



# THE CORPORATE SECRETARY & GOVERNANCE PROFESSIONAL

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## The Ombudsman and the Corporate Secretary

*Redmond, Williams & Associates Discuss Ombudsman Programs with Executives*

Do you really need an ombudsman program at your organization? Stephen M. Cutler, director of the SEC's Division of Enforcement, thinks it's a good idea.

In a December 2004 speech to the General Counsel Roundtable, Cutler said:

"Sarbanes-Oxley requires that a listed issuer's audit committee establish procedures for the confidential submission of concerns regarding questionable accounting or auditing matters. Let me offer an additional suggestion: the appointment of a permanent ombudsman . . . to receive and investigate complaints — a private inspector general, if you will. That person might report to the audit committee to ensure his independence, and also to ensure that company's board is fully aware of emerging ethical or legal issues reported by company employees."

Steve Norman of American Express has been involved from the inception of the idea at American Express more than 11 years ago. Adam Spilka of Alliance Capital Management was involved at his company also from the beginning; his company's ombudsman program is newly created as of the summer of 2004. The two corporate secretaries spoke about their points of view on why an ombudsman office is critical to corporate governance and risk mitigation, their roles in setting up the programs, and their ongoing involvement. Redmond, Williams & Associates, a consultancy dedicated to helping companies set-up and run their ombudsman programs, spoke with these two corporate secretaries who were heavily involved in creating and sustaining their companies' ombudsman programs.

**RWA: Why did your company open an ombudsman office?**

*Norman:* In the early '90s, our new CEO did not want

any corporate scandals during his administration; he wanted to protect the brand and asked: What is the best way to prevent a scandal? A cross-functional team researched various options and recommended establishing an ombuds program. Our CEO believed that creating a reliable and credible channel to which employees can turn frees them from fear of retaliation or of their boss taking a situation personally. Such a channel would also allow the company to be able to nip any scandal in the bud, whether it be theft, expense-account cheating, or "front-running" on revenue recognition. The employees are closest to the scene and are likeliest to see any wrongdoing. An ombuds permits people to share their concerns in a manner that is comfortable and provides protection against retaliation.

*Spilka:* At our company, the decision was made for us. In resolving certain regulatory matters with the SEC, we consented to an order that, among other things, required us to establish a company ombudsman position. We quickly came to believe it was the right thing to do. There is not a sense at the company of begrudging compliance; rather, we are enthusiastically following a mission to improve governance and to improve transparency. Our Ombudsman Office plays an important part in achieving that mission.

**RWA: How does the Ombudsman Office help your company achieve its corporate governance, compliance and ethics objectives?**

*Norman:* We feel that governance, compliance and ethics all facilitate the fair and orderly running of a company and fulfillment of its mission in a controlled and proper way. When you have an environment where wrongdoing is likely to be surfaced, the incidence of wrongdoing, in fact, goes down. The key is getting early warnings of

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problems and an ombuds program is a way, now well recognized, to permit the truth to percolate up. An ombuds complements the whistleblower mechanism, which was a much later development.

*Spilka:* One of our key strategic initiatives is to create a fiduciary culture at Alliance Capital. Our Ombudsman Office plays a key role in that. I think one aspect of effective corporate governance permits information to flow freely and transparently (subject, of course, to ensuring that confidential information remains confidential).

### **RWA: When did your company open its ombudsman office and to whom does it report?**

*Norman:* Our program was established in 1994. It reports to the CEO and the Audit Committee of the board.

*Spilka:* Our Ombudsman, Jan Schonauer, started on August 16, 2004. She reports to the CEO and Audit Committee of the Board of Directors; she also provides reporting to the mutual fund boards.

### **RWA: What was your role in setting up the Office?**

*Norman:* We formed a cross-functional team of people from all staff departments that have a hand in internal controls, corporate reputation and Code of Conduct Administration. It included representatives from the Secretary's Office, Audit, General Counsel, HR, and Public Affairs. It was a diverse group. The advantage of this process was that each representative brought a different professional perspective as to what would work and what would be desirable.

*Spilka:* As a senior lawyer in the legal department, I had a central role in the design and implementation of the Ombudsman Office together with two others, our General Counsel and our Chief Compliance Officer. First, we needed to get up to speed about the ombudsman role. We then retained consultants to help us set up an office that would adhere to professional standards and codes of ethics, draft communications and reporting, and institute best practices. We championed the role of the Ombudsman internally. We assisted with the selection process and were part of the team that drafted the charter and brochure.

### **RWA: Since the Office opened, what has been your involvement with it?**

*Norman:* The Secretary's Office has been involved since its inception in working with the Ombuds to resolve issues. The Ombuds consults with us and refers issues that

may violate the Code of Conduct to us. At American Express, the Secretary's Office administers the Code of Conduct and a number of the concerns that the Ombuds Office receives relate to it.

The Ombuds Office is also an informal member of the drafting team that the Secretary's Office periodically assembles to review and update the Code. This is valuable because the Ombuds sees organization-wide, emerging and continuing workplace issues. The Ombuds helps us determine what needs to be modified in the Code.

*Spilka:* My colleagues and I have been able to help Jan become knowledgeable about our company and industry. I have organized meetings for her with key company resources so that she can get a good sense of the issues that can arise. Jan introduced herself to the Audit Committee of the Board at their most recent meeting. They welcomed her and said that they look forward to her future reporting.

### **RWA: Is the Office being utilized?**

*Norman:* According to the current American Express Corporate Ombudsman, the Ombudsman's Office has provided assistance to more than 27,000 people since it opened. All employee groups use the Office, from associates to senior leaders. It's led to nipping problems in the bud and lowering cynicism about the Company's commitment to resolving employee issues. Every fall, we get a report card as a company in the form of an Employee Value Survey; the integrity scores have risen steadily. The Ombuds program has contributed to these results. It is a useful program which can be measured and has tangible benefits.

*Spilka:* The Office is still in mid-launch and Jan has not yet made a formal report. Our chairman had sent out an e-mail to all employees announcing Jan's arrival and the importance of her role. In addition, the Office has started its awareness program and I understand that people are starting to use the office, although, appropriately, I am not aware of the nature of any inquiries that have been made.

### **RWA: Do you believe that there are issues that would not have been brought forward without the existence of an ombudsman office?**

*Norman:* Before the ombuds program, occasionally—once in a great while—a courageous employee would have risked his or her job to advance a problem. However—I use the analogy of a chimney—without a central chimney shaft offering safety, the number of issues surfaced would not reach the right people at senior levels that now come up through the Ombuds Office.

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*Spilka:* Questions can certainly be raised more readily and quickly before they become larger problems. Also, Jan's role is to identify trends and anticipate issues. This permits us to prevent issues before they arise.

**RWA: How do you know that the Office is effective in executing its role?**

*Norman:* There are three ways I feel we can determine if the Office is worth its time and effort. First, I look at the usage. The usage has been strong. A lot of people have come to share their concerns; the people using the Office represent the demographics of the employee population. Some companies outsource a help line function to pick up the phone in an anonymous way. We feel that our usage is more widespread because we have a visible, in-house ombuds function.

The second thing I consider is the issue resolution rate: How many people coming to the Ombuds Office had legitimate concerns which were effectively addressed? To be sure, some complaints reflect personalities and cannot be addressed in a way satisfactory to the employee, but our results show that important and legitimate concerns are surfaced through the Ombuds Office. Many of these concerns lead to corrective actions or changes; the proof is in the decline of issues that recur.

The third area I consider is employee morale as measured by the annual Employee Value Survey. Integrity and belief in honesty and fairness are key elements of employee morale. If the culture reflects these values, it affects decisions about wanting to remain working here. Happily, we have had great scores.

*Spilka:* I would look at the number of inquiries and the types of issues that I am directly involved in resolving. An ombudsman reports data that indicate effectiveness. While maintaining confidentiality on an individual level, an ombudsman provides statistics to senior management and the board regarding types of issues, demographics of those using the office, and issue trends. An ombudsman reports which formal channel (e.g., Compliance, Legal, Human Resources, and Internal Audit) addressed the issues and what percentage of issues resulted in change. An ombudsman identifies changes that have significant impact on a company.

Our chairman has said that the Ombudsman Office is successful when employees understand that it is a benefit to them and will improve their work lives. He views the Office as a metaphoric and an actual benefit to employees—a safe place where they can go to raise issues. Ombudsman program success exists when employees see Alliance as a better company, and a better place to work,

due to the existence of an effective Ombudsman.

**RWA: How is the Office different from other company channels such as HR, Legal, Compliance or Audit?**

*Norman:* There are two ways that the Ombuds office differs from other channels in the company. First, it is different in providing complete confidentiality, official neutrality, informality, independence and protection from retaliation. Secondly, it is different in its ability to broker. The Ombuds has an organization-wide view and knows where and how to hand off a wide variety of issues and concerns, e.g., this one should go to Audit, this one should go to the General Counsel's office or this one is a Code of Conduct violation. It is a lot more efficient. It is like having a central clearing house.

*Spilka:* Our Ombudsman Office is distinct from formal corporate governance structures. It is additive to those structures and independent from them. Also, Jan's independence from other channels is underscored by the fact that she reports to the CEO and Audit Committee; there are no other "organizational boxes" above her.

Somewhat counter-intuitively, the ombudsman is a company employee who is not "of the company." Conversations with her do not give rise to a legal obligation on part of the company until and unless the question had been brought to a formal channel. To me, that is a fundamental difference. It is the only informal channel. An employee can have an off-the-record conversation with a neutral party.

**RWA: Could an employee help line (hotline) function as effectively as an ombudsman does?**

*Norman:* My guess is no, and it would not be used as much as an in-house ombuds. Anecdotally, from other companies that have tried help lines, they don't get as many calls. Also, I believe that an ombuds function indicates that the company is more serious about reaching out and providing a haven for people who have concerns.

I remember that in the Army, they have an Inspector General and he is visible; the Corporate Ombuds is visible and, I think, presents a far more inviting image than a remote 800 number. The in-house Ombuds in our company conducts an extensive awareness process to personally inform all employees about the role and practices of the program.

Also, the Ombuds is a professional who has in-depth knowledge about the company and its resolution channels. The Ombuds, as a company employee, has a higher likelihood of being more sensible and efficient in dealing

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with company-specific concerns than an outside 800 hotline can be. Through reputation, an in-house Ombuds still has to establish whether the office keeps its promises of anonymity, confidentiality, and freedom from retaliation. This happened here very quickly.

*Spilka:* No. At the beginning of our process of setting up the Office, there was some consideration of whether a Sarbanes-Oxley hotline could constitute compliance with the SEC requirement. Once we understood better the role of an ombudsman, we concluded that the SEC order requires an ombudsman to make reports, and that we needed an ombudsman to be analytical and proactive. Unlike persons who answer help lines, an ombudsman is a senior, skilled executive who has in-depth knowledge of the company and is trained by The Ombudsman Association. An ombudsman can probe beneath the surface of the issue, understand nuances and be creative about helping the employee identify the most appropriate resolution option. Additionally, an ombudsman ensures that any imminent threat of serious harm is surfaced.

A hotline is more passive. A passive recipient of information cannot do what an ombudsman does. A hotline cannot make reports, cannot be analytical about existing and emerging trends, cannot be proactive and cannot help senior management determine the best course of action. Help lines report to a formal channel and this lessens the likelihood that an employee who is very concerned about confidentiality will come forward.

### **RWA: Do you believe that the total confidentiality of the Ombuds precludes serious issues from coming to light?**

*Norman:* No. Total confidentiality helps bring serious issues to light. The Ombuds hear about all types of serious issues; e.g., the bullying leader, the expense-account cheater, the potential pockets of employee unrest, or incipient financial-reporting concerns.

Important issues get surfaced to the right people in the organization; I have seen this happen. When an important issue comes to the Ombuds, the Ombuds helps the employee determine the best place to direct it. Problems get fixed without having to identify the individual. Additionally, if there is imminent threat of serious harm, the Ombuds has an obligation to get the issue surfaced to the most appropriate source, while striving to maintain the anonymity of the employee coming to the Office. Employees go to the Ombuds with serious issues because they want to get those issues out and addressed.

Net-net, it is in a corporation's financial interest to have no scandals. The Ombuds Office is a way to nip scandals

in the bud and bring them to light early.

*Spilka:* I believe that the Ombudsman has the judgment to bring forth serious issues as ombudsmen are obligated to do under The Ombudsman Association's standards of practice. Different kinds of issues require different kinds of attention. I believe the ombudsman we hired has the experience and judgment to handle all issues, particularly serious issues, appropriately.

### **RWA: What types of companies do you believe should have an ombudsman office?**

*Norman:* I cannot limit it to any one industry. You can have some bad apples in financial services, healthcare, manufacturing, retail, or anywhere.

*Spilka:* The larger the company, the more regulated it is, and the more compliance issues that might arise—the more highly I would recommend an ombudsman.

### **RWA: Is there anything else that you would like to add?**

*Norman:* The only thing I reflect about is the uniqueness of the word. "Ombuds" is a funny word. I'm not sure of the etymology, but I wouldn't change it. It is one of a kind.

[Editor's Note: According to Merriam-Webster's Unabridged Dictionary, "Ombudsman" was borrowed from Swedish, where it means "representative," and derives from the Old Norse words "umboth" ("commission") and "mathr" ("man"). In the early 1800s, Sweden became the first country to appoint an independent official known as an ombudsman to investigate complaints against government officials and agencies.]

*Spilka:* Being ombudsman is a tough task to do well. We have discovered that "bedside manner" is important. It is extremely important to have the right person in the job.

In addition, sponsorship is critical. We have good internal support and involvement. I worked closely with our Chief Compliance Officer and newly appointed general counsel in setting up the program. We also worked closely with the directors of Human Resources and Internal Audit. HR, Audit and Legal are among the key formal channels that must understand and support the role; the Ombudsman will interact frequently with these areas. I think our ombudsman office is stronger because it had the benefit of their advice and input as it was being designed.

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