MIT CMS MATERIALS

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AN OVERVIEW OF THE MIT COMPLAINT SYSTEM FOR DEALING WITH HARASSMENT

MIT appears to have been the first major organization to adopt policies and procedures for dealing with harassment. This process began explicitly in the first months of 1973, some years before the passage of Federal and state laws and regulations on dealing with harassment. It resulted in the building of an integrated conflict management system which now deals with most kinds of concerns and complaints. The system is constantly reviewed -- there have been a number of substantial changes in policies and procedures in the last 25 years. With respect to the subject of harassment, a 78 page document -- The MIT GUIDE to Dealing with Harassment --- is available for review at: http://web.mit.edu/communications/hg/.

The system was built on a number of principles:

So far as possible policies and procedures should be substantially the same or similar for everyone -- for all pay classifications and people of student status. This led to one policy for everyone and similar sets of procedures for everyone.

The system should have "redundant" elements, in the engineering sense of redundancy, to provide fail-safe, check and balance and backup. This led to provision of a multi-access system where complainants can enter the system in a wide variety of ways.

The system was designed as a zero-barrier or low-barrier system, to make it more likely that people would actually come forward when they perceive something seriously amiss. This led to the provision of many options for complainants, since different people have very strong feelings about which option in a complaint system they are willing to use. (In particular it appears from many nation-wide surveys that only a small proportion of the general population is willing to use formal complaint procedures.)

The attempt to design a low or zero barrier system also led to provision of highly confidential options: the ombuds offices, counselling deans, religious counselors, health care practitioners. The ombudspeople in particular do not keep case records and receive a relatively high level of concerns and suggestions about harassment. The GUIDE to Dealing with Harassment explains to the community that -- if a complainant wishes to have action taken -- he or she may go to line managers or most staff offices. (If the complainant wishes to have action taken there are a variety of informal options. If the complainant wishes to make a formal complaint, the GUIDE also carefully specifies what should be in a formal complaint and how to make a formal complaint). If the complainant does NOT wish action taken without permission, he or she might -- at least at first -- consider one of the highly confidential offices.

The system was designed to serve people equitably without regard to race, color, gender etc. With respect to harassment, all forms of harassment and unacceptably unprofessional behavior were covered from the outset.

The system was designed to provide information and training for the community, and in particular, specific guidelines for people in each of four "roles" in the community: possible perpetrators of harassment, possible targets, supervisors, and "bystanders". Addressing each of these four roles separately appears to have been helpful in raising consciousness about appropriate professional behavior.

For twenty-five years the MIT system (all access points taken together) has experienced a relatively high level of contacts and concerns about various forms of perceived harassment and workplace mistreatment and an apparently low level of external complaints.

An Effective Conflict Management System

1. Provides options for all types of problems and all people in the workplace, including faculty, staff, students and post-docs.

2. Creates a culture that emphasizes integrity, welcomes questions, and encourages conflict resolution at the lowest appropriate level (including support for people to learn to manage their concerns directly with those involved.)

3. Provides multiple access points. Faculty, staff, students and post-docs can readily identify a knowledgeable person whom they trust for help with conflicts and the conflict management system.

4. Provides multiple options—both rights-based (formal channels) with trained investigators; and interest-based (informal and mediation) options, with trained problem-solvers.

5. Insures that people know policies and rules, coordinates the multiple access points, integrates conflict management into daily operations, and works for continuous improvement.

Questions for Review

-All cohorts covered by the same personal conduct policies?
-Complainant and responder, in a formal process, get to see either what each other has written, or the "major elements thereof"?
-Cross-cohort complaints handled appropriately for all cohorts?
-Getting back to the people involved?
-Follow-up after problem resolution?
-Making a complainant or an injured person whole?
-Multi-issue complaints — all issues reviewed?
-No retaliation?
-Policies in sync with each other?
-Protection of privacy?
-Reasonable consistency in how the "same" concerns are handled?
-Right of accompaniment; provision of confidential support?
-Timeliness and timelines?

1995

Similarities and differences between public and private sector Ombudsmen

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Mary Rowe drafted a paper to describe the options, functions and skills of ombudspersons in the private sector. Dean Gottehrer wrote about the same subjects from the perspective of public sector, classical ombudsmen (particularly in Alaska). These comparisons highlight the similarities and differences in the public and private sectors of the ombudsman world. *Dean's comments are in italics and follow Mary's.*

Overview

An organizational ombudsperson is a confidential and informal information resource, communications channel, complaint-handler and dispute-resolver, who may also help work for systems change. Organizational ombudspeople are employed by public and private institutions, agencies and corporations. The basic purpose of such an ombudsperson is to foster values and behavior such as fairness, equity, justice, equality of opportunity, and respect. The ombudsperson often will be especially concerned about those who are -- or who see themselves as -- less powerful than others in a given situation.

The public sector, classical ombudsman receives and investigates complaints about the administrative acts of agencies. Classical ombudsmen exist at the federal, state and local levels. In a classical office, the majority of complaints are handled as opportunities to assist the complainant. That assistance can take the form of providing information, helping to resolve disputes, advancing or facilitating communication. Occasionally, it means investigating the acts of an agency to determine whether they were contrary to law, unreasonable, unfair, inefficient, discourteous, unnecessarily discriminatory, based on mistake of fact, etc. The ombudsman is most concerned that the laws be followed and that process is observed. This may mean making a finding that a complainant was subject to an act of maladministration or that the agency did what the law, regulation, policy or procedure called for under the circumstances.

This kind of ombudsperson is a designated neutral within an organization and usually reports at or near the top of that organization, outside ordinary management channels. (An outside organizational ombudsperson works on contract as an ombuds service provider and may report to the CEO or to the head of the division that is contracting with the practitioner.) The designation of neutrality and the situation of reporting to the CEO help to preserve the independence of ombudspeople.

The public sector ombudsman is a neutral third party, neither representing nor advocating for complainant nor agency. In the classical model, the ombudsman is appointed by a legislative body to investigate the administrative acts of the executive, legislative and judicial branches. Because the ombudsman is not responsible to the agencies and people being complained about, the ombudsman has the power to investigate formally and to make recommendations. Executive and specialty ombudsmen exist. They may find themselves at somewhat of a handicap having to investigate those who appoint them. The classical ombudsman historically does not investigate elected officials (the electorate has the power to remove or refuse to reelect at the polls and so the ombudsman is not a substitute for recall or rejection at the polls), or judges (who are either subject to re-election or removal and the ombudsman does not substitute for those processes). The ombudsman has the power to report to the agency being complained about, issue investigative reports to the highest elected officials, the legislative body, other agencies and the public and media. Classical ombudsmen generally report directly to no one and are guaranteed independence by a web of controls and counterbalancing pressures.

The ethic and practice of near absolute confidentiality helps to preserve the right of people who contact the ombudsperson to decide themselves how to deal with their concerns. Organizational ombudspeople typically will not answer questions from anyone, including senior management, about those with whom they may have had contact--and they maintain the privacy of everyone with whom they have spoken -- unless they have permission to speak. In order further to safeguard the reality and appearance of neutrality and confidentiality, they do not appear as witnesses in formal proceedings inside or outside their organizations. Ombudspeople may of course serve managers -- who may call upon the practitioner in the same fashion as anyone else -- but the ombuds practitioner does not represent or act formally on behalf of a manager or of the employer.

Public sector ombudsmen are required by law to keep the identity of complainants confidential. Of course, some complaints cannot be investigated without identifying the complainant. If the complainant will not allow that and the investigation requires it, the ombudsman will close the complaint. If the complainant wishes the investigator to look into the complaint to see if it warrants investigation or if the complainant wants the investigator's assistance to see what the problem is, contact will be made with the agency and eventually the investigator will tell agency staff what the complainant is alleging. Once the complainant decides that the ombudsman may look at the complaint, it becomes the ombudsman's complaint to investigate. The complainant may at any time withdraw the complaint. Generally that will halt investigation. However, most public sector ombudsmen may initiate investigations on their own motion and they can decide to continue an investigation even if the complainant withdraws the complaint. So public sector ombudsmen will answer questions from agency personnel about the complaint, but they and their staff have the discretion not to do so and may not reveal confidential information to anyone. Public sector ombudsmen are generally prohibited in their

statutes from testifying or producing records. They also have immunity from liability in their official acts.

Organizational ombuds practitioners are different in some significant ways from "pure" or classical ombudsmen who are created by law and generally appointed by legislative bodies. Classical ombudsmen receive complaints about the administrative acts of government agencies. They may have jurisdiction over all agencies of a local or state government or only over certain agencies. Outside of the United States, they may be national ombudsmen with powers to investigate a number of agencies nationally. Specialty ombudsmen in North America and around the world may, for example, investigate prisons or deal with the needs of a defined population such as children or crime victims. Classical ombudspeople are also designated neutrals and have many of the functions described in this article. They, however, also serve an important additional role for citizens, as formal investigators and fact-finders with subpoena power and strong legal safeguards for their independence and the confidentiality of their records. In addition they can and do publish public reports that make findings on whether a complaint was justified and offer recommendations to the agency investigated. Like organizational ombudsmen, they have no power to enforce their findings or recommendations.

An organizational ombudsperson may serve internal staff (employees and managers) or clients of the organization (such as students, patients, nursing home residents, newspaper readers, insurance subscribers, banking customers, etc.) or both internal staff and clients. Some organizational ombudspeople who serve clients do so in a manner similar to that of classic, statutory ombudsmen. That is, some client ombudspeople may look into a problem and issue a written report with opinions as to right and wrong. A common example would be that of a newspaper ombudsperson--and many other organizational ombudspeople who serve clients (customers of the employer) also use this mode.

However many practitioners do all their work informally, and put almost nothing on paper. Most ombudspeople who deal only with internal staff, and many of those who deal with students do no formal investigations and write no reports.

The Alaska ombudsman has removed himself from employee grievances. Unionized employees have recourse to a grievance system that ends in binding arbitration. There is no incentive for the agency to accept the recommendation of the ombudsman if it thinks it can take the grievance to binding arbitration and win. The ombudsman is not an alternative to unionized grievance procedures. The ombudsman will accept complaints from agency employees about matters not subject to a grievance process. Some agency heads have requested the ombudsman conduct an investigation because the office is seen as a credible, neutral third party that will not be biased toward one side or the other. Ombudsmen in other jurisdictions have differed about whether they will accept such complaints from elected officials who are generally not subject to the jurisdiction of a public sector ombudsman. Others have felt that elected officials are members of the public as well and should have the right to avail themselves of the office's services to the same extent as complainants who are not elected public officials.

Public sector ombudsmen work both formally and informally. Formally, ombudsmen will conduct a full-scale investigation that may require deposing witnesses, subpoenaing evidence, creating

an office record and writing a formal report. In Alaska, the preliminary report must be sent to an agency for its comment if the report is critical of the agency. Also a misconduct complaint critical of the person accused of the misconduct must have an opportunity to review it and comment. Responses to critical comments will be incorporated in the report along with any response from the ombudsman. Informally, ombudsman investigators will call agencies, make inquiries, examine files and records and generally facilitate communication between agency and complainant and hopefully advance the situation so the complainant has a better understanding of what is taking place or the problem should be resolved.

The records of public sector ombudsmen are protected and confidential. For this reason, public sector ombudsmen can keep extensive records of complaints, secure in the knowledge that the courts have upheld the confidentiality of these records. Many public sector ombudsmen have computerized caseload management systems in which they store information, some of which is public and some of which is confidential, about the complaint, the complainant, the allegation, which agency was complained about and how the complaint was handled, resolved or investigated.

By tradition, an ombudsman may not make or change or set aside a law or management policy or decision. By tradition an ombudsperson may agree or not agree to help a person who contacts him or her. Ombuds practitioners often prefer not to deal with third party complaints. However at their own judgment they may agree to listen to a third party, and in certain rare cases this service may be very valuable to the organization. An ombudsperson may act "on his or her own motion" if he or she perceives a problem that appears to need attention. (Acting in this fashion the ombuds practitioner would try not to run a risk--or give any impression--of violating the confidentiality of any visitor to the office. This kind of action would be most likely when the practitioner personally sees some problem, for example, like a safety hazard, or a management document that seems indecipherable and needs to be re-written.)

By statute, ombudsmen have limited powers. Generally, they are the power of subpoena, the power of persuasion and the power of publicity. Ombudsmen can subpoena people to speak with them and take depositions under oath. They can subpoena evidence from agencies and private companies or individuals. They can attempt to persuade agencies to follow recommendations and they can make their reports public to increase the pressure to follow the recommendations. But they cannot force an agency to do anything else. While they can recommend changes in the law to the legislature, they cannot introduce legislation or make the changes themselves. While public sector ombudsmen have some discretion about how complaints are handled, it seems to be far less than that of private sector ombudsmen. A public sector ombudsman can decline to accept a complaint only for the reasons set out in a statute. The discretion whether to conduct a full-scale investigation is probably broader but only a very small number of complaints ever become full investigations with reports. Alaska law does not allow the ombudsman to pursue complaints filed by third parties. But it does allow anyone to file a complaint about anything. Investigators always listen and generally offer some suggestions about what the person can do if they cannot pursue the complaint. When the complainant is a third party, investigators ask that person to have the person affected by the agency action call us. Alaska's statute allows the ombudsman to initiate complaints on his own. In practice, such ombudsman-initiated

complaints are relatively rare. The office much prefers to have a complainant. If the problem is important, the wait for a complaint is generally not very long.

People who call upon an organizational ombudsperson need options and usually can be offered a number of different options from which to choose. In fact, the customary practice of offering options, rather than choosing for a complainant how a complaint will be handled, helps to define the profession of ombudsmanry within organizations. Many managers think of options for conflict management as options for the manager. In most instances an ombudsperson, by contrast, thinks of the options open to the person who contacts the practitioner. Most organizational ombudspeople, by their codes of ethics, will not act without permission unless the situation seems potentially catastrophic and there seems no other responsible option.

In the public sector, the result is similar, but classical ombudsmen view the process differently. Investigators ask complainants to do what they can for themselves. Part of what public sector ombudsmen do is inform complainants about what they can do. In some circumstances, if they won't do it, the ombudsmen won't look in to their complaint. For example, ombudsmen ask inmates to grieve and appeal to the highest level those issues that can be grieved. If the issue is one where that won't work or damage will be done before the grievance can be heard and resolved, investigators do not ask them to grieve and appeal. Medical emergencies are an example where ombudsmen would not send a complainant into the grievance process if they needed a solution more rapidly. But investigators have refused to look at complaints where inmates refuse to file a grievance without good reason. Since so much of what public sector ombudsmen receive complaints on is governed by statute, regulation or policy and procedure, option generation may not be as central to the public sector role. But education is a very big part of that role. Public sector ombudsmen educate complainants about processes they can avail themselves of, help them be better complainants and offer tips on how to get what they seek without offending those from whom they seek it.

Rather than serving just as mediators or counselors, or just as third party intervenors, ombudspeople have a variety of functions. In practice, organizational ombudspeople typically have most of the functions that any dispute resolution practitioner can have. The exceptions are that organizational ombudspeople typically do not investigate formally for management for the purpose of adjudication, they do not keep case records for the employer, and they do not make management decisions. Their multiplicity of functions--and the facts that organizational ombudspeople typically do not do formal investigations for adjudication and that they do not adjudicate--also help to define the ombuds profession.

Public sector ombudsmen use all of those skills but probably in a different mix. Classical ombudsmen do very little mediation in the formal sense, although some are experimenting with it. The Alaska Ombudsman's Office participated in the Wolf Summit as mediation facilitators in a small group process. But that has been the office's only formal mediation role. Classical ombudsmen do investigate but not on behalf of the agency, nor for the purpose of adjudication. They also do not make management decisions, but they will make recommendations to management. They do keep extensive

case records that are confidential and protected against having to testify or comply with subpoenas to produce office records.

Ombudspeople need certain knowledge and need to learn a variety of skills to pursue their basic functions. Skills and knowledge may be acquired by experience, professional courses such Ombudsman 101, 202, 303, etc., academic courses, training at professional conferences, and discussions with other ombudspeople.

The list covers all three subjects simultaneously: the basic OPTIONS and alternatives open to a caller/visitor/complainant, the FUNCTIONS of complaint-handlers (all but two of which are practiced by ombudspeople-see the box below) and a basic outline of SKILLS that an ombudsperson should acquire. Each item on the list is, at the same time, an option, a function and a skill.

This list works as well for public sector ombudsmen but within the differences in roles between the two different types of ombudsmen.

Basic Options, Functions and Skills

Listening: The first option that a caller or visitor may choose is just to talk, and for the ombudsperson to listen, in an active and supportive fashion. The ombudsperson may affirm the feelings of the individual but should be an impartial person with respect to the facts of a situation. In many cases this is all that a caller wants. Listening and being gently questioned may help put a problem into perspective. It may help a person to deal with rage or grief or uncertainty or fear. It may help people deal with stress so they can take the time that they need to figure out what is happening to them. Listening impartially is a special skill and requires constant thought and discipline.

Providing Information: Often a caller needs information on a one-to-one basis. For example, often a caller does not know what information or which records are by law available to him or her. The ombuds practitioner might provide a copy of a policy or obtain clarification of the meaning of a policy, so a complainant under stress need not search or read through dozens of pages of a manual. The ombudsperson may be able to provide or go find information that resolves a problem in one or two contacts.

Reframing Issues and Developing Options: An ombudsperson may be able to help a visitor or complainant develop new options. Often people come to an ombudsperson's office believing they have no options or only bad ones. The ombuds practitioner can often help frame or reframe the issues, identify or develop new and different perspectives, and describe additional, responsible and effective paths from which the visitor may choose. This function is often especially useful to managers in a quandary.

Public sector ombudsmen do not use this function much with managers. Agencies usually find most situations covered in statutes, regulations, or polices and procedures. Attempting to devise options is difficult if not impossible when the manager finds the statutes cover the situation.

Referral: Many visitors and complainants need more than one helping resource-in effect a helping network. Some need the help of a person such as a social worker or an "accompanying person" who can act as an advocate. And sometimes the ombuds practitioner is not the best person to help but knows who would be more appropriate. An ombudsperson should know the other important resources available for people with problems, and will be able both to refer callers and complainants to others, and to work effectively with others on behalf of a visitor or complainant, when given permission to do so.

Helping People Help Themselves in a Direct Approach: An ombuds practitioner may help a visitor or complainant to deal directly with the perceived source of a problem. Through discussion, support and role-playing, a visitor may develop the skills and self-confidence to work on an issue without third party intervention.

This option includes A (the complainant) choosing to deal directly with B (the apparent offender or the perceived source of a problem) in any of several ways:
* A could choose (to learn how) to write a private note or letter to B, laying out the facts as A sees them, A's feelings about these facts, and the remedies proposed by A.
* A could choose (to learn how) to go talk directly with B, with or without presentation of a note or letter. A may decide to go back to B alone, or accompanied by a friend or colleague.

If an ombudsperson knows that a direct approach is being chosen, the ombudsperson typically would follow up with A, asking if the situation is resolved with no apparent reprisal.

Drafting a private letter is often the most helpful first step for a visitor to take, in deciding what to do next. This is especially true if the visitor is angry and upset. Thus, preparing a private letter, whether or not it is sent, is almost always helpful in choosing an option and in pursuing any option. This draft may possibly also be useful as evidence, if needed, if the letter writer later decides to make a formal complaint to management. If the complainant wishes help in drafting a letter, an ombudsperson may ask questions, offer editing suggestions, offer ideas about an effective tone for the intended message of the letter, suggest reorganization of points, etc. (The practitioner typically would not write, or keep a copy of, notes or a letter for a complainant. The ombudsperson would explain that it is the responsibility of a complainant to document and preserve evidence that he or she has, or to make sure that his or her evidence is in safekeeping in the files of responsible line or staff managers, if the complainant wishes such evidence to "be on record.")

The same caveats on evidence apply to public sector ombudsmen. Investigators in Alaska are much less likely to use letter writing as a strategy and certainly would not follow up with the person addressed in the letter unless the complainant filed another complaint that the person addressed in the previous letter has not responded. Alaska investigators believe that the complainant is the person best suited to monitor and pursue a complaint. The complainant is the person most interested in seeing the situation resolved. Ombudsmen would likely help a complainant who felt incapable of writing a letter to write one if it is related to the complaint and advances the complainant's situation.

Sending a private letter -- in the context of North America -- may be a good approach for a complainant whose concerns are in part a matter of perception, like arguments over who should get credit for a good idea. In a harassment complaint, the complainant's letter may also help, later on, to demonstrate that offensive behavior actually occurred and that it was unwelcome. (Both of these points would be essential in making a finding of sexual harassment if the private approach did not work.) In some cultures, the direct approach, or one or another version of the direct approach, may not be considered appropriate.

Informal Third-party Intervention: The visitor may choose to ask a third party to be a shuttle diplomat -- to go back and forth between A and B, or bring A and B together informally, to resolve the problem. The third party could be the ombuds practitioner himself or herself. On the other hand, after consultation with the ombudsperson, the visitor might choose to ask a colleague, a housemaster or student dean or faculty member in an academic institution, an administrative officer, a personnel officer, an impartial line supervisor or department head, or other appropriate person to intervene.

Classical ombudsmen generally do not perform shuttle diplomacy. Either the complaint can be resolved with tasks the investigators are obliged to do under the statutes or it cannot. Shuttle diplomacy is not something classical ombudsmen engage in because most jurisdictional complaints can be examined in the context of law, regulation, policy or procedure. They may however engage in extended discussion between complainant and agency, but that is usually in the function of making a decision that the complainant has not been treated fairly or correctly under the governing rules.

It is important in these approaches that there should be no formal disciplinary action taken by a third party without a process which is fair to an alleged offender. (Typically moving someone or re-assigning duties is not by itself defined as disciplinary action, where these are customary management responsibilities, but a formal letter of reprimand would be so defined). The ombudsperson should follow up afterward, to see if the problem is resolved, and to check about possible reprisal.

Alaska has a Whistleblower Statute that protects people involved in a matter investigated by the ombudsman from denial of benefits, reprisals, etc. Additionally, obstructing an ombudsman investigation is a misdemeanor punishable by up to a year in jail and a fine of $1,000.

"Looking into" the Problem: Organizational ombudspeople typically have access to all or to almost all of the data kept by an employer. Some organizational ombudspeople-this practice may be more common in Canada-may agree to look into a problem on a fairly exhaustive basis and write a report including the practitioner's opinion of right and wrong. Some such practitioners refer to this practice as "investigation" as a classic ombudsman might do.

Ombudsmen statutes generally give ombudsmen access to all government records with the exceptions listed. In Alaska, state records the ombudsman may not have access to are: attorney work product, confidential communication between client and attorney, records of an on-going criminal

investigation, records that would tend to disclose the identity of a confidential police informant, and confidential oil and gas data. Investigators have access to and have examined: confidential personnel records of state employees, confidential child support records, confidential child protective services records about children in the state's custody and how they got there.

However this investigative function is typically at the request of someone in the organization other than the employer, and is typically not for disciplinary purposes. Client ombudspeople (who serve clients of the employer, such as readers of a newspaper, residents of a nursing home, patients in a hospital, franchisees of a franchiser) also may agree to look into a problem and submit a written report. Sometimes this report is submitted in draft to a relevant manager before being issued, to allow for discussion and perhaps remedy of a problem-or revision of the draft. Sometimes the report is simply issued without such a step. The findings of an ombudsperson may be accepted in whole or in part, or ignored or rejected by the employer and its managers -- typically the findings are not binding on the employer. The role of an ombudsperson may be thus differentiated from that of an inspector general or ethics officer.

How reports are handled is detailed above. In the public sector, the role of an ombudsman most closely approximates that of a legislative auditor. The auditor, however, would not spend the time investigators do listening to complainants and handling complaints that are not audits.

Other organizational ombudspeople look into problems much less formally, and never or almost never write a case report. They usually will report their findings directly to a relevant manager or the findings become part of the work of shuttle diplomacy. If the informal findings of an ombuds practitioner indicate the need for formal investigation, for example by the Audit Department, Ethics Office, Safety Office, Security Department or Campus Police, or line management, typically the practitioner will endeavor to see the matter turned over to the appropriate fact-finder.

The written reports of some ombudspeople in Canada may occasionally be introduced in formal hearings, though in these cases the ombudsperson typically will refuse to identify his or her sources for information, unless their names have been included with permission as part of the report.

Classic Mediation: This option is offered by ombudspeople in many (though not all) organizations. In classic mediation, A and B are helped by an ombudsperson, or another person who is a trained mediator, to find their own settlement, in a process that is rather formal and well-defined. A and B may meet with each other and the mediator, or may deal with each other indirectly, with the mediator going back and forth between them. Classic mediation is purely voluntary for A and B and for the mediator. This option must therefore be chosen by both disputants, and agreed to by the ombudsperson or other trained mediator, if it is to occur. Settlements often are put into writing, and may be on or off the record as the parties may decide. Formal mediation is still relatively rarely chosen but is becoming somewhat more common. Many 30-40 hour training programs are available to teach mediation, and most offer a certificate of completion.

As noted above, classical ombudsmen are only experimenting with classic mediation. Few do it on any regular basis.

Generic Approaches: A visitor may choose a generic approach which is intended to change a process in the workplace -- or generically to alert possible offenders to inappropriate behavior -- in such a way that the alleged specific problem disappears. For example, an ombuds practitioner might be given permission to approach a department head about a given problem without using any names. The department head might then choose to distribute and discuss copies of the appropriate employer policy -- for instance to stop supervisors from requiring uncompensated overtime from non-exempt staff. Or a department head might encourage harassment training, in such a way as to stop and prevent inappropriate behavior. Generic approaches may be effective in stopping a specific offender and may of course prevent similar problems. These approaches typically do not affect the privacy or other rights of anyone in the organization.

This approach is generally not used by public sector ombudsmen. The closest they come to it is to look at a complaint or do an investigation without divulging the name of the complainant. The allegation, however, needs to be specific so it can be determined whether it is justified. Generic allegations cannot be verified or checked.

Systems Change: Research indicates that about a third of the working time of organizational ombudspeople is spent on systems change. A practitioner might notice a problem new to the organization and surface it in a timely fashion, thus serving as an early warning channel for new issues. The practitioner might notice a pattern which would indicate the need for employer attention-or the need for a new policy or procedure or structure in the organization. These functions must of course be pursued in a manner consonant with the confidentiality of ethical ombuds practice.

Systemic investigations are increasingly important in public sector ombudsmanship because they multiply an ombudsman's effectiveness. If a system is broken, it is likely generating large numbers of complaints. While each complaint can be fixed individually, the supply of Band Aids will likely give out before the system is fixed. A systemic investigation looks at a system as a whole and seeks to determine where it has broken down and what is required to fix it.

Many ombudspeople teach or facilitate in training programs to help prevent certain kinds of problems and to help teach principles of ethical management relevant to the given organization.

Following Through: Often an ombuds practitioner will undertake some action as requested by a visitor. In other cases the visitor will act directly. Ombuds practitioners commonly may "follow through" on the problems brought to them -- in a wide variety of ways. For example, one may simply ask the visitor to call back, or may follow up on administrative action to see that it was effective. One may listen for evidence of reprisal. One may follow up months later with a visitor to see that all is well.

Because of the volume of complaints public sector ombudsmen receive, these types of call backs are rare. Normally, investigators depend on complainants to bring the problem in again if solutions

have not been reached or the agency continues to act in an unacceptable manner. This is something complainants are advised they can do for themselves.

A Custom Approach: Where none of the options above seem exactly right a caller or visitor may ask for or need unusual help. A typical example would be action with a long or short time lag that is appropriate to the situation. If all options temporarily seem inappropriate, an ombuds practitioner may simply commit to continuing to look for a responsible approach that is tailor-made for a particular situation.

Investigation and Adjudication and Formal Appeals: As distinguished from an ombudsperson, a supervisor, department head, personnel officer, formal fact-finder or other appropriate staff person may investigate and/or adjudicate a concern in a formal fashion, or deal with an appeal in a formal grievance channel. A practitioner functioning as an ombudsperson is, by contrast, not part of the due process or compliance structure of an organization and does not do formal investigations or keep formal case records for the employer. (Some ombudspersons do play a neutral role in convening or supporting peer review grievance channels.)

Public sector ombudsmen exist outside formal processes. Often they will ask complainants to use the formal processes before agreeing to look into a complaint. In Alaska, the time for appealing to a court is not halted by coming to the ombudsman. Nor is the ombudsman considered a step in exhausting administrative remedies.

An ombuds practitioner should, however, understand the formal grievance process. Disciplinary action and adverse administrative action require a fair investigatory process, including notice to the alleged offender and a reasonable opportunity for that person to respond to complaints against him or her. The ombudsperson should be able, if asked, to help others to learn how to investigate and adjudicate fairly, and to support managers to deal with appeals effectively and fairly. The ombudsperson should not necessarily need to learn the particulars of a formal grievance, but should be able to advise on fair process -- perhaps offering pros and cons for consideration. The ombudsperson should also be able to describe and offer the formal grievance option to complainants. Some ombudspeople accept concerns and complaints about apparently unfair formal procedures.

Unless the classical ombudsman has retained jurisdiction over union grievances, this is not necessary. What is needed is that the investigative staff be well-versed in what appeals procedures exist for complainants and what the office will require complainants to do before agreeing to look at a complaint.

The list of skills below also applies to classical ombudsmen to a greater or lesser degree except where noted.

Additional Skills:

In addition to the basic list of function-related skills an ombudsperson of course needs additional skills. These include:

• Maintaining confidentiality and neutrality
• Maintaining statistical records and using them appropriately
• Using data, in a fashion consonant with confidentiality, to inform management of new problems, and of issues that need management attention, and of exemplary management and employee practices that deserve commendation or emulation
• Self-reflection, and evaluation of the office, and continuous evaluation-through surfacing the concerns and commendations of users-of the employer's conflict management system, and, as appropriate, of other human services programs in the organization. An understanding of the cost-effectiveness of good communications, fair conflict management and complaint-handling, and early surfacing of problems is essential for ombuds practitioners.

Classical ombudsmen generally function only in the context of a complaint, whether it was brought to the office or initiated by it. Little has been done to bring problems to the attention of agency managers where complaints have not been filed.

• Developing new skills on a continuous basis, and teaching skills
• Mentoring others on a one-to-one basis

This translates to educating complainants in the public sector and training staff.

• Staying out of formal grievances and court processes
• Dealing with groups
• Dealing with senior managers who are themselves a problem for the organization

Absent a complaint, this is not done by classical ombudsmen.

• Dealing with difficult and dangerous people
• -Using non-offensive humor to defuse stress and tension
• Seeking and using consultation when the ombudsperson needs help

Additional Knowledge -- An ombudsperson needs to know:

• The Ombudsman Code of Ethics and Standards of Conduct.

Knowing the governing body of law that affects the operation of the ombudsman.

• How and where ombudspeople practice.

Only relevant for referral or for educating staff on how to do their jobs professionally.

• How the profession is organized, how ombudspeople meet together professionally, and how to keep improving professional skills on a continuous basis.
• The employer's policies and procedures, values and code of ethics.
• The structure and processes of the employer's organization.
• Laws relevant to the given organization, and laws related to any client groups that will be served. Examples might include employment law, the Federal Sentencing Guidelines, access to records. etc.

In the public sector, this involves reading the relevant laws. Over time, investigators have discovered they can learn what law governs a situation faster by asking an agency than by searching it out themselves.

• Sufficient knowledge of cross-cultural, ethnic and gender issues and facts to deal effectively with diversity concerns.

Functions Organizational Ombudspeople Do Not Have (and where there may be role conflict for practitioners with multiple roles)

Ombudspeople:

• Do not -- in the role of ombudsperson -- write formal reports at the request of management for decision-making by management . For example organizational ombudspeople do not do risk assessment with respect to formal grievances, or fact-finding for formal grievances, or keep case records with names for the employer.

Classical ombudsmen write formal written reports that may call for decisions by the agency staff to whom the reports make recommendations. At the very least, the agency can ask that findings be modified and decide whether to accept the recommendations. Classical ombudsmen are not part of a formal grievance procedure. In fact, in Alaska the ombudsman will not examine complaints from anyone represented by a union with a state bargaining contract that provides a grievance process that ends in arbitration. The ombudsman's investigative process is established in statute, regulation, and policies and procedures. Case records with names are kept, but they are confidential and protected from disclosure by law.

• Are not compliance officers in any domain (for example, with respect to Equal Opportunity, Safety or Ethics functions).

Likewise. Classical ombudsmen do not duplicate these functions but will investigate complaints against those who perform them (except for employment complaints from unionized state employees).

• Are not Inspectors-General.
• Are not Human Resource/Employee Relations/Industrial Relations officers.
• Do not serve as internal counsel.
• Do not serve as arbitrators.
• Do not accompany visitors in a formal grievance process.

Likewise.

• Are not advocates for any party in a conflict -- though they are advocates for fair process.

Generally speaking, neither are classical ombudsmen. As neutral third parties, classical ombudsmen do not take the role of advocate for either party. They will, however, advocate for recommendations made in investigations. Sometimes that means asking an agency to do what complainants want because the ombudsman found them to be correct and the result they desired to be an appropriate solution. It can also mean testifying before the legislature. In the broadest sense,

classical ombudsmen are advocates for good government rather than specifically hired by either the agency or the complainant.

• Do not deal with lawyers in a formal or legal confrontation.

Generally, lawyers are not involved in the process of a classical ombudsman (except that Alaska has a few investigators, the ombudsman and the deputy who are attorneys and other states have also employed attorneys in these roles). In Alaska, anyone the ombudsman is investigating has the right to be represented by counsel and a number have chosen to do that. Since people the ombudsman will depose have all the rights they would have in a court of law, they may have an attorney of their choice present. A number of the people deposed have done so. The ombudsman has also been sued and subpoenaed to testify or produce records. Alaska courts have never required the ombudsman to produce records or testify.

• Are not therapists.

Neither are classical ombudsmen. Strictly speaking staff do not do therapy, but they have been shoulders to cry on and have offered advice to complainants that goes beyond receiving complaints against the administrative acts of a state agency.

• Are not part of any formal due process structure.

The classical ombudsman does observe procedures that might be considered due process rights for people and agencies being investigated. But these are rights the ombudsman defined or were defined in the ombudsman's statute. Coming to the ombudsman does not extend any statute of limitations or halt it from tolling.

• Part-time ombudspeople do not serve as an ombuds practitioner in any area where they are also line managers.

Part-time and full-time employees of the Alaska Ombudsman are expected to declare any conflict of interest when a complaint is taken and to remove themselves from any investigation where they have a conflict. This means not taking complaints from friends, neighbors, relatives or enemies. If any party to the investigation would think the treatment from the ombudsman was less than fair and neutral if they knew about any relationship between the investigator and other people in the complaint, the investigator should declare the conflict and be recused from the complaint.

OPTIONS AND CHOICE FOR CONFLICT RESOLUTION IN THE WORKPLACE:[1]

COMPLAINANTS SHOULD HAVE MORE CHOICE ABOUT HOW TO COMPLAIN

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(for Changing Tactics, Lavinia Hall, Editor; Program on Negotiation)

Henry came into my office extremely upset by his supervisor's taking credit for work that Henry had done. Henry said he did not want "just to forget it". He also did not want to leave the department -- and he did not see how he could stay. He also did not want to make a formal complaint. In short, he felt he had no options. At first Henry was also afraid of the half dozen other alternatives I suggested to him, including the possibility of a polite, well-crafted letter to the supervisor. However, he finally decided to work with me on a letter, and he did then send the letter (privately) to his supervisor. He was astonished that his letter brought an apology and full credit in public.

Colleen poked her head into my office. "Just wanted you to know that my boss tried to take off my blouse last night in the lab. I stopped in to tell you because I know you want to know about these things and besides I just wanted to tell somebody. Charges? A complaint? No, I don't want to make a complaint. He'll never do it again. I really walloped him. I told him if I, or any one else I know, ever has this problem with him again, he'll be missing a piece of himself. I don't want you to do anything about this; what's more,... you don't need to!"

Sandy came in sadly to talk about a problem with an old friend in the department. Sandy felt the friend might be drinking at lunch, was using poor judgment, might possibly get himself or Sandy into an unsafe situation with high voltage equipment. "I know I should simply turn him in, but I hate just to call down an investigation on him, and get him fired."

Both complainants and complaint handlers need options

I believe that people with concerns -- and those who complain and dispute -- often want more options than they have. I also argue here that employers and others who are responsible for dealing with complaints have much to gain from offering options. For example, I believe that people with problems who believe they have options are much more likely to come forward in timely fashion. I note that those who choose their own options are more likely to be satisfied. In addition, employers may in some cases be protected, if a complainant's choice of option does not work out well, because the complainant could have chosen a different mode of complaint-handling.

However, many managers and even some negotiation theorists do not believe in providing options. Moreover, I believe that many complainers and complaint-handlers actually practice very restricted options with respect to complaining[2].

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[1]This article was adapted from a lecture about complaints and disputes that arise within institutions. I have been a full-time ombudsman at MIT for seventeen years, and consultant to a fairly wide variety of other ombudsmen and other private and public employers. The ideas in this article, the examples and the quotes, (which are taken from real cases), are drawn from this experience.

[2] See also the work of Deborah Kolb, (Simmons College), and of Sally Merry and Susan Silbey, (Wellesley College), on the narrow range of conflict resolution modes practiced by mediators whom they have studied.

Disempowering the complainant

Decision-makers do not instinctively provide options to others, about how they may complain or raise a concern. Most people who think about complaint procedures and grievance procedures, at home or at work, imagine only one or two ways to handle a concern or complaint. In fact many people learn in childhood only two ways to handle conflict, (versions of fight or flight). Others seem to think that "experts" can and should learn what is the "best" way for complaint-handlers to deal with any given dispute. Restricted thinking characterizes many alternative dispute resolution (ADR) theorists, as well as more traditional people. Some examples of restrictive thinking, and of the all-too-common willingness of decision-makers to make decisions about how complainants "ought" to have their complaints handled, are:

1) many traditional people automatically assume that most disputes should be handled, -- one hopes fairly -- by those with more ***power***[3]: for example, parents, the relevant supervisor, the CEO. *("Because I'm the parent; that's why!" ..... "Do it my way or you're fired!")* Many managers in fact believe that managers should decide the outcome of most workplace disputes and concerns, as a matter of management rights, of "being a leader", and of "maintaining workplace control."

2) many principled people and many political activists think that nearly all disputes should be handled as a matter of justice, or decided on the basis of the letter of a contract, say a union contract. In this view, complaints should be decided on the basis of who is ***right***, of course with due process. *("Get the facts and decide the matter fairly.")* This point of view may indeed be appropriate for certain problems like proven larceny. However this type of thinking is also common when the problem is controversial and in part a matter of perception, as in the vignettes that begin this article: academic credit, sexual harassment, use of alcohol and safety. In fact many managers and academics think of workplace complaint systems only in terms of formal, due process, complaint-and-appeal systems. In the extreme form of this position, if a problem cannot be adjudicated fairly, for example for lack of sufficient evidence, a person oriented solely toward justice may then take the position that nothing can be done and therefore that no complaint exists .

3) many ADR practitioners will seek the ***interests*** of those in the dispute and then recommend and/or practice the form of interest-based problem-solving with which they are familiar. Mediators tend to think solely or mainly about mediation, (and within that context may be "bargainers" or "therapeutic")[4] ; counsellors tend to think mainly of therapy or therapeutic intervention; communications specialists think about better communications; organizational theorists think about changing the system to prevent or deal with problems.

In prescriptive research, as negotiation theorists have applied their tools to more and more types of negotiations and conflicts, they have, reasonably enough, tended to seek what a researcher would see as "optimal" solutions to the problems they address. For many types of objectively quantifiable problems, this has made excellent sense. My concern is that this type of

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Compare also the typologies of Myers-Briggs, and of Gerald Williams (Brigham Young University), on negotiating styles; many people appear to have quite well-defined, but very limited, ways of negotiating.

[3] This typology is drawn from the terminology of colleagues at the (Harvard/MIT/Tufts) Program on Negotiation and of William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, in Getting Disputes Resolved, Jossey- Bass, 1988. It will be noted by negotiations theorists that an orientation on rights is likely to lead to distributive solutions; an orientation on power is also most likely to be distributive although there are a few power-orientated managers who seek integrative solutions. A manager who is oriented toward interests is more likely to seek integrative solutions.

[4] See again the work of Kolb, Merry and Silbey.

research, -- and all three viewpoints above -- while extraordinarily useful as advisory tools, tend to focus peoples' thinking on **singular solutions, rather than ranges of choice.** It also focuses on solutions that can be prescribed by those outside the dispute and even outside the system. I believe this often is not as appropriate for complaint-handling as for other forms of negotiations.

Descriptive research may also lead to the idea of stereotyped solutions to problems. For example, some researchers who have observed complaint handling and complaint-handlers, correctly note that the ways in which people deal with their disputes are culture-specific, and that many complaint-handlers deal with disputes in narrowly defined ways. Thus descriptive researchers also may focus quite narrowly on only one type or style of complaint handling, in a way that inadvertently reduces the likelihood that interested managers will learn to think about many different modes of complaint handling.

I believe that complaints and intra-institutional disputes are not necessarily like commercial or game-theory negotiations, which may have an inherently "best" solution. And the specific practices of individual complaint-handlers may or may not be as broad as complainants would wish, (at least if the complainants knew the choices they were missing). In short, **for a wide range of cases, there may not be any one, "optimal" way to handle a complaint, other than whatever responsible method is freely chosen, by disputants and complaint-handler, under conditions of choice.** This article then is about developing options, and deliberately providing choices within a complaint system.

The Value of Options and Choice

-Different people want to settle things in different ways. Different options may be necessary to satisfy the variety of people in a given workplace who believe "complaints should be resolved on the basis of principle", but who do not share the same principles. For example some believe, on principle, that disputes should generally be resolved in an integrative fashion; these people will not be very happy if they are provided only adjudicative, complaint and appeal channels.*("Please don't set up another formal EO thing for racial harassment; we get singled out enough already....")* People who share this opinion may not complain at all, and will simply suffer, rather than be forced into a polarized situation. The reverse is also true. An exclusively integrative, problem-solving complaint system also will not satisfy the feelings of everyone who uses it, for some people will feel some grievances should have been adjudicated as a matter of justice.*("It's time those creeps were stopped. I am going to take them every step of the way if I have to. I'll go to the Supreme Court.")*

-Providing alternative modes may also be necessary in order to be able to deal with a particular problem. For example many complaints cannot be adequately adjudicated in the workplace, for lack of sufficient evidence to "convict" a wrongdoer[5]. A formal process may therefore be useless in certain workplace disputes such as harassment, if sufficient evidence of wrongdoing does not exist. (*"He only does it behind closed doors; it'd be his word against mine. I don't want to bring a formal complaint; they would say it could not be proved and nothing would happen.")* An adjudicatory process may also be impractical for handling a very complicated web of problems; mediated outcomes may in such cases be substantively better, for example by including a wider range of topics and feelings. *("Separating the work of the guys on that work team would take an arbitrator six weeks. We need to find a way to help them to work out the details themselves, without killing each other or the project....")*

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[5] I have written further on this point in a long article on "Characteristics of People Who Complain of Harassment."

-Choice itself is often important to disputants and complainants.*("I stopped feeling that my hands were tied.")* Having choice offers a measure of power and self-esteem and will often be perceived to be more fair. Some complainants specifically ask for a "vote" about how something will be handled, instead of, or in addition, to substantive redress. Choice can be, itself, an "interest", that can and should be included in interest-based problem-solving. Even in situations where there appears to be only one responsible option about what will happen, a complaint-handler may be able to provide small choices. For example, suppose a theft must be reported; there seems to be only one responsible option. But still there may be some small choices available: would the complainant prefer to go directly to the security office alone, or would she rather have the complaint-handler accompany her, or would she rather that the complaint handler go to report the theft alone? It is especially important to offer some choice if the subject matter is stressful; people cope better with tough problems if they perceive that they have some control over the complaint process; they are more likely to feel that the process is fair.

-Knowing that they have a choice about how to pursue a complaint is also essential to getting some people actually to come forward with serious concerns. My research[6] indicates that many people who have a concern do not wish to lose control over their complaints, especially at the beginning while they are thinking things through. For example, a majority of people who have come to my office feeling harassed express fear of retaliation, and loss of privacy. *("I know it's important to stop my supervisor using coke, if only because he's mean as hell. But I can't be the one to complain; I've got a family.")* In addition they may care about the object of the complaint, and they may fear being seen as childish or disloyal. Many would ultimately do nothing about their problems if we could not together devise a tailor-made option that satisfied their individual concerns. *("Thank-you for letting me wait until after graduation; I just could not have come forward before.")*

The complainant's choice may be a better choice. The complainant who chooses his or her own mode for how the complaint will be handled, may well do so in a way that is for some reasons "better", where the factors taken into account would be very hard to identify and quantify. *("I don't know why. I just couldn't look her in the face if I didn't try one more time to take it up with her directly, before I go to the boss.....")*

The complainant who chooses may learn something. Having a choice of complaint-handling mode may encourage complainants to take more responsibility for their lives and to become more effective. Developing and then choosing an option with a skilled complaint-handler provides a complainant not just an individual solution, but a method for responsible disputing in the future. *("Hey. I came back to see you. You know that year I spent carping at everyone about safety on the plant floor? Well, you know you finally taught me how to negotiate these things. I haven't had a fight about safety (or much of anything else) for four years....I just wanted to tell you.....")*

-Providing options may be less costly. It is important to provide (responsible) options that cost the complainant and the system as little as possible for any given dispute. Otherwise, people who perceive that they have only one way to complain may use that restricted option, rather than do nothing, even if it costs a lot in time and soul and money. Take, for example, the situation where someone mainly "just wants to be heard." We know from numerous studies of union grievances, -- and from our lives as parents and family members -- that complainants sometimes pursue formal grievances when they think this is the only available way to express their feelings about dictatorial work relationships. People sometimes go to court or to Government agencies for the same reason, even though they may wish they had a better

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[6]Ibid.

option. *("I know I may lose this case against that bastard; I know I don't necessarily have a leg to stand on. But he is going to have to listen to me.")* In my experience as an ombudsman and as a consultant, the strongest impetus behind labor law suits against employers, is that the plaintiff felt humiliated and could find no other way satisfactorily to express the humiliation. By the same token, sabotage and violence are also likely to be precipitated by humiliation. As PON graduate Diane Di Carlo put it, "when social rules provide alternatives, people are less likely to take revenge".

Providing choice in how to deal with a complaint may help protect the employer. The complainant that has chosen his or her dispute-processing mode may well be better satisfied with the solution. And if he or she is not satisfied, the employer can reasonably plead that the complainant chose the mode himself and therefore should take some responsibility for what ensued. *("This company always offers the possibility of a formal investigation and adjudication to anyone who feels harassed. When Chris Lee complained, we wrote her a letter offering to investigate. Obviously this is the option we would have preferred. She refused. She did not permit us to do a fair, prompt and thorough investigation. She absolutely refused to make an open complaint; the only choice Lee would agree to was that we should bring in a training program to that department, which we did immediately.")*

I believe options and choice for complainants will be especially important for the US workplace of the 1990's. We are moving into an era of extraordinary diversity. The Bureau of Labor Statistics suggests that only about one in ten, of net new entrants in the US labor force of the 1990s, will be a native-born "Anglo" white male. The rest will be minorities, women, and immigrants, who will represent an extremely diverse group of managers and workers, by contrast with the past. We can assume that with such a diverse workforce it will be especially important to have choices in how to express concerns or pursue grievances in the workplace, because individual values will differ.

What are some of the choices?

An effective complaint system should be able to offer the following options to those who have a complaint:

1) Complaint-handlers who will listen, and offer respect, for the feelings of a person who has a concern, and who will help people who are hurt, in grief, confused, angry, aggrieved or frightened, to deal with their feelings. It is essential that this function should be offered on a confidential basis, (probably without the keeping of individual case records by the complaint-handler). Moreover, a complainant should, under many circumstances, be able just to talk, and then choose no further action, if that is what he or she wishes[7]. Or there may be a referral to talk with a counsellor, or a religious advisor, for those who wish it. The option "just to be heard" by the complaint-handler may be the appropriate complaint-handling mode for the case of Colleen in our opening vignette. Colleen is simply asking for affirmation, and for her

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[7]This possibility is controversial for some types of complaints, for example, harassment. It is in this arena that we see most clearly the extent to which many people would like to be able to make decisions for complainants about how they will be "allowed" to complain. For example, many people think that all harassment complaints should be investigated and adjudicated, whether or not the offended person wishes this to happen. This is a complicated matter, but in most cases I feel that if a complainant knows there are options and refuses investigation and adjudication, and the complaint-handler follows up and knows the harassment has ended, then the matter should not be pursued. Investigating harassment that is said to have ended should, ordinarily, require permission from the harassed person. There should of course not be adverse administrative action or a record made against the alleged offender, in the absence of a fair investigation. (A review of choices actually made by this type of complainant in my office is included in my article "Characteristics of People Who Complain of Harassment".)

situation to be recorded in the aggregated statistics on sexual harassment. The complaint-handler should, if possible, follow up with Colleen to be sure that the harassment has in fact ended. The complaint-handler might also agree with Colleen about the importance of bringing in a training program for the whole work unit. However, in most cases, the complaint-handler ought not do anything, in this kind of situation, without permission.

2) Any person in the workplace should be able to get certain kinds of information off the record, for example, about "how the system works", what fairness is, what salary equity is, how to raise a concern. Everyone should also have safe (that is, anonymous or completely confidential) channels to provide information back to management about unsafe conditions, unethical and illegal practices, and the like. Colleen wants her case recorded for statistical use. Sandy and Harry, in our opening vignettes, need to know how the system works. Sandy for example, needs to know about Employee Assistance, what are the policies on use of alcohol, and how supervision and the Safety Office may be expected to function if and when they hear about Sandy's co-worker. Harry also needs to know his employer's policies on assignment of credit and perhaps on fraud.

3) All employees and managers (and disputing groups) should be able to find effective, confidential counselling, to learn how to sort out their complaints and conflicts, how to generate different responsible options for action, and how to negotiate their problems directly if desired[8]. This was an option for Sandy and Harry to consider. For example, Sandy might have learned how to persuade the old friend to seek help, perhaps even accompanying the old friend to Employee Assistance, while nevertheless insisting on compliance with the safety code. Harry finally chose this option and successfully wrote and sent a personal letter. Colleen seems already to have chosen this option, but even she may learn from talking through what she did, (there are several different ways she could have rejected the harassment), and the employer may learn more from her story, for example, the effectiveness of direct negotiations by the complainant.

4) There should be effective shuttle diplomats and process consultants, as go-betweens and educators, for individuals and for groups[9] It is important to note that this is by far the commonest form of "mediation" in the workplace, because it helps people of unequal rank to save face, in dealing with each other with the help of a third party. Harry and Colleen could have asked the complaint-handler to talk with their bosses. Sandy could have asked the complaint-handler to talk with his co-worker.

5) Formal mediation should be available, (with written agreements if desired), for individuals and for groups, with the possibility of formal written settlements, if desired[10]. This would have been a reasonable option for both Harry and Colleen.

6) There should be fair, prompt and thorough investigation of complaints where appropriate. A good complaint system can provide formal and informal investigation, with or without written recommendations to a decision-maker[11]. Harry might have asked for an investigation by his supra-supervisor. Colleen might have asked for an EO person or her boss' boss to look into her complaint. Sandy could trigger a safety inspection

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[8]See for example, Rowe, Mary, "Helping People Help Themselves", in Negotiation Journal, forthcoming.

[9]See for example, Robert R. Blake and Jane Srygley Mouton, Solving Costly Organizational Conflicts, Jossey Bass, 1985.

[10]See for example, William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg, Getting Disputes Resolved, Jossey- Bass, 1988.

[11]See for example, David Ewing, Justice on the Job, Harvard Business School Press, 1989, and Alan F. Westin and Alfred G. Feliu, Resolving Employment Disputes Without Litigation, BNA, 1988.

and possibly also a substance abuse investigation, by a specialized staff person or the supervisor.

7) There should be appropriate, "fair process", complaint and appeal channels, with impartial arbitration, or peer review, or other impartial adjudication[12]. These options could have been offered to Harry and Colleen, and indeed would likely have been triggered by investigation. Harry, Colleen, their supervisors, and Sandy's co-worker could also have appealed a decision they did not like within a formal grievance structure.

8) **There should be effective provision for upward feedback and systems change,** both as a problem resolution device for a specific complaint, and to prevent further problems[13]. Colleen's employer should offer a program on harassment, Harry's employer should train supervisors about work credit; Sandy's employer should train about safety and substance abuse. A good complaint system will provide management the information needed to design effective problem prevention programs.

How to provide options for complainants

Obviously an employer wants to take the lead in the design of the system to provide choices for complaint handling and dispute resolution in the workplace, to assure responsible and consistent practice. The employer should in fact think of this process as the design of a complaint-handling system, and should involve potential disputants and potential complaint handlers in the design process. This may happen naturally in the context of union negotiations or consultative committees, or may happen ad hoc, (for example, by focus groups or circulating draft proposals to many networks in the workplace).

It is important to note that the impetus for designing a grievance channel or a complaint system can be, for perfectly understandable reasons, much too narrowly focussed. For example, because of an organizing campaign, there may be a singular focus on one configuration of complaint, like worker vs. management grievances. Or a group of concerned employees may generate a great deal of attention to just one type of concern, like transfer policy, or safety.

This article, by contrast, is meant to foster choice of complaint-handling options for the whole panorama of real-life, workplace disputes. A great many workplace problems are between worker and co-worker, manager and fellow manager, or between or among groups rather than individuals. And, of course, complaints may arise in any area where people feel unjustly treated. In order to make clear that there truly are various options for complaint-handling which in fact are available to everyone within a workplace, complaint systems should provide all the options above. And of course, everyone in the organization (managers, employees, union workers, professionals, etc.), should have recourse, with respect to every kind of important concern.

In addition, the systems approach requires having different kinds of people available as complaint handlers. This is true with respect to demographic characteristics: the set of complaint handlers should, in a reasonable way, reflect the given workforce, for example including African-Americans, females, technical people, etc. This makes it more likely that the

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[12]Ibid.

[13]There are many good examples of systems change mechanisms in the books cited above, although each example tends to focus on only one way to produce systems change. Ombuds practitioners typically spend a quarter to a third or more of their time in systems change.

workforce will believe there are accessible and "credible" managers, who might offer acceptable ways to raise a concern.

The point is also true with respect to complaint handling skills. Since few complaint handlers are equally good at listening, referring, counselling, mediating, investigating, adjudicating, and systems change, a good system will have a variety of complaint handlers providing a variety of functions. (In particular it often helps to have different people for problem-solving and adjudication, since some people are better at integrative solutions and others consistently think distributively and may make better judges.)

Finally, a good system will train its employees and its complaint handlers, including all managers, to respect and offer and pursue the widest possible variety of different options for dealing with disputes and concerns -- with as much choice as possible for those who raise concerns. It may not be easy to change the working styles of employees, managers and complaint-handlers, but everyone can learn what their own strengths are, and can learn at least to respect and offer other options[14].

"I used to think that my only choices were put up with the unpaid overtime -- shut up -- or just quit. Then I thought, well, I could take that slavedriver to court, or maybe file a formal grievance with Corporate (headquarters). Then I thought, I can't stand it any longer, and I began to miss work. Then you pointed out to me that there were several possibilities other than fantasies of revenge or a law suit or dropping out. I actually had not considered sending a private letter to my boss, for example, and I certainly had not imagined that you (the company ombudsman) would be willing to go see the boss for me. But the best idea was that you would go to Human Resources to ask them to send out a general notice on the overtime rules. Your having gone to Human Resources alone, without mentioning me, really made me feel safer. My boss stopped requiring unpaid overtime, and no one knew I was involved. I'm very glad it worked. Who knows? Maybe somebody else's situation got cleared up at the same time."

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[14]Please see the Appendix for an exercise that can be used as a diagnostic tool. The exercise provides a framework for analyzing one's own skills as a complainer and a complaint-handler, and for analyzing the skills and methods of others.

APPENDIX

Exercise on "Skills Needed by the Complaint-Handler"

This exercise is very simple. The sheet on "Skills Needed" is assigned for a one week or one month period. The task is to notice and keep a journal on the ways in which the writer finds himself or herself dealing with concerns. In addition the writer should analyze the complaint-handling options chosen by others.

For example, if the writer is a parent or lives in student housing, or works in any employment context, he or she should notice his or her customary ways of expressing concerns. Do I seek advice about how to handle my problems? Do I just need to blow off steam, and with whom do I do this? Do I look for mediation? Do I ask others to be a shuttle diplomat for me? Do I ask for investigation of my problems? Do I want someone more powerful than I to take care of my complaints? Do I seek for a systematic change in the conditions that cause the problem?

By the same token, the writer should notice how others handle complaints and concerns. Do they offer choices to the complainants? Or do they just seem to "know what is best?" Do they appear to listen to the complainer, help to invent options, advise on tailoring an option to the concern at hand? Or do they irritably decide the question before exploring it?

The writer should try to develop insight into his or her normal complaint-handling modes with children, colleagues, supervisors, strangers, and so on. By the same token it is useful to analyze the patterns of others, as they deal with the complaints and concerns of many different people.

Obviously some people will be very much oriented toward justice, in almost all circumstances and with nearly everyone. Others will "problem-solve" in the face of the most tenacious wrong-doing and in the most serious, win-lose situations. Most people have a variety of skills and can develop and work on new skills. It is useful to reflect on the variety of skills needed in different situations and to provoke discussion as to whether and when certain complaint-handling modes appear to be best or necessary.

Skills Needed by a Complaint Handler and Functions and Characteristics Required in a Good Complaint System

A good complaint system will provide **multiple options** for complainants, and as much **choice** as possible among those options. The first three functions of the system will be **available on a confidential basis** if desired. The system will have **men and women, minorities and non-minorities**, available as complaint-handlers. The system will be **available to everyone** within the workplace, including managers, trainees, employees, etc., and will accept any kind of concern. Necessary functions include:

• **Expressing respect for feelings**, especially rage, fear of retaliation and grief. Helping people deal with their feelings so they will be able to make good decisions and be able to deal effectively with their problems or complaints;

• **Giving and receiving information** on a one-to-one basis;

• **Helping people help themselves:** confidential counselling with clients, inventing options, listing possible options for the choice of the client, coaching on how the client or group may deal with the problem directly (problem-solving, role-playing, anticipating possible outcomes, etc.);

• **Shuttle diplomacy** by a third party, back and forth among those with a problem, to resolve the matter at hand, (sometimes called "conciliation" or "caucusing" or as one form of "mediation");

• **Mediation:** having a third party bring together the people with a problem, so they reach their own settlement or are helped by a third party to reach their own settlement; the settlements of mediation may be formal or informal;

• **Fact-finding or investigation**: this may be done either formally or informally; results may be used or reports made either with or without recommendations from the fact-finder to a decision-maker;

• **Decision-making, arbitration or adjudication**: where a person or body with power and/or formal authority decides a dispute; this may be structured as (part of) a formal complaint-and-appeals channel or formal grievance procedure;

• **Systems change**: designing a generic address to a problem or complaint; "upward feedback"; actual change in policies, procedures or structures as a result of inquiry, suggestion, complaint or grievance.

Within organizations, where all these functions are being performed, one may speak of a complaint-handling **system**. Without fair, accessible complaint-and-appeals channels, other functions are not likely to work well. Where all functions are working well, the formal grievance channel is not likely to be used heavily. By analogy, a manager who is not able to decide disputes fairly will not be much trusted in carrying out other functions of a complaint handler. And the manager who has all these skills will usually be able to solve most problems without much "arbitrating of disputes."

NOTES ON OPTIONS FOR COMPLAINT HANDLERS

A. Plan and Prepare:

- Estimate your time constraints — **is this an emergency**? Do you have time to give the complainant a little time to compose his or her thoughts?
- Consider whether you are the right person to deal with this complaint;
- Determine whose interests are at stake and what those interests are;
- Determine who "owns" this question. Who is responsible for this subject or problem? Who in management would think they have a right over this subject? What about the original source of the complaint — does that person feel he or she "owns" the complaint or ought to be able to do so?;
- Seek advice, making certain that you have permission* to do so. Seek advice from people who might understand some aspect — the technical points or the racial context or the policies and laws at stake — better than you. Ask for unforeseen issues, precedents, etc.;
- Gather any facts that are cost-effective and ethical to gather in the time available. Depending on the situation this might be done by you or for you or for some other manager;
- Brainstorm — with someone else if possible — all the constructive and unconstructive options open to each actor. This will lead you to doing an analysis of the sources of power** for each of the actors. Be sure that you have thought through the covert and "acting out" options open to each actor;
- Brainstorm a second time if the situation is very serious — feelings, interests, positions, options and the policies and principles that should govern this situation;
- Make notes — figure out a plan for action, and a plan for follow-up. (This is **essential** in harassment, safety and ethics cases).

B. General Principles

- Help the complainant pick an option — or if necessary, you pick an option — that you think may really work. One wants to avoid half-hearted measures and escalation, so plan to expend 101% of the effort that will be required for the option that is chosen;

- Other things being equal, recommend or choose a method that resolves the problem at the lowest possible level. "Delegate" as much complaint-handling as you effectively can — empowering others is probably efficient for you and may produce better answers in the short and long run;
- Protect people's privacy in every responsible way you can.

C. Choose an Option, or if Possible, Help the Complainant Choose an Option

1. Helping People Help Themselves:

a) How to do it:

- Consider all the other options as well, and consider them again before any action is taken. Be sure that if this option is chosen, that the complainant knows other options exist and has freely chosen this one. This is **essential** for harassment, safety and ethics complaints, so you may wish to make a written note to your file of having offered options;
- Explore facts and feelings with the complainant — take enough time! Listen , listen, listen.....;
- Explore with the complainant, what the Other would or will think, say, do and feel. You may wish to role-play: "I'll be you — you be the Other";
- Consider re-reading How to Draft or Write a Letter to an Offender;
- Encourage your complainant to draft a letter to the Other, writing several drafts if necessary, with facts, feelings, and recommendations in separate sections. Characterize this step as a preparation step that might help with any option, not as a commitment necessarily to send the letter;
- Help your complainant choose an option for handling the complaint. If the option is to be that the complainant will handle the problem directly, help him or her to choose whether to handle the problem in person or on paper, or both — for example, by delivering the letter in person. The complainant should keep a copy of a letter, if any, but usually should not send open or covert photo-copies to anyone;
- Prepare for all logical outcomes on the part of the alleged offender, so the complainant will not be surprised by the outcome, whatever it is;
- Follow-up with the complainant. This is **essential** with harassment, safety and ethics complaints.

b) Why to choose this option:

- The complainant wants this option;
- This option helps to support peoples' control over their own complaints. For many people, handling a problem directly, if it is effective, may be a preferred process — because they maintain control — no matter what the substance of the complaint;
- This option may be the only reasonable option if there is not enough evidence and when it is impossible or too expensive for the complainant or the employer to get all the facts;
- In addition, direct action by a complainant is frequently the most effective option, in terms of "just stopping" offensive behavior, where there is no evidence for the offense beyond the complainant's own statements;
- In most cases handling a problem directly is less likely to provoke attempts at reprisal, since reprisal is often provoked by intervention by a third party — dealing directly does not "rock the boat" and is often preferred by the Other;
- This option is likely to take less time and cost less;
- This option is sometimes better in terms of timing and other psychological variables, due to the complainant's superior knowledge of the situation;
- This option usually permits the widest variety of "next steps," if this step does not work, and if more action is desired;
- This option may prevent mistakes based on insufficient data and/or different perceptions of the facts — this choice makes it much more likely that the complainant will learn what should be learned about the facts and the Other's perceptions of the facts;
- This option may help to teach offended people a method for dealing with problems and offenses. Moreover, teaching a **method** for dealing with problems — rather than just solving the specific problem — appears to make it less likely that the complainant will be offended in the future — possibly because it may help such a person to learn how to prevent interpersonal problems;
- Delegating complaint-handling makes a more efficient enterprise, (as with any other effective delegation of responsibility);
- Handling problems directly appears to some people more moral and more fair. In particular many offenders hate to have some one go around them;
- This option helps to preserve the privacy of all;

- This option helps to protect the rights of the Other;
- This option will usually provide more leverage for management, if management action is needed later on, because of the evidence provided by a complainant's letter, or by the complainant's direct attempt to get the situation resolved.

c) Caveats:

- This option has only limited goals — there is not likely to be much system change, or consciousness-raising of others from the use of this option, unless the option becomes widely known and used in the company;
- Follow-up is essential;
- "Justice" may or may not be served;
- If a complainant sends a letter, that letter then belongs to the recipient and can be used by that person. This can be damaging if the letter is inaccurate or embarrassing;
- There is usually no central record, from a direct approach, which is a drawback in the case of repeat offenders. In choosing the direct approach, the system errors, if any, will be errors of omission — too little being done — rather than errors of commission — too much being done.

2. Shuttle Diplomacy and Mediation:

a) How to do it:

- Consider all other options, with the complainant and by yourself. Be sure that you have permission* to talk with everyone with whom you will need to talk. Remember that in most situations formal mediation should be voluntary for all parties, though shuttle diplomacy need not be;
- Seek advice, from counsel, EO, ER, mentors, superiors, etc. Consider reading Christopher Moore's Mediation Process;
- Consider how and when to enter the dispute. Can you enhance your credibility? Is there trust and rapport — is there anyway you can build trust? Think about timing and place, etc. Is there an understanding of third-party intervention of this type? (Most people understand shuttle diplomacy. Fewer people understand mediation.) What are each party's expectations of you?
- Investigate a little if you can do so at no cost. Are there records? Will the parties have data they can prepare for you? (In a formal mediation, the parties are to come at least in part to their own settlement, but you

will be better off with as much data as you can get, in either shuttle diplomacy or mediation);

- Prepare and plan for all logical outcomes — beginning with the standard analysis of feelings, interests, positions, options, policies and principles that may obtain or should obtain;
- Choose a mode for how you will enter the dispute, remembering that — within hierarchies — shuttle diplomacy works better for most people than does mediation. (See also point "c", below.) If mediation appears to be a good choice, then consider using shuttle diplomacy first, to prepare people for the mediation;
- Follow the basic steps. Prevent emotional withdrawal if possible. Protect and support conciliatory feelings if possible. Seek out all the interests again and again, and deal with the "positions" that come up. Brainstorm if possible — expand the pie if you can — wait for the parties' own solution if it will come. Then help narrow the issues; help in assessing and choosing an option; come to a conclusion; state the conclusion; write the settlement if appropriate;
- Follow up if appropriate.

b) Why to choose this option:

- The parties want this option — and you have been asked to conciliate or mediate;
- You feel comfortable with this option — you know you are good at it and you know you are reasonably impartial;
- This kind of complaint-handling is consistent with your employer's "culture" — the norms support each side giving a little and the norms support cooperation;
- The timing seems right. For example, they have tried to settle this themselves unsuccessfully, but they are not yet hopelessly polarized;
- You believe that you will be able to problem-solve, to help them come to their own solution, to help them exchange information and perceptions, to build trust;
- The parties are inter-dependent and this is not a win-lose situation;
- The parties each perceive that they have weak BATNAs; there is reasonably equal power in the situation;
- You have a high investment in a good outcome for each person involved;
- The right people are actually available to deal with.

c) Why to choose shuttle diplomacy rather than mediation:

- This is the option that the parties want, or that one person wants, or that you prefer;
- Trust is a major problem;
- "Face" is a major problem;
- Privacy is a major problem;
- This is the best way to get the data that are needed;
- A single text option is going to work best with these people;
- This option is much more convenient;
- This is the only way to substitute for someone who cannot be there for face-to-face mediation;
- This is the only way to deal with the situation that you cannot discuss all the relevant data with one person or the other.
- This is the best way you can think of to deal with an imbalance of power.

d) Caveats:

- Do not use mediation where what you really intend is to lay down the law or otherwise adjudicate, or arbitrate. People will quickly come to distrust you if they were brought together to find (or to help to find) their own solution and you provide and insist on your solution;
- Do not use mediation as a tool for formal investigation or where you believe that you might learn facts that will force you to adjudicate;
- "Justice" may or may not be served;
- Mediation may not provide good "precedents".

3. Investigation and Adjudication or Arbitration

a) How to do it:

- Consider all other options. Be sure that you have permission* to use the information that you have or will have, except in the unusual circumstance that there must be a truly clandestine investigation;
- Under ordinary circumstances you should not take adverse administrative action against an employee without a fair process*** beforehand. Emergencies may occasionally pose a problem in this respect, but consider carefully whether a fair process can occur, before you fail to initiate such a process;
- Seek advice, from counsel, EO, ER, mentor, superior, etc.;

- Consider who should be the investigator(s). For example, you may wish to insulate a decision-maker from any bias or perception of bias, or from backlash. You may wish to provide special, perhaps technical, expertise in fact-finding, or persons of a given race or gender, and therefore may wish a finder of fact separate from the decision-maker;
- Consider what should be the charge to the fact-finder, and what should be the limits or scope of the investigation;
- Consider whether the investigation should be formal or informal, and whether the investigator should or should not be asked for formal recommendations. Do not ask a junior person to make formal recommendations;
- Consider the timing of the investigation, which should typically be "fair, prompt and thorough." (Note that an **expeditious** investigation will not necessarily be possible);
- Consider carefully all the non-invasive sources of data, for example records, reports, etc., before going to disruptive sources of data;
- Consider very carefully who should know about the investigation, beginning of course with whether you will inform the subject of the investigation. Consider who will be informed about the process of an investigation if it takes a long time, and on what schedule;
- Prepare and plan for all the logical outcomes, beginning with the standard analysis of feelings, interests, positions, options, policies and principles that may be relevant. It is particularly important to do a careful analysis of the sources of power of each of the people involved, and a careful analysis of unconstructive as well as constructive options open to each of these people;
- Arrange for appropriate review of the results of any formal investigation — for example by legal counsel — before administrative action is taken;
- Anticipate and plan for follow-up steps after investigation and adjudication have occurred.

b) Why to choose this option:

- Where you are required by law or policy to investigate, and/or adjudicate;
- Where you personally are willing and able to undertake a fair process; (for example you have no serious conflict of interest);
- Where one or both parties wish an investigation and decision-making, and you approve, for example for the reasons above;

- Where both or all parties refuse to negotiate or mediate; where the parties cannot learn how to negotiate fast enough to deal with the problem that must be resolved;
- Where a win-lose decision is the right decision — for example it is a hopelessly distributive problem — there is an emergency — or it is clear that one or both parties are lying about something serious;
- In lose/lose situations where the goal is to minimize the maximum feasible loss;
- Where you can easily see a win/win adjudication;
- There is a hopeless power imbalance, or a desperate problem of saving face;
- Where the future relations of the parties are not a concern or might actually be enhanced by adjudication, or satisfaction of the real interests of the parties is not dependent on their future cooperation;
- Where the stakes for the parties are low, but they are high for your employer.

c) Caveats:

- Investigations are often very expensive in time and feelings, and money and investigations often make people fear and dislike the investigator;
- Expect that the results of the process and outcome of the investigation may be made public, possibly in a disconcerting way;
- Be prepared for people "voting with their feet" or expressing other dissatisfaction with the outcome of investigation and adjudication. This is especially difficult in situations where you will not be able to give information to the public, and where you therefore cannot defend yourself and the process. In such situations you may need to continue to deal with peoples' feelings, and to try to maintain respectful relations with disputants and bystanders, for some time. This may be especially true with people who are — or who see themselves as — "whistleblowers".
- Too frequent adjudication of disputes may result in inefficient management and loss of motivation — or willingness to speak up — by those involved.

4. Generic Options and Systems Change

a) How to do it:

- Consider all other options to be sure this one is appropriate. Be sure that you have permission* or a right to use any information you will need to use. Alternatively you could try to devise a method whereby an

appropriate office (like Safety or Audit or Environmental Hazards) can be alerted to collect the information that is needed — on an unobtrusive or apparently routine basis — without your having to break anyone's confidence;

- Ask yourself, whose interests are at stake? (Make a list). Ask yourself, who "owns" this problem — who would feel a right to dispose of or prevent this type of problem? (Make a list). Consider these lists carefully before you decide where and how to intervene;
- Consider the time constraints. Is this urgent? Is this a problem that needs careful study?
- Do a quick and practical cost-effectiveness analysis in your head about whether and when and how a systems approach might help;
- Consider whether to design a way to find out later if the systems change is working.

b) Why to choose this option:

- Where a systems change is required by policy or law;
- Where you personally are willing and able to pursue a generic approach;
- Where many people are likely to have the same problem, the costs of not fixing it are high, or for any other reasons the cost-benefit analysis is favorable;
- Where the workplace culture is, or should be, tilted toward preventive measures as well as complaint resolution;
- Where for confidentiality reasons you cannot address the alleged problem of an individual (e.g. sexual harassment or unpaid overtime required of a non-exempt employee) but a "generic" address to the problem (e.g. a training program on harassment or a departmental reminder on the overtime laws) is likely to resolve the problem of a known individual who will not otherwise come forward;
- Where the complainant or the offender is unknown (e.g.. the complainant is anonymous or an anonymous person is making obscene calls);
- Where you have picked up a problem new to the company, that will need to be thought through, or where the ramifications of a problem are as yet unknown and should be considered at top management levels;
- Where the only satisfactory approach will require cooperation between the company and outside persons or entities.

c) Caveats:

- A systems approach may not satisfy the feelings of individual complainants, especially if a problem is taken out of individual hands, or the solution takes a long time, or a "vanilla" solution must be adopted to placate strong competing interests;
- "Justice" may or may not be served in the individual case that is dealt with on a "generic" basis;
- If a systems approach is used to deal with an individual case, follow-up with the individual who complained is essential, to be sure that the individual problem does not recur;
- Some managers will complain that a systems approach was not needed, for a problem that they never knew existed or thought to be trivial or very rare;
- One must approach the system in the right manner, at the right time and at the right level. If you think this is not possible at the moment, this may not be a good option.

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* Confidentiality and Privacy: **Always** get permission, if you can, to use the information given by a complainant. Typically one can get permission to consult with others, to use the information on an anonymous basis, or to use the information after a certain period of time has passed (if this is acceptable to you). If all else fails, a complainant will often give you permission to tell a person very high in management, for example, a CEO. It is usually better to spend the time to work very hard to get permission to use information than to expose someone as an informant. When in doubt, (and when an investigation is not clandestine), work hard to get explicit permission before quoting a complainant by name, and in general always protect people's privacy in any responsible way that is open to you.

** Sources of Power in Negotiation include: Legitimate Authority; Rewards; Sanctions; Force; Commitment to a Position; Charismatic/ Moral Authority Power; Information or Access to Information; Expertise or Skill; an Elegant Solution; Good (or Bad) Relationship — for building (or losing) power; a BATNA (or fall-back position).

*** A Fair Process Requires, at a minimum, that the alleged offender know the charges against him or her, (or all the major elements of the charges), that he or she have a reasonable opportunity to respond to those charges and to bring his or her own witnesses, and that the matter will be investigated and adjudicated by a reasonably impartial person or persons.

Simmel, G. (1904). *Conflict and the web of group affiliation.* Glencoe, IL: Free Press.
Straus, M., Gelles, R., & Steinmetz, R. (1980). *Behind closed doors: Violence in the American family.* New York: Doubleday.
Thomas, K. W. (1992). Conflict and negotiation processes in organizations. In M. D. Dunnette & L. M. Hough (Eds.), *Handbook of industrial and organizational psychology* (Vol. 3, pp. 651-717). Palo Alto, CA: Consulting Psychologists Press.
Thorne-Finch, R. (1992). *Ending the silence: The origins and treatment of male violence against women.* Toronto: University of Toronto Press.
Tolman, R. M., & Bennett, L. W. (1990). A review of quantitative research on men who batter. *Journal of Interpersonal Violence, 5,* 87-118.
Toufexis, A. (1987, December, 21). Home is where the hurt is: Wife beating among the well-to-do no longer a secret. *Time,* p. 68.
Underwood, J. (1987, April). End sexual harassment of employees (sic), or your board could be held liable. *American School Board Journal,* pp. 43-44.
U.S. Merit Systems Protection Board. (1981). *Sexual harassment in the federal workplace: Is it a problem?* Washington, DC: Office of Merit Systems Review and Studies/Government Printing Office.
Walker, L. E. (1979). *The battered woman.* New York: Colophon.
Walker, L. E. (1984). *The battered woman syndrome.* New York: Springer.
Winter, D. G. (1973). *The power motive.* New York: Free Press.

from Sexual Harassment in the Workplace: Perspectives, Frontiers, and Response Strategies, Women and Work, Vol. 5, Margaret S. Stockdale, editor, Sage Publications, Inc., 1996, pp. 241-271

12

Dealing With Harassment: A Systems Approach

MARY P. ROWE

People who are concerned about harassment often feel they "know what is best" for a person who has been harassed. But those who have actually been harassed often have very strong—and different—points of view about what they are willing to do. Thus, procedures for dealing with harassment must first take into account the wide range of interests of various complainants—or complainants will not take action. This chapter explores the pros and cons of many possible elements of a complaint system. I conclude by recommending an integrated dispute resolution systems approach, which provides options for complainants, respondents, bystanders, and supervisors.

DESIGNING AND REVIEWING HARASSMENT POLICIES AND PROCEDURES

Employers large and small are designing and reviewing harassment policies and procedures—and are surprised by the difficulty of the task. Such review is in fact objectively difficult, because there is no ideal way to resolve the complex and painful problem of harassment. It *is* possible to deal better with harassment now than in the past. I recommend an integrated, systems approach to conflict management—especially for

large enterprises but also for small ones. A systems approach provides options and choices for complainants and, to some degree, for supervisors and respondents.

An integrated conflict management system, in my view, has a number of specific characteristics. In the language of dispute resolution systems design, there should be "multiple access points" for people with concerns and grievances. These gatekeepers should include people of different races and genders. The gatekeepers should include resource people who concentrate on providing interest-based options as well as those who handle rights-based options. For example, a medium- or large-sized organization might have an ombudsperson as one of the options for managing conflict. Some options should be interest-based and some rights-based (or based on rights and power). A complainant may in many circumstances either loop *forward* from an interest-based option to a rights-based option, or loop *back* from a rights-based option to an interest-based option. Options are often available in parallel, rather than designated as steps of a grievance procedure. Options in the system are initially available for *complainant* choice for most problems—rather than solely at *complaint handler's* choice, which used to be the common mode for a nonunion environment, and rather than a *single grievance channel,* which is the classic mode in a unionized environment. At the end of the line, there is an option that takes investigation or decision making, or both, out of the line of supervision. The system is open to managers with concerns, as well as employees. It takes virtually every kind of concern that is of interest to people in the organization, including, for example, disputes between coworkers and between fellow managers, teammates, and groups, as well as classic concerns about discrimination, conditions of employment, and termination. There is an overall value system with respect to conflict management derived from the core values and human resource strategy of the organization, which is backed by top managers and taught to both employees and managers. With respect to harassment and discrimination, there is explicit recognition of the rights and responsibilities of four groups: complainants, respondents, supervisors, and bystanders.

This chapter first states why I believe that there is no single correct policy or procedure for harassment, and suggests why the process of conflict management systems design is difficult for employers. I discuss the rationale for a systems approach. I set forth major issues that must be addressed in taking this path as well as some pros and cons attached

to major issues in harassment system design—which are excellent topics for research.

Since 1973, I have been an ombudsperson,[1] working and teaching within a research university, and also consulting to corporations, academic institutions, and government agencies. (An ombudsperson is a conflict management professional, designated as neutral, who has all the functions of any complaint handler, except those of formal investigation and adjudication, and who offers confidentiality under all but potentially catastrophic circumstances.) I am a general ombudsperson, but about half of the concerns that come to me deal with harassment, discrimination, or some other kind of workplace mistreatment. Counting many calls from outside my own institution, I estimate that in the last 23 years I have helped with or consulted on some 8,000-9,000 complaints, concerns, and questions about various kinds of harassment, discrimination, and workplace mistreatment[2]—and about how an employer should deal with these problems. I have also helped hundreds of institutions and government agencies to design and set up complaint systems to help deal with harassment. This chapter is drawn from analysis of this experience. From a scholarly point of view, the points made in this chapter may be considered hypotheses in a field with virtually no large-scale research.

THERE IS NO PERFECT POLICY OR PROCEDURE

Many writers have attempted to describe "the right" policy and procedure for dealing with harassment. I believe that there is no perfect policy or procedure. This is true for at least three reasons. First, it is nearly impossible to design a complaint system that users will think is satisfactory. Once harassment has occurred, it is difficult to bring about any resolution that is wholly positive. This virtually guarantees that harassment policies and complaint systems have an unsatisfactory reputation. In an ideal system, a high proportion of complainants would feel satisfied, most respondents would feel fairly treated, and most complaint handlers would feel they acted fairly. In actuality, the complainant's pain is often long lasting. *Any* steps that can be taken after harassment has occurred may lead to feelings of more injury. The evidence is often only one person's word against another, so one party

may feel mistreated and the complaint handler unsure about what is fair. Often, the best that an employer feels it can do is to minimize pain and loss—for the harassed person and for others who have been affected—and perhaps learn how to do better in the future.

The second reason there is no perfect system is that institutions differ. They have different missions, for example, "readiness" in the armed forces, education and research in a university. They are subject to different laws and rules and traditions, in different industries, different states and countries.

The third reason is that different people have very different ideas about what constitutes a good system. It is therefore not possible to design a policy or procedure, even within a single workplace, that everybody will find acceptable. One might, for example, think that most people could at least agree about prevention programs—almost everyone believes in prevention—but even here there is sharp disagreement about whether to take a legalistic approach or an educational approach, a narrow punitive approach or a broad positive approach. Controversy is even more fierce with respect to complaint handling. As we shall see, people disagree about how broad a harassment policy should be and whether there should be a central office or EEO function for dealing with all complaints.

In particular, responsible people disagree about how much choice a complainant should have—of resource persons and of options—for dealing with harassment. Probably the most serious differences occur between those who believe in offering *interest-based options* for most noncriminal harassment (a direct approach from the offended person to the offender, a go-between, classic mediation, a generic approach, systems change, or even avoidance) and those who believe in options based on *rights* or *rights and power* (investigation and adjudication; complaint to a government agency, the security department, police, a court; or even "just firing people" who are alleged to have harassed). Consider the following true story.

> "Can I tell you my story?" asks a caller from out of state. "I came in early to the office and I overheard a secretary talking on the phone, about a colleague of mine. I could hear her saying that she was being brushed against, crowded, and stared at. She said that my colleague is deliberately trying to make her blush with many kinds of sexual comments. He laughs at her, trying to get a rise out of her. She said that he is very careful to do it only when they are alone together. She keeps asking him to stop it. But yesterday he put out his hand to take a paper from her—and then put his hands up under her breasts and held them there. She was crying on the phone. She told her friend that she was going to try for a transfer.
>
> "I walked quietly to my own office without saying anything to this secretary because she was crying so hard and seemed so upset. At nine o'clock I called our General Counsel's office. Fortunately I did not mention anybody's name though they tried to find out who I am. They said I am required immediately to call the EEO Office and that EEO in turn is required to institute a fair, prompt, and thorough investigation. So I went back to the secretary to talk with her. She was stunned to think that I had overheard her. She pleaded with me to keep my mouth shut. She said it would be 'his word against hers.' She is afraid that somehow he will get back at her covertly. She is desperately worried about not having anyone else know the story—she is especially concerned that her husband must never hear about this.
>
> "We talked it over at lunchtime. She said she did not want to get anyone in trouble, she did not want an investigation, all she ever wanted was for the behavior to stop. She was *extremely* upset with me for eavesdropping. She says there is absolutely nothing that anyone can do, and that I have to keep quiet about this until she can get a transfer. She is working on a degree and does not want anything to derail her—especially in this economic climate. She is worried about her references, and she is beside herself about what her husband—and his family—might do.
>
> "Our Total Quality Management training program says that I am supposed to think of our employees as one group of 'customers.' So here I am required by company policy to ignore the wishes of a 'customer' and—so to speak—to turn her in—in a circumstance where she feels that the personal and professional consequences might be really terrible for her. I cannot believe this is happening. Can you help me?"

As this case makes clear, harassment can raise agonizing dilemmas. In this example, a staff person believes that her employer cannot protect her from personal or professional injury if the eavesdropping manager "turns her in." On the other hand, taking no action in a harassment case may lead to continued abuse by a grossly irresponsible supervisor, serious damage of persons thereby abused, and a costly suit against the employer. It may also lead to loss of image for the company, agency, or university as a responsible institution. It is therefore essential to start with the premise that harassment issues are complex. This means listening to those who will be affected.

IDENTIFY THE STAKEHOLDERS

An institution that is reviewing complaint procedures or designing a system may inadvertently have the interests of just one or another group clearly in mind. It is important to identify *all* those whose interests are at stake.

Groups Focused on a Rights-Based Procedure

There may be institutional lawyers whose interest, by their ethics, lies in protecting the employer and who lobby for mandatory reporting, formal investigation, and careful record keeping with respect to harassment concerns. In addition, there may be others in the institution—some of whom have been harassed—who also want mandatory investigation and adjudication of all complaints. Their focus is often on punishment, on defining and announcing sanctions against those who harass. These two sets of stakeholders are likely to use quite broad definitions of harassment, which include offensive speech and expression, although they are often focused only on sexual harassment. There are also men and women who are primarily concerned for the rights of alleged offenders. The focus of this group is likely to be defined as "justice for all disputants." They typically prefer rather narrowly written policies. In addition, for most organizations, there are regulatory agencies and external constituencies whose guidelines and outlook must be considered and whose primary focus is on adjudicating rights.

Groups Primarily Focused on Interest-Based Procedures

There is always a great silent pool of women and men who have been or will be harassed whose interests lie, at least in the beginning, in having choices about what to do—including having choices that do not involve investigation or at least do not involve punishment. There are usually people of different nationalities, colors, and religions who want to have a broadly defined harassment policy that includes harassment and discrimination against all legally protected groups but that provides interest-based options for different subcultures. There frequently are people who feel strongly about free speech who insist on interest-based options, because they feel that harassment by means of speech, graffiti, and posters should never be punished.

Groups Focused on Power-Based Procedures

There may be senior managers who believe that sexualization and harassment in the workplace must be eliminated by any means necessary—including simply firing people about whom such a concern is raised, or by getting rid of complainants, or by making settlements even if they are inappropriate. In addition, there may be managers who do not care about harassment and want to ignore the subject. These groups typically just want options based on management power. Finally, there may be security personnel or police who want to discuss power-based procedures that increase safety, as well as rights-based procedures.

Some of the points of view discussed in this chapter may not be acceptable to a committee that is reviewing harassment procedures or designing a system. Discussion of the questions below will, however, at least permit better informed policy making.

SPECIFIC OR GENERAL POLICY AND PROCEDURES

Specific Policies

Those who argue for specific policies (for example, solely about sexual harassment or racial harassment) often note that there are differences with respect to the origins, manifestations, and effects of sexism, racism, and other kinds of mistreatment—and therefore each kind of harassment should be dealt with separately. They may argue that specific policies convey more of a sense of urgency about one particular kind of harassment. Narrow definitions of proscribed behavior are sometimes thought to be more easily understood. Policies that deal with all types of harassment and policies that deal with a wide range of severity of offense may be attacked as "too vague." Sometimes senior management cares most about just one kind of harassment and would prefer to concentrate on the issue of most concern to them. Sometimes stakeholders such as lesbians, gays and bisexuals, or men and women of color are incensed about their particular issue, usually because there

has been a recent crisis. These people may not want institutional effort, airtime, or their own scarce resources dissipated over a wide range of problems. Finally, some managers who want to limit complaints will oppose having "plain workplace mistreatment" included in a harassment policy.

General Policies

Those who argue for general policies often point out that general policies are used by more complainants and therefore are likely to be more widely understood. They may note the recent emphasis of the U.S. Equal Employment Opportunity Commission (EEOC) on addressing harassment against all legally protected groups. General policies may be seen as fairer and less invidious in coverage. There is less backlash from white males where employer policies protect everyone against all workplace abuse and mistreatment, in addition to specific protections with respect to race, age, religion, gender, and so on. A general harassment policy also provides for more choice for individuals. For example, a woman of color may ask that persistent questions about her sexuality or an indecent assault be seen as racism—rather than sexism—for the purpose of devising an appropriate remedy. Having a general policy may avoid certain semantic disagreements ("This is not sexual harassment, this is homophobia") and help focus attention on unreasonably offensive behavior rather than permitting people to avoid a problem by quarreling over terms. General policies appear more appropriate for small enterprises that would not want to have separate policies about each form of abuse. Having a general policy has also proved helpful in certain institutions in providing coverage to emergent groups such as gays, lesbians and bisexuals, and Muslims.

All Policies

All policies should define harassment. All policies should provide examples of the discrimination that will be covered, such as cultural, religious, racial, sexual, age, sexual orientation, and disability harassment. All policies should describe management responsibilities that per se are not harassment, such as negative performance evaluations and work assignments. All policies should proscribe reprisal for bringing a complaint in good faith. Helpful resource personnel and their characteristics—that is, who can keep the complainant's confidence, who must act if notified—and the options available for dealing with harassment should be listed specifically. All policies should be addressed explicitly to at least four groups: complainants, respondents, supervisors, and bystanders.

WHAT OPTIONS SHOULD BE PROVIDED?

Providing Only Investigation and Adjudication

In some workplaces, there is only one option for a complainant—rights-based, win-lose investigation and adjudication. In some workplaces, such as the one in the opening story, this option is mandatory, meaning that anyone who hears of harassment must report it, and all reports must be investigated. Rights-based procedures usually follow specified steps. The complaint and outcome are usually in writing and recorded formally. Some employers insist on a finding—either the complaint is substantiated or it is not. And in some workplaces, there are only two possible outcomes—the alleged offender is guilty or innocent. Some employers provide for degrees of substantiation—that is, a concern may be affirmed in whole or in part or not affirmed. Other employers also provide for the possibility that there is simply not enough evidence to come to a conclusion, in which case some keep records of the case and some do not. Some keep harassment complaint records in the files of the alleged offender. Some keep them in the file of the complainant—a practice sharply criticized by some observers and seen as fair by others.

The rationale for providing a single, rights-based option includes the following points: It will be easily understood; it will provide justice; repeat offenders can be tracked; the process is easily monitored by senior administrators; and managers are more easily held accountable.

There are a number of problems with providing only a win-lose, rights-based procedure. Many people (e.g., Gadlin, 1991; Rowe, 1990b)—especially those of certain cultural backgrounds and especially women (e.g., Gwartney-Gibbs, & Lach, 1991, 1992; Lewin, 1990; Riger, 1991)—deeply dislike win-lose procedures. I believe that a major reason is that rights-based procedures are thought to polarize issues and affect workplace harmony and career relationships. In addition, an adjudicatory option may not be adequate for subtle or covert discrimination, free speech issues, and the fear of reprisal.

A rights-based procedure will not deal well with subtle or covert discrimination (see Gwartney-Gibbs & Lach, 1991; Rowe, 1990a)—which in my experience is often as damaging as other forms of harassment, especially on a cumulative basis—because of the problem of inadequate evidence. And even though the EEOC guidelines do include matters of speech in the definition of harassment, some complainants and some employers do not believe in using formal procedures with respect to offenses that are matters of speech and expression. Finally, although many institutions try hard to prevent reprisal, it is in fact impossible for an employer to prevent many forms of reprisal. Examples include covert repercussions and cold shouldering or abuse from peers, family, and colleagues in other institutions.

For these and other reasons, formal grievance procedures are used only rarely by comparison with the proportions of women and men who report on anonymous surveys that they have been harassed. It is not unusual, however, to find employers who offer only win-lose, rights-based procedures, despite the fact that it is widely understood that such procedures are used comparatively rarely. (Some employers have told me that they prefer offering only a rights-based procedure to discourage concerns about harassment.)

Providing Only Interest-Based Procedures

Most employers deal relatively informally with virtually all non-criminal harassment and with some harassment that might be criminal in nature. In many small enterprises, there is no tradition of rights-based, win-lose grievance handling, and harassment is dealt with informally, as are all other issues. Many problems are addressed by discussion or reassigning job responsibilities. Interest-based procedures, such as discussion with or between the parties, usually depend on local management style and skill, and often there are no records. The usual rationale for such a model is that many harassment concerns derive from misunderstandings or ignorance and many offenders will straighten up if they are told to do so. Moreover, it is often impossible to know who is telling the truth.

For many reasons, it is unsatisfactory to provide only interest-based options. A small but significant percentage of complainants are only satisfied with win-lose, rights-based processes. In addition, some respondents prefer a rights-based process, when they think this provides the best chance to clear their reputations. Many people believe that all

civil rights offenses or at least egregious offenses should be dealt with on the basis of rights (Edelman, Erlanger, & Lande, 1993). In addition, many people believe in having a rights-based, adjudicatory option available, even if they personally would never use it, because this "conveys a message" about the commitment of the employer to deal with harassment. Finally, exclusive reliance on interest-based procedures may contribute to the invisibility of harassment, and complaints of harassment may be discouraged when each offended person thinks she or he is "the only one."

In sum, no single option is right for most complainants. Without a choice of options, many complainants either do nothing about harassment—some suffer acutely in silence—or leave the situation they are in by quitting or transfer. Where there are options, complainants' choices will depend on their perceptions of their evidence, their perceptions of the employer's commitment to maintain a harassment-free and reprisal-free environment, their judgment of the integrity and impartiality of the gatekeepers (Gwartney-Gibbs & Lach, 1991), their wish to safeguard their privacy, their cultural background, the nature of their family and career relationships, their personal histories of abuse or efficacy, their best alternatives to dispute resolution, and other factors.

AN INTEGRATED DISPUTE RESOLUTION SYSTEM

Many employers, both large and small, have turned to providing multiple options within a system. There are five common modes for harassment dispute resolution: (a) direct approach from complainant to respondent in person or on paper; (b) informal third-party intervention; (c) generic (interest-based) approaches and system change; (d) classic (formal) mediation by a designated neutral third party; and (e) rights-based investigation and adjudication (and appeals).

The Direct Approach

Where the complainant particularly wishes to protect her or his relationships and/or privacy, feels that there is little evidence beyond her or his personal testimony, thinks that there may have been misunderstanding, or otherwise simply prefers this option, the complainant may decide to raise the matter directly to the offender. This may happen

whether or not the employer "provides" this option. It is a great deal easier, however, for most harassed people and for bystanders to use a direct approach where the employer specifically approves of and encourages such action. It also helps if the employer expects respondents who are approached responsibly to respond responsibly. Large employers should provide off-the-record counseling for complainants to support this option. Counseling is useful both to be sure the complainant knows about all her or his options before choosing this one—and to prepare for this option.

The direct approach often works well with matters of speech and expression and with subtle harassment—possibly because many offenses of this type really do derive from failure by offenders to understand the importance of the offenses. This option usually safeguards the rights and interests of respondents, as well as those of complainants, because miscommunications may be resolved and no employer record will be made of the complaint.

The direct approach is often effective in North America but is not universally helpful. It does not necessarily appeal to people of every background. For example, some cultures expect use of a go-between. In some milieus, only one version of this option may work well—some traditions favor communications in writing, some favor face-to-face contact.

Informal Third-Party Intervention

Where the complainant wishes help, she or he may turn to a trusted mentor, an immediate supervisor, an ombudsperson, a human resource manager, even a family friend or member of the family to intervene informally. Here the goal is not to establish right or wrong, or to punish wrongdoing, but simply to resolve the problem on the basis of the interests of the parties. The third party may sit down with first one and then the other party. The intermediary might agree, if asked, to separate the work of the parties—or might just have a heart-to-heart talk with the offender. This mode is preferred in many cultural traditions. The option is widely used in blue-, pink-, and white-collar employment and is common in small as well as large work units.

If the informal third party is a supervisor or human resource manager, then informal third-party intervention should have the explicit approval of the employer. It will work best where the complaint handler has had adequate training. Such training should include specification of the

main goals: Complaint handlers should be explicitly held to a standard (a) that any alleged harassment must stop and (b) that there may be no reprisal for complaints made in good faith. It will also help the institution to monitor the workplace if complaint handlers get training on how to report identity-free, statistical records on informal harassment complaints. Complaint handlers should also be taught about safeguarding the rights and interests of both parties. For example, although it should be possible for a supervisor to solve a problem informally by taking corrective action that is not disciplinary in nature, I believe that no disciplinary action should be taken against an alleged offender without a fair investigation. In addition, complainants should not be transferred to alleviate tension—unless they ask for a transfer or the situation is an emergency—without a fair investigation.

Generic Approaches and Systems Change

Where a complainant especially dreads reprisal, or loss of relationships and privacy, is concerned about not being able to prove that harassment took place, is concerned about a group of offenders, wants to protect others in the future, believes in education of offenders, or otherwise simply prefers this option, an employer can provide a generic option. Here the relevant department head need not necessarily know the identities of the complainant or the alleged offender(s) but is informed in some responsible way—as, for example, by an ombudsperson—that there is a concern in a certain work area. The department head might then bring in a film or workshop or skit or posters, or might talk about the employer's harassment policy (with some generic examples) at the next department meeting. Whoever knows about the original concern would follow up to see that the alleged harassment had stopped and that there was no reported reprisal, and would keep a statistical record, without names, for an annual report. This option often works well with matters of speech and with subtle harassment. It is a good addition to other prevention programs in the workplace, and usually protects the rights and interests of both complainant and respondent.

In addition, an employer may make changes in the workplace in response to an individual complaint. Examples include increasing the number of women and/or people of color assigned in a certain workplace, successfully recruiting a senior woman manager or a senior black manager for the area, stating clear expectations about professional

behavior on business trips, curtailing the use of alcohol at workplace parties, and so on.

Classic Mediation

A number of employers provide for the possibility of classic formal mediation by a professional neutral who is following a publicly available set of ground rules. Typically, this option is purely voluntary for all parties to the complaint. The settlement, if any, is agreed to and belongs to the parties. It is not dictated, monitored, or enforced by the mediator—who typically asks at the beginning for a formal agreement that the mediator and his or her records will not be called if the case is later reopened. The settlement is usually not kept or enforced by the employer—unless such an agreement is part of the settlement reached by the parties. The employer in fact may not even know of the existence of the complaint if the parties choose an in-house mediator. Exceptions occur where employers offer this option only after formal investigation of the facts of the case, or after termination.

This option is sometimes initiated by complainants who particularly wish to safeguard the relationship, and safeguard their privacy, who believe that they do not have enough evidence to prevail in a formal grievance, or simply believe in classic mediation as a form of dispute resolution. Sometimes a complainant asks for mediation because it seems the most likely mode to get a harasser to agree to stop offending in general as well as in the specific case. Both parties may agree to mediate, and comply with a mediated settlement, if they see all other options as worse alternatives. This option is likely to protect the rights and interests of both parties, if it is maintained by the employer as a purely voluntary option, because either party may later choose a different option if mediation proves unsatisfactory.

Formal Investigation and Adjudication

A rights-based option (a formal grievance procedure) should offer investigation, adjudication, and the possibility of appeal. Some grievance procedures separate investigation from decision making, to provide more objectivity, so different people perform each of these tasks. Some grievance procedures use an outside arbitrator, peer review, or a board of appeal to decide cases in the last stage of appeal.

Some organizations that have their own security or sworn police force also offer a second alternative that is based on rights (and on power). A complainant who fears for her or his safety, for example, may approach a police or security officer at the workplace to ask that a harasser be called in for questioning, for a warning, for investigation, or for other appropriate action. Some workplace police and security departments will support employees in seeking a restraining order, enforce trespassing orders, and so forth. Except for emergency action, workplace security and police departments ordinarily coordinate with the employer's interest and rights-based procedures.

A fair investigation is required if the employer is to take disciplinary action against an offender. Typically, a rights-based option is used for the most serious offenses (including allegations of reprisal) and for repeat offenses. It may also be used as the last step in a complaint process. I believe, however, that this option should also be available as a first step to any complainant or respondent who can demonstrate reasonable cause and who prefers an investigative approach. This is because there is a small but significant group of complainants who do not believe in interest-based approaches for harassment, because respondents may wish to have their names formally cleared, because society has an interest in having some allegations of illegal behavior investigated formally to provide a publicly available record, and because most criminal offenses warrant a formal approach.

There are a number of controversial issues that need to be addressed in developing this option. The first deals with the standard of proof used in the judgment of whether or not harassment took place. Some employers say they rely on the civil standard of preponderance of the evidence, and thus determine whether it is "more likely than not" that harassment took place. This standard permits judgments to be made on the basis of "he said/she said" evidence; the decision maker simply decides who is the more credible disputant. Theoretically, this standard—because it sets a low requirement for proof—should lead to more mistakes in judgment, especially in workplaces where the employer insists that a finding be made one way or the other. This standard is therefore sometimes thought to be unfair to complainants and sometimes to respondents. It is, however, the standard used by courts in most harassment cases, and is thought by most observers to be the most appropriate for employers. Employers, however, often use higher standards, closer to clear and convincing evidence. Employers sometimes explain this behavior in terms of not wishing to put anyone's job at risk on the basis

of lesser proof. Some employers even use the criminal standard—that is, "beyond a reasonable doubt"—for harassment that would not be considered criminal in nature. In time, legislatures may specify the standard for employers.

Some employers de facto use a different standard of proof where the alleged offender is seen as particularly valuable to the institution—a practice open to sharp criticism. And many employers mix together the issue of how much evidence should decide if harassment actually took place with the issue of how much evidence should result in serious sanctions. Thus a complaint of serious harassment may be lightly punished if the evidence is considered weak but may be more seriously punished if the evidence is strong. This practice may seem to be reasonable—but to many it appears unjust, especially with respect to offenders who admit to the behavior that was the subject of a complaint. This practice may also foster dishonesty on the part of offenders.

How an adjudicatory procedure will deal with concerns of harassment will also depend on how thoroughly the employer investigates a complaint. It is common for employers simply to talk with complainant and respondent, to evaluate the evidence brought by each, and decide the matter on the basis of this investigation. This is sometimes appropriate and sometimes not. Because the complainant and the institution often do not know whether there have been other people offended by the same offender—and because some investigators are very skeptical of complainants or of respondents—the thoroughness of investigations is important to findings of guilt or innocence. On the other hand, the employer who investigates very thoroughly—a really thorough investigation might even require calling former employees and clients or alumni—risks endangering the privacy and reputations of the complainant and respondent and also risks serious upset in the workplace and more suits by respondents.

The potential effects of the standard of proof and the thoroughness of investigations matter enormously to a complainant. They also matter to the respondent; however, the effect on the complainant may determine whether an offense gets surfaced and, therefore, is of first priority for systems design. A complainant whose only option is a rights-based procedure with a de facto high standard of proof typically will not wish to come forward at all—unless it is the rare case where he or she happens to have a great deal of evidence in addition to his or her word. (In my experience, complainants with a great deal of evidence are more willing

to use rights-based procedures.) In the common situation where there is only "he said/she said" evidence, some complainants who decide that they must make a complaint will prefer very thorough investigations that look determinedly for other persons who have been offended. On the other hand, because they fear losing their privacy, some complainants avoid bringing a complaint where the employer is known to do thorough investigations in every case. The thoroughness question therefore needs evaluation on a case-by-case basis, preferably including discussion at least with the complainant.

Another issue, especially important in a rights-based option, is that of accompaniment, that is, the possibility for any party in a dispute to be accompanied by another member of the organization. I believe that people who are harassed recover faster and do better if they are assisted by a sympathetic, responsible, and knowledgeable person. This is also true in my experience for respondents. Some employers permit attorneys to be present in internal procedures; most do not. Some employers have an advocacy program or designate a trained manager to assist each disputant. Some employers permit the advocate or assistant to represent the disputant, although many do not. Many permit an "accompanying person" who typically does not represent the disputant but is available for support and advice. It is essential with advocacy and assistance programs that roles are clearly defined, that staff are well trained with respect to policy, procedures, and law, and that they know about various kinds of harassment and their effects, understand the possible effects of any prior abuse of the complainant, and understand their own legal position and possible vulnerability. If advocates are made available by the employer, many people feel that they should be made available to both sides.

CENTRALIZED OR DECENTRALIZED STRUCTURES

Centralized Responsibility

Many employers have addressed discrimination and harassment complaints by setting up a centralized office or EEO function with trained counselor/investigators. This model is often associated with mandatory investigation and mandatory adjudication of all complaints. Skillful,

central EEO staff, however, also can provide some informal options for complaint resolution.

A centralized structure has several advantages. It is easy to find for those in trouble. Those who staff the office usually acquire a good deal of experience. Complaints are generally treated in a consistent fashion, which is a virtue for adjudicatory procedures. People who seek help from a central office usually will not have to be referred elsewhere and therefore need not tell their story over and over. Central record keeping provides one way to identify repeat offenders. In addition, a central office can help to interact constructively with repeat complainers. Records are easily compared from year to year. People with serious harassment complaints often feel there will be less conflict of interest if their concerns are dealt with outside ordinary lines of supervision.

Some employers consider it an advantage of the centralized EEO structure that supervisors do not have to spend time thinking about discrimination and harassment because responsibility has been delegated to specialists. The complexities of dealing with complainants and respondents, especially in the context of proliferating harassment laws and regulation, need not be learned by supervisors or other human resource staff. On the other hand, the same points are seen as serious disadvantages by those who feel that a true equal opportunity world requires skill and commitment from everyone in the workplace.

Other shortcomings of centralization include the fact that where EEO staff perform variously as confidential counselors, quasi-mediators, and investigators who are also compliance officers, complainants may be misled about the degree of impartiality and confidentiality that is being offered (see Edelman, Petterson, Chambliss, & Erlanger, 1991; Edelman et al., 1993). It also may be impossible for the complainant who goes to a central office with rigid rules to obtain her or his own choice of option for dealing with the complaint. Over time, central office staff may be tagged as advocates for complainants, or as advocates for one protected group, or as advocates for management, under circumstances that provide no alternatives.

Centralized offices and EEO staff usually work to protect the privacy of those who have contact with the office, as much as possible. A system with a centralized office, however, typically cannot guarantee confidentiality to any complainant or respondent for at least two reasons. First, the office is usually required to respond to any concerns it hears about, whether or not the offended person wants the office involved. In addition, the central office is generally expected to keep records with names, and these records may be subject to review inside and outside the institution.

Public access to harassment records is seen by some people as an asset and therefore an important reason to have a central office. Proponents of record keeping believe that employer accountability requires court and agency access to information on all harassment concerns. Opponents tend to believe that no records with names should be kept by an employer when a complaint is settled on the basis of interests, and some feel that no records should be kept if an investigated complaint is found to be without merit. Opponents therefore may not favor a centralized EEO function.

Decentralized Responsibility

A decentralized system—where all supervisors and human resource staff are explicitly held accountable for preventing and dealing with harassment problems—also has advantages. Many people believe that discrimination and harassment are management responsibilities that ought not be completely delegated—at least not in the initial phases of concern or complaint. In the increasingly diverse workplaces of the future, every worker and manager will need to acquire a basic understanding of discrimination law and human sensibilities with respect to race, gender, religion, disability, color, age, nationality, sexual orientation, and other differences. This point of view is consonant with contemporary management theories of decentralization of responsibility. Those who hold this view often point out that it is impossible to centrally monitor all the perfidies and meanness that can happen in a workplace—so even if all supervisors do not manage harassment perfectly, and keep only statistical records of complaints settled on the basis of interests, it is better to hold responsible as many people as possible.

A decentralized model is capable of dealing with many more offenses than are central offices because supervisors and human resource managers are available as complaint handlers. Moreover, my experience suggests that many people who feel harassed initially prefer to go to someone they know. Some resent being told they only have a single option; they may want a local supervisor, local-area human resource specialist, employee assistance practitioner, or ombudsperson. This is especially true when the only evidence is of a "he said/she said" variety,

or the problem is subtle or embarrassing or a matter of free speech in an institution that emphasizes free speech. There also may be resistance to a central office if the office staff are of just one race or gender or religion. Finally, two common problems with centralization—the perception that the central staff are management flunkies or that they do not have much power vis-à-vis senior supervisors—may disappear in a decentralized model.

Typically, the decentralized model provides a range of interest-based options for the complainant. Many complainants precisely do not want a "similar and consistent approach" to be taken to their unique concern. Custom-tailored solutions are more easily provided within the line of supervision than by a central office. A local supervisor may provide the best protection from reprisal. In addition, many people who feel harassed will not report the matter at all if a central record with their name will be made of their concern, so they prefer the possibility of local-area, interest-based resolution that may stay off the record.

On the other hand, in a decentralized model, it can be confusing to find out who has what responsibility, and record keeping may not be complete. Different supervisors have different levels of skill in dealing with harassment and may not acquire enough experience—or may just not want to spend the time that is needed—to do well. People who feel that all complaints should be dealt with in exactly the same way, whatever the severity of the offense, will dislike decentralization of responsibility. And decentralized structures are open to the perception of conflict of interest ("my supervisor will not take action against his friend") whether or not real conflicts of interest exist.

A Decentralized Model With a Central Office

An employer can combine advantages of both models in a systems approach. Most complainants will then have a choice of options, especially with offenses that are not egregious and where there has been no known repetition of offenses. The central office may gather name-free statistics about interest-based problem resolution from supervisors, may coordinate or handle formal investigations and appeals, and may keep records of rights-based actions. In addition, the central office can coordinate AA/EEO compliance requirements, provide training and advice for other complaint handlers, disseminate clear and detailed information about policy and procedures, and advise on policy.

INCREASING THE REPORTING RATE

Respect the Wishes of the Complainant When Possible

Employers commonly wish that people who are harassed would come forward within the workplace, rather than going outside, and that they would do so more promptly than is often the case. These employers must provide complainants not just with options but with a *choice* of options, except in the most serious cases, such as criminal assault, reprisal, or repeat offense. Too often, employers say they are "providing options" when in fact the options exist for complaint handlers rather than for complainants. For example, in a system with mandatory investigation of all harassment concerns, the complaint handler not only investigates, with or without the permission of the complainant, but then may decide, after the investigation, whether there will be an attempt at reconciliation. I believe, by contrast, that even in egregious cases such as criminal behavior, when an investigation must go forward despite the complainant's wishes, the employer should at least offer options about how this will be done—for example, the steps that will be taken to protect privacy, or the nature of further contact between the parties.

Deal With Fear of Reprisal in Policy and Procedures

Managers who are dealing for the first time with the topic of harassment may very much underestimate concerns about reprisal. Sometimes there is hesitation about adding this issue to policies on harassment ("Reprisal is a different topic and does not belong in the harassment policy"). In my experience, almost all complainants and potential witnesses consider and fear reprisal. I believe more people will come forward with concerns about harassment—or be a witness in a formal hearing—if the policy defines reprisal to be as serious an offense as harassment. It can also be argued that harassment and reprisal are similar, in being offensive, hostile, intimidating, and unreasonably disruptive, which makes such a definition reasonable. On the other hand, it is ultimately not possible to protect complainants or witnesses—or respondents—against every kind of reprisal (see Coles, 1986; Gadlin, 1991; Gutek, 1985; Gwartney-Gibbs & Lach, 1991; Lewin, 1990; Riger, 1991; Rowe, 1990b). Reprisal is often very subtle

and may simply lie in support not given or opportunities not provided rather than in provable injury. An institution therefore should not "guarantee freedom from all reprisal" in its policy, because doing so may mislead a complainant.

Fear of reprisal may depend in part on the complainant's view of her or his evidence. Complainants who have convincing proof of offenses against them are often less worried about reprisal than are complainants in a "he said/she said" situation. Totally convincing proof is, however, quite rare, which means that an employer that wants complainants to come forward must also keep in mind fear of reprisal as it designs its procedures. An employer should proscribe reprisal whether a complaint is handled on the basis of rights or interests—and whether a formal grievance is found to have been justified or unjustified or not proven—so long as the complaint is not found to have been malicious.

In particular, the employer should take very seriously the need to educate its supervisors about reprisal as well as harassment. It should require its supervisors to have an explicit plan to prevent reprisal before dealing with a complaint of harassment—at least by warning all concerned against retaliation. Supervisors should treat reprisal in the same way that they are required to deal with harassment, should follow up after intervention to ask if there has been reprisal, and should take serious action against those proven to have retaliated against a complainant, a witness, or an alleged offender.

The importance of perceived and real reprisal is a major reason an institution should provide interest-based options, because classic mediation, the generic approach, and systems change appear least likely to provoke reprisal, and the direct approach and informal intervention usually are reported to be safe and effective.

Provide Confidential Advice

Many people want a resource person who will not talk or take action without permission. One way to increase the reporting rate in every kind of system is to provide an ombudsperson who has been trained with respect to harassment. Ombudspeople should be designated as neutrals. There should be a formal agreement that the ombudsperson will not be called on the employer's behalf in any formal hearing in or outside the organization, and that the employer will attempt to quash any subpoena against the ombuds office.

Line managers typically are not permitted to keep harassment discussions completely confidential. Moreover, many people believe that supervisors and human resource managers in fact should be required to act, at least where serious offenses, threats, reprisal, and repeated offenses are alleged—even if the complainant demurs—and that they should not be required to maintain complete confidentiality. But many people also believe that there should be a designated person who will keep confidence in all but catastrophic cases—hence the need for an ombudsperson.

In addition, an employer may provide a hot line for anonymous callers. In ordinary circumstances, persons staffing the hot line should not accept complaints about individuals but simply offer options. Experience indicates that hot lines are used by persons in all four roles—complainants, respondents, bystanders, and supervisors—and can provide essential support to people in great distress. Hot lines and ombudspeople who accept anonymous calls often hear of serious events from people who greatly fear loss of privacy. These callers may then learn of a responsible option they can use.

SPECIAL ISSUES

Privacy Versus Right to Know

A difficult question faced by all employers is how much, if at all, to publicize actions taken in response to harassment. Many employers never speak in public about individual personnel matters. These employers will not wish to do so about harassment matters either. There is an argument that it is hard for a harassed person to come forward if she or he does not know of any case that appeared to be settled fairly and with appropriate action taken against the harasser (see Edelman et al., 1993). If the employer publicizes a case where someone is punished, however, many other people will refuse to come forward, not wishing to be the cause of someone's punishment or not wishing to lose their privacy in the same way.

In any case, an employer should be straightforward about its policies, be forthcoming about its procedures, and publicize aggregate statistics. It may let the community know in general that people can be and are fired for harassment. It may also give the proportions of known con-

cerns and complaints that get settled through rights-based or interest-based options.

Free Speech

In my experience, harassment by means of speech is frequently as disruptive and damaging to targets and bystanders as are forms of harassment like touching. The EEOC specifically mentions offensive expression as potential harassment and has indicated concern about protection of bystanders as well as targets. However, controversies about free speech are far from settled in the United States. Many specific questions have not yet been answered. Will private employers be brought under the same rules as public employers? After a person has been reasonably put on notice about her or his offensive speech, is it then acceptable to bring charges of harassment if the offending person repeats the behavior? Can a bystander bring a charge? Is the situation different if the offensive speaker is a supervisor, or a person of the same race or religion?

Until there is clearer consensus from the courts, I believe that institutions should explicitly ask members of their communities to avoid putting the essential rights of free expression and freedom from harassment to a balancing test. Those who are concerned about free speech should be asked not to test the issue by gratuitous insult. And those who are offended by speech should be encouraged to try interest-based options—at least until it is clear that informal options have failed.

Consensual Relationships Between Supervisor and Supervisee

A consensual sexual relationship between a supervisor and supervisee can give rise to harassment complaints in several different ways. The most important is where the relationship was in fact not completely welcome to one party. In addition, a consensual relationship may become distasteful to one party and not to the other, who may continue to pursue—and thereby harass—the person who has lost interest. Third parties may complain of favoritism and may sometimes claim sexual harassment if a party in the relationship appears to benefit in an unfair way. Consensual relationships may also give rise to complaints of

harassment if the behavior between the parties—such as making love indiscreetly in the office—is considered unreasonably disruptive and offensive by third parties. Thus, while some employers decline to have any policy with respect to this situation—usually on grounds of not wishing to invade the privacy of anyone in the workplace—it makes sense for all employers at least to consider the issue.

Some employers deal with the question of supervisor-supervisee consensual relationships as a form of harassment, or proscribe all senior-junior relationships in their harassment policies whether the senior supervises the junior person or not. The usual rationale for doing so is that there can be no such thing as a truly consensual relationship between people of unequal power. This possibility is often discussed where there are trainees, or students, or other young people reporting to older people of different status. There are shortcomings in such policies. The first is that, although the general public often disapproves of dating relationships at work, the public usually does not think of consensual relationships as harassment and may also resent implicit invasions of privacy and free expression. In addition, *universal* no-dating policies may appear to protect the employer but cannot be effectively implemented—and they encourage dishonesty.

Another option is to deal with consensual, supervisee-supervisor sexual relationships in a conflict of interest policy. An emergent question is whether dotted-line supervision—for example, where there are cross-functional teams, and people work for more than one team leader—should be included in such policies. The logic for suggesting that personal relationships pose the potential for conflict of interest, when they occur within any type of supervision, is that favoritism distorts meritocratic relationships. In addition, there may be less tension and backlash when supervisor-supervisee consensual relationships are dealt with in a conflict of interest policy, because almost everybody is against conflicts of interest.

Under a conflict of interest policy, a typical employer will not punish supervisors and supervisees who fall in love with each other but will, instead, help find alternative supervision for the junior party over a reasonable period of time. The rationale is that the personal relationship is not a problem per se but that the problem lies with the existence of a personal relationship within a supervisory relationship. A conflict of interest policy should require both parties to seek advice if a conflict of interest of this sort arises.

Vendors and Clients, Patients, Donors, and Visitors

Harassment by outsiders is a serious problem. In some institutions, the majority of serious harassment is thought to originate with people who do not work for the employer. Managers and employees typically feel very uncomfortable complaining against those on whom the institution depends, such as clients, customers, and donors. The employer might consider brainstorming with employees at various levels to identify the kinds of harassment received from outsiders and to elicit suggestions for how to prevent and deal with such harassment. The employer will not necessarily be able to prevent reprisal by an outside offender, against a complainant, or against the institution itself. These problems need to be discussed openly. It is important to include examples of outsider harassment in policy and in training programs. It is essential to train supervisors about the importance of listening sympathetically to those who speak up in this situation.

Cross-Cultural Miscommunication and Intragroup Harassment

Globalization of the economy, and increasing diversity in the labor force of virtually every country, guarantees that employers, especially multinational employers, will encounter cross-cultural harassment—including complicated harassment where religion, gender, class, race, and nationality are all involved. I recommend thorough discussion of local norms with respect to male-female and cross-cultural relations in each country where a United States institution employs people. Variations from any U.S. norms, and the laws governing U.S. companies overseas, need to be discussed explicitly. Unless thorough discussions produce agreed-upon local policy within each country, a U.S. employer should, courteously, try to follow U.S. law and custom.

In any situation where intragroup harassment is alleged, and the employer does not have appropriate experts among its complaint handlers, such expertise should be sought, at least on a consulting basis. Great harm can be caused to complainants and others attached to a case if the employer takes the wrong step—especially in a case involving strong traditionalist or fundamentalist beliefs and practices. Where intragroup harassment can be anticipated, the employer should plan explicitly for interest-based options, appropriate complaint handlers, training, case examples for discussion, and local language materials. Explicit consideration should be given to prevention of reprisal with respect to intragroup harassment.

Cross-Complaints, Countercharges, Multiple Concerns, and Criminal Behavior

People accused of harassment often bring countercharges. It may seem appropriate to deal with both complaints together, and occasionally the circumstances of the case—for example, an allegation of reprisal—may make it sensible to deal with such charges simultaneously. This is especially true if both sets of concerns have been raised informally to a supervisor or to a peer for that person's recommendation or disposition. It is important for the employer to recognize, however, that one instance of unacceptable behavior does not justify another. Thus an employer should in each case consider dealing separately with formal charges and countercharges. On the other hand, multiple, simultaneous complaints against the same person usually should be dealt with together.

A substantial number of concerns about harassment are raised together with serious concerns of other types—for example, with concerns about conflict of interest, favoritism, threats, theft of intellectual property, academic misconduct, fraud, defamation, invasion of privacy, or the like. The employer that only has a specific policy about one or another form of harassment will probably not wish to deal with multiple kinds of concerns together. But it is sometimes easier to resolve all allegations of unacceptable behavior together, especially if the issues are linked.

The question of how to deal with criminal behavior needs to be reviewed explicitly. Some institutions refer all concerns about criminal behavior to law enforcement authorities. Other employers handle a wide variety of behaviors that might be construed as criminal. If this question has not been thought through, then the review of harassment policy should be used as an opportunity to review policy about criminal behavior.

Difficult and Dangerous Situations

Harassment of a difficult and/or dangerous nature is being reported more frequently. Such harassment includes stalking, people who "won't let go of a grievance" and are vengeful and disruptive, people who are followed to work by frightening strangers or estranged friends or family

members, assaults, repeated obscene calls, threats, and the like. Complaint handlers should call security experts or others with special expertise in these areas—protecting privacy where possible.

All employers including small ones should consider having a plan for dealing with difficult cases. Larger institutions need an ongoing "problem assessment group" for a number of reasons. Exceptionally difficult harassment problems are becoming more common. The most difficult problems need various different kinds of expertise—for example, from human resource managers, ombudspeople, security, equal opportunity specialists, employee assistance and other health care practitioners, legal counsel, and senior line managers. In academic and other residential institutions, this list might include persons responsible for housing. Just recognizing the most difficult problems may require information from various functions in the organization, each of which has picked up a fragment of data. Dealing with the most difficult problems will often need the involvement of various functions inside the organization, and sometimes their professional contacts outside the organization. It is helpful in a crisis if the relevant group of managers has been meeting together regularly and is used to working with each other and learning from each other.

Monitoring

Yet another reason for an ongoing group is that the managers in a given workplace who have an interest in harassment need to be up to date about the problems the employer is facing, and they need to know if new kinds of problems are occurring. This group should monitor the conflict management system, receive regular statistical reports, design training, and work on continuous improvement.

PREVENTION PROGRAMS

The most important function of a dispute resolution system is prevention. Here, too, there are different views about implementation. Some employers train everyone regularly with respect to the employer's definition of harassment and complaint system options; some train only a few. Some such programs concentrate on consciousness-raising and sensitivity training; some focus on the law. Some are led by EEO specialists and some are led by the CEO or other senior managers. Some programs concentrate on team building with people of different races

and genders dependent on each other for their success—where one person cannot succeed as an individual but only as a member of a diverse group. Some encourage bystanders as well as supervisors to intervene against harassment, if they can do so appropriately. Some programs sandwich diversity issues in with general management issues. Some are intentionally funny and upbeat about diversity; some are earnest. Some programs are oriented positively (the gains from diversity) and others negatively (do not harass or you will be punished).

Having observed programs in a variety of settings with diverse policies and complaint systems, I believe that we know very little about "what works" in even one setting, let alone whether an apparently successful program can be successfully transplanted elsewhere. For example, what is success? It clearly is possible to reduce the number of reports of harassment, especially in a draconian, single-option system; but does this mean there is less harassment? Could a program stop most harassment but produce a hidden backlash such that many whites and many males stop affirmative action recruitment and mentoring?

I believe employers should consider broadly focused, positively oriented diversity programs and specific training about harassment. I believe in regular programming constructed around a variety of workshops, films, discussion groups, posters, skits, and so on that occur in a wide assortment of settings—so that people do not get bored. Good settings include department meetings, optional lunch meetings for secretaries, retreats, orientation programs, and training for those to be promoted. It helps if senior managers frequently talk about "diversity on the team," recruitment, networks, mentoring, and harassment, in many settings. Respectful humor definitely helps.

I believe that the employer's written materials on harassment should be addressed explicitly and simultaneously to four roles in a workplace—*the complainant, the respondent, the bystander, and the supervisor*—not just to one of these roles. It is common for people in one role not to know the rights and options of people in other roles, and people may find themselves in any of these four positions. Bystanders should not be overlooked; they are frequently effective in stopping both harassment and reprisal.

CONCLUSION

The employer who sets up an integrated dispute resolution system, with ongoing prevention efforts, should expect a relatively high report-

ing rate of relatively low-level concerns that can be settled satisfactorily on the basis of the interests of those involved. There will be a few serious complaints that require a rights-based procedure—investigation and adjudication. There will be a few difficult and/or dangerous cases—that cannot easily be prevented by training programs—which may be brought to light at an early stage, and dealt with more effectively, than would be the case without an integrated system.

I believe in providing options. In the case cited at the beginning of the chapter, the support staff person should have been able to seek help off the record, for example, from an ombudsperson. A generic approach—for example, a departmental training program proposed by the ombudsperson—might have helped stop the problem, at less cost to the woman's peace of mind and at no cost to the rights of the alleged offender. Alternatively, an early informal discussion by the ombudsperson with the offender might have stopped the harassment, if the complainant had requested such an option. An ombudsperson might have helped provide support to the complainant until she could transfer, if she insisted on transfer. A trusted HR manager might have been able to expedite a transfer. After the transfer, the complainant might have agreed to permit a discussion with the alleged offender or might have agreed to a formal complaint and investigation. There may have been custom-tailored options available.

I sympathize with those who believe that the rights of all parties are often best served by investigation and adjudication, especially where there are allegations of unwanted assault and repeated offenses. However, the first issue—both for society and for employers—is to persuade those who feel harassed to decide to take action. To persuade the majority of those who are harassed actually to take effective action, employers must respect the wishes of complainants and provide multiple access points and many options. I believe this is best done within a comprehensive systems approach.

NOTES

1. Many male and female ombudspeople in North America have changed to the use of the terms *ombud* or *ombuds* or *ombudsperson* rather than the term *ombudsman* (see Rowe, M. P., Options, functions, and skills: What an organizational ombudsman might want to know, *Negotiation Journal, Vol. 11*(2), 1995).

2. MIT may have been the first major institution—starting in 1973—to design policies and procedures with respect to sexual harassment.

REFERENCES

Coles, F. S. (1986). Forced to quit: Sexual harassment complaints and agency response. *Sex Roles, 14,* 81-95.

Edelman, L. B., Erlanger, H. S., & Lande, J. (1993). Internal dispute resolution: The transformation of civil rights in the workplace. *Law and Society Review, 27*(3), 497-534.

Edelman, L. B., Petterson, S., Chambliss, E., & Erlanger, H. S. (1991). Legal ambiguity and the politics of compliance: Affirmative action officers' dilemma. *Law and Policy, 13,* 73.

Gadlin, H. (1991). Careful maneuvers. *Negotiation Journal, 7*(2), 139-153.

Gutek, B. A. (1985). *Sex and the workplace: Impact of sexual behaviors and harassment on women, men and organizations.* San Francisco: Jossey-Bass.

Gwartney-Gibbs, P. A., & Lach, D. H. (1991). Workplace dispute resolution and gender inequality. *Negotiation Journal, 7*(2), 187-200.

Gwartney-Gibbs, P. A., & Lach, D. H. (1992, Summer). Sociological explanations for failure to seek sexual harassment remedies. *Mediation Quarterly, 9*(4), 365-373.

Lewin, D. (1990). Grievance procedures in nonunion workplaces: An empirical analysis of usage, dynamics and outcomes. *Chicago-Kent Law Review, 66,* 817, 823-844.

Riger, S. (1991). Gender dilemmas in sexual harassment policies and procedures. *American Psychologist, 46,* 497-505.

Rowe, M. P. (1990a). Barriers to equality: The power of subtle discrimination to maintain unequal opportunity. *Employee Responsibilities and Rights Journal, 3*(2), 153-162.

Rowe, M. P. (1990b). People who feel harassed need a complaint system with both formal and informal options. *Negotiation Journal, 6*(2), 161-172.

Rowe, M. P. (1995). Options, functions, and skills: What an organizational ombudsman might want to know, *Negotiation Journal, Vol. 11*(2). *Negotiation Journal, Vol. 11*(2), pp. 103-114..

People Who Feel Harassed Need a Complaint System with both Formal and Informal Options

Mary P. Rowe

There are at least four important reasons to look at the characteristics of people who feel harassed and at how they want to express their concerns:

- Designers of dispute resolution systems need to know what the "customers" (those with complaints and employers)[1] want and need in order to deliver excellent service.
- With increasing diversity in the U.S. workforce, lawmakers, the corporate world, scholars and the general public are all showing increasing interest in preventing and dealing with harassment, particularly sexual and racial harassment. Because perception of harassment is intrinsic to the definition of the offense of harassment, it is necessary to have an understanding of those who experience the problem. (Harassment is an unusual "wrong": It exists in part in the eye of the person wronged, rather than having a wholly objective life of its own. For example, sexual harassment is legally defined in part as being *unwanted* sexual attention).
- There is increasing controversy about mandatory reporting, investigation, and adjudication of certain kinds of harassment cases. Some groups are pushing for increasing formality of grievance procedures for harassment, while others, such as the U.S. Equal Employment Opportunity Commission, are exploring less formal methods, such as mediation.
- Negotiation theorists find that complaining is an interesting area of dispute resolution for our standard tools of analysis, as we look at rights-based and interest-based complaint-handling options.

But first, the reader may ask, is harassment really a serious problem? For example, a 1989 *Forbes* article suggests it is not, in part because so few people make formal complaints. On the other hand, ubiquitous anonymous surveys

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say harassment is very common. Dr. Freada Klein, who is probably the best-known surveyor of this topic in the United States, agrees with me in estimating that five percent of men and 15 percent of women in the workplace feel seriously harassed each year on the basis of sexual harassment alone.[2] (For this estimate, Klein and I both define "seriousness" in terms of disruption in one's ordinary work and personal life.) My data and hers indicate that racial, ethnic, religious and other forms of harassment are also common. However, if harassment is a problem, why is it that so few people—Klein and I estimate fewer than one percent of a given work population—file formal harassment complaints?

The data I shall present in this article suggest that many people who come to a complaint-handler with interpersonal concerns appear to require a menu of dispute resolution options, including both formal (distributive) and informal (integrative) choices.[3] Even more important, according to these data, is the necessity for these people to have the chance to custom-design an approach to their concerns. This study of the characteristics of people with complaints about harassment also suggests that:

- harassment is an extremely complicated problem experienced very differently by different people;
- people who do not file formal complaints choose not to do so for a variety of reasons;
- it would be in the interests of employers as well as concerned employees, to prevent—and surface—more harassment complaints;
- tougher grievance procedures represent only a partial answer for people whom I describe in this article; and
- problem-solving complaint mechanisms appear to be important options for this population.

Background

I have been an intra-institutional ombudsman, one of two special assistants to the President of the Massachusetts Institute of Technology (MIT), since 1973. The two special assistants at MIT are designated as impartial counsellors and informal complaint-handlers. We place major emphasis on confidentiality, and keep almost no formal written records of individual cases. Anyone in the MIT community may contact us for any reason; they are encouraged to do so by MIT's complaint policy and by booklets for students and employees called "Tell Someone." The Institute has tried both to prevent harassment and to encourage reporting of concerns; MIT is believed to be the first major employer in the country to have "named" harassment as a problem, and to have developed procedures to deal with concerns. Many kinds of cases—for example, problems that belong with employee assistance or formal complaints from a union member—are referred to others, but MIT's ombudsmen hear a very wide range of concerns.

The complainants described here are those who allege that other people harass them, or that other people are extraordinarily mean and unreasonably difficult to get along with. (These people, who are concerned about serious interpersonal problems, are a subset of all complainants who contact my office; other kinds of questions include access to posted jobs, substance abuse, park-

ing, safety concerns, possible salary inequities, a wish to report some kind of misconduct, etc.) Intra-institutional ombudsmen differ in the proportion of harassment-type problems in their caseloads. However, since this type of problem is particularly significant, in terms of costs both to those involved and their institutions, the subject is clearly an important one. And I believe that the particular characteristics of this kind of complainant have important implications for the design of complaint systems.

For the purposes of this case study—which is obviously not a scientific survey—I have pooled my impressions of MIT people who complain about harassment, together with my impressions of hundreds of complainants of this type from outside MIT. (Harassment should be understood here in its broadest definition, as offensive, intimidating or hostile behavior which has the intent or the effect of unreasonably disrupting the work environment. As used in this article, harassment includes—but is not limited to—offensive behavior on the basis of gender and sex, race, religion, age, handicap, etc.) The complaints that reach my office from outside the MIT community arise from problems originating in a wide variety of employment situations: private industry, foundations, academe, self-employment, government. I do not report the subject matter or final outcome of the calls and visits; I discuss here only some characteristics of people who have contacted me.

MIT has both adjudicative and informal complaint channels available for each type of complainant and for every type of complaint. In most cases, there are at least three options simultaneously available to any person who has an interpersonal concern: the line of supervision; the parallel line of supervision in Personnel (or for students, in the Dean's Office); and the special assistants to the President, who act as ombudsmen.[4] At MIT, the two parallel channels can be used either informally, or for adjudicative or quasi-adjudicative complaints and appeals. Each year, hundreds of complaints are handled on-the-spot by immediate supervisors or appealed up a supervisory or alternative channel, with or without coming to an ombudsman.[5] Complainants from outside the MIT community who have come to my office also had at least the line of supervision available. Many outside complainants had also contacted other counsellors, including lawyers. This article therefore describes the characteristics of complainants who have sought help informally when formal channels were at least theoretically available (though these channels may not have been well understood by complainants).

This article focuses on a subset of an unknown total population of people who felt harassed. Many people who were concerned about interpersonal problems have chosen to deal directly with the harasser. Or they will have complained and appealed to available line and staff offices, rather than going to an ombudsman. In addition, there is another large population who feel concerned or aggrieved, and who do not seek support or raise their concerns to anyone. Instead, they simply quit, outlive or overcome the problems, suffer, or take out their feelings in some other nonviolent or violent way.[6] (Indications of the importance of these different groups are available to any employer through review of harassment surveys; quit rates; employee attitude surveys; reports of sabotage and interference with the work of others; discussion with employee assistance personnel, etc.)

Method

Once a year, for a one-month period in the spring, I have noted characteristics of the comments of complainants who contact my office. I have tried to differentiate the characteristics of MIT people who complain of interpersonal problems from those of outsiders. One might expect some differences, because of the much higher "barrier" to be crossed in finding me from outside MIT. I find, however, only the small differences that I report here. I have also tried to note during the rest of the year whether there were any major seasonal variations in the data I report here. I believe there are not; although major social events, like holiday parties, may provoke more harassment, the characteristics of complainants do not appear to vary by season. I have also sought to understand whether people differ depending on the type of harassment reported. My data suggest that the type of harassment does not make much difference, with respect to the characteristics I report here,[7] for the population who has called me.

During the 1980s, the average number of persons who contacted me about mean behavior was about 500 per year (a substantial number were contacts from outside MIT, and a substantial number were MIT people complaining about offenders who are not in the MIT community).[8] I do not ask questions of callers for the purpose of my own research interests, so the impressions reported here derive from statements made by callers. (Some statements are, of course, made in response to my routine questions or suggestions.) Some calls are brief; other contacts continue for many hours, over many days, weeks, or even months. In all, I estimate that these impressions are based on conversations with approximately 6,000 persons over the 16-year period 1973-1988. (Note: In the following sections, illustrative comments made by complainants appear within brackets in italicized type.)

Characteristics

Most People (75 percent or more):

- express concern about some kind of bad consequences. [*I'll lose even more than I have already.*] People talk about many kinds of loss in addition to job reprisal, as they discuss taking action openly about the problem that brings them in. In fact, what they most commonly fear is not overt retaliation from supervisors but silent rejection or disapproval by co-workers and family, and the loss of goodwill from supervisors. [*I do not want to rock the boat.*] In fact, some people simply feel uneasy. [*No one would do anything to me; I would just feel like a troublemaker.*] Other kinds of fears include a surprisingly common fear of violence. These concerns are almost as characteristic of the professionals and supervisors who come in (who are often afraid to "take on" offensive employees and colleagues), as they are of subordinates and students complaining about supervisors. Fear of loss is characteristic of nearly everyone, in any workplace, who expresses concern about mean behavior;
- fear loss of privacy. Typically, a concerned person does not want co-workers, or perhaps a supervisor or family members, to know about the problem. [*My family are conservative Muslims; if they knew about this, they might call me home,* or *My parents were born in Asia; they would be so*

humiliated.] Or, the person does not want a "record in the files." [*I want to be known as a first-class scientist, not as a "harassment case."*]

- say they do not wish to go to a third party, but feel they lack the skills they need to change the situation effectively. [*It always comes to me too late, what I should have said,* or *She's really a good person; I wish I could think out how to stop her.*];
- believe that they lack sufficient evidence of the offensive behavior. Most complainants realize that lack of proof represents a problem for management. In my opinion, the belief of complainants that they lack sufficient evidence is the main reason why people who feel harassed do not complain openly or, in the eyes of management, soon enough. [*I did not want to get into a situation of his word against mine, so I did not do anything.*] Although there are important cases where a determined and thorough investigation will provide clear and convincing evidence, it is quite rare in my experience for there to be sufficient evidence for a fair process management to feel confident in taking *serious* disciplinary action against an offender;
- say, when asked what they want out of the situation, that what they want is "just for the problem to stop." Some will add that they also want to be sure that the offender does not harass anyone else. [*Please do not investigate; I do not want to see him punished. I just want to be able to go back to work and forget about it.*]

What explains why so many people who come to see me do not want to enter into a formal complaint process, and just ask for "the problem to stop?"[9] Quite a number of offenders are thought by complainants to need psychological help or education. [*Couldn't you just put him into a training program?*] Some say that they do not want an investigation or punishment because they fear social rejection or loss of privacy. Some feel they share responsibility for the situation. [*I was the one who asked him out.*] A substantial number of people (especially certain ethnic groups) really dislike adjudicative procedures. Some people (correctly) believe that the process of investigation will be painful to them emotionally, by forcing them to relive the harassment, or because they are in conflict about reporting sexual and other abuse.[10] Some know that it will be costly in terms of their own time. Still others fear that there will not be enough evidence to punish the alleged offender. They therefore do not want to get into an inconclusive investigation, or an investigation that produces an "acquittal"—with its high costs and zero benefits for the complainant—and therefore just say that all they want is for the harassment to stop.

Many People (more than 50 percent):

- appear in distress, sometimes very serious distress. [*I think this must be an over-reaction to his just staring at me, but I have not been able to concentrate or write for several weeks.*] They need various kinds of support: religious counsellors, a women's group, a medical checkup, assertiveness training, a therapist, a few days off, a chance to telephone home to another country, support for an angry spouse [*My husband won't touch me anymore; he thinks this must be my fault!*] as well as support with the complaint itself;

- give evidence of having widely differing views about whom they will approach as a primary or subsequent complaint handler. In particular, they often feel that the relevant supervisor or supra-supervisor will be useless or worse. [*If this has to go up to my department head, I would prefer not to do anything.*] Many complainants will go only to a woman (or to a man) or to someone of the same ethnic group or to someone who understands their particular work environment or to a person known to be very sympathetic. On the other hand, I estimate that more than half of the workforce will not bring a harassment complaint to an Equal Opportunity office, or to a complaint-handler who is seen in the workplace as "radical";
- are concerned about being perceived as disloyal, supersensitive, or childish. [*Who is going to see me as a team player if I say those jokes are anti-Semitic?*];
- value the esteem, friendship, or support of the alleged harasser(s). [*I care a lot about what my group thinks of me. I wish they accepted me. I hate it that they look down on me*];
- suggest in some way that it is probably pointless to complain. [*Everyone understands problems like assault; my problem is just vicious, nasty, disgusting remarks; if I complain, they'll probably tell me they don't want to legislate conversation.*] Sometimes complainants say it is pointless because they feel they lack enough evidence of the alleged offense for a responsible management to be able to act. [*It is hopeless; he only rubs against me behind closed doors.*] Other complainants say that they do not trust the employer to be able or willing to do anything to rectify the situation. [*I am not going to complain to my administrative officer; she eats lunch with the guy!*];
- make clear that they do not wish to lose control over their complaint. [*I want to know what will happen next; can I work out some plan with you? . . . You won't do anything without my permission will you? . . . I do not want her fired because of me.*] Important subgroups want to be sure that their complaints are defined as they wish them to be. They include, for example, many Asian- and African-Americans who see unwelcome sexualized behavior as racism, and want it dealt with in those terms; supervisors who would rather treat unwelcome sexual advances from subordinates as a conflict of interest rather than harassment; and gay persons who want their complaints handled as anti-gay harassment and not as sexual harassment.

Some People (5 to 10 percent):

- appear to want the complaint handler to be an advocate. [*You believe me, don't you?*];
- ask if a colleague or a spouse can accompany them [*Could my fiancé come in with me?*], or whether one or more colleagues can be involved as formal or informal witnesses.

A Few People (1-5 percent):

- want somebody else to take care of the whole thing, and have little understanding of due process. [*Everybody knows she harasses people; why do I*

have to do something about it? If the company had ever cared about the people here, they would have fired her!].

A Very Few People (0-1 percent):

- appear vengeful. [*I wish I could see his face when his wife—and his wife's family—find out!*];
- appear to enjoy the fight for the sake of the fight itself, and will overtly or covertly resist having the altercation settled. [*I know that we agreed in writing not to call each other, and to have contact only through a third party, but then I found that he hadn't returned my copy of the Annual Report, which was* ***totally wrong*** *of him, so of course I went to get it, and that was when he hit me* ***again***.];
- report that they have themselves offended someone else. [*I do not know what came over me; I just put my hand under her skirt.*]

Options Initially Mentioned by Complainants

Many People (more than 50 percent):

- talk (at least fleetingly, and sometimes at length) about the idea of either having to leave their jobs, their training program, their dorm, etc. [*In my culture, coming to complain means that I will have to go.*] or wanting to quit [*Even if he apologized and even if I thought that he understood what he had done, I don't think that I could go on working with him*];
- discuss "just putting up with" the problem. [*I don't know why I came to talk with you; I know there is nothing I can do, and I don't want you to do anything about it either*][11];
- mention some common form of "acting out" or taking it out on themselves or co-workers or family members. Symptoms include getting sick, (physical difficulties such as pinched neck, headache and gastrointestinal problems are common); having accidents; taking unscheduled time off; coming in late; having trouble concentrating; gossiping; obstructing work; not being able to sleep or eat; gaining weight; being very sleepy; getting into fights; etc. [*I never want to make love anymore*];

Some People (5 or 10 percent):

- mention the idea of recourse outside the institution, for example, the courts. (This proportion is higher than 10 percent for complainants who come to me from the outside.) Over the past seventeen years, an increasing proportion discuss an anonymous or open appeal to outside agencies or the media. [*I have copied some of her marginal notes and doodles; I think a lot about just sending them to the press; I'd like to let people know what she is really like.*] People frequently want to talk about these options, even when they are sure they do not wish to pursue them. I believe that these feelings are common among people who feel humiliated as well as harassed;
- initially come in to talk about a direct, responsible address to the person who is perceived to be the problem. [*I want to learn to handle this on my own; underneath he is a really good person, in spite of the garbage he dishes out*].

A Few People (1-5 percent):

- ask for disciplinary action against the offender without understanding the elements of fair process in a formal grievance procedure. Some in this group wish for disciplinary action to be taken against the alleged offender without an investigation, or without their own names being used, or at least without further pain to themselves. [*I don't understand why I should be harassed until I can't stand it . . . and now I also have to go through all this crap to make it right?*] Some vividly illustrate the scriptural phrase that "he who is not with me is against me." They feel so hurt that they cannot stand the idea that the offender should have equal rights in due process. [*You're going to protect* ***him*** *instead of me?*] It is especially painful for someone like this if the offender brings an appeal after being found guilty, or if for some reason the investigatory process has to be extended. For some people, the reality of the harassment is so stark and cruel that they cannot understand the level and type of evidence that a responsible management will require before firing an offender;
- talk about thoughts of sabotage, other illegal behavior, or violence toward themselves, others, or property. [*I look at them getting on the company plane and I think how easy it would be to pay him back . . .*]

A Very Few People (0-1 percent):

- come in saying the offender should be fired. [*He should not be supervising anyone, and especially not blacks.*] This proportion is somewhat higher for complainants who come to me from outside.

Complainants' Reports of Experiences with Third Parties

Complainants who come to an ombudsman with concerns about mean behavior by definition have not been satisfied by their previous attempts to deal with the interpersonal problems they report. And there is no way to know whether the reports of these complainants about the prior reactions of third parties (who include supervisors, colleagues, friends and family members) are perceived and reported accurately. Nevertheless, because I typically ask whom a complainant may already have seen, I have also noted the perceptions of complainants about the responses of third parties. In rough order of frequency, here is my categorization of the complainants' memories of prior advice and/or reactions from a third party. Third parties (including family, friends and supervisors) are said to have:

- advised "just putting up" with the situation. [*Give it a month or two and maybe it'll go away*];
- advised complete avoidance of the problem person. [*Do not speak to her; just stay completely out of her way*];
- advised quitting. [*So, dust off the old resumé, right?*];
- counselled address to an appropriate supervisor or to another appropriate person. [*Tell someone! Go to your administrative officer or Personnel or someone in charge*];

- refused to listen, and avoided the complainant. [*So let's take it up later, over the summer, or something*];
- made angry suggestions about confrontation, with unhelpful details about how to do it. [*You should go on the attack; tell your husband, he should threaten the bastard and set him right!"*];
- intervened with the alleged offender, and joined the fight in a way found by the complainant either not to be helpful or even very damaging. [*So then she went and called my boss without my permission, and said I had been complaining about him, and that he'd better watch his step with me. It was awful*];
- encouraged court action or an appeal to the media, openly or anonymously. [*Hey, like the easiest thing is just drop a dime on him*];
- blamed the victim. [*You must have sassed him—why else would he do a thing like that?*].

Dispute Resolution Modes Ultimately Chosen

At an appropriate point in discussion with complainants who contact my office, I ask if it would be helpful to review what appear to be all the responsible options open to the concerned person. I virtually always describe both adjudicative and problem-solving options. I usually do not choose the option for the complainant. (Exceptions sometimes occur in an emergency, or in rare cases when a complainant does not feel able to make any choice but it is clear that, with the permission of the complainant, something must be done immediately.) The options chosen include:

- A very few complainants prefer just to blow off steam, and express their rage and grief. This is an option that I do not recommend by itself. Complainants sometimes express very strong feelings, and then appear to be more comfortable, both then and later when I call to follow up. They may then choose, at least for the time being, to do nothing more (I then typically check back to be sure there is no more harassment);
- A very few complainants learn more information in our discussion about how their complaint system works, and about definitions of harassment, and then say that just getting more information has helped them to resolve the situation within themselves. As in the preceding circumstance, I am likely to follow up at least once.
- Most complainants who report mean behavior decide to learn how to go back directly to the alleged offender, either in person or on paper; typically the complainant will spend some hours drafting a letter and/or role-playing, briefly or at length, how to handle the problem on his or her own. For example, I may role-play the concerned person; my visitor will role-play the offender.[12] This option is chosen by nearly all supervisors who complain of harassment from peers and subordinates, and by more than half of all other (student, employee and manager) complainants;
- Some complainants will ask for a go-between, that is, for informal, third party intervention by a "shuttle diplomat" to resolve the tension: this might be done by a line or staff manager, by me, or by another appropriate person;

- A few complainants will ask for informal or formal mediation of the problem, with a third party bringing together the disputants; this might be done by a line or staff manager, by me, or by another appropriate person;[13] this option is most often chosen where the problem is between peers, and where there has been physical violence;
- A few will eventually agree to ask for adjudication by a third party to decide the matter; this will be done by a line manager or another appropriate person or committee, and usually begins with investigation of the alleged offense. In addition to the option of formal mediation, this is the only other formal (in-house) dispute resolution mode;
- Some will ask me to arrange for a "generic" approach to the alleged offense. For example, a department head may write a general departmental letter about sexual harassment, bring in a training program, or discuss offensive behavior at a general staff meeting, with the intent of generally raising consciousness, and with the expectation of stopping the specific problem along the way. (In such cases, I follow up to be sure that the specific complaint is appropriately resolved, since the department head will presumably not know the specifics of the case.)

Sometimes a complainant will choose more than one mode or will try first one and then another, if the first option fails.[14] Sometimes I very strongly encourage formal address to a concern, or push for a supervisor to be informed. This may or may not be accepted as an option. (If I push strongly for a given *informal* mode, for example mediation, the complainant is more likely to agree.) It is very unusual for a complainant ultimately to decide to do nothing.

Conclusions

My experience indicates that it is possible to encourage a high reporting rate of interpersonal meanness problems if an institution is willing to grant a high degree of control to complainants. My experience also indicates very wide variation in what complainants want; people of different backgrounds see harassment extraordinarily differently and will choose different options if permitted to do so. This fact militates strongly for providing many options for those who feel harassed, especially in the context of increasing diversity in the U.S. labor force and educational institutions.

The complainants I have described here are not necessarily typical of *all* persons with interpersonal difficulties. They also present themselves in some ways differently than other types of complainants, in their general unwillingness to seek adjudicative or quasi-adjudicative relief via a supervisor or other formal complaint handler. However, this group *by itself* is significant in size and should be provided for within a complaint system.

Because the suffering of these complainants and their colleagues is significant; because harassment is disruptive, against employer policy, and illegal; because the costs to an employer, of failure to respond appropriately to complaints of harassment, are so high (in terms of lower productivity, litigation, bad publicity, violence, etc.); and because many complainants come to an ombudsman thinking of unconstructive options for dealing with their problem, the characteristics of this group are important to those designing a complaint system. The characteristics of this group are also extraordinarily important for

the further development of law and public policy with respect to harassment, where there is controversy about mandatory reporting, mandatory investigation and adjudication.

On the basis of my experience, I believe that an employer must choose between a very high degree of complainant choice, in dealing with concerns of harassment—and having a high reporting rate—or, on the other hand, insisting on mandatory reporting to an Equal Opportunity-type office and having a lower reporting rate. This is because most complainants do not want and cannot be helped in any one standard way, and therefore will not come forward if confidentiality cannot be guaranteed and especially if the only options are formal.

Moreover, many observers raise the question of who *should* be allowed to choose options of pursuing a complaint, and who should be allowed—and encouraged—to deal with meanness. If one believes that harassment is most uncomfortable for those with least power, then one may believe that it is important to empower offended people to deal effectively, if they can, with the offense, and not to give all control, over the choice of options and the process of stopping the offense, to those already most empowered in the workplace. Additionally one may believe that offended people should take responsibility themselves. Thus philosophers on the left and the right may both agree that it is important to help people choose and develop their own options.

To summarize, the characteristics of at least one important group of people who feel harassed require employers to provide many different access people and different options open to the choice of complainants, including the option of learning on a confidential basis how to deal directly with harassers. In addition, law and public policy need to take appropriate account of the needs of complainants, and of employers, to provide options. I believe that employers should be required to provide both adjudicative options (based on rights) and problem-solving options (based on interests) for those who feel harassed in the workplace. I believe these points will become increasingly important with increasing diversity in the workforce.

NOTES

1. There are, of course, other interested parties, including the alleged offenders, supervisors, and other complaint handlers. It is beyond the scope of this article to review the characteristics and interests of these other groups. The reader may, however, wish to consider these other parties in considering the data presented here. For an elegant review of the theory and practice of building complaint systems, see Ury, Brett, and Goldberg (1988). Ury, Brett, and Goldberg's clear exposition of rights-based, adjudicatory grievance procedures vs. interest-based problem solving and mediation is particularly useful and important for complaint handlers.

2. Klein, Freada, Klein Associates, Cambridge, Mass. Personal communication.

3. I have written more about "choice" in an article entitled "Options and Choice" (see Rowe, forthcoming; see also Ury, Brett, and Goldberg, 1988).

4. There are also other important resources and points of appeal: the Committee on Discipline, the Campus Police, and other kinds of counsellors. There is also a very substantial amount of referral of cases among the different offices which hear harassment cases; many complainants are supported by several offices at once.

5. Of those who bring harassment concerns to offices other than my own, a substantial but unknown proportion ask for informal solutions.

6. See, for example, Merry and Silbey (1984) for a very helpful analysis of the cultural reasons why many people are reluctant to use informal and formal dispute resolution. These authors

note that many people prefer not to contact any third party to resolve interpersonal differences, even when they know such options exist.

7. I of course do not mean to imply that all kinds of harassment are alike, nor that racial and sexual and other kinds of harassment necessarily have the same origins.

8. The MIT community numbers about 20,000, counting all students, faculty, and staff. I hear from two to four percent of the total community per year about some kind of meanness or harassment. The number of concerns has risen in recent years, as has the proportion of alleged offenders who are not members of the MIT community.

9. See again Merry and Silbey (1984).

10. There are particular groups of complainants of harassment who are poignantly vulnerable to harassment and who sometimes find it difficult to bring formal charges. These are the estimated 20 to 35 percent of women and the five to 15 percent of men who were abused in childhood. Such persons, when again offended in the workplace, may also be negatively affected by being forced to go through a formal procedure, and particularly so if the procedure is heavy-handed; if the offender is perceived to be like the original abuser; or if the result is acquittal due to lack of evidence. Some persons who were abused in childhood may also be *helped* if they can, as adults, bring a formal complaint about harassment in the workplace, but it appears to be important that the choice be made by the offended person and not by a manager.

11. These data appear to affirm the observations of Merry and Silbey (1984).

12. See "Helping People Help Themselves," an article by the same author, which *Negotiation Journal* has accepted for publication later this year; see also Rowe (1978).

13. Some ombudsmen—for example, Howard Gadlin of the University of Massachusetts—have made a specialty of mediating harassment complaints.

14. In the terms of Ury, Brett, and Goldberg (1988), MIT in appropriate cases permits and encourages "looping back" from more formal to less formal dispute resolution modes. With respect to harassment, MIT would of course also permit looping *forward* to a more formal grievance procedure.

REFERENCES

Merry, S. E. and **Silbey, S.** (1984). "What do plaintiffs want? Reexamining the concept of dispute." *The Justice System Journal* 9 (2): 151-178.

Ury, W. L., Brett, J., and **Goldberg, S.** (1988). *Getting disputes resolved. Designing systems to cut the cost of conflict.* San Francisco: Jossey Bass.

Rowe, M. P. (1978). "Dealing with sexual harassment." *Harvard Business Review* 59 (3): 42-47.

———. (forthcoming). "Options and choice." In *Changing tactics*, ed. by L. Hall. Washington: National Institute for Dispute Resolution.

Dispute Resolution in the Nonunion Environment: An Evolution Toward Integrated Systems for Conflict Management?

Mary Rowe

I. Introduction

Dispute resolution within the nonunion workplace in the United States varies greatly from employer to employer. There are many small companies with no designated dispute resolution mechanisms. There are employers with dispute resolution procedures restricted to specialized situations such as harassment and discrimination, and some that will deal only with a formal grievance. Many employers are now experimenting with "appropriate dispute resolution" (ADR) mechanisms, such as mediation and arbitration, often using neutrals outside the workplace.[1] Much of the interest in these ADR mechanisms is oriented externally, toward those rare disputes that are particularly serious and will otherwise go outside the workplace to a government agency or to the courts. There is also an increasing number of employers with extensive internal systems—which include internal ADR options—designed to deal with all the different kinds of conflict in a workplace. These systems constitute a major change from a prior focus on one or another grievance channel.

There is no reliable estimate of the number of nonunion employers that have instituted internal dispute resolution procedures because the subject is poorly defined and observers discuss conflict management in different ways.[2] Even within a given firm, dispute resolution procedures are sometimes well described and understood and sometimes are not. What is clear is the fact that there has been a great deal of change over the past thirty years. One study[3] published in 1989 found that half or more of large employers had instituted some kind of grievance process for at least some nonunion employees, and that

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at least one-fifth of those used third-party arbitration as a last step in their formal procedure. The United States General Accounting Office reported in 1995 that "almost all employers with 100 or more employees use one or more ADR approaches" and in 1994, Organizational Resources Counselors reported that 53 percent of a survey of "ninety-six leading companies" used an ADR program to resolve employment-related issues.[4] My own consulting experience indicates that many organizations are now reviewing their dispute resolution structures and that many are moving toward a systems approach.

Some of these structures and systems appear to be working well, but in many small and large firms the mechanisms that exist are inadequate. For example, they may fail to cover one or another group of employees or fail to include managers and professionals. In some companies, the dispute resolution structures are treated cavalierly by management or are effectively unknown to the workforce they are supposed to serve.

Apparent shortcomings of nonunion dispute resolution have received a good deal of attention in the past fifteen years. Various observers have described a variety of problems as seen from the employee perspective. Perhaps the most common criticisms center on inadequate protection of employee rights,[5] including statutory, economic, and "enterprise" rights (those rights granted by a specific employer). Many criticisms center on the absence or inadequacy of formal grievance and appeal channels, focusing especially on the perceived absence of sufficient due process protection. In addition, rights-based formal procedures are believed not to work as well for women's complaints as they do for the complaints of men,[6] and the "gatekeepers" for complaint processes are found to be not as helpful for women and people of color as they are for white men.

Both men and women experience many problems in the process. Many people who use rights-based (formal) complaint procedures fear career damage—as do their supervisors. Fear of reprisal and conflict of interest are serious problems, especially where formal complaint and appeal procedures rise within a single line of supervision. The process of using complaint procedures is often difficult to understand. Nonunion grievants are seen to lack advocacy. Stakeholders are often left out of the process of building nonunion dispute resolution structures. Finally, providing only a single complaint procedure of any kind will shortchange employees and managers who do not like that particular kind of formal or informal procedure.[7]

Other common criticisms come from employers. Thousands of employers are reacting to the fact that the obvious tip of the iceberg of nonunion dispute resolution is handled slowly and expensively by government agencies and the courts. Some employers are also acutely conscious of a litany of other serious costs resulting from the lack of effective internal dispute resolution: damage to relationships in the workplace, loss of productivity, sabotage and theft, harassment and violence, and the like. Some employers are concerned with the particularly high costs that may ensue when managers and professionals feel unjustly treated. In short, many employers believe that the costs of employment disputes are far too high and that there must be a more cost-effective approach.

This chapter will review some innovations in nonunion dispute management and resolution. I first cite various explanations for the introduction of innovations among nonunion employers, and various opinions about dispute resolution procedures. I then turn to the concept of an effective integrated conflict management system. Since the success of a conflict management system depends for the most part on the needs and wishes of complainants, I discuss some characteristics of people who perceive a problem or want to complain in the workplace.[8] I then turn to the implications of the opinions of various critics, and of the characteristics of complainants, for setting the specifications for a good system and for providing the options needed in an effective complaint system. The experience of Brown & Root in developing an integrated conflict management system is briefly reviewed as an example of a contemporary systems design. I conclude with some suggestions for future research.

II. Why Has the Nonunion Sector Been Innovating?

The reasons for nonunion innovations are varied and complex. To my knowledge there has been no satisfactory broad overview of this field or systematic description of the different innovations that are emerging all over North America. There is no comprehensive understanding about why these innovations are appearing or how well they are doing. Most authors have a particular focus, such as a special concern for employee rights, alternative dispute resolution centered on the interests of disputants, cost-control, or healthy organizational development. None seems to have a comprehensive perspective.[9] I will cite just a few of the varied studies about conflict management in the United States.

Ewing,[10] writing in 1989, pointed to erosion of reverence for the sacredness of management and management rights, with concomitant growth in concern for employee rights. He identified as causal factors the influence of education, mobility, and diversity in the workforce, rising expectations for fairness and happiness, a wish by management to create a sense of belonging and trust in participative management, a rise in decision making power by personnel departments, the proliferation of "conscientious objectors" or whistle-blowers, and a change in the legal climate toward thinking about jobs as "property." He also noted an increase in interest about procedural justice and substantive justice and indicated that the former cannot necessarily be delivered by line managers when there may be a perception of conflict of interest. Ewing noted, as do many others,[11] that employers realized that they needed to fill the void in conflict management left by the decline in unionization and therefore in union grievance procedures. He noted extensive changes in federal and state laws that restrict employment at will. In addition, some of these legal changes encourage and require employers to provide fair processes for complaints within their organizations.[12] Ewing also discussed the influence on thinking in the United States of worker rights and dispute resolution institutions in Europe (see Clarke's discussion in chapter 8).

The rise of individual rights and of corporate responses in the 1970s and 1980s also was chronicled by Westin and Feliu.[13] They stressed the importance

of whistle-blowing, equal opportunity imperatives, and the rise of litigation. They noted the proliferation of corporate innovations in conflict management over a decade of major change. Bedman[14] has recently chronicled changes in how employment disputes are handled in the U.S. legal system; he took particular note of the expansion of tort law.

Ziegenfuss[15] discusses many of the same issues, emphasizing cost control where costs are broadly defined as including lost productivity. He wrote that conflict can be very expensive in a competitive environment, especially in a workplace that is subject to the dislocations of technological change. Cost control was also a central issue for Blake and Mouton[16] in their remarkable (and prescient) book on intragroup conflict within organizations. They looked at lost productivity in the aftermath of mergers, reductions in overhead, realignment of products, and many other situations where trust had been destroyed or was otherwise absent. They concluded that these costs could be lowered through a thoughtful, systematic approach to conflict management. McCabe[17] also focused on cost control, including the need to constrain the emotional costs of workplace conflict, ethical obligations increasingly felt by senior management, and the need for senior administrators to catch their mistakes so they can correct them.

Cost control, including, for example, the costs of wildcat strikes, also was the focus of Ury, Brett, and Goldberg.[18] This concern for cost-effectiveness contributed to the development of their brilliant theoretical analysis of providing mediation as part of a systems approach to conflict resolution in a unionized setting. They were among the first to popularize the notion of dispute resolution systems design. More recently they have extended their "alternative dispute resolution" orientation to dispute resolution in nonunionized settings and commercial disputes.[19]

In his 1993 overview of rights in the workplace, Edwards[20] wrote that the granting of nonstatutory rights in employee handbooks and the advent of innovative complaint mechanisms in the nonunion arena were motivated by four factors: the desire of employers to compete successfully for the best workers, a wish to avoid unionization, a wish to avoid costly lawsuits, and a belief that workers deserve rights. Lewin,[21] who has written extensively about dispute resolution, has suggested, in addition to other points cited above, that nonunion employers seek to improve work performance by providing dispute resolution structures. Edelman, Erlanger, and Lande[22] conclude that the chief impetus for employers to build internal dispute resolution structures is to smooth employment relations and get resolution to employee tension, as they put it, by appeasing employees.

In addition to studies that have concentrated on processes *internal* to the workplace, there has been a great deal of interest in the 1990s in *external* DR. External DR processes such as mediation and arbitration allow employers to deal with problems that would otherwise move from inside the workplace to external agencies such as the Equal Employment Opportunity Commission (EEOC) or to the courts for resolution. The driving forces behind the use of these processes are a concern for finding ways to reduce the workload of the courts, the control of legal and other costs of litigation and of settlements, par-

ticularly in jury trials and for statutory rights cases, as well as perhaps the search by lawyers for new areas of practice.[23]

Most of these external "ADR" devices are tightly focused mediation and/or arbitration steps at the end of or in addition to a grievance procedure. Most deal only with rare cases, though some are configured as part of a comprehensive systems approach to conflict management.[24] Some employers offer mediation and arbitration on a voluntary basis, some require agreement to noncourt dispute resolution involving employees who will benefit from stock options or who will receive other benefits, and some employers have made imposed arbitration a condition of employment.

Imposed arbitration as a condition of employment is very controversial. The National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC) oppose imposed arbitration, particularly for civil rights cases. Some opposition also exists in the courts, although a few recent court decisions also support imposed arbitration. There is also both support and opposition in Congress. Many arbitrators have recently announced that they will not handle cases arising under an imposed arbitration program.

Criticisms of specific dispute resolution mechanisms have led many professionals besides Ury, Brett, and Goldberg to conclude that the best approach is to focus on a conflict management *system* that provides options. For example, taking an industry-based perspective, both Marcus and Slaikeu[25] have each recently discussed the need for conflict management systems in health care. Costantino and Merchant[26] have taken an organizational development approach to the subject, writing about the need for "productive and healthy organizations." According to them it is self-evident that disputes, internal competition, sabotage, inefficiency, low productivity, low morale, and withholding knowledge within an organization are symptoms that should lead to conflict management systems design.

In my own work at MIT on conflict management systems design,[27] I joined an effort focused on meeting the needs of a diversifying workforce and student body in a high-tech educational and research environment. As various issues emerged, increasing attention was given to meeting the "needs of the customer."[28] I found that people who wanted to raise a concern or complaint overwhelmingly wanted options, and preferred their own choice of options wherever this is appropriate.[29] Fortunately, the wish for a choice of options matched well with the MIT systems design tradition of providing "redundant" resources and structures for people with problems.[30]

My own employer has been evolving a systems approach to conflict management for about twenty-five years. Many other employers, including colleges and universities, government agencies, foundations, and corporations, have been designing their innovations in a similar way over recent years as they listen to requests and concerns within their own communities, to leadership from one or another innovative senior manager, to federal and state laws and agency requirements, to court decisions, to public demand (see, for example, the 1994 Dunlop Commission), and to outside consultants. Innovative companies in this area include Citibank, Federal Express,

McDonnell-Douglas, Motorola, Polaroid, United Technologies, Xerox, and more recently American Express and Brown & Root. Government examples include the departments of the Air Force, the Army, the Navy and Marine Corps, the Coast Guard, the U.S. Secret Service, the Federal Deposit Insurance Corporation, and many others. Innovative international institutions include the World Bank and the International Monetary Fund.

III. Designing an Effective Integrated Conflict Management System

There are several basic changes implicit in this evolution toward integrated dispute management systems. The first is the idea of a *system* which provides various options and various resource people for all persons in the workplace and all kinds of problems. This approach contrasts with the more traditional methods of providing a single grievance procedure that is only for workers grieving against management, or one designed for a limited list of disputes arising under a contract. A system provides "problem-solving" options based on the interests of the disputants, and "justice" options based on rights and on rights and power. The second major change is the broad idea of conflict management. This may, for example, include the idea of teaching peers, such as managers and teammates, how to negotiate their differences with each other, teaching a whole workplace to use constructive dissent for continuous improvement, and learning how to prevent some costly conflict. Conflict management is a more comprehensive idea than just a process for ending specific grievances. A third idea is that of integrating conflict management options and structures with each other, in the context of an overall human resource strategy.

A. System Development

My experience dealing with some hundreds of employers over twenty-five years suggests that most nonunion conflict management systems have developed structure by structure, in an ad hoc response to one or another concern, such as containing litigation costs, dealing fairly with diverse populations, or responding to a consent decree. Some employers, however, such as Federal Express, have taken from the beginning a relatively comprehensive "systems approach", and a few relatively complete systems are now emerging (such as that of Brown & Root discussed below). Whatever the history in a given workplace, I do not believe in ideal models. All the excellent systems that I know are evolving steadily and along somewhat different paths. Since different institutions have widely different missions, and operate within different legal environments and value systems, it seems reasonable to me that they have taken and will continue to follow different paths to systems that are custom-tailored.

B. Stakeholder Input

A major question with respect to systems design is how much input there should or will be from all the stakeholders of the given organization. Experts on labor relations and organizational development, observers concerned with the rights of respondents and those of complainants, and persons especially concerned with the rights of minority and women's groups, feel strongly about stakeholder input in the design phase. To build effectiveness and trust in a system, stakeholders should be asked first what they want and then be provided a structured means to give input into both design and continuous improvement. Design consultants offer structured plans for such input.[31]

It should be noted, however, that some important innovations in conflict management have occurred through the determined efforts of a CEO or other senior manager and even by what Walton, Cutcher-Gershenfeld, and McKersie might think of as "forcing" an innovation.[32] Paradoxically or not, some relatively thoughtful, integrated systems are being set up by using managerial power with relatively little input from employees and managers.

C. Begin with the Characteristics of Complainants

Whether a systems design comes from extensive stakeholder input, by fiat from above, or both, I believe, at a minimum, that certain characteristics of complainants, i.e., the initial "customers," must be considered in fashioning a system. This idea has not been sufficiently discussed in the literature, and it is not necessarily the same idea as "stakeholder input." Those who speak up about conflict management design are not necessarily those who will find themselves suddenly in need of a complaint system. This is especially true in a multicultural context. Many people who speak up about dispute resolution have thought mainly about the interests of employers, the rights of complainants or respondents, organizational development principles, or conflict resolution theory, all of which are important, and all of which contribute to the design of procedures people think complainants should want. But considering what complainants actually want, which is, if possible, to raise concerns *as they personally wish to raise them*, is critical to ensuring that a system is actually used.[33]

Probably the most common characteristic of people who have a concern or grievance is that they just wish their problem would go away—they "do not want any process." Many complainants are simultaneously uncomfortable about doing nothing, uncomfortable about taking any kind of action on their concerns, and angry if they feel they "either must do something or have to quit." In addition, most complainants disapprove of other options that easily come to mind, which employers also consider unconstructive, such as walking out, absenteeism, going slow, sabotage, agency complaints, legal suits, bitter gossip, anonymous attacks, and the like. In short, people with problems often feel that they have no options at all.

Why is constructive conflict difficult? One major reason is that most people in the United States still think first or only about formal grievance proce-

dures although virtually every survey shows this option to be unwelcome to most people for most problems. There are, of course, some problems, such as criminal behavior, which require formal procedures. But there is a long list of reasons why most people do not wish to use formal grievance procedures for most kinds of complaints. People with concerns and complaints often fear loss of privacy and dignity with respect to family and relatives, supervisors, and coworkers. They may value the relationship they have with the person they see as the source of the problem, and other relationships they have inside and outside the workplace, and fear these relationships will be placed at risk if they file a grievance.[34] They often fear covert as well as overt reprisal from the employer, and dread criticism from family and from colleagues who may hear gossip about them. They fear being thought of as disloyal, lacking in humor, or a poor sport. "Token" professionals, including women, people of color, and anyone who is nontraditional in a traditional environment, may especially fear being seen as troublemakers rather than self-confident professionals. Many people also hate the idea of losing control over their concerns. (This issue appears especially true for professionals and managers.) Complainants may—rightly or wrongly—fear that they do not have enough evidence to prevail in an investigatory procedure. This fear is especially common regarding discrimination and other interpersonal problems. In addition, some people fear they will be criticized on free speech grounds if they complain in a formal grievance procedure about offensive communications.

Because most complainants "just want the problem to stop," they are often concerned that an adversarial option will result in punishment of the offender, rather than just fixing whatever is wrong. Complainants commonly fear that they do not have the skills to complain effectively. But many people dislike asking any third party for help, except maybe a friend, and many have very strong feelings about which third party they would or would not consider going to, if going to a third party is required by the employer. If the third party in a formal grievance process is not trusted, many complainants will not come forward at all. For all these reasons, a majority in the workplace will not choose and cannot be persuaded to file a formal grievance—even for such problems as civil rights violations which many people feel belong in a rights-based process.[35] If people with problems are to act in any constructive fashion, most of them must be provided with interest-based options designed with the wishes of complainants in mind.

On the other hand, a small number are satisfied only by a formal, rights-based, win-lose process. They typically wish to be able to move directly to file a grievance, and have it investigated, without prior, interest-based steps. They may not understand any option other than a formal grievance procedure, or they simply regard a rights-based option as the only just process. They may also have strong feelings about desirable elements in a rights-based procedure. Lewin has studied the wishes of complainants with respect to formal procedures. He identified their interest in an independent fact-finding procedure, in an impartial process, in obtaining feedback about grievance settlements, in protection from reprisal and from the disapproval of coworkers, in having several levels of appeal, and in having at least some outcomes favorable to

those who file grievances.[36] If people oriented toward right and wrong are to be satisfied, they should be allowed in appropriate cases to move directly to a rights-based option designed with wishes of complainants in mind.

There are also a few people who present especially serious challenges for a fair dispute resolution system. They may deeply distrust other people, and may reject the idea of due process for people who are seen to be the source of problems. A few complainants want revenge. A few enjoy fights in and of themselves, and resist settling any dispute. Occasionally also a complainant brings a complaint for an ulterior reason, such as preventing a layoff or termination. In addition, a few people wish simply to disrupt the workplace. Rights- and power-based options are usually the most reasonable processes for these rare situations.

Many men and women who have a concern or grievance who say that they are unable to concentrate or think clearly, express fear that their work is deteriorating, and state that they do not know how to pursue a complaint. Systems should provide support for these complainants to find and use constructive options.

IV. Specifications for an Effective System

Building on many ideas raised in the literature, on my own experience, and the characteristics of complainants as I know them, I believe that an effective integrated conflict management system would include the following basic characteristics.

Values of the system: There is a general orientation toward conflict management that derives from the core values and human resource strategy of the organization. The orientation includes a commitment to fairness for everyone involved in a dispute and freedom from reprisal. The employer proscribes reprisal against any disputant, including supervisors who act in good faith, and including witnesses who speak up for any disputant. The strategies of fairness and freedom from reprisal are backed by top managers who hold themselves accountable, and are held accountable, for the success of the system. There is at least one powerful senior manager who embodies this commitment and understands the nature of conflict management. The employer presumes that the backbone of conflict management is not based primarily in staff offices such as human resources and the legal department, but is, rather, embedded in line management and team management. Preventing unnecessary problems through active listening and effective, respectful communications is seen as a major responsibility of line management and of members of teams. The importance of constructive questions and dissent is seen as a major part of "continuous improvement" of the organization and of teamwork.

Many options: A variety of interest-based and rights-based dispute resolution techniques are offered to employees and managers, and employed for the clients of the organization (e.g., visitors, students, patients, nursing home residents, vendors, policyholders, franchisees) as appropriate.[37] The interest-based options are usually available in parallel, rather than as sequential and required steps of a single procedure. With respect to the choice of options, the parties

may in many cases agree to loop forward from an interest-based option to a rights-based option (or to a rights- and power-based option),[38] or loop back from a rights-based option to an interest-based option.[39] For most problems that are not of a criminal nature, these options are initially available to the complainant. This contrasts with previous approaches in which the complaint-handler chose how a problem would be handled in the nonunion environment, and with the single grievance procedure that was the usual option in a unionized environment. In the rights-based, formal grievance and appeal option there is an appeal mechanism that takes investigation or decision making, or both, out of the line of supervision. There are reasonable standards of conduct for formal investigations and decision making. Disputants have a right to be accompanied, though they may under ordinary circumstances be expected to represent themselves.

Multiple access points: People with concerns and problems can find access points of different ethnicity and gender, and varied technical backgrounds, to help them. These access points are people who have been trained to act as fair "gatekeepers" for the conflict management system. In a small company these might just be specially designated employees and managers. In a large firm, these would include professionals such as human resource managers, employee assistance providers, equal opportunity specialists, and occasionally religious counselors. They provide a degree of privacy and support for various options in the conflict management system. Access points also include specialized personnel in safety, security, environmental hazard, ethics, and audit departments. Some employers can provide 800 lines for people to talk, and seek advice, and provide information anonymously. All disputants may be accompanied, when using the system, by a colleague or coworker.

An organizational ombudsperson: There is, in addition, at least one ombudsperson, designated as a neutral, who is available to help informally with any workplace concern, and to provide formal mediation as appropriate.[40] In a small company one or several people may carry these responsibilities on a part-time basis. Ombudspeople report outside ordinary line and staff structures to the chief executive officer (CEO) or the chief operating officer (COO), or local plant manager. The ombudsperson maintains strict confidentiality, asserts a privilege to protect the confidentiality of his or her practice, and follows the Code of Ethics and Standards of Practice[41]of an ombudsman association.

Wide scope: The system is used by professionals and managers with concerns as well as by employees. The system takes virtually every kind of concern that is of interest to people in the organization. This includes, for example, disputes between coworkers and between fellow managers, teammates, and groups, as well as classic concerns about conditions of employment and termination. The system may also listen to recently fired employees, outsiders who feel badly treated by someone who works for the employer, anonymous complainants, and others as appropriate. The system can deal with multi-issue complaints.

Continuous improvement: An oversight committee is built into the system and meets regularly to improve the effectiveness of the system.

V. Options and Functions Needed in an Effective System

A. Interest-based Options

Interest-based options for "problem solving" attempt to address the real needs of the complainant, as distinguished from defining problems and their solutions solely in terms of legal rights. Options of this sort can provide several advantages to the complainant. For example, an effective, direct approach from a complainant to a respondent may lower the likelihood of reprisal, offer freedom for the complainant from the demands of evidence, and offer more control over, and greater comfort with, the process of problem resolution. Interest-based options can be prompt and swift. For example, some options can be pursued by the complainant or offered by line managers on the spot. Interest-based options also are particularly appropriate for dealing with offensive communication.

Listening: An important option that a person may choose is just to talk, and for the line manager, ombudsperson, or other resource person to listen, in an active and supportive fashion. The manager or resource person may affirm the feelings of the individual but should be impartial with respect to the facts of a situation unless or until the facts are known. In many cases, "being listened to" is what a person with a problem wants and needs. Listening and being gently questioned may help put a problem into perspective. It may help a person to deal with rage or grief or uncertainty or fear. It may help people deal with stress so they can take the time that they need to figure out what is happening to them or what the problem actually is. This option is probably the most cost-effective element of a conflict management system, both for people with concerns and for employers, although ironically it is the option most often overlooked. Still some employers such as the Internal Revenue Service, the Royal Canadian Mounted Police, and Brown & Root are attempting to teach listening skills to hundreds or thousands of supervisors.

Giving and receiving information: A person often needs information on a one-to-one basis. A manager, ombudsperson, or 800 line might provide a copy of a policy or obtain clarification of the meaning of a policy, so a person under stress does not need to search or read dozens of pages of a manual. The resource person usually can provide or find information that resolves a problem in one or two contacts. A manager, ombudsperson, or 800 line may also be *given* information about a problem in the workplace such as a safety issue, evidence about a theft, harassment or potential violence, or about equipment that needs repair. A team may be offered suggestions for improvement from a teammate who perceives a problem. These data may be offered anonymously, or surfaced in a quiet way, for fair handling by appropriate persons. Again, despite what I believe is the cost-effectiveness of this option, too many systems do not make explicit provision for giving and receiving information on a one-to-one basis.

Reframing issues and developing options: A manager, ombudsperson, or other resource person can often help a caller or complainant develop their own ideas about options they find acceptable for settling a conflict. As we have

seen, many people believe they have no options or only bad ones. The supervisor or resource person may help frame or reframe the issues, identify or develop new and different perspectives, and describe additional, responsible and effective paths from which the caller or complainant may choose. This function is often especially useful to managers who have a problem and are seeking help. This option also is quite useful where complainants will ultimately choose to file a formal grievance but need time, information, and support to decide to do so. This option must be relatively private, so managers must be taught not to act precipitously when they hear of a problem that is not an emergency. Furthermore, for some people to be willing to use this option, it must be totally off the record, which means providing an ombudsperson.

Referral: Many disputants and complainants need more than one helping resource—in effect, a helping network. Some need the help of a person such as an employee assistance professional or a colleague who can accompany them in raising a concern. Every manager and resource person should know the other workplace resources available for people with problems, both to refer disputants and complainants to others, and to work effectively together with others on behalf of a person with a problem, when given permission to do so. The need for this function makes it imperative to integrate all the elements and resource persons in a conflict management system.

Helping people help themselves in a direct approach: An ombudsperson or other resource person, manager, or teammate may help someone with a problem to deal directly with the perceived source of a problem. Through discussion, support, and role-playing, a person with a concern may develop the skills and self-confidence to work on an issue without third-party intervention. When experts speak of "delegating disputes to the lowest possible level," this is the option on which they primarily should focus rather than on forms of third-party intervention. This is also an option to foster in the workplace for development of "individual accountability." In some cultures, however, the direct approach, or particular versions of the direct approach, may not be considered appropriate. Consequently, a sensitivity to cultural differences is important when discussing options.

This option includes A (the complainant) choosing to deal directly with B (the apparent offender or the perceived source of a problem) in any of several ways. A could choose to write a private note or letter to B, laying out the facts as A sees them, A's feelings about these facts, and the remedies proposed by A. Alternatively, A could choose to go talk directly with B, with or without presentation of a note or letter. A may decide to go back to B alone, or accompanied by a friend or colleague. It is possible that A will need to be taught or at least given some guidance on how to write a letter to or talk with B in the most effective way. If a manager or resource person knows that a direct approach is being chosen, he or she should typically follow up with A to find out if the situation is resolved and to check on any evidence of reprisal.

Shuttle diplomacy: A person with a concern may choose to ask a third party to be a shuttle diplomat, who will go back and forth between A and B or bring A and B together informally to resolve the problem. The third party could be a line supervisor, a human resource officer, an ombudsperson, or

other staff member. Alternatively, a complainant might choose to ask a teammate, uninvolved colleague, or other appropriate person to intervene. It is important in this approach that there should be no formal disciplinary action taken by a third party without a process that is fair to the alleged offender. For example, moving someone or reassigning duties[42] is not usually defined as disciplinary action where these are customary management responsibilities, but a formal letter of reprimand would be so defined. If possible, the person who was the go-between should follow up afterward, to see if the problem is resolved and to check about possible reprisal.

"Looking into" the problem informally: Most problems, especially if they are caught early, do not require a formal investigation. There are at least two kinds of informal data gathering that may be done by third parties, one by ombudspeople and another by line managers, administrative officers, human resource managers, and other appropriate staff. Assistance from an ombudsperson (except classic mediation as described below) is informal. Line managers, and staff people such as administrative officers and human resource managers, may look into a problem informally, but also may make management decisions as a result.

The role of an ombudsperson is different from that of a formal fact-finder (whose investigation becomes part of a case record and part of the decision making process for the employer), and from that of an arbitrator (whose decisions typically are binding on the parties to a grievance—see right-based options below). Most U.S. organizational ombudspeople look into problems informally and typically keep no case records for the employer. They usually will report findings directly to the person that came to see them or, with permission, to a relevant manager, or the findings become part of the work of shuttle diplomacy by the ombudsperson. In many such cases the ombudsperson serves the purpose of providing informal neutral fact-finding and informal "early neutral evaluation" so the disputants can get an idea of what a peer review board or an outside arbitrator or judge might think if the problem went to formal grievance or to court. If the informal findings of an ombudsperson indicate the need for formal investigation, for example by line management, the audit department, ethics office, safety office, or security department, typically the ombudsperson will try hard to get permission to turn the matter over to the appropriate formal fact-finder.

rights?

A few organizational ombudspeople, especially in Canada, may agree to look into a problem on a fairly exhaustive basis and write a report including the ombudsperson's opinion of right and wrong. This action is typically at the request of someone in the organization other than the employer, and is typically not for disciplinary purposes.[43] The findings of an ombudsperson may be accepted in whole or in part, or ignored or rejected by the employer since the findings are not binding.

Classic formal mediation: Classic mediation is the only formal, interest-based option. This option is offered by employers in many organizations. In classic mediation, A and B are helped by an organizational ombudsperson, or another professional (neutral) mediator, to find their own settlement, in a process that is rather formal and has a well-defined structure. A and B may

meet with each other and the mediator, or may deal with each other indirectly, with the mediator going back and forth between them. Classic mediation is purely voluntary for A and B and for the mediator. This option must therefore be chosen by both disputants, and agreed to by the mediator, if it is to occur. Settlements often are put into writing, and may be on or off the record as the parties may decide. Classic mediation, as offered by an inside neutral such as an ombudsperson, frequently results in off the record settlements and is therefore a private way to settle delicate issues when that is the wish of the parties. Classic mediation offered to the employer by outside neutrals may result in settlements kept by the employer if the employer is one of the parties, or as a condition of the settlement.

Formal mediation is still chosen infrequently, but is becoming somewhat more common. Some employers offer mediation only for certain issues such as termination, and a few only after termination has occurred. Some employers have ombudspeople or other specialists with training and expertise in intergroup and intragroup mediation and conflict management.[44] These specialists work with small or large groups, or may be called to advise managers who are interested in mediation techniques for managing dissent and disputes within and between groups. Some such specialists are called upon to train or support the work of self-managed teams.

Some employers are now offering a service called "mediation" by selected managers or in-house counsel who are not designated as neutrals or trained in the code of ethics and standards of practice of ombudspeople and mediators. This kind of dispute resolution can at best, be likened to good shuttle diplomacy (see above). It should not be called mediation, or thought of as classic mediation by a neutral, and could not easily be shielded by a mediator's privilege if the dispute should go to court.

Generic approaches: A complainant may choose a generic approach aimed at changing a process in the workplace or alerting possible offenders to stop inappropriate behavior so the alleged specific problem disappears without the direct involvement of the complainant. For example, an ombudsperson might be given permission to approach a department head about a given problem without using any names. The department head might then choose to distribute and discuss copies of the appropriate employer policy, for instance to stop supervisors from requiring uncompensated overtime from nonexempt staff. Likewise, a department head might encourage safety training or harassment training, to stop and prevent the alleged inappropriate behavior. Generic approaches may be effective in stopping a specific offender and may prevent similar problems. The ombudsperson or other go-between should follow up to be sure that the complainant believes the specific problem has ended and that there have been no repercussions. Generic approaches offer the advantage that they typically do not affect the privacy or other rights of anyone in the organization.

Systems change: People with concerns often simply wish to suggest a change of policy, procedure, or structure in an organization, to recommend reorientation of a team project, or to start an orderly process of dealing with a policy, group, or a department seen to be a problem.[45] Such people may take a

direct approach (as above) to try to change matters, may bring issues to relevant supervisors or complaint-handlers such as human resource officers or ombudspeople,[46] or they may make suggestions on anonymous employee surveys or on an 800 line. This is especially important for problems that are new to the organization. Those who supervise the complaint system should be on the lookout for new problems and for any pattern of problems that would suggest the need for a new policy, procedure, structure, or training program in the organization.

Training and prevention: The employer should, if possible, maintain ongoing training programs to teach the skills of teamwork, conflict management, and dispute resolution and to teach about specific topics such as diversity, ethics, safety, etc. The employer should ensure that supervisors know the principles of interest-based and rights-based dispute resolution. The employer should provide training that fosters individual responsibility and accountability at all levels. For most problems people should be encouraged to deal with problems directly and to help others to help themselves in a responsible and effective fashion.[47] A company with many teams might focus management of conflict within self-managed teams. Many workplace disputes arise because of imperfect communication about rules and expectations, disagreements about performance, and interpersonal and diversity tensions. All supervisors should learn active listening, should know the policies and rules of the organization, and should know how to get authoritative advice when needed. Wherever possible, supervisors should be trained in setting performance standards and in performance evaluation, with explicit responsibility to recognize good performance and poor performance.

This training must also include issues of dissent and reprisal.[48] Preventing reprisal is, I think, the most important and most difficult issue for training. Retaliation stifles good communication and in many employment situations, including civil rights cases, retaliation is illegal. Differentiating constructive from unconstructive dissent is not easy. Those whose ideas are not accepted may feel in any workplace that they are meeting retaliation. Four different groups need training about raising questions, about disagreeing and about complaining: potential complainants, potential respondents, potential bystanders, and supervisors. The employer should specifically teach people how to raise a question or a complaint, what to do if one is the subject or recipient of a concern or complaint, and what to do if one is a bystander. The employer should train its supervisors and employees that it is not acceptable to punish someone who has raised or responded to a concern in good faith in an orderly manner. Complaint-handlers should be required to plan and take reasonable action to prevent reprisal and then follow up to see that they have been successful. The basic tasks for those who handle specific complaints are twofold: to deal fairly with the disputants, and to prevent reprisal for raising a complaint or concern in good faith.

Following through: Often a resource person or supervisor will undertake some action as requested by a person with a concern. In other cases a complainant will decide after consultation to act directly. Complaint-handlers can "follow through" on the problems brought to them in many different ways. For

example, a manager might simply ask the complainant to call back, or follow up on administrative action to see that it was effective. A manager might listen for evidence of reprisal or might follow up months later with a complainant to see that all is well.

A custom approach: Where none of the options above seem exactly right, a person with a concern or complaint may ask for or need unusual help. A typical example would be action with a long or short time lag that is appropriate to the situation. If all options temporarily seem inappropriate, an ombudsperson or other resource person or manager can sometimes simply continue to look for a responsible approach that is tailor-made for a particular situation.

B. Rights-based Options

Disciplinary action and adverse administrative action against a respondent require a fair investigatory and decision making process. Definitions of appropriate process differ.[49] I think a fair internal process should include notice to the alleged offender, a reasonable opportunity for that person to respond to complaints and evidence against him or her, a chance to offer his or her own evidence, reasonable timeliness, impartiality of investigation and decision making and freedom from arbitrariness and capriciousness, the possibility of appeal, and the right of accompaniment by a colleague or coworker. The employer should have explicit rules about maintaining privacy in complaint handling. The employer should, if possible, provide for follow-up monitoring on each case settled formally, to check if the problem has been resolved and that there is no reprisal against any disputant or witness.

Investigation and adjudication and formal appeals: A supervisor, department head, personnel officer, formal fact-finder, or other appropriate staff person may investigate and/or adjudicate a concern in a formal fashion, or deal with an appeal in a formal grievance channel. Final appeal may be to a senior manager or to the CEO. Best practice in my opinion requires separation of fact finding from decision making in serious cases, and the possibility of appeal to a person or structure that is outside the relevant line of supervision. This avoids real and perceived conflicts of interest.

The best-known internal structures[50] include peer review, an off-line board of appeals that includes peers, or an off-line senior manager who makes a final decision. Peer or board review structures may act with power or, alternatively, result in a recommendation to a senior decision-maker, who typically honors the peer or board findings. I believe that complainants and respondents should be able to strike names, and/or choose the peers who will judge them from rosters maintained by the employer.

Other possibilities for formal action include inside and outside fact-finders. They may report to an internal decision maker or may offer an advisory opinion to the parties about how an arbitrator might decide the matter if it were to go to arbitration. Combinations of options also occur. For example, a peer review system may be coordinated by an ombudsperson who is empowered to offer mediation as a final step before the peer review panel meets. An

outside neutral fact-finder might offer the results of investigation to the disputants, and then function, if asked, as a formal mediator between the parties.

Some employers are offering a rights-based option provided by outside neutrals as the last step in the employer's complaint procedure. Some employers require arbitration as the last step, as a condition of employment, for all complaints including statutory rights complaints. As noted earlier, many observers find this requirement to be wrong.[51] There is also much discussion about appropriate elements of due process for formal investigation and adjudication outside the workplace. Some observers[52] believe that the due process expectations for arbitration should include the right of counsel for the complainant, part or all of the costs of counsel,[53] and a chance to help choose the neutral.

Some organizations have their own security or sworn police force. This department may offer an option for emergencies based on both rights and power. A complainant who fears for her or his safety, for example, may approach a police or security officer at the workplace to ask that someone be called in—for discussion, for a warning, for investigation, or for other appropriate action. Some workplace police and security departments will support complainants in a request for a restraining order or for enforcement of a trespassing order. Except for emergency action, workplace security and police departments ordinarily coordinate with the employer's customary dispute resolution options.

C. Monitoring, Evaluation, and Oversight

The employer should provide for data collection and evaluation of the system. The statistical information provided should be used in a way that supports continuous improvement of the system and appropriately protects the privacy of individuals. Each organization needs to decide how to evaluate effectiveness; I will state a few of my own ideas. I believe that the most important element of evaluation is to ensure that the system is actually used by a wide cross section of men and women in all pay classifications and of roughly the demographic profile of the organization, since this is the best indicator that a program is trusted. The system should be used for all the problems that people in the organization think are important. It should be perceived as credible and fair by the various stakeholders. The system should produce demonstrable change and improvement in the organization, and it should save money.

In my opinion, the system should be overseen by a group rather than by one manager, except in very small organizations. In large firms there should be a specialized group in each major operating unit, including, for example, appropriate persons from senior line management, human resources, security, medical department, employee assistance, equal opportunity, religious counselors, ombudspeople, legal counselors, and those responsible for functions that generate much conflict, such as personnel transfers or housing. The oversight group should meet on a regular basis, at least monthly. It should talk regularly about difficult and dangerous cases and link the complaint system to other systems inside and outside the operating unit and to the local community

as appropriate. In many organizations this will be the group that will receive comments from users, monitor, report on, and work to improve the system on a continuous basis.

VI. Overview of the Brown & Root Dispute Resolution Program

I know of no employer that has an integrated conflict management system with all the features that I have described in this chapter. There are, however, hundreds of employers adopting a subset of the innovations described here, and many that are evolving toward a comprehensive system. A well-known case in point is the dispute resolution program (DRP) of Brown & Root, a large, international, nonunion construction firm. The DRP began in June 1993 and covers only its domestic operations. The program began with focus group input from employees and managers of the company. It is, however, largely the brainchild of a creative associate general counsel, William Bedman,[54] and of an experienced consulting group, Chorda Conflict Management, of Austin, Texas.

The Brown & Root DRP is founded on principles of fairness and freedom from retaliation. It is overseen by committed and knowledgeable senior managers. It provides options both inside and outside the company. Internal options include listening, referral, discussion of options, informal fact-finding, shuttle diplomacy and mediation inside the company for any type of workplace problem. Four levels of options are presented in a clearly written booklet given to all employees. At level one there are parallel interest-based options. One is an open door policy within the line of supervision. Front-line supervisors are being trained in listening skills and conflict management, and the company plans to continue indefinitely to train supervisors in conflict management skills. Retaliation is forbidden (and at least one manager who was found to retaliate has been fired). A complainant may talk any time with the Personnel Office of the given business unit, or with Corporate Employee Relations or other specialized offices as appropriate. A complainant may also call off the record, either anonymously or with all the identifying details of a case, to an employee hotline staffed by advisers.

At level two, any unresolved problem may be brought to the DRP administrator who can arrange dispute resolution conferences. In the usual case, various options will be explored, including informal mediation by one of a number of trained, internal neutrals. In appropriate cases the DRP specifically allows for loops forward (for example, to arbitration) or loops back (for example, to in-house mediation), as complainants review their options. The lead professional in the DRP office is an experienced mediator who reports to a human resources manager but is designated as a neutral. She serves the program as an ombudsperson and practices as far as possible to the Standards of Practice of the Ombudsman Association.

At levels three and four, complaints about legally protected rights may be taken outside the company to mediation or arbitration at the request of the complainant. For legally protected rights, the administrator can arrange, if needed, for some reimbursement of legal consultation for the complainant. In

the usual case the company pays most of the costs of legal consultation, up to $2,500. Imposed arbitration is a condition of employment for disputes that might otherwise go to court, although anyone at Brown & Root is free to consult with or appeal to any relevant government regulatory body. Arbitrators are empowered to provide any award that might be sought through the court system. They are assigned through private justice providers.

Statistics are not kept about use of the system at level one. The program advisers and administrators deal with about 500 cases a year, and 1 or 2 percent go to arbitration. (Brown & Root has lost and won cases—an out-come that I feel speaks well for the DRP.) A few employees have appealed to one or another government agency. Concerns that go to an adviser or administrator are monitored internally by the program office to be sure that they are addressed promptly; about 70 percent are resolved within one month. The program office also serves the company by keeping statistical data about problems brought to the advisers and program administrators. Program administrators may recommend systems change in the company and there have been a number of changes because of information brought forward to the DRP. The company reports that its legal expenses are sharply reduced. The company has commissioned several evaluations of the system.

I have some concerns about the design. I believe that an organizational ombudsperson should be designated as such and should report to the CEO or COO rather than to human resources; the position should stand apart from ordinary lines of supervision. I would have recommended much stronger emphasis at the program office level on helping people with problems help themselves. There should perhaps be more training for supervisors and employees on this option, and also further development within the program of the use of generic options. I might have recommended building in more capacity to deal with group conflict, and a stronger emphasis on serving managers with problems as well as employees. I prefer to see the possibility for disputants to have some input into the choice of an outside neutral. The usage rate is somewhat low, compared with other programs I have surveyed. I would like to see the program collect data on use of the system at level one, so the overall usage rate can be better assessed. I strongly recommend against requiring imposed arbitration as a condition of employment and hope that the DRP will change in this respect.

On the other hand, the DRP has great strengths. It reflects the interests of at least some stakeholders since management feels the DRP "fits" its environment. The DRP can be seen as a simple, easily understood, cost-effective program. It is a multiaccess, multioption system with an unusual degree of integration. In most respects it meets the specifications for a system discussed above. It is important that within the ~~mandatory~~ imposed arbitration structure there is affirmation for the rights of employees and managers to appeal to government regulatory bodies, for example on civil rights cases. It is also important that when people have in fact appealed outside the company, Brown & Root has cooperated with the agency involved and has sought to settle cases rather than push the issue of imposed arbitration. The program provides a high degree of flexibility both for people with problems and for management. The excellent

emphasis on training of all supervisors provides a powerful scaffolding for the success of the program. Brown & Root has been open about its program, and has provided a great deal of information to many outsiders. The DRP is under constant scrutiny from inside and outside, which provides a strong basis for continuous improvement.

VII. Suggestions for Future Research

Workplace dispute resolution in the nonunion sector of North America is changing swiftly. There are many reasons for nonunion employers to be innovating in this area, and their innovations are varied. Some employers are experimenting with a systems approach to conflict management that goes far beyond a single grievance procedure. A systems focus represents an important, user-oriented improvement in conflict management that gives complainants greater flexibility and more options, particularly at the early stages of a conflict.

Research as to the effectiveness of specific innovations, and of a systems approach, is very much needed. For example, we need to know more about options people would choose under conditions of choice, and then how they would evaluate the choices they have made. We also need to know how respondents and supervisors and top management assess each option. This information would be most helpful if we had data for men and women, people of various ethnic backgrounds, managers as well as employees, people in teams and those working in hierarchies, those in small establishments and large, local establishments and multinational companies, organizations with a very strong culture and those that appear impersonal, stable establishments and those with high turnover, and for organizations with different workforce characteristics.[55] We know almost nothing about small informal systems in small companies and how people perceive them. We know little about the integration of internal systems with the external environment—for example, about the impact of different state laws.

It is not easy to address these questions. It would make sense to continue building a widely understood glossary of terms, and then continue to build a taxonomy of conflict management characteristics and functions, as I have tried to do here—of "specifications" for effective conflict management systems. Using such a taxonomy one may then see which structures appear in which kinds of organizations, describe them, and then evaluate them. Simultaneously we need to work on developing appropriate evaluation protocols. Case studies with respect to any of these questions will contribute greatly.

Notes

1. Alternative—or appropriate—dispute resolution (ADR) means different things to different people. In the widest, technical sense I prefer to use the term to describe any kind of mechanism inside or outside a workplace that seeks to settle problems primarily on the basis of the *interests* of the disputants rather than on the basis of rights and power. In the United States in the 1990s, however, the word has largely been taken over by lawyers to describe narrowly

based efforts to deal with commercial and employment disputes that are not being settled among the disputants and are otherwise on their way to the courts. I view this development as unfortunate since many people have come to understand ADR only in terms of specialized mechanisms at the edge of the workplace rather than as "appropriate dispute resolution"—the foundation of systems design that includes many kinds of options within a workplace.

2. See for example an article by H. A. Simon and Y. Sochynsky, "In-House Mediation of Employment Disputes: ADR for the 1990's." *Employee Relations Law Journal* 21, no.1 (summer 1995): 29–51, which used the title term "mediation" to refer to an extraordinary spectrum of informal and formal, interest-based and rights-based dispute resolution techniques inside and outside the workplace.

3. J. Delaney, D. Lewin and C. Ichniowski, "Human Resource Policies and Practices in American Firms." *Bureau of Labor-Management Relations*, no. 137, 1989.

4. U.S. General Accounting Office, *Employment Discrimination,* Report HEHS–95–150 (July 1995), 3; and Organizational Resources Counselors, Inc., "Preliminary Results of an ORC Survey on the use of ADR in Employment Related Disputes," Unpublished paper, November 1994.

5. A good contemporary overview of these concerns may be found in R. Edwards, *Rights at Work* (New York: The Twentieth Century Fund, 1993). See also L. B. Edelman, H. S. Erlanger and J. Lande, "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace," *Law and Society Review* 27, no. 3 (1993): 497–534.

6. D. H. Lach and P. A. Gwartney-Gibbs, "Sociological Perspectives on Sexual Harassment and Workplace Dispute Resolution," *Journal of Vocational Behavior* 42 (1993): 102–15; P. A. Gwartney-Gibbs and D. H. Lach, "Workplace Dispute Resolution and Gender Inequality," *Negotiation Journal* 7, no. 2 (April 1991): 187–200; and P. A. Gwartney-Gibbs and D. H. Lach, "Sociological Explanations for Failure to Seek Sexual Harassment Remedies," *Mediation Quarterly* 9, no. 4 (summer 1992): 365–73, for detailed discussion of the differential needs of women complainants. See also M. P. Rowe, "The Case of the Valuable Vendors, Subtle Discrimination as a Management Problem," *Harvard Business Review* 56, no. 5 (September—October 1978): 40–47, and M. P. Rowe, "Dealing With Sexual Harassment," *Harvard Business Review* 59, no. 3 (May–June 1981): 42–47.

7. M. P. Rowe, "People Who Feel Harassed Need a Complaint System with Both Formal and Informal Options," *Negotiation Journal* 6, no. 2 (April 1990): 161–72; and M. P. Rowe, "Options and Choice for Conflict Resolution in the Workplace," in *Negotiation: Strategies for Mutual Gain*, ed. L. Hall (Thousand Oaks, Calif.: Sage Publications, Inc., 1993), 105–19.

8. I use the term complainant throughout this chapter to mean someone who perceives a problem, or who wishes to complain.

9. I have been an organizational ombudsperson for twenty-five years and also teach negotiation and conflict management at the MIT Sloan School of Management. My own perspective is therefore that of a practitioner who has dealt with many thousands of persons involved in disputes, and from being a professor of negotiation.

10. D. Ewing, *Justice on the Job* (Boston: Harvard Business School Press, 1989).

11. See for example, D. M. McCabe and D. Lewin, "Employee Voice: A Human Resource Management Perspective," *California Management Review* (spring 1992): 112–23, who cite union avoidance as a major reason for the rise of nonunion grievance procedures.

12. Many authors cite the statutory establishment of individual rights, such as laws which prohibit discrimination and harassment, regulate safety, pension plans, plant closings, and family and medical leaves, as major incentives toward the establishment of complaint systems. Courts have also expanded restrictions on wrongful dismissal, for example, discharge contrary to public policy, discharge which violates the concept of good faith and fair dealing or which is contrary to an implied contract such as an employee handbook. Some regulations, such as the Federal Sentencing Guidelines, also strongly encourage the establishment of complaint mechanisms. Some regulations which prohibit dis-crimination require complaint mechanisms.

13. A. F. Westin and A. G. Feliu, "Resolving Employment Disputes Without Litigation" (Washington, D.C.: Bureau of National Affairs, 1988).

14. W. L. Bedman, "From Litigation to ADR: Brown & Root's Experience," *Dispute Resolution Journal* 50, no. 4 (October–December 1995): 8–15. The other articles in this issue on employment ADR are also instructive.

15. J. T. Ziegenfuss, *Organizational Troubleshooters* (San Francisco: Jossey-Bass, 1989).

16. R. R. Blake and J. Srygley Mouton, *Solving Costly Organizational Conflicts* (San Francisco: Jossey-Bass, 1985).

17. D. M. McCabe, *Corporate Non-union Complaint Procedures and Systems* (New York: Praeger Publishers, 1988).

18. W. L. Ury, J. M. Brett, and S. B. Goldberg, *Getting Disputes Resolved* (San Francisco: Jossey-Bass, 1988). J. M. Brett, S. B. Goldberg, and W. L. Ury,

"Resolving Disputes: The Strategy of Dispute Resolution Systems Design," *Business Week*, Executive Briefing Service 6 (New York: McGraw Hill, 1994).

19. Brett, Goldberg, and Ury, "Resolving Disputes."

20. Edwards, *Rights at Work.*

21. See for example, D. Lewin, "Grievance Procedures in Nonunion Workplaces: An Empirical Analysis of Usage, Dynamics and Outcomes," *Chicago-Kent Law Review* 66, no. 817 (1990): 823–44, and D. M. McCabe, and D. Lewin, "Employee Voice: A Human Resource Management Perspective," *California Management Review* (spring 1992): 112–23.

22. Edelman, Ehrlanger and Lande, "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace." Also see McCabe and Lewin, "Employee Voice." This article expresses extensive concern that in the process of meeting management interests such as peace in the workplace, appearing to conform to civil rights law and regulation, and avoiding lawsuits, the civil rights of employees are actually subsumed and are likely to be undermined.

23. Significant differences in perspectives on ADR exist between some externally-oriented lawyers and some conflict managers internal to organizations. The concept of ADR, that is, *alternative* dispute resolution, prevalent among lawyers and arbitrators usually refers to processes that lie at the edge or outside the workplace, such as external mediation and arbitration. Some of these processes require the assistance of lawyers. The perspective of those who are generally unfamiliar with internal dispute resolution methods is in marked contrast with that of internal conflict management specialists. DR specialists *internal* to the workplace typically think of ADR as *appropriate* dispute resolution: a broad and varied set of options for dispute resolution that can be used both inside and outside the workplace.

24. Note the Center for Public Resources Institute for Dispute Resolution, *Model ADR Procedures and Practices,* 1995. The final draft (July), recommends in section one that mediation and arbitration procedures might be added onto an internal system that provides a variety of internal mechanisms.

25. See L. J. Marcus, *Renegotiating Health Care: Resolving Conflict to Build Collaboration* (San Francisco: Jossey-Bass, 1995), and K. A. Slaikeu, "Designing Dispute Resolution Systems in the Health Care Industry," *Negotiation Journal* 5, no. 4 (October 1989): 395–400.

26. C. A. Costantino and C. Sickles Merchant, *Designing Conflict Management Systems* (San Francisco: Jossey Bass, 1996).

27. M. P. Rowe and M. Baker, "Are You Hearing Enough Employee Concerns?" *Harvard Business Review* 62, no. 3 (May–June 1984): 127–36; M. P.

Rowe, "The Non-Union Complaint System at MIT: An Upward-Feedback Mediation Model," in *Resolving Employment Disputes Without Litigation,* eds. A. Westin and A. Feliu (Washington, D.C.: Bureau of National Affairs, 1988); M. P. Rowe, "Organizational Response to Assessed Risk: A Systems Approach to Complaints," in *Program Record of the 1988 Institute of Electrical and Electronics Engineers, Inc. Electro 1988 Conference, Risk Assessment and Response* (Boston, IEEE, Inc., 1988); M. P. Rowe, "The Post-Tailhook Navy Designs an Integrated Dispute Resolution System," *Negotiation Journal* 9, no. 3 (July 1993): 203–13.

28. In my first year at MIT, working together with others, I compiled a list of hundreds of concerns expressed by women, by people of color, and by white males. Many concerns affected white males, who in addition brought forward concerns of their own, but some problems appeared especially to af-fect the nontraditional members of the community. See also P. A. Gwartney-Gibbs and D. H. Lach, "Workplace Dispute Resolution and Gender Inequality," *Negotiation Journal* 7, no. 2 (April 1991): 187–200, and Lewin, "Grievance Procedures in Nonunion Workplaces." I found that some concerns of women and minorities, such as subtle discrimination, did not lend themselves to traditional formal grievance procedures. Furthermore, some people simply did not like formal grievance procedures. These findings led to consideration of new options for complainants. See M. P. Rowe, "Barriers to Equality: the Power of Subtle Discrimination to Maintain Unequal Opportunity," *Employee Responsibilities and Rights Journal* 3, no. 2 (1990): 153–63, and M. P. Rowe, "Helping People Help Themselves: an Option for Complaint Handlers" *Negotiation Journal* 6, no. 3 (July 1990): 239–48.

29. For most problems in the present day MIT, where having a choice of dispute resolution options is the norm for everyone (for problems that are not illegal in nature), most men and women want to discuss their options at length. Many complainants demonstrate in conversation that their choice of option depends on an assessment of the characteristics of the immediate problem and situation, the setting, the supervisor and the respon-dent, and their own personal preferences in dispute resolution.

30. The word redundancy has an unfortunate connotation in general speech but among engineers it is an important concept. If an engineering system is important, it needs backup, checks and balances, and devices for fail-safe operation. By extension, if a person has a serious problem or complaint, there may be a need not just for one option but for several.

31. See for example, C. Moore, "Dispute Resolution Systems Design" (*Resource Manual*) (Boulder, Colo.: CDR Associates, 1995); the work of K. Slaikeu and R. Hasson of Chorda Associates in Austin, Texas; and Costantino and Merchant, *Designing Conflict Management Systems*.

32. See R. E. Walton, J. E. Cutcher-Gershenfeld, and R. B. McKersie, *Strategic Negotiations* (Boston: Harvard Business School Press, 1994).

33. Except as noted, this list comes from analysis of many hundreds of concerns a year over the past twenty-five years in my office as an ombudsperson. See Rowe, "People Who Feel Harassed."

34. The fear of loss of relationships might be, at an extreme, defined as a fear of reprisal. But this concern goes far beyond what is ordinarily meant by reprisal. It includes an interest in harmony, in team spirit, in humor, and fellow feeling in the workplace. It also includes a very common fear of disapproval from family and friends and colleagues outside the workplace. It is commonly thought that fear of loss of relationships is felt most strongly by men and women of certain ethnic backgrounds, and by white women. See for example, the remarkable article by S. Riger, "Gender Dilemmas in Sexual Harassment Policies and Procedures," *American Psychologist* 46 (1991): 497–505. However I frequently hear the same concern from white males, though sometimes cast in different terms.

35. See S. E. Gleason, "The Decision to File a Sex Discrimination Complaint in the Federal Government," *Proceedings of the 36th Annual Meeting of the Industrial Relations Research Association* (San Francisco, Industrial Relations Research Association 1983), 189–97, for a sensitive evaluation of the intangible as well as tangible costs to women for using a formal procedure.

36. Lewin, "Grievence Procedures in Nonunion Workplaces," 831.

37. Customers, vendors, and employers entering into partnering relationships are outside the scope of this paper, but it is of interest that the same kinds of innovations in conflict management have entered these relationships. See for example Brett, Goldberg, and Ury, "Resolving Disputes."

38. An example would be where someone has repeatedly asked a coworker to end offensive behavior, then despairs of classic mediation, and decides to make a formal complaint.

39. See Ury, Brett, and Goldberg, "Resolving Disputes," who originally proposed the term *loopback*, to refer to a shift from a rights-based to an interest-based option. An example would be to shift from a formal, win-lose grievance procedure to formal mediation.

40. M. P. Rowe, "The Corporate Ombudsman: An Overview and Analysis," *Negotiation Journal* 3, no. 2 (April 1987): 127–40; M. P. Rowe, "The Ombudsman's Role in a Dispute Resolution System," *Negotiation Journal* 7, no. 4 (October 1991): 353–61; M. P. Rowe and J. T. Ziegenfuss, "Corporate Ombudsmen: Functions, Caseloads, Successes and Problems," *Journal of Health and Human Resources Administration* 15, no.3 (winter 1993): 261–80; M. P.

Rowe and J. T. Ziegenfuss, G. Hall, A. Perneski, and M. Lux, "Perspectives on Costs and Cost Effectiveness of Ombudsman Programs in Four Fields," *Journal of Health and Human Resources Administration* 15, no.3 (winter 1993): 281–312; M. P. Rowe, "An Overview of Client and Internal Ombudsmen," *Journal of Health and Human Resources Administration* 15, no. 3 (winter 1993): 259–60; M. P. Rowe, "Options, Functions and Skills: What an Organizational Ombudsperson Might Want to Know," *Negotiation Journal* 11, no. 2 (April 1995):103–14.

41. In many organizations, human resource managers and equal opportunity specialists work hard to maintain privacy. However, Human Resources and Equal Employment Opportunity managers are also compliance officers and therefore cannot offer a high degree of confidentiality to complainants. See, for example, the important concern expressed on this point by Edelman, Erlanger, and Lande, "Internal Dispute Resolution." In some organizations Employee Assistance Program and other health care practitioners may be also required to keep records and/or may be subpoenaed in cases that go outside the workplace. Ombudspeople, by contrast, typically keep no records for the employer. Contrary to the widespread misunderstanding of many writers, organizational ombudspeople are not adjudicators or formal investigators. They typically refuse to testify in any formal proceeding in or out of the workplace, for the employer or for anyone else. The several thousand organizational ombudspeople in North America are conflict management professionals, designated as neutrals, who have all the functions of any complaint handler except that of formal investigation and adjudication. They offer confidentiality under all but potentially catastrophic circumstances. See also C. L. Howard and M. A. Gulluni, *The Ombuds Confidentiality Privilege* (Dallas: The Ombudsman Association, 1996).

The survey by Organizational Resources Counselors, Inc., of New York City, *op. cit.*, found the most popular nonunion dispute resolution devices in a group of forty-five companies were an ombudsman office and a peer review system. Unpublished testimony submitted to the Commission of the Future of Worker-Management Relations, (Dunlop Commission), 1994.

42. Although job assignments are typically not considered disciplinary action, an employer should carefully consider the fairness of moving a complainant or respondent who does not want to be moved.

43. A few organizational ombudspeople do occasionally act outside their ordinary role and agree to do formal investigations for the employer for the purpose of adjudication. Some ombudspeople have served as formal observers of the fairness of an adversarial hearing process. On the basis of consultations with several hundred practitioners, I believe that in such circumstances they should write a memo to the file noting the exception from ordinary practice. With respect to such exceptions they should not expect to be shielded from a summons to testify in formal hearings inside or outside the organization, al-

though they should attempt to preserve the privacy of anyone who has given information.

44. See Blake and Mouton, *Solving Costly Organizational Conflicts*, for an example of an excellent model for intergroup facilitation and conflict management.

45. See ibid. for an example of an excellent model for such action between groups.

46. My research indicates that about a third of the working time of organizational ombudspeople is spent on systems change.

47. Rowe, "Helping People Help Themselves.".

48. See R. L. Hutchins, *Reprisal, Retaliation and Redress,* (Dallas: The Ombudsman Association, 1996).

49. Some lawyers wish that employers would adopt all the safeguards of due process in law for internal workplace dispute resolution. Few employers agree. My list of elements of fair process does however include many of the customary elements of due process.

50. See Ewing, *Justice on the Job*, for a description of such structures.

51. See J. W. Zinsser, "The Perceived Value of Considered Approaches to Internal Conflict Within Organizations," (Masters Thesis, Antioch University, 1995) for evidence that imposed arbitration was seen within one firm as not adding value to the dispute resolution process.

52. See for example, Bureau of National Affairs, "A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship," Employment Discrimination Report (May) (Washington, D.C.: Bureau of National Affairs, 1995).

53. The construction company Brown & Root offers to pay a substantial amount of an employee's legal fees, for consultation about legally protected rights and for accompaniment to arbitration, but most nonunion employers do not pay such costs.

54. See Bedman, "From Litigation to ADR," and J. Zinsser, "Employment "Dispute Resolution Systems: Experience Grows but Some Questions Persist," *Negotiation Journal* 12, no. 2 (April 1996): 145–58, for longer presentations about the Brown & Root DRP.

55. Some of these questions may be answered by a 1997 survey conducted by David B. Lipsky and Ronald L. Seeber of the Cornell PERC Institute on Conflict

Resolution. The survey is focused on dispute resolution techniques being used in the 1000 largest corporations in the United States.

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8

Options and Choice for Conflict Resolution in the Workplace

MARY P. ROWE

▶ Henry came into my office extremely upset because his supervisor had taken credit for work that Henry had done. Henry said he did not want to *just forget it.* He did not want to leave the department, but he did not see how he could stay. He did not want to make a formal complaint. In short, he felt he had no options. Henry was also afraid of the half dozen other alternatives I suggested to him, including the possibility of a polite, well-crafted letter to his supervisor. However, he finally decided to work with me on a letter and then eventually did send the letter privately to his supervisor. He was astonished that his letter brought an apology, and full credit in public.

Colleen poked her head into my office. *My boss tried to take off my blouse last night in the lab. I stopped in to tell you because I*

AUTHOR'S NOTE: This article was adapted from a lecture about complaints and disputes that arise within institutions. I have been a full-time ombudsman at MIT since 1972 and a consultant to a wide variety of other ombudsmen and other private and public employers. The ideas, examples, and quotes in this article are drawn from that experience and are taken from real cases.

know you want to know about these things and, besides, I just wanted to tell somebody. Charges? A complaint? No, I don't want to make a complaint. He'll never do it again. I really walloped him. I told him if I, or any one else I know, ever has this problem with him again, he'll be missing a piece of himself. I don't want you to do anything about this; what's more . . . you don't need to!

Sandy came in sadly to talk about a problem with an old friend in the department. Sandy felt the friend might be drinking at lunch, was using poor judgment and might possibly get himself or Sandy into a unsafe situation with high voltage equipment. *I know I should turn him in, but I don't want to call an investigation on him and get him fired.*

Both Complainants and Complaint Handlers Need Options

People with concerns, and those who complain and are involved in disputes often want more options than they perceive that they have. Employers and others who are responsible for dealing with complaints also have much to gain by offering options. For example, people who believe they have realistic options to solve their problems are much more likely to come forward in timely fashion. I note that those who choose their own options are more likely to be satisfied. In addition, employers may in some cases be protected, if the complainant's choice of an option does not work out well, because the complainant could have chosen a different mode of complaint handling. Despite these arguments, many managers and even some negotiation theorists do not believe that they should provide options, and in practice they and most complainants actually use only one or two ways of complaint resolution.[1]

Disempowering the Complainant

Decision makers do not instinctively provide options to others about how they may complain or raise a concern. Most people who think about complaint procedures and grievance procedures, at

home or at work, imagine only one or two ways to handle a concern or complaint. In fact, in childhood many people learned only two ways to handle conflict: versions of fight or flight. Others seem to think that *experts* should determine the *best* way for complaint-handlers to deal with disputes. Restrictive thinking characterizes the work of many alternative dispute resolution (ADR) theorists as well as the average person's approach to conflict. Some examples of restrictive thinking, and of the all-too-common willingness of decision makers to make decisions about how complainants *ought* to have their complaints handled, are the following.[2]

1. The power orientation: Many people automatically assume that most disputes should be handled, one hopes fairly, by those with more *power*; for example, parents, the relevant supervisor, the CEO. (*Because I'm the parent; that's why! Do it my way or you're fired!*) Many managers, in fact, believe that managers *should* decide the outcome of most workplace disputes and concerns, because it is their responsibility to be a leader and to maintain workplace control.
2. The rights orientation: Many principled people and many political activists think that nearly all disputes should be decided on the basis of justice or the letter of a contract (e.g., union contract). They believe that complaints should be decided on the basis of who is *right*. (*Get the facts and decide the matter fairly.*) While this approach may be appropriate for such problems as larceny, this type of thinking is also commonly applied when the problem is controversial and, in part, a matter of individual perception (i.e., issues of academic credit, sexual harassment, the use of alcohol, and safety). In fact, many managers and academics think of workplace complaint systems *only* in terms of formal, due process, complaint-and-appeal systems. In the extreme form, if a problem cannot be adjudicated fairly, for example, because of a lack of sufficient evidence, a person oriented solely toward this view may take the position that nothing can be done and, therefore, that no complaint exists.
3. The interests orientation: Many ADR practitioners will seek the *interests* of those involved in the dispute and then recommend and/or practice the form of interest-based problem solving with which they are familiar. Mediators tend to think solely or mainly in terms of mediation–and within the context may be *bargainers* or *therapists*;[3] counselors tend to think in terms of therapeutic interventions, communication specialists think about better communication, and organizational theorists think in terms of changing the system to prevent or deal with problems.

In prescriptive research, as negotiation theorists have applied their tools to more and more types of negotiations and conflicts, they have tended to seek *optimal* solutions to problems. For many types of objectively quantifiable problems, this has made excellent sense. My concern is that this type of research, and all three viewpoints above—while extraordinarily useful as advisory tools—tend to focus people's thinking on *singular solutions, rather than ranges of choice.* They also focus on solutions that can be prescribed by those outside the dispute and even outside the system. This is often not as appropriate for complaint handling as it is for other forms of negotiations.

Descriptive research may also lead to stereotyped solutions to problems. For example, some researchers who have observed complaint handling and complaint handlers, correctly note that the ways in which people deal with their disputes are culture specific, and that many complaint handlers deal with disputes in narrowly defined ways. Descriptive researchers in this way may focus quite narrowly on only one type or style of complaint handling, in a way that inadvertently reduces the likelihood that interested managers will learn to think about many different modes of complaint handling.

Complaints and intrainstitutional disputes are not necessarily like commercial or game-theory negotiations, which may have an inherently *best* solution. Also, the specific practices of individual complaint handlers may or may not be as broad as complainants would wish (if they were aware of the choices they were missing). In short, **for a wide range of cases, there may not be any one *optimal* way to handle a complaint, other than whatever responsible method is freely chosen, by disputants and the complaint handler, under conditions of choice.** This chapter is about developing options and deliberately providing choices within a complaint system.

The Value of Options and Choice

Different People Want to Settle Things in Different Ways. Different options may be necessary to satisfy the variety of people in a given workplace who believe *complaints should be resolved on the basis of principle,* but who do not share the same principles.

For example, some believe, on principle, that disputes should generally be resolved in an integrative fashion. These people will not be very happy if they are provided only adjudicative, complaint and appeal channels (e.g., *Please don't set up another formal equal opportunity thing for racial harassment; we get singled out enough already.*). People who share this opinion may not complain at all and will prefer to suffer rather than be forced into a polarized situation. The reverse is also true. An exclusively integrative, problem-solving complaint system will not satisfy the feelings of everyone who uses it, for some people will feel that their grievances should be adjudicated as a matter of justice (e.g., *It's time those creeps were stopped. I am going to take them every step of the way if I have to. I'll go to the Supreme Court.*).

Providing Alternative Modes May Be Necessary to Deal With a Particular Problem. For example, many complaints cannot be adequately adjudicated in the workplace for lack of sufficient evidence to convict a wrongdoer.[4] A formal process may, therefore, be useless in certain workplace disputes such as harassment, if sufficient evidence of wrongdoing does not exist (e.g., *He only does it behind closed doors; it'd be his word against mine. I don't want to bring a formal complaint; they would say it could not be proved and nothing would happen.*). An adjudicatory process may also be impractical for handling a very complicated web of problems; mediated outcomes may, in such cases, be substantively better because they often include a wider range of topics and feelings. (*Separating the work of the guys on that work team would take an arbitrator 6 weeks. We need to find a way to help them to work out the details themselves, without killing each other or the project.*).

Choice Itself Is Often Important to Disputants and Complainants. For example, *I stopped feeling that my hands were tied.* Having choices offers a measure of power and self-esteem and will often be perceived as more fair. Some complainants specifically ask for a *vote* on how something will be handled, instead of, or in addition, to substantive redress. Choice can be itself an *interest,* that can and should be included in interest-based problem solving.

Even in situations for which there appears to be only one responsible option, a complaint handler may be able to provide small choices. For example, suppose a theft must be reported; there seems to be only one responsible option. But there may be some small choices available: Would the complainant prefer to go directly to the security office alone, would she rather have the complaint handler accompany her, or would she rather that the complaint handler go to report the theft? It is especially important to offer some choice if the subject matter is stressful; people cope better with tough problems if they perceive that they have some control over the complaint process, and they are more likely to feel that the process is fair.

Knowing That There Is a Choice About How to Pursue a Complaint Is Essential to Getting Some People to Complain. My research[5] indicates that many people do not wish to lose control over their complaints, especially in the beginning while they are thinking things through. For example, many people who come to my office feeling harassed express fear of retaliation and of loss of privacy (e.g., *I know it's important to stop my supervisor from using coke, if only because he's mean as hell. But I can't be the one to complain; I've got a family.*). In addition, they may care about the object of the complaint and may fear being seen as childish or disloyal. Many would ultimately do nothing about their problems if we could not together devise a tailor-made option that satisfied their individual concerns (e.g., *Thank you for letting me wait until after graduation; I just could not have come forward before.*).

The Complainant's Choice May Be a Better Choice. This is particularly true when the complainant finds it difficult to identify exactly the factors that are important (e.g., *I don't know why. I just couldn't look her in the face if I didn't try to take it up with her directly one more time before I go to the boss.*).

The Complainant Who Chooses May Learn Something. Having a choice of complaint handling modes may encourage complainants to take more responsibility for their lives and to become more effective. Developing and then choosing an option with a skilled

complaint handler provides a complainant not just an individual solution, but a method for responsible dispute resolution in the future (*Hey, I came back to see you. You know that year I spent carping at everyone about safety on the plant floor? Well, you know you finally taught me how to negotiate these things. I haven't had a fight about safety, or much of anything else, for 4 years. . . . I just wanted to tell you.*).

Providing Options May Be Less Costly. It is important to provide (responsible) options that cost the complainant and the system as little as possible in terms of time, soul, and money. Costly alternatives are often used in situations in which someone mainly *just wants to be heard.* Numerous studies of union grievances have shown that complainants sometimes pursue formal grievances when they think that a grievance is the only available way to express their feelings about dictatorial work relationships. Sometimes people go to court or to government agencies while wishing they had a less costly option (e.g., *I know I may lose this case against that bastard; I know I don't necessarily have a leg to stand on. But he is going to have to listen to me.*). In my experience, the strongest impetus for labor lawsuits against employers is that the plaintiff felt humiliated and could find no other satisfactory way to redress the humiliation. By the same token, sabotage and violence may also be precipitated by humiliation. As Program on Negotiation participant Diane Di Carlo put it, "When social rules provide alternatives, people are less likely to take revenge."

Providing Choice in How to Deal With a Complaint May Help Protect the Employer. The complainant that has chosen his or her dispute-processing mode may be better satisfied with the solution. And if he or she is not satisfied, the employer can reasonably plead that the complainant chose the mode himself or herself and, therefore, should take some responsibility for what ensued (e.g., *This company always offers the possibility of formal investigation and adjudication to anyone who feels harassed. When Chris Lee complained, we wrote her a letter offering an investigation. Obviously, this is the option we would have preferred. She refused. She did not permit us to do a fair, prompt and thorough investigation. She absolutely refused to make an open complaint.*

The only option Lee would agree to was that we develop a training program for that department, which we did immediately.).

Creating options and choice for complainants will be especially important for the U.S. workplace in the 1990s and beyond. We are moving into an era of extraordinary diversity. The Bureau of Labor Statistics suggests that only about 1 in 10 of net new entrants into the U.S. labor force of the 1990s will be a native-born Anglo (white) male. The rest will be minorities, women, and immigrants, an extremely diverse group of managers and workers compared with the past. It will be especially important to have choices in how to express concerns or pursue grievances in the workplace because individual values will differ greatly.

Prescriptively, What Are Some of the Choices That an Effective Complaint System Should Provide?

1. **Complaint handlers who will listen and offer respect** to people with concerns and who will help people who are hurt, in grief, confused, angry, aggrieved, or frightened to deal with their feelings. It is essential that this function be offered on a confidential basis, perhaps by employee assistance or ombudsman counselors. Moreover, a complainant should under most circumstances be able to talk and choose *no* further action, if that is what he or she wishes.[6] It may be appropriate to make a referral to a counselor or religious adviser. The option *just to be heard* by the complaint handler may be the appropriate complaint handling mode for the case of Colleen in my opening vignette. Colleen is simply asking for affirmation and that her situation be recorded in the aggregated statistics on sexual harassment. The complaint handler should, if possible, follow up with Colleen to be sure that the harassment has ended. The complaint handler might also agree with Colleen on the importance of bringing in a training program for the whole work unit. However, in most cases of this kind, the complaint handler ought not act without permission.

2. **Any person in the workplace should be able to receive certain types of information** off the record, for example, about how the system works, what fairness is, what salary equity is, and

how to raise a concern. Everyone should also have safe (that is, anonymous or completely confidential) channels to *provide* information to management about unsafe conditions, unethical and illegal practices, and the like. Colleen wants her case recorded for statistical use. Sandy and Henry in my opening vignettes need to know how the system works. Sandy, for example, needs to know about employee assistance, the policies on use of alcohol, and how supervisors and the safety office may be expected to function if and when they hear about Sandy's co-worker. Henry needs to know his employer's policies on assignment of credit and perhaps on fraud.

3. **All employees and managers should be able to find effective, confidential counseling** on how to sort out their complaints and conflicts, how to generate different responsible options for action, and how to negotiate their problems directly if desired.[7] This was an option for Sandy and Henry to consider. For example, Sandy might have learned how to persuade the old friend to seek help and perhaps accompany the old friend to employee assistance while nevertheless insisting on compliance with safety standards. Henry chose to learn to write and send an effective personal letter. Colleen seems to have chosen this option, but can still learn more by talking through what she did (as there are several different ways she could have rejected the harassment).

4. **There should be effective shuttle diplomats and process consultants** as go-betweens and educators, for individuals and groups.[8] It is important to note that this is by far the most common form of *mediation* in the workplace because the assistance of a third party helps people of unequal rank to save face. Henry and Colleen could have asked the complaint handler to talk with their bosses. Sandy could have asked the complaint handler to talk with his co-worker.

5. **Formal mediation should be available,** accompanied by formal written settlements, if desired.[9] This would have been a reasonable option for both Henry and Colleen.

6. **There should be a fair, prompt, and thorough investigation of complaints when appropriate.** A good complaint system can provide formal and informal investigation, with or without written recommendations to a decision maker.[10] Henry might have asked for an investigation by his suprasupervisor. Colleen might have asked for an employee ombudsman (EO) person or her boss's boss to look into her complaint. Sandy's complaint

could trigger a safety inspection and possibly a substance abuse investigation by a specialized staff person or the supervisor.

7. **There should be appropriate, fair process, complaint and appeal channels, with impartial arbitration, peer review, or impartial adjudication.**[11] These options could have been offered to Henry and Colleen, and indeed would likely have been triggered by an investigation. Henry, Colleen, their supervisors, and Sandy's co-worker could appeal a decision they did not like within a formal grievance structure.

8. **There should be effective provision for feedback and systems change,** both as a problem-solving device for specific complaints and to prevent further problems.[12] Colleen's office should offer a program on harassment, Henry's office should train supervisors about work credit, and Sandy's office should train about safety and substance abuse. A good complaint system will provide management the information needed to design effective problem prevention programs.

How to Provide Options for Complainants

Obviously, an employer wants to take the lead in the design of a complaint handling system, to foster responsible and consistent practice. Potential disputants and potential complaint handlers should be involved in the design process. This may happen naturally in the context of union negotiations or consultive committees, or it may happen ad hoc, through the use of focus groups or by circulating draft proposals to many networks in the workplace.

A grievance channel or a complaint system is often designed around the issue that brought it into existence and, therefore, can be much too narrowly focused. For example, as a result of an organizing campaign, there may be a singular focus on worker versus management grievances. Or a group of concerned employees may generate a great deal of attention to one type of concern such as transfer policy or safety.

This chapter, by contrast, aims to foster choice of complaint-handling options for the whole panorama of real-life workplace disputes. Workplace problems can involve co-workers, peer conflict among managers, or fights among groups. Complaints may arise

in *any* area where people feel unjustly treated. In order to make it clear that there truly are options for complaint handling available to everyone within a workplace, *complaint systems should provide all the options discussed above.* Everyone in the organization (managers, employees, union workers, professionals, etc.) should have recourse, with respect to every kind of important concern.

The systems approach also requires having different kinds of people available as complaint handlers. The set of complaint handlers should, within reason, reflect the given work force, and include, for example, African-Americans, females, Asian-Americans, technical people, and so on. This will make it more likely that the work force will believe there are accessible and credible managers, who might offer acceptable ways to raise a concern.

The point is also true with respect to complaint handling skills. Because few complaint handlers are equally good at listening, referring, counseling, mediating, investigating, adjudicating, and systems change, a good system will have a variety of complaint handlers providing a variety of functions. In particular, it often helps to have different people for problem solving and adjudication, since some people are better at integrative solutions and others consistently think distributively and may make better judges.

Finally, a good system will train its employees and its complaint handlers, including all managers, to respect, offer, and pursue the widest possible variety of different options for dealing with disputes and concerns, with as much choice as possible for those who raise concerns. It may not be easy to change the working styles of employees, managers, and complaint handlers, but everyone can learn what his or her own strengths are and can learn at least to respect and offer other options.[13]

> *I used to think that my only choices were to put up with the unpaid overtime–shut up–or just quit. Then I thought, well, I could take that slave driver to court or maybe file a formal grievance with corporate* [headquarters]. *Then I thought, I can't stand it any longer, and I began to miss work. Then you pointed out to me that there were several possibilities other than fantasies of revenge or a lawsuit or dropping out. I actually had not considered sending a private letter to my boss, for example, and I certainly had not imagined that you* [the company ombudsman] *would be willing to go see the boss for me.*

But the best idea was that you would ask human resources to send out a general notice on the overtime rules. The fact that you went to human resources alone, without mentioning me or my boss, really made me feel safer. My boss stopped requiring unpaid overtime and no one knew I was involved. I'm very glad it worked. Who knows? Maybe somebody else's situation got cleared up at the same time.

Functions of a Good Complaint System

In sum, a good complaint system will provide *multiple options* for complainants, and as much *choice* as possible among those options. The first three functions of the system will be *available on a confidential basis* if desired. The system will have *men and women and minorities and nonminorities* available as complaint handlers. The system will be *available to everyone* within the workplace, including managers, trainees, employees, and so on and will accept any kind of concern. Necessary functions include:

- *Expressing respect for feelings:* especially rage, fear of retaliation, and grief. Helping people deal with their feelings so they will be able to make good decisions and deal effectively with their problems or complaints.
- *Giving and receiving information* on a one-to-one basis.
- *Helping people help themselves:* confidential counseling with clients, inventing options, listing possible options for the choice of the client, coaching on how the client or group may deal with the problem directly (problem solving, role-playing, anticipating possible outcomes, etc.).
- *Shuttle diplomacy* by a third party, back and forth among those with a problem, to resolve the matter at hand (sometimes called *conciliation* or *caucusing* as one form of mediation).
- *Mediation:* a third party brings together the people with a problem to reach their own settlement; mediation settlements may be formal or informal.
- *Fact-finding or investigation:* this may be done either formally or informally; results may be used or reports made either with or without recommendations from the fact-finder to a decision maker.
- *Decision making, arbitration, or adjudication:* a person or body with power and/or formal authority decides a dispute; this may be structured as part of a formal complaint-and-appeals channel or formal grievance procedure.

- *Systems change:* designing a generic process for a type of problem or complaint; *upward feedback;* making actual changes in policies, procedures, or structures as a result of an inquiry, suggestion, complaint, or grievance.

When all these functions are being performed within an organization, one may speak of a complaint-handling *system.* Without fair, accessible complaint-and-appeals channels, other functions are not likely to work well. Where all functions are working well, the formal grievance channel is not likely to be used heavily. By analogy, a manager who is not able to decide disputes fairly will not be trusted to carry out other functions of a complaint handler. The manager who has all these skills will usually be able to solve most problems without arbitration.

Appendix: Exercise on "Skills Needed by the Complaint Handler"

This exercise is very simple. The sheet on skills needed (see "Functions of a Good Complaint System," above) is assigned for 1 week or 1 month. The task is for the assignee to notice and keep a journal on the ways in which he or she deals with concerns. In addition, the writer should analyze the complaint handling options chosen by those with whom he or she comes in contact.

The writer should take notice of his or her customary ways of expressing concerns and ask the following questions. Do I seek advice about how to handle my problems? Do I just need to blow off steam, and with whom do I do this? Do I look for mediation services? Do I ask others to be a shuttle diplomat for me? Do I ask for an investigation of my problems? Do I want someone more powerful than I to take care of my complaints? Do I seek a systematic change in the conditions that cause the problem?

By the same token, the writer should notice how others handle complaints and concerns. Do they offer choices to the complainants? Or do they just seem to "know what is best?" Do they appear to listen to the complainer, help to invent options, advise on tailoring an option to the concern at hand? Or do they irritably decide the question before exploring it?

The writer should try to develop insight into his or her normal complaint handling modes with children, colleagues, supervisors, strangers, and so on. It is also useful to analyze the patterns of others, to see how they deal with complaints and concerns.

Obviously, some people will be very much oriented toward justice. Others will problem solve in the face of the most tenacious wrong-doing and in the most serious, win-lose situations. Most people have a variety of skills and can develop and work on new skills. It is useful to reflect on the variety of skills needed in different situations and to provoke discussion as to whether and when certain complaint handling modes appear to be best or necessary.

Notes

1. See also generally the work of Professor Kolb (Simmons College), and Professor Merry and Professor Silbey (Wellesley College) on the narrow range of conflict resolution modes practiced by mediators whom they have studied. See also the typologies of Myers-Briggs and Chapter 11, this volume, by Professor Williams (Brigham Young University) on negotiating styles.

2. This typology is drawn from the terminology of colleagues at the (Harvard/MIT/Tufts) Program on Negotiation and Ury, Brett, and Goldberg (1988). It will be noted by negotiations theorists that an orientation on rights is likely to lead to distributive solutions and orientation on power is also most likely to be distributive, although there are a few power-oriented managers who seek integrative solutions. A manager who is oriented toward interests is more likely to seek integrative solutions.

3. See again generally Kolb (1983; also this volume), and Merry and Silbey (1984).

4. For further work on this point see Rowe (1990).

5. Rowe (1990).

6. This possibility is controversial for some types of complaints, for example, harassment. It is in this arena that we see most clearly the extent to which many people would like to be able to make decisions for complainants about how they will be "allowed" to complain. For example, many people think that all harassment complaints should be investigated and adjudicated, whether or not the offended person wishes this to happen. This is a complicated matter, but in most cases I feel that if a complainant knows there are options and refuses investigation and adjudication, and the complaint handler follows up and knows the harassment has ended, the matter should not be pursued. Investigating harassment that is said to have ended should, ordinarily, require permission from the harassed person. There should, of course, not be adverse administrative action, or a record made against the alleged offender, in the absence of a fair investigation. A review of choices actually made by this type of complainant is included in Rowe (1990).

7. See, for example, Rowe (1990).
8. See, for example, Blake and Mouton (1984).
9. See, for example, Ury, Brett, and Goldberg (1988).
10. See, for example, Ewing (1989) Westin and Feliu (1988).
11. Ewing (1989) and Westin and Feliu (1988).
12. There are many good examples of systems change mechanisms in the books cited in this chapter, although each example tends to focus on only one way to produce systems change. Ombuds practitioners typically spend a quarter to a third or more of their time on systems change.
13. See the appendix to this chapter for an exercise that can be used as a diagnostic tool. The exercise provides a framework for analyzing one's own skills as a complainer and a complaint handler and for analyzing the skills and methods of others.

In Practice

Helping People Help Themselves: An ADR Option for Interpersonal Conflict

Mary P. Rowe

A good complaint system provides options for complainants. By the same token, skilled complaint handlers and dispute resolution specialists should possess many different skills in order to provide options for helping complainants. These different skills are equally valuable for supervisors, parents, therapists, and human resource managers. A reasonably comprehensive list might include:

- expressing respect for feelings and dealing with feelings;
- giving and receiving relevant data on a one-to-one basis;
- helping people help themselves to deal effectively with their concerns;
- shuttle diplomacy and other forms of informal mediation;
- formal mediation;
- investigation;
- arbitration or adjudication, and
- a "generic" approach—taking a systems approach, like a training program, to deal with a specific complaint and to prevent further similar concerns.

This article discusses the functions and skills necessary to help others to deal directly and effectively with interpersonal concerns such as harassment.[1]

Alternative dispute resolution (ADR) usually means alternatives to adjudicative (distributive) conflict resolution modes, such as arbitration or going to court. One alternative dispute resolution mode is formal mediation; this alternative to arbitration and court is now being more widely used.[2] Major corporations are also using the "generic" approach in response to certain kinds of specific complaints, such as sexual harassment, in circumstances where the complainant will not come forward. Less well-known to negotiation specialists is the technique of using ADR skills to "mediate" when one of the disputants is absent

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from the discussion, and when the complaint handler has been asked to intervene by teaching one party how to negotiate directly and effectively with the other disputant(s).

Direct negotiation is especially useful for people dealing with harassment or with other interpersonal difficulties. My research indicates that many complainants do not consider, and cannot be persuaded to try, formal grievance paths for certain kinds of conflicts, including interpersonal disputes. In addition to offering informal and formal mediation and the generic approach, one may offer to complainants the option of learning to take responsible, effective, direct action.

Plan and Prepare

The first task for the complaint handler is to determine whether the problem at hand constitutes an emergency. For example, in a harassment case, is the concerned person in danger? Is anyone else? Is it likely the complainant might retaliate by harming, or getting others to harm, the alleged harasser? How much time is available to think things through? The second step is to consider whether you are the right person to be helping this particular complainant. For example, are you sufficiently objective; do you have any conflicts of interest? If you are not the appropriate person to handle a complaint, who is?

An early task—to be undertaken alone, if necessary, or with the disputant—is to determine whose interests are at stake and what those interests are. Who now seems to be involved in the problem? Is it important to know who started this dispute? Has anyone else been offended or has anyone else benefited from this situation? Is there a relevant employer? What are the interests of each party on this list?

Concurrently, the complaint handler should determine who "owns" this dispute—who is responsible for this subject or this problem? Who would think he or she has a right to decide what will happen? For example, if there is a relevant employer, does the employer take an activist approach? These questions are particularly important with respect to the complainant; does this person feel that he or she should decide what happens next? Other preparation questions include: What principles and laws apply here? With respect to hazing, violence, threats, and harassment, one should examine state and federal laws. If there is a relevant employer, what are the employer's policies? What rights are at stake, and whose are they?

Additionally, the complaint handler should determine what options are open to each person involved in the dispute. (This task will lead to an analysis of the sources of power for each actor.) For all the usual reasons, and because people concerned about harassment are usually exceptionally anxious about the possibility of retaliation,[3] it is worthwhile to sit down with paper and pencil to brainstorm about the available options. Perform this step very thoroughly and be sure that you have thought through covert and unconstructive options open to each person involved, as well as obvious and constructive options. (At this step, it may also be cathartic for the person who has been harassed to be able to think and talk about a variety of mean-hearted fantasies before deciding on an effective and responsible path.)

Also consider whether you should you seek advice (for example, from a human resource manager), and if so, do you have permission to do so? Can

you seek advice off the record or without identifying the people in the complaint? Before you begin, do you need more facts or evidence to help the complainant help himself or herself? Look first for data that are immediately available, because they are most helpful to the complainant in deciding what to do and how to do it. Are there witnesses to the alleged harassment who should be consulted before the complainant decides to take direct action?

Lastly, if you are embarking on a plan to support someone else while they deal directly with the problem at hand, you may wish to figure out a plan for follow-up ahead of time. This is essential in a sexual or racial harassment complaint if you are a manager or supervisor because an employer has the obligation to ensure that the harassment stops and that there is no retaliation by any supervisor. Planning ahead to follow up may also help to reduce the anxiety of the harassed person and may open the door to further consultation if the initial plan is not effective.

Why Choose this Option?

Helping disputants to help themselves may be the option of choice for many reasons. First, in my experience, this option is the most likely to be effective in harassment cases, in terms of stopping the offense and in meeting the stated interests of the majority of offended persons. I have outlined elsewhere (Rowe 1990) some characteristics of a significant group of people who complain about harassment. The most common goals within that group were simply to stop the harassment and to do so at as little cost as possible.[4] Direct action by a harassed person is most likely to achieve these goals. Obviously this option should *not* be pursued unless the complainant, having been presented with a choice of options, prefers it.[5] (If you are a manager, and the substance of the complaint is serious, you may wish to make a note of the fact that you have discussed various options with the complainant.)

Other reasons to encourage disputants to help themselves exist as well. To many people it is a matter of morality to support people to handle harassment directly, if they choose to do so and can do so effectively, because this course of action helps people to control their own lives. This method helps to "give voice" to those who wish it. It also encourages people to take responsibility for their lives. Thus, philosophers on the left and on the right both tend to approve of this technique.

Supporting an offended person who chooses the option of returning directly to the alleged offender may produce a better outcome than intervention by a third party adjudicator. The direct approach may prevent mistakes based on insufficient data and/or different perceptions of the same facts. It makes it much more likely that the offender will learn from the complainant how this person saw the offense; the complainant will also learn more about the offender's perceptions of the facts. In addition, the disputing parties may come up with innovative solutions that might not occur to an adjudicator. Moreover, as many complainants themselves realize, in choosing this option, the timing and handling of the situation may be better, simply because the complainant has superior knowledge of the circumstances.

Teaching the direct approach option may help provide people with a general method for dealing with problems and offenses that goes far beyond the specific offense at hand. (To paraphrase the Native American proverb, one

is not giving someone a fish, one is teaching the other person *how* to fish.) I have noted, during the past 17 years of being an ombudsperson, that people who have effectively stopped others from harassing them are less likely to be offended in the future. They are also quite likely in their turn to teach the method to colleagues and people they supervise.

Encouraging people to deal directly with those who offend them is also an efficient management practice, like any other form of delegation of responsibility. It usually takes less time, and even with caring, one-to-one support of the complainant, this option is likely to cost less than other options.

Helping people to help themselves is the option that is most likely to protect the privacy of the complainant (and his or her family). It is also most likely to protect the privacy and other rights of the alleged offender. In my own experience as an ombudsperson (and despite myths to the contrary), handling a problem directly also appears to be the option least likely to lead to attempts at retaliation and reprisal. An offender usually prefers to be approached directly and is, consequently, least likely to feel humiliated and to strike back.

This option permits the widest variety of "next steps" if it does not work. In fact, being able to prove that an offended person did try responsibly and directly to get his or her problem solved may make further action easier for the complainant and for management. For example, a complainant may not be able to prove that she was harassed, but she may be able to prove that she thought she was being harassed and that she took responsible and orderly action to get the harassment to stop—for example, by writing a letter to the offender. This action may be an important contribution later if the complainant needs a stronger body of evidence.

Helping a person to prepare to deal directly with an offender is, at the same time, the best possible preparation for pursuing any other dispute resolution mode. For example, imagine that the offended person is considering a formal complaint to the employer. A very effective way of helping the offended person to organize her thoughts and to do the work required for a formal complaint (work that also would be useful in the case of mediation) is to assist in drafting a letter the complainant might send to the alleged offender.

Of possibly even more importance, helping a person put his or her thoughts down on paper is a powerful support to the offended person's physical health and emotional well-being. A common characteristic of harassment complainants is that they have turned their anger inward and are having trouble sleeping and eating, or they have developed a pinched neck or some other physical or emotional symptom (see Rowe 1990). Writing a letter is an effective way of helping an offended person deal with his or her feelings. This is a particularly important step if the offended person is blaming himself or herself in some way for the offense. Writing down what happened may help to convince the writer that the offender actually is responsible for the offense; this step, therefore, often makes it easier for offended people to take action.

Finally, in circumstances where you are an outside adviser with no direct influence or control over the situation, helping disputants to help themselves may be the only reasonable choice, at least until sufficient evidence can be amassed so that relevant managers can be persuaded to act. Clearly, it is the only option when the offended person refuses to come forward about the situation to management.

Caveats

After considering all the pros and cons of dealing directly with the offender, one should ask the offended person to compare the use of this technique with the options of formal and informal mediation. In harassment cases where able mediators are available, mediation offers many—but not all—of the same benefits as the direct approach.

The option of helping people to help themselves satisfies only limited goals. Use of this option may very well stop a given offender from offending.[4] However, there is not likely to be much systems change or consciousness-raising of others, from the use of this option, unless the option becomes widely known and used in a given workplace. Moreover, the use of this method will not provide central records with the names of offenders, since most employers believe that one cannot properly keep such records unless there has been a fair process of investigation and judgment by an objective third party.

Using the direct approach requires courage, truth, and candor. It also requires a commitment by employers to provide competent and sometimes extensive help to those who prepare to deal directly with someone who has offended them.

It should be pointed out that "justice" may or may not be served by following this course of action, since offenders will not be punished formally.

Finally, a manager may run some legal risk in not immediately reporting, investigating, and adjudicating any report of harassment, at least of sexual and racial harassment. Thus, if you are a manager, at a minimum it is essential to follow up after any informal process to be sure that it stopped the behavior alleged by the offended person.

How To Do It

As you progress through various stages of working out how to support an offended person who has decided to deal directly with a problem, keep in mind that other options—in particular, formal options—may be or may become open to the offended person. The choice of distributive and integrative dispute resolution modes can be considered and reconsidered throughout the process.

Ask the offended person to consider writing a particular kind of letter to the alleged offender. Advice on how to write such a letter is described in Figure 1. (*Author's Note*: Readers who find the advice in Figure 1 useful have my permission to photocopy and use that particular section of this article.)

In discussing the letter option with the offended person, you should explain that the final letter will be most effective if it separates facts from feelings, from "what should happen next." Most people will need help in keeping these sections separated. In complicated cases, it may be important for you to offer to read drafts of this letter or for you to recommend that some other responsible person help the complainant during the writing of the letter.

In cases where there has been ongoing tension, many responsible people will have done all they could to forget the facts of what happened to them, in order just to "get on with their lives." You are now asking that these facts be remembered. One way to help an offended person to remember the facts is to ask if he or she kept a diary or talked about the problem with a friend, spouse, counselor, or relative during this period. If so, such a person may be

FIGURE 1

Advice on How to Write a Letter to a Person Who Has Harassed or Offended You

If someone has offended you, you may wish to go directly to that person. You will find it easier to go to the offender, in person or on paper, if you first write a draft of how you see the problem. Then you can decide whether to send the letter, go in person, or choose some other option to deal with the situation now that you have collected your thoughts.

Writing such a letter may take a little time. If you have been hurt, if you feel very angry, if you are at all afraid, you may find you need to write several drafts. (Do not be worried if your first draft is a messy stream-of-consciousness creation, and do not worry about the tone of your early drafts. In fact, the more upset you are, the more worthwhile it actually is to write a letter. It will help to "get the anger outside yourself" and help in the process of deciding what option to choose in dealing with the situation. And your last draft will be more effective if early drafts have helped you deal with your feelings.)

Sometimes a person who has been offended will worry whether a direct approach to the offender will cause that person to retaliate. This is an important question to consider, but in North American society, a well-prepared, direct approach to an offender may actually be the option least likely to result in retaliation. Remember that most people in this culture would rather hear about a problem directly and not from a third party. Also, you should keep a copy of the letter you send; this is likely to help later if there should be retaliation or if the offense recurs.

A letter can be used by anyone who feels unreasonably offended, intimidated, or harassed. It is particularly useful when people's backgrounds are different. For example, energetic managers may offend older people by making allusions to age without really understanding the offense. Ethnic slurs, anti-Semitism, anti-gay jokes, poking fun at the handicapped, racist behavior, and sexual harassment are all problems where a letter may help. Letters have been used effectively by nontechnical people who feel that "the computniks are sneering at them" and vice versa; so also with smokers versus nonsmokers. A letter may help in getting compensation from the garage that damaged your car.

I do not recommend a "form" letter. Sometimes a brief note is better between friends. Whatever the case, the letter should fit the particular situation exactly. I do recommend three distinct parts to a note or letter. The first is an objective statement of the facts as you perceive them. No feelings, judgments, or opinions belong in this section. In serious cases, it may help for this section to be quite long and very detailed. It must be scrupulously accurate in order to be effective (and fair). The first section should not use euphemisms. It should be very matter of fact. If you are not sure whether a statement is factual, then say, "I believe (this happened) . . ." or "I think (this was the case) . . ."

The second section is for opinions and feelings: "This is how the facts as I know them make me feel." This is the appropriate place for a statement of damages, if any—"I feel I can no longer work with you" or "I was not able to work effectively for the following two weeks . . ." or "I felt terrible about what you did," for example.

Finally, the writer should state clearly what she or he thinks should happen next and, if appropriate, ask for a specific remedy: "I ask that our relationship be on a purely professional basis from now on." "I want a chance to go over my work with you again and to reconsider my evaluation (grade)." "Since I was unable to go on this sales trip because of your behavior, I ask for immediate assignment to the next trip." Sometimes the writer will request a sum of money, as appropriate.

Many people ask if a letter really should be the first or the only attempt to deal with offensive behavior, and of course the answer is dependent on the people and the problem. Criminal acts may better be brought to the attention of supervisors or the courts, although occasionally a letter may be the right choice. At the other end of the spectrum, one may wish to write a letter but then opt not to send it; consider forgetting the incident in the spirit of tolerance of diversity. Also, many people prefer to try talking with an offender before sending a letter, and there are many ways to do this effectively.

A letter may be an especially effective choice when verbal remonstrance has been ignored. It is particularly useful with sexual harassment, with offenders who believe that "no" means "maybe" or "yes." A letter may work well in situations where an offender seems to have no idea of the pain being caused. Writing a letter may be particularly helpful when an offended person fears coming forward because she or he lacks conclusive proof of the offense or when the offended person wishes to avoid the situation of "his word against mine." Letters are useful beyond the hope of stopping offensive behavior; they provide good evidence for management or a court to take action later, if necessary. Letters are especially effective in dealing with very powerful people, as in a case when a junior person has little leverage or fears retaliation. Writing a letter usually provides hope of ending harassment when the offended person wishes to avoid public exposure.

Letters are especially useful when a school or corporation has well-drafted policies against (all forms of) harassment. They work best if responsible grievance counselors help sort out alternatives and draft letters. They may be a good choice when you particularly wish to be scrupulously fair (because no third party needs to see the letter). And letters often work well in union situations—for example, worker with coworker.

Once the letter is written, the decision actually to send it to an offender should be carefully weighed against other alternatives. Should a letter instead go to a supervisor? Should you now go talk with a trusted colleague or counselor? Or with a women's group or a spouse? Writing a letter does not commit you to send it. It may be, however, a good way to deal with feelings and to help to organize your thoughts during the process of deciding your best option. And be sure to keep the letter whether or not you send it; it may make you feel good about yourself for years.

able to remind the letter writer of facts and feelings that have been forgotten. It is helpful to suggest that the first draft be simply stream-of-consciousness; this may help draw out important memories.

An early draft may be an exceedingly angry and vituperative document, so much so as to embarrass or frighten the writer. Reassure the offended person that the process may take some time, and a number of drafts may be necessary. You should affirm that it is normal to become extremely angry and upset during this process. (These emotions are in fact so common that if the facts that the writer brings forward engender very strong feelings in you, but the complainant does *not* appear to be upset, you should try to convince the letter writer to take more time to think about the issue.) If you become truly concerned about the emotional well-being of the letter writer, or if you are told that writing the letter stirs up old memories of other, earlier abuse, consider referring the complainant to a mental health professional for additional support in this process.

After the Letter Is Written

Typically a letter writer will feel more focused and much calmer once a letter has been finished. It is not uncommon for this change also to startle or even worry the writer, so be prepared to reassure him or her if this should happen. In fact, this change is so common that if the writer's feelings do not diminish in intensity, you might recommend a search for new or more facts in addition to those already in the letter.

After the letter is written, you may wish to explore with the offended person what the offender might be thinking and how that person may feel if the offended person confronts him or her in person or on paper. Sometimes it can be helpful to role-play, with you taking the part of the offended person. Talk out how the offender may see the situation and what may happen next. Most offended people have considerable insight into the thoughts and feelings of offenders, who may be acquaintances or even former friends. In a case where the offended person needs to develop more insight into the feelings of the other party, role play can be very valuable. In the rare situation where the offended person seems entirely off base in his or her accusations, this process may be the only one whereby he or she will be able to think through the interests and actions of the alleged offender.

Once a letter is written, it is time to review again which dispute resolution option is appropriate. Many people, having written a letter to prepare themselves, will then decide to go in person to the offender. Others will use the letter writing as a basis for preparing a formal complaint, or the complainant may actually send the letter. If the letter is, in fact, to be mailed, the writer should keep a copy but in most cases should not send copies to others. (Sending copies to others may arouse great hostility and may not be needed, although it is an available next step.) It may be important to know when the letter arrived (since the typical response is to have no overt response) and to be able to prove that the letter was received. Consequently, the letter should be delivered in person, by registered mail, or by using some other device appropriate to the situation.

(In my own case, as an ombudsperson, I do *not* keep copies of letters such as these, on the grounds that I have heard only one side of the story; managers

similarly may feel that it is not appropriate for them to keep copies when the recipient does not know that they have been part of the process. It is important, then, to remind oneself that the writing of such a letter does not constitute a formal warning by the employer, although repeated offenses may be more easily addressed if a letter writer will use the letter as evidence.)

The letter writer needs to be prepared for the likely possibility of no overt response to the letter, as well as all other logical possibilities, including great anger, tears, or even—in a rare case—a tearful marriage proposal. One common response when the letter writer delivers the letter in person is for the recipient to ignore it while complaining about some other topic as a diversion.

Within an employment or academic context, the recipient is very likely to stop the behavior discussed in the letter. Failure to do so is unusual. It is essential that you follow up with the letter writer to determine what happens. Depending on the situation, you may wish to do this several times over the course of the coming year, reminding the writer thereafter that you wish to hear if there is recurrence of offense or any appearance of retaliation. Depending on the circumstances, the *recipient* may also come to see you. If you think this may happen, it is a good idea to prepare by discussing this possibility with the letter writer and to get permission, if possible, to tell the recipient that you have already been involved.

Why Does the Direct Approach Work?

As already stated, the direct approach usually achieves the (limited) goals of stopping the offense at the least cost to the complainant and to others who are involved. There are many hypotheses as to why, all easily understood in terms of negotiations theory, and all most easily seen where the option is understood in terms of writing a letter to an offender. Writing a letter to an offender provides power to the writer, especially the power of legitimate authority, in that a letter creates evidence and invokes the possibility of lawsuit. Letters are an indication of commitment to self-defense. They invoke the power of relationship, the power of information, the power of an elegant solution. Moreover, people who have written a letter seem to *feel* more powerful and act in a more powerful manner.

Writing a letter also provides a vehicle for the clear specification of the writer's interests, and it appeals directly to the interests of the recipient. It saves face for the recipient, compared with all other dispute resolution options. A good letter is respectful. A good letter clears up any failures of communication. The second section of the letter often invokes the idea of settling the dispute on principle. Writing a letter and, especially, writing the third section, almost always provokes the complainant to brainstorm options. Separating the sections of the letter helps to separate the people from the problem. Of particular importance, writing a letter helps the complainant prepare, both emotionally and practically, for whatever dispute resolution option he or she will choose to follow.

NOTES

1. This article is part of a forthcoming book on various ways to deal with harassment and to help others to deal with harassment. See also Rowe (1990).

2. See, for example, the superb discussion of this technique in Ury, Brett, and Goldberg (1988).

3. Retaliation from supervisors is proscribed by law in harassment cases. People who feel harassed may nevertheless fear this kind of retaliation, and even more often fear other kinds of retaliation from which an employer cannot easily protect the complainant, such as "cold shoulders" from coworkers or anger from family members.

4. Complainants are likely to explain this choice by saying that they do not want to lose their privacy; for example, a top manager or leading professional may not wish to have his or her reputation as a professional tarnished by the image of being a complainer. Those concerned about harassment also typically fear retaliation or some other "bad consequence," such as anger from family members or the silent treatment from coworkers, if they complain openly. In addition, many offended people do not have evidence of the alleged events beyond the (important) evidence of their own statement. In particular, it is rare for people who feel harassed to have sufficient evidence of the offense for serious disciplinary action to be brought against the offender. Most offended people recognize this fact. (This may be the leading reason why most people do not complain of harassment in the first place, since most people hate getting into a situation of "his word against mine" and then having "nothing happen.")

5. I make this point explicitly because there is an unfortunate and improper caricature of this option in which the complaint handler just irritably brushes off the complainant, saying "Oh, go deal with this by yourself!"

6. There is a popular belief that harassers abuse many people and that stopping them from harassing one person, through an informal method, will simply turn them to new targets. My own experience does not find either of these points to be generally true in the workplace, although both may be true occasionally. In particular, these points are not necessarily correct for those who harass others sexually. It is quite common for someone to sexually harass only one person and then, once confronted, to stop the offensive behavior. It is rare for someone to be reported again for sexual harassment after he or she has received a letter from an offended person. It is also important to note, for example as with the recividism rate of violent offenders, that formal processes do not necessarily prevent further offenses. I do not think, therefore, that the popular beliefs are compelling as arguments against offering informal options for dispute resolution in the workplace.

REFERENCES

Rowe, M. P. (1990). "People who feel harassed need a complaint system with both formal and informal options." *Negotiation Journal* 6: 161-172.

Ury, W. L., Brett, J. and **Goldberg, S. B.** (1988). *Getting disputes resolved: Designing systems to cut the costs of conflict.* San Francisco: Jossey Bass.

Columns

The Post-Tailhook Navy Designs an Integrated Dispute Resolution System

Mary P. Rowe

In the wake of the infamous 1991 Tailhook incident — and the many investigations which followed dismal reports of sexual misbehavior and misuse of alcohol at the 1991 Tailhook Convention — the U.S. Department of the Navy[1] conducted an "every-member standdown." This meant that virtually every member of the Navy and the Marine Corps — more than one million people — was required to spend a day of training on sexual harassment. In the fall of 1992, as one of a number of other responses to Tailhook, the Department of the Navy also designed an integrated dispute resolution system.

In July of 1992, Barbara Spyridon Pope, then assistant secretary for manpower and reserve affairs, invited me to review training materials and then subsequently to help design a new system to deal with harassment and unprofessional interpersonal behavior. She brought together Marine Corps and Navy personnel and several internal experts to review harassment data and earlier studies and recommendations on the status of women in the Department of the Navy. I worked with hundreds of uniformed and civilian men and women in the Navy and Marines, assembled together in design groups in the Washington D.C. area. The process included organized brainstorming and long discussion by Navy and Marine Corps personnel from vir-

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tually every race, rank, and background.

The process was both responsive to outside imperatives and also built on the ideas of hundreds of insiders — and the core values of the Navy and Marines — a desirable situation for dispute resolution systems design (see Ury, Brett and Goldberg, 1988). The Navy-Marine design also meets many of my personal specifications for an *integrated* dispute resolution system:

- it deals with a wide spectrum of concerns, from inquiry through crime;
- it deals with all categories of personnel as complainants and respondents;
- it can handle groups as complainants or respondents;
- it provides four major sets of dispute resolution mechanisms:
  1. person-to-person negotiations — between complainant and offender, or bystander and offender — that is, a "direct approach."
  2. several informal third party intervention options;
  3. generic and systems interventions — including generic responses to individual complaints, and systems change to prevent further problems; and
  4. formal grievance resolution mechanisms.

(The major dispute resolution modes not represented in the Navy-Marine system are formal mediation and formal, group-to-group problem-solving.)

- it provides for the possibility in suitable cases for "loops forward" or "loops back" — from less formal to more formal modes or from more formal to less formal modes;
- it provides a variety of helping resources to each of four parties or roles — the complainant, the respondent, the bystander, the supervisor — including confidential advice, advice for people who call anonymously, informal counsel, and formal advice. It provides people of color, whites, men and women as sources of information and support, so that a person seeking information may, if desired, find someone similar to himself or herself as a helping resource;
- this system is taught to each member of the relevant community or workforce simultaneously and in common terms so that each party has access to the information that is being given to other parties;
- the system proscribes reprisal;
- there is provision for monitoring and evaluation.

This article discusses six relatively unusual characteristics of the Navy-Marine systems approach for dealing with harassment and unprofessional interpersonal behavior:

- The Navy-Marine dispute resolution system is anchored directly and specifically to the core values of the Navy and Marine Corps.
- It emphasizes and is built on "individual accountability" of those who might be involved in a conflict: the complainant, the respondent, the bystander, and the supervisor — rather than being addressed to just one role. The system is presented in specific, simple terms for each of these four roles.
- It is an integrated dispute resolution system, as noted earlier. It specifies clearly from whom one

can seek help, ranging from anonymous advice, through confidential advice, through contact with those who must take action in certain cases — and it specifies different options.

- The system is designed to deal with all forms of harassment, abuse, and unprofessional interpersonal conduct — rather than with just sexual harassment.
- The system is powerfully oriented toward prevention of unprofessional and unethical behavior — rather than solely with "how to deal with complaints." There is emphasis on curtailing abuse of alcohol. A simple, powerful metaphor — the "stoplight " — has been developed to aid in better understanding of unprofessional and harassing behavior.
- And finally, the Department of the Navy is committed to follow-up and evaluation.

Core Values

There was considerable agreement among senior officers and administrators that new policy, procedures, and training with respect to harassment had to be structured onto the foundation of core values. Discussion of various core values began and continued for months among many groups in the Navy and Marine Corps.

The values that emerged are courage, honor, and commitment — the courage to come forward; the essential nature of honorable behavior toward oneself, one's shipmates, and the service; and a commitment never to give up on the mission, one's code of behavior, and one's shipmates.

Training programs about the new system emphasize the connection between these core values and professional behavior, and are introduced by senior officers in each locale to emphasize the seriousness of the subject.

Individual Accountability

Many harassment training programs around the country focus on just one party. The central issue for some programs is to teach potential complainants how to bring complaints. Others focus primarily on potential and real offenders to ask them to behave professionally. Some are primarily for supervisors, to teach how to handle complaints.

Some such programs in the past have led to misunderstandings. For example, some people have been encouraged to come forward with a complaint, but have not been taught the requirements of due process in formal complaint handling. Such people are often bitterly disappointed when there is too little evidence to reach a conclusion of guilt. By the same token, some supervisors and some people who harass have been surprised and nonplused at what complainants are being told — and specifically at their having been encouraged to come forward. Some people who are told they are harassing have no idea how to respond in a professional way — because they have not been taught how to do so. Some people who actually do harass other people sleep through mass training programs designed to discourage people from harassing — and do not recognize themselves. Of particular importance, there has been relatively little attention paid to the potentially powerful role of peers and other bystanders.

By contrast, the Department of the Navy's directives on harassment were designed to convey the same message to everyone — at the same time, in the same skills booklet, and in training programs — but addressed specifically

to each party to a case. The essential theme of this training for every role is: "You are individually accountable. Do not ignore harassment."

The harassed person — known as Person A in the Navy and Marine Corps skills booklet "Resolving Conflict" — is encouraged to be individually accountable — and therefore to choose a responsible option to deal with harassment rather than ignoring it. The person who is told that he or she is harassing — known in the booklet as Person B — must be individually accountable for stopping unprofessional behavior as well as responsible for dealing in professional terms with the complaint and the complainant.

The bystander — who is Person C — also may not ignore harassment and is individually accountable for interrupting harassment that he or she observes. The supervisor — Person D — also may not ignore harassment, and must be individually accountable for dealing properly with any harassment seen or reported. The hope is that a simple message addressed to all — including peers — will have a real effect in reducing unprofessional behavior — and reduce misunderstandings among the different parties to a case.

In the booklet, the rules are summarized for all in the following manner: "Regardless of your role in a conflict, keep in mind the following individual responsibilities:

- I do not ignore conflict.
- I review my conflict resolution options.
- I take action to reach resolution."

An Integrated Dispute Resolution System

The Navy has always had well-specified formal grievance procedures, along a spectrum up to and including courts-martial. (Initial steps of the formal procedure are different in the Navy from those in the Marine Corps.) The Navy and Marine Corps also emphasize dispute resolution at the lowest possible level. There has, however, been less emphasis on alternative dispute resolution and informal complaint resolution, and no specification of informal options. Research (Rowe, 1990, Gadlin, 1991) indicates that most people who feel harassed are reluctant to choose formal procedures. In the Navy and Marine Corps, as in other workplaces, people are reported to be afraid that using formal procedures would bring unwelcome attention and possible reprisal. In addition, my research shows that some people wish to avoid the loss of privacy caused by using formal procedures; others believe they may have insufficient evidence to prevail; some just want the wrongdoing to stop — as distinguished from punishing the offender; and still others do not want to be seen as disloyal or childish or "unable to take a joke."

In short, since most people appear to want a *choice of options*, there appeared to be serious need for development and specification of informal as well as formal options. (In addition, the Navy undertook review of its formal processes and made some changes, including requiring mandatory processing toward administrative separation of anyone found guilty of very serious harassment. The policy on harassment was also rewritten in much clearer terms.)

The Department of the Navy developed an integrated dispute resolution system, providing four sets of options for complainants. A person who feels harassed can take the

direct approach — in person or on paper. Instructions are provided to support options for a direct approach. Or, the complainant can appeal to a friend or immediate supervisor to step in informally. Here again, there are a number of different possibilities for informal intervention. The harassed person can choose a *generic approach* and simply ask through a third party — without naming him or herself or the harasser — for focused training materials to be brought to an appropriate local area of his or her ship or workplace. The hope is that specific and focused training instigated through a generic approach may stop individual acts of harassment at no cost to anyone's rights, at low cost to relationships among shipmates, and at little risk to the complainant of being thought insubordinate if the alleged harasser is a supervisor. Since the introduction of such programs in a local area often stirs up useful discussion and since programs of this kind can be individually tailored by the training officers involved, some employers have found them more useful than mass programs in stopping individual harassers. Finally, the complainant has several options for *formal complaint* — the well-specified formal grievance procedures which have always been available.

The respondent, supervisor, and bystanders to a dispute have their own options for action, depending somewhat on which option the complainant chooses and depending on the nature of the complaint. The skills booklet, "Resolving Conflict," has been developed to help each party to a case know the options, prepare for an option, and pursue that option in a responsible fashion. In addition, an anonymous 800-telephone line has been instituted to make it easier for a person in any role to get appropriate advice about how to deal with unprofessional behavior or with a complaint. Since its inception late last year, this line has been used significantly by people in all four roles.

Dealing with All Forms of Harassment

Like many other employers in the 1990s, the Navy and Marine Corps have wished to recommit themselves to the long-standing effort to build services free of racism and other impermissible discrimination and mistreatment. The armed services have taken great pride in their efforts to deal with people of color on an equal opportunity basis. In designing the new complaint system, the Department of the Navy therefore explicitly included all forms of harassing and unprofessional, interpersonal behavior.

Prevention and Follow-Up

Since Navy research data suggest that unprofessional and abusive behavior in the Navy — as elsewhere — are very highly correlated with abuse of alcohol, a major tactic of the new prevention program is to link the two subjects and to address both together.

The connection between unprofessional behavior and alcohol abuse, while widely recognized among U.S. employers, has rarely been emphasized in programs to prevent unprofessional behavior and harassment. The Navy, by contrast, is placing extraordinary emphasis on curtailing abuse of alcohol in the campaign to curtail personal abuse and unprofessional behavior.

Review of previous armed services prevention programs indicated a major need for a simple, quickly

understood way of communicating definitions of harassment to late teenagers and young adults who do not yet have much education or experience. As all employers know, the subject is complex and has not been easy to communicate — this problem, in fact, became the subject of much brainstorming among the design teams.

After sustained discussion, the Navy and Marine Corps developed the metaphor of a stoplight with "red, yellow, and green" behavior.

"Red" behavior is criminal or obviously unacceptable behavior that must be stopped and probably should be dealt with by a supervisor. It includes quid pro quo sexual harassment and such activities as sending hate mail.

"Yellow" behavior suggests "warning. . .you are moving toward a red light," and it lends itself to a number of options. Yellow behavior includes racial, ethnic or sexual jokes and comments, violating personal "space," and touching someone in a sexually suggestive way. "Green" behavior is behavior that is appropriate and encouraged — although it sometimes makes supervisors nervous when dealing with women — including supervisory critique of poor performance and unprofessional appearance, commendations for good performance or improved appearance, necessary orders for getting the work done in normal times and in emergencies, and touching which could not reasonably be perceived as sexual or threatening.

In just a few months — even before the new Navy training program came out — this metaphor was communicated very broadly by word of mouth among employers. The stoplight is being discussed nationally and internationally — and across ethnic barriers — suggesting that it may be an effective communications device in an arena where communications have been very difficult.

Though some commentators have criticized the idea as overly simplistic, and there remains hot dispute about what is "yellow" and what is "red" behavior, it is worth noting that different kinds of employers are expressing interest. The metaphor's very simplicity is part of what is attracting favorable mention — and the stirring of discussion about what is and is not acceptable. In addition, there is interest among employers in emphasizing that supervisors and certain instructors can and should pursue appropriate feedback to employees about professional dress and performance.

The Future

The Department of the Navy's emphasis on appropriate "marketing" is leading to new patterns of training. The Navy and Marine Corps are including harassment training and prevention in basic training and in training for new senior officers. Both have developed a series of easily understood materials to communicate the stoplight metaphor and the sets of options for each role. They are also developing new materials to illuminate behavior that is and is not acceptable and options for dealing with harassment that are responsible and effective.

In addition, they are explicitly mobilizing peer pressure — at every level — to communicate Navy and Marine Corps expectations for pro-

fessional behavior. They have set up various mechanisms for monitoring how things go, including continuation of anonymous surveys and pursuing improved data collection about sexual assault. They are also determined to increase the power of their ancient denunciation of unprofessional conduct: "Not in my Navy!" "Not in my Corps!"

Since the armed services have had a major influence in dealing with certain forms of discrimination, the future of this program will be of particular interest to all who are concerned with discrimination of any kind — and all who are concerned with complaint systems.

NOTES

The author acknowledges with thanks the excellent suggestions of an anonymous *Negotiation Journal* reviewer and of several readers in the Department of the Navy, particularly Deputy Assistant Secretary Dorothy Meletzke and Captain Johnnie Boynton.

1. The Department of the Navy includes both the U.S. Navy and the U.S. Marine Corps.

REFERENCES

Gadlin, H. (1991). "Careful maneuvers: Mediating sexual harassment." *Negotiation Journal* 7: 139: 153.

Rowe, M.P. (1991). "The ombudsman's role in a dispute resolution system." *Negotiation Journal* 7: 353-362.

Columns

The Ombudsman's Role in a Dispute Resolution System

Mary P. Rowe

Contemporary negotiation theory and practice suggest that organizations should design and build dispute resolution systems—rather than just one or another dispute resolution structure—in circumstances where people will be working together or dealing with each other over time. Review of the success of (proliferating) ombuds offices[1] suggests that this kind of office is both a desirable and cost-effective element in an efficient dispute resolution system. This column focuses on the ombudsman who works within an organization. Much of the discussion, however, is equally appropriate for ombudsmen who serve clients such as citizens, students, newspaper readers, patients, vendors, taxpayers, etc.

I define an internal ombudsman[2] as a neutral or impartial manager within an organization, who may provide informal and confidential assistance to managers and employees in resolving work-related concerns; who may serve as a counsellor, informal go-between and facilitator, formal mediator, informal fact-finder, upward-feedback mechanism, consultant, problem prevention device and change agent; and whose office is located outside ordinary line management structures.

An often-quoted sentence about ombudsmen states that "ombudsmen may not make or change or set aside a law or policy; theirs is the power of

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reason and of persuasion." Ombudsmen thus have all the functions of any complaint-handler except that of formal fact-finder, judge or arbitrator.[3] Ombudsmen do not "deliver due process" in the sense of a court system.[4] They encourage practices that are fair and just and respectful. They work to foster whatever responsible process is "due under the circumstances"; (in the ideal situation, this process is one chosen, or at least agreed to, by the parties).

Functions and Characteristics of Dispute Resolution Systems

An effective dispute system includes all of the following functions:

- *Expressing respect for feelings* (especially rage, fear of retaliation and grief). Helping people deal with their feelings—so they will be able to make responsible decisions and be able to deal effectively with their problems or complaints—may be the most cost-effective element of a dispute resolution system. This is true in part because providing respect and dealing with feelings cost very little. It is also because respect is a parent of productive work relations, and because humiliation is a parent of destructive behavior. In my experience, this is the function most likely to fail in a dispute resolution system; in the language of Total Quality Management (TQM), the system fails where "customers" have been ignored.
- *Giving and receiving information on a one-to-one basis* (making referrals, telling people how the system works, receiving whistleblowing complaints, etc.). Many people overestimate how much information disputants have. Nearly everyone overestimates how much information top managers have, especially when things are going wrong.
- *Consultation to help people help themselves.* This can involve such practices as counselling with employees and managers; inventing new options; listing all possible options for the choice of the person(s) with a problem; consulting and coaching on how a person or group may deal with the problem directly (problem solving, role-playing, teaching negotiations skills, anticipating possible outcomes, etc.); or helping review the strengths and weaknesses of previous dispute resolution efforts. This is the function that helps to define what process is "due under the circumstances."
- *Shuttle diplomacy by a third party.* In this process, the third party "shuttles" back and forth among those with a problem, to resolve the matter at hand (sometimes called "conciliation" or "caucusing"). Shuttle diplomacy and mediation both may include offering advice as to what may happen if informal problem solving fails, including advisory arbitration;
- *Mediation.* The settlements of mediation may be formal or informal, and on file or off-the-record. The key element of this function is a neutral third party who brings together the people or groups with a problem, so they reach their own settlement or are helped by the third party to reach their own settlement.
- *Fact-finding or investigation.* This may be done either formally or informally. Reports may be made either with or without recommendations from the fact-finder to one or more decision makers.

- *Decision making, arbitration or adjudication*. In this process, a person or body with power and/or formal authority decides a dispute. This may be structured as part of a formal complaint-and-appeals channel or formal grievance procedure. As Ury, Brett and Goldberg (1988) have pointed out, it is often useful to consider a variety of mechanisms to provide rights-based and power-based decisions.[5]
- *Upward feedback, problem prevention, and systems change*. This can involve designing a generic address to a problem, or a single complaint, or a pattern of dispute; fostering change in policies, procedures, or structures as a result of inquiry, suggestion, complaint or dispute, or an evaluation of the handling of a previous dispute; or providing group training in dispute resolution skills.

An effective internal dispute resolution system also has the following characteristics:

- *The system is taken seriously*. It has strong support from top management. It is widely publicized. Managers and employees hear discussion and receive some training in conflict resolution. The system reports back aggregate statistics about problems and disputes to top management and the community, as an integral part of the organization's management information system.
- *The system provides significant evidence of change* (including reversal of some management decisions) as a result of complaints and disputes.
- *Policies against retaliation are taken seriously by all*. Managers typically are not punished for reversals of decisions they made in good faith; employees are not punished for raising questions or for responsible disputing.
- *The system provides options—and choice—for pursuing most complaints*. The system allows disputants to have as much choice as possible, rather than requiring that a given problem may by pursued in only one way. This respect for the "customers," now immortalized by TQM, is particularly likely to be ignored by people who think they know best what disputants need.
- *The system provides loopsback*, from adjudicative options to problem-solving options, *and also loopsforward*, so that most people with problems can at any stage choose investigation and adjudication of their complaints, so long as they do so in good faith.[6]
- *The system is available to everyone*, managers and employees alike, for every type of problem.
- *The system provides in-house, designated neutrals,* who: help people deal with the system; legitimate the asking of questions and raising of concerns; minimize retaliation against those who complain; provide consultation on options; review how conflicts have been handled in the past (especially patterns of conflict); are alert for new problems, as well as available for bizarre, delicate, distasteful or frightening problems; provide individualized coaching on negotiation skills, and (where appropriate) keep disputants focused on interests and on cost-effective modes of disputing.
- *The system provides, if possible, more than one available neutral*, so that people with problems have a choice. Ideally, people should

have the choice of dealing with an impartial complaint-handler or mediator of the same gender and race, as this makes it much more likely that different kinds of people will feel welcomed and respectfully treated by the dispute resolution system. Providing more than one neutral or impartial person also helps in cases where the first such person is no longer appropriate or available, and where there is a wide variety of disputes requiring a variety of skills.

- *The system guarantees confidentiality* to all who approach an in-house, designated neutral off the record (e.g., for consultation and counselling), except in the rare case where there is a duty to protect (i.e., a danger to self or others). The practice and perception of near absolute confidentiality is essential to building trust in a system that is going to handle delicate and difficult disputes.[7]

Where the Ombudsman Fits in a Dispute Resolution System

An ombuds office may be seen by itself as a mini-system, since the internal ombuds practitioner has all the functions of any complaint handler except that of formal decision maker, investigator or arbitrator. In addition, the ombuds practitioner typically works closely with supervisors and with other dispute resolution structures within an organization.

An internal ombudsperson is often the first person approached for difficult problems within a given workplace. In these cases, the ombuds office may be the point of entry into the system rather than the only person of contact. However, many managers and employees who seek out an ombudsperson come in just to blow off steam, or find out a fact or two, or to learn how to help themselves.[8] In these common cases, the ombudsperson may be the only complaint-handler, and also does not intervene.

Many workplaces also have other offices where people may go to express or sort out their feelings off the record, give or receive information on a confidential basis, or develop and choose effective options. These include sensitive supervisors, employee assistance, equal opportunity officers, human resources personnel, the appropriate medical department, religious counsellors, student affairs deans, etc. Ombudspeople quite regularly refer visitors to such offices and receive referrals from these colleagues, as all these practitioners seek to build an effective support network for those who are raising concerns.

Ombudspeople may also intervene as third parties. They are sometimes asked to pursue shuttle diplomacy between peers, and it is common for an ombuds practitioner to be asked to go back and forth between the person with a concern and his or her supervisor. Many ombudspeople are mediators. (Formal mediation is more common between peers than between supervisor and supervisee within a workplace.) Here again, most workplaces also have other people who serve these functions: skilled supervisors, human resource managers, deans in academic settings, and outside consultants. Ombudspeople make and accept referrals to and from these other helping resources.

Informal investigation is a common function for an ombudsman. Frequently the practitioner will get permission from a visitor to look into and pursue a concern. This often entails an informal inquiry. Thereafter the ombudsman may make informal

recommendations to a decision maker and or lobby quite stubbornly for change in policy. It is, however, rare for an ombudsman to be asked to do a formal investigation in a formal grievance process, and many ombudspeople will not do so. (The common belief that ombudspeople are formal investigators applies more appropriately to classic public ombudsmen than to internal practitioners.)

Informal and formal investigation are functions also shared with labor-relations, human resource personnel, student affairs administrators, active supervisors, and some other specialized personnel such as safety, equal opportunity, security and audit professionals. As noted earlier, it is common for referrals to come to the ombuds office and be made from the ombuds office to these colleagues. In particular, an ombudsman who is the recipient of a whistleblowing report will likely be working with line managers and/or other staff offices to see the matter properly referred to appropriate persons.

In some workplaces, ombudsmen are so much a symbol of "interest-based" dispute resolution that some people presume that these practitioners function mainly as a *loopback* process from adjudication to problem solving. Looping back is, in fact, common. However, most ombudsmen also facilitate and support *looping forward* (to rights-based, formal investigation and adjudication) on important (if uncommon) occasions where this is the option responsibly chosen by a visitor. (Some conflicts need a win/lose response.) Ombudsmen also may serve as nonvoting managers of a peer review process and in other ways support formal complaint and appeals channels.

Research indicates that internal ombudsmen typically spend a quarter to a third of their time as internal management consultants, trainers, and change agents. This may occur in many ways. Sometimes the best way to deal with a specific problem is through a generic response, where the ombuds practitioner will be working with the relevant line manager or personnel specialist.[9] Sometimes the ombudsman will be called to conduct training programs on conflict management or negotiation skills, for people or groups that will be working together.

The Ombudsman's Sources of Power

Because ombudspeople have no line authority, people often presume that they "have no power." This assertion, however, reflects a misunderstanding of the sources of power in negotiation. Following are some commonly recognized sources of power and the extent to which they are helpful to the ombudsperson:

- *Legitimate authority.* Most internal ombudsmen do not have line management power. Those few who are empowered to make binding decisions typically choose not to do so very often, choosing rather to affirm the responsibility and rights of line authority and of disputants. (The rare ombudspeople who occasionally do formal findings of fact often do not provide formal recommendations for future action for just this reason.)
- *Rewards.* While internal ombudspeople do not set raises or promotions, their affirmations of good management and productive behavior often serve to illuminate excellence in the workplace. Ombudspeople commend as well as criticize; commendations are often seen as "rewards," and provide considerable power as well as entrée.

- *Sanctions*. Ombudspeople obviously illuminate bad behavior as well as good, raising the concern of sanctions from authorities. The fear of sanctions is a potent source of ombudsman influence.
- *Force*. The fact that other people may use force (sabotage, violence, work stoppages, etc.) provides power to alternative dispute resolvers, including ombudspeople.
- *Moral authority, charisma*. Obviously the idea of an ombuds office is to affirm that which is just and fair; the office therefore has strong moral authority. In addition, most ombudspeople are chosen in part for charisma and/or reputation.
- *Commitment*. Stubbornness, and a resolve never to give up on a problem until it appears to be resolved, are qualities much needed by practitioners. These qualities can be a major source of power, in continuing to raise questions with recalcitrant managers, in seeking systems change, and in "staying power" with disputants in mediation.
- *Information and expertise*. These classic sources of power are usually available to an ombudsman, who typically has access to every database in the organization, and who knows as well as anyone "how to make something work" in the given workplace.
- *Elegant solutions*. Since the ombuds practitioner is personally disinterested, committed wherever appropriate to integrative solutions, has information about interests on all sides of a dispute, has the luxury of concentrating on dispute resolution, and is unlikely to lose interest (or composure), he or she can sometimes find a reasonably elegant solution.
- *Fallback position or BATNA*.[10] The BATNA of an ombudsman is usually to turn over the dispute, or let it devolve into, the next possible mode of resolution: line supervisors, formal grievance mechanisms, the courts, letting the disputants quit the workplace, etc. This is often a very useful source of power since frequently disputants think that all alternatives are worse than dealing with the ombudsman.
- *Relationships*. The professional relationships of the ombudsman are typically an important source of power. In particular, most ombudspeople work for the CEO or other very senior manager, and many practitioners are old friends of senior managers. These intangible points are widely considered, by ombudsmen themselves, to be major sources of power for practitioners. (In addition, it is perhaps easier to be an ombudsman than to be in other areas of senior management, in terms of not making enemies. Although many people think that it must be hard not to make enemies as an ombudsman, in fact most people in a given workplace appear to understand the peculiar charge given to the practitioner. If people come to learn that the practitioner keeps near absolute confidence, is in fact neutral and personally disinterested, they are usually gracious and respectful to their unusual colleague.)

Cost-Effectiveness

Corporate Ombudsman Association research, based on information provided by practitioners, indicates that internal ombudsman offices may be quite cost-effective (Rowe and Perneski, 1990). Preliminary estimates

indicate cost-effectiveness ratios in corporate workplaces between 1:2 and 1:6. The cost savings estimated by practitioners include such items as providing alternatives to some litigation (for example wrongful termination suits); averting or dealing promptly with some harassment, fraud, theft, and other unethical behavior; preventing or dealing early with some threats, safety problems, sabotage, and potential violence; retention of some highly valued professionals who would otherwise leave.

Here are some hypotheses as to why ombuds offices may be effective:

- Because the existence of an ombuds office legitimates the idea that it is acceptable to raise questions (even small questions) and because there is almost no cost[11] to contacting an ombudsman, people with questions and problems often come in early, when most disputes are more easily resolved. Ombuds offices are especially useful with respect to whistleblowing. In the course of informal problem solving, ombudspeople almost never identify a visitor or caller without permission. They are, therefore, often in a position to act as a buffer for a legitimate whistleblower, and can talk with that person to ask details useful to management in addressing the complaint. Ombuds offices thus can be effective in surfacing unethical behavior (and in reassuring callers whose concerns turn out not to be serious).
- In addition, if it is appropriate to support disputants to choose an interest-based or low-cost rights or power-based approach, the ombuds practitioner will usually try to do so.
- Many suggestions that come to an ombudsperson directly make or save money for the employer (in addition to the increases in productivity that one hopes take place when disputes are resolved).
- Ombudsmen often fill in for parts of a dispute resolution system that are not functioning well, as fail-safe, back-up, check and balance. Moreover, these practitioners can focus precisely on the dispute resolution element that is failing. In particular, the ombuds practitioner can sometimes alleviate the damage done when someone feels humiliated, enraged or afraid.[12] The practitioner also may be in a position to provide a crucial bit of information, or infusion of problem-solving skills, to help dissolve a dispute. In addition, the ombudsman sometimes fills in where an established complaint procedure may not be helpful, as with union worker-to-worker problems.
- Ombudsman offices can help disputants choose an option which is "right" for them. My research (Rowe, 1990a and forthcoming) indicates that people with difficult problems often have very firmly held—and disparate—ideas about dispute resolution. Thus the chance to choose or custom-tailor an option is likely to be appealing to a complainant. Moreover, an ombudsman may be able to help fashion unusual remedies (even if sometimes quite small remedies) which exactly fit unusual circumstances and therefore are relatively pleasing to one or more party. In my experience, finding the "right" option for a complainant makes it less likely that a complainant will reject a solution in a costly fashion.
- Ombuds offices are widely sought out.[13] As is the case with most

forms of mediation, many people who see an ombudsman appear to be reasonably satisfied by the chance to get a problem examined or resolved, and to learn new skills. These former "customers" send in new people. There is then a widening pool of people who practice and teach others their new negotiations and problem-solving skills. It is also quite common for people to seek consultation on problems (before a dispute has taken place), after working with an ombudsman.

- Ombudsmen provide low-cost data collection, by tracking their caseloads and running surveys. A particularly important data collection function is that of identifying and reporting problems that are new to the organization, for which appropriate policies and procedures do not yet exist.[14] Another is the ability to collect and put together little pieces of data from many sources, or complaints from disparate areas, about the same person or service.
- Ombudsmen help to deal with peculiar, delicate questions, with people whom others find to be difficult, and with cross-cultural issues.[15] Practitioners often become reasonably adept at understanding and surfacing hidden agendas, especially from "chronic complainers." Ombuds offices are one useful path for making appropriate referrals—for example, to get managers and employees to employee assistance or medical help, for people who have not yet quite agreed to go to seek support and help.
- Ombuds practitioners work in a low-key, usually evolutionary fashion, for steady systems change to meet changing needs. (In fact, a few ombudsmen deal solely with systems problems.) This element of legitimating disputes and problem prevention is hard to evaluate in economic terms, but is thought by ombudsmen themselves to be an important element of effectiveness.

Conclusion

In the terms of Ury, Brett, and Goldberg, ombuds practitioners can help to provide "motivation, resources, and skills" for continuous problem solving in times of change, within a dispute resolution system. Ombuds offices help to foster interest-based solutions. They can help disputants to loop backward or loop forward, where such actions are appropriate. In the language of Total Quality Management, ombudsmanry is focused on the needs of the "customers" (that is, the persons involved in dispute), in particular by providing respect and by providing options. In human terms, ombuds offices appear to be widely used where they have appeared, thus indicating some effectiveness of response to the needs of people in conflict.

NOTES

1. There are many kinds of dispute resolution practitioners in North America who are called ombudsmen. These include the "pure" ombudsmen who are appointed and paid outside the arena over which they have oversight. In the classical case, they are appointed by a legislative body to have oversight over actions of the executive branch of government. There are also many other kinds of "client" ombudsmen, for example, those who serve newspaper readers, hospital and nursing home patients, students in educational settings, defense department vendors, bank and insurance company clients. There are, in addition, some thousands of "internal" ombudsmen, who serve employees and managers within companies, universities, government agencies, foundations, etc. Ziegenfuss has written two books on ombudsmen, cast in somewhat different terms but along the same lines as this article (Ziegenfuss, 1985 and 1988). See also Anderson and Stockton, 1990 for the Administrative Conference report recommending ombuds offices in the Federal Government.

2. There is no commonly accepted version of the word ombudsman. Many people say ombudsperson, ombud, ombuds practitioner, etc.

3. There is probably no rule about internal ombudspeople that is true for all such practitioners and this statement is an example of a rule with exceptions. For instance, a few internal ombudspeople are empowered to undertake occasional formal investigations and/or make occasional management decisions if problem solving fails.

4. There are two common meanings for the concept of "due process." The first is a set of elements of proper process in formal investigation and adjudication, such as rights to timeliness of procedures, to know and be able to respond to the charges made against oneself, to representation by counsel. The other common meaning is simply "the process that is due under the circumstances." Many ombudsmen will work, if asked, to see that people get the rights that are due them in formal internal grievance processes; however, it is the second meaning of due process that better characterizes ombuds practitioners.

5. This list of functions includes several important points made by Ury, Brett and Goldberg (1988). Among them is the importance of providing low-cost alternatives to strikes, court action, sabotage and the like. Ury et al. suggest alternatives most relevant to collective bargaining situations. I would add to their list, for nonunion adjudication, peer review and other similar mechanisms. Three, fine, recent books that discuss such internal grievance procedures are: Ewing, 1989; McCabe, 1988; and Westin and Feliu, 1988.

6. Ury, Brett and Goldberg (1988) have given the name *loopback* to the process whereby a dispute can be taken from a rights-based, adjudicative, "distributive" process, to an interests-based, problem-solving, more "integrative" process. My own research indicates that a small proportion of the population is only comfortable with and satisfied by adjudicative processes, especially for problems like harassment and discrimination (see Rowe 1990a). I therefore argue that *loopsforward* are also an important characteristic of an effective internal dispute resolution system, and that people with problems should not necessarily be required to go through all the steps of a grievance procedure for every type of problem.

7. My research over the past 19 years indicates that an employer must choose between: (1) guaranteeing near-absolute confidentiality [and the choice of the complainant about whether and how to pursue a complaint], which will produce a relatively high reporting rate of complaints and concerns; and (2) no effective confidentiality [and therefore no reliable choice for complainants about what will happen], and a much lower rate of reports. This is especially true for very costly and difficult problems such as safety, ethics, harassment, misconduct, etc. (Rowe, 1990a). Whether an ombudsman can be subpoenaed and *forced* to testify, and thus break confidentiality, is a topic now being tested in various ways, but there is an emerging professional consensus that ombuds practitioners must not break confidentiality. A few courts have upheld this principle for ombudsmen as they have for other kinds of mediators (Rowe, Simon and Bensinger, 1990), and the Administrative Dispute Resolution Act of 1990 also provides strong protection for neutrals in federal agencies.

8. Please see Rowe, 1990b for a discussion on helping people help themselves as an ADR technique.

9. As an example, if a person who complains of racial or sexual harassment does not want to come forward personally but asks that the alleged offender be trained and/or warned about harassment, an ombudsperson may go to a department head or personnel manager to arrange for generic responses to the complaint (for example, a training program in the department and a letter from the head to every member of the department).

10. BATNA an acronym for Best Alternative to a Negotiated Agreement, is a concept illuminated by Fisher and Ury (1981).

11. As mentioned earlier, most ombudsmen now refuse to testify in formal grievance processes, thus underscoring the near-absolute confidentiality of the office.

12. In addition to alleviating some great emotional anguish, in my opinion this is the function of an ombudsman that is most likely to reduce the costs of lawsuits, sabotage, public attacks, etc.

13. Many full-time ombudsmen have contact with hundreds or even thousands of people a year.

14. Examples from the past include dealing with fear of AIDS; the need for policies on harassment, fraud and misconduct, dependent care; unusual safety problems. Current examples include dealing with threats, genetic testing, intra-minority group harassment, discrimination on the basis of sexual orientation.

15. Examples of delicate issues include the disputes of family members in family-owned businesses, people who smell bad, or behave bizarrely. Common examples of difficult people are those who scare others through temper tirades. Cross-cultural misunderstandings and tensions are becoming much more common in recent years. An ombudsman of the same background as the complainant may be helpful. Moreover, employers are increasingly providing the option of two or more designated neutrals who can work together with sometimes especially helpful where each neutral is similar in gender and ethnic background to each disputant.

REFERENCES

Anderson, D. R. and **Stockton, D. M.** (1990). *Ombudsmen in federal agencies: The theory and the practice.* Washington: Administrative Conference of the United States.

Ewing, D. (1989). *Justice on the job.* Boston: Harvard Business School Press.

Fisher, R. and **Ury, W. L.** (1981). *Getting to YES.* Boston: Houghton Mifflin.

McCabe, D. (1988). *Corporate non-union complaint procedures and systems.* New York: Praeger.

Rowe, M. P. (1990a). "People who feel harassed need a complaint system with both formal and informal options." *Negotiation Journal* 6 (2): 161-172.

———. (1990b). "Helping people help themselves: An ADR option for interpersonal conflict." *Negotiation Journal* 6 (3): 239-248.

———. (forthcoming). "Options and choice for conflict resolution in the workplace." In *Changing tactics*, edited by Lavinia Hall. Washington: National Institute for Dispute Resolution.

Rowe, M. P. and **Perneski, T.** (1990). "Cost-effectiveness of ombudsman offices." *Corporate Ombudsman Newsletter*, May.

Rowe, M. P. , Simon, M. and **Bensinger, A.** (1990). "Ombudsman dilemmas: Confidentiality, neutrality, testifying, record-keeping." In *Proceedings*, Annual Conference of the Society of Professionals in Dispute Resolution, edited by C. Cutrona. Washington: SPIDR.

Ury, W. L., Brett, J. M. and **Goldberg, S. B.** (1988). *Getting disputes resolved: Designing systems to cut the costs of conflict.* San Francisco: Jossey-Bass.

Westin, A. F. and **Feliu, A. G.** (1988). *Resolving employment disputes without litigation.* New York: BNA Books.

Ziegenfuss, J. T. (1985). *Patient/client/employee complaint programs: An organizational systems model.* Springfield, Ill.: Thomas.

———. (1988). *Organizational troubleshooters: Resolving problems with customers and employees.* San Francisco: Jossey-Bass.