

HANDBOOK PURPOSE

To support new and current ombuds.

If you have received this handbook for the purpose of setting up an ombudsman's office within your company, we want you to know that there are a variety of resources offered by TOA. Among them the ability to confer with members of the board of directors or the consultants list. See Appendix C.

ACKNOWLEDGEMENT STATEMENT

Material for this handbook revision was drawn from many sources and a large number of TOA members have made significant input. I and The Ombudsman Association are very appreciative of their effort. It is highly improbable that any list would be complete, but some deserving practioners are: Jim Hendry, who compiled the original handbook; Carole Trocchio, Ann Bensinger, and Dr. Mary Rowe.

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Virgil M. Marti

PREFACE

In the preface of the first edition (1987) of this handbook, President Carole M. Trocchio stated, "Although this is our first effort to answer questions and provide a comprehensive picture of how an ombudsman functions in a corporate setting, the Association intends to reissue the Handbook from time to time in the future. As our experience grows, and as the role of ombudsman evolves in response to new challenges and new problems, the 'snapshot' of our profession will have to be updated".

That time is now. Over the past seven years we have seen significant change in the organization. We changed our name from Corporate Ombudsman Association to The Ombudsman Association. This recognized the significant number of new members from the academic, government and health sectors. We are today the most diversified ombudsman association in the country, and this is a major source of our strength.

Since our first edition, there has also been tremendous growth in our profession. Increased business awareness of ethics, along with government initiatives, i.e., the sentencing guidelines, have created a great interest in and support for the Ombudsman function. This increase has not been without some drawbacks. The profession's rapid growth has raised serious questions about standards of conduct. Not everyone who uses the title "ombuds" is practicing to our Code of Ethics. In the past few years, we have also seen challenges to our core value -- confidentiality -- in the court system. We are working very hard to address this issue through the advocacy of a Shield Law, but the strongest groundwork for privilege is for every "ombuds" to practice faithfully and conscientiously to our Code of Ethics or to the code of another ombuds association.

Since 1987 we have created a training seminar, Ombudsman 101, that has become a nationally known primer for our profession. The past spring we launched a pilot program, Ombudsman 303, for experienced practitioners, which was very successful. Ombudsman 202, with an emphasis on standards of conduct, will be given next year. All of these programs are contributing to the competence and skills of our profession, and the growth of our Association.

These are some of the reasons to belong to The Ombudsman Association. The main reason, it seems to me, is the care we show for one another. An "Ombuddy" is always there when needed. The networking, hand holding, and expertise in this group is awesome. The people who started this Association should be proud of their handiwork.

**Thomas Furtado, President
The Ombudsman Association**

TABLE OF CONTENTS

Preface		i
Table of Contents		ii
Introduction		iii
Chapter		Page
I	The Role of The Ombudsman	1-1
II	Ethical Issues for an Ombudsman	2-1
III	The Nature of the Work	3-1
IV	The Cost Effectiveness Issue	4-1
V	Starting an Ombudsman Office	5-1
VI	The Ombudsman Association	6-1
Appendix		
A	Reflections of an Ombudsman	A-1
B	Bibliography of Papers	B-1
C	Source of Help	C-1
D	Bylaws of The Ombudsman Association	D-1

INTRODUCTION

The ombudsman function exists to help surface and fairly resolve problems that arise within the organizations that they serve. The word *ombudsman* *om - buds - man* comes from Scandinavia during the 19th century, where the term applied to a public official appointed to investigate citizens' complaints against government agencies. In recent times some persons object to titles which include "man," and this has given rise to the use of alternative words. Some individuals simply keep the protector or representative part of the term, "ombud," and others use terms such as "ombudsperson." In some organizations the function is entitled something entirely different, such as "liaison officer" or "work problems counselor." The women and men of TOA have elected to continue to use the word ombudsman.

The Office of Ombudsman can be found in many corporations, universities and colleges, hospitals, prisons, nursing homes, federal agencies and state governments. Their purpose is to assure that every voice in these organizations can be heard and that every problem can receive an impartial review.

To do this an ombudsman must be "*a designated neutral*" and the organization must ask that the ombudsman surface the truth rather than that he or she defend a particular point of view. If justice is to be served, the ombudsman must also be able to provide *confidentiality* so that individuals can come forward and speak their truth. This manual shares the experiences of some of the best practitioners to date and can help practitioners and organizations assure the efficiency of their ombudsman programs.

CHAPTER I THE ROLE OF THE OMBUDSMAN

1.1 What Does An Ombudsman Do?

In essence, the ombudsman is appointed to act as an impartial source of assistance in the resolution of both an organization's internal problems and those of its people. To provide that assistance the ombudsman must enjoy the fullest support and confidence of the top management of the organization. The ombudsman is not just another functionary but someone with a broad mandate to look into any situation presented, to review any pertinent documents, to meet with and discuss the situation with anyone having knowledge of the matter, and to give advice and opinion as judgement and conscience dictate. The ombudsman is "of" the organization, but not "in" its line or staff management. In the view of many, the ombudsman serves as the conscience of the organization. Researchers who have been studying the activities of the ombudsman have defined the role as "...a neutral member of the organization who provides *confidential and informal* assistance in resolving concerns and is *outside* the normal structure.

While the commitment of management and the delegation of broad powers to the ombudsman are essential, the confidentiality of the office is critical. Keep in mind what is involved -- an individual seeks help on a problem that is very important to him or her. For example: in a corporate environment it may affect whether the client's career is derailed or terminated, or there may be problems of a most serious personal nature. The employee frequently does not know where to turn for help -- he or she may fear that a manager will take reprisals, that personnel officers cannot be trusted to keep the matter confidential, or that it is too embarrassing to discuss with friends or colleagues. In this emotionally charged kind of situation, the office of the ombudsman becomes a place to turn to precisely because it is understood that anything discussed will remain completely in confidence.

Outside the corporate environment where an ombudsman is chartered to provide the service to a variety of clients such as students, patients, customers, franchisees, vendors, subscribers, and the like, individuals with concerns also value the opportunity to discuss specific concerns related to their situations in an atmosphere of respect, understanding, and confidentiality.

In many cases an individual does not want the ombudsman to do anything, but does want someone to listen to the problem, explore what options are available, and then say nothing further to anyone about it. Just talking about the problem can be a therapeutic experience. The individual often is empowered, has learned of some alternatives that he or she can use to better the situation, and ultimately deal with the problem on their own. This often results in increased self-esteem and productivity on the part of the individual.

But even in those cases where the ombudsman does play an active role, the aspect of confidentiality is paramount. Confidentiality is essential to any frank and open discussion of what future action might be taken. No ombudsman will continue to draw visitors to the office if

confidences are not respected. Consequently, if there are no visitors, there is no role for an ombudsman.

As indicated, a large part of the job is to listen -- attentively, empathetically, and objectively, often with a certain amount of counseling and/or problem solving. Because an ombudsman is knowledgeable about the organization and skilled in problem solving, he or she is frequently aware of options the individual does not know about. In addition, the ombudsman often has a sense of how similar problems have worked out elsewhere in the organization.

There are also cases where something more than listening will be needed and here an ombudsman has a variety of approaches from which to choose. After obtaining permission from the individual to talk with anyone who might be helpful in resolving the concerns, the ombudsman may look for some further perspective by talking with any appropriate individual in the organization. This is sometimes referred to as an informal "investigative function". In a corporate environment an ombudsman may choose to review the individual's file; a hospital ombudsman may review the patient's history or insurance coverage; a franchise ombudsman may review the franchise agreement and business history; a university ombudsman may seek information from the student's advisor. Once the dimensions of the problem become better established, and the facts are clarified, the ombudsman may begin to see aspects that could become the basis for "brokering" a solution, thus bringing about a satisfactory outcome for all concerned. Ideally, the situation becomes defused, quietly, informally, without confrontation, and at the lowest possible level of intervention.

Most organizations have some established procedures for resolving problems formally and informally. This usually involves a process of appealing the case to higher levels of authority for review and decision. There are times in every organization when this normal problem-resolution process has broken down or is not working properly -- it is these times when an ombudsman can be very helpful, and indeed acting as a "safety net" is one of the major functions of the ombudsman. The ombudsman, by virtue of his or her unique role in the organization, can quickly contact the person in the organization best qualified to resolve the problem effectively and efficiently. An ombudsman is almost never expected, nor empowered, to make binding decisions on how a problem should be resolved. The ombudsman is expected to persevere in seeing that a resolution process is followed as fully and fairly as possible within the organization. To that end, the ombudsman may serve as an objective observer when meetings take place, or take a more active role in facilitating a meeting between the individual and management representative. Once a case has been carried as high as possible, and a decision is made by the organization's representatives, the ombudsman's involvement is ended.

The ombudsman may not like the way the problem has been resolved, but if the individual has had an opportunity to present all the facts, and all the facts have been taken into account, there is usually nothing further to be done by an ombudsman.

While much of the activity of the ombudsman is in response to problems and concerns brought by

individuals, the ombudsman also has an opportunity to serve the organization in a pro-active capacity by carefully tracking the types of concerns. The ombudsman can then identify significant trends and recommend changes or modifications in the organization's policy and procedures that will help eliminate such problems in the future.

All in all, the neutral and confidential nature of the ombudsman's office, coupled with the ombudsman's problem-solving skill, and extensive knowledge of the organization and "how things get done" within it, enables the ombudsman to serve the needs and interests of individuals as well as the objectives of the organization.

For those who would like to read further about some of the issues touched upon in this chapter, Appendix B contains a "Bibliography of Papers" regarding Ombudsmanry.

1.2 Mission Statement

The Mission Statement for the Ombudsman function will depend upon the organization and the client base the ombudsman will serve. The following mission statement contains the most important basics of the function:

"The mission of the ombudsman is to provide a confidential, neutral, and informal process which facilitates fair and equitable resolution."

1.3 Characteristics of an Ombudsman Office

Confidential -- Clients must feel comfortable that any information, including their identity, which they provide in confidence, will remain that way. Files, notes, and comments are not provided to other employees, including management or any other parties, unless specific permission is granted. This same degree of protection is provided for information that other parties give to the ombudsman in confidence concerning a client's case. Since the actions and recommendations of the ombudsman may not be confidential, care is exercised that practitioners do not reveal any information provided in confidence (e.g. student concerns not disclosed to a roommate, professor or dean).

Neutral -- The ombudsman must approach each case without prejudice but with a recognized obligation to uphold the law and support the intent of the organization's policy. The ombudsman is neither critic nor advocate of the client's cause, but committed to a fair resolution of the client's problem. As stated by one practitioner, "The ombudsman will take into account the rights of the individual and the obligations of the organization, and the rights of the organization and the obligations of the individual."

Informal-- Informality is frequently a key to success for the ombudsman's office. The ability to gather information and explore options with the parties involved before they become publicly committed to a given position is most useful in the type of work accomplished by the ombudsman.

The recommendations or findings are also usually provided in the most informal manner satisfactory to the client.



OMBUDSMAN JOB DESCRIPTION

Independent -- The ombudsman is not normally in the direct chain of the organization's line management and usually accomplishes tasks through the power of logic, charm, persuasion, and an appeal to fairness. This does not mean the ombudsman has no power since he or she reports directly to a senior executive of the organization. It does mean that the ombudsman exercises power with care, since a reputation for integrity and sensible solutions is the best guarantee of continued success.

Non-Retaliatory -- It is important for the members of the organization to clearly understand that there will be no retaliation against employees who visit or call the ombudsman's office. The ombudsman frequently works with other individuals known to the client to solve a problem, and a feeling of resentment on any individual's part destroys that relationship and the effectiveness of the office.

Provides Multiple Options -- Since the ombudsman's objective is to help clients learn how to solve or cope with their own problems, it is important to help them develop a range of options and to discuss the pros and cons of each option. It also provides greater "buy-in" on the part of the client to whatever option is chosen. Furthermore, the ombudsman should develop, with the client, a clear understanding of what actions each will take (if any) in implementing the selected option.

Fair and Ethical -- The ombudsman's office is committed to fair and ethical behavior. The view, of course, of what is fair depends to some degree on the perception of the viewer, and much effort can be spent on identifying all the stakeholders, their interests and what solution is fair to all. (See Chapter 2 for a more comprehensive discussion of ethics).

1.4 Functions

Another helpful way to describe the ombudsman office is to explore the functions most frequently performed.

Listening -- Active, neutral, intent, concentrated listening is surely the most valuable and most used function that the ombudsman performs. Clients have to believe that they have been heard if they are going to be satisfied with the results. It is desirable to express recognition of, and respect for, the client's feelings without necessarily concurring with his or her position. Almost every case with which the ombudsman deals will involve a substantial amount of listening, looking for clues to hidden agendas, sensing hard or soft positions, and observing body language, while remaining open-minded and, above all, neutral.



As indicated above, a large part of the job is listening! Not only is this necessary where someone is simply looking for a respectful hearing of the problem at hand, but careful listening is essential to get the story straight. An ombudsman may spend anywhere from one-third to one-half of his or her office time in "just" listening.

Counseling -- The "just" listening type of contact is usually accompanied by a certain amount of counseling and/or problem solving. It may be minimal in simple cases. But, in many cases the client comes to the ombudsman after trying something which did not work. Many people want to work out problems on their own, but welcome a chance to explore, in confidence, the options open to them. The client needs some counseling from a fresh point of view.

Fact Finding -- Many times clients perceive information they receive to be "factual" because it was heard through another whom they trusted, or it became common knowledge. A most important function of the ombudsman is to determine the true facts in a given situation - "separating the wheat from the chaff" so to speak. Only when the ombudsman has determined the facts and they are agreed upon by all concerned, can the ombudsman move toward identifying the problem, and ultimately toward a resolution.

Negotiation -- There are many aspects to negotiating. Traditionally, the disputing parties meet face to face and discuss their common problem, exchange thoughts, ideas, and possible solutions. Depending on the situation and the organizational structure the ombudsman has several options: (1) the ombudsman may simply arrange for parties to meet and talk; (2) if there is a perceived or real "imbalance of power" the ombudsman may offer to sit in and listen carefully to all statements, allowing the client to negotiate in his or her own behalf, after preparing to do so with the ombudsman; (3) in a peer (interpersonal) conflict, for example, it often is helpful to have even a silent, neutral third party present. It helps the parties listen to each other better (to avoid knee-jerk defenses), and makes them feel more safe in case the discourse degenerates and becomes hurtful; (4) if it is impractical for the parties to meet face to face, or there are other reasons why this would not be comfortable for the parties, the ombudsman may engage in what is known as "shuttle diplomacy".

Shuttle Diplomacy -- Shuttle diplomacy, as the term implies, involves the ombudsman "shuttling back and forth between the parties", either in person or by a series of phone calls, for the purpose of sharing the concerns of both, the needs and interests involved, and working toward some kind of resolution that is agreeable to both parties.

Mediation -- The ombudsman may arrange for a meeting and facilitate the meeting, encouraging the parties to express their concerns, needs and interests, and lead the parties in a problem solving session to reach a solution.

Elegant Solutions -- Since the ombudsman has no vested interest in the outcome of the disputes, is committed wherever appropriate to "win-win" solutions, has information about the interests on all sides of a dispute, has the luxury of concentrating on dispute- resolution, and is unlikely to lose interest (or composure), he or she can often times find a reasonably creative solution.

Change Agent -- A final function which helps to describe the ombudsman's job is the recommendation to the organization of changes needed in the system that will work to reduce the number of problems encountered by the organization and brought to the attention of the ombudsman. The ombudsman frequently is in a position to provide the organization with "readings" of both the mood and morale of the ombudsman's client base.

(Caution: It is important that any reports and/or recommendations made by the ombudsman be restricted to issues and in no way identify individuals who have availed themselves of the services of the ombudsman).

1.5 The Importance of Providing "Feedback"

People do not often come to an ombudsman because everything is going according to plan or because they are delighted with the organization or their representatives. Whether it's a corporation, university, government agency, retail establishment or the like, people come to the ombudsman because they have run into problems. An ombudsman thus sees a biased sample of his or her client base, but this also affords the ombudsman a unique opportunity to observe what is going awry in the organization. One of the important services an ombudsman can perform is to analyze these perceptions, distill whatever significance or trends they reveal, and present them to the management of the organization. This can be accomplished through written reports -- annually, semi-annually, or as appropriate -- but it is more often accomplished by one-on-one meetings with key managers of the organization. The feedback function can focus on policies that seem ineffective or misdirected, can suggest areas for improvement and review, and can highlight areas of major client concern. It can also suggest what appear to be promising new initiatives or alternative policies.

Since most organizations usually have some kind of problem-resolution arrangements in place, one might ask why organizations should even consider an ombudsman. It has been the experience of professionals in the field that even when such existing facilities are working well, an ombudsman is apt to get more and different problems than the more traditional "chain of command" approach. The neutral and confidential nature of the ombudsman office enables it to serve as something of a safety valve, attracting cases that might otherwise have remained unaired and unrecognized. It also seems true that if additional channels of communication are added to an organization, there will be more problems coming to the surface -- or coming to the surface earlier -- as a result. Many organizations are therefore finding that it is not only cost-effective to introduce such an institution (see Chapter IV), but it also is generally viewed as a humane policy, indicative of genuine concern for the rights and responsibilities of employees, patients, students, faculty, parents, franchisees, and consumers... in short, it's also good business.

Every ombudsman has the obligation to advise the organization of the types of concerns that are occurring and where attention should be directed to avoid problems. This is normally done through a quarterly report sent to the appropriate person in the organization. Reports usually include a narrative that discusses recent trends or developments, statistics on the case load, and any significant information that would help the organization improve their relationship with its clients. Care should be taken not to breach any confidentiality or reveal names of individuals who have come to the ombudsman for help, because in many organizations this report is shared with others so that it serves as a source of "publicity" about the existence of the ombudsman and the types of problems handled. Depending upon the client base and the culture of the organization, the ombudsman may be expected to produce a number of other reports.

1.6 Measures of Effectiveness

Most Ombudsman Offices are very much aware of their contribution and value. In a number of cases this value has been quantified through examination of the "cost of alternative outcomes". However, most every ombudsman will agree that these measures fall somewhat short of evaluating the total contribution the office of ombudsman provides to harmonious day-to-day operations of an organization. (See Chapter IV, "The Cost Effectiveness Issue".)

A very important element in providing "Feedback" to management, and thus fulfilling the goal of "Earning Your Keep", is maintaining records of the type of problems that come to light, how often, and where. Ombuds also help head off crises in other areas and provide a "Heads Up" for new problems that are about to surface. The Ombudsman office has the obligation to advise management of the types of concerns that are occurring and where management should direct their attention.

1.7 Files

A final introductory subject is that of files. All offices should keep some statistical information to be summarized in the reports discussed above. In addition, an Ombudsman may keep some sort of file, frequently in a manila folder, on the case while they are working on it. The amount of information in that file is a compromise. On the one hand, there should be enough data to trigger the ombudsman's memory about key facts relative to the case. On the other hand, the matters under consideration are frequently so sensitive it is prudent to have as little in writing as possible. There always is some possibility that the files could be subpoenaed by a court, since ombuds are not protected by a shield law in most states. The office also should have a reputation for being discreet. These considerations argue for a minimum in the file.

A similar compromise exists with regard to file retention, (See Chapter III, Section 3.4, page 3-3). Regrettably, some clients are repeaters. Those who have problems in one area are frequently convinced that their problems would be solved if they were moved. However, after a move, they return with a new, but similar problem. Though it's always risky to retain files, there are various other reasons to justify it, not just that the complainant may return, but there may be future complaints about an alleged offender or a dysfunctional department, or a single past complaint may have been the tip of an iceberg. For these reasons, file retention for years may be helpful. On the other hand, the same reasons which argue for brief files also argue for short file retention. Consequently, some offices destroy the case file immediately after it is closed, retaining only a brief summary (perhaps in a secure computer data base) for future references. The cost of file space is perhaps a final argument for the latter procedure. In the final analysis, the decision is yours to make.

Written communications sent by an ombudsman to others outside of the ombudsman's office are obviously not confidential, even if a copy of this correspondence is retained in the ombudsman's office files.

1.8 What Are The Professional and Personal Qualifications of an Ombudsman?

Most individuals who work as an ombudsman have a history in the environment they serve. An estimated 90 percent of corporate ombudsmen worked for their employer before being chosen to be the ombudsman. A hospital ombudsman is often chosen from the staff and many may be nurses. A university ombudsman often is chosen from the ranks of professors. A school ombudsman, more often than not, was a teacher, and so on. This internal selection process means that most are familiar with their environment and with the associated cultures; it also suggests that they have the trust and confidence of their clients and the organization's hierarchy to handle the difficult, and sometimes delicate problems that arise. About half are women, and a significant number are African-American, Hispanic, and Asian. Some come from previous experience in employee assistance programs or equal opportunity offices; several have legal backgrounds, some with labor relations, arbitration, or mediation experience. The college and graduate school backgrounds of those in ombudsman positions include engineering, economics and management, social work, counseling, liberal arts, divinity studies, law, and many others.

As a general proposition, the typical ombudsman seems willing to take high emotional risks, but is not what one could term an entrepreneurial risk-taker. Effective practitioners are excellent listeners, genuinely like people, can see more than one side to a story and seem able to separate the people from the problem. They are comfortable as neutrals, do not leap lightly to conclusions and tend to be analytical and interested in problem-solving. The nature of the position requires that they be tactful and circumspect, and it helps to be willing to work with anyone, no matter how difficult and unpleasant that person may be.

The appointments of those serving as an ombudsman vary. In some corporate organizations it is reserved for those nearing retirement, as an "end of career" assignment. Others may serve for a guaranteed length of time, with the clear understanding that actions taken as an ombudsman cannot affect their future career or tenure in the organization. Still others take on the role of ombudsman and grow with the profession enriching the organization, as well as their own professional lives, with their experience.

An ombudsman may be appointed based on special relationships with a CEO or other influential person. The government ombudsman who is appointed through the auspices of one political party may leave if that party is voted out of favor. It is not uncommon, however, for the ombudsman to be viewed as bipartisan and continue working under a new administration.

With the downsizing pervading all aspects of industry, a new ombudsman has come upon the scene -- the contract ombudsman. A contract ombudsman serves an organization and its clients, not as an employee of the organization, but as an independent contractor. The contract ombudsman works under contract for a specified length of time and serves the same function as the ombudsman who is an employee of the organization.

One can see, therefore, that no easy generalization is possible about whether being an ombudsman is a profession toward which one can point a career. The most one can say is that the effective practitioners seem to have certain personal characteristics and ethical values in common, which are recognized and appreciated when the time comes to appoint an ombudsman. If that comes close to saying that an ombudsman is "born, not made", then perhaps that is pretty much the way it is.

1.9 Synopsis of Key Principles

The following chapters contain much good advice and counsel on how to be a successful ombudsman and how to set up and operate an efficient ombudsman function. The position may seem overwhelming at times. A retiring ombudsman laid out a list of suggestions for his successor that you will find extremely helpful. They are contained in Appendix A.

CHAPTER II

ETHICAL ISSUES FOR AN OMBUDSMAN

2.1 The meaning of Ethics

Most dictionary definitions define ethics in terms of rules or standards having to do with what is right and good. The definitions almost always include mention of the word "moral." It is interesting to think about some of the synonyms that are given for the word "moral" - clean, decent, pure, spotless, righteous, virtuous, proper, noble, principled, honest, honorable, upright, decent, equitable, fair, impartial, exemplary, blameless and high minded.

In their book, The Power of Ethical Management, Ballentine Books, 1988, Kenneth Blanchard and Norman Vincent Peale claim that no one is immune from facing ethical dilemmas. Unfortunately, many people come to believe that you have to "cheat to win" or that "nice guys finish last." Peale and Blanchard disagree. They argue that the ability to resolve an ethical dilemma really comes down to a matter of self-esteem. When feeling good about yourself depends heavily on approval from others, people often cave in to outside pressure. By contrast, people with high self-esteem can resist pressure from others to "take the easy way out" because they already feel good about themselves.

When faced with an ethical dilemma, Peale and Blanchard advise that you take a little ethics "test." First, ask yourself if the decision you're considering is legal. If you make the decision, will it be against the law? This question addresses existing standards (rules and laws) that should affect how a decision is made. Second, is it balanced? Does the decision benefit one side at the other side's expense? If so, the other side will probably find a way to get even. This question gets at your sense of fairness and rationality. Third, how does the decision make you feel about yourself? How would you feel if what you are thinking about doing ended up in your local newspaper, or, worse yet, if Mike Wallace found out about it and put it on "60 Minutes". This question gets at your own sense of right and wrong. The underlying message of the book is that "there is no right way to do a wrong thing."

Figure 2-1 is a similar summary of guideposts to help a client find the "right" path. It can be made up in a wallet-sized format to distribute when appropriate (see page 2-2).

Figure 2-1

A TRAIL GUIDE TO THE 'RIGHTWAY'

- 1) Does the course of action you plan to follow seem logical and reasonable? Never mind what anyone else has to say. Does it make sense to you? If it does, it is probably right.
 - 2) Does it pass the test of sportsmanship? In other words, if everyone followed this same course of action, would the results be beneficial for all?
 - 3) Where would your plan of action lead? How will it affect others? What will it do to you?
 - 4) Will you think of yourself when you look back at what you have done?
 - 5) Try to separate yourself from the problem. Pretend, for one moment, it is the problem of the person you most admire. Ask yourself how that person would handle it.
 - 6) Hold up the final decision to the glaring light of publicity. Would you want your family and friends to know what you have done?
-

As an unfortunate sign of the times, there are many cases that could be used to illustrate unethical behavior on the part of corporations and management at all layers. It has been estimated that since 1989, nearly two-thirds of America's 500 largest corporations have been involved in some form of illegal activity. In an article entitled "Why 'Good' Managers Make Bad Ethical Choices," Saul Gellerman listed four commonly held beliefs that could lead to misconduct (Ethics in Practice, edited by Kenneth R. Andrews, published by Harvard Business Press, 1989):

- 1) The activity is within reasonable ethical and legal limits--that is, that it is not "really" illegal or immoral.
- 2) The activity is in the individual's or the corporations best interests--that the individual would somehow be expected to undertake the activity.
- 3) The activity is "safe" because it will never be found out or publicized; the classic crime and punishment issue of discovery.
- 4) Because the activity helps the company, the company will condone it and even protect the person who engages in it.

"Put enough people in an ambiguous, ill-defined situation," says Gellerman, "and some will conclude that whatever hasn't been labeled specifically wrong must be OK."

THE DECISIONS WE MAKE IN THE HOPE THAT NO ONE WILL FIND OUT ARE USUALLY WRONG.

2.2 Some Examples of Ethical Issues

Given the sensitive nature of many of the problems which come to an ombudsman, and the unusual situation of being the "designated neutral" in an organization (usually one in which the ombudsman has served for many years and with extensive personal contacts), it is not surprising that ethical issues tend to arise. To a large extent these are tied to the ombudsman's need to respect and protect the confidentiality of information received, as well as to see that certain very serious issues are effectively handled. The willingness of staff members to use the office of the ombudsman depends on whether the ombudsman is perceived as reliable and able to keep matters discussed in strictest confidence. But confidentiality is not the only aspect that raises ethical issues. It is also important that an ombudsman be perceived as honest and fair, with integrity to withstand pressures from senior management, friends and former colleagues. Finally, within the corporate environment people face many of the same moral and ethical issues which arise in the society at large--issues such as equal employment opportunity, environmental protection, worker and consumer safety, and a host of questions raised by the technology of the computer age. The ombudsman has a responsibility to draw attention to these moral issues, and to influence management decisions in ways which will take these issues into account. A few examples of typical experiences (and dilemmas) may help illustrate why The Ombudsman Association places great importance on its Code of Ethics as a guide for all practicing ombuds, whether Association members or not. Several of these issues are summarized below:

2.3 Ethical Dilemmas

The willingness of staff members to use the office depends on whether the ombudsman is perceived as reliable and able to keep matters discussed in strictest confidence. It is also important that the ombudsman be perceived as honest and fair, with integrity to withstand pressures from senior management, friends and former colleagues. There are situations where maintaining strict confidentiality can be counter-productive and, in some cases, downright dangerous. A person may come to talk out a problem and feel better for having done so. In the course of the discussion, the client may reveal information that could be harmful to the company. To disclose the information could prove embarrassing or harmful to the client and could even result in obvious or even subtle reprisals. Yet not to do so could constitute a serious risk of litigation or danger to others. The answer? One must find a responsible option to which the visitor can agree. Other examples: Sexual harassment, conflict of interest, or dishonesty issues on which the "client" does not give the ombudsman permission to act: Harsh treatment of an employee (underdog) that senior management condones but the ombudsman feels is unjust: Overly light punishment to an executive for a serious offense: Promotion or other reward for a high-level officer who has been

known to act unprofessionally.

Another fairly common situation is when an issue is brought to an ombudsman that deals with a particular policy that has been strongly supported by senior management or high level administrators. If the policy is flawed or is being carried out unfairly, disclosure could anger and/or embarrass the senior manager who has been associated with it. Even though the ombudsman could attempt to resolve the issue through tact and quiet diplomacy, the process could be a "sticky" one. There again, one must simply "work the problem" until a responsible solution can be devised.

Should an ombudsman work with any and all clients who request the service? What about a person who is particularly difficult to deal with, such as someone who is personally offensive? Maybe this is someone whom others find repugnant, but seeks the ombudsman's help to deal with the consequences of such behavior. It is only human to experience some loss of *enthusiasm* for your job under these circumstances, and you may find it hard to maintain the sympathetic, objective attitude which all clients have a right to expect. The conflicting strong emotions that can result within you can pose some serious ethical problems.

What about the fine lines of offering options, versus telling a client what to do? An ombudsman is expected to give information that covers the range of options a client might consider in solving a problem. But the ombudsman should not try to "take over," tell the client what to do or worse yet, take it out of the visitors hands without discussion. An ombudsman should try to point out the pitfalls in any option being considered, but at some point should stand aside and let the events take their course (short of situations involving serious harm to the client or others).

One of the best ways to sum up our ethical responsibility to our employer, to our fellow teammates, and to ourselves is through the words of Ken Blanchard and Norman Vincent Peale, previously noted in this chapter: "There is no right way to do a wrong thing."

The Ombudsman Association (formerly the Corporate Ombudsman Association) held its first annual conference in 1984 and published its goals in 1985. Two of these goals were to establish and communicate standards of excellence for the profession and to develop and disseminate ethical guidelines for the profession. By 1986, the Code of Ethics was adopted by the Association's Board of Directors. TOA adopted the following revision in 1994.

2.4 The Association's Code of Ethics

1) The ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention unless given permission to do otherwise. The only exceptions, at the sole discretion of the ombudsman, are where there appears to be imminent threat of serious harm.

2) The ombudsman must take all reasonable steps to protect any records and files pertaining to confidential discussions from inspection by all other persons, including management. The ombudsman should not testify in any formal judicial or administrative hearing about concerns brought to his/her attention.

3) When making recommendations, the ombudsman has the responsibility to suggest actions or policies that will be equitable to all parties.

CHAPTER III THE NATURE OF THE WORK

As the following recap of fundamentals indicates, an ombudsman is an unusual creature who, on the surface, may look like a regular being but is required to work differently from others. Because of these differences, there are two legal arenas that require attention. The first arises from the peculiar nature of the ombudsman's work. The second arises because federal, state or local laws may govern certain standards and options available to an ombudsman.

3.1 Recap of Fundamentals

- * An ombudsman is a designated neutral and holds a unique position in any organization.
- * An ombudsman is not an advocate for any single party in a dispute; rather, the ombudsman is an advocate for resolution of the problem.
- * An ombudsman is an advocate for fairness and ethical standards.
- * An ombudsman should have ready access to all levels within an organization.
- * An ombudsman should have access to all records within an organization, except those covered by attorney-client privilege.
- * The pledge of confidentiality differentiates an ombudsman from other resources within an organization.

An ombudsman, regardless of the formality of the office in an organization, is an **informal** problem solver. One of the advantages of such informal dispute resolution is that this often eliminates the need for formal appeals or legal action. However, this informal problem solver has very unusual powers (e.g., access to people and records, the pledge of confidentiality), which may make the ombudsman privy to information that is not readily available without formal litigation. This, in turn, places some significant responsibilities on the ombudsman. Understanding the role of confidentiality in the ombudsman's work is key to understanding both the potential and the limits of the office.

3.2 Confidentiality

Confidentiality is the keystone of an ombudsman's work. It is this provision that encourages individuals to come forward to report problems that they are otherwise reluctant to reveal.

An ombudsman's purpose is to help surface problems, uncover facts and facilitate solutions--not to judge who is right or wrong. To uncover facts and facilitate solutions, multiple

parties must be able to maintain a confidential relationship with the ombudsman. Confidentiality lets these multiple parties, who are otherwise fearful of coming forward, feel safe in speaking up. It is the pledge of confidentiality and the neutral focus that differentiates the ombudsman from other problem solvers within an organization.

The Ombudsman Association believes that confidentiality is fundamental to the effectiveness of the profession. The Association holds that the pledge of confidentiality is sacrosanct and makes confidentiality a fundamental requirement for fulfilling its Code of Ethics and a requisite for membership in the association.

3.3 Confidentiality as a Privileged Communication

The Ombudsman Association holds that an ombudsman privilege must exist for an ombudsman to fulfill his or her mission. Further, T.O.A. holds that this privilege must belong to the ombudsman rather than to any party in the dispute. To successfully claim this privilege, T.O.A. recommends that an ombudsman be able to demonstrate that he or she operates in accordance with the four traditional criteria defining privileged communications. The criteria are as follows:

- * The communication originates in the belief that confidentiality is provided.
- * Confidentiality is essential to achieving the purpose of the relationship.
- * The relationship is one that society should foster.
- * The potential damage to the relationship through fear of later disclosures is greater than the anticipated benefit to justice in obtaining such evidence. (1)

(1) The formal criteria, known as Wignore criteria, are found in the **Federal Rules of Evidence 501** and read as follows:

1. The communication originates in the belief it will not be disclosed.
2. The inviolability of that confidence is essential to achieve the purpose of the relationship.
3. The relationship is one that society should foster.
4. The expected injury to the relationship through fear of later disclosures, is greater than the expected benefit of justice in obtaining later evidence.

The above criteria apply to doctor-patient, priest-penitent, lawyer-client relationships -- three established, privileged relationships. T.O.A. believes that the same criteria are met in the work of an ombudsman, for the reasons indicated in the above discussion. In addition to believing that an ombudsman's work does fulfill the criteria for a privileged communication, the Association views the ombudsman as simply an informal option. If a dispute cannot be resolved informally with the ombudsman, the courts and other formal options remain available to the parties. Any

facts that the ombudsman might know are discoverable through the direct sources. In claiming privilege, an ombudsman simply wishes not to be the source of any information. The information is available through non-confidential sources.

There is a growing body of case law that has recognized an ombudsman privilege under Federal Rules of Evidence 501. Ombudsman should remember that the courts have recognized privilege for various ombudsman, but this does not insure that ombudsman communications consistently will be held to be privileged. As of December 1993, T.O.A. is aware of the following cases that recognize some degree of privilege for the ombudsman:

Shabazz v. Scurr, 662 F. Supp. 90 (S.D. Iowa 1987)

Roy v. United Technologies, DC Conn, No. Civil H89-680 (JAC), 5/29/90

Kientzy v. McDonnell Douglas Corp., Missouri, No.0-584 C1

Wagner v. The Upjohn Co., Kalamazoo Circuit Court, Case No.: A 91-2156 CL, 42292

3.4 Record Keeping and Confidentiality

Since an ombudsman typically is an informal resource, there is minimal need to keep notes. The only purpose for notes is to jog the memory of the ombudsman as he or she works to help resolve the problem. If an ombudsman elects to utilize notes, he or she should keep in mind that anything that has been written can potentially be read by someone else. The ombuds who keep such notes typically destroy them after a defined period of time.

Aggregated data can be retained to help an ombudsman keep track of potential trends. However, the ombudsman must take extreme care that these data do not in any way identify individual clients.

3.5 "Duty to Warn"

The Ombudsman Association includes in its Code of Ethics an exception to confidentiality. This exception is a threat of imminent physical harm. The guideline for determining the necessity of this action is a weighing of whether the threatened danger to others would do greater damage than would the breach of confidence. As long as there is no increased danger by doing so, the ombudsman should notify the client of the need to surface the threat before breaching confidentiality.

3.6 Formal Investigations

It should only be under rare circumstances that the ombudsman does a formal investigation. In those instances, he or she is not covered by confidentiality. Further, the ombudsman should realize that such formal investigations may jeopardize the ability to stay informal especially from a legal perspective.

Informal investigations done by an ombudsman are not the basis for any formal disciplinary action. An ombudsman's informal work in resolving problems may precipitate a formal investigation, but this investigation is performed by someone other than the ombudsman. For example, an ombudsman might -- without breaching confidentiality -- alert management of the need to perform an audit in a particular area. Management, not the ombudsman, does the formal investigation.

3.7 "Due Process"

As indicated in the discussion of confidentiality, the courts are the place for formal appeals. Nevertheless, ombuds may find that individuals periodically appeal to them for "due process." In doing this, individuals are asking for a formal, legal process -- an important one that safeguards an individual's rights and liberties. While an ombudsman strives to help individuals achieve fair and equitable settlements, an ombudsman is not a vehicle for delivering "due process." Even in the U.S., individuals are not guaranteed due process in all situations. Many organizations, in fact, do not guarantee due process. The courts and certain federal agencies provide due process, and if a person feels that he or she needs due process to properly air a problem, then the court or external agency is the appropriate vehicle for this.

3.8 Need to Know

Because an ombudsman pledges confidentiality, he or she must be exceedingly careful in how they handle all information. Ombuds receive an abundance of allegations, and not all of them are factual. An improperly handled allegation can destroy an individual's career. Clearly, allegations of wrong-doing must be investigated, but they must be investigated in a way that protects all parties involved -- including the accused. Any allegation that might damage an individual's reputation or threaten an individual's privacy should be handled on a strict need-to-know basis.

In referring an allegation for investigation, an ombudsman must determine who absolutely must know the details of the issue, at that point in time. There are many people who may need to know IF an allegation is confirmed, but these same people often do not need to know prior to such a confirmation. The ombudsman should realize that adhering to a need- to-know policy may produce tension between the ombudsman and members of management of the organization. Managers may feel that they have a "right to know" the details of any investigation in their arena. In general, they do. However, when an issue is surfaced through an ombudsman, the accused remains hidden. Therefore, the ombudsman must act to offset the potential impact of this.

An ombudsman must remember that the confidentiality that lets an otherwise fearful person come forward with a problem, also allows a liar to come forward and avoid responsibility for the lies. In order to protect the multiple parties involved in a problem, an ombudsman must handle all allegations in a manner which allows that the allegation could be false. Further, should an ombudsman share allegations beyond an absolute need-to-know basis, the ombudsman may become party to claims of defamation or an invasion of privacy.

3.9 Legislation and Legal Parameters

There are two reasons that an ombudsman needs to be familiar with certain laws, regulations and court rulings. First, an ombudsman's sense of a fair and equitable solution is, to some extent, reflected in contemporary legal standards. For example, an ombudsman frequently is asked by disputants for counseling about their respective options in settling the dispute. Legal parameters may shape the alternatives that exist for the parties if they cannot solve the problem in an informally negotiated agreement. Second, the organization in which the dispute arises may have certain responsibilities under the law that are not negotiable. For example, federal regulations might require safety guards on certain equipment. An ombudsman should not allow an employee and supervision to settle a dispute about the equipment in a way that would violate such a requirement.

Clearly, no individual can be proficient in all areas of law, and it is certainly not necessary or even possible for an ombudsman to know all of the laws. However, it is vital for an ombudsman to have a sense of the parameters introduced by various legislation and court findings and to have ready access to legal advisors and various experts. An ombudsman will want to be familiar with the concepts of protected classifications and civil rights, labor relations, whistleblower protection, contractual relationships, employment-at-will, all forms of benefit regulations, including the myriad accompanying acronyms such as COBRA and ERISA, and any regulations that are important and specific to the industries in which he or she works.

3.10 Bargaining Unit Employees

In addition to the issues cited above, ombuds who work with employees represented by labor unions must take care to respect any union contracts that exist within the organization. In general, union contracts will cover issues concerning wages, hours and working conditions for any bargaining unit employee. Unless otherwise specified in the contract, federal law prohibits an ombudsman from intervening in any area covered by the union contract. The ombudsman, as always, must remain neutral and may not advocate for either a company or union position.

3.11 Protected Classifications

Legislative protections forbid certain forms of discrimination. Legislation also has defined the processes for relief in circumstances where breaches are alleged. Some of these allegations

require specific investigations and reporting by the employer. An ombudsman must be careful not to interfere with the legal requirements of the organization that may be triggered as a result of such allegations and circumstances. An ombuds should have a consistent method for handling such allegations and must assure a distinction between the ombudsman and the organization.

3.12 Differentiating Between the Organization and the Ombudsman

An ombudsman is the closest an individual can come to obtaining an independent, "outside" resource, without actually going outside of the organization. This makes for an unusual situation in which the ombudsman is part of the organization, but independent of it. An ombudsman should be vigilant to help clients make formal complaints to management IF the client wishes to do this. The ombudsman should remain an informal option and should not be used to document a formal complaint. Many individuals approaching the ombudsman for help in such instances do so because they do not wish to file a formal complaint, but some may believe that they can make a formal complaint to the ombudsman. These individuals wishing to make a formal complaint should receive help in reaching the appropriate channels.

Ombudsman 101, a training program given by The Ombudsman Association, provides more detailed training about relevant laws and regulations. See Chapter 6, page 6-5.

CHAPTER V

STARTING AN OMBUDSMAN OFFICE

5.1 What Not to Do First

When an organization decides to appoint an ombudsman, a number of further considerations emerge having to do with the start-up process. Some of these are of the "nuts and bolts" variety, but some of them concern fundamental issues for the organization.

One major U.S. corporation, debating several years ago whether to establish an ombudsman office, commissioned a study of the experience of other companies. Of particular interest were the findings about why some early attempts (during the mid-seventies) to introduce the institution of ombudsman had failed in a few instances. The main reasons included one or more of the following:

- (a) top management was not committed to the ombudsman concept
- (b) the organization's culture was one of pervasive distrust
- (c) the ombudsman reported to a lower level manager and was perceived as having little influence
- (d) employees received little information about the ombudsman, and therefore had little knowledge about the role and purpose of an ombudsman
- (e) the person selected as ombudsman had few of the skills and personal characteristics necessary for effective performance in that position

This litany of things not to do provides a first-class starting point, in reverse, for most of the things that must be done. The pitfalls that this study uncovered do not seem surprising when set out in this way, but it is clear that where they occurred the responsible people did not really understand much about the ombudsman function. Learning from these long-ago failures is therefore the first step, and translating them into positive actions is the second.

5.2 Setting the Framework for Dispute-Resolution

Organizations who successfully use an ombudsman now normally do so within the framework of a well-articulated process for resolving disputes. The ombudsman becomes one of the facilities within that framework, and an important part of the role is to make the established dispute-resolution process work. There are many variants of process, but there are also strong common elements among the variants. Among these common elements is the assumption that an employee's first responsibility is to air any problem with a supervisor in frank and honest fashion, and a supervisor's responsibility is to resolve the problem speedily and fairly.

If the employee and supervisor cannot reach a satisfactory solution, the next step is usually to raise the problem to the level of supervisor's manager, and to do so in writing. Once again, it is

that manager's responsibility to resolve the issue fairly and with dispatch, and there is generally a fixed time within which to do so. A senior manager faced with this situation would often be well-advised to actually meet with the employee and supervisor, either separately or together, but this step may not be required under the process. If an employee still feels the problem is not resolved properly, a written appeal can be made to the next senior level, probably a vice-president or senior vice-president, with time limits again set within which some reply to the employee must be made.

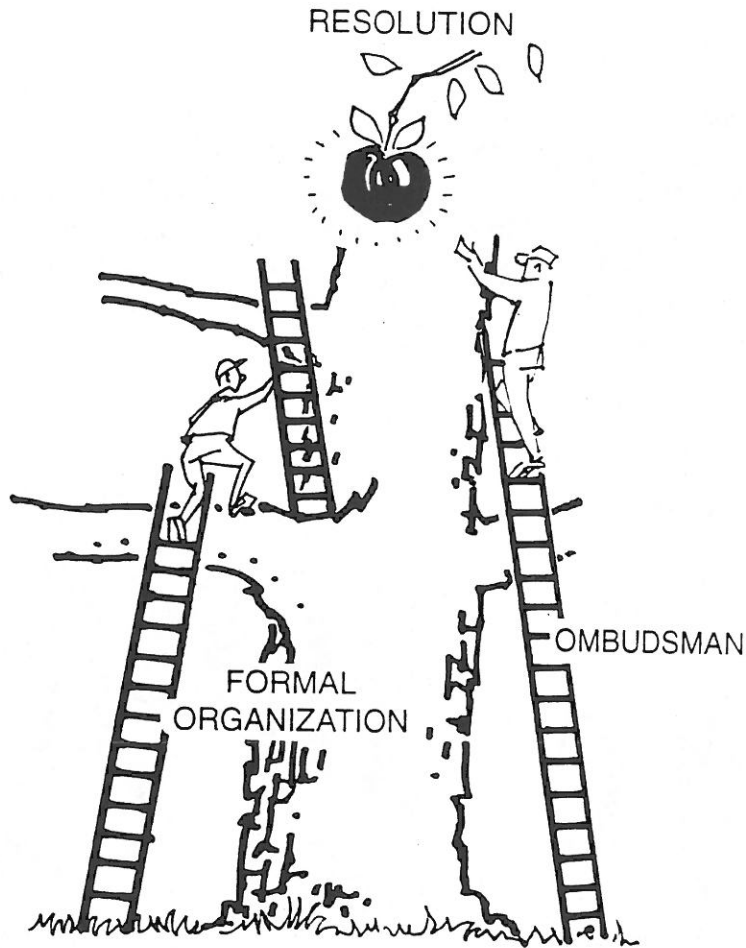
If all this fails, most processes provide for a final appeal level -- this could be the CEO or senior vice-president for personnel, or it could be a special board convened for the purpose. In some organizations the appeals board consists of managers only; in others it is more broadly representative of the staff at large. In either case, the ruling of the appeals board or the CEO is the last stage in the process and the final ruling on the problem made within the organization. As we have seen in Chapter III, however, employees may continue to seek redress for grievances in the courts, under certain circumstances.

What an ombudsman does vis-a-vis this process is to try hard to see that it works as it should, and encourage the bureaucracy to be responsive to its constituents. The process is important to the ombudsman because it provides an organization-specific, sanctioned set of norms for fair-dealing; the ombudsman is important to ensure that the process will not grow rusty or break down. The point here is simply that an organization which has not established rules for the equitable resolution of disputes will not provide much scope for an ombudsman to operate as traditionally called upon to do.

5.3 Establishing the Ombudsman's Role

The lessons of experience, cited above, bring out clearly that success as an ombudsman depends a great deal on how employees perceive that role in the organization. It is most important that the CEO, and senior management generally, make evident the full support they intend to give an ombudsman and the value they attach to the assignment. This can be done in several ways -- the appointment can be made a presidential one, with the proviso that the ombudsman has access to the CEO at any time on problem matters; senior managers can follow-up by announcing they expect second-line managers to cooperate fully with the ombudsman; the appointment is announced to all staff in a manner which underlines the special relationship with the highest levels of the organization.

But while it is essential to ensure that everyone understands the backing an ombudsman has from top management, it is equally necessary to provide a status for the ombudsman which makes clear he or she is not the company lackey, or simply another tool of management. Typically this is done by making clear the ombudsman is not the advocate of either staff or management, but is expected to ensure that objectives and policies of the organization are carried out as intended.

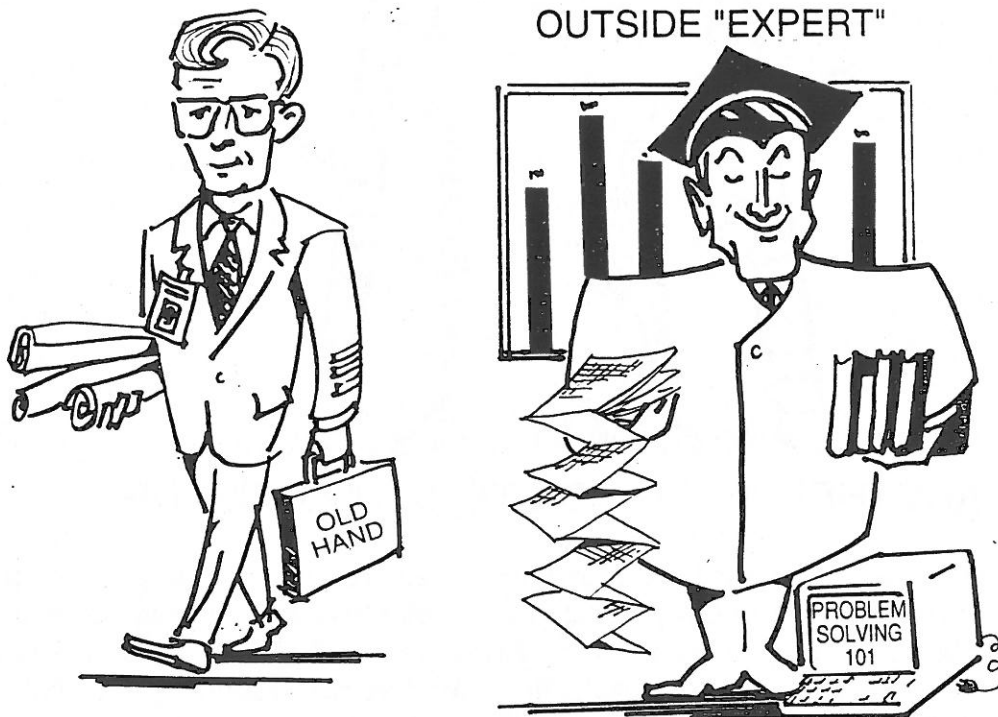


ANOTHER APPROACH TO AIR CONCERNS

An ombudsman usually appears in the corporate organization charts as an independent office, reporting either directly to the CEO, or through a senior vice-president, a committee, or a member of the board. The ombudsman does not have a place in the line organization, nor any formal link to the usual staff functions. The position therefore can be seen only as an independent one, with no obvious points where other parts of the organization could exert special influence.

The terms of tenure given the ombudsman also shape the perception people have of the independence and integrity of the office. A staff member who serves as ombudsman for a period of time, then returns to a line position subordinate to people he dealt with during the term as ombudsman, is bound to be regarded with a certain amount of skepticism. It may be necessary for the ombudsman to recommend changes in management practices within certain divisions or subdivisions. If a young high potential engineer, for instance, were chosen to be ombudsman, it would take enormous courage for him to recommend certain changes in the engineering division when there exists the possibility that the young engineer would be reassigned to work for those same directors and/or vice presidents two or three years later. It is true, and only human, that a person in such a situation may have a concern for future career prospects in the organization when trying to resolve a difficult problem, so the skepticism is warranted to some degree.

For these reasons, some companies focus their selection on people who have a long period of service and are nearing retirement age. The appointment then is made for a fixed time span, usually until retirement normally would occur, and is considered an end-of-career assignment. It must be clear, however, that this is not looked upon as a "Parking Place for Good Old Virg". There has to be a promotion with it, or something to give the reassignment stature in the eyes of the employees. The "immunity" this provides eliminates the future career problem, and enhances the independence of the office.



Some organizations have chosen to bring in someone on a fixed-term contract, renewable upon agreement by both parties. This has the advantage of strengthening the neutral image of the ombudsman, both because the newcomer has no personal or professional ties with other managers in the company and because there are no career objectives to be furthered by any actions taken as ombudsman. It has the disadvantages that a newcomer is not familiar from the start with the culture of the organization and the key personalities in it, and if one is concerned about re-appointment at the end of a fixed term there may be subtle pressures to tread softly when sensitive issues are being examined. Most companies, however, follow neither of these approaches, but appoint people in mid-career, or later, who have the personal characteristics one seeks in an ombudsman. Terms may be fixed or indefinite.

Mention has been made of reporting information to, and the advantage of direct access to the CEO. As a practical matter, it may be more efficient to flow information routinely to the senior vice-president for human resource management on all but the most urgent and sensitive problems. This is because a common practice would be for a CEO to delegate to that senior vice-president the responsibility for handling most problems brought by an ombudsman. This works well provided the CEO is routinely informed about the ombudsman's activities and can intervene personally at any time, but it would be up to the ombudsman to judge when and how to flag issues directly to the CEO.

The reporting arrangements can be structured any way the participants find most useful -- regular or only when critical issues arise, frequent or infrequent, written or verbal or some combination. Problems will have to be reported fully enough to be comprehensible, but the written or verbal reporting must always observe the confidentiality of the information which lies behind the problem. Much of the routine reporting done by an ombudsman provides a continuing picture of the caseload coming into the office. Organizations find this useful to track the kinds of problems which are turning up, the kinds of staff who experience them, and the units in which they occur. These data can spot trends and patterns which yield helpful insights about the firm. For example, a spurt of new cases about job-grading, following on the heels of a company-wide job grading exercise would say something about how that exercise was carried out, and how it was perceived by the staff.

One should also bear in mind the ambiguity inherent in any classification of problems. For example, a staff member can present the ombudsman with a series of problems, including one complaint that the annual evaluation was unfair, a second that the supervisor is personally antagonistic, and a third that the staff member is concerned about career prospects. Some systems try to identify the core complaints, recognizing this obscures the fact other issues are also present; others will reflect all the complaints, but be aware this overstates the number of complaints relative to the number of people making them. Each organization must resolve these issues for itself and choose the reporting format that most fully meets the firm's needs for information.

In addition to access to the CEO and other senior manager(s) designated for reporting purposes, an ombudsman must have full access to any individual in the firm, staff member or manager. An ombudsman who leaves telephone calls unanswered, or requests for meetings ignored, is not going to be very effective. It therefore is important to be very clear about the access issue from the start and to act quickly to correct any situation where the ombudsman runs into difficulties in gaining access.

Access to records is equally crucial(except those held under attorney-client privilege), and these would include the personnel files of all staff, correspondence relating to a staff member or the problem being studied, and any other relevant data (leave records, expense accounts, security reports, and the like). Individual medical records will be an exception to this in most organizations.

5.4 Ombudsman Selection Criteria

There are a number of traits that are associated with successful performance in the role. These include all those characteristics that make someone approachable - a genuine liking for people, a willingness to listen, a sympathetic outlook, a sense of humor, a relaxed and reassuring personality, and a strong personal commitment to the ombudsman function. They also include a reputation for fairness, honesty and courage, which implies a period of time with the organization long enough for these traits to become recognized and widely appreciated. There is no hard and fast rule on the question of age. A candidate certainly should be mature in outlook and generally perceived to have that quality. Finally, one is looking for problem-solving capabilities, an analytical mind, an ability to marshal information well, thoroughness in digging out the necessary information, and strengths in areas such as tactful handling of people, getting them to explore new positions on a problem, and diplomatically dealing with sensitive issues.

What we have been highlighting are essentially aspects of a person's makeup that are given, not learned. There are other attributes, however, which can prove very valuable and which are acquired through experience and training. High on any list of these would be counseling skills and skills in crisis management; these can be added at any time, even after someone has been appointed as ombudsman. A familiarity with law, or experience in mediation is useful, though not essential. In certain situations, proficiency in a second language can be very helpful, where an important part of the work force does not speak English as a mother tongue. The actual career background of a person seems much less a factor in having success as an ombudsman than do the matters of temperament and acquired skills cited here; this widens the field in some respects, but certainly narrows it in others.

5.5 Spreading the Word

Once the background of a policy framework is in place, the status and reporting issues resolved, and a person selected to be ombudsman, the next step is to prepare the ground properly. This is an education and public relations phase, but its consequence should not be discounted. Everyone in the organization should become familiar with the concept of ombudsman, and what is expected of him or her, know the personal background and orientation of the appointee, and where to find the office. This is not something that can be done once and then forgotten; it requires continuing effort and can be carried out in many ways and at several levels in the organization. One means, of course, is to have the original announcement come in a personal notice to staff by the CEO. This can be supplemented by interviews in house organs, devoted to explaining what the ombudsman does as well as something about the appointee as a person. Many firms prepare brochures about the ombudsman office, outlining the services available and how to reach them. Some ombuds issue newsletters from time to time that recount the general concerns staff have raised and how they have been handled; others make annual reports to staff covering the same material.

Another way to accomplish the same purpose is for the ombudsman to meet with groups of staff

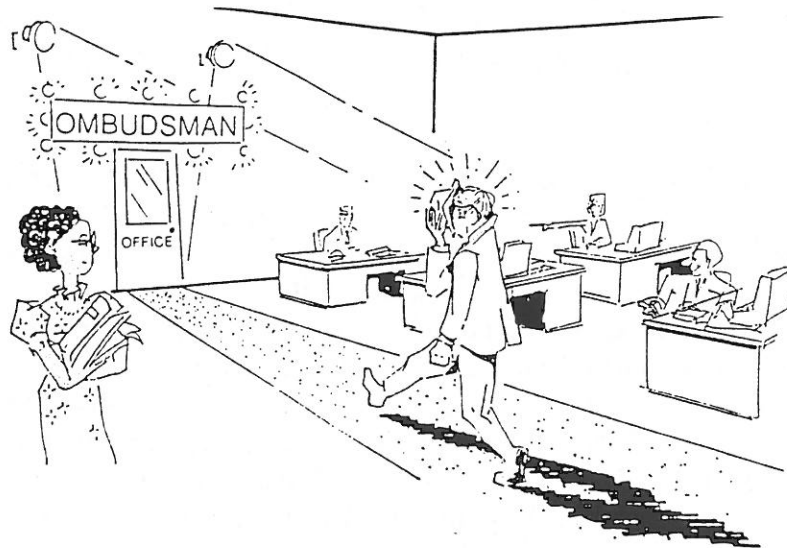
and managers. This is most effective when the numbers are kept to levels that encourage a question and answer format. Responding to questions that people have tends to be a more effective means of communicating than relying on a formal presentation to large groups. Participation by the ombudsman in managerial training programs is yet another device for educating people about the office and how it functions.

5.6 Selecting the Office Location and Support Staff

There are several facets to consider when determining the office location the ombudsman will occupy. It is important because the office, its staff and furnishings should be ready for use at the same time announcements are made about the availability of the office.

Perhaps the first consideration is the location, keeping in mind the clientele to be supported. One school of thought is that the office should be located in or near the executive area, so the location reinforces the awareness that the ombudsman has direct access to the President or CEO. This choice works well if all or most of the expected clients are white collar workers and the office is not readily observed by administrative and clerical workers. If the office is to function effectively in a blue collar environment, the office must be accessible to production workers who may not feel comfortable searching out and entering an executive area in work clothes.

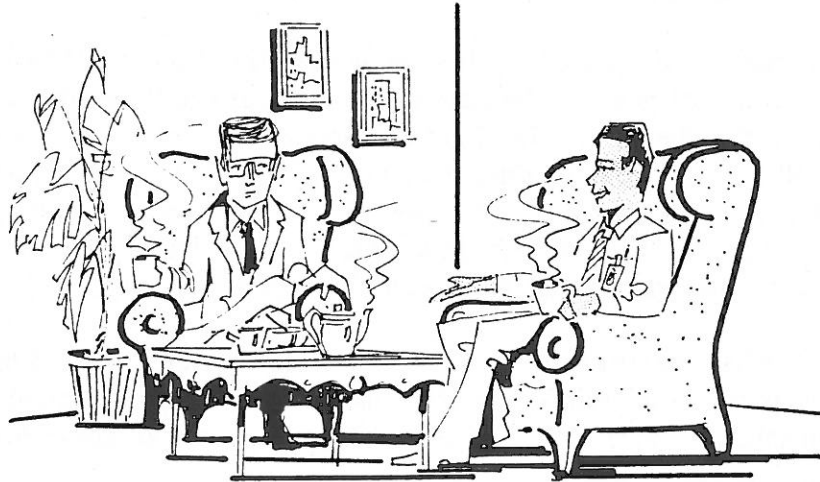
Once this determination has been made, the next consideration is accessibility and privacy. The location selected must provide low visibility, privacy, and easy access to all employees in a relaxed and comfortable atmosphere. The site should provide employees ready access without them being easily seen entering or leaving the area.



LOCATION

The office furnishings should be chosen to provide a comforting, relaxing atmosphere. A room that is bright and cheerful, with furniture that is tasteful and comfortable, sets a tone that encourages relaxation and confidence in the ombudsman. Walls, as necessary, add to the

privacy. In addition to the room where the Ombudsman meets with employees, there should be a reception area that sets the same tone of calm and orderly concern for people and their problems. It's furnishings should complement the office and provide a place where employees can wait or make appointments out of sight of passers-by. It is mandatory that a secured storage system for records and case files be provided to maintain confidentiality. Occasionally, a client may not feel comfortable coming into the office, for various reasons. Arrangements should then be made to meet the employee at a remote location or a specified room at a designated time.



CHOOSE A COMFORTABLE SETTING

The size of the support staff depends mainly on the volume and nature of the work load. At a minimum, there should be an Ombudsman and an automatic answering machine on which clients may leave the date and time of their call and instructions for reaching them. Occasionally, some callers will wish to remain anonymous, but will record their complaint instead. Budget permitting, there may also be a secretary/assistant who will answer the phone and make appointments, assist in maintaining the records and ensuring they are secure, and prepare necessary correspondence and reports. This person's personal qualities are also very important, because he/she is usually the first contact someone has with the ombudsman's office, most often by phone when someone calls to make an appointment. The secretary/assistant must be able to explain to anyone how the ombudsman functions, and reassure them on the issue of confidentiality. The reception should be cordial and open, not brusque and off-hand. Needless to say, all support personnel must be as discreet about the office as the ombudsman. There can be no gossiping with friends about who came to see the ombudsman, or what a sticky problem someone has gotten into. Any hint of this and the position of the ombudsman would be irreparably damaged.

Whether someone should act as alternate to the ombudsman is difficult to answer categorically. In large organizations the case load may require more than one ombudsman, and in these organizations, there is frequently an effort to introduce ethnic, sex, and racial alternatives to help people feel more comfortable about discussing their problems. For example, women might be more ready to discuss instances of sexual harassment with another woman than with a man. A back-up arrangement is important for times when the ombudsman is away on leave or traveling. Not all problems can, or should, wait until the ombudsman's return, and opportunities for swift resolution may be lost if no one is on hand when the problem first arises. Back-up support can be provided by telephone from another location's ombudsman or from the on-site Equal Opportunity Program or Employee Assistance Program managers who are also experienced in dealing with confidential concerns.

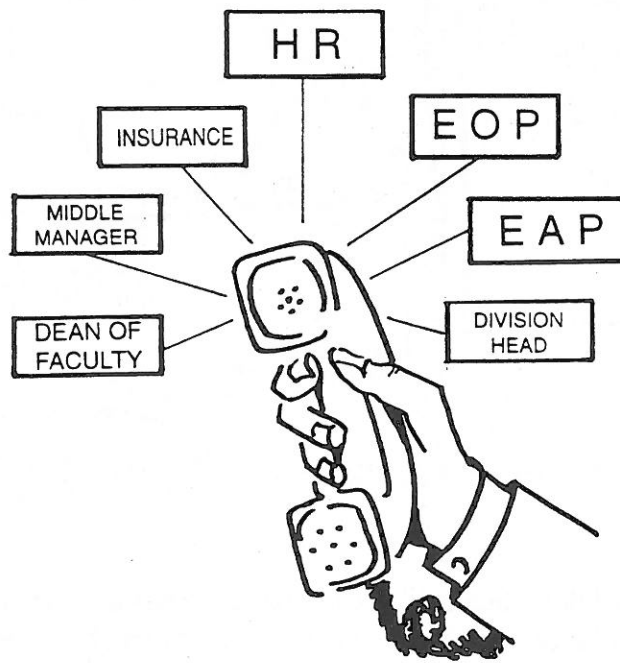


PREMATURE ANNOUNCEMENT OF THE OFFICE

Premature announcement of the office could be a disaster. After announcing the opening of the ombudsman office, it is very important to establish early credibility by immediately responding to telephone calls, visits, and letters. Initially there will be many people who have been frustrated and are looking for a new place or person to air their concerns, whether justified or not. Word spreads quickly, and if the callers feel they were not listened to or their concern was given low priority, it will hurt the credibility and defeat the purpose of the office.

NETWORKING

The ombudsman office will have to have a working relationship with many functions in the organization. Although it is true at all times, it is especially important when the volume of contacts is high. It is important that clients be encouraged to work out their problems within the system. If a pattern of complaints develops, that can mean the system needs changing or it is breaking down. It is up to the ombudsman office to recognize such patterns and recommend change. To network effectively, the office must eliminate the fear of "Protecting One's Turf." The ombudsman office must strive to have a working rapport with the line managers and the service offices, such as Equal Opportunity Program and Employee Assistance Program, so they can resolve problems quickly rather than make the concerned employee feel that he/she is caught in a "crossfire."



NETWORKING

CHAPTER VI THE OMBUDSMAN ASSOCIATION

6.1 History

In the beginning there were seven people who shared a vision, a small group who wanted to provide an association for other-private sector ombuds. Spearheaded by Lee Robbins, Wharton School of Finance and Dr. Mary Rowe, Massachusetts Institute of Technology, the vision became a reality in 1982 in the President's Conference Room at MIT, with the participation and support of Martha Maselko of AT&T, Michael Baker of the Educational Fund for Individual Rights, Fred Olsen of Control Data, Clarence Williams of MIT, and Chris McEachern of Anheuser-Busch.

These founders of the Corporate Ombudsman Association (COA) recognized that their mission was: (a) to define the role of corporate ombuds, who operate under a variety of functions and titles; (b) bring them together under one "umbrella"; (c) create a forum for the purpose of expanding knowledge, enhancing skills, sharing approaches to common problems; and (d) provide an opportunity for networking. Following this initial meeting, the founders undertook the challenge of locating other private-sector ombudsmen and initiating the first Corporate Ombudsman Association Conference in Falmouth, Massachusetts, in 1984. There were 30 attendees.

The COA came together formally in 1985 and adopted a set of By-Laws to govern its operations. Mary Rowe (MIT) served as the association's first President, with Chris McEachern (Anheuser-Busch) and Martha Maselko (Bell Labs) serving as Vice Presidents. The original board of directors included Jim Lakis (Polaroid), Lee Pledger (Digital) and Carole Trocchio (Southland). In 1986 COA was incorporated in the Commonwealth of Massachusetts. Additional board members were welcomed: Virgil Marti of McDonnell Douglas; James Hendry of the World Bank; Catherine I. Buckler of General Electric; and Lewis Redding of MIT/Lincoln Laboratory.

In 1987 a Corporate Ombudsman Handbook was compiled by Jim Hendry, ombudsman of the World Bank, and presented to the membership. The Handbook included the Code of Ethics for the COA, and sections on the value of an ombudsman, setting up an ombudsman office, record-keeping, and other valuable information. In 1994 the handbook was updated to reflect changes in the profession.

As the membership of COA grew, so did the diversity of its membership and, in 1992, the members requested that the name of the association be changed to The Ombudsman Association (TOA), to better reflect the variety of ombudsman functions currently represented by the association. Today, The Ombudsman Association serves ombuds who provide their services to employees, students, faculty, patients, franchisees, and customers.

6.2 Goals of the Association

The primary purpose of TOA is that of providing a forum for exchanging experiences and ideas among practitioners. Over the past few years, the goals of the association have been articulated more fully and in the first newsletter, "Ombudsman News", published in the fall of 1985 the association's purpose and goals were set forth:

- (1) enhance the quality and value of the ombudsman function to business and industry;
- (2) establish appropriate standards of excellence for the profession;
- (3) develop and disseminate ethical guidelines for the profession;
- (4) establish methods to assess the development of the ombudsman function;
- (5) develop a framework of responsibilities;
- (6) develop a network to share common interests and strengthen skills.

TOA was instrumental in developing the building blocks which gave shape and identity to the emerging profession of ombudsman. It dedicated itself to helping its members expand their knowledge and expertise in this very specialized area. There was a need for practitioners to establish standards and guidelines. The association has exercised a leadership role in this respect and, in a variety of ways, seeks to weave the experience of its membership through the fabric of the profession.

6.3 Board Committees

The main avenues through which the association pursues its program is through a number of specialized board committees. By and large, these are made up of directors of the board, but other members of the association participate in committees where their specialized knowledge is particularly valuable. The board committees usually chart out a program for the period between annual conferences, and report on interim progress at full meetings of the board, at least twice a year. The annual conference provides the opportunity to meet with, and report to, the membership at large.

Communications Committee

The mission of the communication committee is to support the goals and priorities of TOA by promoting pro-active internal and external communication to discover information needed by ombuds, to enhance understanding of the ombuds role and function, and to develop and disseminate information to heighten awareness of TOA values and educational opportunities.

Conference Planning Committee

Members of this committee are primarily concerned with planning the annual conference. This includes scheduling meetings, selecting the site, arranging for sponsorship and working with the host corporation, developing the agenda and preparing and distributing materials that will be needed. Members include representatives of the organization which will serve as sponsor of the conference.

Membership Committee

Also known as the "outreach committee", this group has a very significant role in terms of the association's goals. Originally, the COA grew out of a need for people to learn from one another's experiences, and this committee is charged with bringing information about the association and its activities to the attention of others in the field of ombudsmanry. The committee members review methods in which this can be accomplished most readily.

Research Committee

Given the expansion of the ombudsman concept in a variety of environments, it is important to have an active research program that can collect and assess the detailed, empirical data that accumulates out of North America. There is so little known with any assurance about the dimensions of ombudsmanry that any association which purports to promote this field of activity and to guide its development must have accurate information.

The purpose of the research committee is twofold: to identify the priorities for research, as directed by the board, and to develop sources of funding for the research. Closely related to the research function, and also under the purview of the committee on research, is the association's interest in developing a collection of case studies. These are now used at the annual conference as a device to stimulate discussion and thinking about particularly pressing issues, and have proven most effective in this respect.

Nominating Committee

Members of this committee identify association members who are qualified to serve on the board of directors and express an interest in doing so. When there is an opening on the board, the nominating committee contacts interested members and presents their names to the board for consideration.

6.4 The Annual Conference

The association's annual conference provides members with a major opportunity to visit with others in the field, to learn what has been happening in areas of particular interest, and to contribute their own insights and experience. The annual conference is also the primary

means for TOA to pursue the goals cited earlier, and its structure and content are designed with that focus.

Confidentiality

From the beginning, these conferences have operated under an important ground-rule -- namely, those who attend the conferences agree not to use the name of any colleague or organization without explicit permission of that colleague or organization. Further, the attendees agree not to discuss specific problems within an organization outside their profession.

Format/Agenda

The annual conferences take place over two full days of meetings with members attending all sessions. Small discussion groups are formed to examine a case study, then reconvene and report to the body as a whole. The final session is typically devoted to association business and a look ahead to the next conference and to future activities of TOA. As much as possible, current issues facing ombuds are discussed. Past agenda items have included cultural diversity, community unrest, AIDS, employment-at-will, ethics, violence in the workplace, duty to warn, and sexual harassment. As the membership becomes more diverse, with a broader ombudsman client-base, the agenda will reflect and address such ombudsman needs.

Conference Locations

Host

1984 Cape Cod (Falmouth) Ma.	AT & T/Anheuser-Busch/MIT
1985 Dallas, Tx.	The Southland Corporation
1986 St. Louis, Mo.	Anheuser-Busch/McDonnell Douglas
1987 Marina del Rey, Ca.	General Telephone of California
1988 Cambridge, Ma.	Digital Equipment Corporation
1989 Raleigh, N.C.	North Carolina Department of Transportation
1990 Hershey, Pa.	Pennsylvania Blue Shield/Penn State Univ.
1991 Minneapolis, Mn.	Control Data Corporation
1992 Cincinnati, Oh.	General Electric
1993 San Francisco, Ca.	Federal Reserve Bank/Pacific Bell Telephone
1994 Chicago, Il.	McDonalds/United Technologies Corp.
1995 New Orleans, La.	

Attendance has grown from the modest beginning of thirty to more than one hundred attendees each year.

6.5 Ombuds 101 (OMBUDSMAN TRAINING)

In 1991 The Ombudsman Association developed and made available the first formal training program for new ombudsman. This program, entitled "Ombuds 101" is a comprehensive program that focuses on the basic skills necessary for the ombudsman to be effective in a variety of environments. In 1995 and 1996, advanced courses "Ombuds 202" and "Ombuds 303" will also be offered. The instructors are tenured and experienced ombuds, members of TOA, who volunteer their time and expertise to train new ombuds in a variety of skills, including neutral listening, problem solving, confidentiality, handling diversity in the workplace, and the like.

6.6 TOA as a Resource

Finally, The Ombudsman Association is a resource to all ombuds who desire information on any aspect of the ombudsman function. Members from coast to coast make themselves available to discuss unusual situations with another ombudsman, exploring alternatives, and sharing ideas in a confidential manner. Ombuds recognize the isolation inherent in the profession and welcome the ability to discuss specific cases in absolute confidence.

Numerous articles have been compiled by TOA including case studies, articles on ombudsman "burn out", confidentiality, "whistle blowing", cost-effectiveness, building a dispute resolution system, education, and the like. These articles are available to members of TOA upon request. See appendix B for listings.

During the past ten years TOA has been effective in establishing the profession of ombudsman as a valuable resource for individuals and organizations, and in providing its members with information and support. See appendix C for "Sources of Help".

APPENDICES TABLE OF CONTENTS

<u>Sequence</u>	<u>Title</u>	<u>Page</u>
A	Reflections of an Ombudsman	A-1
B	Bibliography of Papers	B-1
C	Source of Help	C-1
D	Bylaws of THE OMBUDSMAN ASSOCIATION	D-1

REFLECTIONS OF AN OMBUDSMAN

During the period I was planning my retirement, I began thinking about what suggestions I might pass along to my replacement. While on a flight I scribbled down the following thoughts which seem to be appropriate:

- **Be neutral.**
- **Be cognizant of the responsibilities of management and the rights of the employees, but don't lose sight of the responsibilities of employees and the rights of management.**
- **Management should treat the employee with dignity and respect, but the employee is expected to work. Conversely, the employee should treat management with dignity and respect.**
- **Don't become emotionally involved with clients, stay detached.**
- **There are always three (at least) sides to every story.**
- **What the client sincerely believes to be fact may be misunderstood or imagined and in some cases contrived.**
- **Look for the "Hidden Agenda." The stated problem may be the tip of the iceberg or the last straw. It only helps a little to give an aspirin when there are compound fractures.**
- **Perception is reality. What is perceived by the employee is a real problem to them, even if it is not true.**
- **The client must take ownership to their contribution to the problem.**
- **Help people to help themselves; i.e., teach them to fish, don't just hand them fish. Has the client discussed this matter with their supervisor? If not, why not?**
- **Is it an isolated problem? Get them back into the system.**
- **If the system needs fixing, lobby to fix it. Constructive suggestions should always be considered.**
- **Not all problems are completely (or even partially) solvable.**
- **You can't snatch the world out of the air and throw it into a new orbit. Keep nudging at it and you will see progress without destroying yourself.**
- **Don't beat yourself up over an occasional failure.**

Virgil Marti

APPENDIX B

This Appendix consists of a short Bibliography of papers pertinent to the Ombudsman function. A more complete list can be obtained from the TOA Executive Officer.

APPENDIX C

Sources of Help

NOT FOR PUBLIC DISTRIBUTION
CONSULTANT LIST
(Updated March 1994)

Listed below are the names, addresses and organizational affiliations of members of The Ombudsman Association (TOA) who have indicated they would be available for consultation about the ombudsman function. If one were to contact any of these members, they would be willing to discuss problems by telephone, or in their own offices, without charge. In cases requiring more extensive consultation, however, particularly consultation that would require a substantial amount of time and possibly some travel, the terms would have to be mutually agreed upon by the parties concerned.

TOA provides this list as a convenience to people inquiring about the profession. TOA does not endorse any of these people, nor is it responsible for any of their actions.

NAME/ADDRESS	TOPICS
Ann Bensinger Office of the Ombudsman United Technologies Corporation One Financial Plaza Hartford, CT 06101 (203) 728-6447	Confidentiality, Testifying, Fraud Financial & Ethical Misconduct
Catherine I. Buckler, Ombudsman General Electric Company 1 Neumann Way, MD/C72 Cincinnati, OH 45215 (513) 243-3561	Reporting Relationships, Confidentiality
Elizabeth L. Clark Corporate Ombudsman The Upjohn Company 7000 Portage Road Kalamazoo, MI 49001 (613) 323-5539	Confidentiality Privilege, Setting up an Ombuds Office
Dawn L. Duquet, Ombudsman Human Rights & MBTI Counsellor 118 Bathurst Point-Claire, Quebec Canada H9S 4Z8 (514) 697-1296	Contracted Ombudspeople, Human Rights, Harassment

Tom Furtado
Corporate Ombudsman
United Technologies Corporation
1 Financial Plaza
Hartford, CT 06101
(203) 728-7864

Promoting the Value of the Function
Communicating with Management

Louis R. Garcia, Chief Ombudsman
& Vice President
TIAA-CREF
730 Third Avenue
New York, NY 10017
(212) 916-4640

Client Ombudspeople, Working with Customers

Virgil M. Marti
Vice President-Ombudsman (Retired)
McDonnell Douglas Corporation
39 Club Grounds North Drive
Florissant, MO 63033
(314) 837-2284

Setting up an Ombuds Office, Keeping Records

Janet L. Newcomb
Sr. Principal Specialist · Ombudsman
Douglas Aircraft Company
McDonnell Douglas Corporation
18311 Gum Tree Lane
Huntington Beach, CA 92646
(310) 496-7218

Confidentiality Privilege, Mediation, Setting up
an Ombuds Office

Gregg Raudabaugh
Liaison Manager
The Southland Corporation
2711 North Haskell Avenue
Dallas, TX 75204
(214) 828-7945

Operating under Foreign Ownership,
Retail, Multi-unit Environment, Multi-cultural The
Workforce

Lewis A. Redding
University Ombudsman
402 Churchill
Northeastern University
360 Huntington Avenue
Boston, MA 02115
(617) 437-3926

Harassment, Unions & Labor Relations

Vincent J. Riley, Ombudsman(Retired)
The World Bank
5028 North 25th Road
Arlington, VA 22207
(703) 536 7939

Confidentiality Privilege, Working with Multi-
national Employees

Mary P. Rowe
Special Assistant to the President
Massachusetts Institute of Technology
77 Massachusetts Avenue
Room 10-213
Cambridge, MA 02139
(617) 253-5921

Tough Cases, Ombuds Research - Cost Special
Effectiveness, Salaries, Caseload, Reporting
Relationships

Mary G. Simon, Ombudsperson
AT&T
1600 Osgood Street
Room 21-2S5
North Andover, MA 018~5
(508) 960-6490

Evaluation of Ombudspeople, TQM & the
Ombudsperson, Working with Groups of
Employees, Upward Feedback for Managers

Ella W. Thurman
Employee Advisor
University Hospitals of Cleveland
2074 Abington Road
Cleveland, OH 44106
(216) 844-1485

Health Care Ombuds Offices

Carole M. Trocchio
Carole M. Trocchio Associates
5521 Greenville Avenue
Suite 104-731
Dallas, TX 75206
(214) 553-1616

Client and Contracted Ombudspeople, Mediation,
Food Franchises

Marsha L. Wagner, Ombuds Officer
Columbia University
659 Schermerhorn Extension
New York, NY 10027
(212) 854 1234

Multi-cultural issues, Neutrality Sexual Orientation
Issues, Anonymous Incivility

**THE OMBUDSMAN ASSOCIATION
BOARD OF DIRECTORS
(1994-1995)**

PRESIDENT

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Fax: (203) 727-6448
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Ombudsperson
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and School of Public Health
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Fax: (617) 432-3834
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Carole M. Trocchio Associates
5521 Greenville Avenue
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Dallas, TX 75206
Phone: (214) 553-0043
Fax: (214) 348-6621
Email: MHS!csmail/dd.id=73772.1763

RECORDING SECRETARY

Toni P. Robinson
Equal Employment Manager
Social Security Administration
Office of Regional Commissioner
2201 Sixth Avenue
Seattle, WA 98121
Mail Stop RX-50
Phone: (206) 615-2106
Fax: (206) 615-2193

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Fax: (616) 329-3468

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UCLA
405 Hilgard Avenue
1172PCPC
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Fax: (212) 916-6335

Joan Helmes
Manager - Ombudsman
Pacific Bell
140 New Montgomery
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San Francisco, CA 94105
Phone: (415) 542-0727
Fax: (415) 546-0523

Eugene T. Herbert
Ombudsman
International Monetary Fund
700 19th Street, N.W.
Washington, DC 20433
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Fax: (216) 844-5805

Vincent J. Riley
Ombudsman (Retired)
The World Bank
5028 North 25th Road
Arlington, VA 22207
Phone: (703) 536-7939

EX-OFFICIO BOARD MEMBER-CLERK

Jerome N. Weinstein, Esq.
Palmer and Dodge
1 Beacon Street
Boston, MA 02108
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Fax: (617) 227-4420

APPENDIX D

This appendix contains the By-laws of The Ombudsman Association.

Revised: 5/15/91

CORPORATE OMBUDSMAN ASSOCIATION

BY-LAWS

ARTICLE I

MEMBERS

Section 1.1. Classes of Members. There shall be one (1) class of Members of the Corporation which shall be known and referred to as "Members."

Section 1.2. Election of Members and Duration of Membership. The charter Members of the Corporation shall consist of the Incorporator or Incorporators. Prior to the first meeting of the Board of Directors, the Members shall consist of the charter Member or Members and such additional persons as the Incorporators or Incorporator shall elect or appoint as Directors or officers. At and following the first meeting of the Board of Directors, Members of the Corporation shall consist of those persons already Members as aforesaid, plus such additional persons who may at any time submit applications for membership to an officer of the Corporation, accompanied by a membership fee the amount of which shall be determined for each class of membership from time to time by the Board of Directors. Qualification for membership shall be determined by the Board of Directors which shall consider whether such person will further the ideals and aims of the Corporation. Any person accepted as a Member shall remain a Member, for so long as such Member regularly and timely pays the Membership dues established by the Board of Directors for such Member's class of Membership, until his or her death, resignation or removal.

Section 1.3. Removal. Any Member may be removed by a two-thirds vote of the Directors present and voting at any regular or special meeting of the Board of Directors.

Section 1.4. Resignations. A Member may resign his or her membership at any time by written resignation delivered to the Corporation at its principal office or to any officer of the Corporation. Acceptance thereof shall not be necessary to make such resignation effective unless so stated in the resignation, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

ARTICLE II

DIRECTORS, COMMITTEES AND OFFICERS: ELECTION, POWERS AND DUTIES

Section 2.1 Directors and Officers. The Board of Directors of the Corporation shall consist of not less than three (3) nor more than fifteen (15) Directors plus emeritus and ex-officio members. There will be three (3) classes of members--up to five (5) in each class. Each class serves three (3) years. The exact number of Directors (within such limits) constituting the Board of Directors shall be fixed by the Incorporators or, after incorporation, at each annual meeting by the Members, provided that by vote of the Members at a special meeting called for the purpose the number of Directors may be increased or decreased (subject to said limitation) and provided further that by vote of a majority of the Directors then in office the number of Directors may be increased (subject to said limitation). The officers of the Corporation shall be a President, one or more Vice Presidents, a Treasurer, a Secretary, and such other officers as the Incorporator or Incorporators or the Board of Directors may from time to time elect or appoint. Except as otherwise specifically required by law, the same person may simultaneously occupy more than one office. Directors must be Members of the Corporation.

Section 2.2 Terms of Office: Vacancies. The Directors, President, Vice President(s), Treasurer and Secretary shall hold office, except as otherwise hereinafter provided, until the next annual meeting of Members or Directors at which they are regularly elected and until their respective successors are chosen and qualified. All other officers shall hold office during the pleasure of the Board of Directors. In case a vacancy shall occur for any cause in the Board of Directors or in any other office, including a vacancy resulting from enlargement of the Board, the Board of Directors (or the remaining Directors, although less than a quorum) may fill such vacancy by the affirmative vote of a majority of the Directors then in office. Any vacancy in the Board of Directors may also be filled by the Members at any annual or special meeting unless such vacancy shall have been previously filled by the Board of Directors. A Director or officer so elected by the Board of Directors or the Members to fill such vacancy shall hold office only until the next meeting of the Members or Directors at which the office would regularly be filled and until a successor is chosen and qualified.

All Board Members may be elected to the two (2) consecutive three (3) year terms of office followed by one year off of the Board before being eligible for re-election. Time served to complete an unexpired term of a former Board Member may be in addition to the two elected terms. Following the year in office the former President will be asked to serve an additional year even if the term of office has expired. The Executive Officer and the Clerk may serve ex-officio for the duration they serve in said offices.

Section 2.3. Resignation and Removal. Any Director may be removed from his or her office with or without cause by the vote, at a meeting at which a quorum is present, of a majority of Members who are present; or duly represented by proxy and any officer may be removed from his or her office with or without cause by the vote of a majority of the Directors then in office.

Section 2.4. Board of Directors. Directors shall be elected by the Members at each annual meeting of the Members or at any meeting of the Members held in lieu thereof in accordance with the Provisions of Section 3.1. The Board of Directors shall have the general management and control of all the property and affairs of the Corporation, except such as are conferred by law or by the Articles of Organization of the Corporation or by these Bylaws upon the Members. Without limiting the generality of the foregoing, the Board of Directors shall have full power to fix the compensation of any and all employees of the Corporation.

Section 2.5. Standing Committees. At each annual meeting of the Board of Directors, or any meeting held in lieu thereof, the President shall appoint persons to such standing committees as the Board by resolution may create from time to time.

Section 2.6. Ad Hoc Committees. The Board of Directors may from time to time appoint ad hoc committees as it deems necessary or desirable with such powers as the Board of Directors may determine. The members of any such committee, who need not be members of the Board of Directors, shall hold office subject to the pleasure of the Board of Directors. Each such committee so appointed shall keep regular minutes of its proceedings and report the same to the Board of Directors upon request.

Section 2.7. President and Vice Presidents. The President shall be elected annually by and from the Board of Directors at the first meeting of the Board following the annual meeting of the Members. The President shall have, subject to the supervision of the Board of Directors, general management, charge and control of all the affairs of the Corporation, and shall be its chief executive officer. The President, if in attendance, shall preside at all meetings of the Members and of the Board of Directors.

One or more Vice Presidents may be elected from time to time by the Board of Directors. A Vice President shall have such powers and be charged with such duties, including (to the extent permitted by law) during the absence or inability to act of the President, such of the powers and duties of the President as the Board of Directors may prescribe or as the President may designate.

Section 2.8. Treasurer. The Treasurer shall be elected annually by the Board of Directors at its first meeting following the annual meeting of the Members. The Treasurer shall keep or cause to be kept regular books of account which are to be available at all times for inspection by any Director, and the Treasurer shall report to the Board of Directors on the financial condition of the Corporation whenever requested to do so by the Board of Directors.

The Treasurer shall have the custody of all documents of title and valuable papers. Subject to the supervision and control of the Board of Directors, the Treasurer shall receive and disburse the funds of the Corporation.

One or more Assistant Treasurers may be appointed from time to time by the Board of Directors. An Assistant Treasurer shall have such powers and be charged with such duties, including (to the extent permitted by law) any or all of the powers and duties of the Treasurer, as the Board of Directors may prescribe or as the Treasurer shall delegate.

The Executive Officer will also serve as Assistant Treasurer as defined above.

Section 2.9. Clerk. The Clerk, who shall be a resident of the Commonwealth of Massachusetts (except that such residence shall not be required during any period in which the Corporation has a duly appointed resident agent), shall be an ex-officio position for the association filled by the attorney for the association.

Section 2.9 a. Secretary. The Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of the Members. The Secretary shall be present at and keep minutes of all meetings of the Members and of the Board of Directors, shall give notice of meetings of the Members and of the Board of Directors and shall perform all duties commonly incident to such office or which may be properly required of the Secretary by the Board or the President.

The Board of Directors from time to time may appoint one or more Assistant Secretaries who, in the absence of the Secretary, shall perform the duties of that office.

In the event of the absence of the Secretary and the Assistant Secretaries, if any, from any meeting of the Members or of the Board of Directors, the Members or Directors at such meeting may appoint a Temporary Secretary to keep the records of the meeting and to perform such other duties in connection with that office as the meeting may prescribe.

Section 2.10. Executive Officer. The Executive Officer will serve as administrator for the Corporation and shall manage all affairs subject to the instructions of the President and the supervision and control of the Board of Directors. The Executive Officer will also serve as Assistant Treasurer as defined in Section 2.8.

Section 2.11. Miscellaneous Duties and Powers. In addition to the foregoing specifically enumerated duties and powers, the several officers and individual Directors of the Corporation shall be charged with such other duties and shall have such other powers (to the extent permitted by law) as may be delegated to them from time to time by the Board of Directors or any officer herein authorized to do so as may be imposed upon by law.

ARTICLE III

MEETINGS OF MEMBERS

Section 3.1. Annual Meeting. The annual meeting of the Members shall be held in every year on the third Tuesday in May at 8 o'clock p.m. (or if that day falls on a legal holiday in the place where the meeting is to be held, on the next succeeding business day) at the principal office of the Corporation within the Commonwealth of Massachusetts, unless the Directors appoint some other date or place either within or without the Commonwealth. At such annual meeting the Members shall elect Directors, hear the report of the Treasurer and transact such other business as may otherwise properly come before the meeting. In the event that for any reason the annual meeting shall not be held as herein provided, a subsequent special meeting of the Members shall be held in lieu of and for the purposes of the annual meeting with all the force and effect of an annual meeting and for such other purposes as may be specified in the notice of said special meeting.

Section 3.2. Special Meetings. Special meetings of the Members may be called at any time by the President or by a majority of the Directors. Special meetings shall be called by the Secretary, or in the case of the death, absence, incapacity or refusal of the Secretary, by any other officer, upon written application of three or more of the Members entitled to vote at such meeting, stating the place, day, hour and purposes of the meeting. Special meetings of Members may be held within or without the Commonwealth of Massachusetts.

Section 3.3. Notice. A written or printed notice of any annual or special meeting of the Members, stating the place, day, hour, and purposes thereof, shall be given to each Member by the Secretary or Assistant Secretary or such other person authorized by these Bylaws to call a meeting, at least seven (7) days before the date of the meeting by leaving such notice with the Member or by delivering it to his or her residence or usual place of business by mailing the same, postage prepaid, directed to the address of the Members as last recorded on the books of the Corporation. It shall be the duty of each Member to notify the Corporation of his or her post office address. Whenever notice of a meeting is required to be given to a Member under any provision of the General Laws of the Commonwealth of Massachusetts or of the Articles of Organization or Bylaws of the Corporation, a written waiver thereof, executed before or after the meeting by such Member or by an attorney representing such Member, duly authorized and filed with the records of the meeting, whether or not such Member continues to be a Member at the time of his execution of such waiver, shall be deemed equivalent to such notice.

Section 3.4. Quorum. A majority of the total number of Members, present or duly represented by proxy at the meeting, shall constitute a quorum for the transaction of business at any meeting of the Members, provided, however, that if there shall be at least ten

(10) Members who are present or fully represented by proxy at the meeting, then such number shall constitute a quorum for the transaction of business thereat, irrespective of the total number of Members.

Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present and the meeting may be held as adjourned without further notice. At any such adjourned meeting at which a quorum shall be represented, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.5. Vote Required. If a quorum is represented at a meeting, the affirmative vote of a majority of the Members who are present or duly represented by proxy at the meeting shall be sufficient to elect any Director or to transact any business unless the matter is one upon which, by express provision of law or of the Articles of Organization or the Bylaws of the Corporation, as amended from time to time, a different vote is required or permitted, in which case such express provision shall govern. Any election by Members shall be determined by a plurality of the votes cast by the Members who are present or duly represented by proxy at the meeting.

Section 3.6. Method of Voting and Proxies. Each Member of the Corporation shall be entitled to one vote at any meeting of the Members of the Corporation or at any adjournment thereof. Any Member not present in person at any such meeting of the Members of the Corporation may vote thereat by a proxy signed by such Member and filed with the Secretary prior to the commencement of the meeting, but no such instrument which is dated more than six months before the meeting specified therein shall be accepted. Except as otherwise limited therein, proxies shall entitle the persons who are authorized to vote thereby to vote at any adjournment of such meeting but no such proxy instrument shall be valid after the final adjournment of such meeting. All proxies shall be filed with the Secretary at the meeting, or at any adjournment thereof, before being voted.

Action in respect of any matter shall be by ballot upon request of any Member.

Section 3.7. Action by Consent. Any action required or permitted to be taken at any meeting of Members may be taken without a meeting if all of the Members entitled to vote on the matter consent to the action in writing and the written consents are filed with the records of the meetings of the Members. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE IV

DIRECTORS MEETINGS

Section 4.1. Meetings of Directors. An annual meeting of the Board of Directors shall be held in every year immediately after the annual meeting of Members or special meeting of the Members, held in lieu of such annual meeting, at the same place as such annual or special meeting, for the election of officers and for the transaction of such other business as may properly come before such meeting, unless the Board of Directors agree to and establish a different time or place for such annual meeting. Any other regular meeting of the Board of Directors may be held at such time and place as may be fixed from time to time by the Board of Directors. Special meetings of the Board of Directors may be called by the President, or by a majority of the Directors, or in case the number of Directors as fixed by the Members or by the Board of Directors shall be an even number, then one-half of the numbers of Directors constituting the full Board of Directors as fixed by the Members or by the Board of Directors for the time being. Any regular or special meeting of the Board of Directors may be held either within or without the Commonwealth.

Section 4.2. Notice. The first meeting of the Board of Directors following the annual meeting of the Members and any other regular meetings of the Board of Directors, as fixed in place and time by the Board of Directors, may be held without notice except as otherwise required in these Bylaws. Notice of special meetings of the Board of Directors or of a change in the time or place of the annual meeting or any other regular meeting shall be given by the Secretary or Assistant Secretary, or other officer calling the meeting, orally, or by mail, telephone, cable, or telegraph, stating the date, time and place appointed for the holding thereof and generally the business proposed to be transacted thereat. Notice so given or sent to a Director's usual and last known place of business or residence at least forty-eight hours before the time of the meeting shall be sufficient notice in all cases, and any notice received by a Director in time to enable him or her to attend the meeting concerning which such notice is given shall be likewise sufficient. Notice of a meeting need not be given to any Director if a written waiver of notice executed by such Director is filed with the records of the meeting before or after the meeting. Notice of a meeting need not be given to a Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice thereof. Any business whatever may be transacted at a meeting of the Board of Directors although it may not have been specified in the notice of waiver of notice of the meeting. No notice of an adjourned meeting of the Board of Directors shall be necessary.

Section 4.3. Quorum. At any meeting of the Board of Directors a majority of the Directors, or in case the number of Directors as fixed by the incorporators, Members or Directors (or as resulting from vacancies) shall be an even number, then one-half of the number of Directors, then in office, shall constitute a quorum for the transaction of

business. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present and the meeting may be held as adjourned without further notice. Except as otherwise expressly provided by law or by the Articles of Organization or by the Bylaws of the Corporation, as amended from time to time, the affirmative vote of a majority of the Directors present at any meeting at which a quorum is present shall be sufficient to transact any business which may properly come before the meeting.

Section 4.4. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all of the directors consent to the action in writing and the written consents are filed with the records of the meetings of the Board of Directors. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE V

MISCELLANEOUS

Section 5.1. Fiscal Year. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall end on the thirty-first day of December in each year.

Section 5.2. Bonds. The Board of Directors may from time to time require from any one or more of the officers or agents of the Corporation that he, she or they shall give bond for the faithful performance of duties. Any such bond shall be in such form, in such sum and with such sureties as the Board of Directors may determine. The premiums for all such bonds shall be paid by the Corporation.

Section 5.3. Execution of Writings. Unless the Board of Directors shall otherwise generally or in any specific instance provide:

a. any bill, or note, or check shall be made or signed in the name and on behalf of the Corporation by the President or the Treasurer or an Assistant Treasurer or such other officer or officers as shall be authorized to do so from time to time by the Board of Directors; and

b. any other contract or written instrument shall be signed in the name and on behalf of the Corporation by the President and the Treasurer, unless otherwise specifically designated by the Board of Directors by resolution or ratification, or such other officer or officers as shall be authorized to do so from time to time by resolution or ratification by the Board of Directors, and such officer so signing such instrument may also acknowledge and deliver the same. Any instrument purporting to affect an interest in real estate shall be executed in the name of the Corporation by two of its officers, jointly, of whom one is the President (or any Vice President) and the other is the Treasurer (or any Assistant Treasurer).

Section 5.4. Respecting Certain Contracts. Directors of this Corporation may be connected with other corporations with which from time to time this Corporation has business dealings. No contract or other transaction between this Corporation and any other corporation and no act of this Corporation shall be affected by the fact that a Director of this Corporation is pecuniarily or otherwise interested in, or is a Director or officer of, such other corporation. In the absence of fraud, any Director, officer or Member of this Corporation, individually, or any firm in which such Director, officer or Member may have an interest, may be a party to or may be pecuniarily or otherwise interested in, any contract or transaction to which this Corporation is a party, provided that the fact that such individual or firm is so interested shall be disclosed or shall have been known to the Board of Directors or to a majority thereof. With respect to any profit or benefit realized on any such contract or transaction, no such Director, officer or Member shall be liable to account to the Corporation thereof. Any such Director may be counted in determining the existence of a quorum at any meeting of the Board of Directors and may validly vote for the purpose of authorizing, approving or ratifying any such contract or transaction.

Section 5.5. Dividends, Profits, and Compensation. No Member or Director shall receive by reason of such membership or directorship, any dividend, profit, or compensation from the Corporation, provided however, that there shall be allowed reimbursement by the Corporation of reasonable expenses incurred on behalf of the Corporation in the course of any activity for the Corporation, by any Member, Director, or officer of the Corporation.

Section 5.6. Corporate Employees. The Board of Directors may from time to time employ or appoint a full-time or part-time Executive Director and such other personnel as may be desirable and necessary to supervise the facilities of the Corporation and to plan and conduct its activities, and the Board of Directors may fix reasonable compensation for such Executive Director or other personnel so employed or appointed.

ARTICLE VI

AMENDMENT OF BYLAWS

These bylaws may be repealed or amended, or additional bylaws may be adopted, at: any meeting of the Members of the Corporation, at which a quorum shall be present, by a majority vote of the Members present in person or represented by proxy, provided that the substance of any proposed amendment shall have been set forth in the notice of the meeting. These Bylaws may also be repealed or amended, or additional bylaws may be adopted, at any meeting of the Board of Directors at which a quorum shall be present, by a majority vote of the Directors present, provided that the substance of any proposed amendment shall have been set forth in a notice of the meeting at which a final vote is to be taken thereon.

A true record.

ATTEST:

(signature on file)

Jerome N. Weinstein, Clerk

