



THE JOURNAL OF
CALIFORNIA CAUCUS OF
COLLEGE AND UNIVERSITY
OMBUDS



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MISSION STATEMENT

We are committed to publishing the highest quality of scholarly and professional articles submitted for publication. We will publish articles by and about ombuds that provide insights into and understanding of our institutional role, practice, and contributions. Manuscripts and materials submitted will be peer-reviewed. We use a collaborative approach to publishing, in which prospective authors receive constructive critiques from reviewers in an effort to increase the quality of the content of *The Journal*. Our main purpose is to enhance understanding of the art and practice of academic ombudsing.



LETTER FROM THE EDITORS

Dear Friends and Colleagues,

What a year it has been, in the ombuds community and in our world. As a variety of systems - and the individuals within them - continue to experience increasing stress, our work of empowering perspective and meaningful choices continues to grow in relevance and potential.

We are pleased to present to you the second edition of our online journal. This publication follows a long tradition of writing about ombuds work, beginning in 1988 with our first printing. Its founder, Ron Wilson, recognized the need for academic and college ombuds to ponder their work and we are thrilled that the scope of all practices of ombudsing has continued to be chronicled in this publication.

This journal is designed to be interactive and we are pleased this year to offer a new feature: the Case Study. Our hope is that readers will begin discussions that not only offer up questions but also provide guidance as practitioners. Additionally, you will be able to comment on any of our articles in this edition, again, hoping for robust discussion and insight. It is our hope that this forum will extend the rich and invigorating discussions we all enjoy each year at Asilomar.

As always, we welcome and encourage your participation, both online and through the insightful experience of writing for the Journal. Please let us know how we can help keep this publication relevant for you.

Thanks much,

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SUSAN NEFF: 2013 PETE SMALL AWARD RECIPIENT

Nominated by University of Victoria's ombuds, Martine Conway, Susan Neff was 2013's Pete Small Award Recipient. This prestigious honor is awarded to the "Ombudsperson of the Year" for work within Cal Caucus and honors their contributions in advancing the field of ombudsing.

Below is Martine's praise of Susan Neff for her outstanding contributions to Cal Caucus.

Susan often refers to "leadership the ombuds way", an approach characterized by listening, questioning, reflection and inclusion. Susan seeks the quality in others, encourages it to develop and to be shared. The truth is that Susan embodies the very concept of leadership "the ombuds way".

Susan is a regular and long-time valued contributor to the Caucus. She has served on conference planning committees since 2004; provided administrative support to the Journal for many years while it was produced at the University of Washington; and in 2006, Susan took on the responsibilities of chair of the Cal Caucus Awards committee.

Susan has published in the Cal Caucus Journal; presented sessions at several Cal Caucus conferences; and delivered the Cal Caucus pre-conference workshop on multiple occasions, with different co-presenters, inviting new and not so new ombuds to reflect on what it means to take on the mantle of ombuds: What values do we serve? What promises do we make and how do we keep them? How does our practice stand up to the distinct purpose of the ombuds institution?

The reflective questions Susan asks of others are the same that guide her practice. Susan has served the University of Washington community since 1991, first as assistant ombudsman, and from 2008 as ombudsman. In doing so she has acted as a bridge between students, staff, faculty and administrators, responding to the needs of three different campuses. Working with individuals, engaging with decision-makers, or serving on committees, her focus has been on building capacity among the university community to engage constructively through conflict, as Susan describes it, "upholding institutional values one conversation at a time."

As she leaves the role, Susan has also guided a successful transition at UW, where the ombuds position had previously always been held by tenured faculty. Susan's consistent focus on educating her campus, its constituent groups and its decision-makers about the ombuds role is reflected in the



revised executive order for the position (2013), which modifies the charter for the office while affirming the strong vision set at its inception, in 1968-69, for the “protection of the rights and interests of individual members of the student body, the faculty and the staff”. The ombuds office at UW in 2013 is set up as “a safe environment to voice questions and concerns, and have constructive alternatives by which to assert [one’s] rights and interests and seek resolution of problems and conflicts”. It is there to “improve the fairness and effectiveness of the University’s systems and operations.”

Susan’s influence extends beyond the UW and Cal Caucus communities, across ombuds sectors and geographical borders. After participating in the informal North-West Ombuds group since its creation in 2001, Susan became its convener circa 2005 and the facilitator of its steering committee in 2009. She still provides leadership to this unique network of ombuds, from Canadian and US offices in the North-West, who meet regularly in both countries to share best practices across all sectors of practice: legislative, public, private, academic, health care and non-profit.

Susan has constantly nurtured ties among US and Canadian ombuds, among ombuds from diverse sectors, and between ombuds and non ombuds, encouraging us all to “learn with and from each other”. She has participated in several regional ombuds meetings with the Association of Canadian College and University Ombudspersons (ACCUO), and co-led sessions focused on ombuds leadership at a regional conference in Victoria, Canada, and at Cal Caucus, in 2005, and at the inaugural conference of the International Ombudsman Organization in La Jolla, California, in 2006. She has also led the North-West ombuds group to present panel discussions at the Dispute Resolution conference in Seattle, and at the joint ACCUO-FCO (Forum of Canadian Ombudsman) in Vancouver in 2011.

If Susan’s contributions often include others, it is not by accident but by design. Susan’s leadership style is that of the caring shepherd, gathering, encouraging and guiding others. Often a spontaneous summarizer and reframer during discussion periods, she challenges us to connect concepts with practice and with reflection. A tireless advocate for ombuds and for dialogue among ombuds, Susan has inspired and guided many ombuds and non ombuds, mentoring those entering the position, and encouraging and challenging those writing about the role, always generously sharing her knowledge, experience and extensive network.



The Journal of the California Caucus of College & University Ombuds

Susan says that “when an organization is really open to learn through reflection, there’s always room for an ombuds.” She also reminds us that, by having an ombuds, an organization makes an “inherent promise” to live up to its stated values. As an ombuds, Susan also considers herself a “steward of the ombuds institution”, encouraging us individually and as a group to reflect on the values we stand for as ombuds, and the promise we make when we become a part of the large and varied ombuds family.



ABSTRACTS

WHEN AND TO WHOM SHOULD THE OMBUDS REPORT A PROBLEMATIC TREND?

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One particularly stimulating session at the 2014 Cal Caucus conference was devoted to discussing whether, under what conditions, how, and to whom a “trend” should be reported. This article reports on the conclusions reached in that discussion and elaborates on several important issues ombuds encounter in making decisions about reporting trends.

We offer a working definition of a “trend”, and describe how trends can be identified and verified when we are working with a relatively small number of visitor reports. We discuss guidelines for deciding whether to report a trend, including: preventing physical harm, weighing potential risks versus benefits of reporting, avoiding advocating for the visitor, preserving visitor anonymity, noting presence of systemic or structural issues, evaluating the severity of any harmful effects. Considerations in deciding whom trends should be reported to, and under what conditions are also discussed, emphasizing the importance of building strong, informal relationships of mutual trust with organization administrators.

THE MERITS OF A STAFF OMBUDSMAN IN HIGHER EDUCATION: A PLEA FOR THE WIDESPREAD INTRODUCTION OF A STAFF OMBUDSMAN IN THE HIGHER EDUCATION SYSTEM IN THE NETHERLANDS

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The position of Staff Ombudsman remains virtually unknown within higher education. This article examines the duties, powers and impact that a Staff Ombudsman can have. Should the position of Staff Ombudsman become a more widespread phenomenon? In other words, what benefits does the appointment of a Staff Ombudsman offer for an institute of higher education?



INSTITUTIONAL OMBUDSING: CONSIDERING THE ROLE OF DISCOURSE

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Ombudsing is a rich tradition that has been growing worldwide since its inception, but theoretical approaches in the field appear somewhat sparse. This article considers discourse theory and its relevance to institutional ombuds practice. Discourse theory is an approach that centers language and human social interactions. Discourse theory provides important tools for understanding relationships and power dynamics, including those that pertain in institutional contexts. But the concept of discourse has also been extended in various useful ways. This article looks briefly at three main ideas: discursive spaces; discursive channels and discursive positioning in relation to ombudsing. As the ombudsperson seeks to achieve redress for administrative complaints or conflicts, he or she will also need to be equipped with tools with which to work in discursive spaces and discursive channels. Narrative mediation is a good example of a tool for seeking redress that uses the concept of discourse in order to make sense of what puts people in conflict with each other. Narrative mediation provides a promising means of navigating interpersonal and institutional discourses as well as discursive spaces and channels in order to mediate dialogue and conflict. It ties in theoretically with a conceptualization of ombudspersons as well positioned to see a broad range of institutional practices and discourses and to identify discursive channels that can be traversed through these institutional contexts. The hope is that these ideas will invite further conversation and deepen the dialogue of theory in practice.



WHEN AND TO WHOM SHOULD THE OMBUDS REPORT A PROBLEMATIC TREND?

Michael Dues
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In what proved to be a remarkably thoughtful and provocative session at our 2014 Cal Caucus conference, participants addressed the following questions posed by Lisa Neale:

- How do you determine a trend?
- In what situations would you report a trend with few numbers?
- To whom do you report the trend? What is your process for reporting? Is this decision situation determinant?
- What trends do you *not* report?
- How do you protect visitor anonymity?

Lisa's questions, and the responses generated in the session, require us to think deeply about the scope of our roles as ombuds and professional members of an organization. They also focus our attention on some fundamental tensions inherent in our professional work. The purpose of this essay is to continue and expand the discussion begun in that session by bringing clearer focus to the issues raised, and suggesting some guidelines for making decisions about when and how to report trends. First, we present a working definition of a trend and a summary of the discussion at the 2014 conference; then, we suggest guidelines for determining whether a trend exists, and when, to whom, and how to report it.

What is a "Trend?" And When Should It Be Reported?

In common usage, the term *trend* typically refers to a general tendency or pattern occurring in a group and indicated by a set of similar or recurring events or phenomena. In our conference discussions, this term was interpreted in the context of organizational ombudsing to include problematic patterns of interaction, structural and systemic issues—virtually any general condition that might interfere with supportive communication and collaborative problem solving. It was evident from our discussions that ombuds make judgments about reporting trends based on the unique circumstances surrounding each situation, mindful of our standards of practice, and especially mindful of any risks to visitors.

Whether a trend should be reported depends upon the extent to which it is pervasive, the degree to which it is harmful, the likelihood that reporting it will lead to constructive action and the risk that reporting it may trigger harmful reactions. However, there is no single, reliable standard identifying the frequency or number of specific instances that may constitute a trend, and it is rarely possible for



the ombuds to acquire a precise measure of either pervasiveness or harm. Moreover, like a reporter who must protect her/his sources, the ombuds is constrained in any reporting by our commitment to confidentiality and our need to protect visitors' anonymity.

Occasionally, a trend is truly pervasive, noticeably affecting large numbers of employees, and clearly harmful to the organization. In these instances the trend should be reported and, due to its pervasiveness, can be reported with little or no risk to any specific visitor. Of course, reporting these trends can be like pointing to the pink elephant in the room; it isn't news. In our experience, however, significant and fairly obvious problems often go unaddressed in an organization until someone speaks up. Calling attention to such conditions can be very helpful in triggering remedial action by management, especially when the ombuds can assist in improving the condition.

Systematic, Data Driven Assessment of Trends

A particular challenge ombuds confront is attempting to identify the presence and extent of a trend while dealing with a manager for whom the trend is unwelcome news. How confident can we be of our conclusions about trends? And how can we communicate this confidence, given our need to protect our visitors' confidentiality and anonymity? Phrased another way, the question is: When can we say with enough confidence that a trend is sufficiently apparent and sufficiently problematic that it warrants reporting by the ombuds and action by management?

We are often challenged to provide credible evidence of a trend's existence. For instance, those in the sciences rely on verifiable data to support their conclusions. Some managers do not want to hear they have serious conflicts which require their attention. All managers require reasonably reliable real-world evidence to inform their decisions and actions. To consider a trend report as valid, the evidence and analysis behind it must be sound. We are professional practitioners, not scientists, but our role and practice are well-grounded in research by social scientists in psychology, sociology, communication, organization management and conflict management.

In identifying trends, to the extent it is feasible, ombuds use both quantitative and qualitative social science methods. We follow, for instance, Owen's Criteria (1984) for thematic analysis which considers repetition, recurrence, and forcefulness to identify themes. If a specific type of conflict arises repeatedly, regardless of who the visitors are and their unique circumstances, then the pattern reveals itself and needs to be addressed. When an issue arises several times, is likely to recur, and can have a significant negative impact on visitors and the organization, that issue is also a theme and therefore a "trend" worthy of discussion. In addition to any case-related coding done by ombuds to look for trends, we are continually listening to stories that reveal themes. Ethnographers and researchers using oral histories collect information to identify themes this way. In addition, ombuds can employ the investigative technique of triangulation to help confirm the presence of a trend. This technique involves inquiring among varied sources and using varied methods to acquire data



from different points of view concerning the possible trend (Patton, 2002; Webb, Campbell, Schwartz and Sechrest, 1966).

Trends with Few Numbers

The more challenging decisions for ombuds involve trends that may not be visible to management, and may not involve statistically large numbers. In our discussions we focused on the question “In what situations would you report a trend *with few numbers?*” Here are some examples of such situations that the discussion group witnessed in past years:

1. Four different visitors from the same administrative unit have sought help from the ombuds to deal with the behavior of a supervisor whom they describe as abusive and vindictive. Each is afraid to confront the supervisor directly. Their complaints seem credible and consistent.
2. Seven different visitors from the same unit in the university library are currently engaged with the ombuds office. They are all complaining about one another; none is willing to meet with the others to work out their differences. All are complaining that their supervisor refuses to deal with the problem.
3. Three different custodians in student housing have visited the ombuds office complaining that new vacuum cleaners were purchased that are much heavier than the old ones, and that this is a serious burden since they must carry these up and down stairs between dorm floors. Each asserts that this is another instance in a pattern of making decisions about how the work will be done without consulting the people who do the work.
4. Two different workers in a facilities maintenance unit complained of serious bullying behavior by their supervisor. They insisted on meeting with the ombuds off campus, in non-work hours, fearing reprisals if the supervisor learned of their complaints. Both were reluctant to allow the ombuds to discuss the issue with the supervisor or any other administrator. For several years thereafter, there were one or more complaint each year about the same supervisor.

Each of these situations is unique, but they have several important considerations in common: (1) there is no precise measure of the frequency of behaviors or instances that make up a “trend,” so pervasiveness is therefore uncertain; (2) while we can assume that each trend (if it is a trend) causes harm to our visitor, other employees, and/or the organization, the harm is not readily measurable and cannot be well documented; and (3) there may be risk to the visitor and perhaps also to the ombuds (and the ombuds function) in reporting what the ombuds judges to be a trend.



Each situation, therefore, requires gathering as much information as possible, (given time, structural and resource limits); determining if the information indicates a trend, making careful judgments about the credibility of informants; assessing the current and potential damage resulting from the trend as well as the risks in reporting it; and weighing the likelihood that reporting it will yield improvement.

Suggested Guidelines for Making Judgments about Reporting a Trend

Because there is no formula for determining when to report a trend, the decision to do so requires the ombuds to make judgments. Such judgments require competence, wisdom, and often a large dose of courage. Competence is necessary in understanding of the dynamics of human interaction in organizational settings and in observing objectively without prejudging patterns. Wisdom is required in sorting out the organizational politics involved, and in discerning how to both challenge and support people in difficult situations. Courage is always required, as Cynthia Joyce has noted, when delivering “unwelcome news” and often for “coping with the response” (Joyce, 2014). Our discussions pointed to some useful guidelines for deciding whether to report a trend. These are:

1. When there is a significant concern for the physical safety of one or more persons, the condition should be reported. This is standard for ombuds, as imminent risk of serious harm.
2. When, after exploring with the visitor the risks and possible outcomes of reporting, s/he clearly and explicitly requests that the trend be reported.
3. Report, but do not become an advocate for the visitor. Advocate for fair, transparent process and for supportive human environments.
4. Carefully preserve visitors’ anonymity.
5. When the trend involves systemic or structural issues and can be reported without risk to the visitor, it should be reported.
6. The more severe and pervasive the trend, the more important it is to report.
7. If helping visitors cope with harmful conditions *enables those harmful conditions to continue* by making them less visible, we might consider reporting the trend. (Sometimes, helping visitors cope with a problem, or mitigating the harmful effects of a problem, can have the perverse effect of masking the problem, or reducing motivation to solve it, thus decreasing the likelihood that the problem will actually be solved.)



Choosing a Recipient of the Report

In deciding whether to report a trend, the ombuds also confronts the question: To whom, and by what process, should I report this trend? Answering this question depends on multiple situational factors.

Primary among these factors is the extent to which we, as the ombuds, have a relationship of mutual trust with an appropriate recipient of the report. “Informality” and “Independence” are standard principles in ombuds practice; we do not have line authority in the organization. While most of us “report to” a designated executive officer, that officer is not typically the most appropriate recipient of a report about any specific problematic trend. Ombuds work persistently, over time, to develop relationships with as many supervisors, managers and executive officers as they can, within their operating purview. Lacking line authority, we need to demonstrate integrity, competence, judgment and skill not only in handling specific cases, but also regarding broader issues of managing human environments. At the same time, we need to assess the extent to which we can trust each of these officers to handle sensitive information well, and to act constructively on the information we might provide. That is, we need to assess their integrity, competence, judgment and skill. When we have a relationship of strong mutual trust with a particular manager or officer, we can then judge whether it is reasonably safe, and probably useful to report the trend.

A second important factor is the administrative unit in which the trend exists. We are not part of our organization’s “chain of command,” but it is important that we honor it. The recipient of our trend report should be the office most directly responsible for dealing with it. For instance, if the trend belongs to a specific academic department, the appropriate recipient of our report should be the department head. If the trend is about a particular person, it should initially be discussed with that person, provided that this can be done with explicit permission from the visitor(s), and when any risk to visitors is minimal. Reporting to someone higher up in the organization should occur only when the problem cannot be addressed at the lower level. The real questions here are: Who is the best person in this organization to address the problem posed by this trend? And, do we have a relationship based on mutual trust?

On the question of to whom a trend should be reported, we should also observe that there may be occasions when there is no appropriate, trustworthy recipient for a particular trend report. So, in some cases, when there is risk that a manager or supervisor might react negatively and act to harm the careers of persons he/she suspects of complaining to the ombuds, and when there is little likelihood that the problem will be resolved, it may be best not to report, and better to pursue other options.



Protecting the Anonymity of Our Visitors

The final, difficult question addressed in the session was “How do we protect the anonymity of our visitor(s) when we report a trend?” We, of course, avoid identifying visitors, and carefully couch what we report in general terms to avoid directing attention to our visitor. We also are careful to discuss any potential for the visitor’s role to be discovered or inferred as a result of reporting the trend, to consider potential consequences of any breach of their anonymity, and go forward with the report only if we have clear and explicit permission to do so from the visitor.

Our primary responsibility is always to our visitor, but we also have responsibilities as professional members of our employing organization. Hence, we consider the well-being of the whole system and of the visitor’s fellow employees. And, when appropriate, we encourage visitors to do likewise.

Conclusion

Decisions to report trends are difficult for ombuds on many levels; uncertainties and potential pitfalls abound. Confronted with evidence of a problematic trend, however, the ombuds must make those decisions. Both reporting and not reporting can have multiple, unintended consequences in the real world. Let’s look at the outcomes of those three examples cited at the beginning of this essay:

1. At the request of the four complaining visitors, the trend involving the abusive supervisor was reported to that supervisor’s boss, who did not take constructive steps to resolve the problem. The net outcome was that conditions worsened, at least temporarily. One of the visitors transferred to another unit; one took an early retirement; another took an extended disability leave.
2. The employees of the library unit were persuaded to meet together in a conversation facilitated by an ombudsman. They resolved some issues. The supervisor, seeing the effort they were engaged in, took the occasion to retire. Relationships improved.
3. The custodians were stuck with the heavier vacuums that had already been purchased, but a process was created for consulting in advance of future purchases with employees who would actually be using the equipment. Conditions improved.
4. Lacking permission from the facilities employees to report the trend, and recognizing the risks of reprisals against visitors, the trend was not reported. The problem in this unit is ongoing.

Ombudsing requires both courage and caution. We cannot always predict the outcome when we choose to, or choose not to, report a trend. However, if we make well considered judgments based on systematic analysis we can often influence positive change while minimizing the likelihood of harmful outcomes. We can maintain our primary focus on our visitors while enhancing the well-



being and effectiveness of our organization. Toward those ends, this discussion of when, how, and to whom we should report trends should continue.

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THE MERITS OF A STAFF OMBUDSMAN IN HIGHER EDUCATION

A plea for the widespread introduction of a Staff Ombudsman in the higher education system in the Netherlands

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What Is the Current Situation?

In the Netherlands, around ten institutes of higher education (four research universities and six universities of applied sciences) currently have a Staff Ombudsman, some of whom also work for students.

Utrecht University was the first Dutch institute of higher education with an officer who acts as ombudsman for staff; however, the post was given a different name, roughly translated as Confidential Counsellor for Staff issues or Confidential Staff Counsellor¹. This position was established in 1977 at the request of the University Council and has been part of the permanent staff provisions ever since.

In the job description for Confidential Staff Counsellor at Utrecht University, the purpose of the position is described as follows:

“Providing independent support to individual members of staff, groups of staff and/or managers in analyzing and solving complaints and grievances relating to HR issues, where possible referring to the appropriate bodies within or outside Utrecht University, highlighting systematic shortcomings in regulations or organizational provision”
(Utrecht University, 1998)

In common with other Staff Ombudsmen in Dutch institutions of higher education, the Confidential Staff Counsellor at Utrecht handles issues relating to the legal status of employees, such as performance reviews, dismissal issues, redundancy schemes, problems affecting PhD candidates²,

¹ In 1977, the position of ombudsman was unknown in the Netherlands. The job description of Confidential Staff Counsellor at Utrecht University dates back to 1977 and is almost identical to the job description for ombudsmen currently working in institutes of higher education. A key point of difference is the right of investigation, a power which an ombudsman has but which the Confidential Staff Counsellor at Utrecht University does not.

In addition to the Confidential Staff Counsellor, a Harassment Counsellor and an Academic Integrity Counsellor have also been appointed for staff at Utrecht University.

² In the Netherlands PhD candidates are members of academic staff. Unlike in the UK or USA, they are not seen as students.



working conditions, returning to work after chronic illness and clashes with colleagues. The Confidential Staff Counsellor/Staff Ombudsman is independent and has unencumbered access to all departments and information within the university. The staff ombudsman is not appointed by a legislative body to represent the public, nor does he conduct formal investigations. The (organizational) ombudsman provides conflict resolution and problem-solving services to members of the university.

Within the organizational hierarchy, the Confidential Staff Counsellor/Staff Ombudsman reports to the Executive Board; he or she is not part of HR Management and does not report to an HR Manager. Members of staff see this as an important advantage of the position, since HR staff are not widely considered to be impartial.

What Position Does the Staff Ombudsman Have?

For the sake of convenience, the term Staff Ombudsman will be used exclusively from now on.

The Staff Ombudsman has an independent position, must observe professional secrecy, exists primarily to act for the complainant, but does not necessarily support him or her. In that sense, the position of the Staff Ombudsman differs from that of the Harassment Counsellor. The Harassment Counsellor supports employees and/or students in dealing with such issues as intimidation, violence and aggression at work (Bezemer, 2013). The appointment of the Harassment Counsellor is regulated in the Dutch Working Conditions Act (*Arbowet*).

The Staff Ombudsman is positioned between the parties, advising and acting as intermediary as required. However, such mediation can only take place if the individual reporting the issue authorizes this. Unless the individual reporting expressly waives professional secrecy, the Staff Ombudsman is not permitted to attempt to contact his or her line-manager, close colleagues or PhD supervisor. Only when the individual reporting gives his or her permission, thereby waiving the duty of confidentiality, is the Staff Ombudsman permitted to consult with third parties.

What Powers Does the Staff Ombudsman Have?

The Staff Ombudsman handles complaints or grievances from members of staff on what they consider to be inappropriate or unfair treatment by persons or bodies in the university. The complaint may relate to a measure or decision taken with regard to the individual concerned or indeed a measure or decision that the authorized body expressly or implicitly refuses to make with regard to the individual concerned.

The Staff Ombudsman explores the background and facts of the case. In doing so, he or she will maintain as much contact with local management as is necessary or desired. Bodies and officials are obliged to provide any information requested and to allow access to documentation.

Depending on the conclusions, the Staff Ombudsman can attempt, by means of referral, mediation or advice, to move the situation closer to a solution within the relevant structure of powers and



responsibilities. It is explicitly not the role of the Staff Ombudsman to solve issues him or herself: he or she does not make any decisions and does not act as arbiter.

The Executive Board, local management of faculties or services, other bodies and individual employees can draw the attention of the Staff Ombudsman to complaints or call on him or her to mediate. Cooperation in a mediation process is always voluntary; which is a basic principle of mediation.

How Does the Staff Ombudsman Approach His or Her Work?

During the first phase of contact with the individual making the report or with the complainant, the Staff Ombudsman makes a judgment on the issue as raised by the member of staff as well as the background to the incident and the facts about what happened. He or she checks whether the member of staff has already raised the complaint or grievance within the line-management of the unit concerned. If this reveals that the appropriate procedures have been followed, but little or no progress has been made, he or she explores the broader context of the issue by studying and analyzing relevant documentation and the opinions of any other persons involved.

After considering all of the relevant interests, he or she decides the subsequent approach to be adopted. In weighing up these interests, it is important that a balance is struck between the personal well-being of the member of staff and the interests of the organizational unit as a whole. This may involve taking into account such criteria as proportionality and reasonableness.

What Types of Issues Does the Staff Ombudsman Handle?

The Staff Ombudsman can be approached by members of staff on a range of different issues. Most of these issues relate to:

- Career problems
- Conflicts with line-managers
- Dismissal problems
- Problems encountered by Ph.D. candidates
- Problems relating to the legal status of staff
- Reorganizational problems
- Problems encountered by staff returning to work following illness



The Staff Ombudsman is also deployed in issues relating to performance reviews, personal problems, reports made by whistle-blowers³, clashes with colleagues and issues of conscience.

As well as individual members of staff, groups of staff can also turn to the Staff Ombudsman. This usually happens when working conditions in a department become seriously threatened.

The activities of a Staff Ombudsman can be illustrated by means of a series of examples.

- A PhD candidate clashes with his PhD supervisor. The PhD program is coming to an end and the thesis has already taken shape. The PhD supervisor refuses to continue to work with him. After the Staff Ombudsman is brought in, he or she arranges for a new supervisor to be found without this leading to any loss of face.
- A department decides to pursue a different course. Several members of staff with permanent contracts no longer have a place in the new organization. At the request of the line-manager, a member of staff who is to be made redundant is referred to the Staff Ombudsman for information and advice on a severance scheme, based on a settlement agreement. There are then consultations between the manager and the redundant member of staff on the substance of a severance scheme that is favorable for the employee in order to prevent the case needing to be put to the civil service court or district court.
- More than half of the team is having difficulties working with the manager and this threatens the continuity of the degree program. The result is a group report to the Staff Ombudsman who decides what the next step should be, in close consultation with the reporters. In consultation with management, a satisfactory solution for all parties is found.
- Members of staff who are absent for long periods as a result of illness have to deal with complex regulations and external organizations such as the Employee Insurance Administration (*UWV*). Long-term absence can result in employees losing their jobs if there is no likelihood of recovery within two years. At a time of economic crisis, many members of staff are fearful of the prospect of a life on benefits. The Staff Ombudsman becomes involved, facilitating clear and regular communication between the employee and the line-manager with a beneficial effect for both of them. The Staff Ombudsman must convince the line-manager on the basis of arguments. He or she can never impose certain actions by a manager.
- Within higher education organizations, the Staff Ombudsman plays a unique role in the termination of permanent employment contracts. In the past, before the economic crisis, a permanent contract was almost tantamount to life insurance for staff. Having secured permanent employment in higher education meant that one had a job for life. These times have now changed. For employers, it is now more attractive to dismiss staff who are surplus to requirements or whose performance is disappointing. However, it is a painful and expensive process for both parties, especially if they are both compelled to hire lawyers. The Staff Ombudsman regularly prevents matters reaching that stage by advising the member of staff

³ In higher education, it is generally the Confidential Staff Counsellor or Staff Ombudsman to whom whistle-blowers can report any issues.



concerned and assisting them in drafting what is known as a Settlement Agreement. This kind of agreement takes the interests of both the institution and the member of staff into account. The agreement regulates the end of the appointment, the payment of salary for several months during which no work is done in return, the retention of the right to benefits if the employee is not successful in finding alternative employment, the deployment of an outplacement agency to find an alternative place to work, the funding of additional courses intended to ensure that the employee threatened with dismissal is better equipped for the labor market and so on. The explicit aim of the Settlement Agreement is to find suitable alternative employment. The efforts of the Staff Ombudsman create a win-win situation.

The Staff Ombudsman: Advantages, Importance and Results

In many cases, as described above, the deployment of a Staff Ombudsman can prevent legal conflicts, which means issues within the organization are regularly escalated to him or her as a final resort. His or her efforts are intended to provide intervention in problem scenarios at as early a stage as possible, in order to prevent a situation in which relationships become irreparable or to enable an amicable parting of ways.

In higher education in the Netherlands, around ten percent of institutions have a Staff Ombudsman. This means that it is more the exception than the rule for higher education to have appointed an impartial complaints officer and intermediary in issues relating to the legal position of staff. Indeed, it is remarkable that most organizations have no provisions for staff in the form of an impartial adviser or intermediary.

Two key factors are instrumental in this. The first relates to the role of HR staff. In the past, HR officers worked on behalf of staff members who asked for advice, but this role has recently changed. In the last ten years, HR officers have been deployed exclusively for management. In the event of conflicts, university staff are therefore not likely to call on the services of an HR officer. Trust in HR has diminished significantly. A second factor relates to the importance of the trade unions. In the US and Canada, there is a high level of organization of labor. As a result, many members of staff are automatically members of a union. This is not the case in the Netherlands. Only around ten to fifteen percent of university staff are members of a trade union. In the event of conflict, turning to a trade union is therefore not the most obvious move. Both of these factors contribute to the increasing importance of the position of Staff Ombudsman. Very occasionally, external mediators are deployed, usually in situations where employment conflicts have already escalated. The bulk of the issues put to the Staff Ombudsman can be solved in the early stages.

In terms of expenditure, a Staff Ombudsman can be said to earn his or her salary. A study conducted by Euwema et al. (2007) made an assessment of the costs of conflict at work. It involved an analysis of 56 cases at a university and a ministry. It identified the following cost components: the cost of conflict handling (the deployment of the HR department, staff physician, legal affairs department, etc.), costs resulting from absence, the cost of temporary replacements during absence, exit costs, the cost of permanent replacement and the cost of recruiting and inducting a new employee. In the study, the maximum costs of a conflict at work amounted to € 231,230. In other



words, preventing legal escalation, one of the most important activities of a Staff Ombudsman, is particularly effective.

Intervention by the Staff Ombudsman not only reduces costs, but can also prevent damage to the reputation of the institution and the member of staff concerned. Legal conflicts are emotionally draining for employees. Court proceedings are not only expensive but can also often be prolonged. It can be difficult to focus on a new career with an alternative employer during such a legal process.

The cost element of a Staff Ombudsman is something that deserves further consideration. An argument often cited in opposition to the appointment of such an official is that it is tantamount to sleeping with the enemy. It is seen as inviting complaints and therefore something that should be avoided. This response would appear to be inspired by the notion that it is in the interest of the organization to ignore any complaints as far as possible and to eschew critical scrutiny.

Even if they are ignored, the idea that there could be no complaints is highly improbable. Friction and issues that cannot easily be solved by means of a simple discussion between the parties involved occur whenever people are working together. And this is precisely why the role of Staff Ombudsman exists: an easily accessible, impartial partner in dialogue, adviser and complaint handler who can advise the employee and mediate between the parties. For the employer, the Staff Ombudsman's impartial and independent position makes him or her the only official within the organization who is appropriately qualified to judge it.

The past clients of the Staff Ombudsman are virtually unanimously positive about the support provided. They especially appreciate the independence of the Staff Ombudsman.

At research universities and universities of applied sciences where a Staff Ombudsman is active, experiences at organizational level have been positive, especially at times of major changes in education that have significant consequences for staffing.

What Conclusions Can Be Drawn From All of This?

1. Institutions of higher education are gradually acknowledging the importance and benefits – both for employees and the organization as a whole – of appointing a Staff Ombudsman. Regulating the establishment of such a position within the Higher Education and Research Act (*WHW*, 1992) is something to be recommended. VU University Amsterdam, Leiden, Groningen and Utrecht Universities all have a Staff Ombudsman and there are Staff Ombudsmen associated with several Universities of Applied Sciences. In most of higher education in the Netherlands however, the Staff Ombudsman is an unfamiliar figure.

Recently, the reputation of one university of applied sciences without a Staff Ombudsman was seriously damaged as a result of fraud involving the awarding of diplomas to students who had not reached the required standard. Who knows what difference a Staff Ombudsman would have made at this institution in the period leading up to the fraud that occurred there if it had been identified, tackled earlier and therefore never revealed publicly? This was a case of fraud that seriously undermined confidence in higher professional education in the Netherlands.



2. Embedding the position of Staff Ombudsman within Dutch legislation will require the development of a new Hay profile⁴. Dutch universities apply the University Job Classification System (abbreviated to UFO in Dutch) for job descriptions. The system within higher professional education, which also makes use of Hay profiles, is also lacking the role of Staff Ombudsman. The profile of Harassment Counsellor according to the UFO model differs vastly from the day-to-day activities of the Confidential Staff Counsellor/Staff Ombudsman.
3. If the introduction of the position of Staff Ombudsman is to be successful across the whole of higher education, a suitable qualification will need to be developed. In the absence of any such specific qualification, a qualification in mediation would appear to be most appropriate for a Staff Ombudsman. In the past, ombudsmen have generally been trained by means of peer-education, peer reviews, supervision, coaching and on-the-job learning. Knowledge is also shared by means of the Organization of Ombudsmen in Higher Education (abbreviated to VOHO in Dutch) and via the European Network of Ombudsmen in Higher Education (ENOHE). A handbook on the subject (“Handboek Ombudsman Personeel Hoger Onderwijs”, Teppema & Herfs; 2014) has recently been published.
4. For an institute of higher education, the appointment of a Staff Ombudsman is clearly a demonstrably efficient strategy in view of the expenditure saved on conflict management and is effective both because of the short lines of communication involved and his or her independent position. Thanks to the informal mediation, he or she can also help to prevent damage to employees and to the reputation of the institution.
5. An institute of higher education that has its own Staff Ombudsman is making a clear statement about its willingness to take issues involving the social safety of its staff seriously. That is often lacking: the main focus is generally on aspects of physical safety in the workplace. Recently, the Dutch University Network of Confidential Counsellors drew the attention of the coordinators of the project run by the Ministry of Education, Culture and Science (*OCW*) and the Education Inspectorate on the subject of integrated safety in higher education to the fact that a greater focus is needed on social safety in working situations. This was a response to the report on the issue of (social) safety & integrity in higher education issued by the Education Inspectorate in 2012.
6. By appointing a Staff Ombudsman, the institution concerned is sending out a message that it intends as far as possible to solve internal issues internally and that it has confidence in the organization's capacity to deal with such issues itself. Via the Staff Ombudsman, the competent authorities receive clear and simple signals that will trigger improvements in internal processes. Rather than being dismissed as internal criticism or resistance, complaints are seen as advice provided free of charge. As such, the presence of a Staff Ombudsman could be seen as a hallmark of the quality of an institute of higher education. This is because the institute is establishing provisions for its staff that benefit both the organization and its personnel without being legally obliged to do so.

⁴ All positions in Dutch universities are described by the Hay Group.



Why is the Position of Staff Ombudsman Uncommon?

This article has considered a number of arguments for incorporating the position of Staff Ombudsman within higher education. Finally, we would like to look at some of the reasons why such institutions do not yet have a Staff Ombudsman.

The first of these is a lack of familiarity. University administrators lack awareness of exactly what a Staff Ombudsman might or might not bring to their organization. People are unlikely to miss something with which they are not familiar.

A second reason is associated with the lack of relevant legislation. Neither the Collective Labor Agreement for Dutch Universities, the Collective Labor Agreement for higher professional education, the Working Conditions Act nor the Higher Education and Research Act include regulations on the need for a Staff Ombudsman in institutes of higher education. Both of these arguments are ultimately based on choices made as a result of a lack of awareness.

However a third argument against is actually a conscious choice on the part of those running an institute of higher education to refrain from making such an appointment. This may be based in part on the fact that the Staff Ombudsman's very independence means that he or she is not seen as easy to manage. A Staff Ombudsman may even be perceived as a counterforce within the organization itself. This is not a perception that is shared by the authors of this article.

Final Conclusion

On the basis of arguments mentioned above and their own experiences in their work as ombudsmen the authors are convinced that universities will become more secure organizations after employing a staff ombudsman. That is the major reason for this plea for the widespread introduction of a staff ombudsman in higher education.

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INSTITUTIONAL OMBUDSING: CONSIDERING THE ROLE OF DISCOURSE

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He who loves practice without theory is like the sailor who boards ship without a rudder and compass and never knows where he may cast.

- Leonardo daVinci

I. Institutional ombudsing – Introduction

Ombudsing is a rich tradition that has been growing worldwide for over two hundred years and has ancient multicultural roots (Lang, 2011). I have been studying ombudsing for many years and I am also a practitioner. Many fields of practice, such as economics and psychology, have extensive theories for practitioners to ground their work, but research theories for modern ombudsing seem somewhat scarce. Early books focused on theory and ideas from political realist and public administration perspectives, a nod to the roots and growth of public ombudsing (Anderson, 1968; Rowat, 1965; Sawyer, 1964). Ombudsing continues to steadily spread across borders and across sectors. While critical principles of independence, confidentiality and neutrality help anchor the field of ombudsing, sometimes it feels like daVinci's rudderless boat – the theories have not kept pace.

This article looks at discourse theory in institutional settings with a consideration of three main ideas: discursive spaces; discursive channels; and discursive positioning in relation to ombudsing and I touch upon the value of narrative mediation for navigating institutional discourses. These three main ideas provide a means to reflect on how practicing ombuds may: 1. create space for new dialogues and new discourses; 2. be mindful of existing administrative, procedural and legal channels while identifying new communicative channels; and 3. observe the ways in which people position themselves in relation to others and in relation to other discourses. The goals of this article are to consider new angles and compass points of ombudsing, to invite further conversation and to deepen dialogue of theory in practice. Discourse theory is thought provoking and worth in-depth exploration, but perhaps this brief article will stimulate discussion, discovery and mindfulness of prevailing discourses in institutional settings.

II. Discourse theory and ombudsing

Discourse theory is a way of contemplating language and language patterns over time in social relations such as government, culture and other areas of human interaction (Wetherall, 2001).



Discourse theory is intricately intertwined with human action and social practices (Fairclough, 2001). Karlberg (2012) states that:

Most approaches to discourse theory rest on the underlying premise that language, and language use, do not merely reflect or represent our social and mental realities, but they actually help construct or constitute these realities. (p. 1)

Karlberg suggests that there are links between discourse theory and peace and notes that discourse theory has much to offer to the fields of peace and conflict studies (2005). Since mediation and conflict resolution often factor into ombudising, links between discourse theory and peace are especially relevant to the field.

What is meant by discourse theory?

The French philosopher Michel Foucault may be identified as having shifted attention from 'language' to 'discourse' (Hall, 1997). The word discourse comes from the Latin *discursus* or "running about." For Foucault, discourse is a system of representation or a means to describe our interpretation of the world. According to Hall, Foucault was interested in:

...the rules and practices that produced meaningful statements and regulated discourse in different historical periods. By 'discourse', Foucault meant "a group of statements which provide a language for talking about – a way of representing the knowledge about – a particular topic at a particular historical moment..." Discourse is about the production of knowledge through language. (p. 44)

Discourses and language are central to the construction of our social relations (Burr, 2003).

Fairclough speaks of our relationships in discourses and our ability to co-create meaning between our worldviews and writes (2003):

I see discourses as ways of representing aspects of the world - the processes, relations and structures of the material world, the 'mental world' of thoughts, feelings, beliefs and so forth, and the social world. Particular aspects of the world may be represented differently, so we are generally in the position of having to consider the relationship between different discourses. (p. 124)

Discourses may include large themes conveyed in public and private spheres such as ideas of globalization, marketization and democracy. As an example:

The meaning of the word "men" in the phrase "all men are created equal" in the Declaration of Independence has changed as the discourses surrounding who can own land, vote, and hold political office have changed. It originally referred to adult, white, male, landowners. It now refers, in many people's minds at least, to adults of all genders and skin colors whether or not they own property. (Narrative Worldviews, 2014)

This example also suggests how discourses may change over time.



Discourse theory can help us make room for divergent world views

There are many kinds of interacting discourses related to our positioning and identities. With their dynamic nature, discourses are pivotal to forming and sustaining relationships. Foucault (1982) notes that discourses can also be dangerous and he goes on to examine the production of discourses in relation to power, analyzing the processes of exclusion:

I am supposing that in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality. (p. 216)

Who controls discourses? Discourses, the production of discourses and power are interwoven and discourses may be closely aligned with societal power. Van Dijk (1989) notes that power can be seized through control of discourses:

Power is directly exercised and expressed through differential access to various genres, contents, and styles of discourse. This control may be analyzed more systematically in terms of the forms of (re)production of discourse, namely, those of material production, articulation, distribution, and influence... Through selective investments, budget control, hiring (and firing), and sometimes through direct editorial influence or directives, they may also partly control the contents or at least the latitude of consensus and dissent of most forms of public discourse. (p. 22)

Dominating discourses can be unjust, privileging some and marginalizing others (Wodak, 2002). But dissent and speaking up may come with risk; hence there is a need in any democratic system to develop ways to mitigate this danger. The office of the ombuds represents one such possibility because ombudspersons may be uniquely positioned to identify and navigate discursive channels for remediation. Discourse theory provides important tools for understanding relationships and power dynamics, including those that pertain in institutional contexts and may provide a means to making room for divergent worldviews. According to Michelle LeBaron (2003):

Worldviews, with their embedded meanings, can be the seedbed from which new shared meanings emerge. These shared meanings may arise as people co-create new stories, design new rituals, and find inclusive metaphors to contain their meanings.

In ombuds practice, visitors often have divergent worldviews with seeds for new possibilities.

That brings me to the first main idea - A consideration of discursive spaces

How can we make room for divergent worldviews? The notion of discursive spaces emerges from discourse theory to provide hopeful possibilities for reconstructing and reconstituting dialogues, discourses and relational interactions. For the purposes of this article, the phrase



‘discursive space’ is intentionally broad in order to frame it as an area of possibility for expanding discourses and may be said to be a combination of two fairly unbounded words.

Nakayama and Krizek (1995) talk about the potential that emerging metaphors of discursive space have for rethinking social constructions of power and identity and they note that:

These “new” metaphors invite the disarrangement of modern thought by promoting a complex spatial view of postmodern life, which honors the legitimacy of multiple realities. At the same time, these spatial metaphors consider the milieu present at the intersection of differing” realities” while recognizing the variance within each of the “realities.” (p. 291)

Flores (1996) writes about Chicana feminists deliberately creating discursive spaces through: “a rhetoric of difference which allows a marginalized group to reverse existing and external definitions and create their own definitions” (p. 152). This suggests the wish for those, sometimes on the margin to create new areas of discourse.

There are broad and culturally diverse applications of the notion of discursive space. My interpretation is that the construction of discursive spaces has the potential to allow new possibilities and broader participation in discourses. Discursive spaces may include written and verbal types of discourse, areas of silence, and places of misunderstanding and reflection. The idea of discursive spaces is part of a broad topology of discourse, which includes a variety of discursive practice possibilities. Identifying sites where discursive spaces can be intentionally constructed as spaces where a dialogue can be deepened is crucial for working with diverse populations. For example, an ombudsperson can help identify areas that perhaps have not been discussed as a new discursive space - such as finding a way to re-construct a conflict story so that those on the margins may have greater input and their voices may be heard.

Secondly, contemplating discursive channels

An extension of the concept of discursive spaces is the concept of discursive channels. Discursive channel is a term that I propose which has emerged through my research studies and I could find no prior research on this idea (Lang, 2014). Discursive channels might be considered as the grooves or spaces in which relations between people are negotiated and worked out. As noted earlier, institutions are often marked by a variety of written and verbal discourses and can include codified discourses such as policies and procedures and legal requirements. These are sometimes referred to as administrative channels, legal channels and channels of communication. Whether investigating complaints or helping visitors explore options in a conflict, many ombudspersons must first consider administrative, legal and other codified channels. The ombudsperson may help visitors navigate a course through formal administrative channels but also can identify new channels of communication and may be able to help make connections and clarify progressions in administrative procedures. They may also help navigate between social practices in institutions and identify new areas of dialogue and discourse. In reviewing complaints and hearing conflicts and concerns, an ombudsperson may identify areas along discursive channels where discursive shifts can occur. For



example, while there may be a procedural channel for grievances, perhaps an ombudsperson can help find room for reconciliation before filing a formal grievance.

And finally, a look at discursive positioning

The idea of discursive positioning brings awareness to how individuals may take positions in discourses and brings attention to how people position themselves discursively. Winslade (2006) notes that discursive positioning is:

... a concept that points to the ways in which people take up positions in relation to discourse in the very moment of making an utterance in a conversation. At the same time, speakers offer the other person(s) they are addressing a position (or choice of positions) from which to respond. Positioning theory makes cultural influences visible in discourse in the very moment of the establishment of their influence. It also makes visible the ways in which people resist and refuse dominant discourse in the detail of conversational exchange. (p. 505)

Positioning theory as iterated above brings discursive relations into clearer relief by drawing attention to how people take positions in discourse both in the moment and in relation to other discourses in which they have participated. Winslade goes on to say (2006):

As people speak, they position themselves not just in immediate relation to the other person(s) in the conversation, but also in relation to utterances in other conversations (Bakhtin, 1984, 1986). (p. 505)

An awareness of the discursive positions that people take in dialogues broadens the field of understanding and possibility and noting these discursive positions may open up space for new dialogues. Winslade notes the idea of positioning in conflict and mediation, in relational conflicts:

Frequently conflict might arise from the ways in which people are at least uneasy, and often downright unhappy, with the effects of how they are being positioned by the other party (or parties). But they might also be held to the “truth” of their contradictions by others with whom they are in conflict. Mediation conversations hold out the promise of opportunity to reposition oneself carefully in a relation or to make more room for another’s position taking. (p. 507)

Understanding, examining and reflecting on discursive positioning opens up possibilities for changing discourses. For example, an employee may have a complaint about a boss but the boss may feel that she is following a particular procedure. The employee may feel that he is in a subordinate position, and may feel that the procedure is not being properly or fairly followed but is afraid of speaking up. In addressing this differential, it is valuable to consider the positioning and the impacts of positioning in a discourse. An ombudsperson may be able to mediate the discursive positions and facilitate a safe process to address the concern.



III. The role of the ombuds

So how might these ideas be relevant to the ombudsperson? As ombudsing grows and matures as, discussions of theory in practice may help deepen our work. Discourses are created through the language of human relations and human interactions, and since much of our work takes place with language in institutional settings, a consideration of discourse theory may be illuminative. Discourse theory looks at prevailing discourses in relation to power and knowledge. Identifying institutional discourses may help us identify discursive spaces where new dialogue may occur. The idea of a discursive space is a site where the re-ordering and reconstructing of discourses, or at least of discursive positioning, can take place - where the unheard can be heard. For example, pre-existing policies in an organization may not take into account critical issues of culture and equality brought to the ombuds office. Establishing a discursive space for such issues to surface allows otherwise marginalized discourses to be brought to the center for consideration and to broaden inclusion. While it is important for ombudspersons to be aware of institutional channels such as legal and policy requirements, it may be possible to create new channels and discourses. Discursive positioning provides a means for us to consider how people may position and re-position themselves and others in conflict and resolution. These ideas might be helpful for ombuds practitioners. For example, an ombudsperson may be familiar with grading policies and procedural channels and can help a student navigate these channels. Or, an ombudsperson may help create space to shift language for a visitor to have a stronger voice. An ombudsperson may notice problematic discriminatory patterns to note to those who govern. In a staff dispute, there may be positioning and an ombudsperson may help shift the conflict story.

IV. Mindful listening – Narrative mediation

Perhaps it may be said that, while most ombudspersons navigate institutional channels, there is also a need to specify the conceptual tools that might help them do so. For example, whereas “classical ombudspersons” are likely to investigate complaints, organizational ombudspersons may be more likely to mediate conflicts. The use of terms like complaints and conflicts shapes the discursive space differently and suggests the construction of a discursive channel adequate to the working through of an issue. As the ombudsperson seeks to achieve redress for administrative complaints or conflicts, he or she will also need to be equipped with tools with which to work in the discursive space. Narrative mediation is an approach to conflict resolution that is rooted in language, discourse and positioning theory. It honors different worldviews and is a good example of a tool for seeking redress that uses the concept of discourse in order to make sense of what puts people in conflict with each other. Narrative mediation provides a promising means of navigating interpersonal and institutional discourses as well as discursive spaces and channels in order to mediate dialogue and conflict. It ties in theoretically with a conceptualization of ombudspersons as well positioned to see a broad range of institutional practices and discourses and to identify discursive channels that can be traversed through these institutional contexts.



V. Conclusion

But in the end, these are not merely theoretical musings. Ideas of discourse and positioning may help us think about our work in new ways. Our human interactions with and within institutions are often of critical importance. The ombuds office can be an intermediary means to facilitating and finding our way through administrative obstacles. It may be said that ombudsing is predicated on a hope for helping people navigate bureaucracy in order to improve administrative services and to reduce some of the conflicts and concerns raised in institutional processes and procedures. For ombudsing practice, discourse studies may provide methods to contemplate institutional patterns of discourse and facilitate new discursive spaces.

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CASE STUDY:

You are visited by a faculty member who seems agitated.

Upon welcoming him in, he states that he is currently wondering what to do about a graduate student who has been staying in his house off-campus for the last two months while the faculty member has been elsewhere. He describes the student as someone who he believes is abusing drugs, because some of the faculty member had hidden away in a specific place now seem to be missing. It's also possible that the drugs were used by the frequent guests with whom it seems the student is inviting over.

It turns out that he's letting this student live there for very low cost because she's the daughter of out-of-state acquaintances. He states that he believes the student is engaging in reckless sexual behavior as neighbors have told him there are different cars frequently out front overnight and is concerned that when he last spoke with the student she said some things that came across as irrational. Additionally, he expresses concern over possible mental imbalance because he believes her laboratory work, which is in a different department from his own discipline, involves use of machinery. He believes the parents have no idea that there may be problems. The faculty member states that he wants to respect the student's autonomy but says he is concerned about her.

He's upset and not sure about who to call or what to do, and asks for your help in thinking through options.

1. What concerns as the ombuds would you have with this case?
2. What might be your first suggestion/option be for this visitor?
3. Do you have any obligations to report anything for your organization? If so, what options might you have for surfacing these issues/concerns?



CCCUCO CONFERENCE HIGHLIGHTS 2013

Culture, Fairness and the Brain A Model for Effective Conflict Engagement

Shirley Nakata

University of British Columbia

Our office's mandate is to ensure that students are treated fairly in every aspect of their university life. To achieve and promote a culture of fairness, I believe our ombuds services need to help build both individual and institutional competencies and respond both reactively and proactively. And, as perceptions of unfairness often arise within or result in conflict, we need to understand the intersection between fairness, conflict and the diversity in which it all exists:

Understand – that all conflict is cultural

Prevent – by ensuring a fair environment

Respond – with effective conflict engagement skills

Understand that all conflict is cultural

While acknowledging many different, discipline-specific definitions, for the purposes of this discussion I mean culture in its broadest sense – the lens through which we experience the world around us.

Beyond ethnic and national origin, gender, ability, race, it includes what is not visible to the eye: how we communicate, how deferential we are to authority, collectivist v. individualist, our generational attitudes, whether we see academic achievement as a social or individual endeavour.

Culture occurs at the individual and institutional levels. A department, faculty or discipline/profession has its own respective culture. In academic institutions, culture impacts the way we define academic integrity, how we assess for honesty and veracity, and how it shapes our expectations of our respective roles, responsibilities and rights vis-à-vis one another and vis-à-vis the institution itself.

For most of us raised in the North American educational system, there might be a singular understanding of “academic integrity”. However, research on lying



and truth-telling indicates that culture plays a significant role in our views about moral behaviour. Children in China and North America were involved in scenarios in which they did a good deed, unobserved. When later asked, Chinese children “lied” about doing the good deed, valuing modesty over honesty. North American children not only told the truth about doing the good deed, they labelled the Chinese children’s lie as bad and dishonest.⁵ This research should cause us to pause and question our assumption that our university community holds a singular and shared understanding of what academic integrity means, requires and its consequences.

Culture also impacts the way we express ourselves non-verbally. Eye contact, hand gestures, how and when we smile can differ significantly across cultures. One Australian study confirmed that we judge people’s non-verbal expressions according to our own social norms of

⁵ *Chinese and Canadian Adults’ Categorization and Evaluation of Lie- and Truth-Telling About Prosocial and Antisocial Behaviours* Fu, Genyue. Lee, Kang. Cameron, Catherine Anne. Xu, Fen. *Journal of Cross-Cultural Psychology*, Vol. 32 No. 6, November 2001 740-747

interpretation.⁶ This is not surprising. But how many of our institutions train its members who assess students for honesty in an academic misconduct hearing on such research? And if adjudicators aren’t aware of these differences, can we say that students have receive a fair hearing?

Cultural adjustment is hard even when we are cognizant of differences. One neuroscientist has likened the process of cultural adjustment to the process of recovery from bereavement.⁷ I do not propose that institutions change their standards for academic integrity or bend the rules. But if we could start from a place of anticipating, expecting and appreciating difference instead of assuming sameness, we could better educate and inform students about our rules and practices that might prevent some entrenched and prolonged conflicts and disengagement.

⁶ *Preventing Cross-Cultural Bias in Deception Judgments: The Role of Expectancies About Nonverbal Behaviour* Castillo, Paola A. Mallard, David. *Journal of Cross- Cultural Psychology*, 2011. 43(6) 967-978

⁷ *Brain and Culture*. Wexler, Bruce. Massachusetts Institute of Technology, 2006.



Prevent by ensuring fairness

A structurally and substantively fair environment is critical for a respectful environment. Fairness is a basic human need, like food, shelter and human connection. Brain research shows that when we are treated fairly, the reward systems of our brain light up.⁸ Conversely, when we expect fairness and then feel unfairly treated, there is a significant drop in dopamine levels and we experience something close to physical pain.⁹

So fairness, and perhaps more importantly the perception of fairness, is key to feeling respected. People who feel they have been fairly treated are much more likely to accept and move forward from an adverse decision.¹⁰ Fair rules, fair processes and fair outcomes are critical to building trust and good faith in our relationships with one another and between units, and that trust and good faith in turn builds an environment resilient to conflict.

⁸ *The Brain at Work*. Rock, David. HarperCollins, 2009.

⁹ *Ibid.* p145

¹⁰ Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. New York: Plenum.

Respond with effective conflict engagement skills

Conflicts will arise, despite our goodwill in accepting difference and building fair environments, because conflict is a natural and inevitable aspect of human relationships. When it arises, we need to respond to it effectively and to do so we need a basic understanding of how our brain works when we are in challenging situations.

Two main areas of the brain are key:

- The *pre-frontal cortex* – home of what is called the executive function that enables us to analyze, make judgments, weigh options and inhibit our impulses.
- The *limbic system* – attaches an emotional response to external stimuli. The amygdala responsible for our flight or fight response is part of this system.

There is an inverse correlation of arousal between these two systems: when the limbic system is aroused, the functioning of the pre-frontal cortex is compromised. So stress, fear, hunger, lack of sleep can arouse the limbic system and can impact



our ability to think rationally and inhibit impulsive behaviour. Our brains are designed to ensure that we survive. A lasting evolutionary feature of our species, the limbic system, and in particular the amygdala, helps us to quickly detect a threat and respond immediately.

Unfortunately, the same brain functions that kicked in when we thought we saw a sabre-toothed tiger, still kick in when our integrity or self-esteem is threatened in a conflict situation.

The good news from the research in neuroplasticity is that we can learn to modulate our amygdala response and therefore our behaviour. By employing some calming skills, we can reduce the arousal to the limbic system:

- Breathing, shifting our thoughts to something positive or even a photo of a loved one. Re-appraising, which involves looking at the situation from a different and positive perspective is also helpful.¹¹
- The gift of time: reschedule a meeting when you don't feel

emotionally prepared, or if you feel your flight or fight response kicking in, don't feel trapped in the conversation - ask for a break.

- Oxytocin is the “feel-good” hormone that increases feelings of empathy and trust, reduces feelings of fear and lowers blood pressure and cortisol, the stress hormone. Oxytocin levels can be increased by acts of generosity – giving a compliment, doing a kind deed, smiling, human touch.

Effective conflict engagement is an interdisciplinary endeavour. As ombuds, we need to be mindful of the connections between culture, conflict and fairness to foster both the individual and institutional proficiencies needed to build robust and civil learning, teaching and working environments.

¹¹ *The Brain at Work*. Rock, David. HarperCollins, 2009. p126

What am I doing and *Why* am I doing it? Reflections on the Ombuds Experience

Emma Williams
University of Washington

As an intern with Andrew Larratt-Smith at UCR and Susan Neff at UW, I've had the unique opportunity to observe several Ombuds Office practice frameworks. Although Larratt-Smith and Neff practice differently, they both engaged in reflective practice that helped me grow and develop as a new practitioner. Now as an Associate Ombuds practicing on my own, I find myself reengaging with the practice reflection they modeled for me. The experiences I had as an intern helped me develop my practice, and were integral to entering the field. One of the challenges in becoming an Ombuds is that there is no one way to enter the field; there are a number of points of entry. Even long-time Ombuds stress the need for ongoing mentoring and guidance from their colleagues, but particularly for new Ombuds, connection with mentors plays a key role in maintaining a high standard of practice.¹² Ombuds come from a diverse

range of fields – from law to psychology to business – and there is no one method to introduce new Ombuds to the field and help them develop an individual practice model. Ombuds are utilized differently from industry to industry, and even organization to organization, and the profession still seems to require a personal connection and mentoring to develop new Ombuds. The use of internships in the field helps bolster the community of practice and develop mentoring relationships between long-time Ombuds and new practitioners.

There are a number of things to consider when forming an internship, which were briefly introduced during our presentation at Cal Caucus 2013: internship structure; goals, focus, and expectations for the intern; and the value of interns and reflective practice. While developing an internship structure, a clear educational purpose should be established, with

¹² Levine-Finley, Samantha, and John S. Carter. Then and Now: Interviews with Expert U.S. Organizational Ombudsmen.

Conflict Resolution Quarterly, vol. 28, no. 2, Winter 2010.



expectations that relate directly to academic development and growth, and a set timeline for deliverables from both the office and the intern. Recently, internships have begun to garner increasing scrutiny as concerns have been raised about the exploitation of interns as a means of free labor. In response to those concerns, the Department of Labor (DOL) published a set of criteria for an educational internship – including emphasis on having clear educational focus and learning that is of value to the intern.¹³

In addition to the DOL criteria, it may be wise to consider what the focus of the internship will be. Ombuds Offices’ offer opportunities for those interested in ombuds work directly, but also for those interested in higher education, human resources, organizational development, etc. Prior to engaging an intern, the Ombuds Office should discuss what the intern’s primary interest is in working at the office, and whether the office is the

¹³ US Department of Labor Wage and Hour Division. Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act. April 2010. Available online: <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>

right location for that particular intern. Another practical consideration for academic ombuds is whether the office should engage an intern from their own educational institution. Engaging an intern who is currently enrolled in a department on-campus could present logistical challenges in terms of preserving confidentiality and neutrality in the office.

Considering the structure of an internship is part of the practical, logistical decision to engage an intern, but that decision may also be galvanized by philosophical considerations such as the benefit to the office and to the field itself. The DOL’s criteria focus on the way in which an internship benefits the intern, but there are also benefits to the Ombuds office. First, internships allow for academic Ombuds, in particular, to reconnect to the educational mission of their institution by fostering education within their own office by engaging an intern. Many offices at institutions of higher education offer internship opportunities to students, and the Ombuds Office, when properly structured, could offer the same opportunity.



The second benefit to the office is that interns allow for reflective practice. Reflective practice, as modeled in the Reflective Observer Protocol (ROP), developed by the Ombuds Office at the National Institute of Health, creates deep discussions between the practitioner and the intern by structuring discussions that feel safe and promote openness to learning. The first goal of the ROP is for the intern to focus their attention on the Ombuds, not the client or visitor. When the intern's attention is focused on the practitioner instead of the visitor, the visitor will likely feel safer in sharing their concerns, rather than feeling 'under the microscope' if both the intern and practitioner were to focus on them. The second goal is that the intern and Ombuds work together to make the unconscious or implicit practices of the Ombuds explicit. This benefits both the Ombuds and intern – the Ombuds by engaging in conscious reflection on practice habits and consideration of whether those habits are beneficial or require adjustment, and the intern by gaining understanding about the practice considerations that are the reality of a practicing Ombuds. The final goal is for the intern to engage in non-judgmental

reflection, so that both the intern and Ombuds engage in a full discussion of the practices the intern has observed. Discussion with an intern is not the only way to engage in reflective practice – case consultation with peer Ombuds, and journaling, to name a few. But an intern, who is in the room with the Ombuds during case consultation, provides a different perspective and value: the intern observes what is actually occurring, rather than the Ombuds describing what occurred, perhaps missing details or nuances, after the visit.

In my own discussions as an intern, I found myself continually reflecting with my mentors on the very central question – “What am I doing and why am I doing it?” By asking that question again and again, I believe I helped them make their decisions conscious, and their reflections helped me to learn and grow as an Ombuds. In addition, their emphasis on reflection helped me develop a habit of reflection that continues as part of my own practice. Larratt-Smith, Neff and I felt compelled to do this presentation both to garner support for wider use of interns in the



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Ombuds field, but also because all of us have seen the benefits of reflection in our own practice. Those benefits include strengthening of the diversity in the field by creating room for many practice models, strengthening the tenets of our profession, and raising each practitioner's consciousness about the many unconscious decisions we make as part of

our practice. Whether you choose to work with an intern or not, we hope you'll at least consider the potential value of an intern to your office, and perhaps consider ways to engage in your own reflective practice.



Issues of Workplace and Cyber Bullying

Natalie Sharpe
University of Alberta University

Sue Theiss
Oregon State University

Bullying is an ongoing and common challenge in our institutions. Cases of workplace and cyber bullying require a unique mix of skills and collaboration for ombuds to effectively assist visitors and clients. In order to effectively provide options for assistance in bullying cases, Ombuds are encouraged to assess the types of bullying behaviors occurring, the stage of development, and the unique organizational conditions and relationships presented. Natalie Sharpe and Sue Theiss conducted a session on workplace and cyber bullying, drawing from their experience and related research. Natalie discussed a comprehensive study on cyberbullying at four Canadian postsecondary institutions, and Sue drew from her thesis work with mid-level managers on intervention strategies used in cases of bullying amongst employees. This session was designed to help participants understand bullying as a process, to examine its far reaching effect and multiple dimensions, and to review options for effective

assistance, coaching, and conflict management.

Workplace Bullying (Theiss)

Behaviors perceived as bullying characteristics can be direct or indirect, deliberate or subconscious. Regardless of the initiator's personal characteristics or intent, the bully's actions are unwanted by the recipient. The recipient, feeling targeted by these behaviors, can experience great distress; this undermines his or her ability to work, study, or maintain healthy relationships. Behaviors must be repeated (pervasive and/or persistent) to be defined as bullying behaviors. When cases of bullying are left unattended, or mishandled, they can escalate to all or some of the following: employee turnover, students leaving, poor work or academic performance, absenteeism, and health issues ranging from depression to harming one's self or others. The costs are increased when you include the effects on co-workers, bystanders, and the organization.



Bullying can be viewed as the result of a process which progresses through identifiable stages, occurring on a continuum of various and increasing severity and effect on targets and bystanders. Behaviors may not rise to the level of concern prohibited by an organization's policies, but supervisors who are aware of the typical pattern can intervene early to avoid escalation and its most harmful impacts on targets and the organization. Einarsen (1999) provides a model which identifies four stages of bullying: 1) Aggressive Behavior, 2) Bullying, 3) Stigmatization, and 4) Severe Trauma. Early incidents of conduct that may escalate to bullying are identified in the first stage as "aggressive behavior." Once these behaviors toward the target become frequent, the process has moved from subtle, direct, or indirect aggressive behavior, to bullying. At this point, the target typically becomes unable to defend him or herself. This leads to stress, which can cause inhibited work performance and negative health effects. Soon the inabilities of the target become the focus of the perceived bully, some bystanders, and management. This leads to a stigmatization of the target and is typically

the point at which administrators and third parties are brought in to intervene. If managers cannot address the situation without further victimizing the target, this can lead to severe trauma for the recipient of the abuse. Cyberbullying can accelerate and amplify the stages of bullying. In cases where people are bullied repeatedly over time by one or more initiators, a single act of cyberbullying can magnify their experience to an unbearable level.

Cyberbullying (Sharpe)

Cyberbullying has been recognized and extensively researched as a problem in grade school that stops with maturity. However, recent studies in Canada show that cyberbullying is occurring in post-secondary institutions; its effects are devastating as it breaks down collegial relations and ruins lives; Moreover, cyberbullying is not limited to student interaction: it occurs between faculty and students, and enters faculty disputes.

Spearheaded by Simon Fraser University investigators Wandy Cassidy, Margaret Jackson, and Chantal Faucher, a four-year SSHRC study is underway with four Canadian post-secondary institutions to:



- Examine the extent, nature, and impact of cyberbullying between university students and students to faculty; and to find solutions, including ways to foster cyberkindness
- Conduct surveys, interviews and focus groups for students and faculty (full time continuing and part-times) and policy makers
- Apply Noddings' (2002, 2005) ethics of care approach that "foster(s) a kinder online world"
- Examine existing cyberbullying policies, and make suggestions to improve the health and wellbeing of faculty and students

The study began with an extensive literature research followed the next year with surveys to faculty and students to see whether they had been victims, perpetrators, or colluders. This social relational approach allows us to study the behaviors and institutional climate more dynamically, including those who stand by, actively supporting it or passively allowing it by not being proactive in reporting it or initiating policies to prevent it. The study examines policies or lack

thereof and the attitudes of policymakers. Finally there will be student focus groups and interviews with administrators, policy makers, and faculty on how to prevent cyberbullying.

This research is also informed by a provincial Task Force Report on the eastern side of Canada in Nova Scotia (MacKay, 2012), commissioned following the tragic suicide of a young female cyberbullying victim. Justice MacKay's recommendations focus on a restorative rather than retributive approach to cyberbullying. MacKay says the problem is systemic: society must bear the responsibility for building an inclusive education plan that promotes cyber kindness. Mackay tasks "arms-length" services such as Human Rights and Ombudsman to work with educators in developing and promoting digital responsibility, digital citizenship and progressive discipline. This reframing of the problem by using each incident to engage in proactive learning opportunities, is critical to the ombuds role. The ombuds can map an appropriate way to respond to this systemic problem, exploring the roots of inequity, and promoting fairness in collegial dialogue. This is an important



and timely task with the growing use of social media and online class learning on campuses. The ombuds can readily identify the key people, the appropriate policies, look for errors and gaps in policy, examine and share best practices, and - through moral suasion, - promote ways for the campus to engage in a kinder cyberworld.

Creating a Map to Civility

Ombuds are well positioned and uniquely skilled to help their visitors and organizations navigate their way through the harm and damages caused by bullying. Organizational tolerance of workplace and cyber bullying creates a working and learning environment that inhibits managers from effectively addressing bullying. Ombuds can serve as a change agent by promoting an environment where targets have safe avenues to share their concerns. Ombuds can give managers the tools and organizational support needed to address bullying effectively, The ombuds is proactive in reducing the severity of harm on the targets, team, and the aggressor(s). Within an environment of support, Ombuds can assist and encourage with early

intervention, create a safe space for listening to all parties' concerns, help managers determine the best paths to take for the unique conditions of their conflict, address climate issues, and move visitors towards a more formal response when necessary.

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The Ombuds in Higher Education and Crises

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University of Denver

A crisis is a “traumatic situation or event AND a person’s reaction to an event.” Today’s ombuds in higher education likely have a role in a university’s preparation and response to a crisis. One way to examine the ombuds’ role and value, is to learn from other ombuds’ experience and consider what they found most useful for ombuds and their clients, and their college community during and after a crisis. Here are some observations from one ombuds after a particularly serious campus crisis:

1. With their key contacts with administrators on campuses, ombuds can serve as “knowledge sources; and knowledge funnels” in multiple ways: as a place for campus community members to find out where they can get help, providing information about the protocols established during emergencies for getting medical help, for cleaning up, for retrieving personal belongings, etc.
2. Ombuds can act as another set of eyes, watching for needed interventions in different areas on the campus, without necessarily breaking confidentiality.
3. Ombuds have a role in identifying trends.
4. By their very nature, ombuds are excellent listeners and do well to listen to the stories and help people make sense of their experience, their current emotional state and their

responses to a trauma. Ombuds are not therapists, but they can help people to understand and normalize their intense emotional responses.

5. Finally, and primarily, of course, we need to make sure that we are safe.

Here are some questions to help ombuds to think ahead, and some resources to help them prepare.

Questions

- What would you define as a crisis?
- Is there a role for the ombuds in a crisis? After a crisis? If so, what?
- What does your organization expect of you and/or your office after a crisis?
- What offices and resources does your organization have? How has your organization prepared?
- How have you prepared? What kind of training or preparation have you engaged in?

Resources

“Common Reactions to a Crisis”
<http://psychology.about.com/od/crisisco/unseling/a/crisisresponse.htm>

“What is a Crisis?”
<http://psychology.about.com/od/crisisco/unseling/f/crisis.htm>

“Coping With a Crisis on a Crisis Anniversary”



<http://phobias.about.com/od/supportandresources/a/Coping-With-A-Crisis-On-A-Crisis-Anniversary.htm>

Mental Health First Aid
http://www.mentalhealthfirstaid.org/cs/program_overview/

Theme Weaving: Cal Caucus 2013

Jenna Brown

Jay: mental health

Shirley: culture, fairness and the brain

Emma, Andrew and Susan: all things internships

Lisa: trends

Richard: simple ideas: conflict, emotions, incident and behavior.

Natalie and Sue, cyber and bullying

Tina and Jenna: crisis situations

Jayson: insights into grad students

Valerie: pause to refresh

Steve: navigating impartiality in a peer ombuds model

Thomas: alternate realities and authenticity

Woven throughout:



Early morning walks

Late night conversations

Hugs and high fives

Hospitality

Laughter

Tears

Strumming and singing

Fine dining indoors and out

Sitting back and stepping up

Time alone and time together

Gift exchanges of all kinds

Feeding mind, body and soul in an oxygen-rich environment.



ARTICLE SUBMISSION AND BOOK REVIEW GUIDELINES

Journal Review Guidelines

We welcome submissions to *The Journal* for publication related to the work of ombudsing. Below are our guidelines for submission. As always, the co-editors welcome your ideas and questions.

The Journal publishes articles, book reviews and case studies related to the profession of ombudsing. Prospective writers are encouraged to submit manuscripts that focus on the varied aspects of our work: practice, education, legislation, research, social media or administration. Our goals as editors and peer-reviewers is to support each writer produce the highest quality of work possible that conveys the author's voice and intent.

Each submission should be submitted to the co-editors electronically, double-spaced with one inch margins. Length of each submission should not exceed 20 pages, including references and notes. Our *Journal* abides by APA standards. Please include a title page with the authors, title, institution, email address and an abstract containing no more than 100 words.

All submissions are reviewed by at least two editorial board members. Peer review is a blind process, and reviewers may recommend acceptance, rejection (with reasons given), revisions (with specific suggestions), or resubmission. Recommendations will be sent to the author. Submissions may be edited for clarity, consistency and format.

Book Review Guidelines

Book reviews are welcomed by the editors which relate to the field of ombudsing. Book reviews should be limited to 1500 words and should clearly state the author's thesis or intent of the book. Lastly, the reviewer should assert an opinion, evaluation or stance of the book in the beginning of the review.

The editors welcome feedback and inquiries regarding submissions. You can contact us by email: [Lisa Neale](#) and [Thomas Griffin](#).