



## **Standards of Practice (SPANISH)**

### **La Asociación Internacional de Ombudsmen Normas de práctica**

#### **INTRODUCCIÓN**

Las Normas de práctica de la IOA se basan y están derivadas de los principios éticos establecidos en el Código de Ética de la IOA.

Cada oficina del Ombudsman debe disponer de una Carta o de Principios de Referencia, aprobados por la Dirección General, que establezca los principios de la función del Ombudsman en la organización que corresponda y el cumplimiento de dichos principios con las Normas de Práctica de la IOA.

#### **NORMAS DE ACTUACIÓN**

##### **INDEPENDENCIA**

- 1.1 La oficina del Ombudsman y el propio Ombudsman son independientes de cualesquiera otras entidades organizativas.
- 1.2 El Ombudsman no tiene otra posición en la organización susceptible de afectar a su independencia.
- 1.3 El Ombudsman tiene la responsabilidad exclusiva de decidir cómo actuar con respecto a un asunto individual, una tendencia global o los asuntos de varios individuos a lo largo del tiempo. El Ombudsman también es apto para iniciar una acción relativa a un asunto que haya identificado directamente por observación.
- 1.4 El Ombudsman tiene acceso a toda la información y a todos los individuos de la organización, de acuerdo con lo permitido por la ley.
- 1.5 El Ombudsman está habilitado para elegir el equipo que trabajará en la oficina del Ombudsman y para administrar el presupuesto y las operaciones de la misma.

##### **NEUTRALIDAD E IMPARCIALIDAD**

- 2.1 El Ombudsman es neutro, imparcial e independiente.

## IOA Standards of Practice (Spanish)

- 2.2 El Ombudsman realizará sus mejores esfuerzos para ser imparcial, honesto y objetivo en su trato de las personas y a la hora de considerar todas las posibilidades. El Ombudsman abogará por procesos administrados con honestidad y equidad y no abogará por cuenta de cualquier individuo dentro de la organización.
- 2.3 El Ombudsman es una persona nombrada para ser neutral, que reporta al nivel más alto posible dentro de la organización y opera de forma independiente con respecto al funcionamiento y a las estructuras ordinarias del personal. El Ombudsman no deberá reportar a ni depender estructuralmente de ninguna función a la que deba someterse dentro de la organización.
- 2.4 El Ombudsman no podrá desempeñar un papel adicional dentro de la organización susceptible de afectar a su neutralidad. El Ombudsman no deberá alinearse con ninguna asociación formal o informal dentro de la organización, de una forma que pueda generar conflictos de intereses reales o percibidos como tales para el Ombudsman. El Ombudsman no deberá tener ningún interés personal ni poner nada en juego, ni obtener beneficios o sufrir pérdidas, relacionadas con el resultado de una acción.
- 2.5 El Ombudsman será responsable de considerar los planteamientos e intereses legítimos de todos los individuos afectados por el asunto en consideración.
- 2.6 El Ombudsman ayudará a desarrollar un conjunto de opciones responsables para solucionar los problemas y facilitará el intercambio para identificar cuáles son las mejores opciones.

## CONFIDENCIALIDAD

- 3.1 El Ombudsman se encargará de mantener la estricta confidencialidad en todas las comunicaciones con los que soliciten asistencia, y tomará todas las medidas razonables para garantizar la confidencialidad, inclusive las siguientes:  
El Ombudsman no divulgará ningún tipo de comunicación confidencial sin autorización previa dada en el marco de las discusiones informales con el Ombudsman, y aún así, esto se producirá bajo la responsabilidad exclusiva del Ombudsman; el Ombudsman no revelará y no se le deberá exigir que revele la identidad de ninguno de los individuos que haya contactado con la Oficina del Ombudsman, el Ombudsman tampoco deberá revelar ningún tipo de información proporcionada de forma confidencial y susceptible de permitir la identificación de cualquiera de los individuos que haya contactado con la Oficina del Ombudsman sin la autorización previa y expresa de dicho individuo; el Ombudsman sólo emprenderá cualquier tipo de acción específica relacionada con un asunto individual con la autorización previa y expresa del individuo y únicamente hasta el punto que haya autorizado éste, excepto que dicha acción pueda emprenderse garantizando la protección de la identidad del individuo que ha contactado con la Oficina del Ombudsman, siendo la única excepción a esta obligación de confidencialidad si existe un riesgo de dolo inminente y si no existe ninguna otra opción razonable. Es el Ombudsman quien determina si existe riesgo.

- 3.2 Se considera que las comunicaciones realizadas entre el Ombudsman y terceros (realizadas en el marco de la función del Ombudsman) están sometidas a un derecho de no divulgación. El derecho de no divulgación pertenecerá al Ombudsman y a la Oficina del Ombudsman, antes de cualquier parte en un asunto. Ninguno de los terceros puede prescindir de dicho derecho.
- 3.3 El Ombudsman no testificará en ningún procedimiento formal interno a la organización y se opondrá a testificar en cualquier procedimiento formal exterior a la organización, aún siendo autorizado o requerido a hacerlo.
- 3.4 Si el Ombudsman investiga sobre un asunto organizativo (por ejemplo, proporcionando informaciones sobre tendencias, cuestiones, políticas y prácticas), el Ombudsman deberá hacerlo de una forma que garantice la identidad de los individuos.
- 3.5 El Ombudsman no deberá conservar registros que incluyan datos personales en nombre de la organización.
- 3.6 El Ombudsman mantendrá las informaciones (por ejemplo, notas, mensajes telefónicos, citas de agenda) en un lugar y de forma segura, manteniéndolas protegidas de la inspección de terceros (inclusive la Dirección), y practicará de forma reglamentaria y coherente la destrucción de dicha información.
- 3.7 El Ombudsman preparará cualquier tipo de datos y/o informes de forma que se mantenga la confidencialidad de los mismos.
- 3.8 Las comunicaciones dirigidas al Ombudsman no se comunicarán a la organización. El Ombudsman no actuará como un agente ni aceptará comunicaciones en nombre de la organización ni podrá ocupar un cargo o desempeñar un papel en un puesto designado por la organización como un puesto en el que se reciban comunicaciones en nombre de la organización. No obstante, el Ombudsman podrá remitir a individuos al puesto adecuado donde puedan realizarse comunicaciones formales.

#### **INFORMALIDAD Y OTRAS NORMAS**

- 4.1 Las funciones del Ombudsman en una base informal significan: escuchar, proporcionar y recibir informaciones, identificar y replantear cuestiones, desarrollar un conjunto de opciones responsables y – previa autorización, y bajo la responsabilidad del Ombudsman– iniciar una intervención informal con respecto a terceros. Siempre que sea posible, el Ombudsman ayudará a las personas a encontrar nuevos medios para solucionar ellas mismas sus propios problemas.
- 4.2 El Ombudsman, en su calidad de recurso informal y oficioso, actuará con el objetivo de solucionar asuntos e investigará si existen irregularidades de procedimiento y/o problemas organizativos más amplios cuando sea oportuno.
- 4.3 El Ombudsman no tomará decisiones vinculantes, no dictará políticas o tomará formalmente decisiones para la organización.
- 4.4 El Ombudsman asiste pero no sustituye ningún canal formal. El hecho de utilizar la Oficina del Ombudsman es voluntario y no constituye ninguna etapa obligatoria en ningún procedimiento de resolución de conflictos o política organizacional.

- 4.5 El Ombudsman no participa en ningún procedimiento de investigación formal o de tipo judicial. Las investigaciones formales deberán realizarlas terceros. Si una investigación formal es necesaria, el Ombudsman remitirá a los individuos a las oficinas o personas oportunas.
- 4.6 El Ombudsman identificará las tendencias, las cuestiones y asuntos relativos a políticas y procedimientos, inclusive cuestiones y asuntos futuros, sin romper la confidencialidad o el carácter anónimo y proporcionará todas las recomendaciones para solucionarlos de forma responsable.
- 4.7 El Ombudsman actuará cumpliendo con el Código de Ética y las Normas de Práctica de la IOA, se mantendrá permanentemente al corriente formándose constantemente y ofreciendo a su equipo la oportunidad de seguir entrenamientos profesionales.
- 4.8 El Ombudsman tratará de ser digno de la confianza puesta en la Oficina del Ombudsman.



# Guide to principles of good complaint handling

Firm on principles, flexible on process

Clarity of purpose

Accessibility

Flexibility

Openness and transparency

Proportionality

Efficiency

Quality outcomes

<b>Contents</b>	<b>Page</b>
Introduction .....	3
Chapter 1 Clarity of Purpose .....	5
Chapter 2 Accessibility .....	9
Chapter 3 Flexibility .....	13
Chapter 4 Openness and Transparency .....	17
Chapter 5 Proportionality .....	21
Chapter 6 Efficiency .....	25
Chapter 7 Quality Outcomes .....	29

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# Introduction

The British and Irish Ombudsman Association (BIOA) has many kinds of bodies in membership including ombudsman schemes and review bodies. They range in size from large to small and from national to more local. Some are in the public sector; some in the private sector. Some are statutory and some are voluntary. But all are involved in complaint handling, and all seek to resolve disputes that two or more participating parties have previously been unable to resolve.

Every scheme has its own standards and procedures designed to meet the needs of the people and organisations that use them. In the main, these have been developed as a result of individual experience. They all however aspire to the BIOA values of independence of judgement, fairness and impartiality, effectiveness and accountability.

This booklet seeks to distil the experience and expertise of BIOA's membership. It will help existing Ombudsmen and other complaint reviewers with self-audit and provide guidance for those contemplating new schemes or applying for BIOA membership. In this way it will support the objectives of BIOA, which include the aim to formulate and promote standards of best practice to be met by Ombudsmen in the performance of their duties. The booklet is not meant to be prescriptive or all-encompassing, as schemes vary in size and remit and there is no 'one-size-fits-all' model. BIOA schemes are always seeking to learn from others, so to that extent, the booklet will always be 'work in progress'.

In the rest of this booklet we will

for convenience call Ombudsmen, commissioners and complaint reviewers, 'office holders' and their organisations 'schemes'.

## Background

Office holders and their schemes investigate complaints against a wide range of government and commercial organisations. Complaints will usually already have been investigated by the organisation concerned. The reviewer's role is to resolve cases that get beyond this stage, where, after the organisation has given a properly considered view, differences still remain between the organisation and the complainant.

Sometimes there are shortcomings in how the complaint has been handled, so that when it reaches the scheme, the complainant's grievances may not have been understood or fully considered by the organisation concerned. In addition, the handling of the complaint may itself have become an issue. Sometimes the complainant has unrealistic expectations or an incomplete understanding of his or her rights and responsibilities and wishes to persist against all the evidence. Whatever the circumstances, the scheme will need to understand what has led to the referral.

Every scheme is different and deals with differing issues. There are however, many similarities in how we go about our work. In particular, schemes in BIOA membership recognise that to carry out our role effectively, complainants must have confidence that issues will be considered impartially and on their merits

and that independent judgement will be brought to bear.

### Process

The following basic stages are common to most schemes:

- receiving a complaint from a complainant
- seeking a response from the organisation being complained about
- trying to resolve the complaint as quickly as possible
- carrying out some sort of 'investigation' to identify the merits of the case, arrive at a conclusion and provide appropriate redress
- feeding the outcome of systemic findings into best practice within the organisation

### Key Principles

BIOA member schemes are independent of management control from organisations within their remit and are committed to our key objectives, which include the need:

- to formulate and promote standards of best practice and
- to encourage efficiency and effectiveness

In furtherance of these objectives BIOA has identified seven key principles which support schemes in our work and which people can rely upon when using our services. These are: clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency, and quality outcomes.

In many cases, it is not possible to satisfy completely the needs and wishes of complainants. Incorporating these principles into the complaint-handling process will minimise unresolved issues or feelings of grievance. It may also make the organisation complained against less defensive, and increase the likelihood

of achieving both resolution and organisational learning for the future.

**Clarity of purpose.** A clear statement of the scheme's role, intent and scope.

**Accessibility.** A service that is free, open and available to all who need it.

**Flexibility.** Procedures, which are responsive to the needs of individuals.

**Openness and transparency.** Public information, which demystifies our service.

**Proportionality.** Process and resolution that is appropriate to the complaint.

**Efficiency.** A service that strives to meet challenging standards of good administration.

**Quality outcomes.** Complaint resolution leading to positive change.

Each of these principles is covered in more detail in the chapters that follow.

Please note that commentary or points made in some chapters are repeated in others where it is necessary to emphasise matters that have relevance to more than one principle. Whenever this occurs, the text will include a cross-reference to other chapters.



# Clarity of purpose

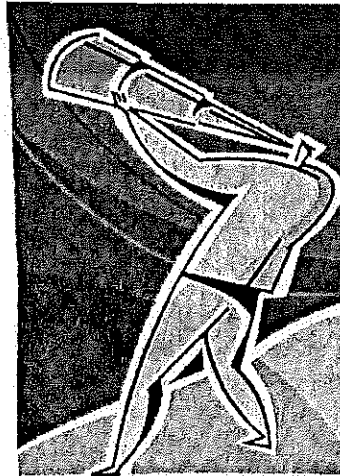
A clear statement of our role, its intent and scope

## 1:1 Introduction

All BIOA schemes are independent of management control from organisations within their remit, so that people can have confidence in their impartiality and in the way their complaints will be handled. Independence is fundamental to our role.

Many schemes are governed by statutory limitations on the types of complaints they can consider or how they can be referred. Some are limited by contractual or other arrangements which define the issues they can consider and when they can do so.

As a consequence, it is essential to explain why we exist and what we do, so that people know what to expect from their contact with us. The factors below all play a part in achieving this objective.



individual complaints about poor service or unfair treatment.

This is not an easy task, as it requires the scheme to balance the views of the complainant against those of the organisation and, based on the merits of the case, achieve a just result for both.

However, we also have an important secondary role. As a result of our work, schemes are able to identify how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future.

Schemes aim to strike a balance between these sometimes competing requirements (see Chapter 7 Quality Outcomes).

## 1:2 Understanding our role

The primary (or core) role of office holders and their schemes is to look into complaints in a proportionate and impartial manner, and bring matters to a fair and reasonable conclusion. In most cases, complaints will have defied earlier resolution by the organisation complained about.

Our role is wider than that of a regulator, with a statutory role in placing obligations on organisations within their remit, for example by setting service standards or placing financial limits on charges to customers. It is also wider than courts or tribunals, which will generally be limited to considering whether action is lawful. Our role is rather to consider and resolve

## 1:3 Leadership

Most schemes are led by an appointed office holder or a number of such individuals. As

the public face of their own organisations, they need the necessary experience, skills and authority to engender confidence in them and their scheme. Their role is to promote the vision and values of the scheme and, in particular, to demonstrate the independence of thought and spirit that will promote public trust in their judgement.

Similarly, they must provide guidance and support for people within their schemes by setting clear goals, defining success criteria and developing an organisational culture, which facilitates a positive and enabling role in the settlement of complaints.

#### **1:4 Clear objectives**

A scheme's principal aim is to secure a just and proportionate result, which brings closure for the complainant and the organisation. For many schemes, this decision will be the complainant's last opportunity to settle the dispute.

A further purpose of the process is to identify the reasons why complaints arose and were not settled by the organisation concerned. This may highlight a weakness in an organisation's administrative or complaint-handling processes, which can be brought to the attention of senior managers, who are accountable for making appropriate changes and improvements.

Some schemes make decisions that are legally enforceable. Most do not. Even where it is not compulsory to do so, organisations within the scheme's remit should be encouraged to accept findings and implement recommendations made by, or on behalf of, the office holder. This is necessary if the scheme is to have credibility in the eyes of complainants. Follow-up is essential, both to confirm that action has been taken, and to provide public assurance.

Whilst it is necessary to ensure that

the scheme responds to people and situations in flexible and proportionate ways, the scheme must remain focused on achieving quality outcomes that lead to positive change (see Chapter 7 Quality Outcomes).

#### **1:5 Clear communication**

Clarity of purpose is achieved by communicating well. Public information should explain the scheme's vision and values, its objectives and service standards. All publications must be easy to obtain and simple to read, using plain language and avoiding technical jargon (see Chapter 4 Openness and Transparency).

Engagement with complainants and others should be designed to avoid doubt and misunderstanding about the reason for the contact and the information that is requested or provided.

Internal guidance should support the achievement of the scheme's objectives and articulate the standards against which the service will be judged.

#### **1:6 Clear and consistent processes**

Schemes should develop standard processes for responding to complaint referrals. They should be designed to meet complainants' needs but also to cope with unusual and complex cases (see Chapter 3 Flexibility). Complainants should be given a clear explanation of the criteria for accepting complaints and a step-by-step guide to the way they will be addressed, including what service standards they can expect in terms of speed, detail and staff behaviour.

Clarity about what can be achieved and what is not possible is vital to a complainant's understanding of the

scheme's role. If the scheme cannot help someone, wherever possible that person should be given information about alternatives. It is especially important to make it clear when matters have been brought to a conclusion.

A final letter or report should set out a synopsis of the facts taken into account, describe the result of the review and, where appropriate, the reasons for decisions that have been reached. It should also direct the complainant to any further help he or she can get if the communication received is not fully understood or there

is dissatisfaction with the service or outcome. This should include how to make representations against a decision.

Consistency must not equal complacency. The scheme's service should be regularly reviewed in the light of feedback from complainants and organisations within its remit, to ensure that it continues to meet changing demands and circumstances (see Chapter 6 Efficiency). Schemes should continue to look for improvements in service provision and be prepared to learn from and assist others in BIOA membership.

## Notes

# Accessibility

A service that is free, open and available to all who need it

## 2:1 Introduction

Schemes must constitute realistic and usable ways of seeking independent redress. Therefore, for those who need to use them, they must be known about, free to use, open and available.

Methods of access to schemes will differ from one scheme to another. For example, whilst most referrals can be made by complainants or their personal representatives, some referrals must be made by Members of Parliament or other authorised representatives. However referrals are made, it is important that people have the information they need to be able to take this step within the appropriate time-frame, and that the organisation complained about does not 'filter' access.

A particular advantage that schemes offer a complainant in terms of accessibility is that the service available to them is free. This means that people do not need to worry about whether they can afford to have their complaints properly considered, in order to get an independent view of what has happened.

## 2:2 Awareness

A scheme should ensure that it takes all reasonable measures to make the general public aware of its role. Promotional material should be available at places where potential complainants are likely to gather or seek information. This includes any organisations covered by the scheme,



Citizens Advice and other voluntary sector organisations, reference libraries, tribunals and courts.

Other means of advertising the existence of a scheme, such as telephone directories and links from relevant websites, should also be considered with the object of increasing public awareness. Logos should be displayed on letterheads and advertising material, so that the scheme is easily recognisable.

To ensure ease of access to all those who need it, the scheme must be well known within the organisations covered by its activities. Those organisations, should refer potential complainants to it as part of their own in-house complaint-handling procedures, and be able to give helpful information verbally as well as in complaints and other promotional literature.

## 2.3 General accessibility

It is important to make it as easy as possible for complainants to access schemes.

Schemes should develop standard methods of responding to complainants, which will be appropriate in most situations, and support consistency (see Chapter 6 Efficiency). That should not prevent them from recognising and responding to the individual and unusual needs of some potential complainants or responding to contact in a proportionate manner.

Whilst accessibility to schemes will differ depending on size, location and remit, complainants must be given as many ways of contacting schemes and referring their complaints as is practically possible within legislative and other constraints. Most should be able to do so by letter, e-mail or telephone. It may also be helpful to consider other methods of communication commonly used by particular age or social groups, such as SMS text messaging.

Although most schemes welcome contact by telephone, it should be borne in mind that some people may find it hard to make phone calls during standard office hours.

It may therefore be helpful to offer out-of-hours contact or make other arrangements for people to complain. Where it is practicable, some schemes may be able to arrange for complainants to do so face to face.

Schemes should regularly check how easy complainants find it to access their services, for example, by issuing customer satisfaction surveys and consulting focus groups.

## 2.4 Special accessibility needs

It is important to identify potential barriers to bringing a complaint and ensure as

far as is practicable, that the processes, principles and practices of the scheme are designed to mitigate them. For example, some people may need advocates or other representatives to act for them in referring their complaint. Others may need other practical assistance. For this reason, information should be available to help people obtain the help they need.

Schemes have a responsibility to provide a service that accommodates the special needs of different groups and individuals in the community. A complainant's personal situation and background should not be a barrier to bringing a complaint.

In each individual case, it is also important to ask individuals what specific help they need to express that complaint, rather than make assumptions. Although not a comprehensive list, some of the possible barriers to access are described below:

### Literacy and language

Differing levels of literacy and uneven communication skills may result in some complainants not understanding the jargon used in complaint forms, or having difficulty in articulating abstract concepts. It is therefore important to ensure that documentation is written in plain language. A scheme may also consider helping complainants complete their documentation.

When English is not the first language of the complainant, even conversational fluency in English as a second language may not be sufficient to allow the complainant to communicate confidently and effectively in official language. Ways of mitigating this issue might include the translation of key documents into other commonly used languages and a phone-based translation service. Some countries have more than one official language and

there may be statutory obligations on schemes in those countries to conduct business with complainants in languages other than English.

#### **Socioeconomic differences**

It may be appropriate to take account of the special needs of some potential complainants from particular backgrounds or communities.

Enabling wider accessibility may include diversity training to help staff identify concerns of people from different backgrounds and to understand when gender, age, race, culture etc. require particular consideration.

Wherever possible and practical, a scheme should consider the diversity of its own workforces and how far it reflects the diversity of the public they seek to serve.

#### **Disability**

Disability-awareness training for staff may help them to assist people with physical and mental disabilities and illnesses and to consider pragmatic individual solutions. For example, it may be necessary to arrange investigator visits for those who are housebound.

It is also important to question common

assumptions. For example, publications in Braille might seem like the answer for people who are sight-impaired but many registered blind people do not read Braille. So dialogue with relevant consumer and voluntary groups is important.

### **2.5 Commitment**

It is important for schemes to seek to do more than simply meet legal requirements relating to accessibility. A legalistic approach to this issue would concentrate only on compliance with the provisions of relevant legislation such as, for example, the UK Disability Discrimination Act or the Welsh Language Act.

A genuine commitment to accessibility is more than just a matter of ensuring disabled access, induction loops, providing leaflets in various languages etc. It is about proactively 'opening up' – widening access, literally and metaphorically – for all kinds of people who might not otherwise have the knowledge, confidence or ability to complain.

This may require significant political, behavioural and process changes right across an organisation.

#### **Notes**

## Dementia in the Workplace: How long should someone with dementia keep working?

### Neurology Now

December/January 2011 Volume 7(6) p 30-33

#### Shaw, Gina

##### [Back to top](#)

In August 2011, University of Tennessee (UT) women's basketball coach Pat Summitt announced that she had been diagnosed, three months earlier, with early-onset dementia. She also stated that she would continue to coach her Lady Vols through the 2011-2012 season.

Summitt's announcement has spurred an important national conversation about how long people diagnosed with Alzheimer's disease or other forms of dementia can or should continue working. It's a complicated decision, and one that thousands of Americans are faced with every year.

### STRUGGLING AT WORK

The new computer system in her office shouldn't have been a problem for Diane Carver.

For more than 20 years, she had worked as an office manager for a flooring company near her home in Altamonte Springs, FL. During most of that time, Carver trained every new employee that walked in the door on all the company's products and taught them how to use the computers. But then the company changed computer systems, and Carver found herself struggling to learn the new technology.

As doctors are able to diagnose people at earlier and earlier stages of dementia, the question of whether to keep working has become more common.

"I've never had issues with learning new computers, but all of a sudden, I'm having problems grasping what to do, and I'm thinking, 'How can this be? I train people! How can I train them if I can't get it myself?'" recalls Carver, now 60.

It wasn't the only problem. A big part of her job was making calculations and giving price quotes over the phone. Carver found that this task, once easy, was growing increasingly difficult. "It got to the point where I was bringing things home and studying to try and sharpen up," she says. "But I never thought it could be dementia. My brother, who'd had Down syndrome and meant everything to the family, had passed away, and I'd lost my mother a few years before that. So I figured I was depressed, plus I was going through menopause."

In December 2008, after months of mightily resisting suggestions from her husband, Larry, that dementia might be involved, Carver finally agreed to go to a neuropsychologist at nearby Florida Hospital Neuroscience Institute. After a series of tests, the diagnosis was clear: Alzheimer's disease.

At first, Carver continued to work. "I had worked there for so long, I had trained everyone there, and they all helped me out," she says. She even paid one staffer to spend time with her after hours, helping her get acquainted with that troublesome new computer system.

But a month or so later, her doctor told her that she should stop driving. And then one day at work, she found herself on the phone with an irate customer. "I had given him five different quotes, and he kept saying, 'That price is wrong. I'd try to refigure and give him another number. Finally he said, 'Lady, how stupid are you? You have no business working there!' and he hung up. I came home crying."

Two days later, Larry and Diane went into the office together and explained her diagnosis. She asked to be placed on disability and resigned from her position.

### THE IMPACT OF EARLY DIAGNOSIS

Usually, by the time someone's condition has actually progressed to the point of a diagnosis with dementia, it can be challenging to continue working, says Anthony LoGalbo, Ph.D., the neuropsychologist at Florida Hospital Neuroscience Institute who assessed Carver. "I will often encourage them to stop at that point, because it's better to leave work before a big problem happens rather than wait until you make a serious mistake."

But some people in the early stages of dementia, like Summitt, continue to work. And new sets of diagnostic criteria now allow physicians to diagnose Alzheimer's disease before the condition has actually progressed to the level of dementia.

"When people have started to show some cognitive changes—a condition known as mild cognitive impairment or MCI—we can make a diagnosis of Alzheimer's disease with substantial confidence before they meet the criteria for dementia, using new technologies involving imaging and spinal taps," says Jeffrey Cummings, M.D., member of the American Academy of Neurology and director of the Cleveland Clinic Lou Ruvo Center for Brain Health, which has sites in Las Vegas, NV, and Cleveland, OH. "As we become more able to diagnose people who have these beginning symptoms, the question of whether to continue working will become more common. It will become a much more common challenge for families, patients, employers, and physicians than ever before."

### MAKING THE DECISION

How should someone diagnosed with dementia or MCI approach the decision about whether or not to continue working? Several factors should be considered, says Gary Kennedy, M.D., director of the Division of

### Resources

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#### Support Organizations

#### [Issue Table of Contents](#)

### Outline

- [struggling at work](#)
- [the impact of early diagnosis](#)
- [making the decision](#)
- [tips for staying on the job](#)
- [when it's time](#)
- [a sense of purpose](#)
- [pat summitt's daily dementia game plan](#)

### Links

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Geriatric Psychiatry at Montefiore Medical Center in New York, NY.

Safety is first. If others' lives depend on the person's job performance, then he or she should consider retiring as soon as impairments are noticeable. For example, for a surgeon, a nurse, an airline pilot, or a school bus driver, errors can cost lives.

Rick Phelps, now 57, was an emergency medicine technician (EMT) in the same town in Ohio for more than two decades when he began having trouble finding the addresses during emergency calls. He tried talking to his boss about it, but the man just laughed and said, "Hey, we're all getting older—I keep losing my car keys too." Phelps was shocked when his supervisor said that he could continue working even after his dementia diagnosis because there hadn't been any problems yet.

"I've seen individuals in jobs like these, and I've advised them to stop working before anyone notices a problem," says Dr. Kennedy. "Once someone else notices, then you've endangered others."

One day, Phelps and his partner had a very rough call: A four-year-old boy had had a seizure; the child was blue and not breathing when they arrived. They were able to start an airway and revive him, but the child died at the hospital. Phelps knew he had made no errors on the call and that the death was not his fault, but he feared it was just a matter of time. Several days later, he quit. "I never forgot a procedure or did anything wrong to a patient, but I knew it would have ended up that way," he says.

"Work is one of our greatest sources of self-worth. So there is every reason for people to continue to be engaged for as long as they possibly can, even when paid work is no longer an option." —JEFFREY CUMMINGS, M.D., DIRECTOR OF THE CLEVELAND CLINIC LOU RUVO CENTER FOR BRAIN HEALTH

Beyond safety, other serious risks should be considered. Aerospace engineer Robert (Bob) Patterson, from Manhattan Beach, CA, didn't have people's lives in his hands, but he held final authority for sending multimillion-dollar satellites into space. "It was a job of incredible responsibility," says his wife, Karen. "While that was a difficult job under any circumstances, as time went by it had become more of a burden than a joy."

In 2005, Patterson was recruited for a prestigious new position in Colorado and passed a panel of interviews with flying colors—despite the fact that he knew he couldn't even remember the names of the people he'd spoken with. The company hadn't noticed a problem. But Patterson knew, and he turned down their offer. He retired a year later, at 59. "These things have to work. You've gotta get it right. I love aerospace and satellites, but it was just too hard. I felt I would be shortchanging them," he says.

Another factor is the degree of innovation versus repetition. "Dementia is always couched as a memory disorder, but in reality it's a learning disorder. Old memories, old habits, old patterns remain until the dementia becomes far advanced. But you cease to be able to learn new information," says Dr. Kennedy.

So if the job is very repetitive—stocking shelves in a warehouse in the exact same way, for example—a person with dementia may be able to stay at work much longer than someone whose position requires them to constantly respond to a changing flow of information, like a stockbroker.



Figure. **THIS IS SERIOUS** EMT Rick Phelps began having trouble finding the addresses during emergency calls. He tried talking to his boss about it, but the man just laughed and said, "Hey, we're all getting older—I keep losing my car keys too."

[Click here to enlarge](#)

"In its early stages, dementia also has little impact upon personal characteristics like an outgoing personality, charismatic leadership skills, and an intuitive sense of how to work with people," says Dr. Kennedy. "That's not likely to change until later on in the disease process." So someone like Pat Summitt should be able to motivate and inspire her players, as well as work with them through familiar drills and practices—but will probably need assistant coaches to make snap judgments about strategy in the middle of a fast-moving game.

Finally, the level of pressure needs to be taken into consideration. High-stress, high-pressure jobs—like Rick Phelps' EMT position or Bob Patterson's aerospace engineer work—are particularly wearing for someone with dementia. But a gardener or a teacher's aide in a preschool (who is always backed up by another teacher) might be able to continue working longer.

## TIPS FOR STAYING ON THE JOB

For those who choose to continue working, certain strategies can be used to help minimize the effect of dementia on job performance. One of the most important strategies, says Dr. LoGalbo, is structure.

"People with dementia should use calendars, day planners, and checklists to remind them of exactly what they need to do and when they need to do it," he says. In addition, they should try to keep their days as structured and predictable as possible. For example, if a daily meeting must be held, a person with dementia should try to schedule the meeting at the same time and in the same office each day.

That's the kind of thing Summitt has done with what she calls her "dementia game plan." Each morning, she reviews a daily schedule to prepare for what is on her agenda that day. (See box, "Pat Summitt's Dementia Game Plan.")

"She is all about her game plan," says Debby Jennings, associate athletic director for media relations at UT. "We are learning along the way and modifying and reshaping our strategies just like our coaching staff does in the middle of a game."

A person with dementia will also need to rely on trusted coworkers for help, as Carver did and Summitt is doing now. "Let's say someone with dementia is a waitress," says Dr. Kennedy. "She has retained good interpersonal skills, and her dementia isn't so advanced that it's changing her personality. The chef who



plates the food and gives it to the waitress can remind her which table it's for, and someone else can check the figures on the bill."

The Americans with Disabilities Act does provide limited protection to people with Alzheimer's disease and other dementias in the workplace. It requires that companies with at least 15 or more employees make "reasonable" accommodations for job applicants and employees with physical or mental disabilities. So, for example, someone with dementia might ask his boss to switch him to a less demanding or stressful position, or reduce his hours so that he is still working but has more time to rest.

## WHEN IT'S TIME

Ultimately, though, the time will come—as it did for Phelps, Carver, and Patterson—when a person with dementia can no longer work. "Even though continuing to work may be beneficial in some ways, providing the person with a social outlet and meaningful things to do, it can also become quite frustrating or embarrassing to be in that environment and not do as well as he or she once did," says Dr. LoGalbo. "I ask patients, 'Would you rather stop working now through your own choice, or wait until someone realizes you're having trouble and you get fired?'" Getting fired, he says, may mean a loss of benefits or difficulty going on work-sponsored disability.

Fortunately, when the time does come to leave work, it has become much easier for people with younger-onset Alzheimer's—diagnosed before age 65, like Summitt, Phelps, Carver, and Patterson—to obtain Social Security disability. In March 2010, the Social Security Administration added young-onset Alzheimer's disease to its "Compassionate Allowance" list, which fast-tracks the approval process so that benefits can start within days rather than months or years.

"We applied and were fully funded six weeks later," says Karen Patterson. "That was the quickest thing I could have ever imagined. Knowing that that's available might ease some of the pressure to keep working for some people."



Figure. STILL IN THE GAME Summitt instructs her team during a game against Pepperdine in November 2011. Summitt's team won 89-57. AP Photo/Wade Payne/corbis

[Click here to enlarge](#)

## A SENSE OF PURPOSE

Of course, work isn't just about money. For many people, it's also about finding something meaningful to do with their day. When dementia forces a person to give that up, it can be isolating and depressing. Experts recommend that people with dementia find something else to do with their time that provides a sense of purpose, such as volunteer work, an exercise group, or regularly scheduled activities with friends such as knitting or scrapbooking. Carver frequently goes out to dinner with old coworkers to catch up on gossip. She also enjoys working in her yard.

"I wasn't going to sit on the couch covered up with an afghan watching Dr. Phil," says Phelps. "Maybe I can't learn anything new with this disease, but I've started a Facebook group called Memory People that provides a community for people with dementia, and I'm working on a book with a co-author and doing videos. Those are things in my long-term memory. And if I have a bad day—I don't even know what happened to me yesterday, for example—I don't have to work that day."

Bob Patterson had hoped to mentor young engineers at his old company, but taking on a volunteer position at an aerospace company was impossible since any kind of work in such a firm requires an active security clearance. So he now volunteers with the local Alzheimer's Association chapter and regularly goes on rounds with his doctor, Dr. Cummings, helping to teach young physicians about Alzheimer's disease.

"Bob's ability right now to talk about the disease gives him a special way of teaching people. He always says to me afterward, 'I feel like a teacher again. I really enjoy this,'" says Dr. Cummings. "Our work is one of our greatest sources of self-worth, and giving that up can lead to an erosion in self-worth. So there is every reason for people to continue to be engaged for as long as they possibly can, even when paid work is no longer an option."

## Pat Summitt's Daily Dementia Game Plan

- A good breakfast
- An exercise routine—she has worked out every day for over 40 years
- An hour or more in the morning working on memory exercises, puzzles, and word games, on her iPad (her son Tyler, a 21-year-old junior on the UT men's basketball team, constantly finds new ones for her)
- Lunch
- Meetings with her coaching staff
- Review of team performance on video
- Practice
- Unwind time
- Dinner
- More memory exercises on the iPad
- A good night's sleep

[Back to top](#)

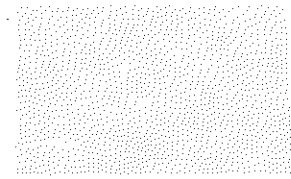
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## Chronic Illness and the Academic Career

*The hidden epidemic in higher education.*

By Stephanie A. Goodwin and Susanne Morgan

*One of the things I find difficult is that many of my colleagues do not know of my illness. I can only assume what they might think privately about my tiredness and various energy levels. I try to be "on" at work, but some days are better than others. . . . Even the people who do know that I have medical problems do not always get what that means. . . . It seems to be a losing battle. Trying to educate others rarely seems to make much of a difference, since I look fine.*

—contributor to *Chronicle of Higher Education* forum on chronic illness and academia

The academic quoted above is not alone; he or she is experiencing dilemmas familiar to the thousands of faculty and staff members who manage challenging academic careers along with the challenges of a chronic illness. Recent research by the Robert Wood Johnson Foundation indicates that more than half of Americans experience at least one chronic illness—a long-term health condition that persists over time, has recurring (often "invisible") symptoms, and requires long-term medical intervention. Aside from a 2008 National Science Foundation report in which 7.3 percent of science and engineering faculty members reported having disabilities, no large-scale studies have tracked chronic illness among faculty members. The National Science Foundation's data likely underestimate the percentage of faculty with disabling illnesses, given the challenges of documenting disability and the fact that the data were collected prior to changes that broadened the Americans with Disabilities Act (ADA).

In a 2003 article in *Academe*, Elaine Beretz called upon academic institutions to recognize the issue of chronic illness in the academic career. Precious little attention has been devoted to chronic illness, however. Given that the ADA now requires accommodation for disabling chronic illnesses, our academic institutions need to consider this issue more seriously. Despite the challenges they face, people with chronic illnesses can be highly productive, high-functioning members of the academic community. The key to their success lies in institutional policies and practices that ensure equity and support their productivity.

Fortunately, a subcommittee of the AAUP's Committee A on Academic Freedom and Tenure has recently developed a framework for policies on disability. The subcommittee's report, *Accommodating Faculty Members Who Have Disabilities*, lays out clear guidelines for providing accommodation for disabilities. While it represents a major step forward in its attempt to address the lack of clear policies at many institutions, the report does not address the stigma surrounding chronic illnesses.

Both faculty and administrators need to recognize the predicament faculty members may face when seeking accommodation for a disability. For a person with an intermittent or progressive disability, challenges include whether and to whom to disclose the condition and how much about the condition to disclose, how to assemble resources, and how to navigate career expectations. Published accounts and contributions to online forums from faculty members who have disabling illnesses, particularly the ongoing forum in the *Chronicle of Higher Education* cited at the outset of this article, help illustrate the issues involved.

### The Stigma of Chronic Illness

Unlike acute illnesses and injuries, such as the flu or a broken arm, chronic illnesses—lupus, Crohn's disease, multiple sclerosis, arthritis, diabetes, mental illness, and cancer, for example—require long-term management. Many chronic illnesses have highly variable symptoms that are largely invisible to others. The symptoms can cause fatigue and pain, affect cognitive function, create sudden emotional shifts, and even impair speech. Such symptoms may not be detectable to an outside observer, yet 20 percent of individuals with chronic illnesses report that their symptoms are debilitating or limit life functions significantly. Conditions that limit "a significant life function"—including many chronic illnesses—are covered under the ADA and its 2008 amendments. Our obligation to support colleagues who have chronic illnesses goes beyond an ethical responsibility and includes a legal responsibility to ensure an equitable workplace. Academic institutions generally have good policies for accommodating students with disabilities, but few models exist for parallel accommodation to promote the success of faculty members with disabling illnesses.

As Beretz notes, academic careers have both unique flexibility and unique standards for performance, which can create a dilemma for faculty members with chronic illnesses. On the one hand, tenured and tenure-track faculty members may have job flexibility not afforded to those who "punch a time clock." On the other hand, this flexibility is what can make academic careers so challenging: because academics can work anytime and anywhere, we often feel we *must* work all of the time and everywhere. Beretz dubs this aspect of academic culture the expectation of "heroic stamina." As many faculty members lament, the work seems never to end. Thus, the apparent flexibility of a faculty career belies the reality of an extremely demanding work life.

Since the publication of Beretz's article nine years ago, expectations for publication and grant funding have only increased, leading many institutions to raise the tenure bar to "superstar" levels. Accountability for both the quality and quantity of teaching has likewise increased. These increased expectations present complex challenges for faculty members with chronic illnesses, particularly when their symptoms

require frequent treatment or rest. Time is, of course, a finite resource. Pressures to spend more time on work necessarily impinge on other aspects of life. Hence, faculty members with chronic illnesses may face a zero-sum conflict between health and professional outcomes.

Many chronic illnesses are stigmatizing. People who are ill can encounter a range of negative reactions, including social avoidance, awkward social interactions, and negative stereotypes about physical, mental, or emotional competence. Such reactions can undermine the quality of life.

Because illness and disease are generally perceived negatively and often associated with death, interacting with those who are ill can elicit strong negative emotions and even fear about one's own mortality, as social psychologist Gilad Hirschberger documented in a 2006 article in the *Journal of Personality and Social Psychology*. These feelings can lead people to avoid social contact with faculty members who are ill, diminishing the quality of social life in the workplace as well as social and professional support. When people do interact with others known to be ill, they often are uncomfortable, avoiding eye contact and having difficulty communicating effectively. People can find it difficult *not* to focus on the topic of illness; however, constantly turning discussions toward illness can undermine a faculty member's opportunities for collegial discourse about scholarly topics. These reactions may further diminish the quality of social and professional life for faculty members who are ill.

Objective criteria notwithstanding, evaluations for tenure and promotion and annual and other reviews in the academic workplace necessarily involve subjective assessments of quality that can be affected by the stereotypes and prejudices associated with stigmatizing illnesses. To the extent that an illness affects (or is even perceived to affect) cognitive or mental function, faculty members with illnesses may be especially vulnerable to stereotyping and prejudice. For example, faculty members with neurological conditions that affect speech patterns, such as multiple sclerosis or neuropathy, may be perceived as less mentally sharp. Because status in the academic workplace can be defined by the *perceived* quality of one's work, faculty members with illnesses that are perceived to result in cognitive impairment may have to work doubly hard to earn the respect of colleagues and students, with implications for their professional lives.

Of course, the nature of the stigma associated with any given illness depends on the nature and severity of the illness. Illnesses and diseases perceived to be contagious, for example, elicit stronger negativity than diseases perceived to be noncontagious. Illnesses perceived to be the "fault" of the bearer elicit particularly negative reactions. Stereotypes about people with mental illnesses such as depression and addiction are both more negative and more socially acceptable than are prejudices toward those with certain physical health problems. Finally, the symptoms of some diseases are simply more socially awkward than others. James Lang, prominent author of memoirs about teaching, wrote in his 2004 book, *Learning Sickness: A Year with Crohn's Disease*, of his experience with Crohn's disease, which causes terrible diarrhea: "The final reason I did my best to conceal the disease from others [was] the fact that the primary symptom of this disease . . . is one that we don't discuss in contemporary American society."

Although others may also respond to those who are ill with sympathy or admiration, those positive responses often connote paternalism or pity, either of which can undermine the autonomy of people with chronic illnesses. Neuroscience research by social scientists Lasana Harris and Susan Fiske published in *Psychological Science* in 2006 suggests that we may quite literally dehumanize individuals who are disabled by not "seeing" them as human. James Lang wrote, "My primary fear was that any revelations I made about my condition would cause others to see me, first and foremost, as a diseased body. . . . But I was also afraid that even those people who might not find the diseased body repulsive might still brand me with that label. . . . I would be lodged in their minds as 'the guy with Crohn's disease.'" Pity and sympathy may be emotionally supportive to those who are ill, but such emotional support can undermine concrete professional support, such as mentoring and identifying solutions to professional challenges—that is, the types of support that *all* faculty members need to succeed.

Ironically, perhaps, the invisibility of chronic illness may elicit particularly problematic responses from others, especially when faculty work in a context where people are expected to be highly productive and have unlimited intellectual energy. Consider, for example, the faculty member who has fibromyalgia and experiences chronic pain and fatigue. In general, this condition is not well understood—even within the medical community. A lack of understanding of a disease may lead others to perceive those who have it to be hypochondriacs or malingerers. Looking fine on the outside but nevertheless experiencing real symptoms can put faculty members with illnesses in a challenging predicament when it comes to disclosing their conditions to colleagues, students, administrators, and others. The balance of costs and benefits shifts with each level of disclosure; department chairs, colleagues, and students require different decisions.

## To Disclose or Not to Disclose?

Faculty members with chronic illnesses may agonize over whether their conditions will lead to marginalization and stigma. "Only a very few of my colleagues know, however, because despite the rules in place protecting people with illness and disability, there is still a lot of subtle—and not so subtle—discrimination," wrote a participant in the *Chronicle* forum. The issue of disclosure is an important one. When an illness is not visible, deciding whether to disclose it may compound these stresses, particularly when symptoms come and go, as is true for many chronic illnesses. One participant in the forum wrote, "The big mountain for me right now is dealing with periods of being brain dead. . . . But sometimes, things pop up on a day when I can't remember my own phone number, and I still don't know how to completely deal with that."

Choosing not to disclose one's illness has several advantages when it comes to managing social relationships and the psychological risks of stigmatization. There is little risk that stigma will lead to stereotyping or prejudice when others do not know about one's illness, thus affording the faculty member who is ill a modicum of control over how he or she is perceived. Choosing not to disclose illness also provides privacy and control over when and where one must confront discussions about one's health, prognosis, and personal experience with disease. Having control over when to discuss one's illness may be particularly important to those with illnesses that are inherently unpredictable or accompanied by difficult-to-control symptoms.

These advantages notwithstanding, there may be costs associated with choosing not to disclose illness. First, others may misperceive illness-related behaviors in ways that are socially costly. For example, faculty members with illnesses characterized by fatigue or pain may be mistakenly perceived as uncommitted or overly negative by others who do not know about their illnesses. Some chronic illnesses also

affect speech and gait in ways that can lead others to believe they are under the influence of alcohol or drugs. Illnesses that are accompanied by symptoms of emotional lability—extreme shifts in mood, sudden onset of sadness or euphoria—may also prompt misperceptions that undermine professional and social relationships. In addition to the risk of others' negative misperceptions, those who choose not to disclose their illnesses may carry the added burden of "closeting" important information about themselves. Research on stigma and disclosure generally suggests that concealing a condition can be stressful, leading people to worry about being outed in public situations. Persistently thinking about one's condition and worrying about whether others know about it can take a toll on one's productivity as well; thinking about one's illness necessarily diminishes the mental resources available for scholarly endeavors.

Choosing to disclose an illness can, of course, resolve this stress and afford explanation for illness-related behaviors. In addition, disclosing one's illness can elicit support from one's colleagues and institution. Knowing about a colleague's illness may prompt faculty members and others to try to help in useful ways. Moreover, some disclosure is required to seek needed (and deserved) accommodations. Making the invisible visible creates opportunities to promote understanding and acceptance, with long-term benefits for the workplace climate and culture when it comes to supporting faculty members who have chronic illnesses.

Those who choose to disclose can be role models for others. "My own 'outing' of myself was a bit of a risk, but has turned out well," Elyn Saks, professor of law at the University of Southern California, wrote about her mental illness in a moving 2009 article in the *Chronicle of Higher Education*. "I am glad and relieved I no longer have to hide. And my story seems to be meaningful to people—it has helped people understand mental illness more and perhaps has led to a decrease in the stigma."

## Policy, Practice, and Reality

People who experience the effects of chronic illnesses are protected under the Family and Medical Leave Act and, because of its recent expansion, the ADA. The AAUP's new report on faculty members who have disabilities provides excellent guidelines for policy development that include recognizing a faculty member's responsibility for requesting accommodation, determining the essential functions of a faculty member's position, and identifying an interactive process for effective, reasonable accommodation. *An Agenda for Excellence: Creating Flexibility in Tenure-Track Faculty Careers*, a report of the American Council on Education supported by the Alfred P. Sloan Foundation, also includes recommendations that are appropriate for accommodating both caregivers and those with illnesses.

Nevertheless, faculty members with intermittent chronic illnesses might not immediately see themselves in the examples in the AAUP's report. The better-known disabilities highlighted in the report, such as ALS and autism, may not involve the intermittent fatigue and cognitive impairment that characterize many disabling chronic illnesses. Perhaps more fundamentally, people with disabling chronic illnesses may not recognize that legal accommodations are both available and relevant to them. Moreover, individuals with disabling illnesses may not know that their institutions will support accommodations if the pressure to perform looms large in conversations about tenure and promotion. A participant in the *Chronicle* forum said, "The major point is, there's a huge pressure to perform as well as well people, especially for those of us whose illness is not short-term. I can see the need from the employer's point of view. I just wish it weren't so hard."

Applying the model for caregiving to chronic rather than acute illnesses, as suggested by the American Council on Education's report, has similar limitations. Pausing the tenure clock for parental leave, for example, is routine at some institutions and possible at most. Slowing the tenure clock will help a person with chronic fatigue who is in the tenure process, for example, by extending the window of evaluation. Yet, while child care interferes less with academic work as families grow older, symptoms of illness may persist or increase for years. Hence, stop-the-clock policies do little to support faculty members across the career trajectory.

Moreover, the law and policies often do not match the realities of practice. Just as symptoms of chronic illness are invisible, existing policies at an institution may not be generally known. While the fine print in many of these policies may include individual disability and illness, faculty members may not know whether existing policies apply to their personal illnesses. Department chairs rotating into their roles may have no idea about the law, institutional policies, and local resources. A faculty member going through the complex and stressful process of diagnosis and treatment planning is unlikely to devote precious energy to researching legal issues.

Research on faculty experiences with caregiving responsibilities gives good reason to believe that many faculty members with disabling chronic illness may not take advantage of existing policies. Writing in *Academe* and *Change* in 2005, Pennsylvania State University researchers Robert Drago and Carol Colbeck asserted that family-friendly policies are seldom used because of biases against caregiving. Disclosing a disability to institutional officials is necessary in order to request accommodation, but as with parenting, a faculty member may choose to cope in secret rather than risk potential negative repercussions. Faculty participants in the *Chronicle* forum on chronic illness described the potential costs of disclosure and their efforts to avoid bias. "People have been pretty accommodating, but I am afraid to really let anyone know how difficult things have been/sometimes are, especially the neurological component of the disease. Somehow it seems a very bad idea to tell the people I want to tenure me eventually that some days I can't remember my own address or concentrate enough to read a page."

Caregiving and chronic illness have another similarity: both disproportionately disadvantage women. University of California, Berkeley, researchers Mary Ann Mason and Marc Goulden documented the impact of family responsibilities on women's careers in their *Academe* series "Do Babies Matter?" Many of the chronic illnesses now included in the ADA, such as lupus, Crohn's disease, and multiple sclerosis, are more common in women, and Robert Wood Johnson Foundation data suggest women are more likely than men to have multiple disabling conditions. To add to the challenge, recent medical advances mean that diagnosis often occurs earlier, around the time of the tenure process. Although diagnoses may help clarify the ambiguity of symptoms, the need to address a diagnosis may come at a bad time in one's career, creating problems akin to those women face when the tenure and reproductive clocks collide. The disconnect between policy and practice may also contribute to gender differences in career trajectories and success in the academy, further underscoring the inequity of existing policies.

Institutions have a responsibility to promote awareness and understanding of accommodation policies to ensure that faculty members with chronic and disabling illnesses can and do take advantage of those policies. Institutional efforts to enhance career flexibility should focus on transparency and cultural change as well as on designing and implementing appropriate policies. It should be clear that no harm will come to a faculty member who requests assistance and that department chairs will be supported as they accommodate their faculty. It should be clear also that an institution cannot include details about a faculty member's disability in the personnel file, as emphasized in the AAUP report.

It is time to implement bias-reduction strategies to improve the institutional climate for those with chronic illnesses. Like people of color, faculty and staff members with disabling chronic illnesses are protected by law; like gay men and lesbians, they must make difficult choices about disclosure. Open recognition that faculty members are not all white, and active inclusion of the words "sexual orientation" or "partner," have made a huge difference not only for those directly affected by prejudice but also for everyone else. Yet despite increased acknowledgment of faculty disability, discussions of diversity on our campuses seldom include disability and chronic illness.

Faculty and staff members experiencing disabling chronic illness will find multiple resources in their communities and on the web, but their workplace strategies may differ from those in nonacademic situations. A participant in the *Chronicle* forum said, "When I build my course syllabi I imagine and write up for myself a shadow plan for every single class period: an 'in case I am sick' plan that covers the material in some other way in case I can't make it or am on half power that day. I make technology my friend."

## Rethinking Heroic Stamina

A faculty member with a disabling chronic illness is in a predicament. Chronic illness is undoubtedly challenging. The social and psychological implications of disclosure are complicated. The policies that would guide an arrangement about accommodations are likely to be bewildering. In addition, faculty life is increasingly demanding for everyone.

Institutions have an obligation to examine their expectations for success and consider whether current assumptions about both physical health and scholarly productivity are reasonable. We need frequent conversations about how these expectations are shaping the culture and, therefore, the diversity of our campuses. Encouraging dialogue about these issues while promoting visible policies for accommodation would enhance the success of people with disabling chronic illnesses. Just as academia continues to drive away talented women, we may be driving out talented people with chronic illnesses or other disabling conditions. As a consequence, we may be losing valuable scholars and teachers who would broaden our discourse across the academy.

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Tags: Stephanie A. Goodwin, Susanne Morgan, access, Diversity

• Troubled Waters for the University of Minnesota

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The Merits of Emeriti >

ADVICE

## Mental Illness in Academe

By Elyn R. Saks | NOVEMBER 25, 2009

My students filled the room. They were interested and eager, unusually so, given that they were second- and third-year law students for whom the fear and trembling that came with the first year had long since faded. The course was "Advanced Mental Health Law." The day's topic: Billie Boggs. A street person who lived over a hot air vent in midtown Manhattan, she threw food at people who wanted to help her and chased them across the street. Her rantings and ravings seemed crazy to most of the students, and we were discussing whether she should be sent to a psychiatric hospital.

I heard myself speak, surprising myself by the steady sound of my voice as I tried to restore my attention to the group before me: "What if Billie Boggs were your sister—would you put her in a psychiatric hospital then?" Up shot the hands.

*Concentrate. These are your students. You have an obligation to them. Canceling class would be admitting defeat. But there are explosions in my head. They're testing nuclear devices on my brain. They're very little and they can get inside. They are powerful.*

I pulled myself together, enough to point to a young woman who spoke often in class. "I couldn't let my sister live like that," she said from across the classroom, which held the students in curved rows, like a giant palm before me. "I know my

sister. That wouldn't be her. There's one and only one of her—and that's the one before she got sick."

*Is she trying to kill me? No, she's a student. But what about the others? The voices inside my head, the explosions. What do they want? Are they trying to interdict me, to hit me with the Kramer device? I went to the store and they said "interdiction." Interdiction, introduction, exposition, explosion. Voicemail is the issue.*

I knew not to say those thoughts out loud. Not because they were crazy thoughts—they were every bit as real as the students sitting right in front of me—but I kept silent because others would think them crazy. People would think me as deranged as Billie Boggs.

*But I'm not crazy. I simply have greater access to the truth.*

"Good," I replied. "But why isn't it the case that your sister has two selves, the sick one you see now and the healthy one you've known all your life? Why should you get to pick which is real? Shouldn't your sister make that choice?" Up shot more hands.

*My brain is on fire! My head is going to explode right here, right in front of my class!*

"But isn't health always preferred to illness?" a bright-eyed young man countered. "We should prefer the healthy self."

Mercifully, the class ended. A law-school dean spotted me as I walked back to my office. He said I looked as if I were in pain. "Just a lot on my mind," I heard myself reply as I continued quickly down the hall. Keys out, door open, door shut. I crumpled into my chair and buried my face in my hands.



That was in September of 1991, and it was one of my worst such incidents. Ten years before, in my mid-20s, during my third psychiatric hospitalization, I had been given the diagnosis "chronic paranoid schizophrenia with acute exacerbation." My prognosis? "Grave." I was, in other words, expected to be unable to live independently, let alone work. At best I would be in a board-and-care, holding a minimum-wage job—perhaps flipping burgers—when my symptoms had become less severe.

That has not turned out to be my life. I am the Orrin B. Evans professor of law, psychology, and psychiatry and the behavioral sciences at the University of Southern California's law school; adjunct professor of psychiatry at the University of California at San Diego's medical school; and an assistant faculty member at the New Center for Psychoanalysis, where I am also a research clinical associate.

My schizophrenia has not gone away. I still become psychotic, as happened in class that day in 1991. Today my symptoms, while not as severe, still recur and I struggle to stay in the world, so to speak, doing my work. I have written about my illness in a memoir and much of the narrative takes place after I had accepted a tenure-track appointment at USC.

Barring a medical breakthrough of Nobel-Prize-winning proportions, I will never fully recover from schizophrenia. I will remain on antipsychotic medication and in talk therapy for the rest of my life. Yet I have learned to manage my illness. How? Do I have any words of advice for others who have a serious mental illness and are on the tenure track?

The first question you must ask yourself is whether to tell your chair and dean. I can think of arguments both in favor of that, and against.

One of the pluses would be the psychological benefits of not having a secret and being able to be open. More practically you might be able to get extra support, or formal accommodations under the Americans With Disabilities Act (ADA). You would serve as a model for other academics in your department and your students.

There are, of course, real pitfalls to telling, too. There is a tremendous stigma, still, around mental illness. People may believe, consciously or not, that you are unreliable or even dangerous, and they may fear you. They may think you can't do the work or your scholarship isn't good, even if it is very good. That may not be intentional on their part but can nonetheless have a big impact on your work life and your prospects for tenure.

My own tack was not to tell, except for my closest friends on the faculty. Even that limited disclosure served me well when I became ill—there were people I could turn to. And so a colleague, Ed, helped get me home and connected with my psychiatrist after my experience teaching class while psychotic. But I didn't want my situation to be known broadly. I work on a wonderful faculty, so it would most likely have worked out well anyway. But I didn't want to risk it.

I feel somewhat bad suggesting that not telling is the better course. Recall the scene in the movie *Milk*, when Harvey Milk, running for city council, says words to the effect of "I am running for government as a gay man, and I am proud." Having schizophrenia is not something I am proud of, but I am less ashamed than I used to be. Yet am I, in effect, telling people with mental illness to hide—to not be proud? Perhaps the message should be that, given the immense stigma, hiding is the prudent course but one should recognize there is no shame in having a mental illness.

Beyond that question, what steps can academics with mental illnesses take to make life easier for themselves? Some are steps that everyone with mental illness should take. First, learn about the illness you have—the typical signs, symptoms, and course. Many excellent sources are available. You may want to start with the *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR*. Psychiatric textbooks, e.g., Kaplan and Sadock's, can be helpful. I have also discovered excellent lay accounts of mental illness.

Second, understand how your illness affects you. What are your triggers? What are your early warning signs? What can you do to minimize your symptoms when they worsen—e.g., call your therapist, increase your medication, listen to music, exercise? Try to devise some techniques for your own situation. Some colleagues and I are studying how a group of high-functioning people with schizophrenia manage their symptoms. You are in the best position to determine what works for you.

Put a good treatment team in place. You need a therapist you can trust and can turn to in times of difficulty. Does he or she respond if you call in crisis? The same is true of a psychopharmacologist. Make friends and family members part of your team.

Sometimes your team can see early warning signs before you can. For instance, my closest friend, Steve, and my husband, Will, often identify when I am slipping. Will says I become quieter in a particular way that signals all is not well. It's a blessing to have such people in your life. Seek them out.

Structure your professional life in a way that works for you. Schedule your courses carefully. If your meds make you tired in the morning, try not to teach morning classes. Try to choose courses that you like to teach—you will do a better job and feel less stressed.

Two other things have been important to me professionally. First, I work hard. I go in seven days a week because I know I may have down times. (I also love what I do, so working is not a chore.)

Second, I try to maintain a professional demeanor. How does a person who becomes out of touch with reality do that? My approach has always been to ask myself, even in those moments where I think I have a special insight on the truth, whether others will think my beliefs are crazy. When I recognize that they will, I simply don't express my views, because I don't want to be thought crazy. My motivation to appear sane leads me to self-censor. If I am so tortured by my beliefs that I know I will not be able to keep quiet, I withdraw—I simply go home.

To circle back to the issue of disclosure and accommodations, many of the things you can do to help navigate the tenure process are things you can arrange without formally disclosing your illness.

For instance, scheduling courses is something that I imagine most departments would want to accommodate to the extent they are able. True, in an unfriendly department, you may need to invoke the ADA. If you need more time on the tenure clock, and your department is not well-disposed to offer it, the ADA might also come to your rescue.

All of that said, the balance of factors for and against telling may change once you do get tenure. Being open about your illness at that point exposes you to less risk and may have the advantages mentioned earlier—e.g. not having a secret, being able to serve as a role model for others in academe.

We also need to put a face on mental illness. Being open about one's own illness will probably do more good than all the laws we can pass.

My own "outing" of myself was a bit of a risk, but has turned out well. I am glad and relieved I no longer have to hide. And my story seems to be meaningful to people—it has helped people understand mental illness more and perhaps has led to a decrease in the stigma. I was lucky in that my law school accommodated my teaching needs without my having to invoke the ADA. My colleagues are supportive, and I no longer feel ashamed about needing their help.

The suggestions I have made here are all straightforward. There is, unfortunately, little engagement with the issue of mental illness and academic employment. I began a campus support group for professors with mental-health issues; one person showed up for the meeting. I don't know whether people fear confidentiality won't be maintained, are too busy, or, as professors, tend to "fly solo." In any case, the effort failed.

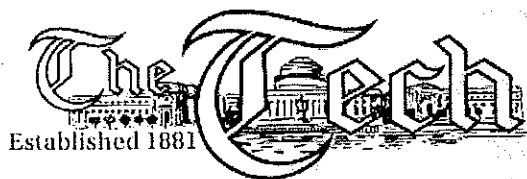
I hope that this article will help start a much-needed conversation about mental illness in higher education. (Indeed, it might be worthwhile to start an online support group for professors with mental illness. If you are interested, please contact me.)

Perhaps most important: Seek help when you need it. Mental illness is a no-fault disease like any other, such as cancer or diabetes. Help is available, but you need to ask for it. Don't let the threat of stigma deter you. You shouldn't have to suffer.

And you shouldn't allow mental illness to stand in the way of the wonderful contributions you are poised to make to your students and to your field.

*Elyn R. Saks is a professor of law, psychology, and psychiatry and the behavioral sciences at the University of Southern California's law school. She is the author of a memoir, "The Center Cannot Hold: My Journey Through Madness" (Hyperion, 2007).*

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### IN GOOD COMPANY: With tenure but not without troubles

Professor Belcher's experiences handling depression

By John W. Belcher

March 19, 2013

*As chair of the Undergraduate Association Student Support Committee and as part of continuing efforts to have open discussions about mental health on campus, I approached Professor Belcher about sharing his story in a public forum. He graciously obliged with this moving account. For me, Professor Belcher's piece is a reminder that mental health challenges do not discriminate — they can strike any person at any stage of life, but they need not be debilitating.*

*We are always looking for additions to the conversation about mental health at MIT, especially from faculty, who are particularly inspiring to students. Perspectives from all other members of the MIT community are also valuable. If you would be willing to share your story, please be in touch at [rileyb@mit.edu](mailto:rileyb@mit.edu) or [ua-wellness-chairs@mit.edu](mailto:ua-wellness-chairs@mit.edu). Note that for at least this semester there are also opportunities to publish through one of our partner organizations, ActiveMinds (see [web.mit.edu/activeminds/speakyourmind.html](http://web.mit.edu/activeminds/speakyourmind.html)).*

— Betsy Riley '14

UA Student Support Committee, Chair

The April 10, 2012 issue of *The Tech* carried an article by Grace Taylor '12 that I greatly admired: <http://tech.mit.edu/V132/N17/depression.html>.

It was about her depression and how she dealt with it. Her article inspired me to write an article on the same topic from a faculty point of view. Why? Because there is a stigma attached to having been clinically depressed and being on anti-depressants (as I am). That stigma is undeserved, and many people who should embrace such treatment instead avoid it. The more open people like Grace and I are about our experiences in dealing with depression, the more acceptance of those treatments there will be.

Near the end of the 80s, I was doing well. I had a stable marriage and two wonderful children, 8 and 11. I was a tenured Physics Professor, and Principal Investigator on an instrument on the Voyager Outer Planets mission to explore Jupiter, Saturn, Uranus, and Neptune, with a Neptune encounter coming up. Then I was diagnosed with a malignant melanoma. Its thickness was such that the chances it would metastasize were about 1 in 4. At that time, metastasized melanoma was a death sentence. I became hyper-vigilant about my health. A bit later, my then-wife and I started a major renovation project on our home, which did not go well. Because of the stress of that situation, and my own preoccupation with my health, our marriage collapsed. At the beginning of the summer of 1989, I was trying to figure out how to get divorced, what the custody arrangement for my children would be,

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how to prepare for the upcoming Neptune encounter in August, and because of the melanoma, still panicked about my mortality.

It was the perfect storm. My physical coordination went. My thought processes became disordered. I had a hard time, for example, simply reciting the Pledge of Allegiance. I became lethargic, and had a hard time getting out of bed in the morning. Sleeping all the time seemed like a good option. I retained a certain detachment as I was sinking into depression. "So this is what it feels like to become clinically depressed" I would say to myself. You cannot imagine what it is like unless you have been there. I have always had hyper-active thought processes—juggling a million things at once in my head. For the first time in my life I could no longer do that. I soon realized what "living in the day" meant. The best I could do each morning was make a sort of ranked list of the things I had to do to get out of the situation I was in, and then just forget everything except the one on the top of the list. Considering the full list for even a second was just overwhelming.

I started seeing a psychiatrist, who immediately diagnosed depression and recommended an anti-depressant. I was reluctant. I was raised in Texas and had a macho attitude. Real Texans don't take Prozac. But I sank further into depression and became less and less functional, and I realized that I had no choice. I had to do something. The well-being of my children depended in part on my being a reasonably functioning adult, and I was far from that state. So I started taking Prozac.

I know that there is a lot of popular press these days about anti-depressants not always being effective. Maybe that is true for some people, but nothing could be further than the truth for me. I could immediately see the difference in my mental processes two days after I started taking Prozac. I would describe it as like being in a room full of a huge amount of static background noise, that makes it impossible to think, and then someone walks into the room and turns the volume way down. I could think logically again. I could recite the Pledge of Allegiance. My physical coordination returned. Life became tolerable. Not great, but tolerable. That made it possible to slowly start dealing with the situation I was in.

These events took place more than 20 years ago. I am now happily remarried. My children are now 34 and 37. I am permanently on Prozac, as a prophylactic. Since I am a Texan and by definition should be able to whip depression all by myself, I have on two different occasions in the last 20 years gone off of Prozac. In both cases after about six months I lapsed back into clinical depression. I think once having been depressed, your body chemistry is such that you are more susceptible to a recurrence. Watching my descent into depression again those two times was really enlightening. I would do fine with a certain level of stress, but if one additional, not so big, stressor was added, I went from flying high above the waves to being right at sea level, and then even the slightest additional thing could cause me to go down. And it could be really fast, like stepping off a cliff. My body chemistry could change in a few days from more or less normal to clinical depression, with all the symptoms I mentioned above. So I just stay on Prozac. Luckily for me, it has always remained as efficacious as the first time I used it.

This term I am teaching in and co-administering 8.02, a class with 830 students, along with Peter A. Dourmashkin '76. We both know from long experience that it is statistically inevitable that a handful of our 8.02 students will get into trouble this term, with their own perfect storm, and that clinical depression is one of the possible outcomes. I am no doctor, but I do recognize the symptoms of depression. If a student comes to me with troubles of any kind, I always tell them to go to S<sup>3</sup> or Mental Health. In case depression is the cause of the trouble, I also share with them that I have been clinically depressed and am on Prozac, and that there is no shame in that.

We should all be thankful that we live in this day and age, when these medications and treatments are available. We should not avoid them. In the words of Grace Taylor, "It's not you, it's a disease."

*John W. Belcher is a Macvicar Faculty Fellow and a professor in the Physics Department.*

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## An Inappropriate Illness

Mark Grimsley on living and working in academe -- with bipolar disorder.

September 26, 2006

By Mark Grimsley

**T**wenty years ago I was hospitalized for acute mania and diagnosed with bipolar disorder and depression. It's the result of an abnormal brain chemistry that arbitrarily turns up a one's emotions. The disorder can be controlled with medication, in my case mainly depa episodes; and lamictal, an anti-depressant.

I decided early on that I would regard the illness as something I had, like a clubfoot, and acknowledge the illness openly in situations where to do otherwise would be to hide it and despite the fact that my initial experience with the stigma attached to mental illness was me (and was careless enough not even to hide his reason). Friends, thinking that my life was less than supportive.

Nevertheless, thanks to the fidelity of a few close friends and the lack of an alternative - life as one does a bad deal in poker -- I persevered. I started on my doctorate, completed track professor, published a successful first book, and received tenure a year early. In a decade after my diagnosis that it was easy to regard the diagnosis as more theoretical than thought of myself as asymptomatic. I didn't see a psychiatrist and took no medication.

A serious hypomanic episode nine years ago jolted me back to reality. In a hypomanic episode can even seem brilliantly charismatic, but those close to her or him know something is wrong. An episode can lead to full-blown mania amounting to a complete break with reality. The experience I could never be like other people, that I would have to own, really own, the fact of my illness. I took medication, seen a psychiatrist, and visited a therapist regularly ever since.

My department has a new chair, and a couple of days ago I sent him a memorandum sir chair for the past nine years. The memo gives an overview of bipolar disorder, details the suggested course of action to pursue if he ever has concerns that I might be having a mania.

- Approach me, outline your concerns, and ask for an explanation.
- If, after talking with me, you think it warranted, make sure that I call my therapist or psychiatrist.
- If I fail to do so, that is a bad sign, and you should ask me to go to the emergency room. My judgment and do as told. This has actually happened on three occasions and in each case I complied.



■ If I don't go to the emergency room, that means I'm psychotic, and you should treat it as a Medical Technicians] and have me taken to the ER by force if necessary. This has never occur theoretical possibility that has to be taken into consideration.

For potential hypomanic and depressive episodes, the first and second steps should suff one or the other of these people in the following order....

I then supplied complete contact information for my therapist (a clinical psychologist) ar

People often think that because I'm so up front about having bipolar disorder, that being easy thing for me to do. In fact, it scares me. I'm up front about it only because I'm con alternative. Being open with my colleagues, for example, populates the department with identifying unusual behavior as an artifact of the illness rather than erroneously attributi spirits instead of hypomania, for example. It enables me to ask for help when necessary from scratch. And it gives me a chance to combat, in a small way, the stigma that still a protected by tenure cannot summon the modest courage required for such an act, I do i

Because it's a biochemical illness, no different than any other chronic ailment, and beca record of being supportive, one might wonder why I feel any trepidation about discussin groves of the academy a place of unusual enlightenment, free of the prejudice one might

Well, no, not exactly. In the academy, nearly everyone knows better than to talk or act but people have their own way of reflecting the age-old stigma concerning mental illness:

*It's inappropriate.*

Sure, Grimsley can't help having manic depression, but does he have to talk about it?

I first encountered this perspective about 10 years ago when a friendly senior colleague illness. He had been around the academy long enough to fear that two things might hap university would be publicly supportive but would privately tell one another, "He's bonke would cripple my chances of ever landing a position elsewhere were I inclined to apply. letters of recommendation strong. But did you know he's nuts?"

Of course, "bonkers" and "nuts" probably would not be the terms they would use. Acade conveying their prejudices. And in this instance they could use my very candor against r doesn't show a sense of proper boundaries.

I was once told exactly this by a committee chair who was upset with me because he th certain matter. I've since come to see that, on the merits, he was right and I was wrong Trying to explain his strong reaction, my colleague blurted, "You might think you can jus want, but it isn't like that. You might think you can give people a memo about your bipo won't. That's not how people are." The last two sentences were such a non sequitur and a historian I have always respected, then and since -- that I realized that in his anger he ordinarily would have kept to himself, or at least away from me.

(And in fact he was wrong. When I did have a second manic episode, in 1999, my depa through for me like champs.)

On another occasion, I became interested in the idea of writing an article about the various sometimes erratic behavior and fierce speech of Union general William T. Sherman from narcissistic personality disorder; another implies that he had bipolar disorder. Most psychopathology, however, because they suppose that no one with a serious mental illness far in life, and certainly not to command the principal army that won the Civil War.

I approached an editor about such an article and he was enthusiastic -- except for the part of my own experience with bipolar disorder to help interpret the evidence.

Nowadays it is not unusual for historians to "place themselves in the narrative," as it's the roots of their perspective and so reject the misleading "god trick" of objectivity. But no article from me that did that. Not about a mental illness. It was, he conveyed, *inappropriate*.

A few years later I heard a scholar give a public lecture on visual literacy in which the fact was prominently. The audience of academics was wowed. This deployment of a physical disability.

I will give one final example. Because I am so up front about having bipolar disorder, I am an instructor and students, both graduate and undergraduate, who have been diagnosed with bipolar disorder. I give advice and reassurance. Others just want to talk.

One told me the story of what had happened to her when she was an adjunct professor. She had to miss several days because of a bout with clinical depression. When she returned to work, her colleagues and good rapport, were very concerned and wanted to know what had happened to her. She gave them information (I have discovered the same to be true when I discuss the illness with my own students). I called her into his office, explained at length that her disclosure was inappropriate, and

## BIO

Mark Grimsley (<http://history.osu.edu/people/person.cfm?ID=690>) is an associate professor at Ohio State University, where he specializes in military history. He is the author of several books, including *Military Policy Toward Southern Civilians, 1861-1865*, which received the Lincoln Prize in 1997. He has also received, including the Ohio State Alumni Distinguished Teaching Award, the university's highest award for teaching.



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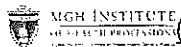
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# Worrying Enormously About Small Things

## How I survive anxiety and you can, too.

By Lisa T. McElroy

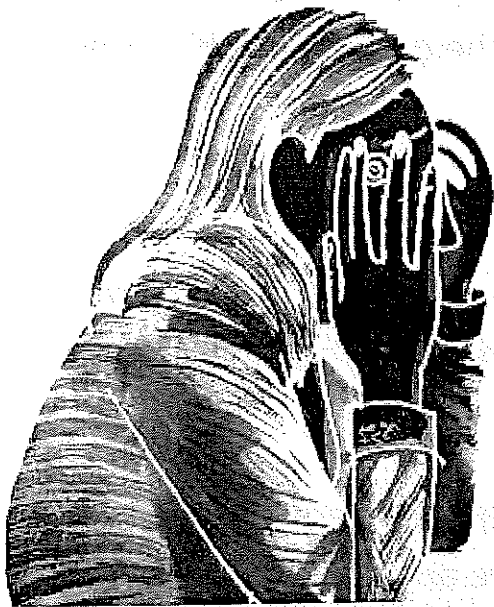


Illustration by Rob Donnelly

**HOW TO LIVE WITH ANXIETY AND PANIC ATTACKS** I sat in my tent in the Kenyan bush. It was nighttime. I was up late, in Kenyan time, at least. Back in the United States, it was afternoon. The afternoon that the tenure committee was meeting to vote on my future. As a university professor who had worked 13 years toward a goal of job security and respect from my peers, it all came down to this one conference room sit-down.

I listened to the lions roar. And I thought about walking outside the demarcated safari “safe area” into the night, into the bush, into the wild. Because, for me, the safe area was not safe. No place was safe. No place on Earth, I’d found, as I’d crossed hemispheres—west to east, north to south—trying to find one.

If the lions ate me, my family would get my life insurance. And then a tenure denial wouldn't matter. Having a back-up plan made me breathe easier.

It was a very long night. No email arrived by 1 a.m. I took a sedative and tried to sleep. At 5 a.m., I checked again. There it was. The email.

I had been voted tenure.

So many colleagues across the country had tried to tell me that getting tenure would be anticlimactic. It wouldn't matter, they said, because by the time the vote came around, I'd have a pretty good idea of whether I'd met the standards or not. I'd have a feel for the politics of my law school. I'd have heard through the grapevine which way the winds were blowing. The vote would not be a surprise.

#### Advertisement

But as I write today, a month after the board of trustees formally granted me tenure, six months after receiving that email after a very long Kenyan night, I can tell you that my colleagues and friends were wrong.

You see, for a person living with mental illness—in my case, a severe anxiety disorder—the kind of security and certainty that come with tenure are an exquisite relief. And that is because the six years it takes to get there are an exquisite kind of torture, of error. of talking oneself into being semicalm through the night to make it to the next day, the next class, the next faculty meeting.

Those years are full of lions around every bend. And so the lions in Kenya were familiar, if not friends. And considering letting them eat me alive? It couldn't be worse than the six-year job interview I'd just been through.

I started my academic career at a small, New England law school, where I was not on the tenure track but taught dozens of students for very little money. My children were small, my marriage was young, and my budget was tight. At night I obsessed over every student email and semester-end evaluation (was I really too demanding, as one student wrote? Did I really require too much reading, as another few complained?), but in front of a classroom, I was in my element. In fact, during the performance of

teaching a writing class, I forgot that I was different, that I was hiding a monumental secret for which the students would certainly think less of me. In front of a classroom, I felt strong. I felt powerful. I felt normal.

Standing up there, talking about law, I forgot about the rest of my life. The life I had been living since I was 19.

As a college sophomore, I had everything going for me. I was attending a top college. I had spent two quarters studying in Italy and London. I had wonderful friends.

But one morning, I woke up to find that I didn't want to wake up anymore. My heart beat at double its normal rate; I struggled to catch my breath; I felt dizzy and hot, then cold. I became scared to leave my apartment, then my bed. If I stayed under the covers, the lions could not get me.

It was that quick, the onset. And it was that bad. I went from carefree, happy, college-loving post-adolescent to suicidal inpatient in the course of about six weeks.

I would never fully recover.

For the next 25 years, doctors would try to figure out just what was wrong with me and just what would help. I was not schizophrenic, that they knew for sure. I was not bipolar, I did not have a personality disorder. I did not have OCD. But I had panic attacks, sometimes daily, sometimes 10 times a day, sometimes only once a week. When I wasn't panicking, I panicked that I would start panicking. I panicked that someone would find out that I was panicking. I panicked that the rest of my life would be a constant state of panic.

I panicked that I would never have a career, or a family, or a regular home outside of a hospital.

Somehow, I did. Somehow, I graduated college (albeit with extensions on papers and other accommodations), I finished a master's degree, and I got into the top law school in the country. When I missed class, I pretended that I had been up late studying and



and overslept. When I lost too much weight, I praised the cabbage soup diet. When I requested a special room in which to take an exam, I explained that I needed to walk around, and I didn't want to disturb others in a regular hall.

I graduated from law school with honors (I never knew how). I got married (I never understood why, given my belief that I was totally unlovable). I became a law professor (pretending every day to be confident, when I knew inside that I must really be a poser, a fraud).

Essentially, since I was 19, I have felt that the sixth sense is not ESP, but some sort of feeling that all is right with the world, or, à la Anne Frank, that people are essentially good. I don't have this sixth sense, and without it, I feel as disabled as I would if I were blind or deaf. Just as you can't explain to a blind person what "red" is, you can't explain to me what "peace" is. I feel like I am missing something essential that others use to function. The phrase "don't sweat the small stuff" is ludicrous, impossible for me, because my very existence is catastrophizing: worrying enormously about small things. If an administrator tells me that he met with one of my students today, I immediately become worried that I have done something wrong vis-à-vis the student. If someone disagrees with me in a faculty meeting (even collegially), I worry that something terrible will happen—perhaps the colleague will tell others how stupid I am, and the dean will call me in, and they will decide that I'm not cut out for the job (of course, with tenure, this is now unlikely, but until very recently I was convinced it would happen). If I teach a class of 40 students and 39 say on their evaluations that I'm a great teacher but one says (as one did this semester) that I am one of the "mean girls like in high school," I truly believe that the one critic can get me in trouble. And when a senior colleague reads a draft of a paper I've been working on and tells me she hates my quotes, draws frowny faces in the margins, and questions my terminology? It's cause for a long, long weekend of calls to the crisis hotline and emergency medication.

For 13 long years (six on the tenure track), I panicked, using close friends as yardsticks for what was real, what was imagined, what was possible, what was exceedingly unlikely. I panicked that I would get fired, then I would not be able to support my family (my husband is a stay-at-home dad), then we would be homeless, and then my

kids would die of malnutrition. It sounds crazy because it is. That's an anxiety disorder. A person like me, one who is mentally ill, truly believes it all, and obsesses about it for days, crying and losing sleep, breathing into a paper bag.

But I am lucky, as nonsensical as that word might seem in describing someone who lives life afraid. You see, now that I have tenure, I am one of the very, very few people living with mental illness who does not have to worry about what might happen at work tomorrow, which irate student or grumpy colleague or persnickety dean might decide that I am just not right for this job. I have a job for life. I can pay my mortgage. I can feed my children. I have health insurance. And I will never want for those things. I will never again have to lay careful plans to ensure that my family gets a payout from my life insurance.

Of course, that is not to say that I do not panic, even now, in the weeks after earning tenure. I fear confrontation, far, far more than others do, I think. I still have irrational thoughts (not surprisingly, about whether people are whispering that I do not deserve tenure), and I go to bed early every night, in part because I am exhausted from a day filled with worry, in part because I need to escape from the world, in part because I know I might wake up in the night, still thinking about the student who perceives me as a mean girl, still seeing those margin frowny faces in my mind. But I no longer need the yardstick, at least to measure the likelihood that I will lose all that is truly essential in life. I am safe. The lions cannot get me, or my family, or my job.

And so the summer of 2013 is the beginning of a new era for me. Instead of the hunted, I can become the camp guard, the one who patrols to keep the lions away from the tents where safari guests sleep. Though I know I will panic about how others will perceive my efforts, I seek to eliminate, or at least lessen, the terror on the tenure track. We in academia have come to accept people of color, gay people, and people with physical disabilities. We have acknowledged their difficulties, our (even subconscious) prejudices, and we have changed our views of their capabilities.

And people with mental illness? We in academia cannot see them. We do not know what lions stalk them. All we can do is try to create a safe place, a place where they can use us, their senior colleagues, as yardsticks for what is real in the world on the

ensure track. We cannot eliminate the terror. But we can support the people who live through it. From a place of safety, I will speak out in their honor.

## NEWS & POLITICS

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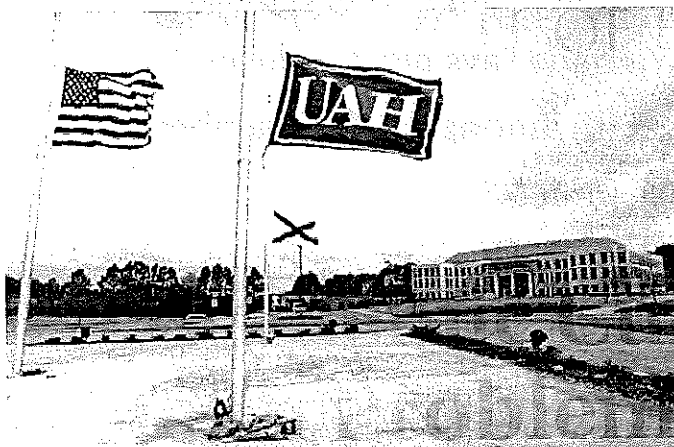
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### Bernie's Big Brother on the Vermont Senator's Failed Bid to Be High School President

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FACULTY

## In Academic Culture, Mental-Health Problems Are Hard to Recognize and Hard to Treat



Billy Weeks for The Chronicle

Flags are flown at half-staff at in memory of the professors killed last Friday at the University of Alabama at Huntsville. The shootings have fostered new debate over the pressures of academic life.

By Jennifer Ruark | FEBRUARY 16, 2010

The shooting deaths of three biology professors at the University of Alabama at Huntsville this month, allegedly by a colleague who had recently lost an appeal of her tenure denial, seemed to many observers to confirm the worst about faculty workplaces. In conversations on *The Chronicle's* Web site and elsewhere, people have seized on the killings as evidence that academic life today is a petri dish for

madness: The high stress of the tenure process, the pressures to be brilliant at research and teaching, the cloistered environment, the extent to which internal politics affects people's careers—it's a combination that could damage even psychologically healthy people.

Others object that every profession has its own stresses—look at medicine, police work, high finance. And, of course, many people point out that no amount of anguish over a derailed career justifies murder.

What does seem clear is that many aspects of the academic workplace get in the way of recognizing mentally ill employees and offering them the help they need.

"Academic culture really neglects issues of the psychological health of its workers," says David Yamada, a law professor at Suffolk University and founding director of the New Workplace Institute, a nonprofit research center. His particular expertise is bullying.

### **Less Reaching Out to Faculty Members**

While student mental-health awareness and services have improved, especially since the shootings at Virginia Tech, in 2007, Mr. Yamada says most colleges do not have programs designed to promote mental health among faculty members — "maybe because we haven't yet had a poster case for it."

In fact, we have. Though the culprits in high-profile homicides on American campuses have tended to be students, in 1992 an associate professor of mechanical engineering named Valery Fabrikant went on a shooting rampage at Concordia University, in Montreal, that left four people dead. The killer had a long history of abusive and threatening behavior at the university. An independent investigation of what went wrong, known as the "Cowan Report," found that, among other failings, administrators had dodged the problem, treating his misconduct "as an issue of academic quality."

Some things have improved in 18 years. The colleges considered most progressive by mental-health experts offer programs through their human-resources departments that include short-term crisis counseling. But there is less effort to communicate to faculty members than to students the availability of such services or the warning signs of psychological stress.

"Adults are fully capable of seeking counseling services independent of the university system," says Dennis Heitzman, director of the student-focused Center for the Study of Collegiate Mental Health, at Pennsylvania State University at University Park. "Faculty and staff don't have the same in-your-face kind of information that students get."

The damage that results from ignoring mental health among faculty members is very rarely murder, but it often borders on mayhem. Accounts abound of temper tantrums, distraught assistants, and departments paralyzed by the dysfunction of some key member.

### **Few Studies of Stress in Academe**

Little research exists on the mental and emotional stresses particular to higher education. But a 1987 study of one field that provides a nice control group, psychologists, found that academic psychologists reported significantly more job-related stress than did those in private practice, and that they approached "mildly pathological levels" of "overthoroughness and concerns about colleagues' evaluations."

In fact, according to data from the Standard Insurance Company, which provides employee health-care coverage for more than 1,000 colleges and universities, people in higher education are more likely than those in other sectors to go on disability for psychological reasons. "Seven percent of the claims for other professions we cover are primarily caused by mental or nervous disabilities," says Stanley Kulesa, assistant vice president for benefits, "but for college and university employees it's between 12 and 13 percent."

The problem is that the people in the direst need of help are the least likely to seek it on their own. "The faculty view of themselves is that they are the experts; they have a vested interest in appearing to be in charge," says one former

associate dean who dealt with several faculty members suffering from depression or substance abuse.

And colleagues of a troubled person, as distressed as they are by the behavior, may not recognize it as mental illness. Professors can go days or weeks without substantial interactions with one another. Once they do interact, "there's a pretty high tolerance for eccentricity, and the sense that really smart people are often quirky," says David R. Evans, vice president for academic affairs and dean of faculty at Buena Vista University, who writes for *The Chronicle's* On Hiring blog.

"Where's the bright line between nonconformism and madness?" he asks.

Spirited debates, questioning, intellectual pushing—these are hallmarks of academic life. "But there's a difference between that and chest poking, name calling, slamming things down, throwing things across the room," says Cathy Nicholson, director of human resources at the University of Arizona's health-sciences center. "Sometimes people have a hard time distinguishing and don't want to be the one who draws that line in the sand."

Ms. Nicholson says staff members are likelier to report bad behavior than deans or department chairs are. "They're concerned about ruining someone's career," she says.

And the rules for managing faculty behavior are not clear. "Collegiality and collaboration" may be described in a faculty manual as sought-after values, but they are rarely formal criteria for promotion and tenure. There's a reason for that, Mr. Evans says: Historically, "collegial" has too often been code for "just like us."

"Excellent people have been driven out because of cultural differences," he says.

## **Eccentricity vs. Danger**

The question becomes, "What's just someone being themselves, and what's dangerous?" says Darci Thompson, director of Life&Work Connections, a counseling service at Arizona. After shootings left four people dead on her campus in 2002, the university developed a system in which a threat-assessment team made up of people from different divisions of the university can gather quickly if someone expresses serious concern.

"Different people may be used to a different level of behavior," says Ms. Thompson. Including people from outside the department on the team "helps provide a broader picture."

Another problem is that academic administrators rarely have any training as managers, as the "Cowan Report" pointed out. What's more, it said, "the majority of academics who become academic administrators ... are accustomed to work in a milieu where the exercise of authority is considered in bad taste."

Groups like the American Council on Education, the Association of American Colleges and Universities, and the Council of Independent Colleges have tried to solve that problem in recent years, offering workshops for department chairs that cover topics like conflict management and dealing with underperforming faculty members.

"This year I anticipate that the conflict-management sessions will touch on the issues raised by Huntsville," says Richard Ekman, president of the Council of Independent Colleges. "Academic life is not what it used to be. The rising tensions of faculty life and what that means for professional development—there should be more attention to that."

Even once they've determined that a faculty member has a mental-health problem, many department and division heads think there is little they can do about it. It is illegal to remove someone for simply having a mental illness, and



"people don't want to be accused of violating someone's rights," says Mr. Evans, of Buena Vista.

"'Academic freedom' gets thrown around a lot, and people often feel that tenure protects people no matter what," says Arizona's Ms. Nicholson. "That's not true. Tenure doesn't give you the right to act in a way that makes people uneasy."

But Lawrence White, a vice president and general counsel of the University of Delaware, says public colleges in particular should make sure they have strong reasons for expressing the belief that an intervention is necessary. "You incur legal risk if you're engaging in casual supposition," he says.

In 2008 a federal appeals court sided with a public university's decision requiring a tenured art professor, who showed "bullying" behavior, to submit to a psychological evaluation in order to remain employed. (In the case, the practice is now being challenged on different legal grounds.)

Better, says Ms. Nicholson, is to avoid having to give such an ultimatum, by educating people about mental health and informing employees and their managers of available treatment in a supportive, respectful way.

The danger of insisting that the Huntsville killings had nothing to do with academic culture, says Mr. Yamada, of the New Workplace Institute, is that colleges and universities will miss an opportunity to take faculty members' mental health more seriously.

*Libby Sander and Brad Wolverton contributed to this article.*



# R E P O R T

## ACCOMMODATING FACULTY MEMBERS WHO HAVE DISABILITIES

(JANUARY 2012)

The report that follows was prepared by a subcommittee of Committee A on Academic Freedom and Tenure and approved for publication by the parent committee.

### I. Introduction

In recent years the rights and responsibilities of students who have disabilities have received considerable attention. Professors routinely accommodate students with a front-row seat in class or extended time on an examination. Faculty members who have disabilities have received far less attention. This report from a subcommittee of Committee A on Academic Freedom and Tenure addresses practical and legal issues concerning faculty members who have disabilities.<sup>1</sup>

In higher education, as in American society generally, one still often encounters the stereotype that disability necessarily equates with diminished professional competence. With suitable accommodations, a faculty member who has a physical or mental disability may perform equally well as, or even better than, a colleague who does not have a disability. As an expert on these issues observed in 2009, "So far, professional groups have not fully incorporated disability in their diversity agendas."<sup>2</sup>

In promoting access and success for faculty members with disabilities, the AAUP highlights the significant talents of an important group, promotes a diverse professoriate, and expands role models for students.

A faculty member may have a disabling condition at the time of his or her appointment or may develop a disability later. The onset can be rapid or gradual. A disability may be a physical or mental condition, and a faculty member may have multiple disabilities. Comprehensive data are not readily available on the incidence of disability among the American professoriate.<sup>3</sup>

Federal, state, and local laws establish basic requirements for the protection of faculty members who have disabilities. Federal laws include the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. While this report incorporates some core legal principles and expands upon them for the academic setting, it is not a substitute for legal advice tailored to particular situations.

The report presents a general discussion of faculty and disabilities followed by three appendices: (a) ideas for an institutional policy and procedure to address faculty disabilities, (b) guidelines from the Modern Language Association on recruiting faculty members who have disabilities, and (c) a discussion of disability legal issues and faculty performance authored by Laura Rothstein, professor of law at the University of Louisville.

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1. The subcommittee was originally created to review Regulation 4(e) of the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*, "Termination Because of Physical or Mental Disability." On the basis of the subcommittee's advice, Committee A voted to withdraw this regulation. It invited the subcommittee to express its views on accommodating faculty members with disabilities, and this report responds to the invitation. Members of the subcommittee express their appreciation to Laura Rothstein (University of Louisville) and Jack Bernard (University of Michigan) for valuable insights and assistance.

2. Carrie G. Basas, "Lawyers with Disabilities Add Critical Diversity to the Profession" (paper presented at the Second National Conference on Lawyers with Disabilities, Washington, DC, June 2009); available at <http://www2.americanbar.org/calendar/2nd-National-Conference-on-Employment-of-Lawyers-with-Disabilities/Pages/AttendeeInformation.aspx>.

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3. The National Science Foundation (NSF) tracks, among other data, the careers of persons with disabilities who hold doctorates in the sciences and engineering. The NSF reported that in 2008, out of 269,400 science and engineering doctorate holders with appointments in higher education, from chancellors to teaching assistants, approximately 19,700 (or 7.3 percent) had a disability (<http://www.nsf.gov/statistics/wmpd/pdf/tab9-22.pdf>). As to the general lack of data, regulations limit the kinds of queries employers may make of applicants regarding disability.

## II. Faculty Members Who Have Disabilities

Brief profiles of three prominent professors who have written about their own situations illustrate the rich and important contributions of faculty members with disabilities.

Temple Grandin is a professor of animal science at Colorado State University. Her field of expertise is livestock behavior and handling. She has authored more than three hundred articles and several books. In addition to her academic work, Dr. Grandin consults widely with industry on animal facilities. She has designed half of the livestock-handling facilities in the United States. At the age of three, lacking language, she was diagnosed with autism. Today she describes herself as thinking in nonlinear, associative "photorealistic pictures." This approach allows her to analyze an animal's perspectives differently from other experts who might think verbally or in patterns. Among the most notable autistic individuals in the country, Dr. Grandin received an honorary doctorate from the University of Illinois and has been profiled in major media and a feature-length HBO film.<sup>4</sup>

Stephen W. Hawking serves as director of research at the Centre for Theoretical Cosmology at Cambridge University. He has published over 180 scientific papers, and his books include three for popular audiences. Shortly after his twenty-first birthday, Hawking was diagnosed with the incurable motor neuron disease ALS. On his website he describes the early difficulties he and his new bride had in finding suitable housing while he was a fellow at Cambridge. He inquired at several points whether the college could provide assistance and was told none was available. He and his family lived in several homes. One move was necessitated by his loss of the ability to climb stairs:

By this time, the College appreciated me rather more, and there was a different Bursar. They therefore offered us a ground floor flat in a house that they owned. This suited me very well, because it had large rooms and wide doors. It was sufficiently central that I could get to my University department, or the College, in my electric wheel chair. It was also nice for our three children, because it was surrounded by

garden, which was looked after by the College gardeners.<sup>5</sup>

Today Dr. Hawking requires round-the-clock care. He speaks through computer voice synthesis of typed words, spoken at the rate of about fifteen words per minute. By his account the system works well but has an American accent. His medical condition has progressed more slowly than that of many people with similar diseases.

Kay Redfield Jamison is the inaugural Dalio Family Professor in Mood Disorders at the Johns Hopkins University School of Medicine. Her areas of expertise include mood disorders, suicide, the role of mood in artistic and scientific creativity, and the relationships between positive and exuberant mood states and pathological ones. She has received seven honorary degrees and a MacArthur award. In two books she wrote in the 1990s, Dr. Jamison described her personal struggle with manic-depressive illness and her suicide attempt.<sup>6</sup> As the university's alumni magazine summarized, "It is in her combination of science, humanism, and personal openness that Jamison has made her mark. She hadn't planned it that way, but as Roethke said . . . 'The edge is what I have.' And in *An Unquiet Mind* she wrote, 'The Chinese believe that before you can conquer a beast you first must make it beautiful.'"<sup>7</sup>

These three outstanding professors serve merely as proxies for the thousands of faculty members with disabilities who, every day, contribute to advancing higher education. From chemistry professors who are blind to recreation faculty who use wheelchairs, they challenge preconceptions about the limitations created by disabling conditions.<sup>8</sup>

## III. Steps in Accommodation

Most institutions have well-developed procedures for managing the needs of students who have

4. See "Conversations from Penn State: Temple Grandin," [http://conversations.psu.edu/episodes/temple\\_grandin/](http://conversations.psu.edu/episodes/temple_grandin/). Dr. Grandin's web page is located at <http://amar.colostate.edu/~grandin/>.

5. "Prof. Stephen Hawking's Disability Advice," on Stephen Hawking's official website, <http://www.hawking.org.uk/index.php/disability/disabilityadvice>.

6. *An Unquiet Mind: A Memoir of Moods and Madness* (New York: Knopf, 1995) and *Night Falls Fast: Understanding Suicide* (New York: Knopf, 1999).

7. Dale Keiger, "Prose Born of Pain," *Johns Hopkins Magazine* (April 2000), <http://www.jhu.edu/jhumag/0400web/22.html>.

8. Some institutions with strong programs in serving students who have disabilities also attract faculty members who have disabilities. At Gallaudet University, internationally known for educating deaf and hard-of-hearing

disabilities.<sup>9</sup> Procedures for managing faculty accommodation requests, while used less frequently, are equally important. Sample procedures for handling faculty disability issues appear in Appendix A.

*Raising the Issue of Disability.* If a faculty member believes that a disabling condition impedes his or her discharge of professional responsibilities, it is incumbent on the individual to bring the matter to the attention of appropriate institutional authorities. Someone who has an obvious disability, such as blindness or a missing limb, need not provide notice. Unless a disability is obvious, the institution must not initiate discussion with an individual about a potential disability. This is a fundamental requirement—that the faculty member alone has the right and responsibility to raise the issue of disability.

Once a faculty member indicates, whether orally or in writing, that he or she has a disability, a structured process involving several steps begins. If it has not already done so, the institution must identify the “essential functions” of the faculty member’s position. The nature and extent of the disability may be examined. Most importantly, the individual and institution must engage in good-faith discussions about how best to accommodate the limiting conditions. The following sections address the steps in accommodation.

Throughout the process, institutional authorities must respect the individual’s privacy interests and confine information about the matter to those with professional responsibility for addressing or resolving it. Under federal law, information about a disability must not be included in the faculty member’s regular personnel file.

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students, about half of the total faculty and staff is deaf or hearing impaired.

9. The many ways in which faculty members can support students who have disabilities are beyond the scope of this report. We simply note the option of including a statement on the course syllabus such as the following: “My goal is to make this course accessible to all students. If you think you need an accommodation for a disability, please let [the appropriate party—for example, ‘me,’ ‘the disability services office,’ or ‘the associate dean’] know at your earliest convenience. Some aspects of this course—the assignments, the in-class activities, and the way I teach—may be modified to facilitate your participation and progress. The sooner you make [the appropriate party] aware of your needs, the sooner we can determine appropriate accommodations. I will treat any information you provide about your disability or accommodations with respect.”

This separation limits the possibility that the information might improperly and negatively influence decisions regarding the individual.

A search committee should only raise disability when asking all candidates whether they may need an accommodation in the application or interview process. If the candidate does need accommodation, the institution should be thorough and gracious. One anonymous candidate has described a positive experience:

Interviewed in wheelchair. Perfect interview for disabled candidate. I never experienced this before. Driver who picked me up knew what to do. Hotel was on main street downtown so I could go out. (As opposed to hotels where you are captive in your room as you can only access parking lot.) Room was easy to navigate with enough space to get in bathroom, move around bed, desk. Department made my “accessibility” a non-issue by planning. Lectern for job talk was already at perfect height. Lunch and dinner were easy to get to and wheelchair friendly. Department already knew where accessible toilets were. (The worst is when you ask and they say: Oh, gee, I guess we’ll have to find “one of those” for you!) All around class act. And no, I didn’t get the job.<sup>10</sup>

The Modern Language Association’s advice on interviewing candidates with disabilities is reprinted as Appendix B.

*Defining Essential Functions.* A faculty member who has a disability needs to accomplish the essential functions of his or her position, either with or without an accommodation. Essential elements common to all faculty positions would be requirements such as

- mental agility, including capacity for analysis and evaluation;
- mastery of a complex subject;
- initiative;
- creativity;
- strong communication skills;
- ability to work cooperatively with others; and
- ethical behavior.

If an institution has a standard teaching load, fulfilling the load could be an essential function. Research and service expectations may also be essential functions at many institutions.

Beyond essential functions common to all faculty appointments, a particular position may have its own

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10. “Universities to Love,” *Academic Jobs Wiki*, [http://academicjobs.wikia.com/wiki/Universities\\_to\\_love](http://academicjobs.wikia.com/wiki/Universities_to_love).

requirements. The demands of an academic position that involves performing on violin with the music department's faculty string quartet differ from those of a position in theoretical mathematics. Apart from obvious differences in subject matter, the violinist needs the capacity to play in public quartet performances.<sup>11</sup> The mathematician, in contrast, might require sophistication in highly specialized computer functions. The hours each devotes to working directly with students would likely differ. Such variations shape the essential functions of particular faculty positions.

At what point should a university define the essential functions of its faculty positions? Some institutions define essential functions for the purpose of, and in the process of, posting and eventually filling open positions. Such institutions routinely include the essential functions in the vacancy announcements, typically listed as "required qualifications." Other institutions have proceeded more comprehensively, establishing essential functions for all faculty positions. But some colleges and universities, perhaps most, have not undertaken to define the essential functions of their faculty positions. We encourage appropriate faculty bodies, including departments and faculty governing bodies, to define the essential functions of faculty positions, subject to review by administrative authorities.

Articulating essential functions provides a useful framework for professional responsibility and reduces for all faculty members the prospect of arbitrary charges of neglect of duties or incompetence.

Nonessential functions are those that may be absorbed by other people. Leading student field trips may, for example, be an essential function for a geology professor. Driving the van, however, may be a nonessential function that someone else could perform. Nonessential functions are also called marginal functions.

A position's essential functions provide the starting point for considering a faculty member's request for

accommodation on the basis of a disability. Briefly stated, an individual who has a disability must perform the essential functions, either with or without an accommodation. If a faculty member requests an accommodation and the institution has not previously defined his or her essential functions, the institution must promptly perform the analysis. The analysis at this point is only of the *position*—what are its core responsibilities, without regard to the individual situation prompting the analysis. That is, the essential functions of a position are independent of any individual who may hold it.

If an institution has defined essential functions of faculty positions before a professor requests an accommodation, the institution avoids possible charges that it manipulated the analysis to the detriment of the individual. Written position descriptions and detailed vacancy announcements provide evidence of essential functions. Faculty members should lead the effort to create fair descriptions of essential functions of faculty positions.

*Establishing the Nature and Extent of the Disability:* An individual who has a disability may first raise the issue in a request for leave for medical treatment or rehabilitation. Unless a disability and the limitations it creates are obvious, the institution may need information about the nature and extent of the disability. The goal is an objective analysis of the individual's condition and capacity to fulfill the position's essential functions.

The faculty member typically seeks documentation from his or her own health-care provider or other appropriate professional.<sup>12</sup> The institution may write to the professional to share a description of the essential functions of the individual's position. The institution might solicit from the professional specific information, such as the diagnosis, the expected duration of and prognosis for the disabling condition, the individual's general limitations and specific capacity to perform the essential functions, and suggestions for possible accommodations.

The institution may have an appropriate professional of its choice review the documentation. If after review the institution requires additional information, it may seek further guidance and clarification from the professional who provided the original documentation.

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11. What if a violin pedagogue, not involved in the faculty string quartet, lost the use of her hands? Her teaching career would not necessarily come to an end. Some professors teach instrumental music using only oral advice to avoid having their sound and interpretation unduly influence their students. As another option, the professor could have an assistant demonstrate on the violin during students' lessons. The issue is whether the faculty member can perform the essential functions of her position in violin instruction, either with a reasonable accommodation or without the assistance of an accommodation.

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12. Consider the situation of a faculty member who has attention deficit disorder or attention deficit hyperactivity disorder. She may furnish documentation about her condition from an expert in learning disabilities, although the expert may not be a "health-care provider" as that phrase is commonly understood.

for the faculty member. In unusual situations, central issues may remain unresolved even after further exchange with this professional. The institution may take the final step of arranging for a health-care provider or other appropriate professional of its choice to evaluate the faculty member's capacity to fulfill the position's essential responsibilities. The faculty member should not bear any expense for an evaluation by a health-care provider or other appropriate professional selected by the institution.

It is useful to bear in mind that the term disability has a technical, legal meaning. It does not cover all limiting conditions.<sup>13</sup> A bad cold and a broken leg are not disabilities because they are transitory and typically last fewer than six months. A disability is a long-term physical or mental impairment that significantly impedes an individual in performing an activity that is of central importance to life.<sup>14</sup> Central activities include

13. Questions often arise on the legal status of alcohol abuse and illegal drug use. Federal law covers past or current alcoholism as a disability. Illegal drug use is not a covered disability. Federal law, however, protects individuals undergoing treatment for drug addiction. An institution may prohibit faculty and staff from consuming or possessing alcohol or illegal drugs on campus. It may also prohibit faculty and staff from arriving at work impaired by alcohol or illegal drugs. See, for example, the Drug-Free Schools and Communities Act of 1989, 20 US Code §1011(I).

14. Here is the statutory definition:

Sec. 12102. Definition of disability. As used in this chapter:

(1) Disability. The term "disability" means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities

(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited

### Selected Resources

- Abram, Suzanne. "The Americans with Disabilities Act in Higher Education: The Plight of Disabled Faculty." *Journal of Law and Education* 32 (2003): 1-19. Detailed discussion of cases involving faculty members who won their lawsuits.
- ADA National Network Centers. <http://www.adata.org>. A group of ten regional resource centers providing information and guidance on disability issues for individuals and groups. Funded by the US Department of Education and the National Institute on Disability and Rehabilitation Research.
- American Bar Association Commission on Disability Rights. <http://www.americanbar.org/groups/disabilityrights.html>.
- DiNardo, Lawrence C., John A. Sherrill, and Anna R. Palmer. "Specialized ADR to Settle Faculty Employment Disputes." *Journal of College and University Law* 28 (2001): 129-52.
- Job Accommodation Network. <http://www.askjan.org>. Online and telephone resources for structuring accommodations for many types of disabilities in many employment settings. Sponsored by the US Department of Labor.
- Lee, Barbara A., and Judith A. Malone. "As the Professoriate Ages, Will Colleges Face More Legal Landmines?" *Chronicle of Higher Education* (November 30, 2007): B6-B8.
- Lee, Barbara A., and Peter H. Ruger. *Accommodating Faculty and Staff with Psychiatric Disabilities*. Washington, DC: National Association of College and University Attorneys, 1997.
- Rothstein, Laura. "The Employer's Duty to Accommodate Performance and Conduct Deficiencies of Individuals with Mental Impairments under Disability Discrimination Law." *Syracuse Law Review* 47 (1997): 931-86.
- . "Higher Education and Disability Discrimination: A Fifty-Year Retrospective." *Journal of College and University Law* 36 (2010): 843-74. Primarily addresses student disability.
- Rothstein, Laura, and Julia Rothstein. *Disabilities and the Law*. Eagan, MN: Thomson West, 2009. Section 3.26.
- US Department of Justice. "Americans with Disabilities Act ADA Home Page." <http://www.ada.gov>.
- US Equal Employment Opportunity Commission. "The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities." <http://www.eeoc.gov/facts/performance-conduct.html#alcohol>. Discussion of alcoholism and illegal use of drugs.
- . "Disability Discrimination." <http://www.eeoc.gov/laws/types/disability.cfm>.
- US Office of Personnel Management. *Alcoholism in the Workplace: A Handbook for Supervisors*. [http://www.opm.gov/employment\\_and\\_benefits/worklife/officialdocuments/handbooksguides/alcohol/index.asp](http://www.opm.gov/employment_and_benefits/worklife/officialdocuments/handbooksguides/alcohol/index.asp).

sleeping and eating, for example, and also bodily processes such as function of the immune system and normal cell growth. A disability may be continuous, episodic, or intermittent. Intermittent disability would include cancer in remission, if when active the disease would be an impairment. The statute, regulations, and case law all elaborate on the definition. Appendix C offers additional insight on the issue of who is disabled.

The Americans with Disabilities Act protects a person *without* a disability if the employer treats him or her as impaired. This is informally known as the statute's "regarded as" clause. Caution requires that we avoid making comments suggesting that faculty members or others have a mental or physical problem.

*Discussing Accommodation.* Once a faculty member has raised a disability issue, the essential functions of the position have been identified, and the nature and extent of the disabling condition have been established, the process of discussing and structuring accommodations begins. Federal law mandates an interactive process. The faculty member and the department are typically well informed about possible adjustments that would permit the individual to succeed in meeting the essential functions. Experts from a campus disability-support office or human resources often provide valuable assistance. They may have considerable experience in translating diagnoses into pragmatic considerations and suggesting accommodations.

An experimental scientist with a disabling back condition might need higher laboratory countertops. A professor who loses his eyesight might need a reader and a specially equipped computer. The options are nearly infinite, and a reasonable solution should be selected to fit the circumstances. The essence of the interactive process is that each party solicits and considers the other's suggestions. The solution must be effective and reasonable, and the institution must be prepared to defray reasonable expenses.<sup>15</sup>

Sometimes persons who have disabilities privately and quietly bear the burden of making their own

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to, functions of the immune system; normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment.

15. As Appendix C discusses, feasibility, cost, and effect of program adjustments are related factors. The institution must reach a reasonable, justifiable conclusion in balancing competing considerations.

accommodations. They should, however, be encouraged to avail themselves of the institution's resources, to which they have a legal right.

Hope Lewis, professor of international law at Northeastern University, has stressed the value of dialogue between employers and people who have disabilities: "In addition to technical compliance with the law, employers and providers of public accommodations should talk with vendors, colleagues, disability professionals—and most importantly, people with disabilities themselves—about ways to make work and social environments accessible and inclusive for all."

Professor Lewis is severely visually impaired. She uses large-format bold-faced notes for lectures and presentations. Her research tools include computer speech software, specially adapted handheld devices, and a scanner.<sup>16</sup>

Sue Titus Reid is a noted criminologist and professor of public administration at Florida State University. She has mobility impairments resulting from a degenerative condition exacerbated by several car accidents. Dr. Reid uses a special type of chair in her office and classroom and receives accommodations in course assignments, class size, and class schedules.<sup>17</sup> She disclosed her condition at the time of her appointment to FSU and was, by her account, reassured that it would pose no problem. After changes in both administrative personnel and her need for accommodation, she resorted to the courts to enforce her rights.

A law professor who is profoundly deaf works with an interpreter in interacting with his students and colleagues. The professor, Michael A. Schwartz, has explained, "The interpreter is not my interpreter. He is OUR interpreter. He belongs to all of us!"<sup>18</sup>

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16. American Bar Association, Commission on Mental and Physical Disability Law, "Lawyer Spotlight: Professor Hope Lewis" (December 2010); available at <http://www2.americanbar.org/disability/Lists/Lawyer%20Spotlights/Previous%20Spotlight.aspx>.

17. American Bar Association, Commission on Mental and Physical Disability Law, "Lawyer Spotlight: Professor Sue Titus Reid" (August 2010); available at <http://www2.americanbar.org/disability/Lists/Lawyer%20Spotlights/Previous%20Spotlight.aspx>.

18. American Bar Association, Commission on Mental and Physical Disability Law, "Lawyer Spotlight: Professor Michael A. Schwartz" (February 2008); available at <http://www2.americanbar.org/disability/Lists/Lawyer%20Spotlights/Previous%20Spotlight.aspx>.

Some accommodation requests may be inherently unreasonable. These might include, for example,

- demand for the creation of a part-time position with a full-time salary,
- refusal to serve on committees with specific individuals,
- removal of the department chair,
- refusal to teach undergraduates, or
- refusal to participate in department meetings.

Even some of these requests, though, should be evaluated in the context of the position's essential functions. If travel to campus for meetings is problematic, perhaps a faculty member could participate remotely. If attendance at department meetings is not an essential function, then an individual might be excused entirely.

The US Department of Labor sponsors the Job Accommodation Network, which provides online resources and telephone advice on workplace accommodations.<sup>19</sup> Structuring reasonable accommodations calls for creativity, flexibility, and open dialogue. A successful accommodation redounds to the mutual benefit of the institution and the faculty member.

*Addressing Evaluation and Performance Issues.* In past decades, the first female or minority professor in a department may not have received effective mentoring and evaluations.<sup>20</sup> Faculty members who have disabilities should not suffer the same fate. They should be evaluated on the same schedule and basis as their colleagues who are not disabled.<sup>21</sup> Those responsible for the evaluation should take care to be candid and to avoid paternalism. Evaluators should not assume a faculty member's disability is the cause of any performance problems. Like any other faculty member, a faculty member who has a disability may fail to fulfill professional responsibilities. The basis for discipline or dismissal must be the individual's performance. Institutions must avoid speculating on medical causes for performance problems. If a faculty

member appears to be exhibiting mild dementia, for example, the evaluation should address the problematic behavior and its consequences. Such an evaluation might appropriately state: "You did not meet your class three times last semester and did not provide an explanation. Students report that your lectures are disorganized. You failed to turn in grades by the deadline. These problems harm current students and impede the department's efforts to attract more students to the major."

While some might criticize such an approach as insensitive, it focuses on performance and addresses core institutional concerns. Were the evaluation to suggest, for example, that "some early-stage dementia may be contributing to your problems," it could constitute disability discrimination. Were the evaluation to urge the individual to consider retirement, it would likely run afoul of age discrimination laws.

To protect the dignity of faculty members unable to fulfill their professional responsibilities, institutions are well advised to seek negotiated resolutions.<sup>22</sup> Failing a mutually satisfactory resolution, in serious cases the institution should proceed under Regulation 5 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.

A faculty member who has a disability is entitled to the same due-process protections as a faculty member who does not have a disability. Equity requires use of the standard criteria and procedures. In special circumstances, however, an institution might wish to offer an abbreviated process on a voluntary basis. This could be appropriate if, for example, the subject matter of the proceeding were of a highly sensitive personal nature. An abbreviated process might involve a representative standing in for the individual or mutually agreed-upon stipulations of facts about the faculty member's performance. The choice between the full process and an abbreviated one must be left entirely to the individual.

Conceivably, a faculty member facing dismissal might for the first time indicate that he or she has a disability and might request an accommodation. In its discretion, the institution may proceed as discussed above, obtaining

19. See <http://askjan.org>.

20. See, for example, *Kunda v. Muhlenberg College*, 621 F.2d 532 (3d Cir. 1980), a case involving a female faculty member who was not advised about requirement of advanced degree.

21. For sound faculty evaluation guidelines, see *Good Practice in Tenure Evaluation: Advice for Faculty, Department Chairs, and Academic Administrators* (Washington, DC: American Council on Education, American Association of University Professors, and United Educators Insurance, 2000); available at <http://www.acenet.edu/bookstore/pdf/tenure-evaluation.pdf>.

22. In severe situations, an institution may require a faculty member to undergo a fitness-for-duty medical evaluation. The health-care provider performing the evaluation should receive information about the essential functions of the individual's position. Merely requiring such an evaluation does not, as a matter of federal law, constitute discrimination on the basis of disability. State laws may also bear on such examinations.



an objective opinion from the individual's health-care provider or other appropriate professional about the nature and extent of the disability. The information may form the basis for discussion of accommodations that would allow the faculty member better to fulfill his or her professional responsibilities, thus postponing or eliminating the need for dismissal proceedings. But an institution bears no legal obligation to accommodate retroactively a disability of which it was unaware. The faculty member who first raises a disability issue during a dismissal proceeding may be entitled to a reasonable accommodation in order to participate effectively in the proceeding itself.<sup>23</sup> Appendix C offers a fuller legal analysis of the dismissal of faculty members with disabilities.

An institution must avoid requiring psychological counseling or medical treatment as a condition for a faculty member with a disability to retain his or her position. Mandatory counseling or treatment is inconsistent with using performance as the sole basis for judging professional fitness.

23. Students facing disciplinary procedures sometimes raise an issue of disability for the first time during the discipline process. Should the same pattern occur for a faculty member facing dismissal or other severe sanction, the institution might examine how it has handled comparable student disability accommodation requests.

**IV. Conclusion**

A final cautionary note is in order. It is important to avoid casual use of words such as "disabled" or "handicapped" unless circumstances warrant the technical application of such terms. Similarly, the speculative or pejorative labeling of an individual as having a mental or physical challenge perpetuates negative stereotypes and may even create a presumption that the speaker regards the individual as having a disability.

The academy welcomes and supports qualified faculty members with disabilities, who deserve the same opportunities and protections as their colleagues who are not disabled. ■

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**Appendix A:**

**ADA Policy for Faculty Members Who Have Disabilities**

Institutions are well advised to develop policies explaining the rights and responsibilities of faculty members who have disabilities. Useful elements in an institutional policy might include

1. the need for a faculty member to identify himself or herself as having a disability, unless the disability is obvious, such as blindness or a missing limb;
2. the officer to whom a faculty member should provide notice of a disability;
3. the faculty member's responsibility to provide documentation from an appropriate professional and the institution's right to review the documentation, interact with the professional, and, in rare situations, request another examination;

4. the determination of essential functions of faculty positions;
5. the interactive process for identifying an effective, reasonable accommodation;
6. the designated officer who makes the decision on accommodation;
7. how and where records are maintained (with no medical information in the personnel file); and
8. the appropriate internal route, if any, for the faculty member to challenge the accommodation decision.

The following policy is adapted from one developed at Indiana University. It is offered merely for purposes of illustration.



### Policy and Procedures for Accommodating Faculty Who Have Disabilities

The Americans with Disabilities Act (ADA), the [state] Civil Rights Act, and [name of institution] policy prohibit discrimination in employment and educational programs against qualified individuals with disabilities. It is the policy of [institution] to provide reasonable accommodations or academic adjustments when necessary. These accommodations and adjustments must be made in a timely manner and on an individualized and flexible basis.

It is the responsibility of the individual student, staff member, or faculty member to identify himself or herself as an individual with a disability when seeking an accommodation or adjustment. The individual bears the responsibility to document his or her disability with an opinion from an appropriately licensed professional. The individual must also demonstrate how the disability limits his or her ability to complete the essential job functions or limits participation in the university's programs or services. Medical documentation will be kept confidential.

Students, staff, and faculty members must maintain institutional standards of performance.

#### Faculty and Academic Appointee Accommodation Request Procedures

1. To receive an accommodation under the ADA, a faculty member must file an application with the [role and contact information of designated officer]—for example, "provost," "dean of faculty," "human resources director," "director of disability support services". The faculty member should include documentation of his or her functional limitations.
2. After reviewing the documentation and the facts of each request, the [designated officer] will determine

if the faculty member is eligible for accommodations under the ADA.

3. The [designated officer] will then meet with the faculty member and his or her chair or dean to develop a plan of reasonable accommodation. Through discussion the participants will seek to
  - a. identify the essential and marginal functions of the position (if not already done);
  - b. discuss the faculty member's specific physical or mental abilities or limitations as they relate to the essential functions along with potential accommodations; and
  - c. identify the accommodation that best serves the needs of the faculty member, his or her students, and the university.
4. The [designated officer] may require the faculty member to provide medical documentation in order to verify a condition or to provide further information that will assist in identifying reasonable accommodations. In most cases documentation is necessary to determine the appropriate accommodation. The [designated officer] may seek advice from third-party experts when necessary.
5. It is the responsibility of the [designated officer] to determine the reasonable accommodation in a particular case.
6. The reasonable accommodation shall be documented by placing a copy of the accommodation plan in the faculty member's personnel file and in the Office of the [designated officer]. To the extent necessary, this documentation should include a long-term plan for dealing with changes in the faculty member's limitations over time. Medical documentation shall be retained only by the [designated officer] and shall be kept confidential and separate from the faculty member's personnel file.

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## Appendix B: Disability and Hiring: Guidelines for Departmental Search Committees

*The guidelines below are reprinted with permission from the Modern Language Association (MLA). These guidelines may be useful in faculty recruitment and also in hosting visiting lecturers or other academics who have disabilities. The guidelines are available on the MLA's website at [http://www.mla.org/dis\\_hiring\\_guidelines](http://www.mla.org/dis_hiring_guidelines).*

The diverse, talented, and well-qualified group of job seekers includes some candidates with disabilities. Disabled people are still significantly underrepresented in higher edu-

cation. Disability is a positive value that can add to intellectual and cultural diversity on campus. Further, disabled faculty members provide valuable role models for students.

You may find the following guidelines helpful when you are filling positions in your department.

1. Construct job advertisements that actively welcome applications from all candidates, including candidates with disabilities.
2. Treat all job candidates with dignity and respect.
  - Disability includes a wide range of people: wheelchair users, deaf people, blind people, and many others, such as people with HIV/AIDS, cancer, depression, diabetes, and chronic pain.
  - Keep in mind that many disabilities are not visible.
3. Affirm that faculty members should be protected from discrimination and are entitled to reasonable accommodation in places of employment.
  - You should familiarize yourself with the Americans with Disabilities Act (ADA) and the Canadian Charter of Rights and Freedoms.
  - You should not make any pre-employment inquiries about a disability or the nature or severity of a disability. Without referring to disability in particular, you may ask questions about a candidate's approach to performing specific job functions (see guideline 7).
4. Address requests for sign language interpreters or other accommodations for the interview. Many accommodations are inexpensive and easy to provide; many are free.
  - Interviews should be conducted in accessible space.
  - For interviews that occur at the MLA Job Information Center, the MLA will provide interpreters or other accommodations. To make a request for access, the candidate should contact the MLA convention office.
  - For interviews away from the conference site—this includes hotel rooms or suites at the convention—or on your campus, your school is encouraged to provide interpreters or other accommodations. Procedures vary by school; ideally the costs and arrangements will be handled by an official outside your department. Some of the units and individuals that might be involved in this conversation include your institution's ADA Compliance Officer, Equal Employment Opportunity Officer, Human Resources Officer, or disability services office.
5. All candidates should be provided beforehand the names of all the people who will be present at the interview.
6. At the interview, strive to make the candidate feel welcome.
  - Establish a collegial atmosphere by introducing interviewers to the candidate and to any support personnel (sign language interpreters or personal assistants). For interviews at the convention, wear your MLA badge.
  - Offer to shake hands. Shaking with the left hand is okay. For those who may prefer not to shake hands, a welcoming touch on the shoulder or elbow is acceptable.
  - Give the candidate a few moments to determine a comfortable setup. A visually impaired person may appreciate a verbal description of the layout, including where people are sitting in relation to the candidate. A wheelchair user may want to transfer to a chair.
  - If a candidate has a sign language interpreter, he or she will want the interpreter to be clearly visible and positioned near the interviewer.
  - Address the candidate directly, even if sign language interpreters or personal assistants are present.
  - If the candidate has trouble understanding you, enunciate clearly, but do not shout.
  - If the candidate uses a wheelchair, do not lean on the wheelchair when talking to her or him. The wheelchair is part of the candidate's personal space.
  - If the candidate has a service animal, do not touch the animal or make noises to it without permission.
  - It is fine to offer assistance, but be prepared to have that offer declined.
7. When conducting the interview:
  - Follow the same basic format with all candidates, recognizing that some candidates may require additional time.
  - Encourage candidates to demonstrate their expertise, achievements, and individuality.
  - Identify yourself when speaking. This is particularly helpful for candidates with visual impairments.
  - Communication styles may differ. For example, candidates with speech impairments should be given time to complete their thoughts.
  - It is illegal to ask about the nature or severity of a candidate's disability or the accommodations he or she would require in the workplace. Some candidates may make the choice to discuss their disability status. The negotiation of specific



workplace accommodations is not part of a job interview.

- All job candidates should be given an opportunity to discuss their pedagogical and research strategies.
8. When organizing itineraries of campus visits:
- All candidates appreciate campus visits being designed humanely.
  - Take into account the rigors of travel.
  - Plan the schedule with adequate time for breaks and a good night's rest.
  - Keep in mind that some people have difficulty walking up steep hills or over long distances. Plan transportation options accordingly.
  - If you entertain the candidate off campus, be sure that restaurants and their bathrooms are accessible.
9. When scheduling interviews on campus:
- Know the location of the following: disabled

parking spaces; ramps and other accessible entrances; accessible restrooms, water fountains, and telephones; elevators. Ensure that the interview rooms are accessible. It is important for wheelchair users to be able to get into the room and to be able to move around.

- If the candidate is to teach a class, make sure such features of the classroom as its technology, platforms, blackboards, and lecture podiums are accessible. Some candidates sit while teaching or lecturing.
10. Advocacy
- Many schools are centralizing disability services; consider suggesting this to your provost in the interest of creating a more welcoming and just academic community. Be prepared to provide information on disability resources for faculty members.

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## Appendix C: Litigation over Dismissal of Faculty with Disabilities

BY LAURA ROTHSTEIN

*The first three paragraphs below are adapted and updated from Laura Rothstein, "Disability Law and Higher Education: A Road Map for Where We've Been and Where We May Be Heading," Maryland Law Review 63 (2004): 101, 107, 122 (footnote references omitted). They are reprinted with Professor Rothstein's permission and are followed by her further analysis prepared for this subcommittee report.*

The elimination of mandatory retirement, the difficulty of measuring performance for higher education faculty, and a shaky economy have combined to create an increasing number of challenges by faculty members claiming discrimination on the basis of disability. Faculty members have brought challenges in the context of employment and tenure, as well as promotion decisions. Although this development is part of a larger societal issue, the uniqueness of employment in an academic setting has required institutions and the courts to address these issues in an unusual context.

Factors requiring attention include the elimination of mandatory retirement and the challenges in measuring and documenting performance deficiencies. Uncertainties about the economy and whether retirement benefits will be sufficient have caused more people to delay retirement. The higher education setting gives aging faculty members

the opportunity to remain connected to a community of colleagues. This opportunity is particularly compelling considering the benefits of having an office and access to support services, such as long-distance telecommunications, clerical support, technology support, computer upgrades, and even travel funding.

An increasing number of cases involve faculty claiming disability discrimination. In these cases, the institution of higher education generally has prevailed because of its ability to prove that the adverse employment decision was a result of factors other than the disability. These cases illustrate, however, the importance of establishing essential functions and fundamental requirements for a program at the outset, and documenting deficiencies on a careful and ongoing basis. Although many institutions of higher education have improved their faculty evaluation procedures and

practices, those that have not may find themselves in messy and lengthy disputes.

It is not only faculty members reaching retirement who raise disability issues. The faculty member who becomes depressed, develops substance abuse problems, has cancer, or has some other condition that either affects (or is perceived potentially to affect) performance may raise concerns regardless of the seniority of the individual.

#### WHO IS "DISABLED"?

To be protected under disability discrimination law, the individual must be substantially limited in one or more major life activities, have a record of such a limitation, or be regarded as having such a limitation. The ADA Amendments Act of 2008 and the 2011 Equal Employment Opportunity Commission Regulations make it clear that the definition of who is covered is to be broadly interpreted. The result is that in most cases, a dispute about discriminatory treatment should not focus on whether the faculty member meets the definition of "having a disability." Instead, the focus should be on whether the institution has established the essential requirements of the program and whether the faculty member is otherwise qualified to carry those out. This assessment should take into account reasonable accommodation and should involve an interactive process.

The case of *Wynne v. Tufts University School of Medicine* provides guidance about judicial deference. Although the case is in the context of an accommodation for a student, its reasoning is relevant to faculty settings as well. The court held that in cases involving modifications and accommodation, the burden is on the institution to demonstrate that relevant officials within the institution considered alternative means; weighed their feasibility, cost, and effect on the program; and came to a rationally justifiable conclusion that the alternatives would either lower standards or require substantial program alteration.

#### WHEN WILL MISCONDUCT OR DEFICIENCIES BE IN QUESTION?

For both tenure-track and contract faculty members, an annual evaluation process can raise issues of misconduct and deficiencies. These issues can also arise when granting raises, sabbaticals, or research support. Post-tenure review, more common on campuses today, may also highlight concerns. And, of course, promotion and tenure decisions are occasions for evaluation of performance. A termination for cause at any point may result from claimed misconduct or deficiencies.

Deficiencies that may raise concern could include the inability to teach a full load. Student evaluations (even with their limitations) might raise concerns about the faculty member's performance in class. For example, several students might comment that the faculty member seemed frequently impaired in the classroom—perhaps by a controlled substance or perhaps because of a psychological or health condition. The faculty member may not turn in grades in a timely manner or meet with students according to expected norms. The faculty member may not meet publication or other scholarship and productivity expectations. Or there may be off-the-job conduct, such as drunk driving or inappropriate behavior, that reflects poorly on the institution. A faculty member may simply not be able to interact with other colleagues in required committee and other service responsibilities.

Whenever there is a deficiency (or perceived deficiency), one of the questions that must be answered is whether the expectations were clearly stated in terms of employment or whether they were implied. Does the faculty member's appointment letter state what is required in terms of teaching, research, and service? If not, what documents are incorporated by reference? Did the faculty member have reasonable notice of deficiencies? These questions are important for establishing the "essential functions" of the position.

#### REASONABLE ACCOMMODATIONS

The reported judicial decisions involving faculty members generally present fact patterns where the faculty member's performance was deficient, and the courts rarely discuss whether reasonable accommodations might have been provided. The types of accommodations that should be considered in appropriate cases, however, might include adjustments in teaching times, leaves of absence (paid or unpaid, depending on institutional policy), extension of the "tenure clock," reduction in committee responsibilities for a semester, and other adjustments.

The challenge in finding good guidance on appropriate accommodations is that faculty members do not produce widgets, and establishing the exact requirements, expectations, and norms is quite challenging. While institutions have improved in developing consistent policies and expectations, faculty members may have been appointed, tenured, renewed, and promoted under old rules that have been changed.

#### WHAT OTHER LEGAL ISSUES MUST BE CONSIDERED?

In addition to disability discrimination requirements under the Americans with Disabilities Act, the Rehabilitation

Act, and state law, several other laws must be considered when looking at faculty performance deficiencies that might be related to health or disabling conditions. The Family and Medical Leave Act provides for leave if certain conditions are met. Privacy policies under the Health Insurance Portability and Accountability Act allow faculty members to protect certain information, although the faculty member may need to waive that privacy (at least for limited purposes) in a dispute where the faculty member is claiming discrimination or claiming that the deficiency was related to the disability. And, of course, university internal personnel policies, including all faculty review procedures, must be followed.

The faculty member who can show that policies were followed inconsistently may have a claim of discrimination. For example, routinely granting extended leaves or special teaching accommodations for faculty members who do not have disabilities, but not for those who do, could be a violation of discrimination laws.

#### **FACULTY DISMISSAL**

In the context of a faculty dismissal process where there may be an issue of disability, while it is humane to take into account the potential stigma and privacy issues of a faculty member, it would probably violate the Americans with Disabilities Act and the Rehabilitation Act to have a mandatory process for termination based on a health or disability issue. While it might be appropriate to provide a faculty member an option of addressing the issue outside of the ordinary termination process, it is problematic to require it.

The increasing number of faculty members with disability issues should highlight for institutions the importance of developing consistent and appropriate procedures for termination and for addressing disability issues in other employment decision making. ■



The following reference entitled *Nuts and Bolts: Establishing and Operating a College or University Ombuds Office* was originally written as a guide to establishing an ombuds office in a college or university setting and was part of the University and College Ombuds Association (UCOA) Handbook. It was largely written by Dalene Hoppe and Barry Culhane, and was later updated by Mary Lou Fenili, Maile Sagen and Tom Sebok. It is recognized that the IOA is composed of a broader cross section of more than just academic institutions. Recognizing this, *Nuts and Bolts* is included as a resource to the Endangered Ombuds Office project as it contains many useful instructions that are applicable to both academic and non-academic ombuds offices. The original language was maintained for historical purposes unless information was no longer accurate, additional information was needed, or copy editing was required.

**Part I**

**NUTS AND BOLTS: ESTABLISHING AND OPERATING A COLLEGE OR UNIVERSITY OMBUDS OFFICE**

Table of Contents

	Page
<b>Understanding the Ombuds Role</b> .....	2
Definition .....	2
The Value of an Ombuds Office to a College or University .....	2
Cornerstone Principles .....	2
Ombuds Functions and Skills .....	3
<b>Establishing a College or University Ombuds Office</b> .....	6
Getting Started .....	6
Reporting Structure .....	6
Constituencies Served .....	6
Physical Location .....	6
Selection Process .....	7
Characteristics of an Ombuds .....	7
Staffing .....	7
Helpful Basic Training and Continuing Education .....	8
<b>Operating a College or University Ombuds Office</b> .....	9
Making the Rounds on Campus .....	9
Assisting Target Populations .....	9
Records .....	10
Assessment and Evaluation .....	12
Accountability .....	14
Communicating With the Campus: Marketing the Ombuds Office .....	14
Technology .....	17
Multiple Roles .....	17
<b>Exhibits</b> .....	18-29

# UNDERSTANDING THE OMBUDS ROLE

## DEFINITION

A college or university ombudsman is authorized by an institution of higher education to confidentially receive complaints, concerns, or inquiries about alleged acts, omissions, improprieties, and/or broader systemic problems within the ombudsman's defined jurisdiction and to listen, offer options, facilitate resolutions, informally investigate or otherwise examine these issues independently and impartially.

## THE VALUE OF AN OMBUDS OFFICE TO A COLLEGE OR UNIVERSITY

Conflict is inevitable and can be expensive. The normal alternatives for dealing with conflicts are administrative hearings, formal grievances, or lawsuits. All of these options drain institutional resources. The opportunities for conflict to occur within educational bureaucracies are endless. Some examples include: perceptions of fairness related to the application of policies, evaluation criteria; money and other kinds of limited resources; priorities; appropriate uses of power; interpretations of rules; cultural differences; values, attitudes, and perceived insensitivity.

Institutions establish a campus Ombuds Office with the hope that the Ombuds Office will resolve at least some of these issues faster, cheaper, and more equitably than either grievance procedures or litigation. In simple terms, it is more expensive for administrators to spend their time attempting to resolve disputes than it is for an ombuds. When the intervention of an ombuds results in student or employee retention, it is usually a "win-win" outcome for the institution and the individuals involved. When the intervention of an ombuds results in the avoidance of litigation, financial savings can be considerable and negative publicity for the institution is avoided.

Ombuds services also "humanize" institutions for many constituents. The existence of an Ombuds Office sends the message that the institution cares about its people and recognizes the value of providing informal dispute resolution for members of the campus community. Because Ombuds Offices have no authority to sanction individuals or make official decisions or pronouncements of "right or wrong" for the institution, disputants who use an Ombuds Office are empowered to decide for themselves how their concerns will be addressed.

## CORNERSTONE PRINCIPLES

The Ombuds Office provides confidential, impartial, informal and independent assistance to individuals and groups who are experiencing conflicts or who have complaints.

### Confidential:

Ombuds maintain the privacy of the identity of visitors to the office as well as the content of their conversations. With a visitor's permission, the Ombuds Office may contact individuals within the institution whose help is necessary to resolve a problem. Ombuds Office staff do not testify in formal proceedings. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no reasonable option other than disclosure. Whether this risk exists is a determination to be made by the Ombudsman.

### Informal:

All members of the college/university community have a right to consult voluntarily with the Ombuds Office. The office has no authority to make decisions on behalf of the institution and maintains no official college/university records.



## **8. Making Appropriate Referrals:**

Ombuds sometimes refer individuals to other offices or services on campus to assist with problem resolution.

Skills related to the Making Appropriate Referrals function:

- \* Familiarity with the institutional structure, policies, and procedures
- \* Familiarity with roles and functions of key offices and individuals
- \* Familiarity with campus and community resources
- \* Ability to clearly explain and describe all of the above

## **9. Clarifying Next Steps:**

Before visitors leave the Ombuds Office, the ombuds clarifies with the visitor what, if anything, will happen next and who will be responsible for taking those actions.

Skills related to the Clarifying Next Steps function:

- \* Identifying the appropriate ombuds role in a particular situation
- \* Communicating the appropriate ombuds role to the visitor
- \* Asking the visitor to restate her/his understanding of what will happen next
- \* Articulating agreements the ombuds believes have been made with visitors

## **10. Communicating With Others:**

With the agreement of the visitor, the ombuds may contact a specific party or parties to gather information relevant to a visitor's concerns or to invite another party to participate in the resolution of the concern.

Skills related to the Communicating with Others function:

- \* Diplomacy skills (e.g., poise, tact, wisdom)
- \* Clarifying with visitors and with other parties what information will be disclosed, with whom, and by when
- \* Honoring agreements with visitors and other parties about disclosure

## **11. Mediation:**

Mediation provides a structure allowing disputing parties to talk with one another and identify mutually acceptable solutions.

Skills related to the Mediation function:

- \* Appropriate mediation training (where many specific skills can be developed)
- \* Ability to recognize when mediation is/is not appropriate for the ombuds

## **12. Group Facilitation:**

Facilitation assists groups to identify issues and make decisions.

Skills related to the Group Facilitation function:

- \* Appropriate facilitation training (where many specific skills can be developed)
- \* Ability to recognize when facilitation is/is not appropriate for the ombuds

## **13. Data Collection and Analysis:**

Ombuds often collect data regarding the types of problems individuals face within the organization. Using this data, ombuds identify patterns that the ombuds share with organizational decision-makers. This data collection and analysis function is performed while maintaining the confidentiality of all visitors to the office.

Skills related to the Data Collection and Analysis function:

- \* Ability to collect and maintain data
- \* Sound analytical skills that allow an ombuds to synthesize data and spot trends or systemic

problems within an organization

## **ESTABLISHING A COLLEGE OR UNIVERSITY OMBUDS OFFICE**

### **GETTING STARTED**

Once the decision to establish an Ombuds Office is made, the process of communicating that decision and searching for the best person(s) to fill the position is crucial to the effectiveness and success of the office. The rationale behind the decision and the expectations of the office should be communicated widely and well. All campus constituent groups should be involved in the search process. If the announcement of the new office is issued directly from the president, the communication itself becomes a statement of support by the administration for the ombuds.

Ombuds often need to be familiar with the institutional structure, policies, procedures, etc. in order to help visitors to better understand how the institution functions and help them avoid frustrating "dead ends" as they pursue resolution of their concerns. Resource files, including up-to-date policies, procedures, directories, catalogs, handbooks, schedules, etc. are a necessary part of any college or university ombuds office for exactly this reason.

### **REPORTING STRUCTURE**

One way to establish both independence and credibility for the office is to have it report to the CEO for the institution. The view of the Ombuds Office as a legitimate option for informal problem solving assistance is enhanced when it reports directly to the highest-level administrator at the institution. Some Ombuds Offices report to the vice president of student affairs, dean of students, or provost. When the reporting relationship is not to the highest level but, instead, to a specific administrative area, the perception of the ombuds' neutrality and independence may be at risk. If the ombuds is to deal effectively with the complexities of the college or university within the context of the campus culture (without minimizing the office's impact on specific administrative units), reporting to the highest level best supports that mission.

The ombuds has no institutional authority to change rules, overturn decisions, or force issues to be addressed. However, the office should be perceived as an influential campus resource. That perception may help the ombuds gain the cooperation of the campus community. It may influence decision-making and the community's willingness to accept the ombuds' recommendations. Key factors that lead to the office's perceived influence are the knowledge that the ombuds has the ear and the support of the university's highest level administrators, and the observations by users of the office that ombuds recommendations to others in the past have been implemented.

### **CONSTITUENCIES SERVED**

Some ombuds assist all constituencies (students, staff, faculty, administration, etc.) on their campuses while others are designated by their institutions to work only with one group. For ombuds who work with one constituency, it is important that all constituent groups be informed that the ombuds is not an advocate for members of that group but rather one who attempts to promote fair processes.

### **PHYSICAL LOCATION**

Ombuds Offices are sometimes located in campus buildings that are utilized by all members of the campus community---for example, student unions. The use of the building by large numbers of people

**Neutral or Impartial:**

Ombuds have no personal interest or stake in and incur no personal gain or loss from the outcome of any disputes. Ombuds avoid situations that may cause or result in conflicts of interest. Ombuds attempt to promote fair processes but do not advocate for individuals on the basis of affiliation or constituency status.

**Independent:**

Ombuds report to the highest possible level of the organization and operate independently of ordinary line and staff structures. The ombuds reporting relationship to her/his supervisor is for administrative and budgetary purposes only. The ombuds exercises total discretion regarding her/his responsibilities. S/he is not part of and does not take part in any administrative or formal complaint processes.

## OMBUDS FUNCTIONS AND SKILLS

Ombuds perform a number of functions in carrying out their responsibilities. The primary functions are: assisting with the resolution of complaints and serving as an institutional change agent.

Ombuds perform a number of functions in carrying out these responsibilities. The primary functions are:

**1. Clarifying the ombuds role:**

When meeting with visitors, the ombuds provides oral and/or written information about the role of the office and explains the cornerstone principles.

**2. Listening:**

The ombuds provides a safe place for individuals/groups to express their concerns and know that they will be heard.

**Skills for Effective Listening:**

- \* Empathy for and focus on the speaker's concerns
- \* Clarifying
- \* Re-stating
- \* Reflecting
- \* Summarizing
- \* Validating
- \* Recognizing and setting aside the assumptions of the ombuds
- \* Recognizing the assumptions of the speaker
- \* Insuring that being heard does not necessarily mean agreement with what the speaker says

**3. Asking strategic questions:**

Asking strategic questions helps the ombuds accurately understand a speaker's story, perspective, priorities, and goals.

**Examples of good strategic questions are:**

- \* Who have you spoken with about this matter so far?
- \* What have you done to try to resolve this problem? \* How do you think I might be helpful to you?
- \* How do you feel about this situation?
- \* How do you feel toward X (person)?
- \* How do you think it will affect your relationship with X if you do?

After hearing the speaker's basic story, some other questions that are likely to be necessary or helpful are:

- \* Do I have your permission to speak with X . . . ?
- \* How do you think the other person would describe this situation?

- \* If I spoke with the other person, what is s/he likely to say about you?
- \* Ideally, what would you like to achieve in this situation?
- \* What would be an acceptable resolution to this matter?
- \* What do you NOT want to happen?
- \* What would fairness look like to you in this situation?
- \* What options do you see for addressing this issue?

For most issues, it is less important for an ombuds to have answers to questions than it is for her/him to have good questions to help move the conversation toward closure.

#### 4. Providing Information and Options:

Ombuds provide information about policies, procedures, rules, and formal or administrative options for addressing concerns within an institution.

Skills and knowledge related to Providing Information and Options:

- \* Familiarity with the organizational structure of the institution
- \* Familiarity with formal or administrative institutional processes
- \* Familiarity with institutional policies, procedures, and rules
- \* Establishing relationships with key contact people within the institution (e.g., financial aid, registration, faculty governance)
- \* Assisting visitors to generate and evaluate options for addressing concerns

#### 5. Assisting With Decision-Making:

Ombuds assist visitors to determine which options are most likely to achieve their goals. Often visitors are aware of all of the options from which they may choose but, for one or more reasons, are unable to make a decision about which one(s) to implement.

Skills related to Assisting With Decision-Making:

- \* Asking strategic questions
- \* Helping visitors evaluate advantages and disadvantages of various options
- \* Clarifying the visitor's priorities and interests

Insuring that the visitor understands that it is the visitor's responsibility to make decisions about the course of action to be taken

#### 6. Coaching:

The ombuds assists visitors to express their concerns effectively to others.

Skills and knowledge related to the Coaching function:

- \* Role-playing
- \* Understanding the non-verbal aspects of communication
- \* Teaching conflict management skills (e.g., "I Statements," stating requests positively, avoiding "always/never" statements, etc.)
- \* Helping others recognize the effects of their own verbal and non-verbal behaviors on others

#### 7. Reviewing Correspondence:

Visitors may ask ombuds to review written correspondence before it is sent to others.

Skills related to the Reviewing and Editing Correspondence function:

- \* Recognizing writing readers are likely to find insulting or irritating vs. writing which is likely to elicit cooperation and promote understanding
- \* Communicating suggestions tactfully
- \* Possessing strong written communication skills
- \* Insuring that the writer makes a specific request for desired action
- \* Evaluating the clarity and conciseness of the message

for a variety of reasons minimizes the likelihood that users will be assumed to be using the Ombuds Office. However, if users of the office can be easily seen entering or leaving the office, their anonymity can be threatened. Some campuses prefer to house the Ombuds Office in the administration building—close to the CEO in order to enhance the perception of the ombuds' influence. However, this location can inhibit users who have concerns about administrators or who do not wish administrators to know they are using the Ombuds Office. And, location in an administration building can be perceived as limiting the office's neutrality and independence. Ideally, ombuds offices should be centrally located in space that allows entry and exit with a minimum of visibility by others.

The office should be large enough to accommodate a private space for each practitioner. A waiting room and soundproof walls are important for maintaining the confidentiality of the ombuds' work. Access to a conference room allows the ombuds to bring together concerned parties when complex problems need to be addressed in a group.

## SELECTION PROCESS

Effective communication about the ombuds role and a selection process which results in the selection of the best person for the role will affect the credibility of the office immediately. A clearly defined charter or mandate and job description that is widely distributed throughout the campus prior to the search will help prevent difficulties and misunderstandings and will encourage campus acceptance of the concept (see Exhibits). The application for the position should be open to all candidates who meet the established minimum qualifications.

The search committee for the new ombuds should be comprised of representatives from all the major campus constituencies. A mandate that includes the charter and job description should guide the selection process. Involvement of key campus figures in the search process serves to communicate the important nature of the position as well as to create ownership by the various groups within the community.

After interviews are completed, the search committee's recommended candidate(s) may be vetted by the CEO. In some cases the CEO may prefer to be given a list of candidates the search committee feels meets the requirements for the position and the CEO ultimately makes the final selection. This second approach, however, risks the appearance that the ombuds is beholden to the CEO. Once the ombuds is selected, the practical considerations of implementing the operation begin.

## CHARACTERISTICS OF AN OMBUDS

Ideally, a university or college ombuds would exhibit the following characteristics:

- \* Excellent listening skills
- \* Excellent oral and written communication skills
- \* Diplomacy skills
- \* Fair-minded
- \* Sensitivity to and awareness of diversity-related issues
- \* Understanding of appropriate and inappropriate uses of power
- \* Comfort with a wide range of people regardless of status or position
- \* Excellent sense of humor

## STAFFING

Each campus determines its own staffing arrangements. Variations include: one or more full-time and/or part-time staff ombuds, one or more faculty ombuds who is/are retired and/or on term

appointments, and students who serve in the ombuds role. Depending on the size of the constituent base and the actual utilization of the office, the size of the staff may affect effectiveness and responsiveness. As a result, staffing needs should be considered and reviewed carefully.

Skilled administrative support staff are vital contributors to a smooth operation. They are usually the first to have contact with users of the office and, in doing so, provide people with their first impressions of the service. The administrative support staff may also be the first to hear complainants' anger, frustration, or panic. In addition to technical training related to their roles, training on effective stress management and conflict management training may also be useful for these important staff members.

Many Ombuds Offices employ student assistants. It is crucial that a student employee's training clarify the confidential nature of the office and the expectation that information be held in confidence. Some student assistants may need help managing conversations with users of the office in order to convey the role of the office appropriately.

## HELPFUL BASIC TRAINING AND CONTINUING EDUCATION

Although there is no academic program teaching individuals the specific skills required to become ombuds, several professional organizations have annual conference that would likely benefit new ombuds. These include UCOA<sup>1</sup>, the Association of Canadian College and University Ombudspersons (ACCUO), The Ombudsman Association (TOA)<sup>2</sup>, and the Association for Conflict Resolution.

In addition to membership in professional organizations, attendance at annual conferences, and participation in specific professional development workshops, many ombuds find mediation training very helpful. Typical introductory courses in mediation are 40 hours and are often offered in a single week. Even if ombuds do little or no mediation, the conflict diagnosis skills and the intervention skills taught in mediation courses are applicable to the work of most ombuds. Similarly, since ombuds are often asked to facilitate group discussions, specific training in group facilitation skills (which is different from mediation) is also very useful. (See Exhibits for a list of suggested training resources for both mediation and facilitation.)

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<sup>1</sup> In July 2005, The University and College Ombuds Association (UCOA) merged with The Ombudsman Association (TOA) to form the International Ombudsman Association (IOA). IOA is the largest international association of professional organizational Ombudsmen practitioners in the world, representing over 600 members from the United States and across the globe. IOA holds conferences each year and sponsors a day of pre-conference workshops for professional development. IOA also offers extensive training courses for new ombuds practitioners.

<sup>2</sup> Id.

# OPERATING A COLLEGE OR UNIVERSITY OMBUDS OFFICE

## MAKING THE ROUNDS ON CAMPUS

After an ombuds is selected and when new ombuds are hired, it is important for her/him to meet key people on the campus, explain her/his role, and learn about the activities and priorities of these individuals. These individuals include administrators and others who have influence over decision-making on campus.

This allows the ombuds to:

- \* Establish rapport with these individuals, which may help later should the need arise for the ombuds to contact her/him.
- \* Convey to those with whom s/he speaks that the Ombuds Office is a campus resource they can use and to which they might make referrals.
- \* Convey the role and function of the Ombuds Office.
- \* Be known to key members of the campus community.

Similarly, when a new dean or other administrator is hired, it is wise for ombuds to initiate contact with this individual. Such a welcoming gesture is almost always appreciated and can yield the same benefits mentioned above.

## ASSISTING TARGET POPULATIONS

Depending on which constituent groups ombuds are designated to assist, ombuds working in institutions of higher education may work with students, faculty, staff, administrators, family members, alumni, former students, and/or prospective students. Across institutions, UCOA members have found that, to some extent, these groups often seek ombuds assistance for predictable issues. The lists of issues presented below for each group, while not all-inclusive, do provide an indication of typical uses of ombuds services for each group.

### Students

1. Academic issues
2. Administrative policies, procedures, and/or practices
3. Student employment disputes
4. Fees and costs
5. Campus housing
6. Disciplinary matters
7. Interpersonal conflicts
8. Harassment/discrimination
9. Environment, safety, and parking
10. Thesis/committee
11. Teaching/research assistantships
12. Clinical training issues

### Faculty

1. Teaching, research/creative activities, service
2. Tenure and promotion
3. Salary, benefits, and retirement
4. Workplace or departmental dispute
5. Interpersonal conflicts
6. Environment, safety, and parking
7. Harassment/discrimination
8. Disciplinary issues

- 9. Research funding issues
- 10. Clinical affiliation issues
- 11. Facilities and equipment
- 12. Customer service

**Staff**

- 1. Classification and promotion
- 2. Salary, benefits, and retirement
- 3. Workplace or departmental dispute
- 4. Interpersonal conflicts
- 5. Environment, safety, and parking
- 6. Harassment/discrimination
- 7. Disciplinary issues
- 8. Customer service

**Administrators**

- 1. Consultation about policies
- 2. Consultation about procedures
- 3. Consultation about personnel matters

**Family Members**

- 1. Concerns about the welfare of students and employees (State and Federal law limits disclosures to family members)
- 2. Customer service

**Alumni and Former Students**

- 1. Academic records
- 2. Billing issue
- 3. Letters of recommendation
- 4. Customer service

**Prospective Students/Applicants**

- 1. Admission
- 2. Financial aid
- 3. Customer service

**RECORDS**

Ombuds Offices function differently and have a different purpose from other departments in an institution. While UCOA's Standards of Practice suggest that information retained by the ombuds should be kept secure, that principle cannot be completely guaranteed.<sup>3</sup> Depending upon any given state's Freedom of Information laws, and depending upon any given ombuds' past practices, any records an ombuds keeps might be subject to subpoena and the ombuds subject to questioning about such records. As a result, unless the Ombuds Office is legally required to maintain records, most ombuds choose not to keep records that identify individuals who make complaints or who are the subject of complaints.

Ombuds operating in states where they are required by law to keep records, typically keep only the minimum information necessary to comply with the law. And, they keep these records only for the

<sup>3</sup> IOA Standards of Practice state: "The Ombudsman keeps no records containing identifying information on behalf of the organization." (See Section 3.4). Furthermore, "[t]he Ombudsman maintains information (e.g. notes, phone messages, appointment calendars in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information." (See Section 3.5)



minimum amount of time required to comply with the law. In some cases, institutional requirements may mandate this, as well. In those cases, ombuds are strongly encouraged to pursue a change in institutional policy to allow the ombuds to operate in accordance with UCOA Standards of Practice. For an Ombuds Office, the possibility that records that identify individuals may be subpoenaed represents a potential threat to its most fundamental operating procedures. When records are surrendered, confidentiality, impartiality, informality, and independence could simultaneously be threatened or destroyed. Confidentiality is eliminated when the ombuds surrenders records that include names. Impartiality is destroyed when Ombuds Office records are used by advocates on either or both sides of formal adversarial procedures. Informality is immediately destroyed by any kind of Ombuds Office participation in an adversarial process, which, by definition is "formal." Independence is threatened when the institution stands to "win" or "lose" in a case in which Ombuds Office information can be used either to help or hurt the institution's case.

Records are normally kept for one or both of two reasons:

1. Because there is a need for an "official institutional memory" and/or
2. People simply cannot remember all the details that might be necessary to assist someone in a particular case.

Decision-makers at institutions may need to demonstrate that they acted responsibly or that they complied with institutional policies or state or federal laws in a given case. However, ombuds are not decision-makers for institutions and, if they practice according to the UCOA Standards of Practice, they do not participate in formal processes (including surrendering records to be used in such processes). Further, visitors to an Ombuds Office are not required to use it and are free to access another office if they wish to make a formal complaint or have a complaint investigated by someone in authority at the institution. In fact, when visitors express this desire, responsible ombuds refer them to the appropriate office to allow this to occur. This is in marked contrast to required procedures for formally processing certain kinds of complaints in other offices (e.g., sexual harassment). The designation of the Ombuds Office as an informal dispute resolution option nullifies the need for keeping records that identify individuals in order to maintain "institutional memory." There are numerous appropriate options on campus for "maintaining institutional memory."

Another argument in favor of not maintaining records that identify individuals is exactly the same as the argument that favors maintaining them: records can serve as a "memory prompt" for the ombuds. While that can clearly be helpful to the ombuds while dealing with a case, if records are subpoenaed, their memory prompting qualities are also likely to make it easier for an ombuds to remember details if s/he is required to testify. In this "worst case scenario," most ombuds would prefer to be able to say honestly, "I don't recall."

Some ombuds keep brief, sketchy notes while a case is active in order to minimize this "memory of details" problem. However, others maintain absolutely no records of any kind in order to avoid the possibility that records might be subpoenaed. To deal with the "memory" problem, some ombuds elect to ask that complainants "please refresh my memory" about the details of the case if the ombuds cannot remember the details upon a subsequent contact by the complainant. And, some ombuds encourage direct communication between disputing parties or between a complainant and someone with information relevant to her/his case. This helps the ombuds to avoid having to recall complex details to relay to either party later. In any case, some tension exists between the need to remember details as a case is progressing and the need to avoid the dangers of subpoena.

In addition to "case sheets" or "case notes," there are other kinds of "records" which could be used to identify individuals, as well. If permitted by law, most ombuds elect not to maintain these records, as well. If required to maintain them, ombuds need to keep this information in a secure location and manner. These include:

1. E-mail files;
2. Copies of letters;
3. Any document submitted to the ombuds regarding a case, from whatever source;
4. Appointment calendars and logs;
5. Telephone message pad copies;
6. Hand-written notes about phone calls; or
7. Voice mail archives

Some visitors to an Ombuds Office might attempt to contact the ombuds via e-mail prior to meeting or calling to talk to the ombuds. The UCOA Standards of Practice indicate that the ombuds "does not communicate confidential or sensitive information by electronic mail." Further, the ombuds "discourages the use of electronic mail, as it is not a confidential means of communication." Ombuds encourage individuals to call or visit the office, rather than attempting to assist them via e-mail. A practical reason for this is that the ombuds has no control over what a person with whom s/he has had e-mail contact will do with a written (printed out) record of the conversation. (In fact, some people are capable of altering these files to suggest the ombuds wrote things other than what s/he actually wrote.)

Many ombuds do not accept letters or other documents from visitors. Some accept them temporarily but return them promptly. This underscores for visitors that the Ombuds Office is not the place to "get something on record" or "lodge a formal complaint" at the institution. Some Ombuds Office Records Policies indicate that appointment calendars, logs, and telephone message pad copies are discarded at regular intervals. This practice (regularly discarding these things) eliminates the possibility that these kinds of documents can be used in formal proceedings.

Retention or retrieval of voice mail archives is normally outside the control of the Ombuds Office. Methods for addressing this issue include: never leaving voice mail messages providing only a minimum of information on voice mail and asking individuals (complainants or respondents) to call the Ombuds Office. Of course, ombuds have no control over what others leave on the Ombuds Office voice mail.

If permitted by law not to keep records, ombuds may provide the institution's legal counsel a copy of an Ombuds Office Records policy that clearly outlines that the office does not maintain records. This will assist in at least three ways:

1. It signals the institution's legal counsel that there are no records and, therefore, it is fruitless for attorneys to ever attempt to gain them,
2. It allows legal counsel to make this argument to plaintiff's counsels as needed, and
3. It underscores (with a potentially important entity) the operating principles with which the office is intended to operate and sets the stage for legal counsel to oppose subpoenas for ombuds' testimony.

Visitors to the Ombuds Office sometimes say, "I just want to get something 'on the record' about this." Complainants may perceive a genuine need to "get something on the record" in a given circumstance. For example, a student who has a heated disagreement with a professor may fear the professor will give him/her an unfair grade at the end of the semester. The student may want to establish that s/he had this concern before receiving the grade. Since the Ombuds Office is not an appropriate place for a visitor to establish a record of a complaint, s/he may need ideas about how to establish a record without using the Ombuds Office to do so.

## **ASSESSMENT AND EVALUATION**

Program evaluations are often conducted by using an in-house panel of program reviewers. This method offers several advantages and some disadvantages. In institutions where it is a commonly accepted evaluation practice, in-house review has credibility. It is also cost-effective since all team members are usually on the campus. However, because the ombuds role is sometimes not well

understood, it could take time and effort to sensitize team members to specific concerns such as the meaning of confidentiality and neutrality in the ombuds context. Additionally, when team members are on the campus, it is possible that one or more have had previous interactions, either directly or indirectly, with the Ombuds Office staff which could positively or negatively bias their evaluation of how well the office functions.

Another method of evaluation utilized successfully on a number of campuses involves the use of an outside expert (or panel of experts). This method also provides several advantages and a few disadvantages. Unlike some internal program reviewers, the expert(s) understand(s) the mission and role of the Ombuds Office. A considerable amount of time is saved because the reviewer is more knowledgeable than one less familiar with the ombuds' unique role. Similarly, such an expert would have a better understanding of appropriate evaluation criteria. S/he would also be sensitive to potential sources of bias (e.g. the desire for advocacy by some who use the ombuds' services, the danger that people with institutional power may perceive any office that questions their actions as "advocates," etc.). Disadvantages of this method include the costs of bringing an expert or experts to campus and the possibility of bias due to the outside expert's previously established relationships with individuals on the ombuds' staff and the external evaluator's lack of sensitivity to the unique campus history and environment.

There are several unique factors that should be considered by anyone attempting to evaluate an Ombuds Office. Confidentiality must be assured for all respondents. In order to accomplish this, the Ombuds' Office staff should initiate all contacts for evaluation purposes. Another campus resource (e.g., Institutional Research) may be helpful in collecting evaluative data directly from members of the campus community. This method may increase the response rate because some people may prefer that their comments be non-identifiable to the Ombuds Office staff. Furthermore, because Institutional Research routinely gathers, evaluates and analyzes data, it can help design or refine the survey instrument in order to gather useful, evaluative data.

A number of tools are available to assist ombuds professionals in self-assessing the services of an Ombuds Office. These include user surveys (for those contacting the office for assistance and those who were contacted by the office to help resolve a dispute), workshop evaluations, surveys for office liaisons (i.e., individuals who work in campus departments who agree to be contacted with problems related to their unit), and through the comparisons of annual report data. User surveys (see Exhibit 3) can provide useful feedback about how individuals who have dealt with the Ombuds Office feel about a wide range of issues related to her/his experience with the office and its staff.

Another consideration involves sensitizing the evaluator(s) to the fact that individuals who have used the office (or have been contacted by the office) may evaluate the effectiveness of the office in terms of whether they believe they "won" or "lost" their disputes. Given its mission, this is not an adequate measure of the effectiveness of an Ombuds Office. Some requests are simply inappropriate and others are the kinds about which reasonable people might disagree. The outcome of these cases may have nothing to do with whether or even "how well" the Ombuds Office did its job. Survey questions should focus on how well the ombuds professional performed within her/his appropriate role and not on the results the complainant was seeking or whether the ombuds staff member functioned as performed within her/his appropriate role and not on the results the complainant was seeking.

It might be useful to include an open-ended question about their perception of the role of the Ombuds Office. This could provide insights into whether their evaluation was based on an accurate understanding of this role. (Another alternative would be to simply describe the role on the evaluation form. However, there is no guarantee the individual would read it and including such a statement would not provide any information about their understanding of the role.) Similar evaluative feedback can also be requested from individuals who were contacted by the Ombuds Office in an attempt to determine if there are perceptual differences between the perceptions of individuals who initiated contact with the office and those who were subsequently contacted by the office.

Information can be collected periodically and provided to the administrator to whom the Ombuds Office reports administratively to provide statistical information about use of the office by constituent group, (e.g., administrators, staff, faculty, undergraduate students, graduate students, etc.), the kinds of issues raised, and the kinds of assistance provided by the Ombuds Office. It is strongly recommended that, if such a database is compiled, names or other identifying information not be included unless required by law. This is to minimize the usefulness of these data in the event they were subpoenaed. Demographic data can also be collected to evaluate the use of the Ombuds Office by, for example, gender and/or ethnicity. However, it is important to consider that there is some danger in keeping information that might later be subpoenaed and used by lawyers to identify individuals - especially in combination other with statistical data about constituents, given the current legal context in which ombuds must operate (e.g., without shield laws).

## ACCOUNTABILITY

There are a number of tools available to assist an Ombuds Office in demonstrating its effectiveness. Those tools include:

- \* Evaluation surveys completed by users of the office (see Exhibits)
- \* Workshop evaluations' (see Exhibits)
- \* Annual reports

Periodic informal discussions with the administrator to whom the office reports can also be helpful in promoting accountability. Demonstrating the value of the service to this individual is vitally important because s/he often has the authority to determine whether the office will continue to exist. Discussions might focus on general office activities and needs, the identification of trends or problem areas, and pervasive campus concerns. The reporting relationship is primarily administrative, rather than supervisory, in that day-to-day case management issues are not discussed (Discussions requiring identification of individuals occur only with permission.). The Ombuds Office must maintain independence and accountability simultaneously. The degree to which this is possible depends largely on the quality of the working relationship between the ombuds and her/his supervisor. Clearly, it is incumbent upon the ombuds to demonstrate how the office is fulfilling its mission while enhancing the administrator's appreciation for the importance of maintaining independence and confidentiality.

## COMMUNICATING WITH THE CAMPUS: MARKETING THE OMBUDS OFFICE

An ombuds has an opportunity to inform the entire campus community of the work of the office using a variety of public relations tools. This communication usually takes three forms, advertising the office to be sure that constituent groups are aware of the existence of the office, marketing the office to recruit new users of the office, and reporting annually the work of the office. Since most colleges and universities are interested in accountability, some form of reporting, usually an annual report, is made public as a way to justify the work of the office. The annual report may also be used to describe trends and make recommendations for change. It is important to remember that campus communities are constantly changing as students, faculty and staff enter and leave each year making continuing communication efforts on campus necessary.

Ombuds may become so focused on assisting complainants that it is possible to overlook regular communication to the campus community as a whole. Since all members of the campus are potential users of the office, the opportunity to provide clear, concise information about the work of the office should not be missed. Several opportunities exist for publicizing the office in differing formats, and several may be tried at one time or another to provide a variety of ways of reaching potential constituents.

Because expenses are always a consideration for Ombuds Offices, every attempt should be made to take advantage of those existing publications on campus that are available to Ombuds Offices free of charge. Campus publications such as catalogs, orientation bulletins, campus newspapers, newsletters, schedules of courses, operations manuals, various college/university or departmental brochures and the telephone directory examples of college/university publications which would gladly list the Ombuds Office if asked to do so. Many institutions also offer an automated information telephone system that provides messages on various offices on campus and can be accessed 24 hours a day. The Ombuds Office may obtain one of these lines as well. Usually, each of these offices/publications will ask the ombuds to prepare the text that gives her/him the opportunity to describe the office in her/his own words.

### **Print Media**

At their own expense, Ombuds Offices may prepare brochures, fact-sheets, posters, bookmarks, and help cards with basic information about the office. In addition, inexpensive hand-outs such as pencils, key rings and note pads can be used to publicize the office.

Some ombuds advertise in the student newspaper or prepare a regular column for the paper. Others work with the editors in preparing feature articles or offer to provide interviews on the ombuds and/or the office. Staff and faculty newsletters are other avenues for interviews or guest columns. Regardless of format, an easily identified, simply stated written description of the ombuds' services will increase awareness and utilization of the office.

The Ombuds Office may also have posters made which can be distributed on campus transit vehicles, in residence halls, in the student union and other campus offices, departments, or buildings. At the beginning of each academic year, the ombuds may want to send out a form letter to campus leaders, students, faculty and staff reminding them of the existence of the office and of the availability of the ombuds as a presenter or participant at future meetings of their departments or organizations.

Since it is difficult to reach commuting and part-time students, faculty and staff, direct mail is an option, though an expensive one. Ombuds could use a folded flyer sent by bulk mail to each constituent that provides basic information about the office.

### **Broadcast Media**

Institutions with radio and television outlets on campus may provide another opportunity for free advertisement. Ombuds may want to approach them regarding on-air interviews about the office. Public service announcements for both radio and television are another option. Again, the ombuds would be asked to prepare the text. There also may be opportunities for the ombuds to appear as a guest or member of a panel discussion on campus or on non-campus local television and radio talk shows on issues of local interest.

### **Presentations**

Ombuds may be invited (or may volunteer) to make presentations to various groups on campus in and out of the classroom. Most frequently, the request is to describe the Ombuds Office, its mission and function. Other topics may include conflict resolution, mediation, diversity, and complaint related university policies and procedures (e.g. sexual harassment, discrimination, etc.). Regardless of the subject matter, an awareness of the Ombuds Office and its services will emerge within the context of the presentation.

Orientations are another avenue for reaching large numbers of new students, parents, faculty and staff. Human resource offices often request the participation of the ombuds in employee workshops or panel discussions on work place issues, disciplinary processes and conflict management. Many institutions offer several opportunities such as "orientation fairs" or "activity fairs" throughout the year.

where campus organizations with certain services may have a table or display area to distribute information to the campus community. Ombuds Offices may take advantage of such opportunities.

In some institutions, there are opportunities for the ombuds to teach conflict management and/or to lecture occasionally in college classes about various topics.

Ombuds should also appear at least annually at meetings of the faculty senate, student senate, and staff council to report on the work of the office and to answer questions. One appropriate time would be soon after issuing the annual report, which would readily provide many issues for discussion.

Finally, some mechanism should be available for regular reporting to the central administration, at least annually. Once again, the usual time for this is with the issuing of the annual report.

### **Annual Reports**

Most institutions will expect some form of accountability from the ombuds office. Information about the work of an ombuds office can be shared through an annual report in which general information and statistics are provided without jeopardizing individuals' confidentiality. An annual report may include:

- \* The number of complainants assisted
- \* Complainant demographics (e.g., gender, constituent group, college, major or discipline, etc.)
- \* Problem categories
- \* Issues and observations
- \* Trends, concerns, recommendations

In addition to describing the mission of the office and summarizing the results of the years' work, an annual report can alert the campus community to problems and trends. A well-written annual report can also serve to clarify and justify the contribution of the Ombuds Office to the campus community.

### **Web Sites**

Most colleges and universities have established web pages which may also describe the Ombuds Office. In addition, many ombuds have established a web page providing access to more specific information about the office. Students, faculty and staff may explore the ombuds web to learn what the office does, how it can be helpful and how to contact it for help. They may also learn about the history and concept of ombudsing and the mission and history of the office. The annual report may be viewed as well. Besides specific information about the office, the web can provide links to information and resources at the university and across the internet which may be helpful.

For example, links may be provided to information on the Americans with Disabilities Act, Family Medical Leave Act, Workers Compensation, Equal Employment Opportunity, Occupational Safety and Health, union information, workplace violence, substance abuse, and other workplace issues. Several ombuds links are also available on dispute resolution and mediation resources and organizations. Many Ombuds Offices have developed web pages and ombuds may want to view them before establishing their own.

Visitors to the office and potential visitors to the office are the main beneficiaries of the web sites ombuds provide as it is available to them 24 hours a day every day of the week. Since a web page is a centralized data source which can easily be updated and corrected, information can be provided immediately and complainants can obtain up to date, accurate information.

Clearly, ombuds have a wide variety of public relations tools available to help them advertise, market and report on their work. Many such tools are free for the asking. Others require a budget. Each office will need to determine which activities are effective with their constituent groups and which combination of activities works well for the campus as a whole. Most offices will vary their communication resources from year to year. Ultimately, time, money and personnel resources will guide the ombuds' communication efforts that are unique to each college and university campus.

## References for "Communicating With the Campus:"

Griffin, Tim, "Techniques For Marketing The College And University Ombuds Office To Faculty, Staff, And Students," The Journal, California Caucus of College and University Ombuds (1993).

Hoppe, Dalene & Culhane, Barry, Eds., "Communicating with the Campus," The Ombuds Handbook, pp. 67-73 (The University and College Ombuds Association, 1995).

## TECHNOLOGY

Ideally, the Ombuds Office should have all the tools typically needed to function in a college or university environment. A computer with various kinds of software is essential for (non-confidential) correspondence, for maintaining case-related statistical data, and to allow access to the Internet. Internet access allows ombuds to participate in UCOANET and other listserves and correspond with colleagues quickly and easily about (non-confidential) issues of mutual concern.<sup>4</sup> In addition, this allows ombuds to develop web pages that can be used to publicize the office and to read web pages developed by other ombuds. Spreadsheet and graphics programs are also very helpful. Access to printers, copy machines, and facsimile equipment, as well as voice mail and TDD (Telecommunications Device for the Deaf) is helpful, as well.

Given the need to maintain confidentiality, it is not advisable for ombuds to conduct casework over e-mail. E-mail is not a private or confidential form of communication. Ombuds have no control over how e-mail information might be used by others. Also, while extremely convenient, use of e-mail to discuss information which is supposed to be confidential, could undermine the ombuds claim of confidentiality should a subpoena for testimony be issued later.

## MULTIPLE ROLES

At some colleges and universities, the ombuds may be delegated additional roles. These additional roles can cause conflicts of interest with the ombuds role. Conflicts of interest may cause perceived or actual problems for ombuds in maintaining confidentiality, impartiality, and independence. When individuals designated as the ombuds also occupy formal roles such as Affirmative Action Officer, Director of Employee Relations, Sexual Harassment Officer, or any administrative role (e.g., Dean, Vice Chancellor for Student Affairs, etc.), the potential for conflicts of interest is very high. This is most troubling when visitors tell the ombuds something assuming it will remain confidential and later learn that the ombuds also occupies another role related in some administrative way to the same issue, which does not allow her/him to maintain confidentiality. This limits the ability of potential users of the office to speak freely to the ombuds about their concerns. Balancing and communicating with all members of the campus community about these roles can make an already challenging role even more difficult.

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<sup>4</sup> UCOANET is no longer active. IOA members may be added to the IOA listserv by contacting the Administrative Office at [info@ombudsassociation.org](mailto:info@ombudsassociation.org). To view the listserv guidelines visit [http://www.ombudsassociation.org/members/documents/Members\\_List\\_Guidelines.pdf](http://www.ombudsassociation.org/members/documents/Members_List_Guidelines.pdf).

## EXHIBITS

	Page
1. Sample Case Form	19
2. Sample Definitions for Ombuds Office Statistical Reporting	20
3. Sample Office Evaluation Form	21-22
4. Sample Workshop Evaluation Form	23-24
5. Sample Position Announcement	25
6. Sample Position Description #1	26
7. Sample Position Description #2	27
8. Sample Ombuds Office Description in University Catalog	28
9. Suggested Mediation and Facilitation Training Resources	29



**Exhibit 1**

**Sample Case Form**

Name: \_\_\_\_\_

Daytime Phone Numbers: \_\_\_\_\_

Appointment Date: \_\_\_\_\_ Time: \_\_\_\_\_ With: \_\_\_\_\_

\_\_\_\_\_ Assist w/ No Appt

**Constituent Group:**

\_\_\_ Student \_\_\_ Staff \_\_\_ Faculty \_\_\_ Administrator \_\_\_ Parent/Unknown/Other

**Problem (Brief Description):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Assistance Provided: Issues:**

\_\_\_ Dept/Unit Consultation \_\_\_ Academic Concerns (Non-Grading)

\_\_\_ Exit Interview \_\_\_ Academic/Policy/Procedures

\_\_\_ Individual Consultation \_\_\_ Accused of Policy Violation

\_\_\_ Mediation/Facilitation \_\_\_ Administrative/Policy/Procedures

\_\_\_ None (no show/cancellation) \_\_\_ Department Consultation

\_\_\_ OO contacted Person/Office \_\_\_ Grading Dispute/Concerns

\_\_\_ Other \_\_\_ Harassment/Discrimination (Non-SH)

\_\_\_ Referral \_\_\_ Non-Employment Interpersonal

\_\_\_ Reporting Trends \_\_\_ Sexual Harassment

\_\_\_ Miscellaneous

\_\_\_ Workplace/Employment Dispute

\_\_\_ Promotion/Tenure

\_\_\_ Reporting Trends

\_\_\_ Exit Interviews

Revised 10/12/99

(Note: When the case is complete, this form is discarded. Also, some ombuds use forms with no names or other identifying information.)

**Exhibit 2**

Page 1 of 2

**Sample Definitions for Ombuds Office Statistical Reporting**

Original exhibit is superseded by the reporting categories and definitions recommended by the IOA Uniform Reporting Categories Taskforce ( URCTF). See the URCTF webpage on the IOA website: [http://www.ombudsassociation.org/members/Reporting\\_Categories/](http://www.ombudsassociation.org/members/Reporting_Categories/)

**Exhibit 3**

**Sample Ombuds Office Evaluation Form**

The Ombuds Office provides confidential, impartial, informal, and independent assistance for students, staff, and faculty in resolving University-related problems and conflicts. In order for us to evaluate our effectiveness we need your help! Please take a few minutes to complete the following questionnaire and return it to the Administrative Assistant (Campus Box 112). All responses will be confidential.

Thank you.

\*\*\*\*\*

First we would like to obtain some demographic data about you. Remember you will remain anonymous.

Constituent Group(s):

Student  Administrator  Staff Member  Faculty Member  Other \_\_\_\_\_

Gender:

Male  Female

Ethnicity:

African American/Black  Asian American  International

Latino/Hispanic/Chicano  Native American  White

Bi-Racial/  Other \_\_\_\_\_

Please respond to the statements below by circling the appropriate response:

(1) Strongly Disagree, (2) Disagree, (3) Neutral, (4) Agree, (5) Strongly Agree

The Administrative Assistant was courteous and respectful to me.	1	2	3	4	5	NA
The Administrative Assistant provided clear answers to my questions.	1	2	3	4	5	NA
The Administrative Assistant explained the Ombuds Office role clearly.	1	2	3	4	5	NA
The Ombudsperson was courteous and respectful to me.	1	2	3	4	5	NA
I was able to meet or speak with an Ombudsperson within a reasonable period of time.	1	2	3	4	5	NA
The Ombudsperson provided accurate information.	1	2	3	4	5	NA
The Ombudsperson returned my phone calls in a timely manner.	1	2	3	4	5	NA
The Ombudsperson kept her/his promises with regard to what s/he agreed to do after speaking with me.	1	2	3	4	5	NA
The Ombudsperson was knowledgeable regarding pertinent institutional policies and procedures	1	2	3	4	5	NA
The Ombudsperson helped me identify and evaluate the options to address my concerns	1	2	3	4	5	NA

**Exhibit 3** ..... (continued)

I trust the Ombuds Office to maintain confidentiality	1	2	3	4	5	NA
The Ombudsperson appeared to remain neutral throughout our conversations	1	2	3	4	5	NA
I feel that the Ombudsperson did all s/he could to facilitate a fair process for the resolution of my dispute, conflict, or complaint	1	2	3	4	5	NA
I would seek the assistance of the Ombuds Office if I experienced another institutionally related problem	1	2	3	4	5	NA
I would refer others to the Ombuds Office for help in resolving disputes, conflicts, or complaints.	1	2	3	4	5	NA
My dispute, conflict, or complaint has been resolved.	1	2	3	4	5	NA
The Ombuds Office helped me resolve my problem or conflict	1	2	3	4	5	NA

What services, if any, would have been more helpful:

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**Exhibit 4**

**Sample Workshop Evaluation Form**

**FEEDBACK REPORT**  
Ombuds Office Workshop

Please respond to the following (use the back of this form if you need more space):

Workshop name	
Workshop date	
Your department or group	
Name of presenter	
The <b>most</b> helpful part of this workshop was:	
The <b>least</b> helpful part of this workshop was:	
The information presented was: (your general impression)	
The presenter(s) was/were knowledgeable?	Very      Somewhat      Not at All
The presenter(s) communicated ideas well?	Very      Somewhat      Not at All
The presenter(s) was/were interesting?	Very      Somewhat      Not at All
Comments about specific presenter(s)	
Your level of knowledge about the subject <b>before</b> the workshop was (1=low, 5=high)	1      2      3      4      5

**Exhibit 4** ..... (continued)

9/20/2018

Your level of knowledge about the subject <b>after</b> the workshop was (1=low, 5=high)	1      2      3      4      5
How useful was this workshop to you? (1=low, 5=high)	1      2      3      4      5
Overall, this workshop was (give your general impression)	_____
I would change (examples: time, date, location, length of workshop, content, focus, etc.)	_____

Thanks for the feedback!

**Exhibit 5**

**Sample Position Announcement**

Updated document to be added

**Exhibit 6**

*CONFIDENTIAL*

**Sample Position Description #1**

Updated document to be added.

*CONFIDENTIAL*



**Exhibit 7**

**Sample Position Description #2**

Updated document to be added

[Faint, illegible text, likely bleed-through from the reverse side of the page]

## Exhibit 8

*10/20/2019 11:01 AM*

### Sample Ombuds Office Description in University Catalog

#### OMBUDS OFFICE

*10/20/2019 11:01 AM*

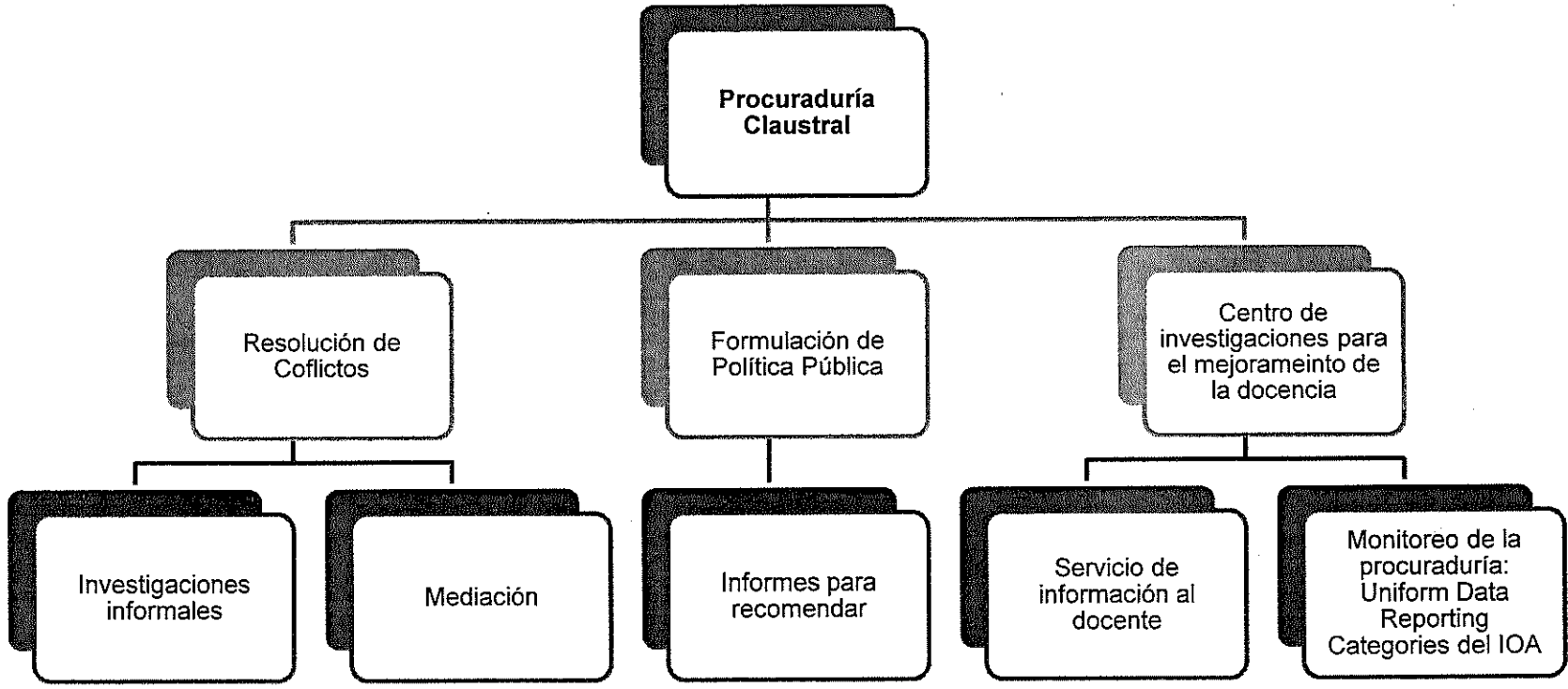
The Ombuds Office provides confidential, informal, independent, and neutral dispute resolution services for all members of the university community. The office assists students, faculty, and staff in identifying and evaluating options for resolving and managing conflicts, provides mediation services, conducts workshops on conflict management, and makes referrals to other appropriate university and community resources. The staff is familiar with the organizational structure of the university and can provide current information about campus services, programs, policies, and procedures. Due to its informal, confidential, and independent role outside the administrative structure of the university, notice to the Ombuds Office about a problem does not result in the generation of records, nor does it constitute legal notice to the university about the existence of a problem. For those interested in making official complaints to the university about a problem, the Ombuds Office can assist by making appropriate referrals.

## **Exhibit 9**

### **Mediation and Related Training Resources**

Numerous excellent resources exist for mediation training. Given that IOA cannot endorse any individual provider, the members of IOA are an excellent source of referrals to specific training organizations around the world. IOA members can reach out to other members through the various sector listserves provided by IOA.

# ORGANIGRAMA DE LAS FUNCIONES BÁSICA DE LA PROCURADURÍA CLAUSTRAL



## ÍNDICE DE DOCUMENTOS SOBRE MODELOS DE PROCURADURÍAS EN EEUU E INTERNACIONAL

### **A. International Ombudsman Association (IOA)**

1. IOA y otras organizaciones
2. Solicitud para ser miembro del IOA
3. Code of Ethics- Spanish
4. Standars for Practice- Spanish
5. IOA Best Practices

### **B. Penn State University- Ombudsperson**

1. Lista de documentos del Ombudsperson de Penn State
2. Ombudsperson Orientation

### **C. Opúsculo del Ombudsman de Washington State University**

### **C. United States Ombudsman Association**

1. Model Ombudsman Act for State Government
2. Govermental Ombudsman Standars

### **D. British and Irish Ombudsman Association**

1. Guide to principles of good complaint handling
2. Guide to principles of good governance

### **F. Organigrama de las funciones básicas de la procuraduría claustral**

# IOA Best Practices

## A Supplement to IOA's Standards of Practice<sup>1</sup>

Version 3, October 13, 2009

The Best Practices guide is intended to provide guidance to Organizational Ombudsmen<sup>2</sup> in practicing according to IOA Standards of Practice to the highest level of professionalism possible. Any questions or suggested revisions are welcome and should be sent to the Chair of the Professional Ethics, Standards, and Best Practices Committee.

### PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman Office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

Before implementing an Ombudsman program, an organization should educate all affected constituencies about the nature and scope of the program, including the role of the Ombudsman within the organization and the Standards of Practice that will govern the activities of the office.

Each entity that establishes an organizational Ombudsman Office should make certain that the office has a Charter that ensures that the Ombudsman will function according to the Standards of Practice and the core values of independence, impartiality/neutrality, confidentiality, and informality. These Standards of Practice will govern the way in which the Ombudsman receives complaints, works to resolve issues, and makes recommendations for the general improvement of the organization. The Charter should also specify the Ombudsman's scope of practice, limitations on Ombudsman authority, and qualifications to be an Ombudsman.

IOA asserts that communications with an ombudsman are confidential and strives to protect confidentiality for all protected communications.

One basis for protecting confidentiality is a claim of privilege. The law on this issue is still evolving and the determination of whether such a privilege is applicable is made by courts on a case-by-case basis since there is no statute creating such a privilege. In addition, ombudsman offices have been able to protect the confidentiality of communications where program materials

<sup>1</sup> IOA Standards of Practice are indicated by text boxes; recommended Best Practices follow each text box. IOA Code of Ethics, Standards of Practice, and Best Practices are designed to guide "Organizational Ombudsmen" as distinguished from "Classical", "Advocate", "Executive" or other types of Ombudsmen.

<sup>2</sup> The term Ombudsman is used to communicate to the widest possible community and is not intended to discourage others from using alternatives. IOA respectfully acknowledges that many practitioners use alternative forms of this word.

adequately state that people who use the office agree to abide by expressed confidentiality principles or where statutes dealing with alternative dispute resolution or mediation are applicable to ombudsman communications.

## **STANDARDS OF PRACTICE**

### **INDEPENDENCE**

**1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.**

The director of the Ombudsman Office should report directly to the highest level of the organization (such as board of directors, CEO, agency head, etc.) in a manner independent of ordinary line and staff functions.

The director of the Ombudsman Office should have terms of employment that indicate that his or her stature in the organization is not subordinate to senior officials.

The Ombudsman should be able to function independently from control, limitation, or interference imposed by any official in the entity.

The Ombudsman should be protected from retaliation (such as of elimination of the office or the Ombudsman, or reduction of the Ombudsman budget or other resources) by any person who may be the subject of a complaint or inquiry.

The Ombudsman should have a set and renewable term, or should be removable only for neglect of duty, misconduct, or medical incapacity, and only by means of a fair process and procedure.

The Ombudsman should obtain assurance from the organization at the outset, and apart from any particular dispute, of access to outside legal counsel at his or her own discretion.

The expense of outside counsel should be covered by the organization and included in the overall budget for the Ombudsman Office. The Ombudsman should have an understanding with the organization that the Ombudsman is not required to inform the organization when it communicates with or accesses outside counsel.

The purpose of outside legal counsel should be to enhance the Ombudsman's ability to practice according to the Standards of Practice. The Ombudsman should consider how outside counsel may assist in a variety of situations, including when the entity and the Ombudsman need to strategize how best to handle a discovery request made of the Ombudsman, or when the Ombudsman and the entity could benefit from consultation with outside counsel regarding how best to establish and operate the office so as to ensure the integrity of function, and to protect the Ombudsman.

**1.2 The Ombudsman holds no other position within the organization which might compromise independence.**

See Sections 2.3 and 2.4.

1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.

The Ombudsman should bring to the attention of the appropriate office those policies, programs, procedures or practices which may be problematic for the organization or which negatively affect people's health, safety or rights.

The Ombudsman should issue periodic reports summarizing activities, problem areas identified, and recommendations for systemic change. Ombudsman Office materials (websites, brochures, etc.) should state that all such reporting is conducted in a manner that protects the identity of individuals and does not place the organization on notice.

1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.

1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

The Ombudsman Office must be provided with sufficient resources to operate an independent and effective program. These resources include adequate space, equipment, staffing, staff development, and the production and distribution of informational materials.

The independence of the Ombudsman Office may be supported by having the selection and evaluation of the Ombudsman, as well as the establishment of an appropriate level of funding, be determined by or in consultation with committees representative of various institutional constituencies.

## **NEUTRALITY AND IMPARTIALITY**

2.1 The Ombudsman is neutral, impartial, and unaligned.

See Section 1.2.

2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

All members of the specified community served by the Ombudsman may voluntarily seek services from the Ombudsman Office and will be treated with respect and dignity. The Ombudsman should assure access impartially, including to people with disabilities, people who



need language interpreters, or people whose work hours require flexibility in scheduling appointment times.

The organization should assure that all specified members of the organization have the right to consult with the Ombudsman, and retaliation for exercising that right will not be tolerated.

2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independently of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.

The Ombudsman should have direct access to the board of directors (or other oversight body as appropriate). See Sections 1.1 and 1.2.

While the Ombudsman should be an internal position, it should not report to, nor have the appearance of reporting to, any compliance office or function or the organization.

The Charter or Terms of Reference for the Ombudsman Office should state specifically that the Ombudsman does not serve as an agent of notice for the organization.

2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

See Sections 1.2, 4.4, and 4.5.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman should not participate in formal management functions or serve in any other role that poses an actual conflict of interest or creates the perception of one. For example, an Ombudsman ought not conduct formal investigations; serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization; serve as a voting member on a search committee (other than for Ombudsman staff); handle formal appeals of management actions; keep case records on behalf of the organization; or be charged in any way to make, change, enforce or set aside a law, rule or management decision.

If possible, the Ombudsman should hold only one position in the organization.

If the Ombudsman does hold another role within the organization, the different roles should be structured so that they are as separate and distinct as possible. The Ombudsman should not provide Ombudsman services to people whom the Ombudsman -- in the other role -- serves, manages, reports to, teaches, advises, or evaluates, in order to avoid partiality or perceptions of conflict of interest. The Ombudsman should provide Ombudsman services in a location that is different from the location in which the Ombudsman, in the other role, works, teaches, counsels, etc., to clarify the distinctions between roles, and to assure confidentiality and off-the-record

informality of the Ombudsman communications. The Ombudsman's support staff (people who take messages or receive visitors, for example) for the Ombudsman role should be separate and distinct from the support staff in any other role. The Ombudsman should continually call attention to the role in which he or she is acting at any given time, and repeatedly educate members of the organization about the principles in the Ombudsman Office's Charter. The Ombudsman should attempt to provide alternatives for people and situations in which the Ombudsman cannot serve as Ombudsman due to actual or perceived conflicts of interest.

2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

An Ombudsman should help the visitor explore and assess an appropriate range of options, from the very informal to the most formal. Formal options may include ways to put management on notice of an issue, referrals to rights-based elements of the organization's conflict resolution system, or the provision of information about the possibility of seeking external resources or assistance. The Ombudsman should never provide legal advice.

When the Ombudsman works with the visitor to address issues that may involve formal alternatives (under laws, policies, rules, or regulations), the Ombudsman should make clear to the visitor that an informal approach does not automatically exclude the visitor's later participation in more formal options, but that the visitor should keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 4.4.

The impartiality of the Ombudsman Office may be supported by consultation with various organizational constituencies regarding the Ombudsman Office's effectiveness.

## **CONFIDENTIALITY**

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:  
The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.

The Ombudsman publicizes the confidential nature of Ombudsman work.

The Ombudsman Office should be situated in an appropriate location to protect the privacy of visitors to the office.

When an individual gives the Ombudsman permission to reveal his or her identity, disclose information, or act on his or her concerns, such permission must be given at the time that the Ombudsman is engaged in the informal conflict resolution process, not as part of a formal process.

The Ombudsman Office Charter for each organization should specify what types of events rise to the level of “imminent risk of serious harm.” The Ombudsman may negotiate with the organization to be exempt, based on Ombudsman confidentiality, from some mandates that require reporting by other employees. Best practice is to interpret “imminent risk of serious harm” as narrowly as possible – for example, imminent risk to human life.

**3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.**

The confidentiality privilege is critical to making the Ombudsman Office a place where people can raise any issue, including an alleged violation of statute, regulation, rule, policy, or ethical standard.

IOA asserts that communications made to the Ombudsman do not constitute “notice” to the organization. No one, including the employing entity, should consider the Ombudsman Office to be agent of notice (that is, an office that receives formal notice on behalf of the organization) and no one, including the entity, should seek information about communications to the Ombudsman Office.

The nature and role of confidentiality should be explained to the visitor, who should understand that the Ombudsman claims the privilege for the office and that it is not the visitor’s privilege to waive. Whenever possible, this information should be communicated prior to discussing the concerns brought by the visitor.

Visitors should understand that as a condition for accepting and benefiting from the Ombudsman Office services, they have the obligation to support the Ombudsman claim of privilege and not to attempt to breach this claim.

The Ombudsman should emphasize in office materials and with the management of the organization:

- that the ability to have confidential communications that do not constitute “notice” to the organization is essential to the effective functioning of an Ombudsman Office and distinguishes the Ombudsman from formal reporting channels;

- that it is the “off-the-record” aspects of the office that lead people who use the Ombudsman to do so before taking any official or formal action;
- that the Ombudsman Office enables people to come forward with an issue when they might otherwise be afraid to do so or when they fear retaliation from managers or peers;
- that only by offering the security of confidentiality can the Ombudsman facilitate organizational responsibility and accountability, which are at the heart of provisions contained in the U.S. Sentencing Guidelines and the Sarbanes-Oxley Act that call for mechanisms of confidential reporting and/or guidance;
- that where issues cannot be confidentially raised, they may not be raised at all, thereby depriving the organization of an opportunity to address issues and rectify misconduct that has not yet surfaced through other channels.

3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor’s contact with or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.

The IOA Board has asked the IOA Standing Committee on Professional Ethics, Standards, and Best Practices to review the language and interpretation of 3.3. Please look for updates in the near future.

See Section 4 on informality.

3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.

Ombudsman materials should state that any Ombudsman reporting of trends, or communication of recommendations for systemic change, is done in a manner that protects the identity of individuals.

3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.

3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.

The Ombudsman record-keeping systems and/or database should be independent of the organization’s technology system, with access allowed only to Ombudsman Office personnel. The Ombudsman Office should also be secure to protect private information and records. The office should develop and implement processes and procedures to regularly purge information that could identify individual visitors to the office. Records such as phone bills, which may indicate with whom the office has communicated, should be made available only to the

Ombudsman Office staff. The Ombudsman should take all reasonable steps to protect the confidentiality of any temporary notes or documents, such as locking file drawers and offices, and exercising extreme vigilance if any notes are carried from one place to another.

3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the Ombudsman are not notice to the organization. The Ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the Ombudsman may refer individuals to the appropriate place where formal notice can be made.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman is never an agent of notice (that is, an officer who receives notice for the organization), and communications to the Ombudsman Office never constitute notice to the organization.

If a visitor wishes to make a record, or put the organization “on notice,” the Ombudsman can provide information about how to do so.

Best practice is for the organization to receive allegations of wrongdoing directly from a complainant or witness, and not indirectly through the Ombudsman.

If the visitor is reluctant to make a formal report to the organization, the Ombudsman can work with the visitor to address the reasons the visitor resists reporting, or to work with the organization to make formal reporting channels more accessible.

If the visitor gives the Ombudsman permission to discuss a concern with a manager, and if the concern may involve some allegation of wrongdoing, the Ombudsman should pass on information only in general terms (without specifying names, dates, or events). If the Ombudsman does pass on allegations of wrongdoing, the Ombudsman should emphasize the he or she has not confirmed the accuracy of the allegations. It is not appropriate for the organization to take any adverse action on the basis of information reported informally through the Ombudsman. The Ombudsman may coach the manager on how to make reporting channels more accessible or how to gather information himself or herself.

An ombudsman may place the organization on “notice” when the ombudsman evaluates the circumstances and specifically elects to place the organization on notice by identifying an appropriate point of contact within the organization and communicating to that point of contact specific information which the ombudsman expressly intends to share for the purpose of placing the organization on notice of a specific concern or specific situation. If an ombudsman makes such an intentional notice communication, confidentiality is waived only with regard to the specific communication made with the point of contact for purposes of the notice communication. It is the conversation between the ombudsman and the appropriate point of contact within the organization that constitutes notice and not the conversation between the ombudsman and the visitor. Thus, under no circumstances, is the original communication to the ombudsman part of the notice communication.

All ombudsman offices should have a well-defined and generally available procedure detailing the limited circumstances and the processes under which the ombudsman may provide notice. If the ombudsman elects to place the organization on notice under the conditions above, the ombudsman should follow the protocol of the particular ombudsman office regarding this unusual action. The protocols should include specific steps so that is clear that the ombudsman made an intentional decision to make a notice disclosure.

## **INFORMALITY AND OTHER STANDARDS**

4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

The Ombudsman should work with the organization to encourage it to provide its constituents with a variety of effective formal (rights-based) and informal (confidential and interest-based) options for surfacing and resolving concerns. All options should be well established and clearly and regularly communicated to the entire organization.

As the visitor may wish to consult with additional resources and services, such as the employee assistance program, human resources, or the benefits office, the Ombudsman should describe resources that might be appropriate to the visitor's presenting circumstances. See Section 2.6

The Ombudsman may consider issues, perceptions, interpretations, information, and concerns about inappropriate acts, omissions, or improprieties presented by individuals or groups.

Ombudsman functions include informal third-party intervention, such as shuttle diplomacy, facilitating communication, and informal mediation, which is voluntary and may or may not produce a written agreement.

Any documents or written agreements resulting from informal processes should not be maintained by or within the Ombudsman Office.

The Ombudsman uses a flexible approach with regard to concerns brought to the Ombudsman Office; options are tailored to individual circumstances.

4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

The Ombudsman should not participate in formal management functions. See Section 2.4.

4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.

For most entities, it is the combination of informal services and formal grievance procedures, embodied in a conflict management system, that provides the appropriate range of options to allow for early identification and resolution of potential legal issues or concerns. The Ombudsman should give visitors information about the entity's formal procedures and remedies whenever appropriate. While a visitor may choose to explore informal options for a wide variety of reasons, the Ombudsman should remind the visitor to keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 2.6.

The Ombudsman Charter or Terms of Reference should define the role, if any, of the Ombudsman in relation to employees and issues covered by collective bargaining agreements (CBAs). This role definition should also, where possible, be incorporated in CBAs, and should include a statement that although the CBA permits the Ombudsman to function in these defined ways, the Ombudsman nevertheless retains the authority to decline to be involved. (See Section 1.3.) The union and management may also enter into an ad hoc agreement permitting an Ombudsman to handle an issue.

4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual

The Ombudsman may be requested or required to speak with public officials, in a private or public setting, about the functions of the Ombudsman Office, or about trends published in a written report. If so, the Ombudsman should still observe the confidentiality standards as stated in 3.1 and 3.3.

4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.

The Ombudsman should be particularly careful to maintain neutrality when making recommendations for system change.

4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.

4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

<sup>1</sup>See [www.ombudsassociation.org/standards/](http://www.ombudsassociation.org/standards/)  
October 13, 2009

Penn State University  
University Faculty Ombudsperson

**University Faculty Senate Standing Rules  
Section 10**

**University Faculty Ombudsperson:**

- a. **Eligibility:** Current or emeritus faculty member
- b. **Election:** By the Senate Council for a term of four (4) years (renewable). While University Faculty Ombudsperson, the incumbent may not serve on the Standing Joint Committee on Tenure, the Senate Committee on Faculty Rights and Responsibilities, or the University Promotion and Tenure Review Committee.
- c. **Duties:** The University Faculty Ombudsperson shall coordinate the training of all college and campus ombudspersons; shall provide for the appropriate dissemination of information among the various college and campus ombudspersons; and shall be the university-level contact for the various college and campus ombudspersons. The University Faculty Ombudsperson shall report periodically to the Senate Council and shall maintain liaison with the Office of the University Provost, the Office of Human Resources and the Senate Office. The University Faculty Ombudsperson shall have no appeal function.

**University Faculty Ombudsperson (effective July 1, 2014)**

Pamela P. Hufnagel, Assistant Professor of Education, Penn State DuBois

**Email:** [pph1@psu.edu](mailto:pph1@psu.edu)

**Phone:** 814-375-4839

**Office Hours:** Monday – Friday | 8:00am – 5:00pm

**List of Unit Ombudspersons**

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**Ombudsperson Orientation**

- [August 28, 2014 \(PDF\)](#)
- [Video Recorded Session \(Passcode: B9TDSMAJC\)](#)

**Ombudsperson Policies and Procedures**

- [Administrative Policies](#)
- [Clarification of Ombudsperson Role \(PDF\)](#)
- [Human Resource Policies](#)
- [Intellectual Property Policies and Guidelines](#)
- [Legislation on Establishment of University Ombudsperson \(PDF\)](#)
- [Policy HR76 Faculty Rights and Responsibilities – Ombudsperson](#)
- [Research Administration Policies and Guidelines](#)
- [Unit Ombudsperson Legislation](#)

**Ombudsperson Reports**



- [University Ombudsperson Report 2013-2014 \(PDF\)](#)

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## Ombudsperson Resources

- [Conflict Information Consortium](#)
- [Conflict Resolution Services](#)
- [International Ombudsman Association](#)
- [Mediation Resources](#)
- [The Ombuds Blog](#)
- [Ombudsperson Resources at Other Universities](#)
- [United States Ombudsman Association](#)

## Policies of Interest to Ombudspersons

### Administrative Policies

- [AD29 Statement on Intolerance](#)
- [AD35 University Archives and Records Management](#)
- [AD47 General Standards of Professional Ethics](#)
- [AD67 Disclosure of Wrongful Conduct and Protection from Retaliation](#)
- [AD83 Institutional Financial Conflict of Interest](#)
- [AD85 Discrimination, Harassment, Sexual Harassment and Related Inappropriate Conduct](#)

### Human Resource Policies

- [HR23 Promotion and Tenure Procedures and Regulations](#)
- [HR40 Evaluation of Faculty Performance](#)
- [HR70 Dismissal of Tenured or Tenure-Eligible Faculty Members](#)
- [HR76 Faculty Rights and Responsibilities](#)
- [HR79 Staff Grievance Procedure](#)
- [HR80 Private Consulting Practice](#)
- [HR91 Conflict of Interest](#)
- [HR99 Background Check Process](#)

### Intellectual Property Policies and Guidelines

- [IP01 Ownership and Management of Intellectual Property](#)
- [IP02 Co-Authorship of Scholarly Reports, Papers and Publications](#)
- [IP03 Courseware](#)
- [IP04 Royalty Payments for Course Materials](#)
- [IP05 Policy Governing Copyright Clearance](#)
- [IPG01 Faculty Guidance on Student Intellectual Property Rights](#)

## Research Administration Policies and Guidelines

- RA10 Handling Inquiries/Investigations Into Questions of Ethics in Research and in Other Scholarly Activities
- RA12 Technology Transfer and Entrepreneurial Activities (Faculty Research)
- RA20 Disclosure and Management of Significant Financial Interests
- RAG15 Faculty Consulting Agreements
- RAG16 The Responsible Conduct of Research

<http://senate.psu.edu/faculty/university-faculty-ombudsperson/policies-of-interest-to-ombudspersons/#administrative>



# Centro de Mediación de Conflictos

Recinto de Ciencias Médicas, Universidad de Puerto Rico

*"Promoviendo un ambiente de armonía y colaboración"*

## ACEPTACIÓN DEL SERVICIO DE MEDIACIÓN

Nosotros/as ..... y ....., aceptamos los servicios del Centro de Mediación en relación con nuestra controversia. Se nos ha explicado el procedimiento de mediación y entendernos que:

1. Es un proceso voluntario.
2. Todo lo que se discuta es confidencial.  
El mediador no divulgará ninguna comunicación verbal o escrita ofrecida como parte de este proceso.
3. En las reuniones se mantendrá un clima y uso del lenguaje de respeto.
4. *El Centro de Mediación es Facilitador:* El Centro facilita el diálogo y la comunicación entre los participantes. No toma decisiones sobre el arreglo a la controversia.
5. *La mediación puede darse por terminada por cualesquiera de las siguientes razones:* Acuerdo, impasse, incomparecencia de alguna de las partes sin excusa valida, una o ambas partes se retira o si a juicio del mediador(a) el proceso no está resultando de beneficio.

**Hemos leído las condiciones anteriores y las aceptamos**

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FECHA



**Centro de Mediación de Conflictos**  
Recinto de Ciencias Médicas, Universidad de Puerto Rico

*"Promoviendo un ambiente de armonía y colaboración"*

**ACEPTACIÓN DE ACUERDO**

Nosotros/as ..... y ....., hemos llegado a los siguientes acuerdos, que en nuestro mejor entendimiento, nos permiten atender razonablemente nuestra controversia. Los términos y condiciones son los siguientes:

- ▶
- ▶
- ▶
- ▶
- ▶

Los abajo firmantes hemos leído y entendido los términos y condiciones descritos, los cuales establecen nuestros acuerdos.

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