



NIH Office of the  
Ombudsman  
The Center for  
Cooperative Resolution

**Office of the Ombudsman**

**Annual Report 1999**

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**OMBUDSMAN**

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# OMBUDSMAN

NIH Office of the Ombudsman The Center for Cooperative Resolution Building 31, Room1B39 31 Center Drive, MSC 2087 Bethesda, Maryland 20892-2087

## **To members of the NIH Community:**

On behalf of the entire staff, I am pleased to submit for your review the first annual report for the NIH Office of the Ombudsman/Center for Cooperative Resolution. Our aim is to give members of the NIH community an overview of the scope of our activities and accomplishments during the 1999 calendar year. In future reports we hope to provide a more detailed description of the variety of issues brought to our attention and the types of resolution achieved.

I would also like to express my gratitude to all employees for your cooperation with our office over the course of our first year of operation. As you know, an ombudsman can be successful only with the support and collaboration of other offices and people. Our successes really belong to the entire NIH community. You have embraced the sensibility of conflict resolution in a way that generates optimism and confidence for the future.

I welcome your comments regarding any aspects of the report and I look forward to continuing our work together.

Respectfully submitted,

Howard Gadlin, Ph.D.

The Office of the Ombudsman, Center for Cooperative Resolution (CCR) develops, coordinates and provides a full range of dispute resolution programs and services for all employees of the National Institutes of Health (NIH). Staff ombudsmen provide conflict prevention and intervention, conflict management including education, and case-specific follow up. CCR staff address individual as well as multiparty, group and organizational conflicts and concerns. They address every sort of issue that arises in the NIH environment – scientific disputes, employee-supervisor conflicts, racial and ethnic tensions, and difficulties between peers by employing a wide array of Alternative Dispute Resolution (ADR) techniques such as mediation, facilitation, shuttle diplomacy, coaching, consulting, peer panel and partnering agreements. In addition, CCR serves as the on-site ADR provider to the NIH Equal Employment Opportunity (EEO) community.

The imperfect is our paradise.  
Note that, in this bitterness, delight  
Since the imperfect is so hot in us,  
Lies in flawed words and stubborn sounds.

Excerpt from Wallace Stevens

The Office of the Ombudsman, Center for Conflict Resolution (CCR) was established in April 1997 as a pilot program supported by five institutes representing a cross-section of the NIH population including: the Office of the Director; the National Institute of Allergy and Infectious Diseases; the National Heart, Lung, and Blood Institute; the National Institute on Drug Abuse; and the National Institute of Environmental Health Sciences. The goals of the pilot program were to:

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- 1. Further scientific research through efficient, effective and innovative conflict management and resolution methods.*
  - 2. Provide an alternative to traditional grievance and Equal Employment Opportunity (EEO) complaint processes.*
  - 3. Improve the work environment, preserve workplace relationships and enhance the quality of work life by increasing participant satisfaction with dispute resolution outcomes.*
  - 4. Reduce the costs associated with and time committed to traditional dispute processing.*
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At the end of the pilot period, in 1998, an evaluation team determined that the CCR was effective in reducing disputes and offered a valued means to enhance conflict management at NIH. In response to a greater than expected demand for services, NIH expanded the staffing of the CCR and extended its services to the entire NIH community at the beginning of 1999.

The Office of the Ombudsman is also NIH's Center for Cooperative Resolution and is charged with being the focal point for conflict management. With that charge comes significant program development and administration responsibilities in the areas of conflict management and dispute systems design. The Office's core functional areas are (1) dispute resolution, (2) conflict management, and (3) dispute systems design. In 1999, our emphasis was on handling new cases, education and marketing, staffing, developing the infrastructure, and coordinating with other complaint-handling offices.

As a service organization, our activity level is driven by consumer demand. A significant majority of CCR staff time (approximately 65 percent) is spent on dispute resolution, or case-related activities. Approximately 20 percent and 15 percent of staff time is spent on conflict management and dispute systems design activities respectively.

To have significant, long-term impact on improving conflict management at NIH, CCR staff will devote greater time to these two latter activities. Conflict management efforts can prevent disputes from developing or becoming counterproductive by improving how individuals handle interpersonal conflict. Dispute systems design efforts can increase the efficiency and effectiveness of formal dispute resolution systems.

## ISSUES, CONSUMERS AND OUTCOMES

The Office of the Ombudsman maintains records of complaints handled, processes used and types of resolutions achieved in order to track the work of our office. Because of our commitment to confidentiality the data are strictly demographic, with no information that would identify individuals who

have used the office. The office also maintains data on the time frames involved in resolving cases – number of hours per case, number of days from first contact to closure. The database, developed with the assistance of Lisa Bingham, Director of the Indiana Conflict Institute, a nationally recognized expert in evaluations of dispute resolution programs, is in the early stages of development and will continue to be refined in 2000.

## Types of Issues

In 1999, the Office of the Ombudsman handled a total of 328 cases. Many of the cases involved multiple issues. Figure 1 shows the distribution among issues raised by people who visited the Ombudsman. The types of concerns most frequently mentioned centered on work environment, management, and personnel matters. While there is a certain arbitrary quality to the categories we use, they allow us to report the types of issues with which we have been working. While the following definitions loosely define those issues, we plan to craft a more refined classification schema in the next year.

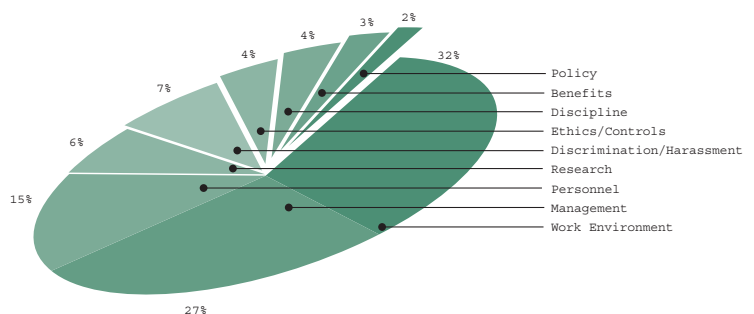


Figure 1. Types of Issues/Nature of the Cases

**Policy** involves issues concerning NIH regulations and procedures. **Benefits** includes issues such as retirement, leave use, training and worker's compensation. **Discipline** issues include conduct-related matters. **Ethics/Controls** includes conflicts of interest, improper practices and misconduct. **Discrimination/Harassment** includes sexual harassment and discrimination on the basis of race, gender, sexual orientation, disability, religion, national origin, age. **Research** includes issues specific to scientific collaboration such as authorship, intellectual property, scientific integrity, allocation of resources, and mentoring. **Personnel** refers to human resource management issues such as compensation, promotion, career development, job classification, non-selection, and performance. **Management** includes issues specific to supervisory practices such as mentoring, or general issues such as relationship with supervisor and leadership. **Work Environment** refers to issues such as relationships with coworkers and quality of work life.

**Processes Utilized by the Ombudsman**

The processes used by the NIH Ombudsman in 1999 are presented as percentages in Figure 2. Data reported below reflects the primary mode of intervention in individual cases. It is common for multiple processes to be used on a particular case. For example, an employee might first meet with an Ombudsman to discuss an issue. After discussion, the employee might choose to meet with the other party involved in the issue, facilitated by the Ombudsman. After such a meeting, the Ombudsman may meet with the parties separately to assist them individually, including referring them to other resources for more specialized assistance.

The Ombudsman used coaching as the primary mode of intervention in more than half of the cases. Coaching involves working with individuals to develop options and devise strategies to address their issues directly. Facilitation, a less formal intervention than mediation, is used in almost one-fourth of the cases. Mediation was used in 12 percent of cases. It should be noted, however, that all of the work done in the Office of the Ombudsman is conducted with a mediator’s sensibility – exploring underlying interests, attempting to take into account all sides of a conflict and seeking solutions that address the needs of all parties to a conflict.

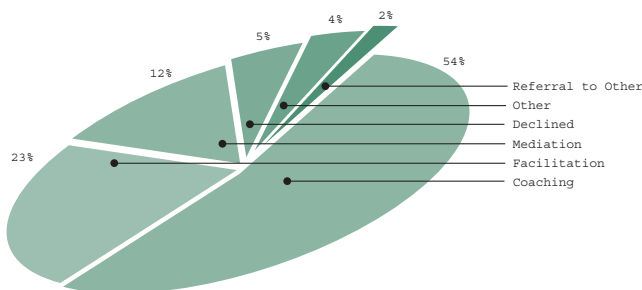


Figure 2. Primary Mode of Intervention

**Elapsed Time to Close a Case**

As indicated in Figure 3, approximately 40 percent of all cases are closed within two weeks, 60 percent of cases were closed within 6 weeks and over 90 percent of all cases were closed in 6 months. This is a very favorable rate of closure relative to formal grievance and complaint processes. An analysis of the cases that are still open after 6 weeks indicates that they fall into two broad categories: (1) multi-party disputes which invariably involve complex logistics; and (2) cases involving either numerous complex issues or contentious interpersonal relationships or both.

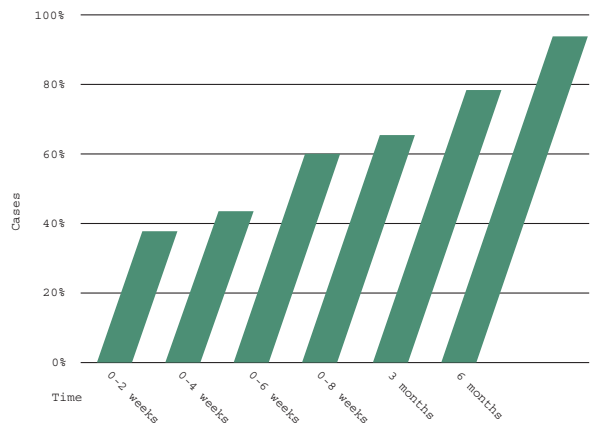


Figure 3. Elapsed Time to Close a Case

**Usage of the Office**

Most people or “consumers” come to the Office of the Ombudsman as either complainants or respondents. A complainant is a person who brings issues and concerns to the office, while a respondent is either a person with whom the complainant has an issue or someone in the management structure who can help facilitate a resolution. Of the 777 consumers in 1999, 357 (46 percent) were complainants and 420 (54 percent) were respondents. (Note that the total number of consumers exceeds the number of cases per year

because there are, often, multiple complainants or respondents in one case.) To determine the extent to which people who hold supervisory responsibilities used the office, we also collected data on whether or not consumers had supervisory or non-supervisory roles in their jobs. Of the complainants, 29 percent were supervisors and 71 percent were non-supervisors. Of the respondents, 78 percent served in a supervisory capacity, and 2 percent were non-supervisors.

Figure 4 illustrates consumers in relation to the three main business functions of the NIH – Intramural, Extramural, and IC Administration, as well as External functions whose work does not directly support NIH (e.g., other Federal Agencies, universities or private industry who collaborate on NIH projects). The NIH Intramural Program had the highest usage, followed by Administrative and Extramural Programs. While one might assume that higher usage indicates a larger number of problems or conflicts, other factors can affect use of the Ombudsman’s Office. Many employees have told us that they have been warned not to bring issues outside their functional unit and certainly not outside their Institute. When this is the case, it is hard to estimate how many more cases might come to our attention if there were no such admonitions.

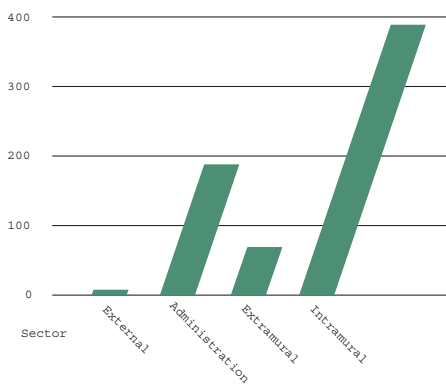


Figure 4. Ombudsman Usage by Sector

### Complainant/Response Disputes

Figure 5 illustrates the relationship of the parties who contacted the office. Note the high incidence of complainants that contacted the office about an issue that directly involved their supervisor.

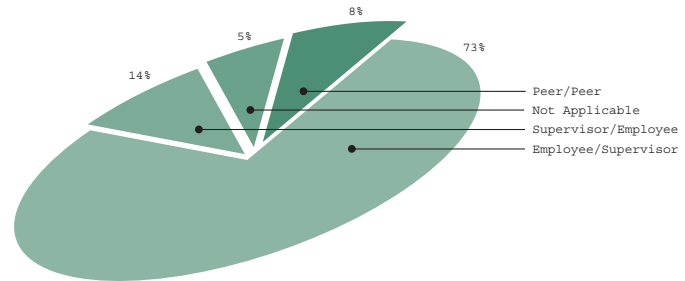


Figure 5. Work Relationship Between Complainants and Respondents

### 1999 Case Outcomes

The NIH Office of the Ombudsman partially and fully resolved 65 percent of the cases it handled in 1999. These figures indicate substantial success for the program when one considers that 14 percent of the cases declined intervention and another 12 percent were referred to formal processes or to other avenues (see Figure 6). This resolution rate is roughly comparable to the 70 percent rate reported by the Air Force Alternative Dispute Resolution Program, an OPM award winning initiative.

Even with these qualifications, the resolution rates do not adequately capture the perceived success of the Office of the Ombudsman, especially given the fact that the office works frequently with complex, multi-party scientific disputes. In the statistics, multi-party cases count as single cases in the same way that a single complainant does and sometimes these cases are assigned more than one outcome category (e.g., fully resolved and referral) because the complexity of issues results in the implementation and

## Program Profile – 1999

monitoring of multiple, long-term strategies. Such complex multi-party disputes are time consuming, often involving more than 60 hours of staff time. It is important to note that the consequences of successful resolution in these disputes go beyond the satisfaction of the concerns and interests of the parties to the dispute. In many cases it is the life of a scientific collaboration or the continuation of an important research project itself that is at stake. As word has spread about these successful interventions more and more researchers and upper level administrators have turned to the Office of the Ombudsman for assistance in working with such disputes. Equally important is the fact that disputes of this sort are not well suited to the traditional complaint or grievance mechanisms within NIH, nor are they the sorts of issues that can be addressed productively by appeal for adjudication to the administrative hierarchy of an Institute.

Outcome Category	Number of Outcomes	Percent of Outcomes
Resolution	Full — 149	65%
	Partial — 70	
No Resolution	15	4.5%
Referral	13	4%
<b>To Formal Process</b>	<b>27</b>	<b>8%</b>
<b>Declined to Have Intervention</b>	<b>47</b>	<b>14%</b>
<b>Other</b>	<b>15</b>	<b>4.5%</b>
<b>Total Outcomes</b> (328 Cases Represented)	<b>336</b>	<b>100%</b>

Figure 6. Case Outcomes for 1999

### SYSTEM-WIDE INTERVENTIONS

This past year the Ombudsman recognized the need to address the way disgruntled employees sometimes pursue complaints and con-

cerns outside the available formal channels. CCR staff observed that aggrieved individuals frequently refrain from participating in established processes and exhibit little faith in the effectiveness and efficiency of these processes. A distinct feature of NIH culture is that disgruntled people will often resort to gossip, unsubstantiated allegations, and indiscriminate complaining as a means of drawing attention to their concerns. Typically this occurs without first bringing issues through the chain of command, or through the formal or informal grievance or complaint channels. Complaints made outside these channels often cannot be addressed given lack of supporting details that allow for a thorough and fair assessment of their accuracy. Moreover, complaints made outside of official channels may lack procedural safeguards for those accused of wrongdoing, unfairness, or improper administration. At the same time, however, widespread resort to such unofficial approaches has a tremendous demoralizing effect on managers and employees alike and fails to facilitate the improvement of the official processes.

Recognizing the need to address these systemic concerns, the Ombudsman convened a group of senior executives to address these problems. The first outcome of these meetings was a resource compilation and synopsis of all NIH complaint mechanisms (entitled “Avenues Available to Resolve Employee Concerns at the National Institutes of Health,” and now available on the Office of the Ombudsman website), which is intended to better familiarize employees with all options for pursuing complaints. The second outcome was the creation and dissemination of a memorandum from the Acting Director, NIH, to all



NIH employees addressing “Respect in the Workplace.” A third outcome, reflecting employee’s concerns, was the recognition that the fairness and credibility of the formal grievance process could be significantly enhanced. This recognition prompted the Ombudsman to develop a peer resolution panel process to handle employee grievances in a more effective manner (see section IV. ).

Finally, this past year, the Ombudsman staff developed several multiple organization-wide projects at Institute/Center, department, division, committee/council, branch and lab/workgroup levels. In these instances, the Ombudsman served as a consultant, working with the organization to identify and work toward its goals. The focus of these projects included addressing group functioning to improve effectiveness, managing change, improving work processes, and engaging in multiparty negotiations to develop solutions to complex organizational matters.

### **PLANS FOR FUTURE EVALUATION**

It is important that the office develop a means to evaluate its effectiveness. However, finding meaningful evaluation tools in the profession of dispute resolution is not easy. During the pilot project there were plans for a very detailed evaluation that would have measured both user satisfaction and the impact of the processes used on the consumers. However, the questionnaires were so detailed and time consuming to complete that many people resisted filling them out. Consequently, the questionnaire was discontinued.

In addition it is difficult to evaluate the Ombudsman function by comparing it to other modes of conflict resolution, especially the formal grievance mechanisms for which the Ombudsman’s Office offers an alternative. We are wary of such comparisons, particularly given the considerable amount of self-selection among the use of dispute resolution processes. The population that uses the Ombudsman Office and the population that uses EEO or Human Resources mechanisms, for instance, cannot be assumed to be, and indeed may not be, comparable. Further, “customer” satisfaction rates are rarely meaningful since consumers bring different expectations, and establish different sorts of working relationships with grievance or complaint officials than they do with Ombudsmen. Nor is elapsed time to close a case a fair comparison as formal mechanisms are structured around specific time frames, whereas most dispute resolution processes move at a pace limited only by the energy and availability of the participants and the ombudsmen.

Obviously, the Office of the Ombudsman must develop a useful measure of user satisfaction and identify methods that provide us feedback. The Office of the Ombudsman has been working with one expert in this area, Professor Kenneth Kressel of Rutgers University, to develop measures of ombudsman effectiveness. This work is part of a larger effort with Professor Kressel to develop a model for reflective practice, an approach whereby an ombudsman can carefully examine the impact and effectiveness of the techniques he or she employs.

# IV.

## Representative Scenarios

### **A SCIENTIFIC DIRECTOR CONTACTED THE OFFICE OF THE OMBUDSMAN TO INQUIRE IF WE COULD HELP WITH A DISPUTE THAT HAD DEVELOPED BETWEEN 2 SCIENTISTS,**

Dr. L. Wire and Dr. M. Steady. Dr. Wire was considering filing an EEO complaint against Dr. Steady who had recently been named branch chief and who was already making changes in the structure of the branch.

Many staff members of the branch, at all levels, were concerned about the security of their positions and the continuity of their work. Several people blamed Dr. Steady for the changes and directly and indirectly challenged the direction in which she attempted to move the branch. Dr. Wire, whose role in the branch had been diminished since the arrival of Dr. Steady, was especially concerned about Dr. Steady's leadership direction and had challenged her in several meetings. Although some people tried to stay neutral, many were lining up as supporters of either Dr. Steady or Dr. Wire. The situation was not helped by the fact that Dr. Steady was a white woman and Dr. Wire was an African-American man. Although these differences had not surfaced under the previous branch chief, each thought that their racial identity played a role in how the other treated them.

Multi-faceted conflicts of this sort are a special challenge. While it appears that everything is related to everything else, it is important to find a way to work with separate components of the conflict while keeping the total picture in mind. In this case, it

would have been a mistake to allow the systemic issues to be hidden by the more obvious and more dramatic personal conflict between the two scientists or to conceptualize the problems as racial or gender ones. While there were real issues dividing Dr. Steady and Dr. Wire that needed to be addressed, it was important to recognize that their conflict reflected several concerns that were affecting all people in the branch.

Our intervention proceeded at several levels. We engaged Dr. Steady and Dr. Wire in a series of discussions with us and facilitated discussions with each other. In the course of these meetings we learned that some of the differences resulted from failures in the ways of communicating, or not communicating, with each other. Often they relied on third party reports about what one or the other of them had said. In addition, we learned that each of them was operating with unverified assumptions about what the other desired regarding the direction of the branch. These problems were exacerbated by the fact they did not have a regularly scheduled time for meeting to openly confer about important and routine matters within the branch. Finally, we spent some time talking about the issues of gender and race, airing for each of them the ways in which they felt the other had been insensitive. Interestingly, the more specifically we spoke about the scientific and managerial issues within the branch, the less salient issues of race and gender seemed to both of them.



During the time period that we were conducting our sessions with Drs. Steady and Wire, we met with each of the key groups within the branch, attempting to discern the concerns that were specific to each group.

Once the major tensions between Dr. Steady and Dr. Wire were addressed we worked with them to put forth a joint statement to be presented to the entire branch. In this statement they developed a shared analysis of the organizational problems of the branch. They also recognized how important it was to present a united position to the entire branch and to make clear that they were committed to working together to address all of the issues of the branch. Toward that end we developed plans for a full day retreat for the branch, which we facilitated.

Members of the branch reviewed and revised its mission and developed a set of understandings regarding how decisions would be made, how information would be shared, and how communications would be transacted. In addition, the group agreed upon steps to be taken to address conflicts that might arise in the future. It would be a mistake to give the impression that all conflicts were resolved. However, it is no longer a seriously dysfunctional group – differences do not automatically explode into conflicts nor are they understood in personal terms. People are talking with each other in more productive ways and they no longer feel that everything is about to fall apart.

**SONIA HAS WORKED FOR NIH FOR ALMOST 20 YEARS. OVER THE YEARS, SHE NOTICED THAT FELLOW EMPLOYEES HIRED AFTER HER RECEIVED TRAINING AND PROMOTIONS WHILE SHE STAYED IN THE SAME JOB AT THE SAME**

**LEVEL.** Sonia suspected that her lack of opportunity was because of her race and ethnicity. She spoke with the EEO officer of her Institute to discuss her concerns. The EEO officer approached Sonia's supervisor with Sonia's concerns. Afterwards, Sonia believed her supervisor had become antagonistic toward her. Sonia approached the Ombudsman to discuss her situation.

She asked the Ombudsman to get her a reassignment. The Ombudsman reminded her of how he works, explaining that he does not have the authority to simply make reassignments but could assist her in pursuing that goal. After reviewing a range of options to address her concerns, including her discomfort in approaching her supervisor, the Ombudsman described several resources that could be of assistance to Sonia. These included the Work and Family Life Center for assistance in career counseling, and the Employee Assistance Program for assistance with stress management.

Sonia did not want the Ombudsman to talk to her supervisor about her career mobility issues. However, since there had been discussions about a possible reorganization, Sonia felt comfortable allowing the Ombudsman to approach the personnel officer of her Institute to discuss the potential place-

## Representative Scenarios

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ment of employees in her work unit. The Ombudsman spoke with the personnel officer, inquiring about the pending reorganization. The Ombudsman explained that an employee who did not wish to be identified was concerned about his possible placement after the reorganization. The personnel officer indicated that there were many poor performers in that work unit and that the management was having difficulty identifying potential assignments for some employees. Without prompting, Sonia was amongst those the personnel officer identified as poor performers.

The Ombudsman asked the personnel officer whether those poor performers had a history of unsatisfactory performance appraisals. After checking, the personnel officer found that many of those considered poor performers had received satisfactory performance appraisals and cash awards. The personnel officer indicated a frustration that managers (including those of that work unit) routinely avoid stating anything negative on performance appraisals though they are aware of ongoing performance deficiencies. The Ombudsman suggested that the failure to tell employees about performance deficiencies is often accompanied by a reluctance [on management's part] to promote those same employees. However, because the employees are not informed of their performance weaknesses, many are

left to assume that the only possible reason they have not been promoted is because of discrimination.

The Ombudsman and the personnel officer discussed the importance of encouraging managers to provide employees with feedback on an ongoing basis and to provide realistic performance reviews. The personnel officer was also in the position to advise management on how to proceed with placing employees during a reorganization. They discussed conducting an assessment of employees' abilities and providing them with the results so they could begin to receive some feedback.

With the employee, the Ombudsman discussed the possibility of an objective assessment of her job skills and abilities to help her gain clarity about her strengths and weaknesses, and begin to think about the kinds of jobs she is interested in pursuing either within the organization or elsewhere. After the assessment and considering the alternative placement offer, the employee decided to accept the job assignment she was offered by management as part of the reorganization. She hoped that this would be a fresh start.

The Office of the Ombudsman is also the NIH Center for Cooperative Resolution. As such, the Office serves as the focal point for conflict management at the NIH by developing and coordinating conflict management initiatives.

### DISPUTE SYSTEMS DESIGN

The staff of the Office of the Ombudsman have responded to the diverse needs of the NIH population by customizing dispute resolution mechanisms. Some examples include: the design of a peer resolution panel process, the development of partnering agreements among collaborating scientists, and co-mediating with colleagues from formal dispute resolution systems within the NIH in areas where subject matter expertise is critical.

### PEER RESOLUTION PANEL

Peer panels have been used in the past at NIH to resolve disputes involving issues of scientific authorship, intellectual property and other scientific community standards. The Office of the Ombudsman staff have modified the process so that it is applicable to other disputes as well, incorporating the new option into the existing personnel grievance process with the intention of increasing credibility and effectiveness of the grievance process among employees.

This innovative dispute resolution process has been developed for roll-out in Year 2000. The panels, consisting of supervisors and peers, investigate employee complaints against some management decisions that are eligible to be brought before them. These panels can evaluate whether or not management followed agency policy in taking an action, and can render a decision in favor of either

management's application of policy or the employee's assertion that management did not follow policy.

### PARTNERING AGREEMENTS

The Ombudsman's office frequently works with disputes among scientists. Sometimes these are about authorship, but many other issues that can cause conflict can occur when people work closely together. When people share a passionate interest in an area that is also important for each person's career and reputation the potential for conflict may well increase. Sharing intellectual space is in many ways as complex as sharing physical space. In our experience many of the conflicts that arise between scientists could have been avoided had the parties to the conflict begun their collaboration with an explicit agreement about their expectations of each other and about how they would handle the major transactions of the collaboration. For this reason we have begun a program for partnering.

Partnering, essentially a prenuptial agreement for scientists, is a quasi-formal process used to develop and sustain collaborations. Partnering allows new collaborators to spell out carefully what they expect from each other, the details of how they will work together, agreement about authorship and crediting for the collaboration, and a mechanism for addressing conflicts should they arise in the future. The Office of the Ombudsman is developing formal partnering agreements for collaborators wanting to work together more effectively. We expect to finalize these agreements in the year 2000.

## Conflict Management Initiatives

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Another area in which partnering agreements could be particularly important is mentoring relationships. We hear many stories of mentoring relationships that are not working out as one or both of the parties had hoped and expected. Often postdoctoral trainees and students are reluctant to bring to their mentor's attention any problems in the working relationship for fear that things will become even worse, or result in limited career opportunities. We are working on versions of partnering agreements specifically tailored to the unique dynamics of mentoring relationships.

### EXECUTIVE SEMINAR SERIES

An executive seminar series was developed and presented to Institute Directors, Scientific Directors, and senior executives on a variety of conflict resolution topics. Experts were invited to present fresh ideas for discussion on the various facets of conflict resolution that face top-level managers.

### SEMINAR THEMES:

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#### Multi-Party Conflict, Power and Group Dynamics

Melanie Greenberg teaches at Georgetown University Law Center and has also taught at Stanford Law School.

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#### Psychological, Institutional, and Strategic Barriers to Conflict Resolution

Carrie Menkel-Meadow is Professor of Law at Georgetown University Law Center.

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#### Dealing with Difficult People and Difficult Issues

Howard Gadlin is the NIH Ombudsman and Director of the Center for Cooperative Resolution. Dr. Gadlin has been an Ombudsman for nearly 20 years, previously at the University of California at Los Angeles.

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#### Conflict Prevention and Systems Approaches

Mary Rowe is Ombudsman at the Massachusetts Institute of Technology and Adjunct Professor at the Sloan School of Management where she teaches Negotiation and Conflict Management.

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#### Consensus Building: Forging Agreement Amidst Chaos

Lawrence E. Susskind is Ford Professor of Urban and Environmental Planning at MIT, President of the consensus Building Institute, and one of America's most experienced public dispute mediators.

### SATELLITE OFFICES

The Office of the Ombudsman has established a satellite office at Executive Plaza in order to facilitate access to the Office. The satellite office will be operational in the Fall/Winter of 2000. In addition, staff members of the office rotate visits to the North Carolina location of the National Institute of Environmental Health Sciences in order to respond to the needs of the NIH population outside the Bethesda, MD campus.

### INTERNAL COLLABORATION

Serving as the focal point for conflict management at NIH, the Office of the Ombudsman plays an active liaison role within NIH.

The Office's effectiveness is predicated on its ability to collaborate with colleagues at all levels within NIH. Solid collaborative relationships are essential in order to negotiate and coordinate sensitive resolutions to complex cases. Informal collaborations between EEO, Human Resources, the scientific community, and other parties effectively sustain the operation of the office, allow for sharing of ideas, generating innovative solutions to disputes, and advance the credibility of the office.

The Office of the Ombudsman is also actively involved in providing consultation to the newly created CIVIL organization at NIH, an entity designed to assist managers and employees who may face a potentially violent situation in the workplace.

### EXTERNAL COLLABORATION

Staff members of the office collaborate with colleagues from Ombudsman's offices around the country and are active members of The Ombudsman Association. They attend professional meetings and keep abreast of current developments in ADR law and practice that impact the profession.

This year the office established a collaborative relationship with the Institute for Conflict Analysis and Resolution at George Mason University. Three advanced graduate students were placed in the office for their practicum work. The office staff mentored their mediation and professional skill building as they assisted in case intervention and participated in weekly case review meetings. The students helped develop a case review model to be used by the office ombudsmen using materials and research drawn from their graduate experience. The office expects to continue this program in the foreseeable future.

### TRAINING AND PRESENTATIONS

The Ombudsman has given approximately 50 presentations to different groups within the NIH. Some were introductory presentations to groups such as IC Directors, Scientific Directors, Scientific Ethics Committee, Executive Officers, EEO Officers and Human Resource groups. Other presentations included those within specific Institutes/Centers, such as planning retreats for principal investigators. Nationally, the Director has given over a dozen presentations at ADR conferences, other federal agencies and universities.

## Outreach Efforts

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The Ombudsman is the current chair of the Coalition of Federal Ombudsmen and is the immediate past president of The Ombudsman Association (TOA). He currently serves as a member of the board and chair of TOA's strategic planning committee. In addition, he is a participant in the joint work of two American Bar Association committees (the Dispute Resolution and Administrative Law Sections), tasked with developing a report and ensuing recommendations on the standards of practice for ombudsmen nationwide. He also serves as a member of the steering committee (IADRWG – Interagency ADR Working Group) which provides guidance to the Department of Justice regarding government-wide implementation of ADR.



Conflict will always be a part of any large, complex organization. While it is not reasonable to aim to eliminate conflict, it is realistic to aspire to improve the way it is managed when it does occur. It is also reasonable to identify and modify those organizational practices and policies that needlessly evoke conflict. The Office of the Ombudsman is committed to meeting both aspirations.

Working with conflicts and grievances on a daily basis we begin to notice certain patterns and themes in the sorts of situations people bring to us. Most striking is how many of the problems we deal with could have been avoided, or at least contained, if they had been addressed earlier. There are, at the NIH, several factors that keep people from addressing issues of concern in ways that would keep small problems from escalating to large conflicts, complaints and grievances.

One factor is avoidance. Often managers are reluctant to address perceived inadequacies in employee performance or problems in conduct because they fear they will be challenged. The various mechanisms by which employees may pursue complaints or grievances are time-consuming and stressful for everyone involved, and managers often conclude “it is just not worth it.” Ironically this often makes matters worse, because when management finally does decide to do something it often comes as a surprise to the employee since it has not been brought to his or her attention previously. It is important that employees and supervisors have regular dialogue around performance issues and that these discussions include constructive criticism.

Supervisors need to be able to identify possibilities for improvement and apply problem solving techniques before feedback is associated with formal performance actions.

Predictably certain workplace environments generate particular sorts of conflicts. For example, authorship disputes are fairly common in scientific collaborations. Partnership agreements for scientific collaborations is an approach intended to reduce the incidence of such conflicts. We believe this approach can be effective both for multiparty collaborations and for mentoring relationships. Our goal within the next 5 years is to have partnering agreements be a commonplace process of new scientific collaborations and of mentoring arrangements. We intend as well to explore the applicability of partnering agreements to collaborations among administrative units.

Effective conflict management systems have strong formal grievance and complaint procedures as well as effective programs of informal resolution. Since formal procedures are more costly in terms of time, money and productivity factors, it is important that we aim to increase the relative number of cases handled in the informal systems. While introduction of a new conflict resolution program initially leads to an increase in the number of complaints coming forward, as the effectiveness of the Office of the Ombudsman becomes better known and employees elect to utilize ADR more often, we expect to see a reduction in the number of formal complaints and grievances.

## Strategic Direction

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Most significant will be the expanded application of ADR to EEO disputes. We envision a corps of highly trained collateral duty mediators, supervised by the Office of the Ombudsman, providing efficient and effective conflict resolution intervention for many of the cases that currently are handled in the formal EEO procedure.

The peer resolution panel project is intended to apply a more efficient and collaborative approach to the personnel grievance procedure which currently lacks credibility among employees. Panels composed of three employees and two supervisors will make binding decisions for those employees who select this option in the grievance procedure.

In addition, it makes sense to provide mechanisms to address issues for which there are not, and cannot be, policies and procedures. Workplaces generate many such situations – perceived unfairness or favoritism, clashes in preferred means to achieve agreed-upon goals, differences in personal communication style and so forth. Early intervention is the key to resolving these issues successfully. Currently many employees, when they are unable to find a mechanism for addressing such dissatisfactions, attempt to shape their dissatisfaction to fit the requirements of the formal systems. The Office of the Ombudsman is working to develop approaches that help reduce the incidence of such complaints and provide informal mechanisms for addressing them when they do occur. Increased publicity for the office will enhance the likelihood that employees utilize informal means through this office to address difficult workplace problems before turning to formal mechanisms.

Common to all initiatives of the Office of the Ombudsman is the intent to improve the work-

place climate at NIH. By promoting early intervention and collaborative problem solving between potential adversaries, we believe morale can be improved and faith in the fairness of NIH policies and procedures can be increased. We have three related goals to achieve this end: One, to increase the likelihood that employees raise issues in a responsible way; two, to develop systems that allow for the appropriate triaging of complaints; and three, to provide upward feedback to senior management about problem areas in policy and practice. While workplaces will always generate conflicts and disputes, their number and frequency can certainly be reduced.

1999 was our first year of full operation. It was an opportunity for us to learn about the culture of NIH and for NIH to learn about what an Ombudsman does. In the coming year we plan to increase our involvement in early intervention and conflict prevention. As we expand the services and reach of the Office of the Ombudsman we aspire to better serve the NIH community.

**The Office of the Ombudsman, Center  
for Cooperative Resolution, is committed to providing  
expert, neutral, confidential  
and independent assistance  
in resolving workplace  
disputes and improving  
conflict management at NIH.**

I was **angry**  
with my friend

I told my wrath,  
my wrath did  
**end.**

I was angry with my foe

I told it not,  
my wrath did  
**grow.**

by Helen Blake



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