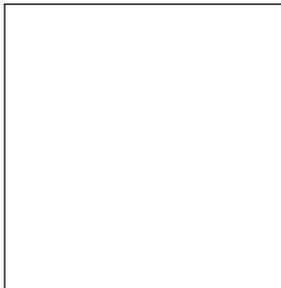


# The Compleat Ombuds

## A Spectrum of Resolution Services

*Margo Wesley*



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OMBUDS POSITIONS,<sup>1</sup> mediation centers, and other types of problem-resolution services are catching on in the workplace. The primary goal of these alternative dispute resolution systems is to resolve employee concerns at an early stage — to approach work-related conflicts constructively before positions harden and become so polarized that there is a felt need to resort to formal dispute mechanisms. Those more formal options, such as appeals, arbitrations, outside agency complaints, or lawsuits, tend to be time-consuming, costly, and unpredictable in their outcomes, often culminating in decisions that leave neither party entirely satisfied.

This article focuses on the services of the “organizational” ombuds as opposed to “classical” and “advocate” ombuds. The organizational ombuds is a designated neutral who is appointed or employed by an organization to facilitate the informal resolution of concerns of employees, managers, students, and, sometimes, external clients of the organization.<sup>2</sup> The “classical” ombuds, on the other hand, typically is appointed by a legislative body to represent the public with regard to concerns about the conduct of governmental agencies; they conduct formal investigations. And, the “advocate” ombuds advocates on behalf of a designated population, such as patients in long-term care facilities. The organizational ombuds neither conducts formal investigations nor advocates on behalf of (or represents) individuals.

### **Foundational Principles**

The effectiveness of the organizational ombuds is grounded in adherence to four foundational principles: independence, informality, impartiality (or neutrality), and confidentiality.<sup>3</sup>

**Independence.** An ombuds is not part of line management, does not make management decisions, and cannot compel anyone to take any particular course

of action. In order to preserve independence, the ombuds office cannot be considered a place where “notice” of improper activities can be given to the institution. In order to assure independence, the ombuds typically reports to the head of the organization and does not take on other roles that might compromise, or appear to compromise, independence.

**Informality.** Ombuds encourage people to resolve problems at the lowest effective level, before they escalate. If informal resolution is unsuccessful, and the problem moves into a formal arena, an ombuds’ involvement ceases. An ombuds does not participate in formal processes, even if given permission to do so.

**Impartiality.** The ombuds does not advocate for the employee, the employer, or anyone else. As a designated neutral, the ombuds helps people to gain perspective on situations so they can make better-informed choices as to how to proceed. This often entails helping visitors gain access to relevant information, as well as opening avenues of communication. The facilitation of constructive communication, whether through mediation, facilitation, or “shuttle diplomacy,” is a key aspect of impartiality. Conversely, ombuds do not negotiate on someone’s behalf, pressing for a particular outcome or course of action; nor do they render decisions.

**Confidentiality.** Essential to an ombuds’ effectiveness, confidentiality is what makes the ombuds’ office a safe place for people to bring their concerns, open their minds, and explore potential courses of action. The only instance in which an ombuds would breach confidentiality is if he or she believes that doing so is necessary to address an imminent threat of serious harm. Because of the expectation of confidentiality, the ombuds office cannot serve as an “office of record” or an “office of notice” to the institution. Confidentiality belongs to the ombuds, not to those providing information to the ombuds. For example, even if a visitor were to give an ombuds permission to discuss a situation, the ombuds might not do so in the belief that such a move might violate another ombuds principle (such as not participating in formal arenas). Confidentiality is one of the ombuds’ most valu-

able tools. For this reason, ombuds professional associations are working to develop explicit federal “shield” legislation.

### *A Distinctive Role*

While bearing some similarity to, and sometimes collaborating with, other offices, the ombuds role can be distinguished in the following ways:

- Like human resources professionals, ombuds inform about relevant policies, procedures, and rights. However, unlike their HR counterparts, ombuds do not develop policies or procedures; impart authoritative interpretations of, or defend or enforce, them; or participate in formal arenas (such as appeals, arbitrations, or lawsuits).
- Like employee organization representatives, ombuds help employees recognize and gain access to rights. For example, ombuds point out that critical time lines govern collective bargaining agreements, and educate clients that bargaining agents can answer questions and represent employees regarding these rights.<sup>4</sup> Conversely, however, ombuds do not interpret agreements or advocate on behalf of individuals.
- Like professionals working in employee assistance programs, ombuds deal with underlying concerns and needs. Also, both ombuds and EAP professionals are concerned with identifying and preventing potential violence. However, while EAP professionals focus on psycho-social assessment and referral or coping with problems outside of work, ombuds concentrate on practical, constructive methods for addressing workplace conflicts.
- Like those who handle certain compliance-related functions (such as audits, whistleblowing, and non-discrimination), ombuds encourage people to report wrongdoing, help them learn about and gain access to their rights, and assist them in finding safe ways to come forward. However, unlike compliance offices, ombuds do not function as offices of record or notice.<sup>5</sup>

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Central to the role of ombuds is the function of coaching. First, coaching helps people to discern what they *actually* want (their underlying “interests”) as opposed to their initial “positions.”<sup>6</sup> Next, it allows them to explore potential avenues for addressing those interests. The coaching process includes “reality checks,” which help people determine what is, or is not, reasonably attainable, and the possible costs and advantages of each option. Such one-on-one counseling is at the core of ombudsing. Our other services radiate from that core.

### *The Staff Ombuds Office*

The Staff Ombuds Office at the University of California, Berkeley, serves more than 12,000 staff employees, supervisors, and managers, including academics with management responsibilities, such as deans, department chairs, and principal investigators. It provides a good working model of the ombuds’ mission, the type of complaints received, and the process of resolution.<sup>7</sup>

#### *Early-warning system on the need for systemic change.*

The mission of the Staff Ombuds Office at U.C. Berkeley states: “The Staff Ombuds Office advocates for fairness, equity, justice, and humane treatment in the workplace. From these principles, the Staff Ombuds Office offers a confidential, impartial, objective, informal alternative for resolution of work-related concerns for staff, student employees, and managers of staff.”

On the face of it, the use of the word “advocates” may seem contrary to what has been said regarding ombuds’ impartiality. The important distinction is that while ombuds do not advocate on behalf of individuals, they do advocate to encourage systemic change within the organization. For example, each time we issue a report, we include a series of recommendations for systemic changes that support fair and humane treatment.

The most recent annual report included four major recommendations to campus management:

- No one should be placed in a supervisory role who does not have the time and desire to exercise adequate supervisory oversight.

- All supervisors (both faculty and staff) should be given training in basic supervisory skills, including conflict management. Priority should be given to the training of first-time supervisors, including new department chairs.
- Workshops on methods for developing and sustaining a civil workplace should be offered to the campus community on a regular basis.
- Staff workloads should be reviewed for reasonableness in light of demands resulting from new ways of doing work, such as systems innovations.

Examples of key recommendations from previous years include:

- Encouraging training in civility and multicultural competencies at all levels
- Monitoring selection practices to assure lack of cultural bias
- Encouraging attendance at programs on dealing effectively with change
- Assuring appropriate use of technology, so that it does not impair the fabric of interpersonal relationships
- Developing means to hold management accountable for upholding the campus’s stated principles and values

*‘Ear’ of the organization.* These recommendations are not mere guesswork. They arise out of an in-depth understanding of the many kinds of problems that employees, including supervisors and managers, are experiencing, and the barriers, both personal and institutional, that impede satisfactory resolution. By adhering to the principles of independence, impartiality, and confidentiality, we have created a safe place where people feel comfortable telling us what really is going on. Because we hear about our visitors’ thoughts and emotions, we become the “ear” of the organization. People often leave our office saying that this was the first time they truly felt heard — evidence that one skill which badly needs to be developed, and used, on campus is *active listening*.

*Individual counseling and coaching.* Our next task is to help people sort through what actually is going on and what outcome they really want. This entails disentangling many threads that the person may have tangled into one seem-

ingly insurmountable problem. And that problem often appears to that person to have only one apparent, and unsatisfactory, solution. We help people to identify the threads, sort them into categories, and then explore options for satisfactory resolution of each concern.

Say an employee expresses a single, giant problem: “My supervisor doesn’t reward me fairly,” and perhaps one simplistic solution: “If I can’t make my supervisor change, I’ll have to quit — but there’s no other job in sight!” Through conveying empathy and asking open-ended questions,<sup>8</sup> an ombuds gains a greater understanding of the situation and can bring to light a number of options. For example, if by “rewards” the employee is talking about a supervisor’s decision concerning pay, the ombuds may inform the client that appeal rights may exist under the collective bargaining agreement, that the union can inform and represent the person regarding such rights, and that important time limits exist. But cases rarely are this simple. Often a word like “rewards” is not about a particular decision regarding compensation but is an umbrella term with a host of other connotations such as:

- Lack of appreciation: “My supervisor criticizes every little thing I do wrong and never shows appreciation for what I do well.”
- Inequitable workloads: “Others are given far lighter workloads for the same pay.”
- Lack of access to privileges: “I don’t get to attend conferences while others do.”
- Lack of visible credit: “My supervisor takes full credit with higher-ups for my work.”
- Lack of advancement: “When hired, I was told I could move up quickly, yet only outsiders seem to get the better jobs.”
- Lack of necessary space/equipment: “My work environment makes it hard for me to perform effectively.”

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The ombuds may discern other underlying issues, such as fear of inadequate skills for taking on new duties, anger regarding perceived slights, a belief that someone is discriminating,<sup>9</sup> or personal problems impinging on performance (such as mental or physical illness, family difficulties, or financial crises). Once it is determined what really is wanted, priorities are identified and possible courses of action are explored. The ombuds then provides coaching on how to understand other perspectives, effective listening and speaking, giving constructive feedback, dealing with anger, effective use of apologies (giving or receiving of same), and other skills as needed. Role-playing can be helpful as well.

Although “rewards” or compensation-related claims often are the “presenting problem” when people first seek an ombuds’ assistance, monetary compensation often turns out not to be the person’s primary concern. In our last reporting period, for example, only 8 percent of the situations were fundamentally about monetary rewards. Apart from problems concerning impaired communications — which are a primary component of nearly every situation brought to our attention — the leading concern of most of our visitors is unfair or uncivil treatment in general (43 percent), which may be manifested in many different ways. The next-most-common concern is conflicting work styles (26 percent). Communication, treatment, and work styles are the “big three,” year after year. Indeed, we stopped counting impaired communication as a separate category because the topic essentially was a “given” in nearly every conflict.

Other common concerns are performance evaluation (14 percent), job status (14 percent), discrimination (10 percent), and disciplinary actions (9 percent). Of the 10 percent of concerns that fell within the “discrimination” category, 48 percent of the cases concerned race/ethnicity; 28 percent gender; 6 percent sexual orientation; 6 percent disability; 2 percent age; 2 percent national origin; 2 percent religion; and 7 percent “other.”<sup>10</sup>

**Group assessment and counseling.** The same kind of “disentangling” and resorting that is done with individuals also works for groups. While sometimes difficult and time consuming, group counseling can get at long-standing, pervasive, even pernicious problems in a way that can lead to dramatic transformations of troubled work groups.

**Mediation.** Most ombuds act in some capacity as mediators, whether the role means simply facilitating a constructive conversation between two people, “shuttle diplomacy” (working behind the scenes, with permission, to help people understand each other better), or more structured processes. Even within the more structured processes, there are varying types of mediation, from “traditional” to “transformative.” The mediation that I see as most appropriate to the role of an organizational ombuds is a process that is focused less on obtaining written agreements than on restoring or transforming relationships.

### ***Other Opportunities for Systemic Change***

There are additional ways that an ombuds, as an “ear,” can provide early warning concerning troubling trends or systemic problems.

**Committees.** Some ombuds are concerned that serving on committees may compromise impartiality. However, attending committee meetings of broad-based groups, and serving as a non-voting observer of process rather than as a “member,” can be a useful role. It enables the ombuds to:

- Track what is going on within the organization
- Provide the committee with information regarding relevant trends
- Encourage members to bring forward problems in constructive ways
- Encourage fair process, such as the inclusion of all appropriate voices before decisions are made.

However, the ombuds must not act as a policymaking member or serve on committees that make determinations about rewards for, or sanctions against, individuals or groups (such as judicial or disciplinary committees). At U.C. Berkeley, ombuds serve as non-voting members of campuswide committees on community-building and on balancing work and family responsibilities.

### ***Outreach to campus organizations.***

The U.C. Berkeley ombuds office periodically meets with key groups affecting campus climate. The purpose is to hear concerns, assist in preventing unnecessary conflict from developing, and support constructive approaches to unavoidable (and often healthy) conflicts that do occur. An additional purpose is outreach: making people more aware of who we are and what we do.

**Training.** Today, attention to training is more important than ever — and, unfortunately, less likely to be given adequate funding because of budgetary exigencies.<sup>11</sup> In the long run, training will lessen the need for individual consultation. However, over the short term, training can lead to more requests for individual consultation as people gain a greater awareness of their problems and begin to address them.

Workshops are central to the effective prevention and resolution of conflict. At U.C. Berkeley, we offer “Civility: Respect in Action,” “Civility in the Use of E-Mail,” “Resolving Conflict,” “Managing and Mediating Conflict,” and “Dealing With Difficult Situations and Behavior in the Workplace.” Offerings are constantly being revised based on reassessment of campus needs. The class on email civility, for example, came into existence because our office began to be inundated with instances of raging email wars. In recent years, we have found that more and more departments benefit from training tailored to their work unit. Usually, we can adapt an existing workshop to a department’s particular needs.

Some may question whether training is appropriate to the ombuds role. I am convinced that if training focuses on the heart of ombudsing — preventing and constructively resolving conflict — no one is in a better position to do it, for

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three reasons. First, we hear the true nature of underlying conflicts. Second, we comprehend the subtle yet critically important characteristics of the organization, such as where power lies, how it is exercised, what values are held in high or low esteem, and what hidden manner of communication is at play. Finally, training is an important communication medium for the ombuds. It facilitates outreach, encouraging people to make individual appointments to explore problems not addressable in the group setting.

**Copresenting or consulting.** Collaborating with others who are engaged in training can result in rich offerings. For example, the employee assistance program has integrated segments on dealing with anger or stress into our programs. We have provided the human resources department with a section on conflict resolution as part of their supervisory training series and have spoken about recognizing underlying issues as part of their performance management series. Sometimes consulting is all that is needed. We have helped other trainers, including external consultants, gain an awareness of relevant issues as they design their programs. At all times, care must be taken to assure both the perception and the reality of the ombuds' independence.

**Self-help tools.** In addition to including selected bibliographies in each of our workshops, our office has a lending library of books and tapes on a variety of ombuds-related topics, such as conflict resolution, communication skills, multicultural awareness, dealing with anger and violence, organizational development, and civility. Our comprehensive website can also be a valuable reference tool for self-help: <http://ombudsforstaff.berkeley.edu>.

### *'Small' Gestures, Large Effects*

Some seemingly small things that an ombuds can do may have large positive effects. For example, ombuds sometimes serve in ceremonial roles that contribute to the development of a caring community. At U.C. Berkeley, the ombuds participates in a campus ceremony honoring the memory of members of the community who have died in the past year. We also participate in Charter Day events as the visible symbol of staff presence. At the campus gathering immediately after "9/11," the ombuds described the impact of that tragedy on

staff. We also welcome staff to the campus at employee orientations. This ceremonial visibility is important because at universities, staff often feel like second-class citizens, the forgotten, invisible partners of a more visible community of faculty and students. Whichever role we are playing, we try to model the empathy, integrity, understanding, and passion for fairness and justice that we encourage in others. ✱

1 Although the terms "ombudsman" and "ombudsperson" are in frequent use, I prefer the simplicity of "ombuds," which appears to be gaining ground — just as "chair" appears to be superseding "chairman" and "chairperson."

2 Detailed descriptions of ombuds functions and services are contained in two valuable booklets published by The Ombudsman Association: "Why an Organizational Ombudsman? What an Organization's Management Might Want to Know," by Thomas Furtado; and "Options, Functions and Skills: What an Organizational Ombudsperson Might Want to Know," by Mary Rowe, Ph.D. The Ombudsman Association and the University and College Ombuds Association both have contributed to the profession by establishing standards of practice, codes of ethics, and a broad range of professional development programs for new and experienced ombuds. Their websites ([www.ombuds-toa.org](http://www.ombuds-toa.org) and [www.ucoa.org](http://www.ucoa.org)) contain useful information for ombuds and for employers who are thinking about establishing an ombuds function.

3 Some associations affirm only three principles (independence, impartiality/neutrality, confidentiality); however, for organizational ombuds, informality also is a bedrock principle.

4 Some collective bargaining agreements may preclude an ombuds' involvement with employees covered by those agreements. In addition, some ombuds do not provide services to employees covered by collective bargaining agreements, out of concern that they may be perceived as interposing themselves between employees and their authorized representatives. To work effectively with employees covered by collective bargaining agreements, ombuds must take scrupulous care not to interfere with rights of representation and that their impartiality/neutrality is manifest to all concerned, including the union. Unions may value ombuds' efforts to help employees sort out their personal concerns from their work-related concerns, to help coworkers resolve personal "workstyle" conflicts with each other, and to assist members of a work group to promote greater civility in all their interactions. As one union

representative told me, “I’m in favor of having a whole arsenal of tools available for problem-solving, including ombuds services.”

5 At present, there are lively debates as to under what (rare) circumstances, if any, an institution may be considered to have been put on “notice” by an ombuds. Ombuds’ terms of reference should be explicit regarding this issue. Our office at U.C. Berkeley states that talking to us does *not* constitute notice to the institution.

6 Terminology regarding “interests,” “positions,” and “reframing” is common to the field of alternative dispute resolution. See work that has emerged from Harvard’s Program on Negotiation, especially Roger Fisher and William Ury’s *Getting to Yes* and Ury’s *Getting Past No*.

7 The office was cited as a model in *The Complete Guide to Conflict Resolution in the Workplace*, Marick F. Masters, and Robert R. Albright (New York: AMACOM, 2002) 195-196.) My reports describing activities of the Staff Ombuds Office since 1993 are available at our website, <http://ombudsforstaff.berkeley.edu>. The most recent report, from which many of the following statistics are derived, covers 2000-02.

8 Examples: “What do you mean when you talk about ‘rewards’?” “What would seem ‘fair’ to you?” “How do you think your supervisor views you — in terms of both positives and negatives?” “Was there a time when you felt more fairly treated? In what way, and when and how did things begin to change?” “What is the worst that might happen if you tried X approach?”

9 The terms *perceived* slights and *belief* of discrimination are not meant to suggest that either the slights or the discrimination are not real, but simply that the ombuds is not in a position to adjudicate what actually is happening. The ombuds can, however, help the person look thoroughly into what is going on and gain access to potential remedies.

10 Statistics concerning sources of conflict may total more than 100 percent because people often present multiple concerns.

11 Further information about the importance of training is detailed in my article, “Ombuds as Teacher: Developing Training Programs,” *Journal of the California Caucus of College and University Ombuds* (2:1, November 1999, pp. 23-27).

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