

# OMBUDSMAN CIVILIAN

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News

## Why an Association for Corporate Ombudsmen

*The following was written by James B. Hendry, Corporate Ombudsman Association Executive Officer, to answer inquiries regarding the Association. In answer to an inquiry, Jim also sends our brochure which includes our Code of Ethics and who to contact for further information. I thought I would pass it along to you in the event that some of your nonmember colleagues would be interested.*

Virgil Marti, President COA

The ombudsman function has a long and honorable tradition as a means to protect against abuses, malpractice, or error by officials designated to administer the laws. Although it is relatively new to the corporate setting, the numbers of ombudsmen and the numbers of firms employing them have grown quite rapidly in recent years. Until the founding of the Corporate Ombudsman Association in 1984, there was no ready means by which corporate ombudsmen could learn from the experience of others. Because the role of ombudsman requires that he or she deal with clients in a way which ensures the confidentiality of the matters discussed between them, an ombudsman cannot readily share experiences and ideas with others in his or her own work place. A major function of the Association has therefore been to provide a forum in which those serving in the capacity of ombudsman could come together and exchange their experience, their ideas, and their different approaches to the resolution of problems. The principal means for doing this has been the Annual Conference. This not only provides the opportunity to share views, but also brings in skilled professionals in areas such as law and mediation to talk about topics of interest and relevance to ombudsmen. Another means of education is through the publication of a Newsletter at least twice a year.

A second major function of the Association is the conduct of research. The Research Committee of the Association conducts surveys to study the functions of corporate ombudsman practitioners, their reporting relationships, their cost effectiveness, and their contributions to employees, managers, employers, and society. These surveys have resulted in the publication of a number of academic and professional articles and other materials, as well as an Ombudsman Handbook that is distributed solely by the Association. The primary objectives of the Association, achieved through the activities of a number of specialized Board Committees, are (a) to educate practicing ombudsmen with respect to the latest developments in the profession; (b) to conduct research regarding the ombudsman function in order to assess how that function is actually growing and evolving in the corporate environment and how it might better serve the public; (c) to set standards of excellence for practitioners, (d) to develop and disseminate ethical guidelines for the profession; and (e) to enhance the quality and value of the ombudsman function.

The become a member of the Association, one must be acting as a neutral party in resolving complaints within his or her organization, and must subscribe to the Association's Code of Ethics. Current members

## Sexual Harassment – Anonymous Complaints

by John D. Murphy

In discussing reports of sexual harassment with my colleagues, some indicate that many victims do not want their complaints or their identities revealed to any other person. This prohibition against disclosure creates enormous problems for organizations when the prohibition against disclosure includes the alleged harasser. Companies need to have in place a well thought out strategy as to how they plan to address these types of complaints.

The reasons individuals offer for this aversion to disclose are numerous. In some cases, the complainant is simply afraid that he or she will become the victim of retaliation which can range from denial of opportunity in the workplace to outright physical violence on or off the job. Victims express concern that they will be ostracized by others if their complaint becomes public. Surprisingly, many victims express concern for the impact on the harasser, and indicate they don't want the accused to lose his or her job. However, regardless of the reason given, the victims almost universally indicate that they are disclosing the harassment because they want the harassment to stop.

As mentioned previously, this kind of prohibition presents problems for companies. On one hand, companies are obligated by law to investigate and react to harassment in the workplace, for the sake of the identified complainant and any other employee who is or may become a victim of the alleged harasser. To further compli-

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## The Ombudsman As Adversary

by Ella Thurman and Dave Kozemchak

The Ombudsman, as a designated neutral, receives and investigates a complaint, and works with all parties to arrive at a mutually agreeable solution.

What happens, however, when an ombudsman, by the particular responsibilities of his/her job description, is cast into an adversarial role? This is the everyday situation in which we, Ella Thurman, Employee Advisor at the University Hospitals of Cleveland, and Dave Kozemchak, Employee Ombudsman at the Allentown Hospital-Lehigh Valley Hospital Center find ourselves.

Our roles are many: mediator, advocate, counselor, communication link and advisor. It is when we function in the role of advisor and advocate that we take an adversarial stand regarding the practices or actions taken with employees by management. The roles of advisor and advocate are triggered when all other approaches have failed to resolve a problem and when the complaint that has been lodged with the ombudsman's office is of a grievable nature. That is, the employee believes the established policies and procedures, wage and salary scales, or personal benefits are not being appropriately applied and chooses to file a formal grievance. Per policy at our respective places of employment, it is at this time we become wholly obligated to support the grievant so that he/she feels their interests are being fully represented. Preparation to function as an adversary in support of a grievant includes making a conscious mental adjustment to focus all of our energies and knowledge in one direction rather than the usual two. We empathize with the grievant. We help him/her to see the problem from management's point of view, explain policies and procedures, relevant labor or employee relations guidelines, and then help the grievant to present the

case as effectively and clearly as possible.

In all other roles we are able to maintain neutrality with a respect for all parties' rights and opinions. However, when we are advising an employee at a grievance or arbitration hearing, the neutrality disappears.

How we are able to "switch hats", maintain credibility in our institutions, communicate our various roles to personnel in our hospitals, and still function as ombudsmen, is the message of this article.

It (switching hats) is a source of confusion to both management and staff how on a Monday we could be playing the role of a Terry Waite, and then on Tuesday, we resemble a John L. Lewis. Some of the many elements that help to alleviate any possible problems or confusion regarding our roles include time, experience, plenty of communication to all levels of staff, education and demonstration. Key to the success of such a "unique role" is the support of employees and managers (Top management must certainly be fully supportive of the role). Our advocacy and support of the customer/employee viewpoint in grievance settings must be so strong that any possible conflict in our roles will be imperceptible. We earn credibility for the role by performing to the satisfaction of the customer/employee and by balancing such performance to fit into the framework of our institutions policies and procedures to which our management teams are committed. It is an ever delicate balancing act to be mindful of our institutions mission statements, management rights and our customer/employee needs.

There is a very clear advantage to our taking an adversarial role. This role creates and maintains a healthy checks and balance system for all controversial issues. It is far more

efficient and much less costly if a David or Ella ask the tough questions rather than a plaintiff's attorney, a judge, a fair employment practices representative, a union representative or a newspaper reporter.

There are several more advantages to having the ombudsman in an adversarial role for grievances. The ombudsman, while still being a strong advocate and advisor for the employee, will analyze the grievance from a neutral position, not necessarily from a win-lose perspective, thereby fully ensuring the employee's rights, yet greatly facilitating an understanding of the problems by all parties. Further, it is because of the authority of the ombudsman throughout this process, that company policy integrity is checked, employees receive due process, and management decisions can be more structurally and formally analyzed for strengths and weaknesses.

Therefore, the adversarial role, while taking time to gain credibility and understanding in the work environment, can serve a valuable, if not unique role for the "designated neutral", the ombudsman.

Bio's of Dave and Ella:

Dave Kozemchak, M.S., PHR, is the Employee Ombudsman at the Allentown Hospital-Lehigh Valley Hospital Center in Pennsylvania. Dave started the position of employee ombudsman in February of 1987, and has developed it to serve over 4500 employees. Dave is a member of the Corporate Ombudsman Association and the Industrial Relations Research Association.

Ella Thurman is the Employee Advisor at the University Hospitals of Cleveland Ohio. She has been employed at UHC for 28 years and has held the advisor position since it was created in November, 1970. Ella attended (Case) Western Reserve University's Flora Stone Mather College and is a graduate of Notre Dame College of Ohio. Ella is a COA member.

## Case 2: Ombudsman Cost Effectiveness Estimates

by Tony Perneski and Mary Rowe

Corporate Ombudsman offices have been set up to serve workforces of less than 1,000 to more than 140,000; (larger groups are usually served by multiple offices and/or an 800 line) (Ziegenfuss, Rowe, Robbins & Munzenrider, 1987). In an average company, between 2 and 10 percent of these people will call or write or visit the ombudsman, to raise problems ranging from the very serious, (e.g., difficult safety problems due to alcoholism), to the relatively simple, (e.g., a request for information on how salary equity is monitored). The ombudsman must strive to provide a cost effective service.

The cost of providing an ombudsman can be broken down into salary (loaded to include benefits), space and equipment (office space, computers, telephones, etc.), support (secretarial, administrative, etc.). We include an estimate of the cost of time spent by other company personnel with the ombudsman, by estimating *net* savings in work time creditable to the intervention of an ombudsman.

How costs are allocated to the above items are determined by the circumstances of a particular ombudsman. The total cost of the above items for an ombudsman at one area of a large R & D company (Company X) was approximately \$200,000 per year, in 1988. The specific examples of cost effectiveness for an engineering company that follow pertain to that area of Company X.

### Gains of the Function

There are five benefits to the ombudsman function which can be relatively easily translated into cost savings: productivity, management time, other personnel savings, legal staff salary savings, and miscellaneous savings. In addition, this corporate ombudsman spends about 25% of his time on company-wide future oriented policies and planning.

**Productivity** – Loss of productivity of employees, due to problems at work, can range from very little (a few percent) for small problems, to much more than 100% (e.g., when the productivity of others is impaired). However, arguments about productivity increases, or “return to full productivity because of solutions to work connected problems,” are difficult to substantiate. Therefore, an ombudsman must make a conservative estimate about productivity increases. We believe an estimate of an average of 2% increase in productivity, for all *resolved* cases, is an appropriately cautious estimate. This estimate is conservative enough to appear to take appropriate account for the time lost by disputants in talking with the ombudsman. The formula for computing productivity gains is:

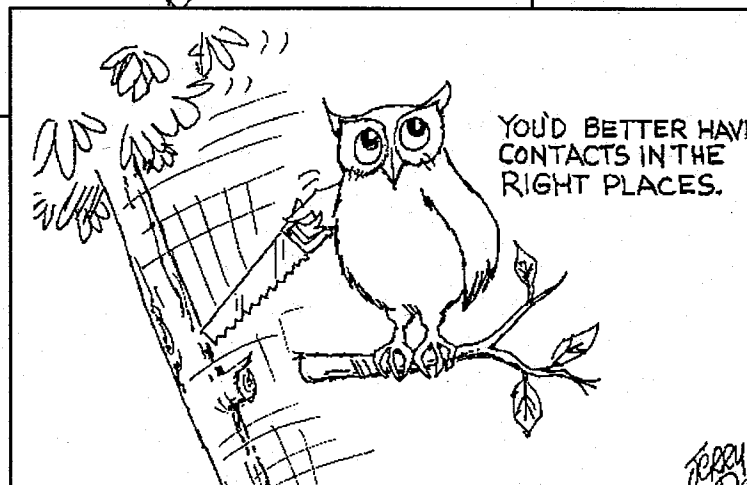
**Number of successfully resolved cases per year, times average**

**productivity gain (%), times average yearly loaded salary per year = productivity gain (\$).**

In our example in 1988, a caseload of 200 people successfully served, per year, times two percent, equals an equivalent of increasing the work staff by 4 people. At loaded salary cost, this would amount to a value of approximately \$600,000.

**Management-Time** – Extensive research indicates that most managers spend a substantial amount of time dealing with peers and subordinates who have problems. Even a conservative estimate would suggest that 1% of the managers' time, (1/2 hour per week per manager), which does not have to be spent on a peer or employee problem, would save a significant amount of corporate management time. The formula for calculating (net) management time savings is:

**Number of serious cases per year, times management-time per case (in years), times average yearly loaded salary (\$/year) = cost savings (\$).**



In this organization, 50 of the 200 cases in 1988 were coded as "serious." In a conservative estimate their resolution saved the equivalent of 1/2 of one manager's time, or about \$75,000. We feel this conservative estimate appropriately takes account of (and is therefore net) of times spent by managerial personnel with the ombudsman.

**Personnel Savings** – People who contact the ombudsmen sometimes are good employees who are at risk of leaving the corporation because of a work connected problem. Solving the problem may induce the employee to stay, at considerable benefit to the corporation in terms of costs of recruiting and training a replacement employee. Personnel savings can be calculated by using the following:

**Number of valued persons saved per year, times (recruiting costs (\$) + training time (years) per person, times yearly loaded salary (\$/year)) = Personnel Savings (\$).**

In 1988 we estimate that two employees decided to stay in the corporation because of satisfactory solutions to their problems. The savings were calculated at approximately \$170,000.

**Legal Savings** – Employee problems not solved by either an ombudsman or corporation management may require attention by the corporate legal staff together with management. Legal staff and managers can contain the problem within the corporation at a reduced cost, or may have to face the problem outside the corporation (e.g., agency or sponsor appeal or a lawsuit) at higher cost. The formula for calculating legal savings is:

**Number of cases kept from becoming a legal problem, times average corporate attorney time per case, (years) times yearly attorney loaded salary (\$/year) plus average manager time per case (years) times yearly manager loaded salary (\$/year) = Legal Savings (\$).**

If agency complaints and complaints to sponsor lawsuits are avoided, an estimate of the cost of the appeal and interrogatories or lawsuit, including possible settlement or payment of

damages, should be added to the legal savings.

**In 1988 it was estimated that three cases were kept from becoming an outside problem for corporate attorneys, conservatively saving about 15% of an attorney's time or an equivalent of \$30,000 plus at least an aggregate of 50% of a manager's time or \$75,000, a total of \$105,000.**

**Miscellaneous Savings** – Depending on the variety of the corporation served, and the skills and availability of the ombudsman, a number of miscellaneous savings may be generated. One typical saving is connected with data collection. Surveys are frequently conducted by ombudspople that would cost \$5,000 to \$100,000, to conduct by outside consultants or other inside departments. In 1988 this particular ombudsman was involved as initiator, planner, and coordinator of a \$1.2 million training program for management. Outside consultant costs averaged \$50,000 per consultant. The ombudsmen saved the cost of a fifth consultant. Other savings that have been reported by ombudsmen are those which came from curtailment activities such as waste, fraud, theft, drug use, sabotage, vandalism, safety problems and potential bodily harm to managers and employees. Cost savings due to these circumstances can only be made with assurance, when specific incidents are considered. Several such occurrences came to the attention of this ombudsman in 1988. Serious problems of this type are currently estimated to come to an ombudsman's office *at least once a year per 2,000 employees around the country*; (this estimate comes from the 1989 Corporate Ombudsman survey and other data available to the authors).

**We estimate total miscellaneous savings at an average of \$20,000 for a company of this size.**

**Increase in Costs** – There is, of course, the possibility of negative impact of actions by ombudsmen. Since the average case load includes hundreds of cases per year, there is a good possibility that some will go wrong. Instead of cost savings or no

effect, costs would increase. Any losses known to have occurred through actions of the ombudsman must be subtracted from the gain before calculating cost effectiveness. We at this time know of no specific negative impact in this company.

### Cost Effectiveness

Cost effectiveness is the ratio of savings divided by costs or (productivity gains + management time savings + personnel savings + legal savings + miscellaneous savings – losses)/cost of the function. For this one area in 1988, the calculation is:

$$\frac{600,000 + 75,000 + 170,000 + 105,000 + 20,000}{200,000} = 4.85$$

**Summary.** An estimate of the cost effectiveness of an ombudsman can be calculated using the approach presented above. Conservative estimates should be used to avoid the need to develop proofs which cost more to obtain than the savings themselves. Using conservative estimates as in the example described here, one can demonstrate that corporate ombudsmen may not only pay for themselves (which would be a cost effectiveness ratio of one) but should do much better.

### Systems Change

Since the actions of the ombudsman are usually relatively unrestricted, one can add to the above estimate of cost effectiveness. For example, the knowledge gained by handling individual problems can be used to produce "generic" solutions with a much larger cost effectiveness. Ombudsmen typically spend at least a quarter of their time in working toward dispute prevention and better management processes, such as participative management. Ombudsmen help to improve policies and procedures, to support workplace diversity, help prevent harassment, etc. In such a process employees become involved in establishing a corporate team that avoids many individual problems.

# Coping Under Extreme Circumstances

## Useful Ideas for Someone in the Office Greatly Under Stress

by Mary Rowe

- If everything else fails, tell the truth...
- Prepare ahead, in any way you can, for a situation you think will be tough;
- Seek out any completely trustworthy advisor (religious counsellor, psychologist, etc.) and friends and family; build support relationships; find a relevant support group;
- Set a routine for yourself;
- Take action, even small actions; between action and passivity, choose action if possible;
- Plan in small bits, if necessary; get through the next week, the next day, the next hour;
- If possible, find *something* wonderful in your life (children, art, memories, music, fantasies, etc.);
- Is there anything you can do to create a BATNA – best alternative to a negotiated agreement – (an escape, a fallback position)?
- LISTEN: Whatever happens, imagine that it is "data." Keep a journal or do any other kind of writing that reaffirms your discussion with yourself, drawing on your own values. These views and feelings may be shared with a few trusted others;
- Develop a theory about what is happening to you, to help explain the experience; (this offers some possible sense of protection, a sense of being able to anticipate or predict what may happen next, a bit of control, a way to dispel the fear of the unknown and sense of helplessness)<sup>1</sup>;
- Develop a sense of humane stoicism; try to maintain a sense inside yourself of high moral position. "Whom the gods would destroy, they first make mad;" your task is to avoid being forced into madness or bitterness, or rigidity;
- Use humor; it will help break up self-righteousness in yourself and others and may create a bond of sympathy in an otherwise rigid system, or with otherwise hostile colleagues;
- Do not tangle emotionally with people who do not have your best interests at heart; it will entangle you in the world-view of the Other

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## Book Review

by Carole Trocchio

GETTING TO YES, NEGOTIATING AGREEMENT WITHOUT GIVING IN by Roger Fisher and William Ury, Penguin Books, N.Y.

One of the most sensitive areas of being an ombudsman is walking that "tightrope" of neutrality, not appearing as an advocate for either the employee or the company and, yet, working with both sides to achieve a mutually agreeable agreement. We, in fact, work to negotiate an agreement between the employee and the appropriate management person.

Fisher and Ury in their national bestseller, *Getting To Yes*, (available in paperback) offer a clear and concise approach to achieving win-win negotiation. They simplify the process of negotiation, differentiating interests-based negotiation from

positional negotiation, by focusing on five objectives:

1. Separate the people from the problem.
2. Focus on interests, not positions.
3. Establish precise goals at the outset of negotiations.
4. Work together to create options that will satisfy both parties.
5. Negotiate successfully with opponents who are more powerful, refuse to play by the rules, or resort to "dirty tricks".

*Getting To Yes* is a must for every Ombudsman's library, 149 pages of down to earth, easy to read, practical techniques that will be used again and again.

## WHY

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come from a large number of major corporations in the U.S. and Canada, as well as from public sector organizations, educational institutions, and health care facilities. All members receive a copy of the Ombudsman Handbook as part of the initial membership fee, as well as the Newsletter, a membership certificate, and a wallet-sized membership card.

## HARASSMENT

(Continued from page 1)

cate the problem, the rights and expectations of the accused must be factored into any company response. The accused should be given the opportunity to hear the allegations against them and should have a real opportunity to respond before the company takes any action. On the other hand, the complainant's expectation of privacy and right to safety are important considerations as well.

The following is a list of possible strategies companies can adopt when confronted with anonymous complaints. These include:

- a) Honor request for anonymity, but continue dialogue with the complainant and encourage him or her to authorize a full investigation.
- b) refuse to continue dialogue with the victim without consent to investigate.
- c) refuse to honor request for anonymity, confront the alleged harasser and indicate a thorough investigation.
- d) confront the harasser without revealing the name of complaining party.
- e) conduct investigation without confronting the harasser.
- f) alternate response depending on whether the alleged harasser is a manager or a co-worker.
- g) focus awareness training and other positive interventions in the organization in which the charging party and the alleged harasser work.