

SPRING 2021

# **FROM THE FIELD: AN OMBUDS GUIDE**



LEARNINGS FROM THE DISPUTE SYSTEMS  
DESIGN CLINIC AT HARVARD LAW SCHOOL

# ABOUT HNMCP

Founded in 2006, the Harvard Negotiation & Mediation Clinical Program (“HNMCP”) focuses on cutting edge work in dispute systems design, negotiation, mediation, and facilitation. We train Harvard Law School students in the theory and practice of dispute systems design; serve clients by building their capacity for effective conflict management and successful negotiation; and serve the dispute resolution field by producing practice-informed scholarship, creating innovative teaching pedagogy, and inspiring and building a community of problem-solving law school graduates.

Students in our Dispute Systems Design Clinic provide clients with high-quality analysis and practical dispute management strategies in a wide range of contexts. Working closely with our faculty, our students engage in dispute systems evaluation; conflict analysis; facilitated dialogue; strategic negotiation advice; consensus building efforts; dispute systems design; stakeholder assessment; mediation; and curriculum development and delivery. Our clients are U.S.-based and international and include non-profit organizations, government agencies, community groups, and private companies.

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# ABOUT THIS GUIDE

This guide seeks to bring together learnings and insights from HNMCP's clinical projects on behalf of ombuds offices. The content of this guide reflects themes that have recurred in these projects, and includes prescriptive advice drawing on the recommendations our students have provided based on best practices from the field. In order to preserve confidentiality, the guide does not share the findings or recommendations of individual projects.

The guide is organized into four main categories of considerations for ombuds offices:

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Each section describes the challenges that can arise for ombuds offices within these areas, and offers design tips and suggestions for navigating these considerations.

We hope that this guide can be useful to multiple audiences, including experienced practitioners within ombuds offices, academics who study dispute resolution systems, and leaders within organizations who may seek to create or strengthen an ombuds office that serves its stakeholders.

# DEFINING AN OMBUDS

## KEY CONCEPTS

Our clients have been organizational ombuds, meaning that they are members of organizations or systems who have been appointed to assist stakeholders seeking to resolve their concerns and manage conflicts.

The International Ombudsman Association has developed a widely-adopted Code of Ethics for organizational ombuds offices, upon which a set of Standards of Practice is based. The Code of Ethics includes four pillars:

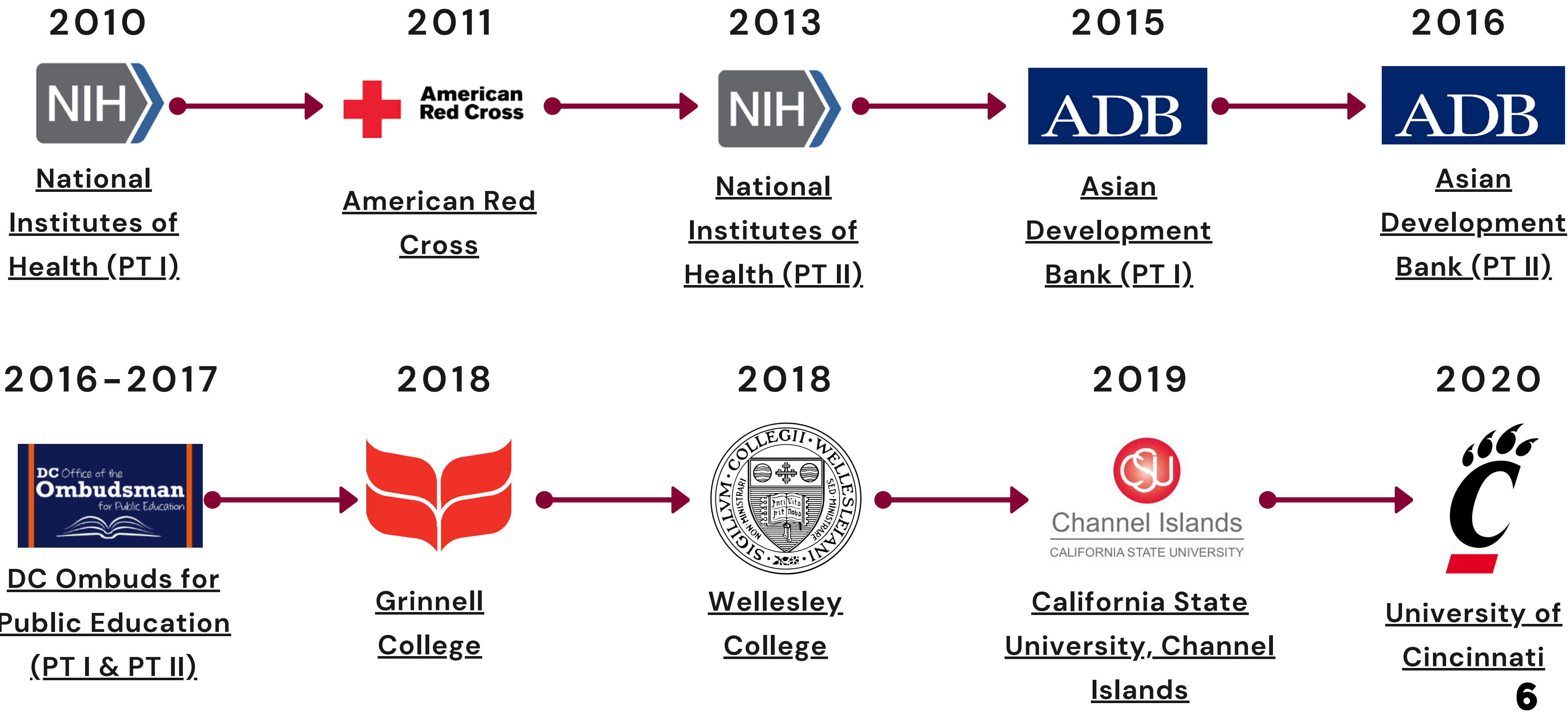
- Independence
- Neutrality and Impartiality
- Confidentiality
- Informality

## OUR WORK



<sup>1</sup> The IOA is currently undergoing a process to update the Code of Ethics, so these changes may be different from what is presently articulated. Melanie Jagneaux, Standards Of Practice & Ethical Principles - Updated, International Ombudsman Association, [https://ioa.memberclicks.net/index.php?option=com\\_dailyplanetblog&view=entry&year=2021&month=01&day=07&id=106:standards-of-practice-ethical-principles](https://ioa.memberclicks.net/index.php?option=com_dailyplanetblog&view=entry&year=2021&month=01&day=07&id=106:standards-of-practice-ethical-principles) (updated Jan. 2021).

# CLIENT WORK TIMELINE



# PROJECT GOALS

HNMCP has consulted with clients to: 1) improve the perception different stakeholders have of the ombuds office; 2) remove barriers stakeholders may experience when using the ombuds; and 3) improve the effectiveness of the ombuds in resolving disputes.

Four themes have emerged from our client projects.

## ● CONFIDENTIALITY

Addressing ombuds constituents' concerns that information shared with the ombuds, or that their use of the ombuds, would become public knowledge

## ● CONCRETE OPTIONS

Developing a process with each constituent that supports their goals and purposes in a clear manner

## ● COMMUNITY ENGAGEMENT

Increasing awareness that stakeholders and the community have of the office's role and responsibilities

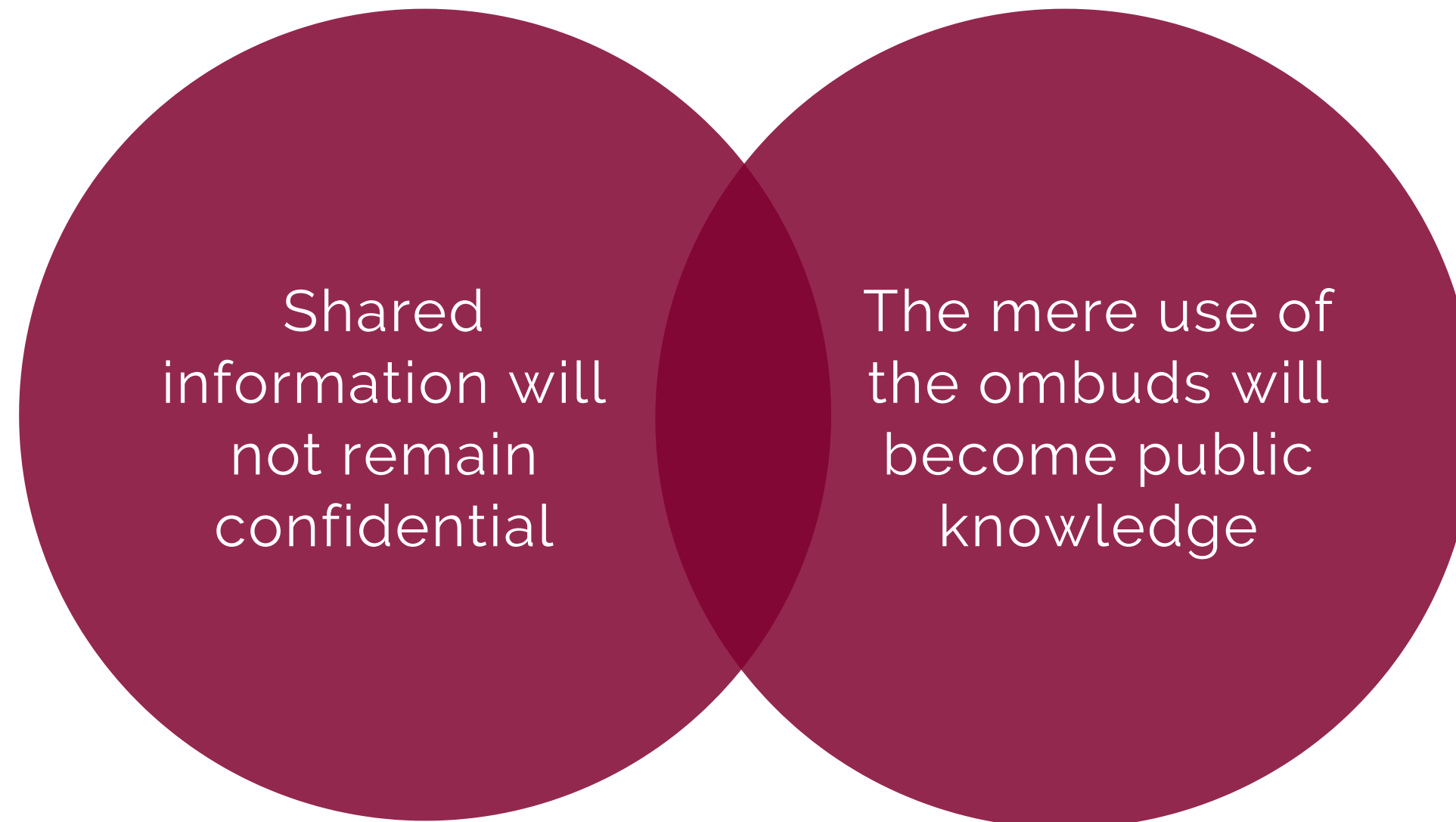
## ● SYSTEMIC CHANGE

Contributing an important voice in effecting change while operating within core tenets, such as neutrality and independence

# KEY LEARNINGS - CONFIDENTIALITY

## CORE CONCERNS RAISED BY CONSTITUENTS

Our clients frequently express an interest in fostering greater trust with their constituents that their use of the ombuds office will remain confidential. Many ombuds constituents fear that a lack of confidentiality will lead to retaliation and diminished status within the organization. These concerns manifest in two noteworthy ways. First, constituents fear that **information shared will not remain confidential**. Second, constituents fear that **the broader community will learn of their use of the ombuds**.





# KEY LEARNINGS - CONFIDENTIALITY

## THE FEAR OF INFORMATION LEAKAGE

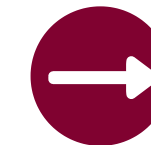
Across multiple ombuds projects, constituents have expressed concern that information they share may not remain confidential. There is consensus that constituents appreciate clarity around the ombuds office's confidentiality protocols. Yet the fear that information will "leak" inevitably reduces the willingness of potential constituents to engage with an ombuds.

Even with assurances of confidentiality, concerns may persist. For instance, in one project the perception of a close personal relationship between the ombuds and the constituent's supervisors or other high-ranking officials within the organization raised questions, for some stakeholders, about confidentiality. Revealing just how intermingled concerns of independence can be with confidentiality, stakeholders from the same project also expressed concerns about whether the ombuds could be truly independent when the Office reports to high-ranking officials.

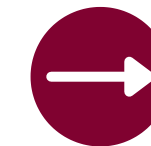
Distinct from a reporting obligation, stakeholders in another project expressed that close physical proximity between the office of the ombuds and senior officials also influenced the perception that the ombuds was not truly independent. Underlying this is the perception that in the absence of independence, information is less likely to remain confidential.

These relational impediments to greater trust can be particularly damaging because, as a series of stakeholders from one project identified, there can be an inverse correlation between institutional power and interest in confidentiality. Said in another way, constituents with less structural power or experience in the organization have a strong interest in confidentially sharing information because they are more vulnerable to retaliation. Although individuals with institutional power also have an interest in confidentiality, ombuds should be mindful of the fear of retaliation for those with less power..

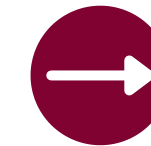
## WHAT MIGHT RAISE QUESTIONS ABOUT CONFIDENTIALITY?



Close personal relationship with senior officials



Reporting obligation to senior officials



Close physical proximity of the ombuds office to senior officials' offices

# TIPS FOR ADDRESSING INFORMATION LEAKAGE

## Develop confidentiality-enhancing protocols

Examples include:

- Destroying physical information
- Encrypting digital information
- Deleting digital information

## Manage staff access

Reduce the number of staff members that:

- Know of a constituent's visit
- Have access to a constituent's information

## Raise awareness

Disseminate confidentiality-enhancing protocols to the community in order to strengthen trust.

## Be transparent with constituents

When meeting with constituents, share confidentiality protocols and address concerns early and proactively.

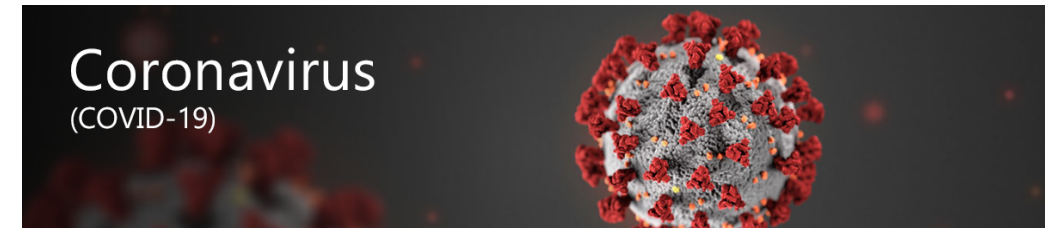
# KEY LEARNINGS - CONFIDENTIALITY

## THE FEAR THAT USING THE OMBUDS BECOMES PUBLIC KNOWLEDGE

Potential ombuds constituents may be disincentivized from using the ombuds out of a concern that others will learn of their visit. The concern here is not that others will learn of information the client shares with the ombuds, but rather that mere knowledge of their visit will provoke speculation and gossip.

The most common way constituents feared their visit would become public knowledge was due to the location of the ombuds office. In multiple projects, stakeholders expressed that if there were no other departments or activities near the ombuds office, a stigma may develop that equates frequenting that location with using the ombuds. When third parties suspect that a constituent visited the office – for instance, if they were observed entering or exiting the area – they might theorize as to why, creating a harmful gossiping environment, and a more acute stigma. Ombuds seeking to overcome this barrier should reflect on where their office is located and explore ways to preserve anonymity for those visiting.

## DESIGN TIP: VIRTUAL ENGAGEMENT



The coronavirus pandemic has introduced opportunities for ombuds offices to leverage video communication to avoid confidentiality concerns. Without the need for a constituent to visit in-person, there is a significantly lower likelihood that third parties would learn a constituent used the ombuds. From our projects, interviewed stakeholders have expressed that supervisors may be able to easily monitor hourly workers in a manner that reduces their use of an ombuds. Incorporating video communication into the system design could better promote use of the ombuds for similarly situated groups. Of course, such an approach requires robust access to technology.

# KEY LEARNINGS - CONCRETE OPTIONS

## ENGAGING A CONSTITUENT'S UNIQUE EXPERIENCE

Clients of an ombuds value hearing concrete options for how to handle a conflict going forward. The more an ombuds can offer concrete options, the greater the trust constituents have in the system. Although concrete options can be difficult to determine when first meeting with a constituent, many constituents find it valuable to brainstorm collaboratively with an ombuds. In addition to the opportunity to collaborate, constituents also value having someone who listens to their experience and appreciates the nuances of their circumstances. This latter piece is critical because, although there can be a certain rhyme to the cases an ombuds handles, insufficient listening or an excessive focus on the similarities to other cases, rather than addressing unique elements, can undermine constituents' trust in the system and make it harder for the ombuds to suggest concrete options tailored to a particular client's needs and interests.

# KEY LEARNINGS - CONCRETE OPTIONS



When **gathering information**, the primary goal is to allow a constituent to be heard and for the ombuds to better understand their unique situation. Moreover, an ombuds should draw on skills such as active listening to understand constituents' stories.

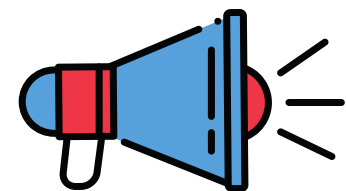
The primary goal of **expectation-setting** is to explain the scope and nature of the ombuds' role, and to explore with the constituent how this role interacts with their goals. The ombuds should seek to clarify information the constituent shares while informing the constituent of the ombuds' institutional capabilities and limitations.

When **generating options**, the ombuds's primary goal is to inform the constituent of specific options the constituent can pursue with the ombuds, and engage in joint brainstorming with the constituent regarding if and how they may want to move forward.

Ombuds should allocate time to these tools based on the constituent's situation and articulated interests. In complex cases, for instance, Ombuds could need to devote more time to gathering information. In addition, an ombuds need not use all three tools. Some constituents could be more focused on only receiving a list of options or on having an institutional actor to speak with to understand their situation better.



# KEY LEARNINGS - COMMUNITY ENGAGEMENT



One of the most frequently recurring themes from our work with ombuds has been the need to advertise the ombuds role and responsibilities to the community. This need is often driven by either a lack of awareness about the existence of the ombuds or a lack of understanding of the core tenets and duties of the ombuds. As such, knowing that an ombuds exists is only half the battle of raising awareness; making sure that the community understands the types of services offered by the ombuds is just as critical. Raising awareness is a continuous process that requires recognition that stakeholder knowledge can always be improved, respect for nuance in the community, and a willingness to innovate.

**Approaches to engaging the community can be organized into four buckets:**

## Community Engagement Buckets

Addressing stakeholders' lack of knowledge

Recognizing nuances between stakeholders

Being willing to take innovative awareness-raising approaches

Exploring opportunities for collaboration

# KEY LEARNINGS - COMMUNITY ENGAGEMENT

## ADDRESSING STAKEHOLDERS' LACK OF KNOWLEDGE

Our ombuds clients have experienced challenges in helping potential clients accurately understand the office's role and responsibilities. In recognizing that stakeholders have inaccurate knowledge, ombuds should prioritize understanding the source of the inaccuracies. In one project, a group of interviewed stakeholders believed that the ombuds should be neutral and independent, and seemed to be unaware that these were principles the ombuds already espoused. In another instance, a focus group revealed that stakeholders believed that using the ombuds was appropriate only when they were in “very serious trouble” or that an ombuds was reserved for only a subset of the community even though the office had a more expansive mandate. In both projects, the recommendations placed a priority on the ombuds determining and responding to the misperception stakeholders have.

Inaccurate perceptions of ombuds offices may spread in an organization through word of mouth. In one client project seeking to combat this dynamic, a relevant recommendation was to have former constituents share their positive experiences with the community. In doing this, ombuds should structure the testimonials in a manner that preserves confidentiality, such as through anonymized digital or physical-paper submissions. Moreover, this theme suggests that widespread rumors have a relationship with - and, indeed, may reflect - an appetite for more information. Rather than ignoring stakeholders' desire for greater information, ombuds can consider sharing information through individuals that have participated in the ombuds process.

# KEY LEARNINGS - COMMUNITY ENGAGEMENT

## RECOGNIZING NUANCES BETWEEN STAKEHOLDERS

Groups of stakeholders differ in important ways that can impact an outreach strategy.

Stakeholders can have varying **spheres of influence** that impact their ability to disseminate relevant information to the community. Ombuds should prioritize ensuring that these individuals are sufficiently informed of the ombuds's role - and, consider the benefits and potential risks of engaging stakeholders as "messengers."

Stakeholders may also have **varying degrees of knowledge** about the ombuds. For instance, two projects found that stakeholders employed within the organization were more familiar with the ombuds than potential users who were not employees. An effective outreach strategy depends on the ombuds office understanding the information asymmetries between stakeholders and incorporating these differences into their approaches.

Asymmetries can also relate to varying **levels of trust** among the stakeholders that contribute to their perceptions of the ombuds office. Employees interviewed in one project expressed fear of retaliation if their superiors were to learn that they had visited the ombuds. Incorporating information about confidentiality-enhancing mechanisms within the advertising campaign can be particularly impactful when this dynamic may be at play.

Lastly, outreach strategies should incorporate differences in **how various groups consume information**. For instance, social media may be an effective strategy to reach some stakeholder groups, but not all, given that factors such as age can influence social media platform preferences. Ombuds offices should consider diversifying their strategies and tailoring them to the preferences of their intended audiences.



# Where is the nuance?

- AVENUES FOR DISSEMINATING INFORMATION
- VARYING DEGREES OF KNOWLEDGE
- TRUST
- MEDIUMS FOR CONSUMING INFORMATION

Stakeholders have different spheres of influence in terms of their ability to engage with the community.

Different groups of stakeholders can have varying degrees of knowledge about the ombuds's role and responsibilities.

Different groups of stakeholders can have different degrees of trust with the institution.

Depending on different factors, including age, stakeholders can consume information through different mediums.

# KEY LEARNINGS - COMMUNITY ENGAGEMENT

## WILLINGNESS TO INNOVATE

Keeping the community informed of the ombuds' role and responsibilities is a continuous initiative. In engaging with the community, an ombuds should be willing to innovate and identify the shortcomings of past advertising campaigns. Innovating does not mean completely deviating from some historical approaches. In a university setting, for example, innovating could mean continuing to deliver a training or presentation on the ombuds office to recently-hired employees during their onboarding, while expanding the training to include students or requiring more experienced employees to join the training. For instance, a creative ombuds who already has held events and open houses marketed as an "Ombuds Day" may consider expanding the time period into an "Ombuds Week," so as to leverage these events into greater community outreach and engagement, and to build momentum into other parts of the year. As such, ombuds offices may consider allocating a specific time in the year devoted to advertising in order to gain additional community attention.



**Keeping the community informed is a continuous initiative.**





# KEY LEARNINGS - COMMUNITY ENGAGEMENT

## COLLABORATION AS AN ASSET

Though much of an awareness-raising strategy can be focused on speaking to the community directly, ombuds offices should proactively seek opportunities to collaborate with others in order to raise community awareness . Collaboration can include working with others to disseminate information and also engaging with the community to assess what stakeholders would want from the ombuds. Although the latter piece has prospective and normative elements, this approach can also allow the ombuds to clarify misconceptions stakeholders have while improving their understanding of the role and core tenets of the ombuds.

Our clinical students have often recommended that ombuds collaborate with other departments to expand the reach of the advertising initiative. For instance, in a university context, ombuds may engage with campus leaders (e.g. student leaders, faculty, and athletic coaches) to assist in disseminating accurate information. In a non-academic setting, another recommendation has been to coordinate with other conflict management resources (e.g. human resources, ethics community, etc.) to develop material for stakeholders that delineates differences between these resources with a secondary purpose of increasing exposure for the ombuds.

Being mindful of their core tenets and the risks that may be raised, ombuds should approach collaboration thoughtfully and selectively. In one project, members of a human resources (HR) department had direct interactions with potential constituents; however, interviewed stakeholders expressed distrust of HR as being biased. In this case, collaboration may have increased the risk that stakeholders ignored the shared information or, worse, viewed the ombuds in a less positive light.

# KEY LEARNINGS - SYSTEMIC CHANGE

HNMCP has found in the course of clinical projects that stakeholders often have a strong appetite for the ombuds to play a role in championing systemic change even as core tenets of the ombuds can be in conflict with playing a systemic role. Consider that constituents often present an ombuds with a problem that impacts the broader institution.



Yet an ombuds having a role in initiating change can implicate the ability of the office to be neutral and independent. Perhaps more damaging is the perception stakeholders may have in future situations that the ombuds lacks neutrality and independence. However, ignoring the appetite some stakeholders have for a systemic ombuds could undermine the office's legitimacy, from these stakeholders' perspective, if the ombuds has no role in engaging with systemic issues.

# KEY LEARNINGS - SYSTEMIC CHANGE

## HOW DOES A SYSTEMIC ROLE INTERACT WITH CORE TENETS?

Stakeholders differ on the tools an ombuds should be equipped with to achieve systemic change. Some stakeholders support an indirect approach; for instance, an ombuds training leaders and decision-makers to educate them on systemic issues that arise in the organization. This approach could also include training in general conflict competency skills and conflict prevention. Other stakeholders see merit in an ombuds having direct power to influence decision-making within the organization. For example, a group of stakeholders in one clinical project wanted the ombuds to make recommendations to decision-makers about how to handle systemic problems.

In assessing their approach to systemic change, ombuds must be mindful of whether and how core tenets are implicated. An ombuds who trains decision-makers on recurring conflicts could potentially raise questions about whether the ombuds can be neutral in handling such matters themselves. These neutrality concerns would be even greater if the ombuds had a direct voice in decision-making.

**Design tip:** Our clinical students have recommended that ombuds offices be **transparent** with stakeholders about their institutional limitations. Moreover, this tension illustrates the importance of having a clear rationale for why ombuds are limited in directly effecting systemic change, and this reasoning could be included in the advertising. Stakeholders value neutrality and independence, so framing the office's limitations around these principles could manage constituents' expectations while also maintaining their interest in using the ombuds.



# KEY LEARNINGS - SYSTEMIC CHANGE

## SEEKING BALANCE

A "systemic ombuds" can simultaneously address systemic challenges while maintaining their core tenets. To the extent that clients have pursued this path, it has been through an indirect route in response to common challenges across groups of stakeholders. For instance, many ombuds have sought to improve an organization's conflict competency through training. This training can be designed to improve individuals' ability to have difficult conversations when the conflict involved ideological differences. This can be particularly helpful when the community expresses support for such an initiative and the training does not require the ombuds to weigh in on particular ideological preferences. Using this approach allows the ombuds to maintain perceptions of their neutrality while addressing a systemic challenge.

**In sum, an ombuds can effect systemic change while maintaining their core tenets by:**

- **identifying a common, broad unmet need among different groups of stakeholders;**
- **refraining from "siding" with one stakeholder at the expense of others; and**
- **designing an intervention that is more facilitative than substantive on the underlying conflict or area of disputes**

# MOVING FORWARD

HNMCP's decade of work with ombuds in different regions and industries has illustrated the many positive impacts ombuds offices can have while surfacing a host of complexities, questions, and challenges that ombuds can benefit from considering. Our website provides additional information about the broad range of work we have done with clients as well as details for applying to work with us as a client.



# GLOSSARY

Below are the definitions covering how certain key terms were used specifically for this guide.

**Client:** an ombuds office that partnered with HNMCP to address certain outstanding questions

**Constituent:** an individual that uses an ombuds office for conflict management purposes

**Stakeholder:** individuals and entities that have an interest in how an ombuds office is managed and operationalized

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