

THE INDEPENDENT VOICE

News from the International Ombudsman Association

Moral Courage

BY JANIS SCHONAUER, IOA PRESIDENT



JANIS SCHONAUER

As the President of IOA I have the opportunity to interact with a wide array of Ombudsmen from all different kinds of organizations. Even with the broad diversity of missions of our members'

organizations, there are many common concerns expressed by visitors to our respective offices and shared constraints, both internal and external, which might make resolution difficult.

I just read **Rushworth Kidder's** book, **Moral Courage**,* which had me thinking about how we, in service of our value of neutrality, must resist the urge to act when confronted by an injustice. We immerse ourselves to determine the central concern in the inquirer's dilemma and strive to develop options which might correct the injustice. Many times we are

asking them, even expecting them, to demonstrate a great deal of moral courage.

I found Kidder's (p. 37) moral courage check list (paraphrased in **bold** below) helpful.

- **What motivates me** (or the inquirer) **to want to act?** Generally there is concern that things will get worse, that personal or professional ethics have been breached, or there is a desire to see that this does not affect another.
- **What keeps me from acting?** Perhaps fear of consequences, a cynical belief that nothing will change, or that no one else sees the situation as a problem.

• **What risks do I see?** Might someone be harmed as a result, could I lose a friend, my job or could I be wrong?

• **Am I best suited to act?**

• **If no one else is suited to act, am I prepared to endure the consequences?**

I believe that asking these questions of ourselves and our inquirer can strengthen our commitment to neutrality, confidentiality and independence and encourage resolution of the issues brought before us.

I hope you enjoy this issue of the **Independent Voice**. Among the articles you will find an update on Certification, news about the IOA Journal and a preview of the Annual Conference in April.

All the best for a joyous holiday season and a Happy New Year! ●

* **Moral Courage**, Rushworth M. Kidder, Harper, 2005



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What Are You Going to Do?

BY TOM BARNETTE, REGIONAL OMBUDSPERSON, AMERICAN EXPRESS, AND NICHOLAS DIEHL, NIH, WITH COMMENTS FROM FRANCINE MONTEMURRO, OMBUDSMAN AT BINGHAMTON UNIVERSITY AND MEMBER OF THE IOA STANDING COMMITTEE ON PROFESSIONAL ETHICS, STANDARDS OF PRACTICE AND BEST PRACTICES

In September, we asked readers to consider and respond to a hypothetical scenario that involved an Ombuds who was asked to lead a taskforce to gather anonymous feedback from employees and identify and prioritize opportunities for change. Following is a recap of that scenario and how our readers responded:

THE SCENARIO

Results from the recent employee satisfaction survey at the School of Engineering were a major disappointment to the Dean. She decided it was time to take action by convening a taskforce to solicit more detailed input and develop an action plan to improve results on the next survey. Because of his unique skill set and position in the organization, she immediately thought of **Newt Reilly**, the University Ombudsperson. The Dean was comfortable that she would get accurate, uncensored data if Newt's office was involved.

Newt was called to the Dean's office, asked to lead a taskforce of selected staff from multiple departments in the School, and given the following mandate:

1. Get anonymous input from all of the staff
 2. Prioritize the most significant opportunities for improvement
 3. "Bring me a report with the three most critical changes I need to make to turn this around"
- "You have 6 weeks. I know that you won't let me down."

As Newt left the Office, his mind whirling, he suddenly had this thought: Is this the kind of support that an organizational Ombuds can provide?

WHAT WOULD YOU DO?

1. Tell the Dean that the informal nature of your function precludes you from leading or participating on this kind of taskforce. She will need to find someone else.
13 responses or 48%
2. Agree to coordinate the collection of anonymous input, but decline to participate in prioritizing the opportunities for improvement.
4 responses or 15%

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(What Would You Do continued from page 2)

3. Agree to lead the effort except for submitting a report documenting the most critical changes that are needed. You must drop out of the taskforce when that decision making occurs.

7 responses or 26%

4. Welcome the opportunity to focus the organization on positive change and agree to lead the taskforce as requested.

3 responses or 11%

Some of our readers shared the following comments:

- I believe that it would be best to not participate in the process. An Ombuds might be able to review the proposed process with the leader to serve as a sounding board and to make suggestions, but implementation should be left to others since the Ombuds could easily be seen losing impartiality otherwise.
- At the individual level we never advocate for a specific outcome. At the organizational level I like to believe that we can create proactive systemic change by taking such an invitation and collecting anonymous input. The prioritizing and decision about what is necessary to bring change belongs to the Dean though.
- The Ombudsperson may be able to define a role, within the terms of practice of the office, to facilitate discussion of results with the task force from an independent perspective. The Ombuds can add value by helping the group identify possible methods to probe issues raised, and provide

input to the possible method of collection (*e.g. from a point of integral integrity*). The Ombuds, however, should not be a decision maker for the prioritization of issues or conclusions of the input or be seen in any way as leading/participating in the actions resulting from the survey.

- Tell the dean #1 above, but also tell her that you would be glad to review the report and provide to the dean your off-the-record and confidential reactions to the taskforce findings.
- Several factors need to be considered before I, the Ombuds, would feel comfortable with choosing this option. First, I would not be the one to choose members of the taskforce nor would I prioritize the opportunities for improvement. The latter task could be misinterpreted as my being the person who had identified these priorities and, thereby, having "my own agenda." While I would agree to submit the three most critical changes, I would not be the one identifying the issues, again, for the reason stated above. Thus, given my rationale as to the above actions, I would be in keeping with my role as an off-the-record, informal, neutral, off-the-record, confidential resource and this could be a positive process for all. However, if the Dean and I could not agree on my role, as I described above, I would decline the invitation.
- An ombudsman is a formal resource that uses an informal approach to provide assistance; so I don't see any issue having the

ombudsman supporting such an initiative. But having the ombudsman leading a task force is from my perspective too risky when we consider the other guiding principles (confidentiality, neutrality and independence). I would try to find with Dean a creative solution that would meet both interests.

- I would help in gathering patterns of dissatisfaction but it would be up to the task force (*without my input*) to prioritize this data and come up with the critical changes that are needed.

We requested some additional comments about this scenario from the IOA Standing Committee on Professional Ethics, Standards of Practice and Best Practices. **Francine Montemurro**, ombudsman at Binghamton University, in consultation with committee members, shared these thoughts:

We hope our comments help identify some of the interests, obligations, and pressures that may affect ombudsperson, Newt Reilly, in this scenario.

We start by noting that we agree with the sentiments expressed by respondents who expressed concern about the possibility of Newt agreeing to head the task force, and to follow the dean's "mandate." A major concern is that the undertaking would likely compromise the informality, independence, and confidentiality of the ombuds.

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(What Would You Do continued from page 3)

We also share respondents' concerns about ombuds involvement in what may be, or may appear to be, a formal undertaking. We believe the task force would, for all intents and purposes, constitute a formal body, and we would, thus, advise Newt against leading it or accepting appointment to it.

As an alternative, we recommend that Newt offer to help the dean identify specific employee problems and options for addressing those problems. That is, instead of only telling the dean what he **cannot** do, Newt should develop alternatives that he **can** do.

We emphasize that it's important for Newt — not the dean — to define the scope and nature of ombuds involvement in the effort to address employee concerns.

Several sections of IOA's Code of Ethics (*Informality; Independence; and Confidentiality*) are pertinent here, as are several sections of the Standards of Practice (*Sections 1.3; 2.1; 2.2; 2.6; 3.2; 3.4; 3.7 4.2; 4.5; 4.6*)

With respect to item one of the task force mandate ("*Get anonymous input from all of the staff*"), we feel reasonably comfortable with the idea of Newt providing **guidance** to the dean or to the task force on the collection of anonymous input. We would advise Newt, however, neither to lead the task force, nor to accept appointment to it as we feel doing so

would be viewed as participating in a formal process. We also think joining the task force could easily compromise Newt's reputation for maintaining confidentiality — the cornerstone of ombuds work. He simply cannot guarantee that the other members of the task force would maintain confidentiality with respect to the information they receive. Newt should guard against inviting this risk.

We think, even if Newt provided, **only** guidance to the dean, that he should take steps to protect his own

Instead of only telling the dean what he *cannot* do, Newt should develop alternatives that he *can* do.

reputation regarding independence and confidentiality (*not to mention professional competence*). In other words, if the ombuds office were associated with the data collection process then Newt would be wise to take steps to ensure the authenticity and security of that process. And if the ombuds holds the individually identifying confidential input, no one else should have access to the information in that format. The effort could, for better or worse, reflect on the integrity of the ombuds office and on Newt's reputation for independence and confidentiality.

We do not think, however, that Newt should back off from the problems in the School simply because the dean

wants to appoint a task force. Rather, we think Newt should suggest options that he **is** willing to carry out and that would result in the improved workplace climate the dean is ultimately trying to create.

Next, as suggested in several respondents' commentary, we agree that heading-up the dean's task force according to her mandate, would likely compromise Newt's ombuds impartiality (*both perceived and actual*). In general, ombuds should not engage in conduct that compromises perceived or actual impartiality.

Heading-up a task force, charged by a dean with a specific mandate and required to return a set of recommendations within a specific (*and conceivably inadequate*) time period could

create the perception that Newt is working on a particular agenda and is not operating impartially relative to the matters at hand.

More specifically, we found items 2 and 3 of the task force mandate ("*prioritize the most significant opportunities for improvement*" and "*bring me a report with the three most critical changes I need to make...*") to be problematic because they would likely force Newt to advocate for a **specific** outcome and thus again put the ombudsperson's impartiality and independence at risk.

(continued on page 5)

***(What Would You Do
continued from page 4)***

We feel the ombud's job is to identify problems, recommend options, and advocate for fairness. We think Newt has to be very careful, however, about recommending a **specific** solution or outcome. Again, were Newt to take on these tasks, he could sacrifice his impartiality and independence by being appearing — as one respondent put it— to have his "own agenda."

Finally we agree with the sentiments of respondents who addressed the need for ombuds to provide "value-added" service to their organizations. We think that while Newt should not accept the dean's mandate "as is," neither should he simply tell the dean that "she will need to find someone else." Instead, we believe Newt should offer to offer to help address employee concerns through appropriate means. We think Newt should both set boundaries for his engagement (*rather than allowing the dean to set them for him*) and offer assistance through an array of means, including those that might not be readily apparent to the dean. At a minimum we think it's important for Newt to educate the dean about the ombuds' independence — her request suggests a serious misunderstanding about the ombuds role!

As with any other ombuds case, the first thing Newt should do is to listen to the dean's concerns and identify her specific interests and concerns. By listening, and asking the right questions, Newt might be able to help the dean recognize some important options for herself, the School, and the employees. ●

OUR NEW SCENARIO FOR THIS EDITION

Following is another hypothetical scenario that an Ombuds might face. In this case we invite you to weigh-in with what you would do by sending us your comments. For this scenario we are not offering multiple choice options. Please keep your comments brief so we can publish as many as possible.



SCENARIO

Revealing Others' Concerns?

During the past two months five out of seventeen employees in a department have come to your office to raise concerns about a supervisor who has been abusive and retaliatory. Some of these concerns stem from the fact that the boss recently fired an employee who had raised concerns about a project. The supervisor took the criticism as a challenge to authority and immediately took steps to get rid of the employee. None of the five employees who have come have wanted to take any proactive steps in addressing the concern — and asked you not to either. Today another employee has come and says "Am I crazy or does this seem like a major problem? I know that others must feel the same way I do, so why isn't anyone doing anything about it? Has anyone else complained to you about this man?"

As the ombudsman, how would you handle this question?

Would you indicate to the visitor that others have come to the office?

INSTRUCTIONS

To post your response, click on the Zoomerang Weblink below or copy and paste this link into your web browser. You can also visit the Member's Only section of the IOA website www.ombudsassociation.org for the survey link.

Tell us what you would do. ●

ZOOMERANG WEB LINK:

<http://www.zoomerang.com/survey.zgi?p=WEB22789SS8WWM>

Guidelines for an Ombudsman Search

BY JENNIFER WOLF, ASSOCIATE OMBUDSMAN, UNIVERSITY OF CALIFORNIA, IRVINE

I recently led a committee charged with hiring a new ombudsman for our office. As committee chair, I learned some valuable insights which apply to most offices going through such a search. Having more experience on the other side of the hiring process, I decided to incorporate that knowledge to create an efficient and thorough procedure for this search. Although this list stems from hiring an ombudsman to join a long-established, multi-person office, these points apply to searches for a start-up office as well.

Here are some ideas to consider:

- **Set a Realistic Timeline:** Setting a timeline at the beginning of the process — complete with due dates for every stage — and committing to adhere to it will keep everyone on track, and keep the process moving forward.

- **Carefully Select the Search Committee:** Keep in mind that coordinating schedules becomes exponentially more difficult with every additional person added to a committee, so consider capping the group at six members; also try to select a broad representation of individuals across the organization who will add unique perspective (and whose bond with the office will be strengthened by the process!)

- **Pare down the Field of Applicants:** Some people apply to positions without consideration of whether their skill set (or resume and cover letter) matches those of the job description; it is usually easy to spot those folks who like to apply to as many jobs as possible, regardless of the industry, skill set or title.

- **Create an Ideal Profile:** Define criteria for the optimal candidate; weigh (*and assign corresponding points to*) which criteria are more important and which are less important; list the criteria (*and weighted scale*) in a matrix which the search committee can fill in when evaluating the submitted materials of the candidates.

- **Don't Exclude Outsiders:** Some organizations value more highly previous knowledge of the organization, while others believe a fresh perspective will allow an individual to pick-up on systemic issues which insiders may have grown accustomed to, so be sure to weigh the pros and cons of each of these qualities; bear in mind the importance of independence, neutrality, and adherence to the Standards of Practice when reviewing candidates' previous experience.

- **Select Finalists Systematically:** By averaging the scores of each candidate (from the matrix) and reviewing the highest-scorers more closely, you can narrow the pool of candidates to a group of six to eight individuals who can then be called for an interview; different committee members will interpret the applications and scoring differently, so these scores can also serve to start a discussion about the candidates' skills and abilities.

- **Prepare Interview Questions:** Ask the candidates the same set of questions to keep the process fair; any unanswered areas or

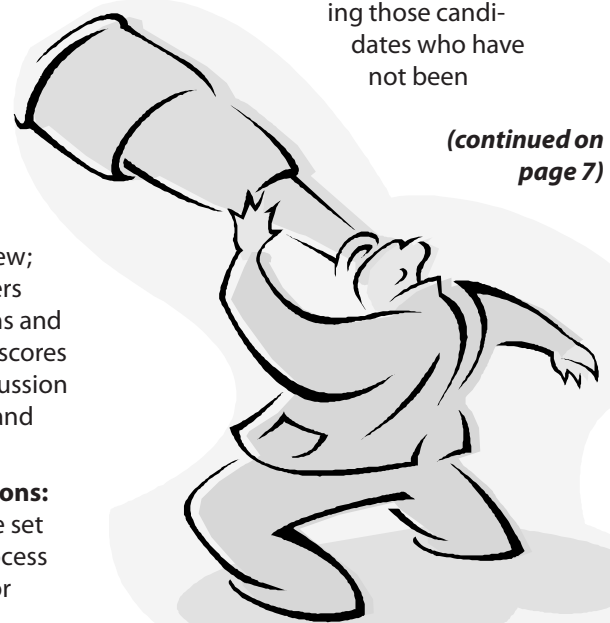
questions can be added at the end—but the search committee should be clear about this process to maintain fairness.

- **Anticipate Candidate Questions:** In a sense, the interview goes two ways, and the candidates often ask questions about the office/organizational climate, office policies, how the office is perceived by others, etc. in an effort to determine if the position fits their goals as well; the candidates may also try to stump the committee with certain questions, so be as prepared as possible.

- **Prepare for the Unexpected:** In the event that one of the search committee members says something "unexpected" or less neutral than you'd like, be ready to utilize your best ombudsman skills to respond to awkward statements or difficult questions.

- **Promptly Notify Those Not Selected:** A letter notifying those candidates who have not been

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(Guidelines continued from page 6)

selected should be sent out as soon as possible — this conveys respect and courtesy for the candidate who can have closure on the process and move on to other possibilities.

• Thank the Search Committee: Write a thank you note to each search committee member, or even treat them to lunch for their time and efforts.

I have observed many ombudsman search processes which have taken close to a year in total. Not only is that frustrating for the applicants, but it also goes counter to the role of an ombudsman as one who helps difficult situations be less bureaucratic, more clear and more efficient. It is always difficult to hear the news that you were not selected for a coveted position, but it is harder to receive this news after you've waited patiently for several months. Following these guidelines for a search process will set an example for your organization and reflect the best practices for our ombudsman profession.

What's Your Motivation?

Readers Respond

In a previous edition of the **Independent Voice** we asked readers to tell us why they do ombuds work. Following are the responses that several readers shared with us:

WHY BE AN OMBUDS?

- Because it gives me a chance to make somebody else's world better, every day.
- This is the best use of my skills and abilities, especially my ability to see the elephant on the table and my willingness to speak about it.
- I am an ombudsperson because of my commitment to informal conflict management and its potential to help people and organizations learn and change.
- There is no end to the learning; being an ombuds is very humbling. Part of my message to my organization is that you don't need to know everything and it's OK to reach out for help, and I practice this every day!

I VALUE BEING AN OMBUDS BECAUSE...

- I have the opportunity to provide a voice and a face to a large bureaucracy that often seems uncaring.

- I provide a resource to the University campus and another means to resolve situations that arise on a daily basis. It is a vital resource for any institution to have such a program.

- I believe that all members of the institution deserve the right to impartial assistance in resolving issues, which effect their work or experience as a student.
- It is fulfilling and rewarding to know that I can be a resource for all members of the University community.
- Being an ombuds provides me with the opportunity to assist faculty and staff vs. my primary role as a student affairs professional.
- If I can help one person resolve an issue so it doesn't cost the University money or the individual his/her job or degree, I have made a difference. Also through the ombuds program I learn something each time.
- I am honored to be part of a team trying to make the University a more civil place to study or work.
- For the ability to coach and help facilitate positive outcomes in conflict. Most conflict is based on prime issues that can be identified and worked through with assistance. I love the training. I share it and use it everyday.

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(What's Your Motivation continued from page 7)

- My desire to improve the work/study life of employees and customers of the University. I want all to succeed, including the institution.
- I like helping people figure out how to solve their problems. I feel good when someone has benefited from my assistance.
- I feel that I am helping people to be better students, staff and faculty.
- I thought I knew everything and found out I really knew nothing about effective communication or problem resolution – the training I received as an ombuds changed my life, the way I work with people, and how I do my job. I share new workshop skills with everyone in our College.
- Being an ombuds improved my life both personally and professionally. As a former ombuds, now administrator, I wish everyone at the University had ombuds training. I learned to listen, really listen.
- Being an ombuds allows me to serve our community (*without passion or prejudice*).
- Complaints are our gifts — trends, issues, outdated policies, and mistakes are identified, addressed, and we improve.
- I am a person who believes we all have a role in contributing to improving the lives of others. I enjoy the Ombuds opportunity to learn, contribute, and to challenge ideas and gain strength from others. What a great life to say I have been of service to the public - helping people in trouble, making the world safer, helping others learn and prosper — this is my purpose. Being an ombuds has helped me in learning about and serving this purpose. Service is an awakening of our sense of humanity and respect, and ombuds are indeed a proud and noble community that provides this service on a daily basis. I feel very fortunate to be a part of the Ombuds program at the University.
- To be available for students and staff to have someone who will listen and give options in strict confidence. The worth of the Ombuds program is priceless. I feel blessed to be a member.
- It allows me the opportunity to interact with others in positive, impactful and informative ways that may or may not be obvious to others.
- I love helping people help themselves.
- It affords me opportunities to learn new skills that, in turn, allow me to serve our students and staff more effectively, and also it lets me interact with colleagues throughout our campus community.
- Of the opportunity it gives me to solve problems together with students and colleagues and help build a more tolerant and understanding community at our campus. ●

Journal of the International Ombudsman Association Call for Articles

We are pleased to announce that the Journal of the International Ombudsman Association (JIOA) is accepting articles to be considered for publication in the inaugural and subsequent issues. JIOA is a peer-reviewed online journal for scholarly articles and information relevant to the ombudsman profession. As members of a relatively new profession, we continually strive to understand, define and clarify the role and function of the professional organizational ombudsman. JIOA will help foster recognition that what we do for our agencies, corporations, colleges and universities is worthy of study. While we must vigorously

protect the confidentiality of our interactions, we can still study and be studied to understand what we do and how we do it; what works well and what doesn't work; what our options are; how social, technical and legal changes may impact us; what the profile and career development of ombudsman professionals might be, and other matters of interest. The journal also will allow IOA members, other ombudsmen, and other professionals to reach out to their colleagues with their ideas, research findings, theories, and recommendations for best practices and to engage in ongoing discussions of critical issues. We also

welcome brief articles on emerging issues relevant to the ombuds profession and book reviews of interest.

Instructions for authors and information about the review process are available on the JIOA homepage located on the IOA website (www.ombudsassociation.org). Please feel free to contact any member of the editorial board or me for additional information.

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Proposed Certification Program for Organizational Ombudsmen

BY MARSHA L. WAGNER, CHAIR, IOA CERTIFICATION SUB-COMMITTEE

Planning a certification program for organizational ombudsmen has been a multi-year process. The Ombudsman Association (TOA) formed a Certification Sub-Committee in June 2003, with representation from the University and College Ombuds Association (UCOA); a preliminary report was issued in February 2004 and a second report was also distributed among the membership of the International Ombudsman Association (IOA) in January 2005. Though the Sub-Committee realized that a certification program could require a significant financial commitment, especially in the early years, the reports emphasized the advantages: enhancing the credibility of the organizational ombudsman profession, maximizing uniformity and high quality of practice, reinforcing our ethics and standards, and mirroring other related professional groups who have certifications (*ranging from employee assistance professionals to mediators*).

The Sub-Committee did its own research by comparing certification programs in other professions, offered a "comment period" on the listserv in 2005, and discussed the pros and cons of certification in various annual conference programs. In the fall of 2006, we realized our planning and assessment of the feasibility of a certification program for our profession could benefit from outside professional guidance. The biggest development during the past year is that we abandoned the "home made" and "amateur" ap-

proach, and decided to "do it right." We determined to learn about, and plan to adhere to, the recognized professional standards in the fields of testing, credentialing, accrediting, and certifying — to avoid creating a flawed program, or a program vulnerable to legal challenge, or a program that would have to be revamped later after problems emerged. Our planning process is now guided by the principles and criteria of the two nationally recognized accreditation organizations: the National Commission for Certifying Agencies (NCCA) or National Organization for Competency Assurance (NOCA).

In late 2006, with IOA Board approval, we sent out a "request for proposals" from various consulting organizations that assist professional groups in establishing certification programs. We received three serious proposals, which we evaluated with the assistance of an independent consultant (Bostrum). We determined the most suitable consultants for our organization would be **Schroeder Measurement Technologies** (SMT). SMT has a staff that includes professional psychometricians, information systems managers, and testing specialists. They now serve dozens of credentialing organizations and they administer examinations in over forty professional categories each year. They maintain offices in Florida and Delaware, London, Tokyo and Hong Kong. In late September 2007 we held a two-day meeting at their headquarters in Florida. Participants

were 5 members of the Certification Sub-Committee (**Mary Chavez-Rudolph, Carolyn Noorbakhsh, Marsha Wagner, Merle Waxman, and Jennifer Wolf**) as well as 5 other representatives of the Board and Ombudsman 101 instructors (**Tom Barnette, Sean Banks, Wilbur Hicks, Janis Schonauer, and Gary Yamashita**).

Our SMT consultant, **Richard Soule**, introduced us to the basic principles of developing, maintaining, financing and administering a professional certification program. We first determined that our mission and goals for the profession were consistent with launching a certification program. Mr. Soule then briefed us on a range of considerations: he explained to us the importance of systematically "marketing" a new program, and advised that most programs begin with entry-level certification and add an advanced level only if there is a significant demand among practitioners. He explained why "grandfathering" would be difficult to defend if challenged, and how to address some of the logistical challenges of offering the examination in various language translations.

During the two-day meeting we became familiar with the steps involved in establishing a certification program, if IOA decides to move forward with it, adhering to rigorous and defensible professional standards. To summarize, the first stage involves "job analysis": practitioners from a variety of sectors and geo-

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graphic locations are surveyed to identify and rate the importance of the various kinds of knowledge, skills, and abilities (“KSAs”) that an organizational ombudsman needs. The purpose of identifying the elements of the job is to assure that the qualifying examination’s content covers the significant material, and devotes appropriate attention to each area of the KSAs. The job analysis also helps to determine the type of examination that will be most suitable (multiple choice, true/false, short answer, essay, portfolio, etc.).

The next stage is test development, which involves a meeting of about a dozen “subject matter experts” (*people who are experienced as organizational ombudsmen*) who are trained to write fair and appropriate questions.

(Questions must be relevant to the profession, non-trivial, up-to-date, clear and unambiguous, with only one correct answer, etc.) These questions then go through editorial and psychometric review by specialists, and after approval they are accumulated in a “bank” of questions. Each time the examination is offered, it presents a different sub-set of the available questions, in a different order.

After the examination questions are prepared, the next step is to determine what percentage of correct answers is necessary to pass. Once again, there are accepted professional procedures for using subject matter experts in the field to

determine the competency level for passing. This group of subject matter experts might consist of individuals who will not take the exam for certification, but analysis of their exam performance will help determine the passing score. They might be ombudsmen who for various reasons are leaving the profession and thus are not interested in pursuing certification themselves, to avoid conflicts of interest. These results are statistically calibrated to correspond to the number of correct answers needed for others to pass, using a complex formula that factors

tional ombudsman position, reminding certified practitioners when they need to recertify, determining criteria for de-certification, and handling appeals or complaints about any aspect of the process. It was a relief to the Sub-Committee to learn that guidance is available on professional approaches to all these issues, and we do not need to start from scratch in determining the procedures or logistics.

Working with SMT was also a helpful way to project a business plan for a certification program. We ran through several versions of financial

planning: obviously, the higher the fees charged to individuals or organizations for certification or accreditation, the sooner we would reach the financial break-even point. Before we move on to any of these

The Certification Sub-Committee graciously requests that IOA members complete the survey and provide candid feedback.



in degree of difficulty, mean score, and several other variables.

IOA would need to determine how frequently to offer the examination, whether online or paper-and-pencil, and in how many different locations. We would also need to set an application fee that would cover the administrative costs and over time contribute to the costs of developing the program. We would need to have procedures for various administrative tasks: providing a handbook to applicants before they take the exam, reviewing the applications for certification from practicing ombudsmen who have both passed the exam and also served in an organiza-

next steps, **IOA needs to learn from this month’s survey – distributed in early December via email — how the membership feels about taking on this ambitious project and how members rate its value to the profession. The Certification Sub-Committee graciously requests that IOA members complete the survey and provide candid feedback.**

The Sub-Committee believes that individual certification (on all three levels) and organizational accreditation can help us achieve enhanced professional status and credibility among ourselves, within the organi-

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**(Certification Program
continued from page 10)**

zations where we work, and in the eyes of the general public. However, we want to emphasize that participation in these programs will be voluntary. We do not envision a licensing process — for example, like that of the American Bar Association, which restricts the practice of law to those who have received their permission to practice. Organizational ombudsman certification will be a choice for those who feel they, and/or their ombudsman programs, will benefit from it. But from the IOA perspective, the Sub-Committee feels that offering the option of certification will support the IOA's goal of advancing the organizational ombudsman profession. The judges and legislators who may determine whether we have a legal privilege or shield law will want to know how we structure practitioners' adherence to standards. Organizational leaders will want to know how ombudsmen can be held professionally accountable. The general public will want to predict, if they have worked with an ombudsman in one organization, they can expect the same standards of practice from an ombudsman in another organization. For these reasons, we believe the recognition of our professional legitimacy will be fostered by the development of a certification program. ●

Corporate Ombudsman Forum Announcement

During the Corporate Ombudsman Forum at the April, 2007 IOA Annual Conference, the concept of organizing a corporate ombudsman discussion group was discussed. **Eric Berger** of Deloitte Consulting, **Elizabeth Lyle** of Merck & Co. Inc. and **Marie MacLean**, The Hartford, began exploring the feasibility of establishing such a group. The conclusion reached was that a discussion group comprised of corporate ombudsmen would be a value-add for each participant, as well as a nice complement to the professional development and support provided by IOA. A message distributed to all IOA Corporate Ombudsmen confirmed interest and Marie, Eric and Elizabeth are pleased to announce the formation of the **Corporate Ombuds Discussion Group**. The group's mission is to:

- Provide a forum for consultation and exchange of information among corporate ombuds;
- Serve as an educational resource among peers;
- Leverage the experience and expertise of participants.

The group plans to meet quarterly. The 2008 meetings are scheduled for 1/16/08, 4/16/08, 7/16/08 and 10/15/08 from 12:00 - 1:00 PM EST.

The agenda and dial-in information for the 1/16/08 meeting is as follows:

Date: Wednesday, January, 16, 2008

Time: 12:00 PM EST

Where: 866-277-4013, participant code 694763

- Demonstrating the Effectiveness of the Ombuds Office
- Understanding your audience
- Defining effectiveness in the context of your audience
- Communicating effectiveness to your audience

The Hartford has generously agreed to provide a dial-in number for group teleconferences.

Please join us — all Corporate Ombudsman are welcome to participate!

If you would like more information, contact:

Marie MacLean: 860-547-6942 or
Marie.MacLean@thehartford.com

Eric Berger: 212-313-1643 or eberger@deloitte.com

Elizabeth Lyle: 215-652-8848 or elizabeth_lyle@merck.com



Organizational Notice

A Message from the Legal and Legislative Affairs Committee

The IOA Standards of Practice 3.8 states: "Communications made to the ombudsman are not notice to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the ombudsman may refer individuals to the appropriate place where formal notice can be made."

In order to qualify as either a Member or Associate Member of IOA, an applicant must be able to state, among other criteria, that he or she has "no job function which would make him or her an agent of the organization for the purpose of notice."

Both the IOA and the ABA assert that communications made to the organizational Ombudsman are confidential, the office will assert a privilege to protect the confidentiality of those communications, and therefore communications made to an ombudsman do not comprise notice to the organization.

Much of the value of the ombudsman function resides in how it provides a safe, confidential, off the record channel to enable people who otherwise would not come forward to seek guidance on how they can resolve workplace disputes and report concerns. The sense of safety created by an ombudsman as a confidential channel enhances the communication and articulation of concerns and thus the organization's ability to effectively respond to those

concerns. Issues that cannot be safely and confidentially raised may not be raised at all, thereby depriving the organization of the opportunity to address issues and rectify misconduct. The ability to have confidential communications that do not constitute "notice" to the organization is essential to the effective functioning of an ombudsman office and helps to distinguish the office from other reporting channels that do trigger "notice" to the organization.

While confidentiality is clearly an important aspect of our practice, we can benefit by giving thought to what constitutes "notice" and to how IOA standards and best practices guide the way we can optimally work with our visitors as well as within our organizations.

A variety of U.S. federal and state laws require an organization to take action (such as investigation and discipline) when placed on "notice" of an alleged violation of law such as harassment or discrimination. Typically, an organization is placed on "notice" when certain information is communicated to individual(s) within the organization serving in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. Therefore, certain communications in the workplace have the legal effect of placing the entity "on notice," triggering a requirement that the organization act, whether or not that is the wish of the particular manager or official receiving the notice communication.

Customarily, organizational managers receive notice on behalf of the organization by virtue of the level of their position or their managerial responsibilities. But different organizations may define positions designated to receive notice differently. Therefore, it is crucial to understand how your organization defines who is and who is not designated to receive notice. This is important not only to know where to direct visitors in order to place the organization on notice, but also so that you are aware — particularly for those Ombudsmen balancing dual roles — whether or not you could also be considered an office of notice within your organization.

Ombudsman independence from management in structure and function is critical because it is this aspect of our office and practice that enables the Ombudsman not to be an office of notice. This independence enables us to assure visitors and the organization that communications made to the Ombudsman remain confidential, "off the record" and do not place the organization on "notice." It is thus critical that the Ombudsman have an explicit understanding (i.e., a charter) with organizational leaders that the Ombudsman does not receive "notice."

This aspect of the Ombudsman must then be communicated broadly and regularly within the organization. The ombudsman office Charter or Terms of Reference, web site, brochures, email disclaimer, and all other forms of communication

(continued on page 13)

(Organizational Notice continued from page 12)

should include the fact that communication to the Ombudsman does not constitute “notice” to the organization. Conversations with visitors to the office should always include a reminder that, absent imminent risk of serious harm or permission from the visitor, all communication to the Ombudsman will remain confidential and will not place the organization on “notice.” In addition, communications made by the organization about the Ombudsman should include the “notice” disclaimer.

Significant issues may be communicated to the Ombudsman which would benefit the organization and its staff if they were informed. Where important information is imparted to the Ombudsman, he or she will ordinarily direct the visitor to the proper point of contact where the visitor may put the entity on notice himself or herself. In only relatively rare instances will the Ombudsman take action, at his or her own discretion to directly place the organization on notice of an allegation of wrongdoing, such as in the rare event that the visitor is not able or not willing to do so himself or herself. An Ombudsman, of course, will place the organization on notice in the unusual situation where the Ombudsman perceives there to be an imminent risk of serious harm.

If the Ombudsman makes such an intentional notice communication to the organization, confidentiality is waived, under IOA Standards of Practice, only with regard to the

specific communication made by the Ombudsman to the point of contact for purposes of the notice communication. Thus, under no circumstances, is the original communication to the Ombudsman part of the notice communication. There should always be a clear distinction between communications to the Ombudsman by a visitor and communications by the Ombudsman to the organization.



Ombudsman independence from management in structure and function is critical because it is this aspect of our office and practice that enables the Ombudsman not to be an office of notice.

It is critical to remember that intentionally providing notice to the organization by the Ombudsman is different from the relatively common practice of identifying trends, issues or concerns, as detailed in SOP 4.4. Trend reporting implies no individually identifying information is communicated. That is, primary facts (who, where, when, what office, etc.) are minimized or omitted from trend reporting to protect confidentiality. Intentionally placing the organization on notice, however, should entail a detailed and formal communication making the entity aware of particular issues so it may take actions necessary to redress problems and concerns.

Each Ombudsman office should have a well-defined procedure detailing the limited circumstances and the processes under which the Ombudsman will provide notice. Such a process should include specific steps that make clear the Ombudsman’s decision and intentional actions to make a notice disclosure. *[examples available in Guidance document noted below]*

Notice can be both a difficult concept to understand and communicate to our visitors and organizations. But it is a very important aspect of our practice and one of the

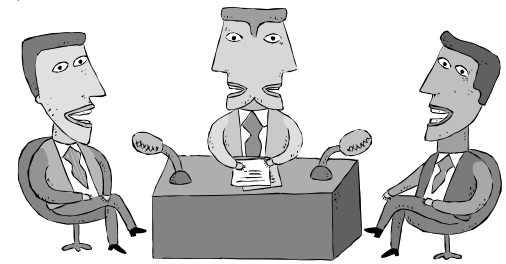
reasons the role of Ombudsman is both unique and effective in assisting both our visitors and adding value to our organizations.

[A more detailed discussion on the issue of “notice” within the organizational Ombudsman practice can be

found in the article titled, ***“The International Ombudsman Association — Guidance for Best Practices and Commentary on the American Bar Association Standards for the Establishment and Operation of Ombuds Offices, Revised February 2004”***. This article can be found in the members only section of the IOA website.] ●

*Feel free to direct questions regarding this article to the IOA Legal and Legislative Affairs Committee, **Judy Bruner, Kevin Jessar, Marsha Wagner and David Talbot***

Demystifying Mediation



BY CYNTHIA JOYCE, UNIVERSITY OMBUDSPERSON, UNIVERSITY OF IOWA

Mediation is a controversial topic for ombudsmen. It is mentioned frequently as a useful technique in the array of options ombudsmen offices offer, yet at the same time there is serious concern in the profession about whether and how ombudsmen themselves should use mediation. Occasionally, this concern rises to the level of anxiety about and maybe even suspicion of the mediation process. Confusion about how much influence mediators have on the outcome of a mediation, whether mediation is formal or informal, whether mediation can be structured or unstructured, and the risks of an ombudsman being involved in a process that leads to a written agreement, can lead an ombudsman to avoid the process. My hope is that by clarifying what mediation is and its key characteristics, describing the mediation process, and discussing how mediation can be used effectively by ombudsmen, ombudsmen will feel more comfortable with mediation.

What seems lost sometimes in the discussion about mediation is the fact that ombudsmen and mediators are all part of alternative dispute resolution processes and options and have many elements in common. Let's begin with the basics. What is mediation? According to **Black's Law Dictionary** (8th Edition, 2004), mediation is a "method of

nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution." Although there are different styles of mediation (facilitative, evaluative, transformative, etc.), in general the role of a mediator is to facilitate discussion between the parties. Mediators typically do not give advice, make suggestions, or judge who is right or wrong.

The key characteristics of mediation should look very familiar to ombudsmen: confidentiality, neutrality, and informality. Mediators take confidentiality very seriously, and mediation privilege is recognized by law in many states. As is the case for ombudsmen, a common exception to confidentiality in mediation is information about physical harm to anyone. Mediators are neutral, and mediator codes of ethics, such as the Model Standards of Conduct for Mediators (revised in 2005 by the American Bar Association, American Arbitration Association, and the Association for Dispute Resolution), state clearly that mediators need to acknowledge any possible conflicts of interest and withdraw if necessary. Last but not least, mediation is always informal. Despite the mystique about mediation and the fact that it usually follows a basic process as described below, there is no such thing as "formal" mediation. In addition to the key characteristics of confidentiality, neutrality, and

informality, many mediators consider mediation to be a voluntary process, although there is controversy in the field over whether mediation must be voluntary in order to be ethical.

The mediation process typically consists of some variation on the following:

- **Introductions and Ground Rules**
- **Story Telling**
- **Problem Clarification**
- **Brainstorming Possible Solutions**
- **Evaluating Possible Solutions**
- **Developing an Agreement.**

There is often a misperception that mediation is "structured." Most mediators use a version of this simple problem-solving process as a guide for discussion, but the process is flexible and adaptable depending on the nature of the conflict and the needs of the parties. Although many mediators advocate training for those interested in using the process, most ombudsmen would have sufficient relevant skills to be able to use mediation without a great deal of preparation. Two introductory books (*suggested by Gregory Perrin in the FBI Office of the Ombudsman*) are "**Basic Skills for the New Mediator**," by Allan Goodman, and "**Mediator's Handbook**," by Jennifer Beer.

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(Demystifying Mediation continued from page 14)

Mediation agreements, in particular, seem to be a cause for concern for ombudsmen, perhaps because they can be used by the parties in subsequent formal processes. Mediation agreements are not unique in this; for example, it is possible to take any document, including a mediation agreement, to court and transform it into a legal document. Moreover, written agreements are not an essential part of the mediation process, and many mediations result in verbal agreements alone. If the parties want a

Mediation can be incredibly useful for an ombudsman. It brings disputing parties together, often for the first time, in a safe setting, and encourages them to be honest and open about their concerns. It has the capacity to allow each party to express his or her perspective on the history of the dispute, the current situation, and the emotions entangled in the problem. The process encourages resolution of the presenting problem as well as underlying problems that might be fueling the current issue. Short-term

The process encourages resolution of the presenting problem as well as underlying problems that might be fueling the current issue.

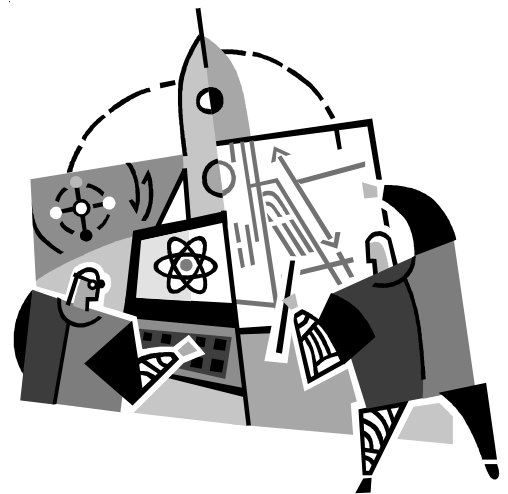
written agreement, it is very reasonable to ask that they draft the agreement themselves; it is, after all, their agreement. This would take the ombudsman out of the position of drafting a written document that could be used in unforeseen ways after the mediation. In addition, it is important to note that mediations do not always result in agreements. The process still can be very valuable in giving the parties the opportunity to express their concerns and better understand the other party's perspective.

irritants, such as noise problems when two people share a small office space, and long-term feuds between faculty members in the same department, can be addressed, and the process is able to accommodate significant power differences and still usually yield a satisfactory solution.

I hope that greater understanding of the mediation process will encourage ombudsmen in all sectors to embrace the utility and power of mediation as we help our visitors. ●

New Board Member

The IOA Board would like to welcome its newest member **Wayne Blair**, ombudsman at the University of North Carolina. Wayne will fill the balance of **Nick Diehl's** term. Nick stepped down after taking a new position as ombudsman with NIH. IOA by-laws do not allow one institution to have multiple people on the Board and **Kevin Jessar** is already a Board member from NIH. While Nick's energy and creativity will be missed, the Board looks forward to Wayne's participation. ●



Cynthia Joyce has been a mediator for 17 years, is an experienced mediation trainer, and has served as University Ombudsperson at the University of Iowa for two years.

2008 IOA Conference **Making a Difference — The Ombudsman Impact** The Boston Park Plaza Hotel, Boston, MA

Please join us in Boston, MA, April 13-16, 2008 for the IOA Annual Conference. This is the ombudsman event of the year that you must attend. As the theme references, an Ombudsman does make a difference and let's discuss how you impact your profession, impact your organization and how the profession impacts you personally.

On Sunday, April 13th several pre-conference courses will be offered, such as; **“Conflict Coaching”, “Exceptions to Confidentiality”, “Challenges to Informality and Other Standards”** with more to be planned. Although Pre-Conference Courses will require a separate registration fee from the general conference, the knowledge you will gain from the experience will be well worth it.

Then starting **Monday, April 14th through Wednesday, April 16th** the general conference will present Keynote Speakers; **Dr. Richard Lapchick**, *Endowed Chair and Director of the Devos Sport Business Management Program, University Of Central Florida And Director Emeritus, Center For The Study Of Sport In Society (Northeastern University), Ambassador Harriet Elam-Thomas*, *Director Of The Diplomacy Program, University Of Central Florida and Former U.S. Ambassador To The Republic Of Senegal and Chief Of Mission To Guinea-Bissau* and **Dr. Paul Barreira**, *Associate Professor of Psychiatry at Harvard Medical School and the Director of University Counseling, Academic Support, and Mental Health Services at Harvard University.*

New this year, we will be posting **ALL** of the available general conference presentations on the IOA website (attendee password protected of course). This will allow attendees access to ALL of the valuable information for the entire conference and not just the sessions they are able to attend.

Also this year we will not offer a planned off-site event.

Boston has so many wonderful sites to offer, we just couldn't choose one. We will, however, provide information for restaurants, cultural attractions, and entertainment in the area and encourage attendees to create their own groups for venturing out on the town.

To help facilitate groups the Sector Forum Discussions will be held in the afternoon prior to the free evening. Those of you who feel inclined to do so, can continue your sector discussions at dinner.

REGISTRATION FEES FOR 2008 ARE AS FOLLOWS:

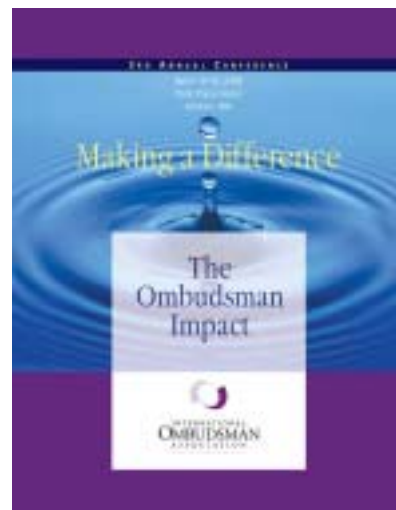
Pre-Conference Courses

Full Day Course or 1 AM & 1 PM Course: \$290
 1 Half Day Course: \$180

Conference	before 2/29/08	after 2/29/08
Members	\$450	\$500
Non-Members	\$500	\$550
One-Day only, Day 1	\$245	\$295
One-Day only, Day 2	\$245	\$295
One-Day only, Day 3	\$150	\$200

The Registration Brochure is being finalized and should be available in January.

For further conference information, please refer to the website www.ombudsassociation.org



EFFECTIVENESS CORNER

Reasons to Evaluate Ombudsman Operations and Protecting Ombudsman Privilege

BY FRANK FOWLIE, OMBUDSMAN FOR ICANN AND MEMBER OF THE EFFECTIVENESS SUBCOMMITTEE

I recently published a booklet called *"A Practitioner's Guide to Evaluating Ombudsman Offices"* (<http://www.icann.org/ombudsman/guide-evaluate-ombudsman-offices.pdf>). The booklet provides Ombudsman practitioners with some basic tools to conduct an evaluation of an Ombudsman Office. A reader provided comments on the booklet which contain an interesting perspective on the need for evaluation.

Charles L. Howard, Esq. of Shipman & Goodwin LLP stated, "From my perspective, a good evaluation program that demonstrates success of the program is critical in getting a court to recognize confidentiality, whether based on a claim of privilege, implied contract, or some mediation or ADR statute. When judges go through the balancing process in trying to determine whether an ombuds should be forced to make a disclosure or not, whether the program is effective becomes important. Moreover, in the leading case in which a court did not recognize the ombuds privilege, *Carman v. McDonnell Douglas*, the Eighth Circuit specifically noted that that there was no evidence that the program was successful or more successful than other types of ADR. While I disagree with much of the court's analysis, I think that case was correctly decided based on the lack of evidence of any kind presented to the court.

A second observation I would make is that ombuds programs are most vulnerable when there is a change in senior management. Usually they are created during a regime in which senior management believes in them and supports them. When that changes, and particularly when someone from outside the organization is brought in, they are likely to be seen as solely a cost center that adds marginal value. Demonstrating effectiveness gives the office ammunition* to deal with the internal dynamics of gaining support from senior management."

These are valuable observations, and worthy of consideration by Ombudsman practitioners.

In the October 2007 Newsletter, the Effectiveness Corner noted that we would explore data gathering options and measurement tools that demonstrate the effectiveness of the ombuds office. We will pick up that theme in the next newsletter. ●

**If this were not a quote, the Effectiveness Committee would substitute the word 'credence' for 'ammunition'.*



IOA COURSE OFFERINGS

SPRING 2008

Monday - Friday
March 3 - 7, 2008
Las Vegas, NV, USA

2008 ANNUAL CONFERENCE

"Making a Difference — The Ombudsman Impact"

Saturday - Wednesday
April 13 - 16, 2008
The Boston Park Plaza Hotel,
Boston, MA, USA

INTERNATIONAL 2008

Monday - Thursday
June 16-19, 2008
Paris, France

SUMMER 2008

Monday - Friday
July 14 - 18, 2008
Washington, DC, USA

FALL 2008

Monday - Friday
October 27 - 31, 2008
Vancouver, BC, Canada

For details on all IOA Course Offerings, log on to www.ombudsassociation.org/

Welcome New Members

The International Ombudsman Association welcomes its newest members.

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University of Cincinnati
Cincinnati, OH

Nizhoni Hodge

Coeur D'Alene Casino Resort Hotel
Worley, ID

John Krpan

Gallaudet University
Laurel, MD

Ennis McCrery

Virginia Tech
Blacksburg, VA

Vagner Ribeiro

Banco Itau
Jabaquara
Sao Paulo

Daniel Riordan

American Red Cross
Washington, DC

Patrick Robardet

Commission Scolaire de Montreal
(Montreal French School Board)
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