



# Tales From the Front Line of Ombuds Work: Handling Sexual Harassment Cases

## ABSTRACT

Twelve anonymous organizational ombuds tell true stories of their experiences assisting employees and students with sexual harassment concerns and reflect on their professional practices. The authors omit or alter unessential details to protect the identities and confidentiality of the people and organizations involved.

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## **1. A VOICE RISES AGAINST SEXISM**

“Well, what did he say?” I asked, in a follow up phone conversation with an undergraduate student who had recently complained to her departmental chair about inappropriate sexual comments made to her by one of her professors. She paused for a second before answering.

I could hear her draw a breath in, and with a mixture of both anger and trembling in her voice she said, “After I told the chair what the professor had said and done to make me feel uncomfortable, the chair said, ‘Well, at least he has good taste.’” I don’t think in my life I have ever done this before, but I did my first facepalm when hearing that response.

About a week or so prior to this conversation, the student had approached the Ombuds Office. She was afraid to talk because she did not want anyone knowing about the situation. I explained our principle of confidentiality and that our office was not a mandated reporter, and so what this meant was that unless there was a threat of harm to someone, we did not have a responsibility to report anything. Up until this point in the conversation I did not know the nature of the issue, but her discomfort was obvious. I reiterated that my focus was on providing a space for people to decide what to do in their situations and that I wasn’t there to judge or blame anyone. I often mention that I’m not there to attribute blame because that’s not my role, and perhaps more important, being judgmental won’t help the person reaching out. She seemed to relax a bit more, but she wasn’t sharing yet.

Over the years I’ve concluded that many individuals experiencing sexual harassment sometimes blame themselves and are afraid others will judge them and grill them (for example, what they were wearing, whether they were drinking, whether they had been flirting, whether there had been a prior intimate, romantic or sexual relationship with the person). I am aware, as an ombuds, that *any* individual contacting us might have a sexual harassment issue and as such, I know to be sensitive as to what I say, how I say it and how I invite the individual to trust in me. It wasn’t lost on me either that I inhabited a male body and she was a female. My intuition told me that she wasn’t yet comfortable with me or the office, and if this was indeed a sexual harassment issue, she might not at all be comfortable sharing her problem with me. Since my Ombuds Office does not have ombuds of different genders, orientations, and races, in this moment all I could do to make her comfortable was to rely on my words and sincerity. I explained to the visitor that she didn’t have to provide names or details of what happened, and that she would only be listed on our intake sheet as “anonymous.” I reiterated my invitation about her only needing to share information to the extent she felt comfortable sharing. This seemed to alleviate her hesitation in talking with me. By then I hoped she felt that she was in charge of the conversation and this was her story to tell.

When a story pours out it isn’t always clear if it is going to be short, concise, and linear or whether it will weave in and out. Here, it was the latter. She shared her excitement about the opportunity to learn from this professor whom she had looked up to, and wondered in retrospect whether she had led him on in some way. She felt guilty that she hadn’t spoken up initially when his comments, and looks, began. She had approached him during office hours when there was no one else to witness what had happened, so she wondered if maybe she was to blame.

The professor told her that he wished he was younger because she was a “heart breaker” and he would have been willing to take that risk if he were younger. She didn’t respond to this first comment. She thought perhaps she overreacted in her mind, she explained. The second time she went to office hours, she was wearing a red sweater. He looked her up and down and told her she should wear red more often because it went with her blonde hair. She worried that this

comment was her fault; her sweater was tight-fitting and red did make her more noticeable. She told me repeatedly that the situation had not felt right. Uncomfortable moments would happen, and then quickly everything would be professional again. The final straw was the last visit she had with him. As she was leaving the meeting, with her back to him, he patted her on the shoulder. And then a stroke on her shoulder. She did not turn around, did not say anything, just left. And now, she didn't know what to do.

We talked about the situation and I shared information about policies that might apply. Here, I shared the sexual harassment policy. Part of the definition is that the behavior, the sexual advance, needs to be "unwelcome." She felt bad that she hadn't expressed to the professor her discomfort. We talked about her options. I asked what she thought about approaching the professor and communicating what she had experienced. I asked whether she wanted me to facilitate a conversation. I suggested she could draft a letter to the harasser in which she could explain her discomfort, ask for the behavior to stop and articulate what she expected in future interactions.<sup>1</sup> None of these ideas resonated with her.

As we talked it became clear that one of the power dynamics (he a professor and she a student) made her believe that he wasn't going to voluntarily change. She felt that he needed to be held accountable, so we talked about her ability to report the situation to the Title IX director. In the United States, Title IX of the Educational Amendments of 1972 (*20 U.S.C. §1681 et seq*) refers to the law that protects people from discrimination based on sex in educational programs that receive federal financial assistance. I reiterated that our Ombuds Office was not an office of notice and as such, we would not report her situation to the university. She didn't want to become embroiled in an investigation, so we explored the idea of her approaching administration to talk about the situation. There was still the possibility that administration, the department chair in this case, might report the situation to the Title IX director, but she was willing to take that risk. And so initially, she left the Ombuds Office with a plan. She felt better and optimistic that perhaps if the department chair – someone with some authority – talked to the professor he would just stop.

Her optimism was gone a number of days later as she updated me during our phone conversation. "At least he had good taste" she repeated. These were the words the departmental chair had uttered when she had confided in him her experience. So the student and I talked some more. What now? Now, she was angrier. She wanted accountability. She didn't want this happening to others. She wasn't now as concerned about her grade; she would demand someone else grade her exams and projects. And so, she did not hesitate to report the situation to the Title IX director.

Last I heard from her she was happy with the outcome.

A semester or so later, I learned that this specific department had professors that, going decades back, reportedly hosted parties where the lines between faculty and students were often blurred. The parties had stopped years ago but apparently, the culture within the department was still questionable and, sadly, this student's situation was one of many indicative of a systemic problem. I was never sure if this particular student's decision to make a report caused the department to become more accountable, but I'm certain her situation made the institution take note.

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<sup>1</sup> Since 1973, Mary Rowe has recommended offering to targets of sexual harassment the option of drafting a letter to the perpetrator as a possible way of helping offended individuals to prepare for and choose the next steps that seem right to them. Rowe, M. T. (2018). *Ideas to Consider If you Have Been Harassed*. [Working Paper.] <https://mitsloan.mit.edu/shared/ods/documents/?PublicationDocumentID=4594>:



Looking back at the situation, what I learned as an ombuds is that sometimes those who have the power to hold others accountable don't effectively execute their responsibility and might even need to be held accountable themselves. Additionally, I saw how the confidential, non-judgmental space created by an Ombuds Office can help visitors find courage when the institution's system has initially failed them. I witnessed a shift in my visitor from someone who was disempowered and questioning whether she had done anything wrong to a more empowered individual who was angry, and in that emotion, found the motivation to resist her injustice.

## **2. SUPPORTING A CONSIDERED RESPONSE TO HARASSING BEHAVIOUR**

The #MeToo movement has had a far-reaching impact, providing a much clearer understanding of sexual harassment in the workplace, as well as highlighting the complexity of this issue. In this narrative I explore the role of the ombuds in supporting a young female staff member, whom I shall call Mary, as she tries to respond thoughtfully to the unwanted attention of a senior male colleague, whilst navigating her way through some of these complexities.

By way of background I am an ombuds in an organisation of less than five thousand employees. I practice according to the IOA Standards of Practice and whilst I am not subject to statutory mandatory reporting requirements in my jurisdiction, it is policy that the head of the organisation is made aware of all formal sexual harassment complaints.

Over the last couple of years my organisation has been active in improving its response to allegations of sexual harassment by reviewing policies and procedures, strengthening formal processes, and raising awareness internally about the issue. There is what I would describe as cautious optimism, as well as a realistic appreciation that significant work still needs to be done to improve the experience of victims who want to raise concerns about sexual harassment.

Mary approached the Ombuds Office at the beginning of the year to discuss concerns about a senior male manager who was not her direct line manager, but someone whose work closely intersects with the work of her team. She explained that at a work Christmas party she found herself in a long, social conversation with the manager. She detailed that the conversation included them both talking in some depth about aspects of their personal lives.

Mary indicated that she had reflected a great deal upon the nature of the conversation and was disappointed in herself, describing herself as 'naive' for not picking up on the cues concerning the 'intimacy' of aspects of the conversation. She further thought that she should have realised the potential for the conversation to be misinterpreted by her male colleague.

Since the Christmas party the senior manager displayed significant unwanted attention towards Mary, both in the work environment and in attempts to meet with her outside of work. She detailed work meetings which the senior manager attended, but which were only marginally related to his responsibilities. She further described how the manager would direct all his work-related queries through her, even though there are more appropriate people to direct his queries to. Because Mary is the most junior member of the team, all her colleagues have more seniority and experience than her.

Mary further detailed attempts by the manager to schedule meetings with her to talk about 'work' related matters or to initiate small projects that they could work together on. The manager was also turning up in different areas of the workplace, the tea room and the cafeteria, attempting to strike up a social conversation. This behaviour had spilled over to outside of work, with the



manager attempting to initiate a dialogue through Mary's social media accounts as well as inviting her to meet up outside of work hours.

As Mary became increasingly uncomfortable about the situation, she described her attempts to try to avoid being in situations alone with the manager, as well as politely declining his offers to socialize. As the manager's behaviour continued, Mary reported that she spoke more directly with him, advising him that she was not interested in anything other than a professional relationship, that she only wanted to relate to him about work related matters and that she wanted him to cease contacting her outside of work.

Following that more direct conversation Mary received an invitation from the manager to meet up outside of work to discuss these matters further. It was at this point that she approached the Ombuds Office, frustrated and upset that the manager was not listening to her, and very uncomfortable that these behaviours appeared to be escalating.

Mary advised the ombuds that she felt anxious, trapped, alone, and confused about what to do next. She explained that she had to be particularly careful about who she discussed this with, as the manager was experienced and well connected whereas she was junior, inexperienced and had only a small network of connections. Mary acutely felt her vulnerability. She wanted to be reassured that the ombuds understood her predicament and that the office would treat issues of confidentiality seriously.

My approach at the beginning was to focus upon listening to Mary empathically and without judgement. I endeavoured to create a safe and respectful environment where she felt that someone understood her experience, could connect with her feelings, and treated her concerns seriously. I wanted to create an environment that enabled Mary to tell her story in her words.

I was also very mindful to understand and explore the impact that this was having upon Mary. I am aware that victims often present in a high state of distress, and that responding to their emotional needs at the outset helps them to settle and enables them to tell their story in a thoughtful and considered way. I was also conscious of ensuring that Mary had adequate resources, both professional and personal, to manage the emotional impact upon her.

One of the dynamics I am aware of in sexual harassment matters, is where a victim feels responsible for what has occurred. When Mary described herself as 'naïve' and berated herself for not realising in the moment what was occurring with the manager, I gently supported her to reflect upon the power differential and her description of him as an experienced senior colleague, a manager, a husband, and a father. I wanted her to think about the fact that each of these roles conveyed a range of responsibilities for him.

Mary was further frustrated with herself, believing that it was a failure on her part that she could not get the senior manager to stop his pursuing behaviour. She also tried to take responsibility for the fact that the situation appeared to be escalating. I encouraged her to think about what was in her control, emphasising that she had taken assertive action to make her wishes clear and that she was limited in what she could do if the manager was not open to listening to her.

Mary was confused, lacking in confidence and apprehensive about what to do next. At this point I engaged with her around the options open to her. I was aware of the importance of not only ensuring that she felt in control of the direction that she wished to take this matter, but also that she had a realistic understanding of the pathways for resolution. To ensure this I explained to her that at times the organisation's rhetoric and good intentions did not match the reality of the experience of people, particularly for those who decided to use the formal complaint mechanisms.



I explored with Mary the option of making a formal complaint in some depth, including what the process entailed, how it works generally and how it might work given the issues that she wanted to raise. This exploration included consideration of subtle issues around power and influence, including the manager's seniority and connections and Mary's significant concerns about the potential impact upon her work life and longer-term career.

From the outset Mary was very clear that she did not want Human Resources involved, nor did she want to make a formal complaint. Part of the reason for this was that she did not want the head of the organisation to be aware of her concerns. Nor did she want to damage the manager's career or undermine his personal relationships. Her desired outcome was that the manager would listen to her and stop the unwanted attention.

I explored with Mary some informal pathways that may enable her to reach that outcome, including whether and how she could communicate further with the manager or begin a discussion with a more senior manager. I also discussed the role that the ombuds could play in either talking directly with the manager, or with more senior management.

While I took some time to explain how I would approach a direct conversation with either the manager or his superior, Mary was of the strong view that direct intervention by the ombuds had an undesirable potential to escalate matters. She held this view because while the Ombuds Office is informal, it has a standing in the organisation as an office of some importance, and any ombuds intervention was treated seriously. Whilst I respected Mary's concern and her assessment in relation to this issue, I would probably have explored her concerns in greater depth if the circumstances of the harassment that Mary had experienced had been different.

Mary decided that the option that she felt most comfortable with was to send a strongly worded email to the manager. She also wanted to develop strategies to confidently respond to him if she did find herself alone with him, or if her work called for her to be in close proximity with him on tasks. I felt that this was a considered, realistic, and proportionate response.

I assisted Mary to draft an email that detailed clear boundaries around work roles, including emphasising again that she did not intend to have any contact with the manager outside of the work environment. The email also suggested that if there was any aspect that the manager was unclear about, she would be comfortable to have a clarifying conversation about this facilitated by the Ombuds Office. Whilst Mary did not expect that the manager would take up the offer of the clarifying conversation, she wanted him to know that she was serious about her concerns and that she was prepared to escalate the matter if his behaviour continued.

I raised with Mary the possibility that the manager might get angry about including the option of engaging the Ombuds Office in her email; however, she did not believe that this would occur. Indeed, she thought that mentioning the Ombuds Office in this way would convey to the manager that she was aware of the office and prepared to use it should the behaviour continue. She thought it would also imply that she may have already consulted with the Ombuds Office, and more generally that it would convey to the manager the importance of responding constructively to her concerns.

I further coached Mary and undertook role plays to build her confidence about how she might respond to situations where she came in close contact with the manager. Following these role plays she indicated that she felt more confident to be able to respond in a measured, thoughtful, and more assertive way should this occur.

I followed up with Mary two months later and at that time she was happy with the outcome of the intervention. She reported that she had not heard further from the manager and that she felt the



strategies that she had implemented had worked. I believed that the ombuds intervention had been successful and was comfortable enough to close the case.

More recently Mary revisited the Ombuds Office, anxious that a vacancy for a manager had arisen in her work group, for which the senior manager was eligible to apply. She was concerned that if he did apply and was successful, that this would have a significant impact upon her safety, wellbeing, and career. Despite what I thought was a good initial outcome, Mary's return brought home to me the fact that informally intervening in sexual harassment matters can leave a victim vulnerable to further unwelcomed behaviour.

Consistent with my initial approach, I spent time listening to Mary's concerns, acknowledging her fears, and supporting her to think about her options. The options open to her were the same as when she first presented, including formally or informally taking her concerns further, with the support of the Ombuds Office. Some important new issues for her to consider were the fact that the manager had respected her last communication with him, and that there were a number of unknowns in relation to whether the manager was actually interested enough to apply for the role. Should he put in an application then he would be required to go through a merit-based interview process in which he may not be successful.

During these discussions I understood that an important part of my role was creating a containing environment to enable Mary to sit with the tension and anxiety of the current situation, and to think clearly about this new set of circumstances. All throughout this time I was conscious about what her response to this situation told me about her anxiety state and of the importance of ensuring that she had adequate resources and support from outside of the office to support her in managing her anxiety.

Mary was able to think clearly about the various scenarios and her options to respond to them. The containing environment enabled her to decide to wait to find out whether in fact the manager applies for the position and that even if he does, to wait upon the outcome of the recruitment process. Should the manager end up in the role then Mary and I agreed that we would meet again to consider her options.

Part of the complexity in Mary's matter related to the nature of the harassment that occurred. Much of the behaviour was nuanced and could be denied, deflected, and defended through the current bureaucratic and legalistic processes. Should she have made a formal complaint and the harassment was found to have occurred, it realistically would not have been found to be behaviour that would result in the dismissal of the manager. For Mary this would probably mean that a formal complaint would result in a pyrrhic victory leaving her to try to continue her career working near the manager against whom she had made a formal complaint. This would be very uncomfortable and have left her incredibly vulnerable.

To make an informed decision about different courses of action, victims deserve not only a realistic understanding of how formal processes operate, but also an awareness of what some of the research tells us about the experience of people who initiate a formal complaint about sexual harassment. The complexity of providing this type of information is that those who are responsible for formal complaint processes might consider that these conversations discourage the making of a formal complaint. Visitors might also believe that the ombuds is discouraging them from making a formal complaint.

I understand how these beliefs can arise and believe that this speaks to the tension for ombuds between the desire for justice, anger about the abuse of power, and the need to protect victims from the complex, challenging, and imperfect system. Whilst I believe that formal complaint processes are an important part of a comprehensive organisational response to sexual

harassment, they are not a constructive option for many situations that visitors present with. Given this, the approach to ensuring informed consent prior to a victim undertaking a formal complaint process should be approached thoughtfully and with these risks and tensions in mind.

If the visitor chooses to take formal action, there is a critical role for the ombuds to not only promote due process, but to ensure that victims are protected from negative consequences associated with exercising their rights, including retribution and reputational damage. These are significant challenges for ombuds to consider when supporting a considered response to allegations of harassing behaviour.

### **3. WHEN THE END IS NOT THE END**

I can easily recall over a dozen Title IX-related cases that I have dealt with since coming to the university that currently employs me. It is a large, public institution, and my Charter with the university allows me to practice under the standards of the International Ombudsman Association (IOA). I am exempt from being a mandated reporter based on my institution's Title IX policy.

I have been visited by alleged victims who were reluctant to report for fear of retaliation, those who wanted to understand the extent to which a formal investigation would be intrusive, and others whose relationships were at some point consensual and they feared that there may be repercussions for that. Most of my Title IX-related cases, however, have come from those responding to allegations. Many of them felt that the investigation process was unfair. Some were provisionally sanctioned (no trespass order, removal from all or some part of campus, etc.) and felt that was unfair since they had not yet been provided due process. Many respondents felt that investigators and other university personnel were too quick to believe the alleged victim.

While most of the respondents who visited my office were men responding to the allegations of women, I have also met with a male visitor who was responding to another male student's allegations of sexual assault and one male who complained that a female student was harassing him. My institution is very diverse, but most of the visitors who have come to my office with Title-IX-related cases were white. I can think of three who were of color and two who were international students.

There was one particular case where I felt most helpful in my role as Ombuds. Because I believe it allowed me to engage directly in a way that was especially effective as an ombuds, I chose that one for this narrative.

A graduate student scheduled an appointment to see me about an issue he was experiencing with his program. When he arrived, I shared my opening statement to be sure he understood the confidential and informal nature of our meeting, and then he began telling his story. He was in a small academic program, and he had been accused of sexually harassing and assaulting another student with whom he had once lived. The formal investigation, which took months to complete, had been grueling for him. He was issued a no contact order and was forced to stop taking courses while investigators looked into the allegations. He was clearly still quite affected by the allegations, and he assured me again and again that he had not done anything wrong. While the investigation was underway, he lost weight, sought mental health counseling, and spent thousands of dollars seeking legal help. Because of the size and nature of the academic department, faculty and other students were well aware of the allegations, and many of them had taken sides with one student or the other. Emotions were highly charged, lines were drawn, and relationships across the department were damaged.





Eventually, the investigators determined that there was not enough evidence to support the allegations, and my visitor was cleared of fault. He was grateful for that – for those who conducted the process – and he looked forward to returning to classes and completing his degree. The “no finding” outcome released the no contact order, which likely was not a concern for the alleged victim since, during the time of the investigation, she had graduated from the program.

Once the Title IX office issued its findings, my visitor was cleared to return to his program. The first event he attended was a “lunch and learn,” where many of the program’s students and faculty met in one room to listen to a guest speaker. My visitor told me that he was very nervous about returning, but he was also eager to move forward. As he sat in my office, he described the palpable discomfort he experienced when he walked into that room.

Soon after, a senior administrator from his academic program wrote him an email and told him that he should not return to campus except to meet with his faculty advisor and that, when he did decide to return to campus, he should let that administrator know. The administrator noted that the student’s presence on campus was unsettling to many, and that their role as an organizational leader was to make sure others felt safe. One of the junior faculty members learned of the communication and suggested the student visit my office.

As an ombuds, it really was a fascinating place to be engaged. Because of the informal nature of my office, there would have been little I could do while the investigation was taking place; however, at the time of his visit, there was no formal process underway. I was able to simply listen (for a long, long time), and then help him understand next steps. It became clear, throughout my conversations with him, that his desired outcome was to complete his academic program and restore the trust of his colleagues and faculty. While I spent many hours coaching him through the latter, there were immediate actions that could be taken to address the former.

I asked him if he was comfortable asking the Title IX investigator about any lingering sanctions, but he shuddered at the idea of engaging with that official again. He asked if I would be willing to ask on his behalf. I reminded him of the informal nature of my role; I do not want visitors to assume I can intervene and “fix” their problems in this role. I ultimately agreed to call my colleague in that office to find out if there were any restrictions on his engaging with the university.

Of course, in asking the Title IX officer about the outcomes associated with his case, I revealed my involvement. The officer and I had already established a positive working relationship, so they expressed neither surprise nor offense in response to my questions. The officer confirmed that the case had been closed and all provisional sanctions had been lifted. The student was free to resume his normal activities.

During a follow-up visit, I informed my visitor that the university had placed no restriction on his ability to engage and that, if he were further sanctioned for any reason, he would once again receive due process. He wanted me to explicitly say the senior administrator was wrong and that he was permitted to visit campus at any time. Instead of confirming his suggestion, which could have sabotaged the trust of university leadership and compromised my impartiality as ombuds, we discussed options:

1. He could choose to stay away from campus as much as possible. He can’t control the perceptions of others and, if attending events on campus was unsettling to him, he may consider focusing on keeping himself well and disengaging in any events or activities that could exacerbate his anxiety.
2. He could confront the senior administrator directly. He could reply to their email or ask for a meeting and explain that he has confirmed that there are no restrictions, no sanctions,



and that he looks forward to returning to campus now that the investigation is over. I recognized the power differential and the perceived risk associated with appearing to challenge a senior administrator. I also tried to help him imagine a conversation that would be productive and helpful rather than challenging and disruptive.

3. He could report the senior administrator to the Title IX office. Those officers would have the authority to confront the administrator directly and then also monitor the administrator's further engagement as it related to his case. His reporting through the office would create a record, and at that point, there were benefits associated with creating a trail of action. We also discussed the risks of (perceived) retaliation if he "told on" the administrator. He had hoped to pursue a Ph.D. in the discipline and valued the support of the senior academic leader. We discussed how the Title IX office may be able to protect him from retaliation, as well.
4. I could contact the administrator by phone and have an offline conversation, expressing the visitor's concerns and helping the administrator to understand due process. This would, again, breach confidentiality – the administrator would know that he spoke with me. We discussed the risks associated with that, but also the benefits of allowing the leader to respond appropriately in a way that did not involve formal authorities.

In the end, the visitor and I addressed this using a combined approach. Before he reported the email to Title IX, he asked if I could inform them of it to see what they thought. The sheer notion of going back to that office created visceral fear in him, but he recognized that he may need more formal support in case the administrator (or other faculty) retaliated. Since the Title IX officer already knew I was involved, going back to them seemed low risk.

I visited the officer in a face-to-face meeting and let them know about the administrator's communications with the student, restricting him from access to campus, faculty, and events. I informed them of the options that the student and I had discussed, and I let them know that they might anticipate communication from him. I told the officer that the student was unsettled by the notion of re-visiting the Title IX office, and they understood. The officer offered to reach out to the student, hoping that may alleviate some of his anxiety, but we agreed that we would reserve his right to initiate a conversation if he chose to.

The student sent an email to the officer asking for a face-to-face meeting, and they scheduled it immediately. The Title IX officer contacted the academic administrator and let them know that they could not issue sanctions based on behavior that had already been reviewed in the hearing.

At some point, the academic administrator called me. I assume they learned of my involvement either from the student or from the Title IX office. In any case, it was an informal conversation, and I welcomed it. The administrator discussed their own conflict in feeling the need to protect their students and faculty without unduly restricting the student's freedom. I assured them that the university was supportive of their concern and encouraged them to report any inappropriate conduct (not perceptions) that were disconcerting to faculty or students.

The senior administrator withdrew the restrictions that they imposed, and the student has been granted free access to campus facilities. To my knowledge, there have been no further incidents.

I do not know what would have happened to this visitor if the ombuds office were not an option for him. He felt afraid and powerless, and he did not perceive the university as an ally. By providing impartial, informal, confidential space to ask questions, the visitor was able to navigate a reasonable outcome and successfully progress in his academic program. The university was also able to avoid the potential loss of additional resources such as time, money, and institutional reputation. I believe it is in these uneasy, nuanced spaces that ombuds should feel most valuable to their visitors and their organizations.



#### **4. YOU'RE NOT ALONE...UNLESS THAT'S WHAT YOU WANT**

When I answered my phone, I was met with a whisper. The voice on the other end was so soft my body leaned forward in order to listen more intently. Elizabeth (not her real name) was obviously trying to be as clandestine as possible, and the tinny reverb that accompanied her words gave me the impression that she was perhaps calling from a stairwell or a restroom. Many times, when people call the ombuds office to schedule an appointment, they do not resist the temptation to begin telling their story; however, it was obvious that Elizabeth only wanted to handle the logistics of scheduling an appointment and hang up as quickly as possible. Sensing this, I obliged and we agreed to meet the following day.

“Oh wait, there was one thing...”

“Sure, what is it?”

“Does your office offer appointments only during regular business hours?”

It turns out Elizabeth wanted to meet after business hours not feeling able to leave her desk in the middle of the day for an extended length of time. This was another context clue of her fear or nervousness, and we agreed to meet at 5:30 the following day.

I begin every one-on-one visit with a description of the ombuds office which includes an explanation of the ombuds confidentiality, independence, informality, and impartiality standards of practice. The confidentiality and informality standards seemed to interest Elizabeth the most. I could see her relief when she heard that I would not reveal the fact that she was meeting with me or anything said to me, and that the office's informality meant that there was no record of the meeting and no paper trail connecting her to the ombuds. She would later tell me that hearing those two pieces is what allowed her to feel safe enough to say things she hadn't said out loud to anyone before—not even her partner or her close family or friends.

Elizabeth was experiencing severe and pervasive sexual harassment at work from a male colleague senior to her but not in her line of reporting. Ronald (not his real name) was a long-time and well-respected person in the office, and he held significant amounts of positional authority and social cachet at all levels.

Elizabeth described a series of events starting out somewhat banal and escalating over time. While her guard was raised from the very first event, she had reached her tipping point after Ronald crossed “the physical line” by grazing her buttocks with his hand while “squeezing past her” in the office break room. She froze. She ran through all the things she wanted to say to him; she thought about #MeToo and all of her feminist friends and family who would want her to confront Ronald and tell him that his behavior was vile and wrong. But she froze. She didn't say anything, and she watched in silence as Ronald walked away with a smug look on his face.

Over the next few days, the shame of her non-response would consume her. She was afraid to tell her partner about what happened. She didn't want to say anything to her co-workers, and she didn't trust Human Resources (HR). She wasn't currently seeing a therapist, and she didn't want to go to her friends and family for fear of being gaslit, being told what she should have done or what she should do now, or being blamed or judged.



Elizabeth knew about the ombuds from a training she had taken where she heard the line, “where to go when you don’t know where to go.” She cried a lot in our time together, and as our visit ended, she thanked me for being able to “wring myself out” of the fear, shame, and anger that had built up like a plaque over the course of several months. She left with an interim plan of reaching out to a trusted co-worker first and scheduled a follow-up visit in a week to work out a broader plan on how to move forward.

The phone rang again several days later. Janet (not her real name) wanted to schedule an appointment and mentioned that she was referred by a man named Jeffrey (not his real name). Jeffrey happened to be the name of Elizabeth’s friend, the one she had planned to speak with regarding Ronald’s behavior. This connection was confirmed when Janet described that someone in her office named Ronald, a manager above her in rank but a man to whom she does not report, made inappropriate comments to her of a sexual nature. Janet, however, made no mention of Elizabeth, and I did not say anything in accord with the confidentiality protecting my visit with Elizabeth.

Stephanie (not her real name) was the third person to visit with me with regards to Ronald. Her relationship to Ronald was identical to Elizabeth’s and Janet’s, however, Stephanie’s grievance was with HR’s non-response to her report to them. In contrast to Elizabeth or Janet, Stephanie had initiated a formal complaint process and was “pissed” about how it was going. She wanted justice, and she wanted to meet with an ombuds to figure out what justice looks like and how to go about making it happen.

One of the exceptions to ombuds confidentiality is when a visitor provides express, written permission for the ombuds to reveal anything discussed in a visit. Stephanie took me up on this exception and gave permission for me to disclose her visit with me to other people who have met or will meet with me, and to describe her being a victim of sexual harassment from Ronald.

Stephanie’s permission was granted just in time for my follow-up visit with Elizabeth. Elizabeth told me she had discussed her situation with Jeffrey, which she said was easier than she had expected because she had the chance to say it to me first. Jeffrey said he had heard similar things from at least one other person to her surprise (but also not to her surprise), and that maybe they should all get together and talk.

I told Elizabeth about Stephanie, and she told me she had talked with her the day before. She also connected with Janet and two other people whom Stephanie had known. After exploring some options, Elizabeth decided that the next best step would be for all five women to come as a group to the Ombuds Office to have a safe, confidential space to compare stories and work out what to do next now that they all knew about one another.

The following week, I greeted five women into the office, reiterated the ombuds standards (this time placing extra emphasis on confidentiality), and facilitated a conversation where these women who didn’t or barely know one another were able to connect through their shared experiences.

After some time, the conversation shifted to “So, what do we do about this creep?” Stephanie proposed a public shaming. She was, in her own words, “out for blood.” She wanted to post on social media, go to the paper, speak as a group to the executive committee and the director of the office, and file every possible formal complaint including considering lawsuits. The other women agreed that they wanted to do something, that they felt empowered as a group and especially with Stephanie’s verve, but hesitated on creating too many waves too soon. When the meeting ended, the group had not reached consensus on what to do next.



I intervened to encourage the group by mentioning that consensus didn't need to and often does not happen immediately. I acknowledged that this was their first substantive conversation as a group and that they may all be at different stages of processing what has happened to them. I proposed a plan: I asked each of them to meet with me individually to explore the question, "Now that you know other people have experienced something similar to you, and now that you know what some in the group want to do in order to move forward, what would you like to do?" I warned them that this proposal would slow things down, but they all agreed to have the individual visits. We discussed how they would stay safe during the process of the one-on-ones and other interim agreements and strategies.

Over the next several weeks, I met with each person to explore their answers to the aforementioned question. Stephanie was resolute and remained true to her desired courses of action. The two people Stephanie knew were on-board with her plan. Janet said that with Stephanie's strength, she too would have the strength to "go public with everything." Elizabeth, however, felt differently. She expressed gratitude for the group and appreciated knowing she was not alone, but she now felt burdened by a new set of duties and expectations. She didn't want to be "a wet blanket" on the group, and she was combating peer pressure to move forward in a way that "feels like someone else's fight." In confidence, Elizabeth said to me (but more to herself) that she wanted to move forward more quietly. Even more than that, she expressed that she wanted to move forward independently. She expressed concern for upsetting the others, and she didn't want to appear as if she was abandoning them. She felt deeply connected with these women and their experiences, but that was separate from how she wanted to figure things out for herself.

Elizabeth and I spent the rest of our visit working out strategies on how she would communicate her feelings to Stephanie and the others. We workshopped an email where she could simultaneously express solidarity and explain why she was going to go a different route. I reminded her that she could take advantage of the ombuds to invite the others or even Stephanie individually to have a difficult conversation, but in the end she left with the confidence that she could handle it on her own.

Elizabeth concluded our visit with a slight smirk, bemused at this unpredictable "ending." She had always envisioned that she would "be more like a Stephanie," but as soon as she saw that she realized she wasn't. She learned that the complexity of life events isn't binary, and that she can be independent and supportive at the same time. She thought she would find absolute solace in the company of others, and while she felt some, what she realized in the end was that she had everything she needed within herself and was now ready to rely on her inner voice to guide her.

I never heard from her or any of the women again.

Several months after my last visit with Elizabeth, the president sent out an email to the entire office announcing Ronald's departure from the company, thanking him for his service, lauding his talents and accomplishments over the years, and inviting everyone to a reception in his honor.

Part of the difficulty of the ombuds role is not knowing how things end. And part of the frustration of not being a part of the ending is questioning if the boundaries of the ombuds' Standards of Practice makes us complicit to the misdeeds of others and the baffling inactions of our institutions with regards to keeping bad actors accountable. I think of a quote authored by John Stuart Mill: "Bad men need nothing more to compass their ends, than that good men should look on and do nothing."

I felt my service to the women victimized by Ronald was to help them find their voices and determine how to use them—the words, the volume, the timing, and the timbre of their voices. But what about mine? Upward feedback perhaps? Promoting systemic change in some way? The

typical channels through which ombuds have voice all seemed so...indirect. Meek, even. Hiding behind informality and neutrality felt like the “nothing” of which Mill wrote.

The company leadership, I’m sure, felt pleased with the outcome. Ronald was gone. Nothing went public. An open-and-shut case. Who knows how the women felt. Sure, Ronald was no longer working with them, but the thoughts and emotions of post-harassment experiences are complex and layered. And what of Ronald? Does he simply get to move on to his next job suffering only a relatively minor inconvenience of finding a new job? Is that fairness? Or justice?

As an ombuds, just like with knowing how things end, the answers to those questions will continue to remain unknown and unresolved.

## **5. CAVEAT MENTOR**

As an ombuds, I pay careful attention to my personal subjective reactions to the people with whom I interact in my role. Even while I am listening carefully, at another level of consciousness I ask myself questions: Is my body tense or relaxed? Am I receptive or skeptical? Is my first reaction to like or dislike the person? Is it easy to listen to them or is my mind wandering? Am I eager for the person to finish or am I patient and willing to follow their discourse wherever it is going? How does their identity – race, gender, sexual orientation, age, etc. – affect me and how I respond to them? This is one useful way to identify my biases, ferret out feelings that could affect my interactions with the person. It also allows me to evaluate critically whatever thoughts I have about how to proceed with the case. Am I giving them a fair shot? I also try to consider how I would handle the case if I were a different person. Sometimes, if I do not feel I am connecting well with the person, I ask this even during our initial meeting. With others these questions do not arise until after the session. I pay attention to that difference because it may tell me something about my feelings about a person. This type of question-based self-reflection is necessary if I am to treat people fairly. I always have subjective reactions to people, and I don’t let myself pretend that I don’t. For me being conscious of these reactions is the best way to keep them from biasing how I interact with others. If I am conscious of my reactions, I can at least try to control them. I don’t believe impartiality and neutrality are actually achievable, but aspiring toward them is essential. That aspiration allows me to self-correct as I work on a case.

I’ve been an ombuds for a long time and worked with just about every sort of issue you can imagine, and a few that you probably couldn’t imagine. Among the most challenging, interesting, rewarding, and painful are sexual harassment cases. Having spent a considerable part of my ombuds career in universities, I have handled hundreds of sexual harassment cases. Almost always they have a deep impact – these are not the cases I forget about when I go home at the end of the day. These are the ones I can’t stop thinking about, that wake me up in the middle of the night. Interactions with people involved in sexual harassment cases (both harassers and victims) are among the most intimate, evocative, and painful connections one can experience while in the ombuds role. Sexual harassment cases, as well as cases that involved allegations about racism and discrimination, have elicited the most intense and ongoing self-reflective questioning of the sort described above.

Of course, at times enhanced self-consciousness can create problems by itself. This happened to me with a sexual harassment case. A female graduate student called for an appointment with me. She hadn’t wanted to identify the issue on the phone, which was perfectly fine. Many people who come to an ombuds don’t want to say what it is in advance of meeting face to face. Sometimes it’s because they want to get a measure of the ombuds before deciding whether and what to reveal. When the student arrived at my office a few days later I was immediately taken by how beautiful she was. Not beautiful in a Hollywood way, but rather without self-consciousness. This was not exactly the best beginning to working a sexual harassment case; the ombuds, struck by the appearance of the woman who had been harassed. But my practice of self-reflection allowed





me to be conscious of my feelings, admit to myself, with some embarrassment, to having them and put them aside. Fortunately, there was no indication that my private reaction to her was visible because she described her situation without hesitation and we very quickly got into an extended, honest discussion. Her story was compelling and, in the same way I had learned to push aside negative reactions to people I found myself disliking, I focused my attention to what she was saying.

It was clear from the beginning that she was mature (mid-30's), articulate and very committed to her program of study (Literature) and deeply engaged in her dissertation. The situation she described was not all that unusual in my ombuds practice or in the experiences of fellow ombuds in the academic world. But it was still a challenging case. Her Ph.D. advisor, a major scholar and literary figure in her field of study, wanted a sexual relationship with her. He had made that clear, although mostly indirectly. She was not at all interested in him sexually, but she said she found him otherwise to be an excellent advisor and very much respected his scholarship and his writing. When she finished her account of her situation, I described to her the full range of options available to her under the university sexual harassment policy, explained how the process of bringing a charge worked, and presented alternatives such as a facilitated discussion or mediation with her advisor (I had lots of experience facilitating such discussions and conducting mediations). She knew almost immediately that she did not in any way want to pursue bringing a charge either formally or informally. She was also adamant that she would not participate in a direct conversation with her advisor, even if it was mediated. She felt that if the advisor learned she had spoken with someone else about the situation he would end their working relationship and possibly retaliate. We also talked about possibly switching to a different advisor, either at the same university or even at another university where there might be a faculty member with similar academic interests. Neither of those options was appealing. She wanted to continue working with her advisor and to complete her dissertation.

But describing the options we discussed and the policies we reviewed doesn't give a full sense of what that meeting was like. In the course of her account of her academic work I asked about her dissertation topic. When substantial matters are at stake, I always ask faculty and graduate students about their academic work because it reflects their interests and how they think. As it happened, I knew a bit about her area of study, so we were able to talk about that too. It was a good connection, and I came away with a fuller understanding of why she wanted to stick with her advisor even with all the complications raised by his interest in her sexually.

Toward the end of the session, we developed a strategic plan for how she would handle interactions and communications with her advisor. She indicated that she was well practiced in deflecting men's advances but, in this case, she wanted to maintain the relationship while managing his expressions of interest in her. I asked her to describe situations where he was more attentive to her work and less likely to come on to her. It turns out he was genuinely interested in her research topic and enjoyed extended discussions about various complexities of literary analysis. Together we decided to focus more on those positive interactions and to sidestep his propositions. The plan we developed was straight-forward: Before meeting with him she would identify a topic or problem that she wanted to discuss. At the beginning of each meeting with him she would bring up what it was she wanted to discuss. Also, she would abbreviate discussion of personal matters with him beyond the usual social niceties of inquiring "how are you doing." If he began to question her about goings-on in her life, she would provide only the most cursory answers and shift as quickly as possible to discussing matters related to her dissertation. In addition, she developed a repertoire of possible responses to his expressions of interest in her, all of them emphasizing that she did not want to have a sexual relationship with him but reiterating her respect for him and the importance of his guidance and mentoring. We agreed to meet on an as-needed basis to debrief how her dealings with the advisor had gone and refine her strategies for the upcoming weeks. On average we met every three or four weeks, discussing the advisor and her progress on the dissertation. In those conversations I could see how this approach was empowering her. When working with a visitor who is trying to manage an ongoing problematic situation, it is helpful for the ombuds to offer periodic check-ins.

After a bit less than a year, her dissertation completed, she came back for a final session to debrief and to say goodbye. When we finished talking, I got up to walk her to the door. Just before leaving she turned and gave me a warm hug. Not the recommended way to end a sexual harassment case, but in this case it was okay.

Although some sexual harassment cases have a satisfactory ending – for example the harassment ceases or the victim safely leaves the harassing situation – I still have a dilemma. In situations where the victim will not pursue formal charges and decides to deal with the situation alone, the harasser remains in place and unidentified. In these cases, the very advantage of being a confidential ombuds – people tell us about problems they will not disclose to anyone else – feels like a disadvantage. How can we prevent harassment from recurring? There are two steps that I have found helpful. The first, which seems obvious to me, is that ombuds should regularly report on the frequency of sexual harassment cases we are handling. This information should be included in annual reports and mentioned in regular meetings with leadership. If a large number of cases are coming from within a particular department I would go to the head of the department, explain that there have been a number of cases recently and suggest that I be invited to give a talk to that department about sexual harassment. Second, almost always when meeting with victims, who in my experience have typically been women, they have mentioned not wanting anyone else to experience the same thing. Consequently, in cases where I facilitate discussions or mediate between the harasser and the person harassed, I regularly raise the question of what should happen if I receive another complaint of sexual harassment about the same harasser? Almost always both parties agree that in such a circumstance, as Ombuds, I am free to report to the appropriate authorities that there was a settlement of a previous harassment case. It is also important to remember that sometimes the ombuds is the only campus resource a victim is willing to turn to. If it were not for the presence of a fully confidential ombuds, most victims who, for whatever reasons, are unwilling to notify university officials of the harassment or bring formal charges, would struggle and suffer alone.

## **6. HOW CONFIDENTIALITY AND INTEGRITY IGNITED OMBUDS ADVOCACY**

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq. (amending the Higher Education Act of 1965) is a federal gender equity law that prohibits discrimination based on sex in education programs and activities that receive federal funding. Sexual harassment, which includes sexual violence and other forms of nonconsensual sexual misconduct, is a form of sex discrimination and is prohibited under this law. In higher education, Title IX is the law that covers the #MeToo era in reporting and gender equality. Noncompliance with Title IX can affect the availability of federal funds, which can be deadly for most educational institutions. The Ombuds Office is a place of informality, which places ombuds decidedly outside of the formal Title IX process. In my office, we practice according to IOA standards and are not designated reporters under institutional policy, although we can provide clarity to visitors regarding Title IX and its reporting process.

A visitor came to discuss options and ask questions. The visitor found out about the Ombuds Office from another staff member and learned about the confidentiality that the ombuds offers. Confidentiality was the *main* reason this visitor came to the ombuds. She wanted a place where everything was off the record and nothing would move forward without her blessing. Mainly, she wanted a place to just talk first and see what could happen.

As an ombuds, I may not know exactly what a visitor wants to discuss before meeting with them and that was true in this case. That is okay for my practice as I like to be present with visitors as they share and not necessarily be solution oriented. Oftentimes, an issue brought up initially may not be the core concern of a visitor. So, I allow my visitors time to feel safe and share what is important to them with me. Aside from active listening, time is my best asset. It is my duty to provide not only a welcoming space, but the freedom to talk. Many administrators and decision-



makers do not always have that kind of time available for every employee, but I do. On average, I spend about 100 minutes with each visitor.

After I briefly explained to the visitor how a visit with the ombuds works and assured her of our confidentiality, I gave her the floor. She shared that her supervisor of two years came to her office and confessed his affection and admiration for her. Although he was married, he wanted her to know that he valued the time they could spend alone together and that he didn't like to "share her" with others in the department. He attempted to touch her shoulder, but she excused herself to get water (and to escape). My heart dropped. No one should be made to feel uncomfortable in their body anywhere, especially at her place of employment.

I asked the visitor what she thought should be happening to get a better sense of what she knew about the organization's formal reporting processes. She only knew that she had one option: report. I asked her what she wanted ideally, and she wanted assurances that she would keep her job and not be subject to retaliation. Identifying options is an exercise in walking a visitor through outcomes via actions and letting the visitor find the path that agrees with them. By goal setting and finding out interests, I can help a visitor identify those choices that maybe were not fully considered or realized before.

As I began to explore the option of reporting sexual harassment and explain the formal process to her, I saw her body language tighten. She looked away and began to fidget with her jacket. When I asked her about it, she shared that someone else in her department had mentioned something about sexual harassment and was immediately moved to a different department that was located 20 miles away. She did not want any different treatment for herself or any shuffling that would jeopardize her childcare arrangements.

I apprised her of another option – do nothing. Visitors tend to feel that something needs to happen and often ignore the do nothing/wait/hold option. I wanted her to understand that doing nothing was also a viable option, while also understanding the consequences of doing nothing. We talked about other options that would shine a small light, such as sending an anonymous letter or reaching out to another supervisor who is a mandated reporter.

I wanted to help her report, if only to illuminate the issue for administrators. I wished I could be a mandated reporter, but I also knew that being a mandated reporter could jeopardize my role as an ombuds. I wanted someone to report for the people who don't come forward at all. Someone needed to illuminate this bad behavior and root it out before it spreads. I was so devastated for her because she truly had no faith that the formal process would protect her. I could sense her shame because she shared other instances of sexual harassment that she witnessed, and she had written those occurrences off because they did not happen to her. She felt exempt until the unwanted attention was directed at her.

I was genuinely disturbed that the visitor was so afraid to use the formal process. She truly wanted anonymity, which is something the formal process can't offer. From a fairness perspective, it is unfair to accuse someone of sexual harassment and not allow the accused an opportunity to confront their accusers. However, when formal processes do not offer the protection and safety that should be built in, it creates a chilling effect on reporting. If fear limits the viable options that I can share with someone, it limits my ability to be an effective resource.

From feedback that I have received, it seems that many employees have lost faith in the institution's formal systems. There is a very real lack of trust and perceptions of retaliation abound. Essentially, people do not feel safe being self-advocates and reporting wrongdoing. As many times as I emphasize the law and its protections, many people don't want to risk needing legal counsel to defend their position, especially in a very close, tight knit community.

From a daily interaction view, I believe that this was a normal ombuds visit where the ombuds learns about an issue early and apprises someone of options that exist for them. One on one visits have been my primary method of gathering information. I believe it is valuable for a visitor to



have an impartial person to talk to who can help that visitor examine the many facets of their situation. But for this visitor, the confidentiality I could offer proved to be even more important because she admitted that she would have continued to suffer silently had she not been able to access a confidential listener. As much as I wanted to follow up to know what happened, one of the downsides of being an ombuds is that I may not always get to find out what someone ultimately decides to do or what options they take. I will often find out when an undiscussed path is taken, and the visitor needs help identifying more options.

But this time, the story does have an end. A year passed and the visitor reached out again. She shared that in a moment of desperation, she called Human Resources hoping to have a confidential conversation. After listening to her, the Human Resources representative informed the visitor that her statements would initiate a Title IX investigation into her allegations and all parties would be notified of the pending action. Once the investigator contacted her, she declared that she would not participate in the investigation and tried to withdraw from the Title IX process. However, the investigation continued, and the accused was found not in violation of Title IX provisions due to the visitor's lack of cooperation. She was reassigned to a different supervisor, but still has daily contact with the accused. She felt that the investigation happened to her without her consent and revictimized her all over again. I continued to be a listening ear for this visitor and confirmed that the Ombuds Office is the only place in our institution that can guarantee a confidential conversation for employees, with limits.

From a trend development perspective, I began to question if others were reluctant to come forward due to fear, and I became more vigilant about seeking opportunities to inform the institution's policy and personnel changes regarding Title IX issues and reporting. Since meeting with this visitor, I knew that I had a duty to address the lack of trust and protection from retaliation for those who do use formal reporting processes. I resolved to become more vocal and use my ombuds practice to do more. When the institution began incorporating new policies and guidance from the Department of Education, I demanded a seat at the table as an advisor to provide insight and mediation expertise. As a result, I was able to compare policies from other institutions and provide insight about the psychological safety of formal processes while simultaneously advocating for varied levels of informal resolution techniques that will hopefully address the needs of those who choose to report victimization.

As ombuds, we have a duty to confidentiality, independence, informality, and impartiality. I believe we also have a duty to integrity. The Merriam-Webster and Cambridge dictionaries define integrity as the quality of being honest and having a firm adherence to strong moral principles. For me, integrity means acting in moral fortitude and having the strength to speak up, to be an active participant in change instead of settling for the fringe. Ombuds are strategically positioned within our organizations to see things before they happen. This means that ombuds are often aware of issues well before the masses. Ombuds know about chronic problems that have plagued our organizations and ombuds often know about the solutions that have failed or are in need of a reworking. Ombuds see the successes of our organizations as well as areas of growth. And ombuds fail when we try to protect our organizations by only pursuing individual victories instead of widespread systematic change.

There are times when there is not much we can do as ombuds. Our role is often one of empowering our visitors to self-determination. But just like our visitors, we should focus on what we can do and the options that are available to us. Ombuds need to remain current by collaborating with other ombuds and conflict resolution peers. Ombuds need to use meetings and strategic conversations to regularly plant those seeds of innovation and change. Ombuds need to use annual reports and mid-year reports to highlight places that are overlooked and recommend fixes for those shortcomings. Ombuds need to use feedback surveys as data points and concrete measures to support our recommendations.

Most importantly, ombuds need to get comfortable with being uncomfortable – especially when it means challenging and pushing back against the status quo when it does not serve visitors. In the future, I resolve to be an active participant in change and not a passive observer. My integrity



means being a light, illuminating the path and casting away shadows. Walking in integrity means being an advocate. I choose to rethink my role as an ombuds and actively seek the place where my impartiality is not threatened by my advocacy.

## **7. HUMILITY HELPS IN MAINTAINING NEUTRALITY**

It was toward the end of a long summer just before Labor Day. However, the whole research establishment was buzzing. Our laboratories were expanding; it looked as if several new drugs might be launching within the next three years. There were scientists coming in from all over (to check out new ways of looking at several famously hopeless problems). The atmosphere was alive, every day of every year. As an ombuds in this environment I loved the zany nature of the place and especially enjoyed the fact that I was dealing with at least four generations of employees, and people from all over the world. The summer had also been lively with trainees from everywhere.

One of these trainees came to see me to talk about her roommate. She said that her roommate had been excited about her work—but was suddenly depressed and perhaps ill. The roommate had stopped talking, for maybe ten days, did not respond to questions, and absolutely would not go to the nursing station. The trainee was very concerned; she decided to come to the Ombuds Office because she did not want to betray her roommate, and she knew we were confidential. Would I be willing to see her roommate?

I did see her; I will tell you the story using pseudonyms.

When the roommate came in, she did indeed seem drawn and upset. At first she did not seem to wish to talk; she just said “I am Anna.”

I decided to talk as little as possible but started out with one of my almost-universally-successful questions at that research establishment.

“I understand you are from far away; what made you think about coming here for the summer?”

After a few minutes of silence, this question seemed to catch Anna’s attention. Anna spoke of her long-standing interest in the work of one of the labs and her enormous respect for the lab director, Dr. S. During half an hour she discussed having read some dozens of Dr. S’s articles.

She seemed at one moment to allude to the fact that something had happened a few weeks ago – but I could not quite understand the sentence and did not want to pry. She then wanted to leave but agreed to come back the next day.

The next day Anna did return. Over the course of that day and the next I heard that she had stopped by Dr. S’s office on a Monday in mid-summer, to ask questions about two articles. She had prepared the questions in writing; she showed me the piece of paper. It had been very hot that day. Anna said that she had however gone to the office dressed quite conservatively. She had knocked at the door, knocking, she said, several times. She concluded that he might have been deeply engaged with someone else but then he came to the door. She then described – in the same quiet and careful detail – how he had invited her in and subsequently raped her. I listened with care for an hour, taking no notes, asking no questions, my heart sinking. This concern ranked among the most appalling assault complaints I had heard.

Finally I offered a number of options from which she might choose. In brief, she could choose an option now or think about it. The options included a number of informal and formal resources. Did she want to consult with family or local clergy or talk again with the doctor she had seen? She could pursue an option alone or with any of several, possible accompanying persons. She decided to write a formal complaint; could she work with me on it?





Over the course of the next appointment Anna read her complaint with the same, sad, careful attention to detail that I had noted earlier. She included the date in mid-July, and time of day and many other facts, such as Dr. S's demeanor and clothing, and her memories of their discussion. She recalled sadly looking at a famous photo on his wall during the assault. (The photo showed Dr. S accepting a famous award.)

I think I hardly spoke at all, thinking of myself as simply there for support. Anna seemed to have thought things through. When she finished, she gave me the complaint; it was addressed to the head of corporate security in accordance with one of the formal options we had discussed. Anna seemed very tired. Would I take it to the head of the security office?

I felt deeply sad (and I was deeply angry). I said that I would take the complaint immediately. I respected our security office and was relieved that Anna had chosen a formal complaint. I walked over to security wondering in pain how many other trainees had been assaulted.

In the event, the head of the security office was in. The head of security read Anna's letter with the respect and care I expected. I listened carefully to the ensuing plan. The head of security would need to go immediately to Dr. S. (For one thing we had no way of knowing whether Dr. S might pose a continuing danger to trainees or others.) I would get a call.

Late that evening I was glad to get a call at home; I had hardly been able to breathe.

It turned out that Dr. S had recently returned to the US from many weeks away; he had left in June on a long trip to several different countries. Dr. S had produced his passport and his schedule for each day on a long trip, with photos in a faraway place for the date in July. His office had been locked for almost all of his trip, for repairs to the ceiling and repainting. Dr. S had the repair records. In addition, the head of security had been able to establish that Anna had worked in another building entirely, all summer, and almost always on a team. The team's work and her hours had been recorded and dated. I saw the copy that had been made of her lab notebook, in her handwriting, in the ordinary custom of our labs. She had never missed a day or been late; she worked with her team on the fated Monday.

Only a very few people ever heard about this case. The details were considered definitive and no one else would need to know. I was told that Anna "had immediately been assisted by counsellors, and had left." Dr. S "wanted the matter forgotten." The record in security was placed in a special file.

I never heard again from her or her roommate, nor did I hear from Dr. S. But I have never forgotten the event. I have grieved ever since, about the distress and pain that Anna went through, the shock and grief that Dr. S. must have experienced, and perhaps the distress of others in their families. I was thankful that the bystander-trainee had felt she would be welcome, and Anna's privacy safe, in the ombuds office. If not, what might have happened? I thought Anna might have gotten more acutely ill and perhaps hurt herself. Anna might have left a suicide note or taken other routes to make public her story about Dr. S. I knew I was lucky that I had had the time, when Anna came in, just to sit and really *listen*; suppose Anna had not felt safe to tell me what she was thinking? I have reminded myself many times since, that listening attentively but *silently* may be essential.

I also learned very painfully, that week, a bit more about how "fair processes" may require (fair) investigations. I learned more about my need for humility about my own intuitive judgment; this case taught me that in many cases I simply will not have "all the facts." I learned that I can almost always offer *empathy*, but I need to be able to withhold judgment, sometimes for long periods, about the facts. I learned more about how important it is for all our constituents that ombuds are designated as neutrals (albeit often working with other professionals to find advocacy and justice for our visitors). And, I learned one more time, about how hard it is to be a neutral.





## **8. HONORING SELF-DETERMINATION DESPITE MORAL OUTRAGE**

This narrative unpacks a challenging sexual harassment-related case that I experienced as an organizational ombuds. While the case details are striking and complex, I emphasize practice reflections and considerations. Details have been altered to further protect the anonymity of those involved.

### **CASE DETAILS PART I**

A new visitor arrived at my office visibly anxious and timid. After some brief opening remarks, I asked her to help me understand what led her to contact the Ombuds Office. She immediately said “first, I need you to understand the history of my situation so that the issue I am here to talk about will make sense, but the history is *not* something I’m interested in addressing. I want to be very clear about that.” Her pointed statement piqued my curiosity. It also signaled that this case could challenge my commitment to honoring my visitor’s self-determination; that is, supporting her capacity to make her own choices regarding how she would like to proceed.

The visitor proceeded to tell me that she had been working in the organization for almost four years. Three years ago, while she was an intern, a senior member of the department forced himself onto her and raped her after a night out with colleagues. Before then, she considered the senior colleague to be a trusted friend and professional mentor. So much so that, in the midst of struggling with her sexuality at the time, she had confided in him that she was gay – something she had not yet disclosed to other very important people in her life. On top of the trauma she experienced as a result of the rape and the self-doubt and questioning that crept in afterwards, she felt betrayed and blackmailed. Personally, she feared he would retaliate by disclosing her sexuality if she confronted him or reported the incident and that was something she was not prepared to face. Professionally, as an intern looking to launch her career, she was terrified about the potential impact reporting the incident could have on her reputation and professional future in a relatively small field. He was someone with a significant amount of influence. Sadly, she also worried that in the absence of any witnesses or evidence, no one would believe her and the formal system intended to handle these issues would not help or protect her. So, she ultimately decided not to report the incident; however, after sharing some of her experience with a trusted peer, she learned that the same man had also sexually harassed another colleague who was suffering from severe depression. It too was not reported. She was disgusted by his willingness to target and prey on people who were psychologically vulnerable, had less power in the organization and were dependent on him in some way.

Despite not reporting the incident at the time it happened, she explained that she was able to physically stay away from him and successfully complete her internship. She also sought counseling in the last year of her program and eventually felt like she was emotionally able to move on.

Her purpose in reaching out to the Ombuds Office was not to discuss what had happened in the past. She had a new concern. She recently learned that the alleged perpetrator – who was still working in the organization and was since promoted to lead a department of his own – had just applied to be a mentor for an internship program that she was involved in. Now, she was on the committee that oversaw the program and reviewed applications for incoming interns and interested mentors. When she saw his application to be a mentor she panicked. She was concerned about her own well-being and the future well-being of any intern over which he would have power. She hoped that the Ombuds Office could help her explore ways to stop him from being a mentor without having to disclose the details of what happened to her in the past. She was adamant about not wanting to 1) disclose information from the past to anyone other than a confidential resource, 2) relive the trauma by going through a formal process and 3) reveal the name of the alleged perpetrator (including to me).

### **REFLECTIONS PART I**



I begin my reflections by acknowledging the emotional toll I experienced listening to her story. I felt stunned and sad before eventually shifting to intense feelings of exasperation, disgust and even outrage. It was difficult to prevent critical questions from swirling around in my head. How can this be going on in our organization? How can someone like that continue to work here? What will happen if this goes undetected? My emotional journey tested my ability to demonstrate a deep sense of empathy, understanding and respect while also maintaining and managing the moral outrage that I felt. I imagine other ombuds have struggled to strike this necessary balance in their own cases. Here are some strategies I used to manage the emotional toll, maintain a comfortable sense of impartiality and keep the focus off of me and on the visitor.

- I stayed present and sat in the uncomfortable and difficult emotional space with the visitor. I did not rush, eliminate or move on from it.
- I decided that expressing my emotional reaction was not as much a threat to my impartiality as it was a signal of my caring and humanity, which is often needed to build connection and trust.
- I created space, listened and reflected back what I heard. I made sure to acknowledge her emotional experience, the reasoning for her decisions at the time and the critical issues, concerns and questions that she faced in the present situation.
- I acknowledged that I could never truly understand the impact of her experiences. I did not pretend to know what it was like to go through what she described.

When we (ombuds) hear from a visitor, we often hold open the possibility that there is another story or perspective to consider. Sometimes we may even voice that directly. There are good reasons for why we do that. For starters, it can strengthen our independence and impartiality. For instance, an ombuds may thoughtfully challenge a claim that a visitor makes about a coworker being disrespectful and intentionally trying to sabotage their work. In many cases, this practice does not present an issue or dilemma. In a sexual harassment case, however, introducing another perspective or challenging assertions a visitor makes is difficult and potentially dangerous. Although, simply holding open – in my mind only – the possibility that a visitor is not telling the “only” story or the full story can help me manage the moral outrage and allow me to maintain impartiality without sacrificing empathy, understanding and respect. It was important for me to remember that if the alleged perpetrator in this case contacted the ombuds because he felt falsely accused of something that was potentially damaging to his career or preventing him from accessing professional development opportunities, I would have provided him with the same access to impartial ombuds services.

As an ombuds I constantly remind myself that I am not positioned to know what is right or best for someone. I strive to set my human judgments aside, honor self-determination, and let people make their own decisions. This approach became incredibly important in this case. An important ombuds-practice value like self-determination can easily be ignored if an ombuds feels moral outrage or succumbs to the temptation to want to “help.” The assumptions we might make about what it means to help someone or fix their problem can get us in trouble. Our idea of help may not be what is most useful to the visitor. In fact, it can cause greater harm or cause ombuds to push the boundaries of their role. I think this dynamic can play out in two different ways. We might feel tempted to rescue the visitor or “fix” it for them. This could lead us to offer advice or overly assure, sympathize and try to console. We might also feel tempted to think critically of the visitor, especially if we think they “didn’t do the right thing” (such as reporting the case). This could lead us to engage in ways that come across as judgement, blame, lecturing or interrogating. None of which is helpful to the visitor.

In order to approach the rest of my discussion with the visitor from a place of genuine curiosity and respect for self-determination, I recalled a phrase that is used in the sexual and gender violence field: “safety is survivor defined.” That phrase grounded me and reminded me that I was in no position to determine what was best for my visitor in this situation. It is my job, instead, to



create a comfortable space for her to share her experience, work on understanding what is most important or concerning to her and explore, with her, ways she might be able to address those concerns and accomplish her goals.

As previously stated, one reason the visitor decided not to report the rape when it happened was her lack of trust in the organization's system for handling sexual assault cases. She did not feel confident that people would believe, protect or help her. Those comments stood out to me. I knew that regardless of how the visitor chose to move forward, it would be important for me to understand, more specifically, what created the visitor's distrust. That information could be used to give feedback to the departments that design and implement that system. A better understanding of the distrust can help the organization make changes to addressing those concerns. In my opinion, the confidential and informal nature of the ombuds role places us in a great position to collect and use that information from our visitors. This case was no different. Therefore, after explaining that I was not surprised by her lack of trust in the system and explaining that my question was not coming from an underlying place of judgment, but instead genuine curiosity, I asked her to elaborate on what caused her to feel such distrust. I told her that I was asking because the Ombuds Office is in a unique position to be able to understand those concerns and give the organization feedback without having to violate commitments to confidentiality. She explained that she did not trust the system because she was aware of unfavorable experiences others had with the system. Those unfavorable experiences boiled down to 1) feeling misunderstood, unsupported, judged and labeled throughout the process, 2) mixed messages about what to expect in the process, 3) delayed processing of the case, 4) the potential for retaliation through ineffective, insensitive and flawed strategies of notifying the alleged perpetrator, 5) inadequate investigation strategies leading to "dismissed" cases or questionable information gathering and 6) limited protections for survivors during and after the process, regardless of the outcome.

## CASE DETAILS PART II

As we proceeded, I decided to revisit the visitor's main question. How can information be shared in a way that prevents the alleged perpetrator from being a mentor without requiring the visitor to disclose her story and risk further emotional distress or trigger an unwanted formal report? Additionally, the visitor did not want any information that she would share to get back to the alleged perpetrator. With that question in mind, we started to explore options. We first explored whether there was anyone with influence over the intern program that she would feel comfortable speaking with. The visitor mentioned that she had a close and trusting relationship with the director of the intern program. Before coming into my office, she had thought about having a conversation with that director and remained interested in that option. In a way, she was looking for validation (from me) that it was a reasonable approach. While I was not prepared to simply validate that option, I did help her think about how that option could help achieve her goals. We also discussed the potential risks associated with the option. In the end, she expressed a desire to proceed with that option. We shifted the conversations to start talking about specific strategies for the conversation with the director. We talked about strategies that 1) conveyed a level of seriousness about the concerns, 2) stayed within what she felt comfortable disclosing and 3) did not run the risk of triggering a mandatory reporting action by the director. We also identified specific language and questions that she felt confident communicating. She left my office with the intention of approaching the director as soon as possible.

A few days later the visitor reached out to share that she had conversed with the director. She said it was well received. She felt confident that the alleged perpetrator would most likely not be accepted as a mentor in the program and she did not have to disclose the details of her situation. I never heard anything else.

## REFLECTIONS PART II

I remember walking away from the initial meeting feeling torn. While I felt pleased with my commitment to self-determination and the standards of practice, I also felt like I had my hands



tied by my role and was, in some ways, feeling uncomfortable with not being able to do more. Could I walk away from this case knowing that someone in the organization was potentially committing such heinous acts and ‘getting away with it?’ As previously mentioned, the visitor did not feel comfortable sharing the name of the alleged perpetrator (which is fine). My commitment to honoring self-determination, confidentiality and maintaining impartiality was enough to prevent me from taking any sort of action without the permission of the visitor; but even if I wanted to disregard the standards of practice – or interpret them differently – I would have been limited in what I could have done without knowing who the alleged perpetrator was.

I also felt a sense of appreciation. The case offered a healthy reminder of the unique kind of experience the Ombuds Office can create for people in these situations and how empowering that can be. It is a space where visitors can feel heard and not judged or pressured. A space where they can feel reassured by knowing they maintain control over what happens with the information they share and decisions that are made.

I believe the standards of practice help ombuds stay in their “ombuds lane” during these critical cases. Deviation from our role can do further harm. In cases like the one I described, I feel strongly that any further action that would require an ombuds to step outside the boundaries of their role is best left up to professionals who are trained to provide advocacy, advice, or counseling for survivors. They are likely to be more effective than an ombuds who decides to disregard impartiality to pursue advocacy. Similarly, an employee who is legally responsible to report sexual assault allegations is better prepared to do that than an ombuds who succumbs to snap-judgements and decides to violate confidentiality when there is not an imminent risk of harm. Some readers might wonder why I did not do more with the little information I had. Some readers may interpret the issues as raising imminent risk of harm. While I stand by my practice decisions, I respect those different opinions and welcome further dialogue around those opinions within our field.

In the end, I was able to at least find various ways to use the information I received about distrusting the formal system to provide anonymized feedback to key stakeholders. Fortunately, the organization was already going through a process of assessing and redesigning their policies, processes and mechanisms for preventing and addressing sexual harassment complaints. The feedback I provided was well received and taken into consideration as those changes were made.

This case challenged me in many ways. I feel fortunate to have the opportunity to reflect on some of those challenges through this narrative. I hope my reflections help promote dialogue and debate in the ombuds field about how we handle these kinds of cases and how ombuds fit into the larger context of trying to prevent and address sexual harassment in organizations.

## **9. CULTURAL DYNAMICS IN A SEXUAL HARASSMENT CASE**

This is a description of a real case of an ombuds visitor at a university in the USA. The case events took place prior to the “Me Too” era, but Title IX of the Educational Amendments of 1972 and the Civil Rights Act of 1964 were in place. Sexual Harassment is recognized as a form of sex discrimination under both Title IX and the Civil Rights Act.

The setting for this case was a university where the Ombuds Office reports to the Office of the Provost. The Ombuds Office was set up in 1996, prior to the establishment of the International Ombudsman Association’s Standards of Practice. The ombuds was asked to handle collateral duties for the institution, and served students, faculty, and staff.

One fall day, Chrissie Molloy (a fictitious name) came with an appointment to the Ombuds Office. Chrissie was a graduate student, a white woman, about 27 years old, and somewhat petite in



stature. At our first meeting, she said she had come to know of the Ombuds Office when she attended an outreach presentation about the office.

Chrissie said she was extremely nervous as she began to describe her situation. She clenched her fist and frequently placed her hand against her mouth. She said she was a doctoral candidate; she had completed her course work and preliminary examinations. She had a scholarship which allowed her to teach a course and advise undergraduate students in a seminar. Chrissie had an issue with her professor, “Dr. P,” who was of Asian origin and the chair of her doctoral committee. Earlier that fall, Chrissie had accepted an offer from Dr. P to rent a room in his house. She said Dr. P was over 60 years old, single, traveled often, and occasionally fell ill. Dr. P had proposed that she could live rent-free in a part of his house, and in lieu of rent, she was to watch his house when he travelled and run some small errands for him from time to time. The errands were sporadic, like grocery shopping and picking up mail at the post office. Chrissie offered that she liked to cook, and he said he would enjoy her cooking. He too offered to cook for them. This seemed like a good deal to her as his house was close to the campus and she could walk or bike over.

The arrangement was good for about two months. However, things changed. Dr. P sometimes dropped in to visit with her in her sitting area “for a chat,” or stopped by to show her journal articles on topics of mutual interest. He asked for help in getting his tie knotted or finding that tweed jacket he wore last fall. There were some moments of closeness and Chrissie thought of these personal requests as something she would do for her father or uncle. Dr. P was a diabetic and there were times when he consumed too much alcohol. Upon drinking, he would be belligerent and ask her to do things that were uncomfortable: start his laundry, make his bed, or serve him dinner in bed. When she protested or sulked, he threatened her by saying that she would never finish her Ph.D., because she had “a bad attitude” or that she would face academic consequences. Chrissie was worried and stressed.

Chrissie said Dr. P touched her or tried to stroke her, especially when he was in a good mood. On occasion he held her hand or brushed her hand against his cheek, or caressed her hair. She did not think of his behavior as “sexual” or “romantic.” Chrissie said she tried to see his behavior from his cultural point of view. She told me that in his native Asian culture, his behavior would be read as affection. She said men of his age and profession tended to dominate women and younger persons; they expected women, even older women, to do their bidding, anticipate their needs, even carry their luggage, and wait on them. Older men expected deference from everyone, especially younger women.

After some six months, Chrissie was more uncomfortable with the situation and told Dr. P that she had signed up for graduate student housing and she would soon move out. Dr. P was livid. He threatened that her scholarship funds would be taken away and she would not be given references. He would talk to his departmental colleagues to ensure they would not support her. She would be denied access to archives and collections in his native country that were essential to her dissertation research. Chrissie was shocked, scared, and immobilized. She did not know what to do; she felt that her situation was untenable. She was alone and thought few would understand her situation. Who could she turn to?

Chrissie’s visit to the Ombuds Office gave her a chance to talk about the strange and difficult situation. She wanted to leave her rental arrangement with Dr. P, but she was afraid to do so. Her main concern centered on the consequences to her, if she moved out. What retaliation would she face and how could she finish her doctoral study?

Many questions surfaced during our conversations which ranged from social justice to interpersonal relations. Was Chrissie disadvantaged in this situation? Did the situation fall into the category of harassment? Was there an on-going risk or a risk of imminent harm? What were her boundaries and how would she know when she had lost sight of them? Was she taking responsibility for Dr. P’s behavior? What was his responsibility as a professor? Did the





department chair, senior faculty, or other members of her committee know of this arrangement? Had she sought any advice? Had she spoken to her friends and colleagues?

I offered her the option to discuss her situation and dilemma with the Office of Prevention of Sexual Harassment, where she would have an option to begin a formal process, but she recoiled at the suggestion. She vehemently objected to the option, saying that a call from that office might engender an investigation and spin the problem out of control. She needed a plan whereby she could slip out of Dr. P's clutches without aggravating him, so that he would not retaliate against her.

In our discussions, Chrissie reflected on her feelings and discussed her perspective as well as that of Professor Dr. P. At times Chrissie would say Dr. P was sweet and kind to her and she was the one who was letting him down. She took responsibility for the initial decision she made in renting space from him. She said that perhaps, unconsciously, she sought secondary gains like access to resources and collections, and greater support from Dr. P. Yet, even as she took responsibility for her own actions, she was protective of Dr. P. She could not bring herself to point to his failure to live up to his side of the bargain and his use of threats to prevent her from moving out.

As our discussions went on, it became increasingly evident that Chrissie's sense of boundaries in this situation had blurred and she was immobilized. Ultimately, she would have to decide what she wanted to do and how she would go about it. We discussed the pros and cons of each course of action available to her. She said she could not enlist support from her doctoral faculty and colleagues, as they would be unwilling to rock the departmental boat.

Gradually, with empathy and support, Chrissie began to understand the interpersonal and systemic dynamics of power in harassment. She was able to understand the dynamics of power at an individual, interpersonal, cultural, and institutional level that led to the continuance of the problem behaviors. She understood her role and rights as a student in the USA, and her own behavior that was submissive to Dr. P's expectations of submissiveness. In addition, Dr. P's dependence on alcohol contributed at an interpersonal level. His gender dominance and her own adherence to his cultural expectations fostered and reinforced his negative behavior. Coaching and discussions on these hidden factors helped her to reconsider her initial assumptions about culturally driven behaviors. I pointed out that although her professor was foreign born, he had lived in the United States for over 45 years and was a sophisticated citizen of the world. Surely, he had learnt about boundaries for students and faculty in all these years in the academy. Chrissie was listening.

We had come from Fall to Spring. I urged Chrissie to use the upcoming spring break to get some distance from her situation and to prepare Dr. P for the eventuality of her moving out. In the meantime, Dr. P had suffered two episodes of "black outs," as his drinking and diabetes converged. Chrissie felt she could not abandon her professor and risk his death. She worried that she had used him. At this point I suggested she may benefit from some distance. Chrissie agreed and went to visit her aunt for a few days.

During the break, I worried if I too had lost my boundaries as an ombuds. I wondered if I had become her counselor or friend? I was beginning to feel frustrated that she was not taking any action, but I did not want to close her case or leave her stranded with an unresolved situation. I addressed this dilemma by setting some limits; I suggested three more meetings after spring break, after which we could "hold" her case until she figured out what she wanted.

When Chrissie returned after Spring break, we began the task of reframing the problem. I proposed that she was experiencing gender harassment and sexual harassment with a hostile environment. Initially, she could not see the "hostile environment," as it was she who sought to live in Professor P's home, as his tenant. Nor could she see professor Dr. P, who was head of her doctoral committee, as being neglectful. We progressed to framing the problem as fear of retaliation. Retaliation is widely known to be illegal today, but fear of retaliation is still one of the





reasons victims do not report harassment. Through our discussions, Chrissie became more familiar with the law and concepts such as gender-based harassment, sexual assault, and hostile environment. Central to all of these are issues of power and domination.

After the last discussion, I saw a shift. Chrissie agreed to a consultation with the head of the Office for Prevention of Sexual Harassment to better understand institutional policy and options for dealing with harassment. At a personal level, Chrissie had begun to define her boundaries, and assess where she had lost a definition of boundaries. Chrissie was about to begin her new journey and take some risks.

Chrissie and I developed a new action plan: she would speak to the chair of her department and voice her concern, including her fear of retaliation. She would request the department chair to appoint a new chair for her doctoral committee. The plan was to communicate the request to Dr. P as a transition that was warranted by Dr. P's health and the awkwardness of her situation. Next, she would visit the other two members of the doctoral committee and request their support. After this communication if there was a need for a neutral third party, I would step in, and if necessary, we would invite a consultation with the coordinator of the Office for the Prevention of Sexual Harassment.

Chrissie visited her department chair and he promised his support. However, when he spoke to the professor, he found that Dr. P had his heels dug in, did not see the need for Chrissie to move out of his house. He became anxious and belligerent. He threatened to remove her from his scholar's circle. At this point, the department chair called the Ombuds Office and invited a consultation. With Chrissie's permission and participation, we devised a modified plan that Chrissie was comfortable with.

The department chair convened a meeting with Dr. P, the ombuds, and the coordinator for the Office for the Prevention of Sexual Harassment. Chrissie was invited to the meeting but declined to be there. She gave us permission to speak to these issues with Dr. P. As an ombuds who had some experience with cross cultural issues in Asian communities, I thought Chrissie's decision to be absent at the meeting was based on her cultural understanding of Dr. P, and his approach to conflict resolution: her absence at the meeting would help Dr. P to "save face" in front of his student.

At the meeting with Dr. P, we discussed the range of behaviors that create an uncomfortable and unpredictable environment for students, the issues of harassment and the fear of retaliation. Dr. P was provided with a detailed appraisal of the university's policy on sexual harassment and received a complete educational discussion on the underlying issues of power. Dr. P was not accused of misconduct because it was apparent that he understood the concerns placed before him. The chair also understood that there was a delicate balance here. Helping Dr. P to maintain his dignity and save face was important to a constructive and informal resolution. Accusations of misconduct would escalate the conflict, adversely affect his sense of honor, and perhaps create a sense of shame. Toward the end of the meeting, Dr. P agreed that Chrissie would move out and he would not act against her, as that would appear to be retaliatory.

Chrissie was invited to a second meeting with Dr. P by the department chair. The head of the Office for Prevention of Sexual Harassment and I, as Ombuds, were also at the meeting. The purpose of this meeting was to communicate final understanding. Dr. P assured Chrissie that he would facilitate her moving out and would not retaliate in any way. The department chair appointed a new doctoral committee chair within her discipline, while Dr. P continued to be on the committee as a subject expert. The transition was managed by the department chair. Chrissie found new accommodations, moved out of Dr. P's house, and completed her doctoral thesis.

As an ombuds, one of the challenges I faced in this case was peeling back the individual, interpersonal, institutional, and cultural layers of the situation in which gender-based dominance and harassment were the central problems. While Dr. P might have expected deference and servile behavior from a male student, he would not have expected this level of subordination. It



was not clear if some of Dr. P's behaviors were of a sexual nature, as interpersonal behaviors such as touching are considered as sexual in some contexts and cultures. However, institutional rules and sexual harassment laws do not provide for cultural variations and explanations. Fortunately, Chrissie moved out and completed her thesis, and her professor's reputation was not jeopardized. This was a win: win outcome.

## **10. THE ACTIVE BYSTANDER**

Years back a visitor approached my Ombuds Office because she was uncomfortable with the behavior of a male staff member towards another female employee in the department. According to the visitor, the male staff member, a married man, would say and do things that would make her colleague uncomfortable, like asking her to lunch, commenting on her looks, or when he thought no one was watching, "checking out" her colleague. The visitor shared that her colleague would just freeze when confronted with this behavior, and awkwardly smile. Though the conduct was not happening directly to the visitor, she was uncomfortable just seeing and hearing his behavior. As a bystander, my visitor felt that the behavior needed to be "nipped in the bud" before it escalated.

We talked about options and how there were actually two questions she was working through. One issue was how the situation impacted her; the second was what her colleague could do about the situation. Each question led to courses of action possibly separate and different from the other.

We discussed possible solutions. She disclosed that she had already talked to their supervisor, who somewhat brushed things off. I asked what she thought about raising the issue to the next supervisory level or Human Resources. The visitor didn't want to escalate things; she just wanted her colleague to get help. I explored with her the option that she could talk with her female colleague and encourage her to reach out to the Ombuds Office. The visitor wasn't comfortable doing this because she wanted to stay out of a messy situation. She wanted someone else to address the problem.

I then offered the visitor another option. I stated that I could reach out to her female colleague, let her know that an anonymous fellow employee had noticed the male employee's behavior towards her, and that the Ombuds Office could be a resource for her. The visitor felt comfortable with this option. She felt that enough people had overheard and seen the behavior so that her female colleague wouldn't necessarily suspect it was she who had raised the issue with me. It's not often that I use this somewhat indirect approach, but I have found it helpful on a few occasions where a visitor simply needs a message to be delivered.

I called the female employee. Although surprised by the call, she listened to what I had to share, acknowledged that the male colleague had said uncomfortable things to her, and stated that she would think about what if any action to take. She didn't seem to want to talk further, so I indicated that the space to talk would always be there if she chose to. When I checked with the active bystander about a month later, she indicated that whatever I had done worked because the male colleague was no longer making comments towards her colleague. I assumed that perhaps the male colleague got the message, and that maybe he had been confronted by someone (his supervisor, someone else, or even the female colleague he had been harassing). In my mind, case closed.

But, as sometimes happens, situations come back. A few months later a female visitor scheduled an appointment. I did not realize until midway through her narrative that this was the same female employee that the bystander in her department had contacted me about months back.

She was now reaching out because she was concerned that her male colleague's spouse was spreading rumors about her to her supervisor, accusing her of being a home-wrecker who should

not be employed by the institution. Apparently, the spouse had emailed a number of people at the institution alleging that the visitor was having an affair with her husband, the male colleague that the bystander visitor had complained about. She acknowledged to me that she and her male colleague had been drinking at a conference recently, but nothing improper was happening. She just wanted this “crazy spouse” to stop spreading rumors about her. We talked about her options, and the ways the Ombuds Office could help. Though she said she would keep me updated, she didn’t respond to my follow up calls. This is not terribly unusual. Some visitors follow-up; others don’t.

As ombuds, we sometimes are only trusted with bits and pieces of information. But because we hear from many individuals, we are sometimes able to piece together a bigger narrative. Sometimes we are the first to learn things, sometimes we are the last. In this case, I eventually learned that the female employee and her now husband (the male employee whom the bystander visitor had complained about) had begun an affair shortly after she joined the organization. I learned indirectly later that the supervisor knew about the romance and had tried to be discreet in not letting others know. The manager had concluded that so long as the affair did not become disruptive and no policy was being violated, management would stay out of it. The assumption there, of course, was that because the relationship was consensual, others in the department would not be troubled or impacted by the affair. However, at least one person in the department was impacted; the bystander became concerned about sexual harassment and had visited the Ombuds Office. Eventually the situation became more public with the spurned spouse and, presumably, even more disruptive to the department. I never learned how that situation turned out but hope all people involved in the situation eventually found some resolution.

For me, I had already found closure. Long ago, after many situations where I was frustrated in not knowing the outcome of matters, I decided I needed a new standard of success. Success wasn’t to be defined by whether all parties to a matter reached resolution, or whether they notified me of the outcome. Instead, success would be found in knowing I had performed my duties in a way consistent with my code: that every individual I interact with has my undivided attention and, without judgment, I offer them ideas, options, techniques, and tools that might shift their situation. What they do with that offering is up to them. As an old Zen koan once taught me, “If you offer someone a gift and the recipient declines the gift, who does the gift belong to?” And so, for me, closure always comes in accepting and acknowledging that my relationship to maintaining a consistent practice is what defines resolution. It is the gift we, as ombuds, offer others and one that ultimately, though we share, always belongs to us.

It is also a gift that active bystanders give to the organization. One of the powerful lessons for me in this case was the importance of that first visitor, whom I’ve called the active bystander, who did something that unfortunately tends to be the exception: she took in what was happening around her, was mindful of how events were impacting others, and did something about it. It is so much easier for members of an organization to note there are problems and simply look the other way. Those individuals may think it’s not their problem and may say to themselves, “we all have problems, so why take on more?” They don’t want to be the one who tattles or snitches on co-workers. And even if a situation may not involve danger of physical harm, there is an emotional risk when bystanders have courage to step out of the shadows and share a concern. And so, inactive bystanders see what is happening and ignore it. Others, the active bystanders, are troubled by what they see and – as difficult as it might be – reach out for assistance. Here, the relationship that troubled the active bystander was consensual, but what if it hadn’t been? In reaching out, the bystander created a positive chain reaction that was a gift to her coworker. By reaching out to me, the active bystander was empowered with options and felt comfortable with me reaching out to the alleged victim, who then felt comfortable with the Ombuds Office and reached out herself later when she had a concern.

Moments are all a gift; some we can accept, while others we can – and perhaps should – decline. Active bystanders are courageous colleagues who offer a gift that may be what someone needs

in the moment. Whether the person needs it or not, the active bystander shows they care and that they've got their colleague's back.

## **11. AN INFORMAL APPROACH TO A TITLE IX CASE**

As an ombuds at a higher education institution, I do not typically facilitate conversations on issues that fall under the purview of the Title IX coordinator. However, one unusual case involving a student, whom I will refer to as Terrie, took a different turn. To be clear, "Terrie" is a pseudonym.

Terrie was finishing up her pre-med undergraduate requirements and was ready to move on to the next phase of her medical training. She was part of a small cohort of 30 students moving through the program. She had become close with two male pre-med students who were part of Terrie's cohort. She thought of them as "brothers" and had no sexual interest in them. This team of three spent hours studying together. All was well until they decided to attend an off-campus party on a Friday night. It was the end of finals week and she was ready to relax and enjoy some down-time with her friends. After being at the party for a few hours, Terrie noticed that her two male friends were extremely inebriated; Terrie decided to leave early and caught an Uber home. She later discovered that her friends stayed behind and continued drinking. She, however, was home by around 10:00 pm.

Later that night around 1:00 am, one of the male friends began texting Terrie. Initially, the texts were innocuous. The first text said, "Hey, where are you? Do you want to come back out and party with us?" She declined, stating she was already in bed and ready to sleep. What followed were a series of indecent pictures of a male's genitalia. The last text asked Terrie if she wanted to have sex.

Unsure what to do, Terrie turned off her phone, made sure all her windows and doors were locked and tried to sleep that night. She was very upset and confused, and she blamed herself; she didn't know what to do. She remembered a presentation on sexual harassment during orientation, and decided to contact the Title IX coordinator in the morning.

The next morning, Terrie made an appointment with the Title IX coordinator, and she met with her later that afternoon. Terrie brought the texts and pictures sent to her from her male friends and showed them to the coordinator. After Terrie described the incident, the coordinator asked Terrie what she wanted to happen. Terrie stated that she wasn't sure, but she was sure she wanted her friends to understand how much they hurt her and how disappointed she was in their behavior. Terrie wasn't sure which friend sent the pictures but she believed the two male friends were together when the pictures were sent. She received the texts from one number, but she also believed that her friends acted together.

The coordinator explained to Terrie that she had more than one option. Her first option was to file a Title IX incident report and follow the university process of an investigation, which included interviews and a panel. Terrie asked what would happen to her friends. The coordinator was unable to give her a definitive answer, but did say that her friends could face a variety of consequences, including the possibility of dismissal from the medical program. Terrie stated that she did not want that to happen to them.

The coordinator gave Terrie a second option: a mediated conversation between the male friends, the ombuds, and Terrie. The coordinator had often worked with the ombuds regarding bias and discrimination cases in the past and felt that an informal, confidential, impartial, and independent approach might help Terrie with her needs and requests in this situation. Terrie had never heard of an ombuds and asked for clarification about the role. It was clear to the Title IX coordinator that Terrie's goals were to be heard and understood. Terrie stated that she wanted her friends to understand how inappropriate the texts were, but she didn't want to hurt them or their future plans

to be medical doctors. Terrie agreed to meet with the ombuds, and the coordinator called the ombuds with Terrie in the room. An appointment was made for her then.

Terrie met with me the next day and explained her situation, in detail, including what happened at the party and after the party. I asked Terrie if having a facilitated conversation with her two friends was what she wanted to happen. Terrie stated that she didn't want to get them in trouble but she did want them to listen to her and understand how much they had hurt her and their friendship. She also wanted to make it clear to them that she never wanted them to send her or anybody else inappropriate pictures ever again. With her permission, I reached out to the two friends separately, introduced myself as the university's ombuds, and explained that Terrie wanted to meet with them in my office. The Title IX coordinator had previously explained the role of the ombuds to both respondents and that the ombuds would be reaching out to them. Consequently, they were ready for the call. When I talked to both friends, I explained the informal nature of the ombuds role and asked both of them if they were willing to meet with me and Terrie. I made it clear that they could decline the meeting; however, a formal process would most likely be the next step if they didn't meet with me. They both agreed to meet with me and Terrie. I set a date to meet with all three of them in my office.

It is important to reiterate that I, as an ombuds, do not typically facilitate Title IX conversations, and all Title IX cases I handled in the past were effectively transitioned to the Title IX coordinator. This was an unusual case because the victim, Terrie, didn't want a formal process but did want to talk with her friends in a safe space. My office provided her with this option. To clarify the ombuds informal role, I confirmed with the Title IX coordinator that there would be no record regarding my informal meetings with these individuals. The Title IX coordinator understood and confirmed that this was going to be an informal and off-the-record process.

When I met with Terrie and the respondents, I first explained a few ground rules and stated that Terrie would begin the sharing today and that they were going to listen and not interrupt her. In this conversation, I explained that the male friends would not be defending themselves nor explaining their actions on the night they sent Terrie inappropriate pictures. They were there to listen to Terrie. I did share that they would have an opportunity to answer Terrie's questions and comment at the end of the conversation. I also explained that this was a confidential process and the conversation was informal and off-the-record. Normally, I am not this directive when I facilitate conversations. I always lay out ground rules, but this case was a little different. While I was not going to force the two male friends to be completely silent, I did feel that it was important that they were not there to defend themselves. They were mostly there to listen to their friend and to bring some restoration to their friendship. My directive approach may have pushed the limits of ombuds neutrality or impartiality as expressed in the IOA Standards of Practice; however, I was willing to take this chance because keeping Terrie safe was my priority.

The two male friends agreed to the ground rules, and for the next hour, Terrie described how she experienced that night and how damaging their actions were to their friendship. Terrie was articulate, emotional, and thoughtful while talking to her male friends. Terrie's male friends sat, listened, and cried. When Terrie was done, they both apologized for their behavior on that night and promised her that they would never do anything like that again.

This was a first for me. It was a unique example of how the Ombuds Office can informally and impartially help in Title IX cases. Often, people need a safe space to hold confidential and off-the-record conversations that do not lead to formal resolutions. As an ombuds, I was able to provide a safe space to a student who was unwilling to file a formal complaint but wanted to be heard and understood. It is my belief that handling this case informally provided a resolution for Terrie. It was a non-punitive, yet powerful learning experience for Terrie's friends.



## **12. THE CASE THAT CHANGED ALMOST EVERYTHING**

A few years ago, our CEO started a Zero Tolerance campaign against sexual harassment and sexual violence. At that time, I had been in my position as Director of the Ombudsman Office for only some months, and was still getting my bearings to navigate the corporate culture. Midway in the campaign, a former employee contacted me, a woman who had been sexually harassed at work and now wanted to understand how to come forward and report formally. It was the “zero tolerance” and the promise of justice that this implied, as well as a promise of taking reports seriously and following due process, that made her decide to come forward. But immediately there was a huge and unsurmountable hurdle: the policy about abusive conduct included a 12-month time limit for reporting. In other words, you must report within 12 months from the moment the incident happened; if you report later your grievance would not be heard.

That time limit struck me as not quite in line with zero tolerance, and simply not a good practice of internal justice. Not only did the visitor want to report an incident that happened over six years ago; by now she was also a former employee. This was another unsurmountable hurdle because only current employees could report. Furthermore, it struck me that for years the visitor had felt it was unsafe to report. By now she had left not only the company but also the industry, and combined with the “zero tolerance” message, she had amassed the courage to make the step she had long wished to make. This background made the years-long impact and potential of trauma inflicted on survivors of sexual harassment apparent to me.

As our company’s new ombudsman, I had explained to the leadership that I would identify systemic issues and provide upward feedback, because that is the strength of our profession to me. We don’t only support individuals dealing with the issues they are facing and coach them in their own endeavours to do so effectively. We also prevent escalation, reoccurrence, reputational harm, and damage to more individuals by providing recommendations on how to change systems, practices, and policies in the company. We are forerunners in creating awareness on issues and trends that the leadership need to act on. Ombudsmen need to tell leaders what matters, even if they would rather not hear about it. I felt that here was exactly such an issue. Sexual harassment was not recognized as a problem within our company that prides itself on being at the top of the industry. Because sexual harassment doesn’t happen in a top-rated company, right?

### **MY STRATEGY TO GET CHANGE**

The policy needed to be changed. An ombudsman doesn’t do that. I didn’t want to limit my role to providing a written recommendation and then leave the rest to thoughts and prayers. I wanted more to be done for survivors to attain justice; I wanted systemic change to occur. Changing that policy would require more than making a recommendation to Human Resources (HR), the policy owner. It necessitated more experts, more diversity, and more disciplines to be involved to write a comprehensive policy. I was convinced of this because, paraphrasing Margaret Mead: “Never doubt that a small group of thoughtful, committed employees can change the company.”

After thorough research, including talking with survivors outside my company, I brought together colleagues from different professional areas: HR, Investigations, Diversity & Inclusion, Legal, Security, Staff Support, and Audit. As an ombudsman I could not tell them what to do, and therefore I explained in what ways the current policy was problematic and why it needed revision. I presented them the research my office had conducted, with the recommendation to form a working group to rewrite and seriously update the policy.

Then #MeToo happened and several badly handled cases became public. The pressure was on to deliver this new policy. And because different disciplines had included their input, it became a benchmark policy within the industry. The new policy prompted more offices to work together, brought awareness to managers that sexual harassment existed, and lifted the taboo for survivors. Indeed, the number of visitors to my office with sexual harassment concerns quadrupled. The number of formal sexual harassment cases quadrupled too.

Fast-tracking formal sexual harassment reports meant quicker investigations and faster disciplinary measures. A senior internal panel was formed by HR, Investigations, Legal, and the Ombudsman Office. The purpose of the panel is to quickly tackle issues of (sexual) harassment, discrimination, and abuse; better protect affected employees; and provide recommendations for action in situations of abusive conduct. I took the opportunity to explain the Ombudsman Office Terms of Reference so the panel would understand and respect my principles of independence, confidentiality, informality, and neutrality, which they did without any problem or hesitation.

I also used my annual report as an opportunity to educate crucial stakeholders. In it I explained how the company had been unaware if not in denial of the occurrence of sexual harassment. Sexual harassment is something we would rather not know happens among us. There was a reluctance to face this shadow of an otherwise well-functioning and often praised corporation. There was disbelief and an “it’s not me, it’s not us” reaction. I found providing stories helped to bring reality closer to home. A website on reporting abuse (unfortunately no longer existing), which I had discovered during my initial research, included personal stories of sexual harassment. These stories were educational, because they were imaginable. Stories make the topic more human; they lift sexual harassment above statistics.

There were also collaborative efforts to improve the organization’s culture. I had learned from investigators that sexual harassment often goes hand in hand with other abusive or even criminal behaviour such as fraud, embezzlement, and extortion. A culture of impunity, a high stress working environment, peer competition for secure jobs, and a tall corporate hierarchy can create a fertile ground for different forms of abuse. A culture like ours that values “getting things done” should not come at the cost of caring for, or looking out for each other and supporting each other’s wellbeing and careers. Moreover, inequality in treatment, hierarchical status, contract security, and access to justice have been shown to lead to power imbalances which can easily lead to abuse. Inequality can stem from different contractual conditions for the same work, male dominance, racial dominance, and hierarchical structures, all of which make some of us less important than others.

I knew reducing the incidence of sexual harassment would require significant cultural change. It would involve looking very hard at the current values and behaviours that were endorsed within the corporate culture and determining the nature and the drivers of sexual harassment in the organization. As the ombudsman I recommended to dedicate a survey solely to sexual harassment, harassment, and abuse of authority, which was subsequently supported by the senior internal panel. This survey provided more insights, surfaced the current problems with abuse, and most interestingly led to the establishment of a corporate structure with the aim to create the necessary cultural change. We are working to cultivate a more inclusive work environment, free from abuse; where employees including managers are aware about sexual harassment, have skills and insights to prevent abuse, and know what to do about it and where to go for help.

#### WHAT I LEARNED ABOUT FORMAL REPORTS AND INFORMAL OPTIONS

Imagine an employee who was sexually assaulted by a colleague, groped, pushed against a wall, or raped after work. The messaging in the workplace is to report what happened, and “we take every report seriously.” The employee tries to piece things together and indeed considers reporting. Reporting means writing up every detail of what happened and sending the story to a generic email address, like “complaints@companyX.” Then they wait. Through this process, the employee is expected to submit a very private matter – one that perhaps keeps them up at night, that brings up many different emotions such as shame, doubt, and guilt – to a mostly unknown process and to unknown people.

In such processes, the employee has no control. I had been told of survivors waiting for weeks before hearing something back. Then they were told to rewrite everything again into a template, or they received an email saying they would be contacted “soon” without being given a timeline. They wondered what would happen if their report didn’t meet the criteria for a formal



investigation, or if an investigation was opened but did not find enough evidence so the case got closed. They wondered why certain witnesses were not called or why a witness told a different story to the investigators. Were witnesses afraid to lose their jobs or afraid of retaliation? Did they just not find what happened to their colleague to be important enough?

Going formal is a tricky process. It requires stamina and patience at a time when the survivor probably doesn't have much stamina and feels very vulnerable. The messages of "zero tolerance" and "we take this very seriously" imply that the company cares, but the victim is frequently left in the cold. In my organization, the reporting process was formerly not as victim-centered as it has become. In a victim-centered process, the care and support for the victim are the determining factor in the steps to be taken, and the victim decides whether an investigation will take place. Even though the process is now more victim-centered, I still hear of instances of supervisors or colleagues implying blame on the victim. There have also been instances where the supervisor was initially understanding and supportive, but then later made decisions that were negative for the victim's career. From other companies I have heard the process was dominated by legal staff who ticked the boxes of due process but lacked empathy for the survivor.

However, if reporting doesn't bring justice, then what is the alternative? Providing options for informal resolution is very important. Several of my visitors, usually women, have wanted their male harasser to know how his behaviour had impacted them, and they wanted him to understand why it was hurtful. Some have wanted reconciliation or an apology. Others have wanted the harasser to listen to their story or to hear the harasser explain what brought them to do it. Here is where the ombudsman provides the options of mediation, facilitation, and a restorative justice process. When there is a safe space for conversation, dialogue, and listening, there is the potential to create learning and very importantly, healing. Another informal and victim-centered option for survivors is the opportunity to deposit their story. This means the survivor provides a written report without asking for a formal action such as an investigation. Instead, the survivor asks for the story to be deposited in a safe, confidential place and to be notified if another victim brings forward a similar case involving the same perpetrator. With strength in numbers and the chance of finding more evidence, the survivor can decide that an investigation be opened.

#### JUSTICE IS A JOURNEY, AND SO IS CHANGE

The changes taking place in the organization are encouraging. There is commitment from the leadership to create a better workplace, a dedicated senior post is established, and funds are committed to roll out a related programme. Curbing sexual harassment and other abusive conduct is now an important topic and there is improvement in how management are being held accountable. Because of the removal of the restrictions for reporting in the new policy, more survivors have been coming forward; and more managers are contacting me as the ombudsman for consultation on how to respond to claims of abuse within their teams.

The individual who had sexually harassed my initial visitor appeared to be a serial sexual harasser and had also been reported by someone else. This provided the opportunity to my visitor to tell her story to the investigators, the same story that started a journey of crucial organizational change. It is a journey that I, as Ombudsman, am glad to continue being a part of.