

California Caucus of College and University Ombudsman

UCI Ombudsman: The Journal 1996

[Acknowledgement](#)

[Introduction](#) by Ron Wilson

[Ethics in the Academy](#) by Kathleen Beattie

[An Ombudsman's proposal for an Independent Judiciary](#) by R. Adolfo de Castro

[Ombudsing in an Educational Institution: Use of Implicit and Explicit Power](#) by Norma Guerra and Gregg Elliott

[Assisting complainants Seeking to Establish a Record of a Complaint Without Violating Ombuds Ethics](#)
Tom Sebok

[Academic Ombudsing: Process, Roles, and Relationships](#) Lois Price Spratlen and Susan L. Neff

[Common Sense Revisited](#) James W. Vice

[Apologies](#) Marsha L. Wagner

[The Contributors](#)

rrwilson@uci.edu

Last Updated: 02/21/97

Acknowledgement

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

Shirley Crawford

It is with sincere gratitude and appreciation that the California Caucus of College and University Ombudsmen acknowledges the contribution that Mrs. Shirley Crawford made to our Asilomar Conference by way of the support services she delivered toward the completion of this publication. Without her diligent and nurturing assistance, our Journal would not have been possible. Mrs. Crawford is the Administrative Assistant to the Assistant Executive Vice Chancellor-University Ombudsman at the University of California, Irvine.

rrwilson@uci.edu

Last Updated: 02/21/97

Introduction

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

INTRODUCTION

Ron Wilson- University of California, Irvine

As we enter the 21st century, many segments of our heterogeneous society are still struggling to exercise the individual rights and privileges that were stated in the 1791 Bill of Rights and were expanded during the 19th and 20th centuries. However, as the 1900(s) draw to a close, many groups -- male, female, ethnic minorities, gays, lesbians, handicapped, and the elderly -remain in the mire of prejudice and the marsh of bias from which they are still striving to emerge. In reality, as our nation enters a new century, our goal of "equal rights for all" remains in a stage of infancy and awaits the promised "coming of age." The dual challenges of equal justice and equal opportunity for every individual in our "multicultural population" are still visible and remain unconquered. The progress that has been made and the victories that have been won are followed by the shadows of unfilled dreams and dashed hopes which often represent "one step forward; two steps backward."

As citizens who respect (and expect) democracy, we no longer can cherish our liberties without providing the means for their possession by all the denizens who live in our pluralistic society. Our varied racial composition -- an inheritance from the immigrants of other lands -- must be viewed as a strong base on which we will continue to build our individual lives. Therefore, free expression of the minorities' viewpoints and opinions must be maintained and protected if America intends to keep pace with the world's growth and development during the coming century.

For those Americans who do enjoy all of the rights to which they are entitled, it is no longer sufficient to say that our government believes in equity if the amendments that were passed to guarantee justice to every member in our mélange of nationalities are thwarted and twisted to preserve the status quo. Moreover, it no longer suffices to state that our laws have created equality if we fail to recognize the necessity of a continuing debate -respectful and relevant -- from the minorities, the disadvantaged, and the underrepresented whose voices remain unheard and whose claims for justice remain unheeded.

These democratic ideals and principles of justice are germane to our ombudsman profession. Moreover, they are the pivotal points from which our duties in conflict negotiation and dispute resolution emanate. As Ombudsmen in academe, we know that our office holds a unique, strategic, and privileged position in the institutions that we serve. We also are aware that our survival in the "higher education arena" frequently depends upon our "high wire act" being performed without a net. However, during the last

decades of the 20th century, our Ombudsmen have discussed "What is an Ombudsman?" "What is not an Ombudsman?" "What should an Ombudsman do?" "What should an ombudsman not do?" Sometimes our dialogues have taken a condescending tone and have revealed that Ombudsmen can be committed to a particular ideology at the risk of ignoring the validity of a different ethos. The aftermath can lead to divisiveness within the profession; to counterproductive actions; and to the very stagnation we hope to prevent. Is this the position in which we are willing to be rooted as the 21st century advances toward us? I believe the answer is an emphatic "no." In my opinion, Ombudsmen can utilize diversified approaches in their search to support equal rights and to achieve equity for their diverse student, academic, and administrative bodies. Moreover, the excellent articles that follow in The Journal are positive examples of the several methods via which we can assume our responsibilities, perform our jobs, and fulfill our goals. The rich variety of theses in the following essays offer "food for thought," "intellectual recharges to our mental batteries," and "mirrors of reality" that reflect the many ways to effectively implement an ombudsman's role.

#

In [Ethics in the Academy](#), Kathleen Beattie acknowledges her instinctive reluctance to judge the actions of others and bravely explores the Ombudsman's dilemmas when asked to be the "community conscience."

As Beattie describes the search for answers to an Ombudsman's questions, "Am I the conscience for the academic community that I serve?" and "If I am asked to be the academic conscience, how can I determine the ethically appropriate behavior -- especially in our *mélange* of cultural and social norms?", she realizes that the members of the university community expect a satisfactory definition of the correct behavioral boundaries. However, Beattie recognizes that a common acceptance of uniformity in ethical behavior is precluded by cultural and social diversity; the diminishing of religion's positive influence; and the increasing ineffectiveness of civil and criminal laws.

Undaunted by these realities, Beattie outlines a plan of action to combat the existing void that lies within the parameters of acceptable and unacceptable behavior. Using three Case Studies in which the ombudsman might be asked to provide an objective opinion and/or an equitable solution, Beattie concludes that the ombudsman's obligation is to identify the most vulnerable party in the dispute and to suggest a reasonable and unprejudiced answer.

#

In [An Ombudsman's Proposal for an Independent Judiciary](#), R. Adolfo de Castro pleads an excellent defense for granting full "functional independence" to the judicial branch. Adolfo de Castro believes strongly that an independent judiciary could possess administrative powers commensurate to those enjoyed by the executive and legislative branches, and could still remain accountable to its constituents, the citizens, who pay for its services.

At present, de Castro alleges that the judicial branch is subordinate to the government's political powers. Furthermore, the courts are lodged in this political arena because the appointments, terms of office, promotions, and salaries are determined and/or influenced by the Chief Executive and the Legislators. However, an independent Legislative or Parliamentary Ombudsman could offer the requisite "checks and balances" to monitor the administrative decisions of an independent judiciary, and also could serve as a control instrument that would "call into question" flagrant misuses of power. Finally, de Castro stresses that the judicial system must become a full-fledged government power if it is to meet the complex challenges of the 21st Century.

#

In [Ombudsing in an Educational Institution: Use of Implicit and Explicit Power](#), Norma Guerra and Gregg Elliott present a masterful study of the Ombudsman's power.

Reaffirming the premise that dispute mediation between university community members requires independence, confidentiality, identification of equitable options, and a genuine respect for both parties, Guerra and Elliott concentrate on the latter aspect, i.e., the disputing individuals.

Guerra and Elliott demonstrate forcefully and unequivocally that the disputants' future relationship might be on a par with their present disagreement because both parties are members of the same university community. Consequently, an Ombudsman in academe should assess the present and future professional interactions between the person who is experiencing the conflict and the individual who is perceived as causing the problem. Moreover, unless the grievant is suffering a crisis which requires immediate intercession, the Ombudsman should gently guide and/or cautiously persuade the "perceived perpetrator" to reconsider a decision that might be unjust.

The authors provide a powerful buttress for their thesis with clear, concise schemata. The Table, Figure, and Case Studies offer synoptic descriptions of the disputants, the disagreement, and the method via which the Ombudsman can objectively address and amicably resolve a problem between players on the same team.

#

In [Assisting Complainants Seeking to Establish a Record of a Complaint Without Violating Ombuds Ethics](#), Tom Sebok offers a viable and pragmatic plan to assist the Ombudsman in preserving the confidentiality and neutrality of the office while simultaneously offering positive and effective solutions to the clients.

Using a classic example of the grievant who desires to register an "informal complaint" that can house a "formal consequence," Sebok cogently summarizes nine alternative solutions which the Ombudsman may suggest. [The grievant does not want the other party to know that an informal grievance has been registered which could be used at a later date if formal charges are filed.]

However, the Ombudsman must listen objectively to both parties. Therefore, Sebok's nine recommendations that the complainant can take independently, afford sagacious, unbiased, and sound advice for the Ombudsman to give freely and without qualms about violating professional ethics.

#

[In Academic Ombudsing: Process, Roles, and Relationships](#), Lois Price Spratlen and Susan Neff deliver a scholarly treatise on the actual process that the Ombudsman uses to effect an amicable compromise between disputants.

Using a five point outline, Spratlen and Neff divide their research into the following categories which comprise the mediation process and link together to form an effective "modus operandi" [MO]: Introduction; Phases of the Ombudsing Process; Contributions and Benefits of the Model; Challenges and Implications of the Ombudsing Process; and Conclusions.

A two page Matrix offers a comprehensive chart which describes the four stages through which a grievance might pass before reaching a resolution. This excellent Model cites "Orientation," "Facilitation," "Termination," and "Evaluation" as the four principal elements in "grievance composition." Furthermore, these entities depict the four phases which will be further defined by the grievant, the grievant's goal, the grievant's adversary, and the Ombudsman -- the objective Mediator who strives to facilitate an equitable solution for everyone.

Spratlen and Neff enthusiastically advocate their Model as an effective methodology for the Ombudsman profession because the empirical evidence appears to confirm a 90% success rate for clients who use Mediation to resolve their complaints.

#

The thesis of [Common Sense Revisited](#) by James Vice will be recognised immediately by every Ombudsman who strives unflinchingly to unravel the dilemma of the student who has been referred from Office A, to B, to C, to D, and back to A. Using modern examples from our universities; timely admonitions from present writers (Philip Howard and Fritz Schulz); and ancient maxims from classic philosophers (Plato, Aristotle, Goethe, de Tocqueville, and Holmes), Vice creates a brilliant analysis of the existing tension between the myriad of rules and their application by conservative bureaucrats who are reluctant to use discretionary judgment, i.e., "common sense."

Vice adroitly supports his defense for "common sense" with elliptic phrases and quotes which evince well-known facts, e.g., find a problem, pass a law; too many regulations written in too much detail; all that is known cannot be articulated in detail; a rule is a general statement which cannot foresee all the circumstances; knowing the principle is not the same as knowing "how"; and all rights tend to declare themselves absolute to their logical conclusion.

These succinct, pithy statements unveil accurate observations on a complex phenomena, i.e., equal, but conflicting rights, can collide and cause tension. However, this discord can be resolved or alleviated by the wise individual who is willing to assume responsibility and apply common sense.

#

In [Apologies](#), Marsha Wagner superbly outlines the seven essential components of sincere remorse, i.e., an identification of the wrongful deed; a recognition of responsibility and accountability on the part of the offender; an acknowledgment of the pain or embarrassment suffered by the offended party; a judgment about the offense; a statement of regret; an assurance of future good intentions; and an explanation of the offender's motives.

Citing a recent public incident that put two prominent statesmen at odds -Senator D'Amato and Judge Ito -- Wagner facilely identifies the cruxes of an acceptable apology while simultaneously defining the fatal flaws that can increase the insulted party's rancor. [In the aforementioned incident, a second public statement of regret was necessary to repair the additional damage caused by the first explanation of the character defamation.]

Wagner's excellent critique of an acceptable and unacceptable apology provides valuable insight into the Ombudsman's continuous task of achieving an amicable resolution between two disputing parties.

#

After reading these dynamic, enterprising articles, I believe their creative contents will assist our Ombudsmen in developing, formulating, and executing the best answers for the individuals who approach the Ombudsman office and ask for help. As the articles demonstrate, the ombudsman's responses can be flexible, and without concern or allegiance to either the "traditional" or the nontraditional" beliefs. For example, the Ombudsman who works closely with the Institution's President, Chancellor, Dean of Students, and Campus Police upholds the ombudsman concept just as the ombudsman who distances the position from the Academic Executives on the grounds of neutrality; the sanctuary of confidentiality; or the maintenance of their present, individualistic footing. Both styles can provide neutral, confidential, focussed, and effective service. Both MO(s) can openly support the needs of the students, faculty, and administrators who request their services.

Finally, it is important to remember that when an Ombudsman office closes, those of us who remain cannot become identical designs and shapes which have been cut from the same "cookie cutter." We must be individual, separate, distinct, and important ingredients in the "whole mix" that represents our workplace. our approaches must be as diverse and unique as the academic population we serve. If we fail to achieve diversity in our actions, we relinquish our opportunity to serve the community that needs us most.

Ron Wilson Assistant Executive Vice Chancellor
University Ombudsman
University of California, Irvine

Editor of the CCCUO Journal

rrwilson@uci.edu

Last Updated: 03/04/97

Ethics In The Academy

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

ETHICS IN THE ACADEMY

Kathleen Beattie-University of Victoria

During my time at the University of Victoria, it has been my privilege to serve virtually all of the constituent groups on campus, even though my position is a creature of the "University of Victoria Students' Society" (formerly the Alma Mater Society).

One of the most satisfying elements of that service, albeit at times a dubious one, has been that of playing conscience to the community. When I first realized the extent of this role, I had to wonder if I was inappropriately seizing power and control over situations which could just as well have been resolved without that intervention. As time and experience unfold, however, I am becoming increasingly convinced that the university community (and indeed the larger community) is probing for appropriate ethical boundaries. Therefore, my experience is one working out of that critical search.

BACKGROUND

Common sense informs us of several realities. I will articulate three of these well-known facts as the basis for this discussion paper:

1. We live in a culturally and socially diverse nation, whether we own Canadian or American citizenship. This diversity is a hallmark of Canadian tradition in which we celebrate the "cultural mosaic" of our society. No doubt, the same elements of diversity underlie the "melting pot" philosophy of our American neighbours. This diversity -- with its richness -- brings generally unarticulated limitations. For purposes of this discussion, the prime limitation is the complete lack of culturally dictated norms of social behaviour. For example, appropriate touching within one cultural grouping can be viewed as inappropriate or offensive behaviour within another.
2. The traditional keeper of appropriate community behaviour and interactions -- the state, usually informed by the church -- no longer speaks even to individual faith groups. It certainly does not speak to those who neither know -- nor care to know -- its teachings.
3. Lawgivers and law keepers, whether police, lawyers, or judges, no longer hold the respect of the general population. Examples of this reality can be witnessed in the barrage of "lawyer jokes", which abound at any bar meeting; the media stories about abuses within the police and justice systems; and the

books such as Philip Howard's *The Death of Common Sense*.

THE STATUS QUO

If my premise is correct, then, we have no common understandings of ethically appropriate behaviour unless we deliberately and proactively develop those understandings, and acknowledge them as common principles underlying all of our interactions within a defined community.

Our community, by definition, is the post-secondary institution of learning, generally known as "The Academy." Sub-sections of this community have developed "Codes of Ethics", or "Codes of Honour" within their own disciplines, and those codes are valuable resources to an informed discussion.

However, we are still left within a void which spawns uncertainty, psychological and emotional stress, potential litigation, and financial expenses. Examples of this void can be found in the following case studies:

Case Study #1: A student is looking for an Honours or Thesis Supervisor in a specific specialty. One (male) faculty member has expertise in that field, but he is under a prohibition from supervising female students because of proven misconduct under the institution's antiharassment policy. The student, unaware of the prohibition, asks the professor to supervise her Honours Thesis (4th year, psychology), and he signs her proposal for submission. What are the issues raised? What are the appropriate institutional responses?

Case Study #2: A junior high school teacher enters a bar during summer vacation and meets a fourteen year old girl, who is a former member of his class and who is expected to return to his school in September. He leaves the bar with her. They go together to a party, and subsequently engage in apparently consensual sexual relations. He is charged under the Criminal Code of Canada. Subsequently, at a trial and in the provincial court of appeal, he is found not guilty of criminal activity because he is "not in a position of trust" outside of the academic year. The Supreme Court of Canada overturns the lower court decision. One teachers' organization asks, "How do we know when we will be held accountable?" and "What is the standard?"

Case Study #3: A graduate student on a Cooperative Work Term requests permission to extend the work term for a specific period at the instigation of her employer who wants her to complete a project for the Ministry of Health. The departmental Co-op Coordinator withdraws initial permission because the student would be in contravention of a "PSERC" (employees' union) regulation -- but allows other students to continue in parallel situations. When queried, the coordinator threatens the student with legal action (cause of action unspecified). He is caught changing the status of a second student in an effort to hide the parallel, and threatens the whole of the Admissions, Programs, and Standards Committee with a lawsuit. He also threatens the Ombudsperson with a lawsuit. There does not appear to be a mechanism in place for "policing" the behaviour of administrative professional staff -- the expectation being that they will discipline themselves appropriately through collegial pressure.

CONCLUSION

What do these situations have in common? How might they inform our practice of Ombudsmanry?

I would suggest that, in each case, the judgment of the primary actor(s) and the consequent action are flawed in a basic way. Each situation undoubtedly could have been avoided if that actor had stopped; had asked himself or herself, "What is the 'high road' in this case?"; and had acted accordingly.

Given that such was not the case, and that we are professionally responsible for an appropriate resolution (at least insofar as we make recommendations) might it not be our role to be "our brother's keeper"?

It is surely a basic function of an Ombuds office to identify vulnerable or victimized parties and to offer some balance to the situation. Although we live in a society which esteems individual rights -- including free speech and freedom of association -- those rights might be curtailed (as in the first two case studies) when an actor has shown a propensity to overstep the appropriate boundaries.

I would propose to go further than this. By instituting discussion within the broader community, I would hope to generate philosophical understandings which would be clearly articulated. From those understandings, it would be possible to extrapolate appropriate action within specific circumstances as well as to curtail some of the excessive "bullying, behaviour" (as in Case Study #3) which seems all too common. meanwhile, it is still a great privilege to be invited to be part of the conscience of the Academy.

rrwilson@uci.edu

Last Updated: 02/21/97

An Ombudsman's Proposal For An Independent Judiciary

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

AN OMBUDSMAN'S PROPOSAL FOR AN INDEPENDENT JUDICIARY

R. Adolfo de Castro- Commonwealth of Puerto Rico

The time has come for all jurisdictions in the United States to wake up to the fact that we are not such a wonderful democracy after all; that we do not really have three equal and separate powers of government; that our judicial system is way behind the times; and that we should not keep putting off the moment to hand the keys of the family car over to the judicial power.

There should be no question in anyone's mind that our judicial system must be allowed to face the challenges of the 21st Century as a full fledged power of government in its own right.

But, we have to do this according to S.O.P., and without subverting the constitutional order of checks and balances that govern relations between our three branches of government. On the contrary, it is precisely on the basis of this principle of democratic control that our judicial system can be endowed with the functional independence necessary to upgrade it to the level enjoyed by the other two branches.

Until now, all our judiciary possesses is an ill-called "judicial independence", which only covers the adjudicative (decisional) function of the judges. Practically everything else the appointments, the salaries, the terms of office, and the promotions still depend upon the will of the executive and legislative powers.

It is time to get our courts out of the realm of politics. It is time to count on a judicial power that is at a par with the other two. Albeit, it is good and necessary to have the political powers exert some measure of control over the judicial branch, at the eve of a New Century, it is more than time enough to simmer down the presently excessive measure to the appropriate level of reality.

As a first step in this direction, it should be wise to know that in the more avant-garde democracies of Europe, the institution of the legislative or parliamentary ombudsman has proven to serve well as an instrument of control of the administrative acts of both the executive and judicial branches of government. Moreover, this independent, legislative ombudsman -- without infringing on the judicial (decisional) function of the courts -- really holds them accountable to the people.

For our purposes, the positive results obtained by this means of democratic control are instrumental to the proposition that it is time for the American judicial system to freely exercise full authority to plan, develop, and carry out its own operational objectives -- the way the other two branches of government have always done it!

The idea is fine, but, we need to change a lot of attitudes to put it into effect. Notwithstanding the good results obtained by the legislative ombudsman as an overseer of the administrative conduct of the courts in other countries, here, the traditional misgivings of our judges and politicians in this regard will be difficult to overcome. The former, because they do not want any control at all. The latter, because they believe they would not have enough.

However history is full of such incidents; the fact is, no society has survived which has not overcome them. It may take a little longer for some of us to change with the times, but, in the end, we all find out that whatever does not go forward, retrogrades. In addition, there will always come a time to measure strengths and reserves; to examine the real world around us; and to correct the historical errors that keep our courts' systems subservient to the other two branches of government. Now is the time to link a new prerogative of self-government for our judicial system with the obligation to stand accountable to the citizen who pays for its services. **THERE IS NO BETTER WAY OF MAKING DEMOCRACY WORK. NOTHING INCREASES TRUST IN GOVERNMENT MORE THAN CITIZEN PARTICIPATION IN ITS INSTITUTIONS.**

In this direction, insofar as the accountability requirement is concerned, it should be enough to establish a legislative ombudsman office with jurisdiction over the administrative (non-decisional) acts of the judiciary.

The judicial independence matter, however, is going to give us a little more work. The most important thing to keep in mind is that everyone must understand that there is no judicial independence without a "judicial career." There are no shortcuts here. Either we all get together on the fundamental principle that entrance to the judiciary is only for the most competent or we waste our time with a dead horse.

No one should be a judge without examination. our law schools are quite capable of establishing the courses required to prepare judiciary candidates for the entrance exams to be administered by the judicial power.

This done, without altering the delicate balance between the three branches of government, if we really want to depoliticize the American judicial system in line with the historical exigencies of the year 2000, it will also be necessary to take the following steps:

1. Amend our constitutions, state and federal, so that, with the exception of the judges of the highest court of each jurisdiction -who should be appointed by the chief executive officers from judges of the courts of next-to-highest hierarchy -- all others should be selected by the judicial power through mechanisms of their own creation among candidates who have:

(a) the certification, and

(b) the endorsement of a commission especially created by law to evaluate their ethical aspects and traits of personal integrity as well as their reputation in their particular communities.

2. After these initial guidelines have been set, establish a truly independent judiciary which, in the same manner that it learned to accept the intervention of a legislative auditor (comptroller), will now also acknowledge a new constitutional obligation to account for its administrative action to another legislative officer, the Ombudsman. In addition, the Highest Court should work out a program of continued training and a set of evaluation procedures to allow the aforementioned special commission to promote the judges. This program, of course, must include the participation and vote of the corresponding bar and judiciary associations.

3. With these procedural and substantive measures in place, tackle the most sensitive aspect of our proposal for an independent judicial branch, e.g., let no one doubt that the only way to guarantee it is through the establishment of life appointments!

A study of the results obtained by the ombudsman in countries where the institution has jurisdiction over the judicial system evidences that its use as a mechanism of democratic control of the administrative excesses of the judiciary mitigates the fears legislators have about life appointments. Enough to state that the evaluation of the judges for promotion as well as the selection of judicial candidates for appointment, being an administrative function, also would be under the scrutiny of "the watchdog of good government" -- the legislative ombudsman.

With this in mind, we should proceed to correct the historical error that has kept the judicial branch subordinated to the political powers of government all these years. To do it, the judicial power must be granted a guarantee of budgetary autonomy consonant with its juridical maturity and constitutional mission. Accordingly, it will be necessary to include in the precited constitutional amendment a disposition to reserve a pre-fixed portion of the government's income for the judicial power.

As pointed out at the beginning of this proposal, all we have in our judicial system, up to now, is an ill-called judicial independence which only covers the decisional function of the judges. It is time to put an end to all the barren and retrograde discussions that maintain our judicial system enmeshed in the past. We have seen why the legislators do not need to fear the judges. Neither do these judges need to feel any fear before the legislators. In the end, the last word about what is administrative or judicial is theirs.

Let us open the frontiers of the New Millennium armed with all the tools available to safeguard our ever-growing and delicate democracy. The legislative ombudsman is one of them. Let us use it! It is time we enjoy the fruits of a truly independent judiciary.

Let all the interested parties get together: the judges, their associations and councils, the lawyers, the law

schools and public administration departments of our universities, the attorney generals, and all of the state and federal legislatures' "Committees on Judicial Matters." Let each of them analyze our proposal for a truly independent judicial system and submit their reports during the course of this year. We can discuss them at a grand international public hearing to be held in San Juan, Puerto Rico during the Summer of '97.

rrwilson@uci.edu

Last Updated: 02/21/97

Ombudsing In An Educational Institution: Use of Implicit and Explicit Power

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

OMBUDSING IN AN EDUCATIONAL INSTITUTION: USE OF IMPLICIT AND EXPLICIT POWER

Norma Guerra and Gregg Elliott- University of Texas at San Antonio

The diversity of activities falling under the auspices of "ombudsing" at different institutions around the world makes a discussion of ombudsing technique challenging. Depending on the institution, the ombudsperson is and has been considered many things. Arnold (1995) defines the ombudsperson as a third-party fact finder/adjuster who remains largely neutral while investigating complaints or grievances. Rahim (1986) portrays the ombudsperson as one who helps parties gather more information so they can overcome their misunderstandings, while Wallace (1993) argues that ombuds duties often require a stance which is not neutral, and that it is the pursuit of fairness and equity which defines the role.

The historical ombuds role seems to reflect Wallace's (1993) view that ombudsing is predicated on providing the individual an option for recourse against a bureaucratic entity, usually the government. It is in these cases where disputes arise out of the power imbalance between the individual and the organization that it is especially important to protect the rights of the individual (Guttek, 1992).

The traditional ombuds role at the educational institution has been one of an outside, independent authority that investigates a case and subsequently decides on the fairness of the decision in question (Rowat & Wallace, 1983). The ombudsperson is called upon to make recommendations for the remediation of complaints and utilizes her or his powers of persuasion and the threat of publicity to encourage the respondent to take the appropriate action (Wallace, 1993). In an educational institution, the clout of the ombudsperson is often backed up by the possibility of further support from the administrative hierarchy (Steiber, 1991). In most cases the ombuds office is clearly established as being completely separate from the administration and as an entity that will act on behalf of the initiator in pursuit of what is equitable for the initiator (McDermott, 1995; Arnold, 1995; Wallace, 1993; Steiber, 1991; Rowat & Wallace, 1983).

The University of Texas at San Antonio (UTSA) ombudsperson works to insure that the policies and procedures of the university are being followed and implemented in a fair and equitable manner. In circumstances where policy is vague or it appears a policy may be out-dated or obsolete, the

ombudsperson makes recommendations as to how the policy might be implemented or changed to best serve the university population. The ombuds role, however, incorporates more than just an acknowledgment and remediation of the immediate policy or procedural concern. The UTSA ombudsperson is a community-builder.

The UTSA Problem Solving/Conflict Resolution (PS/CR) Program was founded in 1993 with four "Pillars," or values, serving as ideological supports for the program and for defining the ombudsperson role. These four values are independence, confidentiality, a commitment to alternative option generation, and respect for the nature of the relationship between the initiators and respondents. Much has been written about the first three "pillars," but little literature addresses the techniques ombudspersons can employ to fulfill the onus of the position in a way that does not negatively impact the relationship between the initiator and the respondent (see Table 1).

Table 1 Definition of Terms

Initiator: Individual(s) experiencing the conflict, and who brought the conflict to the attention of the ombudsing office

Respondent: Individuals perceived by the initiator as the cause of the conflict

Disputants: Term used to refer to the initiators and the respondents together

Investeted Relationship: Individuals in conflict who have an ongoing, interpersonal affiliation

No Investment Relationship: Individuals in conflict who have a short-term or inconsequential relationship

Implicit Power: Intervention techniques focused on maintaining the disputants' relationship while at the same time addressing the conflict situation

Explicit Power: Intervention techniques focused on resolving the conflict situation without concern for maintaining the disputants' relationship

Combination: Situation where the ombudsperson uses both implicit and explicit power in the intervention technique

I/E Combination: Situation where the ombudsperson first uses an implicit power technique and follows-up with an explicit power technique

E/I Combination: Situation where the ombudsperson first uses an explicit power technique and follows-

up with an implicit power technique

At UTSA, a major intervention consideration is the nature of the institutional relationship between the initiators and the respondents. The nature of this relationship determines the nature of the intervention undertaken by the ombudsperson. For example, students may have several years remaining in their work at the institution and therefore cannot afford to alienate themselves from a professor whose courses they may have to take in the future. Staff and faculty members who are planning a career at the institution cannot afford to make an enemy of an administrative official, despite the perceived inequity of their current situation. The fact that the initiator and the respondent may need to continue their relationship past the resolution of the present dispute, requires the ombudsperson to consider the relationship variable before making an intervention.

UTSA ombudspersons conceptualize the conflict situation along two matrices: the nature of the conflict, and the nature of the relationship (see Figure 1). Some conflict situations have an urgency that requires a swift or immediate response. Other situations, while frustrating to the initiator, can be ombudsed at a more deliberate rate. These situations are referred to as being "crisis" or "non-crisis", situations. Similarly, some initiators are in conflict with a respondent with whom they will have a continuing association in the future. These circumstances are referred to as "invested relationships" and represent situations where the ombudsperson needs to take the relationship into account when intervening. Other initiators are in conflict with a person they don't know and with whom their relationship is inconsequential or short-term. In these circumstances, referred to as "no investment relationships," it is less crucial for the ombudsperson to consider the relationship when intervening (see Figure 1).

We characterize the techniques of the ombudsperson as utilizing primarily one of two different types of power, "Explicit power" is characterized by an overt display of power that meets the desired end of the ombudsing intervention, but entails the danger that the respondent will feel subjugated or overthrown by having the ombudsperson take a stand against their previous actions or decisions. The threat of publication or publicity that reinforced the position of the historical ombudsperson represents this type of power. While most ombudsperson offices are established as having no formal enforcement powers (Rowat & Wallace, 1983; Steiber, 1991; Silver, 1967), the threat of taking the issue to the Provost or the faculty senate is often as effective at bringing the conflict to a quick end as it is in causing the respondent to lose face. Using this type of power will likely be successful in an ombudsing case, but it may leave the respondent with ill feelings toward the initiator and the ombuds office.

Figure 1. The Academic Ombudsing Matrix Nature of the Conflict Nature of the Relationship Crisis Non-Crisis Invested I/E Combination Implicit Power Relationship No Investment Explicit Power E/I Combination Relationship

"Implicit power" is characterized by subtlety. Implicit power allows the respondent to weigh the judgment while allowing him or her to make a decision on his or her own. Benjamin (1995), in an article about mediation, compares the conflict resolver to the "trickster" character from folklore, suggesting that conflict resolution success often rests in cleverness and subtle manipulation rather than in force.

Implicit power bears resemblance in some aspects to the mediation technique of "selective facilitation" (Greatbatch and Dingwall, 1989) in that it accomplishes the means of the intervention; not so much by what the ombudsperson does, but by what she or he does not do. Ideally, the ombuds office will be recognized as a fair and just arbiter with the support of the President or executive administration. A friendly chat with a respondent to see if the respondent can generate any options for an initiator may be enough to cause a respondent to reconsider an unfair decision.

Motivationally, the ombudsperson is focused on maintaining and building the university community. As the use of implicit power encourages respondents to make just decisions while maintaining disputant relationships, its use is facilitative in achieving the end of community building. The following case studies illustrate the use of implicit and explicit power, and the results of associated intervention techniques.

Case Study # 1

Initiator disputant: Staff Member Respondent disputant: Supervisor Concern: Lunch break

The staff member came to the PS/CR office after not being allowed to go to lunch at the same time each day. He explained that he had to eat at the same time in order to prevent his blood sugar level from dropping to dangerously low levels, and he indicated he believed his supervisor was thereby creating a dangerous work environment and was putting the staff member at risk. The initiator further complained that his supervisor was not skilled or knowledgeable enough to recognize and manage this situation.

After discussing the situation at length with the staff member, the ombudsperson sensed this situation was only one of a series of many issues of conflict with the supervisor. The initiator went on to say he had more educational degrees and work experience than the supervisor and that he should be his supervisor's boss instead of the other way around.

The ombudsperson visited with the supervisor, who explained that indeed lunch breaks did vary given the traffic of the office. She said she was unaware that the staff member had a health concern and stated that the staff member was always visiting instead of working.

The ombudsperson's recommendation was that the supervisor set-up a regular lunch time for the staff member. It was further suggested that the supervisor spend some time with the staff member in order to provide him with ongoing formative evaluation regarding his work performance. The ombudsperson

requested that the supervisor contact the staff member to discuss the lunch situation and to inform him of her supervisory decision regarding his lunch routine.

The ombudsperson then stepped away and allowed the ongoing work relationship to continue, while periodically checking with both parties to ensure their future communications were more direct.

Case Study # 2

Initiator disputant: Student Respondent disputant: Staff member Concern: Lack of access to professor/ remediation of the American

Disabilities Act (ADA) violation

A student came to the PS/CR office after asking to make an appointment with his instructor to see if he could change his seat assignment due to a hearing disability causing him to not be able to hear the lecture. The division secretary told the student that the professor was very busy and that the student should ask him in class for the seat reassignment. After trying to explain to the secretary the urgency of the situation, the secretary sent the student to Disabled Student Services.

At the Disabled Student Services office, the student was given a special microphone for the instructor to speak into which would allow him to hear the instructor's lecture through an earphone.

When the student attempted to ask the instructor to use the microphone, the instructor had told him he was too busy to talk to him but that the student could make an appointment to see him later. Another attempt to schedule an appointment with the instructor ended with the secretary referring the student to the Academic Advising Center.

The student explained to the ombudsperson that he really needed the class and while he didn't want his teacher to be angry with him, he really could not hear what the instructor was saying. The student said he felt helpless in the situation, explaining that the secretary was keeping him from resolving his problem.

The ombudsperson made a visit to the instructor. The instructor said he did not want to begin making exceptions to his rules and that he had no intention of complying with the student's request unless the student came to see him as the instructor had told him. The ombudsperson explained the secretary's role and the student's frustration in not being able to make an appointment. The professor refused to consider the ombudsperson's information, so the ombudsperson thanked the instructor for his time, returned to the PS/CR office, and submitted the following recommendations to the instructor's division director:

1. "The secretary should be instructed to set up an appointment for the student with the instructor."
2. "The instructor must comply with the identified ADA request."

3. "The instructor should follow-up with the student to make sure he can hear the lectures and discussion in class."

The division director met with the faculty member who was then asked to visit with the student. Shortly thereafter, the problem was remedied.

Discussion

When the disputants' relationship is characterized as a "no investment relationship", it is sometimes easier to intervene with the explicit power of the ombuds office. When the relationship has a longer commitment, however, the ombudsperson should consider the disputants' relationship and attempt to not jeopardize either the situation or future communication between the disputants. Navigation of the Academic Ombudsing matrix is further complicated by the variables and factors of the dispute which often go unstated. The complexity of the conflict, which logical discourse has usually already failed to remediate, requires both analytical skill and intuition on the part of the conflict resolver (Benjamin, 1995) .

In the first case study, the ombudsperson was required to balance the employee's health needs with an employee-supervisor relationship complicated by resentment and poor communication. Relying on intuition and counseling skills, the ombudsperson ascertained that, while the initiator was presenting a health concern, the real problem was a lack of communication. As the dispute represented a long-term relationship with no immediate time constraints for resolution, the ombudsperson made a subtle intervention of implicit power and presented the issue to the supervisor as a problem primarily with communication rather than specifically as a potential violation of a Human Resources policy. By presenting the problem as such, the ombudsperson was able to simultaneously address the policy and procedural concern as well as the interpersonal concern which had not even been presented by the initiator.

The second case study represented a crisis need with a no investment relationship between the student initiator and the secretary respondent. The faculty member was in violation of ADA statutes and was unaware of the situation's need for a swift resolution. In this situation, the necessity to get the faculty member into ADA compliance took precedence over protecting the relationship between the student and professor. The secretary, in a no investment relationship with the initiator, was exacerbating the problem, so the ombudsperson opted to exercise explicit power in a direct and forceful intervention at the level of the division director.

Summary

As a member of an educational community, the university ombudsperson should always attempt to mediate an explicitly powerful response with consideration of the relationships involved. In situations where the relationship does not need to be protected, a gentle intervention is still recommended, when

possible, out of respect for the university community as a whole.

The intervention decision must take into account the longer-range ramifications of the conflict situation. The nature of the relationship between the disputants really is the best resource for determining what intervention to utilize. It requires judgment and intuition on the part of the ombudsperson to find ways to negotiate a settlement without wounding the respondent. When the ombudsperson is able to resolve a situation without alienating the respondent, however, it increases the chances the respondent will learn from the situation, and it promotes peaceful interactions within the university community.

At UTSA, we have found the ombudsperson can build community through the respectful consideration of relationships. one need not jeopardize future relationships unnecessarily. It is less a choice between use of explicit or implicit power, and more a choice to take every opportunity to facilitate change with a subtle respectfulness and a commitment to modeling respect and consideration in interpersonal relationships.

References

- Arnold, T. "Vocabulary of ADR Procedures (Part 1)." *Dispute Resolution Journal*, 50 (4), (1995), pp. 69-72.
- Benjamin, R. D. "The Mediator as Trickster: The Folkloric Figure as Professional Role Model." *Mediation Quarterly*, 13 (2), (1995), pp. 131-149.
- Greatbatch, D., and R. Dingwall. "Selective Facilitation: Some Preliminary Observations on a Strategy Used by Divorce Mediators." *Law and Society Review*, 23 (4), (1989), pp. 613-641.
- Gutek, B. A. "Disputes and Dispute-processing in Organizations." *Studies in Law, Politics. and Society*, 12, (1992) , pp. 31-52.
- McDermott, E. P. "Survey: Using ADR to Settle Employment Disputes." *Dispute Resolution Journal*, 50 (1), (1995), pp. 8-13.
- Rahim, M. A. *Managing Conflict in Organizations*. New York: Praeger Publishers, 1986.
- Rowat, D. C., and G. Wallace. "The Campus Ombudsman in North America." *The Ombudsman: An International Handbook*. Ed. G. E. Caiden. Westport, CT: Greenwood Press, 1983.
- Silver, I. "The Corporate Ombudsman." *Harvard Business Review*, 45 (3), (1967), pp. 77-87.
- Steiber, C. "Reflections: Seventeen Years as MSU Ombudsman." *MSU Alumni Magazine*, (Fall 1991), pp. 28-30.

Wallace, G. "Recent Role Variations in the Ombudsman in Education." The Journal - 1993. Ed. Ron Wilson. Asilomar, CA: California Caucus of College & University Ombudsmen, 1993.

rrwilson@uci.edu

Last Updated: 02/21/97

Assisting Complaints Seeking To Establish A Record Of A Complaint Without Violating Ombuds Ethics

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

ASSISTING COMPLAINANTS SEEKING TO ESTABLISH A RECORD OF A COMPLAINT WITHOUT VIOLATING OMBUDS ETHICS

Tom Sebok-University of Colorado at Boulder

On May 2, 1996, I sent a question to IIOmbud@MIT.EDU asking for guidance from colleagues about how to respond when complainants indicate a desire to "get something on the record, about an issue." I received 12 responses. All indicated the belief (which I share) that it is inappropriate for complainants to establish a "record", of a complaint in the Ombuds Office. What follows is some brief discussion about an actual case (fictitious identifiers used); several underlying issues which I believe this case raises; and nine alternatives (mostly suggested by colleagues) for helping complainants meet this need -- without using the Ombuds Office to do it.

A. Case Example

Joe Student made an appointment to speak with me about his concern that, following a heated disagreement in class with Professor Geteven, she might "punish him" by giving him an unfair grade at the end of the semester. Joe said he wanted something "on the record" about this concern before the grade was assigned. He reasoned that if he were to receive what he believed to be an unfair grade at the end of the semester, it would be helpful to his "case" later on (i.e., a formal or administrative appeal or possibly even a lawsuit) if he could establish that he had expressed this concern before receiving his grade.

B. Discussion

Much to Joe's disappointment, I could not agree to fulfill his request. Had I consented to provide verification later on that Joe made the complaint to the Ombuds Office on x date, I was taking the following risks: 1. becoming a participant in a formal or administrative process later on,

2. becoming -- or being seen as -- a de facto' advocate for Joe in that process, and

3. advocating for Joe without even having any discussion with Professor Geteven (because Joe, understandably, did not want to risk further offending her by letting her know he had expressed this concern about her to the Ombuds Office).

One of the unique characteristics of an Ombuds Office is that we allow individuals to speak freely about almost any concern without fear that it will be reported to anyone. This, of course, allows the complainant to retain control over how and whether a complaint is addressed. However, due to our also being impartial and independent complaint-handlers, the confidentiality we offer is different from that offered by attorneys and psychotherapists. Clearly, those professions offer a confidentiality which can be waived by their "clients." This would allow an attorney or psychotherapist to advocate effectively for his or her client, which is, of course, appropriate for their roles. However, because ombudspople often hear both -- or multiple -- "sides" of a dispute, and because our roles require us to function as neutral and independent complaint-handlers, we cannot allow any user of the office to "waive" our promise of confidentiality. This privilege must reside with the office, not with any user of the office. Otherwise, we risk advocating for one party -- and against another. (For an excellent and much more detailed discussion on the Ombuds "privilege" issue, see TOA's pamphlet entitled *The Ombuds Confidentiality Privilege: Theory and Mechanics* by Charles L. Howard and Maria A. Gulluni).

These Ombuds Office concerns are not automatically understood by users of our office. And, there are numerous situations in which a complainant may, understandably, want to "establish a record" of a complaint. In many of these situations, ideally, he or she would like to do that without the knowledge of the person about whose future behavior the complainant may be concerned. If this is the complainant's goal, it can be achieved without compromising the impartiality of the Ombuds Office.

The following alternatives have been suggested by the various contributors listed at the end of this paper. Some of them involve actions a complainant can take that do not involve notifying the respondent; others involve contacting officials who routinely keep records and can legitimately function as advocates for the complainant; and some involve assistance from individuals who do not function as officials in the organization.

C. Alternatives for Establishing a Record of a Complaint

Complainants seeking to establish a record of a complaint may take the following actions:

1. write a careful account, date it, have it notarized, seal it, and send it via "certified", or "regular" mail (NOT campus mail) to himself or herself. This document should only be opened in the presence of witnesses.

2. write a careful account, date it, have it notarized, seal it, and send it via "certified" or "regular" mail to the following persons:

a. a colleague, friend, or family member who agrees not to open the document and to produce it upon

request of the complainant b. a counselor C. a victim advocate d. a medical professional, or e. his or her attorney

3. speak privately with any of the aforementioned individuals in #2 who agree to verify what was said and that the conversation occurred on x date. (Note: The individual can be asked to make notes at the time of the conversation about the exact date of the conversation and about what was said.)

4. speak with any witnesses to the event(s) about which the complainant is concerned and ask that they assist in the following manner:

a. provide a written statement about the event(s) they witnessed that the complainant can use later, or

b. agree, if asked later, to testify on behalf of the complainant in a formal hearing.

5. ask any university administrator who would be willing to date stamp and hold, but not open, a letter until requested by the complainant.

6. make an audio or video tape outlining the complaint and send it "certified" mail to any of the individuals listed in #2 who agree to provide the tape upon request.

7. keep a log in a dated, bound logbook (of the scientific variety).

8. write a letter to himself or herself indicating that he/she spoke with the Ombuds Office about x complaint on a particular day. Again, this letter can be notarized, sent certified mail, and can remain unopened until it is needed. (Although the Ombuds Office will not verify whether the complainant contacted the Ombuds office, it will provide a document indicating that it is the practice of the Ombuds office not to provide this information.)

9. talk with or write a complaint to the Human Resources office or Legal Counsel. (Note: Depending on the constituency status of the respondent, be advised that Legal Counsel may be expected to provide legal representation to this individual.)

of course, making a written formal complaint to the appropriate committee or administrator also establishes a record of a complaint. However, as indicated above, this alternative is often the last one complainants wish to utilize.

D. Acknowledgments

I would like to thank the following individuals for their ideas, which make up the vast majority of the recommended alternatives for establishing a record of a complaint suggested in this paper:

Glenn Bacon, Frances Bauer, Ann Bensinger, Howard Gadlin, Judy Guillermo-Newton, Helen Hasenfeld, Elizabeth Pino, Mary Rowe, Justine Sentenne, Marsha Wagner, Ella Wheaton, and Larry Wood.

rrwilson@uci.edu

Last Updated: 02/21/97

Academic Ombudsing: Process,
Roles, and Relationships Lois Price
Spratlen and Susan L. Neff

Not found in online archive

APOLOGIES

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

APOLOGIES

Marsha L. Wagner-Columbia University

"ALL I WANT IS FOR HIM TO APOLOGIZE TO ME!"

People who have been hurt or humiliated often hope for an apology. They may hope that an apology from the offender will restore trust, dignity, and, perhaps, a sense of justice. A thoughtful apology is a powerful means of indicating self-awareness and of showing respect for the person who was offended. But a facile and unreflective "I'm sorry" may exacerbate the situation and be perceived as rubbing salt in the wound. A successful apology achieves closure; an apology that backfires escalates a conflict.

The ombuds may help the offended party consider what it means to want an apology, e.g., as a step toward reconciliation; as a confirmation that the other party was to blame; as an assurance that repetition of the offense will be avoided; or as a humiliation to the alleged offender. A public apology may help restore the reputation of the person who was hurt; a private apology may open a path toward discussion, improved mutual understanding, and interpersonal trust. Apologies can take many different forms, and it is part of the role of the ombuds to help the parties identify their underlying interests in the process of facilitating either one-way or reciprocal apologies.

The following public snafu provides an excellent example of an apology that plunged the perceived offender deeper into the political mire:

On April 4, 1995, New York Senator Alfonse M. D'Amato, on Don Imus' radio talk show, used an exaggeratedly heavy accent associated with Japanese movie stereotypes of the 1940's to mock Japanese-American Judge Lance Ito, who was presiding at the O.J. Simpson trial. Senator D'Amato said, "Judge Ito loves the limelight. He's making a disgrace of the judicial system," and he went on to refer to him as "Little Judge Ito." The following day, after considerable criticism from colleagues, citizens, and the media, the Senator issued a brief statement that created more controversy: "If I offended anyone, I'm sorry. I was making fun of the pomposity of the judge and the manner in which he's dragging the trial out." Journalists and Asian-American groups objected even more vehemently to D'Amato's dismissive and inadequate "apology."

Finally, on April 6, in an attempt to quell the rising storm of criticism, Senator D'Amato recovered with

a better prepared statement -this time presented in more formal surroundings: "I'm here on the Senate floor to give a statement as it relates to that episode. It was a sorry episode. As an Italian-American, I have a special responsibility to be sensitive to ethnic stereotypes. I fully recognize the insensitivity of my remarks about Judge Ito. My remarks were totally wrong and inappropriate. I know better. What I did was a poor attempt at humor. I am deeply sorry for the pain that I have caused Judge Ito and others. I offer my sincere apologies." (The New York Times, April 7, 1995, p. A1)

It is instructive to compare the two statements of regret. The first was a casual statement released to the press by the Senator's office, stating his regret if he offended anyone, followed by a reiteration of his criticism of the judge. The Senator personally read the second statement, in a low, nervous voice, into the public record of the U.S. Senate. The full apology 1) acknowledged what he did, 2) stated that it was wrong and that he knew better, 3) recognized his responsibility to avoid ethnic stereotypes, 4) recognized that people had been hurt, and 5) apologized for having caused pain. All six of these ingredients, except the facile words "I'm sorry," were missing from the first poor attempt at an "apology."

In order for an apology to be received as complete and sincere, it may need to include the following elements:

A specific statement of what was done. It is important to clarify the exact nature of the offense, both for the accountability of the offender and also to avoid misunderstandings. The need for an apology usually occurs when two individuals or groups do not share the same perspective -- or when inadvertently or intentionally -- they did not do so at the time of the hurtful event. The first step is to seek common understanding of what action or omission was rude or wrongful. In some situations, a preliminary discussion or communication, or shuttle diplomacy by a third party -- such as the ombuds -- can help identify and, if necessary, make adjustments to the definition of the offense.

Recognition of responsibility and accountability on the part of the one who offended. This admission is perhaps the most important but also the most frequently overlooked element of an apology. This is the "I-statement," the recognition by the offending party that he or she had a choice to act (or speak, or not take action) in that particular way. "I knew better," Senator D'Amato said succinctly. The offender who is a public official, a senior manager, a parent, a teacher, or another role model might also acknowledge how he or she is entrusted with this particular responsibility. Some offenses, of course, are unintentional; therefore, it may be helpful, if it is true, for the offender to explain if there was no way that he or she could have predicted the impact of his or her action (or inaction) on the recipient. But, in any case, most offended people will appreciate any efforts made by the offender to explore how he or she might have anticipated the outcome -- both as an indication of the sincerity of the regret and as an implied suggestion of how a recurrence might be avoided.'

Acknowledgment of the pain or embarrassment that the offended party experienced. A non-judgmental expression of empathy is a basic step toward restoring trust. The offender may be able to identify with the offended person, e.g., "If someone had made a joke about my religion, I wouldn't have found it

funny, either." or even if the offender would have personally reacted differently, he or she might intellectually empathize: "It's understandable that hearing the bad news through the grapevine was upsetting.' The acknowledgment does not necessarily imply that the recipient's response is typical, mature, or appropriate. It may be expressed only as a fact: "I now know that receiving a prompt reply is very important to you.' But it undercuts sincerity when the offender seems to question the recipient's claims of hurt or injury ('I'm sorry if anyone was upset..."). And it subverts the purpose of the apology to dwell on a judgmental "you-statement": "I'm sorry you're so impatient," or, "It's too bad you have no sense of humor." An apology is not a suitable occasion for self-congratulation on the part of the perceived offender with regard to his or her honesty or opinions. In Edward Albee's play, *A Delicate Balance*, Claire says to Agnes, "I apologize that my nature is such to bring out in you the full force of your brutality, " and Agnes soon responds, ". . . I apologize for being articulate." (New York: Atheneum, 1966, p. 13)

A judgment about the offense. When the offender agrees that what he or she did was wrong, saying so is an important part of making amends. The story of George Washington chopping down the cherry tree, though perhaps lacking in historical veracity, has had enduring appeal in United States culture because of its insistence on the honor of acknowledging one's own wrongdoing. Many world religions emphasize confession. But status differences, cultural patterns, and advice of legal counsel may present obstacles to formal confirmation of having made mistakes. Nevertheless, a direct self-judgment ("I was insensitive." "What I did was wrong.") is often a way to establish common ground with the offended party.

A statement of regret. If the offender has fully taken responsibility for how he or she acted wrongly or at least for having hurt the recipient, a simple statement of "I'm sorry" sometimes may be sufficient. The impact of an apology on its audience generally depends on the context -- not on the words themselves. Senator D'Amato's two statements each contained those words, but one created more anger and the other may have decreased the tension. Except in relationships with a history of shared understanding and deep trust, simply saying "I'm sorry" is rarely sufficient. But an attitude of contrition and a statement of regret are basic elements of an apology that will build future trust.

Future intentions. These details are often an important aspect of an apology. In some situations, the apology is requested when no future interaction is expected, but even then the offended party is often relieved to hear if steps have been taken to prevent a recurrence of the offense. When the two parties are likely to interact in the future, it is helpful to discuss the offender's intended self-restraint; improved behavior in the future; how the offender would like attention brought to a possible subsequent misunderstanding; or other means of preventing recurrence. Sometimes the offender will wish to ask the recipient for forgiveness; for an acceptance of the apology; or for another chance to gain that individual's respect. An apology may offer an opportunity not only to restore trust but also to achieve a better relationship.

Finally, it is important not to overlook the means of communication of the apology. Because the recipient's response emphasizes sincerity, any form of communication that appears offhand or trivializing may be resented. In contrast, any gesture of seriousness and personal investment will reinforce the genuine conviction behind the message. The above elements may help the offended person

"accept" the apology, move on, and put the offensive incident behind. An additional aspect of the communication might also help the offended party have increased understanding and respect for the offender.

An explanation of why the offender acted in this way. This component is often not the first priority of the offended party, but it may be very important both to the offender and also to the future relationship of mutual respect between the two parties. An explanation may be the most risky element to include within an apology because it can so easily appear as a flippant excuse; as a defensive justification; or as a reiteration of what was already felt as offensive. Senator D'Amato's first explanation exacerbated the controversy and the outrage: "I was making fun of the pomposity of the judge," but his second presented a point of view that everyone could share: "What I did was a poor attempt at humor." An explanation that includes a recognition of the offense; the pain it caused; and/or a clear statement of wrong as perceived by the offended party, can be a means of showing more respect for the recipient by making the apology a more reciprocal process of increased understanding.

When people who have been offended say, "I demand an apology," it is helpful to probe which aspects of an apology they are seeking. Compelling an apology is usually counter-productive, and the suggestion, "just apologize and it will blow over," is generally misleading. Anyone considering offering an apology should consider the potential damaging results of an inadequate "apology." Sometimes the relationship is too adversarial; the differences are too great; and/or, the legal liability too profound for an apology to be offered or received as sincere. In many situations, a future apology would be possible, but only after a process of conflict resolution -- such as mediation -- that involved increased mutual understanding of both parties' needs, interests, and emotions.

Cultural, gender, and age differences are often factors to consider in requesting an apology. In some contexts it is highly unlikely that a person in authority would apologize to a subordinate, that a parent would apologize to a child, or a man apologize to a woman. Deborah Tannen has cited the differences around the world in drivers' responses to minor car accidents -in Japan and England the drivers are more likely to express regret and show contrition, whereas in the U.S. each driver may be more eager to accuse the other in order to protect his or her own insurance or driving record. Similarly, women are socialized to assume an apologetic stance to the point that they often open a conversation with "I'm sorry," while men may have been taught that apologizing is a sign of weakness.

A rich opportunity for an ombuds to facilitate an elegant resolution is presented when both parties can move to the point where they are ready to exchange apologies. It is common for offenses to occur in the contexts of other offenses: whether two or more individuals or groups hurt each others' feelings by speech, actions, or omissions, or whether they mutually misunderstand each other, the offense that is first identified is frequently embedded in a history of other perceived offenses.

The elements of reciprocal apologies -- perhaps accompanied by explanations and requests for reconciliation or resolution -- are the same as those for isolated apologies. But the coordination of a pair or a series of apologies, between two individuals or among several groups, offers all parties a model of

peacemaking and enhancing respect for each other and for resolution of differences.

End Notes

1. A useful discussion of the process of taking responsibility for conflicts rather than blaming others is found in Jeffrey Kottler's *Beyond Blame: A New Way of Resolving Conflicts in Relationships* (San Francisco: Jossey-Bass, 1994).
2. Deborah Tannen, "I'm Sorry, I Won't Apologize," *The New York Times Magazine*, July 21, 1996.
3. The role of the mediator in facilitating an exchange of reciprocal apologies -- ranging from agreeing, to disagreeing, to forgiving, and to moving forward -- is outlined by Karl A. Slaikeu, in "When Interpersonal Peacemaking is Needed," in *When Push Comes to Shove: A Practical Guide to Mediating Disputes*, (San Francisco: Jossey-Bass, 1996), Chapter 16, pp. 195-207.

NB: The author wishes to thank Howard Gadlin, Mary Rowe, and Linda Wilcox for their comments that contributed to the revisions of this article. The shortcomings remain the author's responsibility.

rrwilson@uci.edu

Last Updated: 02/21/97

THE CONTRIBUTORS

California Caucus of College and University Ombudsman
UCI Ombudsman: The Journal 1996

THE CONTRIBUTORS

Kathleen Beattie

As the Ombudsperson for the University of Victoria since 1992, Kathleen has spent the majority of her "working years" in non-traditional areas, i.e., she began as a professional musician and played the bassoon during her six year tour of duty in the Canadian Forces.

After graduating from the University of Victoria School of Law in 1987, Kathleen was called to the Bar of British Columbia in 1988. However, she chose to pursue alternatives to a traditional law practice and she became involved in arbitration at the Victoria Dispute Resolution Centre as well as remaining active in the mediation and pastoral care fields.

R. Adolfo de Castro

Adolfo, a former trial lawyer, turned "Ombudsman" 11 years ago. Adolfo's present position is the Ombudsman, "Defensor del Pueblo," for the Commonwealth of Puerto Rico. His past experiences as a state attorney and as a judge have contributed in shaping the manner in which he carries out his present responsibilities.

Adolfo has written several articles on the Ombudsman as an "institution" and has discussed the subject in forums around the world. In addition to his Ombudsman duties, Adolfo is a Member of the Board of Directors of the Latin American (Caracas) and International (Edmonton) Ombudsman Institutes; former President of the Ombudsman Forum of the International Bar Association (London); and former President of the United States Association of ombudsmen (Juneau). Adolfo received a B.A. from New York University and a J.D. from the University of Puerto Rico.

Gregg Elliott

Gregg is a Counselling Specialist for the Problem Solving/Conflict Resolution Program at the University of Texas at San Antonio. He received a B.A. in Communications and a B.A. in Sociology from William Jewell College, Liberty, MO. in 1989, and a M.A. in Education with an emphasis in counselling from UTSA in Spring '96.

Gregg co-authors with Dr. Norma Guerra, and their next article, "Cognitive Roles in the Mediation Process: Development of the Mediation Inventory for Cognitive Roles Assessment - [MICRA]" will be published in the Fall issue of the Mediation Quarterly.

Norma Guerra

Norma is the Associate Vice President for Administration and Planning at The University of Texas at San Antonio. Her present responsibilities include the management of the University's Problem Solving/Conflict Resolution Program. [Norma designed and developed this "systems approach" to dispute resolution.] In addition, Norma serves as the University Mediator and Ombudsperson.

Norma's past positions reflect an unflagging progression in the problem solving field. Norma, a nationally certified School Psychologist, earned a Ph.D. in Educational Psychology at Texas A & M University.

Susan L. Neff

Susan joined the ombudsman Office staff at the University of Washington in 1991, and is serving as the first Assistant ombudsman. Prior to her present position, Susan worked as a legal assistant for six years and continues her interest in this area as a volunteer at neighborhood legal clinics.

After entering the higher education field in the early 1970's, Susan worked in the Student Affairs offices at West Chester State University, Pennsylvania and at the Department of Housing, University of Georgia. Susan served as an Academic Advisor and Instructor at City University, Seattle, WA.

Susan received a B.S. in Education in 1972; a M.Ed. in Educational Services in 1975; and continues her course work in the areas of communication, counseling, and conflict management.

Tom Sebok

Tom is in his sixth year as the Director of the Ombuds Office at the University of Colorado, Boulder. Simultaneously, Tom is serving as the Secretary to the Board of the University & College Ombuds Association (UCOA), and is working with his Colorado colleagues to host the 1997 UCOA Conference in Denver. Tom's professional interests include helping the Colorado Ombudsmen to obtain a "shield law"; exploring ombuds ethical dilemmas; and clarifying areas of consensus and disagreement about the theory/practice of ombudsing.

Prior to the Ombudsman position, Tom spent 11 years in academic, career, and personal counselling at the following colleges: Chesapeake College, Wye Mills, Maryland; Salem Community College, Pennsgrove, New Jersey; and Northampton Community College, Bethlehem, Pennsylvania. Tom earned a Bachelor of Arts and Master of Education at the University of Delaware. The participants at the Asilomar Conferences will remember Tom's strong interest in music -- writing songs to play on his

guitar -- which they enjoy annually at the Camp Fire Celebration.

Lois Price Spratlen

Lois began her tenure at the University of Washington in 1972 as a faculty member in the Psychosocial Nursing Department. In 1982, she was appointed the ombudsman for Sexual Harassment, and in 1988 she became the University ombudsman.

At present, Lois is Professor of Psychosocial Nursing; the University ombudsman; and, the ombudsman for Sexual Harassment. In addition, Lois is a board certified psychotherapist in adult psychiatric and mental health nursing. Because of her work with hospitals, clinics, and public social service agencies, Lois frequently serves as an expert witness in sexual harassment cases and as a consultant to organizations on other forms of workplace misconduct. Lois continues to publish her findings on these subjects.

Lois holds degrees from Hampton University, Hampton, Virginia; University of California, Los Angeles; and the University of Washington.

James W. Vice

Jim is serving his sixth year as Ombudsperson at Loyola University Chicago. An alumnus of the University of Chicago, Jim remained at his alma mater for several years as an administrator in the area of student affairs and as a Professor of Social Science. In 1975, he became Dean of Students at the Illinois Institute of Technology. In addition to his administrative duties at IIT, Jim taught Political Science.

Jim's academic interests focus on the general nature of practical reasoning and the specific ways people reason together through institutions -- areas in which he has 27 years of teaching experience. These concentrations, combined with his varied administrative experiences, have sharpened his commitment to improving communication and community understanding within a university. In Spring '94, Jim was elected a Board Member of the Chicago Chapter of SPIDR.

Marsha Wagner

Marsha has been the Ombuds Officer at Columbia University in the City of New York since she established the office in 1991. This year Marsha is opening a part-time satellite office on Columbia's Health Sciences Campus. Her previous positions at Columbia University have included Assistant and Adjunct Associate Professor of Chinese Literature and Director of the East Asian Library. During her tenure as the Vice President for Programs at the China Institute in New York, Marsha worked with a bicultural staff.

Marsha cites both her participation in the 1992 CDR Mediation Training Program and "living in New

York City" as contributing significantly to her dispute resolution skills. In addition, she "negotiated" her way through several trips to Taiwan and China which included living with her family in Beijing during the 1989 Democracy Movement.

After three years of study at Bryn Mawr College, Marsha received a B.A. in Chinese and a Ph.D. in Comparative Literature from the University of California, Berkeley in 1975. A member of CCCUO and UCOA, Marsha also coordinates Training Programs for TOA.

Ron Wilson

A 18 year veteran Ombudsman, Ron Wilson has directed the UC Irvine Ombudsman office since 1979 after leaving the UC Riverside position of Director, Student Affirmative Action. During his UCI tenure, the title has evolved from Campus Ombudsman/Associate Dean of Students to the current title, Assistant Executive Vice Chancellor-University Ombudsman. Concurrent with these title changes, Ron's increased responsibilities include the jurisdiction of the Faculty & Staff Assistance Program and serving as the Ombudsman for the California College of Medicine and the UCI Medical Center.

Active in several ombudsmen organizations, Ron is a past President of the University and College Ombuds Association, and this is his eight contributing effort as the Compiler/Editor of the CCCUO Journal. Ron received a B.A. in English Literature from Bard College, New York in 1975; a Certificate of Administration and Analytical Skills from the Center for Public Policy & Administration, California State University, Long Beach in 1980, and a M.P.P.A. in Public Policy and Administration in 1983.

rrwilson@uci.edu

Last Updated: 02/21/97