who are able to make changes and take corrective actions and who can have a positive or negative impact on the work you do. Meeting one-on-one with these people can be helpful in learning more about them, how they are likely to operate, and how best to build a relationship with them. You can also work closely with people allied with these people and rely on the "word of mouth" to build your reputation. Nurturing the people holding the highest positions can greatly facilitate your acceptance into the organization. When you can, ask your senior "supporters" to introduce you to others.

4. Arrange that a description of your services be printed in the student, faculty and staff handbooks, and the policies and procedures manuals. You may want to put your terms of reference on your door for everyone who visits to see. People should receive both written and verbal explanations of what they can expect, preferably before they begin a dialogue with you. Request or have others request that you be interviewed by the magazines, newspapers and newsletters published by your institution. If appropriate, write an article yourself and submit it for publication. The article can describe your services (similar to the material for your brochure or the descriptions in the various handbooks and manuals).

5. Look for opportunities to continually teach others how to deal with conflict. This can be done by educating others about the value of resolving conflict early on and informally, by your own behavior (i. e. how you listen to others in group conversations), and in your observable interventions. As a new Ombuds, you may wish training on the Ombuds function so that your practice is within the guidelines of your chosen professional organization's code of ethics and standards of practice. If you do not have training in dispute resolution, seek training in dispute resolution. UCOA and CCCUO have beginners

workshops at the annual meetings. Presently, TOA provides a comprehensive three-part training program entitled: Ombuds 101, Ombuds 202, and Ombuds 303.

6. Continually remind people what to expect from you as a designated neutral, that you are not a decision-maker or judge. Emphasize how your role can be beneficial to the organization.

7. You should try to get the involved parties to focus their attention on solving the problem rather than directing their anger at the person who brought the matter forward. Consider asking people to help you understand the situation better or to help brainstorm ways to bring about resolution. This approach can often be seen as less confrontational and more face-saving than implying mismanagement or misdeed.

8. Finally, people may need to be continually reminded that an Ombudsperson is not in the organization to cause trouble, chastise and embarrass individuals, or to act as a "politically correct" monitor. Remember, the Ombuds, purpose is to help people solve problems informally, in the least intrusive manner possible so as to minimize negative consequences. While doing this, the Ombudsperson seeks to provide upward generic feedback to the institution so that it may take positive corrective action.

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Last Updated: 02/21/97

TRAVEL REFLECTIONS VIA INTERNET ELECTRONIC - -E MAIL-

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1995

TRAVEL REFLECTIONS VIA INTERNET ELECTRONIC - -E MAIL-

Dean M. Gottehrer-United States Ombudsman Association

Mary P. Rowe-Massachusetts Institute of Technology

The following travel accounts by Mary Rowe, Ombudsperson, MIT, and Dean Gottehrer, President, USOA, and Head, OLF (Ombudsmen Leadership Forum), appeared on the Ombudsman Electronic Network during August, 1995. In our opinion, the detailed descriptions pertaining to their two trips provide important information for those Ombudsmen who are involved in Conflict Resolution. Therefore, the authors gave us permission to reprint their personal travelogues in our Ombudsman JOURNAL.

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TO:       OMBUD@MIT.EDU

FROM:     Dean M. Gottehrer (deang@cruzio.com)

SUBJECT:       Lesotho Re ort
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When I returned from Lesotho, I said I would send out a note reporting on my visit and activities there. Here it is.

The Lesotho Ombudsman was created in the country's Constitution in 1993. Henry Nts'aba (pronounced en-TSABA) was appointed to the post in October 1993 and took office early in 1994. When his appointment was announced, the public affairs officer of the U.S. Information Service (USIS) in Maseru, Lesotho's capital city, contacted Mr. Nts'aba to discuss bringing an ombudsman to Maseru to work with him and his staff. Mr. Nts'aba responded favorably. Inquiries in the United States resulted in an offer to me to travel to Lesotho as a professional in residence. I left California on July 13, arrived in Maseru on July 17 and returned home on August 12.

During my visit to Lesotho (pronounced Leh-SOO-too) , I worked with the Ombudsman and his staff, met with government and non-government officials, traveled to visit the Lesotho Highlands Water Project Katsie Dam, participated in a public forum in the rural town of Quthing, was a guest on an early morning call-in program on Radio Lesotho in both English and the local language of Sesotho (pronounced Seh-SOO-too) , gave a public lecture at the American Cultural Center in Maseru and met with a number of different interest groups.

The main purpose of my visit was to train staff in all aspects of ombudsman work, discuss how ombudsman offices operate in the United States and work on a computerized caseload management system. During the course of the visit, the American Embassy and USIS Maseru donated an upgraded computer to the office, purchased word processing and spreadsheet software and had a computerized caseload management system originally designed for the Municipality of Anchorage (Alaska) Ombudsman customized by its programmer to fit the needs of the Lesotho Ombudsman.

Sections 134 and 135 of the Lesotho Constitution establish the ombudsman's office. The country is a democratic

constitutional monarchy. It became independent from Britain in 1966. A military coup took place on January 20, 1986. The king returned from exile late in 1992 and elections were held on March 27, 1993, establishing the government that currently holds power. The Ombudsman is appointed by the king on the advice of the prime minister, for a term of four years.

The Ombudsman has been working with the Attorney General and the Minister of Law and Constitutional Affairs to refine a draft law that will be discussed by the Cabinet and presented to Parliament, which has the authority under the Constitution to amplify the powers of the Ombudsman. The Constitution gives the Ombudsman jurisdiction over national and local governments (including tribal chiefs and local elected governments) and statutory corporations. The corporations, known in Lesotho as parastatals, are companies that are or were government owned. They include a national bank, an agricultural development bank, an electricity corporation, the Highlands Development Authority, a housing corporation, a national insurance company, a national development corporation, a telecommunication corporation and a brick manufacturer.

The draft law will specify that the Ombudsman has no jurisdiction over the king, Parliament, the Cabinet in its policy making role (as opposed to the individual ministers as heads of their ministries), the courts of law and statutory tribunals. Discussion is taking place about whether the Ombudsman will have jurisdiction over the administrative acts of the court system, which is overloaded with a backlog. The statutory tribunals include organizations such as the Public Service Commission, which appoints anddisciplines all civil servants, including the staff of theombudsman; the commissions that appoint and discipline teachers and judges, justices and magistrates; the Labor Tribunal, which handles labor disputes, etc. The Ombudsman is not an alternative to these judicial and quasi-judicial organizations and so has no jurisdic- tion over them.

The Constitution and draft law give the Ombudsman the power to:

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        *             Receive and investigate complaints of injustice, threats to natural
                      resources and the environment, as well as maladministration,
                      corruption, unlawfulness, violations of fundamental rights
                      or freedoms, dislocation of orderly administration, etc. One
                      version of the draft law also gives him the right to investigate,
                      comment on and make recommendations to agencies about
                      breaches of Principles of State Policy, established in Chapter
                      III of the Lesotho Constitution. That chapter describes principles
                      of equality and justice, protection of health, provision
                      for education, opportunity to work, just and favorable conditions
                      of work, protection of workers, rights and interests, protection
                      of children and young persons, rehabilitation, training
                      and social resettlement of disabled persons, economic opportunities,
                      participation in cultural activities and protection of the
                      environment. These provisions are not enforceable by any court
                      but are guides for authorities and agencies to achieve
                      progressively.

      *             Initiate investigations on his own motion.

      *             Subpoena witnesses and documents from both government and
                    private sources.

                    * Access government records and offices, including places where
                    people are held against their will.

*       Engage experts or consultants and have them conduct investigations and
report to the Ombudsman. (This provision is particularly helpful when all the
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staff have conflicts of interest, something bound to happen in a small country with
a small staff in the Ombudsman's Office.)

*   Determine which complaints will be investigated.

*   Set deadlines for when office recommendations should be implemented by
agencies.

*   Restrain an agency or government employee from taking any action the
 Ombudsman considers likely to inconvenience or adversely affect the conduct or
 outcome of an investigation or inquiry, pending the final determination of that
 investigation or inquiry.

*   Make annual and special reports to Parliament.

*   Release reports to the public.

The law also establishes penalties for refusing to comply with a subpoena, giving false testimony, withholding information, refusing to be sworn or provide information, wilfully hindering or obstructing the Ombudsman or staff, doing something calculated to improperly influence the Ombudsman, his representatives or witnesses. The penalties range from fines of 500 malotti (the currency of Lesotho; one malotti is equal to one South African Rand and it takes R$3.59 to purchase a dollar) and/or six months in jail up to M$1,000 and/or up to one year in jail.

The Lesotho Ombudsman has the following staff: Mr. Thabo Pule, principal administrative secretary (the person responsible for the day-to-day operation of the office); Mr. Semenekane Moorosi, chief legal officer (an attorney functioning as the chief investigative officer); a secretary; an accounts clerk; a driver; a messenger; and janitorial staff. Mr. Nts'aba is hiring three new staff: an investigator, another secretary who will also be the office's computer specialist, and an administrative assistant to the principal secretary.

The Ombudsman's offices are located in the government complex, across the hall from the government secretary. I recommended the ombudsman seek offices outside the complex and away from any other government offices.

The principle focus of my efforts was to train the staff. We spent many hours together discussing the philosophy of an ombudsman's office, intake, investigations and how to conduct them, relations with agencies and how to develop recommendations and get them accepted, report writing, annual reports, how to make a report public, office and computer security, resource allocation and setting investigative priorities, training new staff, the computerized caseload management system, budgeting on a spreadsheet, and using the auto text and revision marks features of Microsoft Word to increase productivity and ease editing reports.

We worked together to develop a complete list of agencies under the ombudsman's jurisdiction, incorporate it into the Anchorage caseload management system and customize the features to Lesotho where needed.

I left the staff a complete copy of the State of Alaska Ombudsman's Policies and Procedures Manual, a document developed over the office's 20-year history that will offer models of procedures that can be adapted and adopted to the needs of their office.

During the visit, we used my presence as an opportunity to meet with groups and individuals from a broad cross section of Lesotho society. I personally met with representatives of the Lesotho Council of Churches, the Legal Society, the Federation of Women Lawyers, and the Lesotho Council of Non-governmental organizations. I spent two days working with the director and instructors at the Lesotho Institute of Public Administration to develop a syllabus for them to teach future public servants about the Ombudsman's office, what it does and what to expect in contact with the office. Part of that time, I taught

them about the office and how to use the syllabus in their instruction.

I also met individually or in groups with the Lesotho Auditor General, the Attorney General, a number of cabinet ministers and principal secretaries of those ministers, several justices of the Lesotho High Court, including the chief justice, journalists and employees of the Ministry of Information and Broadcasting including the head of news for Radio Lesotho, representatives of the police and military and the resident representative of the United Nations Development Programme. One evening I spoke to a meeting of the Fort Hare Alumni Association. Fort Hare was a black university in South Africa, the South African Tuskegee as one of their members put it, where blacks could get a good university education. Nelson Mandela is an alum and met with the Lesotho group on his visit to the country shortly before I arrived.

So that I would not have just an urban understanding of Lesotho, we traveled two days in rural Lesotho. First, we went to visit the Katsie Dam, the first part of a four-part, 30-year hydroelectric and water transmission project in the mountains of Lesotho. Water from the Lesotho highlands will form a reservoir behind the dam that will be used to generate power and then will be piped, pumped and allowed to flow into South Africa as a source of drinking water. It was an impressive project. out in the middle of nowhere in Lesotho, the dam was rising. Concrete was being poured 24 hours a day, six days a week, trucked in more than 300 kilometers from South Africa. We saw a model of the project and viewed a video produced in South Africa explaining what would happen and the benefits it would bring.

The project reminded me of the trans-Alaska oil pipeline. Both had controversial environmental impacts. Both were seen as providing a significant source of local employment, which in both cases provided less local employment than many had hoped for. Both were viewed as a boost to the local economy, which certainly proved true in Alaska and remains to be seen in Lesotho. We walked on the face of the dam and into its inner passageways. We visited three weeks before the water would start to be held back by the dam.

The second trip was to the village of Quthing in southern Lesotho on the frontier with the Transkei. The Ombudsman and I spoke to a public forum for the community that was fairly wellattended. The questions here were quite different from those I got in Maseru. Maseru questions were often theoretical. Quthing questions were quite practical. The people here wanted to know about specific problems and what the Ombudsman could do about them. Many of them were not in his jurisdiction. For example, one questioner wanted to know what could be done to prevent Basuto who work as miners in South Africa from assigning their insurance and death benefits to their South African girl friends rather than their Lesotho wives. The Ombudsman has no jurisdiction over the private sector, either in Lesotho or South Africa.

During lunch, I talked with the district secretary, the top government official in Quthing. He described livestock theft problems the area was experiencing. Cattle and sheep were being stolen and driven across the border with Transkei. He said that since October, more than 12,000 head were reported stolen -- and those were only the ones that were reported. Some herdsmen no longer reported the thefts. He also described being kidnapped by the Lesotho police, held and finally released. He was not optimistic about solutions to livestock theft and said it was his chief problem.

My visit to Lesotho was a very productive one. Working with the staff, I had an opportunity to exchange experiences and thoughts. Visits with other officials helped the Ombudsman and me to educate a significant number of leaders about an ombudsman's functions and how the Lesotho office will operate. I also read and commented on the draft law and made suggestions to the Ombudsman and other government leaders on how to improve the legislation. The donation by the American Embassy and USIS of computer equipment and software including a caseload management system provides the office with the ability to track complaints, calculate statistics and better account for the services it provides.

I departed Lesotho satisfied with the work we had done together but sad at leaving the staff I had grown close to during the month. I look forward to following their progress as the office grows and more people are educated about its function and use its services.

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TO: OMBUD@MIT.EDU

FROM: Mary Rowe

SUBJECT: Trip to SA

Dean's wonderful trip report has almost convinced me not even to attempt a report on SA... I have only a few minutes and I am nowhere as organized, nor have I integrated it as Dean has. But here are a few highlights.

I spent six days travelling, two weekend days at a game reserve (yay zebras), and nine days working. We did not sleep very much. We were in Johannesburg and Cape Town. The trip expenses were largely paid by USIS and some by the Independent Mediation Service of SA (IMSSA --- something like the Fed Conciliation and Mediation Service here and something like the AAA) and some by my spouse and me.

I worked with trade union women and men mostly black -- and with some corporate people -- mostly white some mediators and arbitrators, many university people, and a couple of new corporate ombudspeople -- in all I met with maybe 100 or so different people. My spouse was working with many people about preventing targeted violence. (The SA Police are by the way changing from a Force to a Service, involved in community policing.)

The South Africans I met spanned a good bit of the political spectrum but seemed universally pragmatically oriented, super-supportive of Mandela, commited to working in a rainbow (many SA teeshirts show a rainbow), very interested in contacts outside the country, a bit naive (or alternatively, and better stated, freshly oriented) toward workplace problems, and enormously able and talented people. SA'ns are also friendly, very gracious, multi-lingual and generally very impressive.

I was mainly listening and talking about dispute resolution system design, about sexual harassment and sexual assault, about training to deal with harassment problems, about affirmative action, and about dealing with HIV in the workplace, The SA'ns I met generally are very pro-affirmative action (and think that the US has largely botched it). They are determined to skip our mistakes and in many ways I think they may.

There is a lot to say -- there is a newly drafted Constitution, a new Draft Labour Law, an interim Bill of Rights. I just heard that the Sexual Harassment Education Project of South Africa had proposed a number of changes to the Labour Law which have been accepted -- there is increasing interest in fair treatment for women. 30% of the new Parliament are women. Mediation is taking off. Many SA'ns are interested in a systems approach to DR in workplaces. Ombuds structures are of great interest. Cape Town is maybe the most beautiful city in the world and it really is true that there are hundreds of varieties of flowers that exist only there, in the world -- the flowers are AMAZING. Mandela has to be observed to be believed -- a person of Gandhi-like stature.

There are lots of problems. Random violence produces the kind of caution that I otherwise know of only in Bogota. 50% unemployment among people of color -- and many of the shantytowns are still there. Of 42?? million people, maybe a fifth are recent immigrants, many illegal, largely from the countries to the north. HIV status has shifted from the US, 1/3 to 1/2 of one percent of the population to almost 10% in maybe a five-year period. The human dislocation and pain of the history of apartheid recall the Holocaust (I do not say this lightly) and leave me feeling deeply disoriented that humans could have contemplated such pervasively contemptible immorality, let alone carried it out.

If you get a chance to go -- I would say go for it. The good news includes the food (inexpensive macademia nuts, great wine, great cooking in a hundred traditions, fantastic fruits and vegetables, and ostrich steaks if you are not a veg like me) -- a most extraordinarily beautiful country with many types of geography, and haunting cave art -- really remarkable and wonderful

people across the rainbow -- and the deep commitment any person of conscience must feel that this country must work -- for its own sake, for all of Africa, and for all of us in a diverse world. I was impressed that many Canadian organizations have offered a great deal of support and resources to SA organizations. I of course came back thinking we should all do more.

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TO:       OMBUD@MIT.EDU

FROM:     Dean M. Gottehrer (deang@cruzio.com)

SUBJECT:        Re: Trip to SA
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Thanks, Mary, for your report on your South Africa trip. It is always better to have something than nothing. I learned much from your report that I did not know about SA. I agree with the assessment of Mandela. People in Lesotho are concerned that he live long enough to make SA a workable country because they think he is one of the few if not the only one who can do that. It is important to remember that Lesotho depends on SA in many ways, primarily economically. So if SA goes down the tubes, in all likelihood so does Lesotho.

If as you think more about your trip, more thoughts come to you, I hope you'll share them with us.

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Best, Dean


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Last Updated: 02/21/97