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Three Chief Compliance Officers' Points of View on the Value of an Ombudsman Program

by Arlene Redmond and Randy Williams

Editor's Note: Arlene Redmond and Randy Williams are Managing Directors of Redmond, Williams & Associates, LLC (RWA), a firm that assists clients with developing processes for risk mitigation, ethics, asset protection and governance. They have over 14 years of Ombuds experience, including leading the global American Express Ombuds program. They are active in The Ombudsman Association where they help design and teach classes and workshops, provide testimony for the Ombuds profession and help create professional best practices. In addition, they have over 35 years leadership experience in a variety of staff and line positions in the U.S. and internationally. Their website, www.redmond-williamsassoc.com provides more information about their backgrounds, services and publications.

Compliance and ethics executives ensure that their organizations have effective risk mitigation and governance practices. A best practice is the implementation of an organiza-

tional Ombudsman (Ombuds) program. Many institutions currently have or are implementing Ombuds programs. An Ombuds is a confidential, neutral, independent and informal resource for employees. An Ombuds provides guidance in surfacing and resolving potential and actual malfeasance and other unethical behaviors. An Ombuds also serves as a change catalyst by promoting improvements that prevent issues from recurring.

The Ombuds programs at American Express, Shell Oil Company and Alliance Capital Management are important elements of compliance and governance strategies. The institution of these three programs over the years represents the continuous growth of interest in corporate Ombuds programs. The American Express program opened in the early '90's; Shell began its program in late '90's; Alliance Capital initiated its Ombuds office during the 3rd quarter of 2004. In

this article, Kathryn Reimann, SVP and Chief Compliance Officer at American Express, Jo Pease, Director, Ethics and Compliance Office at Shell, and Mark Manley, SVP, Deputy General Counsel and Chief Compliance Officer at Alliance Capital, discuss with Redmond, Williams & Associates, LLC, a consultancy that helps organizations enhance, evaluate, expand or establish Ombuds programs, their perspectives on the contributions that Ombuds programs make to their companies. The compliance chiefs elucidate this informal channel's capabilities and how they complement those of formal compliance processes.

1. Why did your company open an Ombuds office?

Kathryn: This initiative came directly from a then-new CEO in the early '90's. He realized that early

intervention was the best way to prevent problems and related brand damage. The most effective method of intervention is to encourage employees to ask questions and escalate concerns early without fear of reprisal. With a Code of Conduct that institutionalizes this approach via an Ombuds program, we took the first step in building a culture that fosters this behavior. In the beginning, promoting the confidentiality of the Ombuds channel—even using special telephone lines and sound-proofed offices—was important in building employee confidence in the channel and in underscoring the extent of its executive support. American Express has a global Ombuds team. The Corporate Ombuds, Wendy Friede, reports to the CEO, Vice Chairman and Audit Committee of the Board. It has grown in acceptance and importance over time, and has become a compliance and legal necessity, rather than just a good idea. In its 15-year history, the Ombuds office at American Express has helped sustain a values-based culture, and has empowered every employee to help protect our brand.

Jo: In 1997, the CEO initiated the

"transformation" of Shell. The CEO wanted to do business in a different way; he wanted to move from command and control to a more collaborative environment. In conjunction with the transformation, the CEO created the Ombuds office as a place where employees could bring concerns.

Initially, the Ombuds reported directly to the CEO to ensure that it was absolutely clear to employees that this effort had sponsorship and was independent, neutral, and confidential.

Mark: Our Ombudsman program was established in the 3rd quarter of 2004. We had considered various options to meet the firm's obligations to have an anonymous forum in order to comply with Sarbanes-Oxley. As part of our offer to settle a regulatory matter with the SEC, an Ombuds program was proposed and included in our final settlement agreement. It was up to us to decide on the type of program that we would implement. After a rigorous review, we chartered and implemented an Ombudsman program that complies with the professional standards of practice and code of ethics.

2. How does the Ombuds office support your organization's compliance program, code of ethics/conduct, and compliance with U.S. Sentencing Guidelines, Sarbanes-Oxley and other regulations?

Kathryn: The Ombuds office is a strong partner with Compliance and is critical to the effective operation of many of our policies. Our issue escalation procedures refer to the Ombuds office for employees who prefer not to go to their leader or to

other formal channels. Virtually any section of the Code of Conduct says that if employees see violations, they can talk to their leader, Compliance Officer, General Counsel, or General Auditor, depending on the type of issue. It always also says, "or, if you prefer, you can speak informally and confidentially with the Office of the Ombudspersons."

The Ombuds office is very effective in supporting the Compliance program when a compliance problem should be investigated. They succeeded in getting callers to feel comfortable in raising issues to Compliance. The culture here has become such that the Ombuds gets calls where people say, "I am requesting that you to talk to Kathryn Reimann about this."

Jo: The Ethics and Compliance Office focuses on Code of Conduct violations such as: conflicts of interest, antitrust, export control, protection of assets, pornography, or fraud.

Employees can go to the Ombuds for issues that are not violations of the Code of Conduct. I hear from compliance officers in organizations which do not have Ombuds offices that 60% of their calls relate to HR issues. Compliance's time is consumed by responding to those calls versus Code of Conduct compliance issues.

Our Ombuds, Wilbur Hicks, and I discuss cases, while maintaining caller confidentiality, if there is an allegation of retaliation, harassment, or discrimination—a violation which should be investigated by my office. For example, an employee may say:

"I got a bad performance appraisal because my supervisor is discriminating against me." We need to probe this type of issue to determine the nature of the discrimination, if any. Likewise, someone may allege discrimination, and after probing, I determine that it is a workplace conflict. I will refer that caller to Wilbur. There are instances where each of us has to probe to the next level because the extent of the issue is not initially clear-cut.

Wilbur and I work very well together and carefully communicate to employees the roles of the Ombuds Office and of the Ethics and Compliance Office. Employees know where to go; they understand the different roles.

Mark: An Ombudsman program is an important element of quality compliance and ethics programs. The existence of our Ombudsman Office reinforces cultural changes, standards and values.

Lew Sanders, our Chairman & CEO, recently stated in a communication entitled, "Creating the Most Admired Investment Firm in the World," that we must be prepared to live by our mission and core values; failure to practice what we preach could breed the worst kind of cynicism. We need to know if people are not adhering to our standards. Having a place where employees can get guidance on how and where to surface issues is critical. We must hold people accountable if they fail to uphold our standards. The Ombudsman program is a statement that we are following through on upholding these standards.

As a neutral, informal and confidential channel, the Ombudsman is at the center of our risk management, ethics and compliance systems. For example, Alliance Capital recently initiated a new policy on gifts and entertainment. This is an area that can lead to conflict of interest- a moral hazard in our business. The interests of employees, shareholders and clients are not always perfectly aligned. How we resolve these conflicts is critically important.

Employees can discuss potential conflicts of interest with the Ombuds, receive guidance and discuss options for surfacing their concerns.

Our Ombudsman, Jan Schonauer, discusses issue trends at the Internal Compliance Controls Committee and Code of Ethics Oversight Committee meetings, while protecting individual confidentiality. In trend reporting to leaders, she can point out where conflicts have not been handled properly, and help ensure that similar conflicts are managed appropriately in the future. At the last meeting, Jan explained the importance of her follow-up procedures. She noted that the appropriate channels have acted in a prompt, professional, fair and serious way when issues were brought to them.

3. How is the Ombudsman Office different from other company channels such as Compliance, Legal, HR or Audit?

Kathryn: We all have the same goal in mind, which is to protect the interest of our employees, customers and shareholders. However, if someone reports a potential viola-

tion to my office, my duty is to the shareholders; I have to take action. I may need to raise it through the leadership chain. I may have the duty to make a regulatory report. A number of legal, regulatory and governance processes may be triggered. Sometimes employees are not yet ready for that. They may need a sounding board. They may be fearful of retaliation or other repercussions. In those cases, employees know that going to the Ombuds office gives them a chance to understand what coming forward may mean.

Jo: Formal channels, like Ethics and Compliance, Legal and HR, cannot perform the Ombuds office's role. We cannot be informal, off-the-record, officially neutral and officially confidential. If an employee goes to Wilbur with alleged fraud, he lets them know that employees have an obligation under the Code of Conduct to report any suspicion. Sometimes people are reluctant to report if they do not know that there actually is a violation. Wilbur can help them feel comfortable surfacing the issue. He explains the processes, including the help line that employees can use to get the issue reported. Wilbur outlines options.

Ombuds have skills that we do not have in Compliance. For example, we are not trained in mediation. Ombuds can provide informal mediation. Ombuds are neutral and often bring parties together. If someone goes to the Ombuds and wants an investigation, Wilbur explains that they do not do investigations. They have Ethics and Compliance brochures which explain our formal

investigation process for allegations of Code violations. I am not neutral; by definition, my obligation is to investigate any suspected violation of the Code of Conduct. Our investigative process has been agreed to by HR and Legal. Ethics and Compliance must ensure that an investigation is done. We may use HR staff, internal audit, or security-whomever we need.

Mark: We have good, fair formal channels that promptly evaluate and investigate issues, escalate them to appropriate senior management, create records, document events, report, and ensure that there is resolution and that the individuals who brought issues forward are protected from retaliation and are aware of the resolution.

The Ombudsman function does not replace the roles of Compliance or other formal channels. The Ombudsman is a completely neutral, confidential, informal and independent resource for employees who are initially uncomfortable going to a formal channel, who do not know where to take an issue or how to take it forward, who do not understand the implications of an issue, or who want to remain anonymous. Jan helps these employees generate options to resolve their issues, and helps ensure that issues are brought to the most appropriate resource at Alliance. That saves us all time and effort and helps all of us to be smarter and more efficient.

It is important to have an Ombudsman who is very effective in communicating with employees,

in helping employees feel comfortable in opening up, and in getting employees to the appropriate resolution resource.

4. What is the working relationship between the Ombuds office and Compliance?

Kathryn: We share trends and alert each other to events that may trigger control, compliance or ethics issues. We can use these observations to help us predict where we need to strengthen processes or investigate further.

I share perspectives and information with the Ombuds at least quarterly so that they can be more effective listening posts and, at least annually, I share our compliance priorities and goals. The Regional Ombudspersons attend our international conferences.

We are a resource for the Ombuds. For example, if our Ombuds are unsure whether a specific activity violates regulations, they will describe the situation to me, ask if it violates policy and ask for the relevant rule.

Likewise, an Ombuds may say that someone is questioning the meaning of a policy. If my response is: "Wow! How did they come away with that impression," this can be a cue to clarify the policy. If an Ombuds is getting feedback that a policy is not clear, we will want to review the policy to ensure that it is effectively driving desired behaviors.

Jo: Ethics and Compliance facilitates a quarterly meeting with the pur-

pose of reviewing trends across all functions. The participants include the Ombuds office, Controller, HR, Corporate Safety, Health & Environment, Corporate Security, Internal Audit, IT, and Legal.

The meeting ensures that we are aligned and that we do not confuse the organization. We look at trends. Wilbur maintains confidentiality. If several of us are seeing issues in an organization, we have a dialogue regarding what we need to do and how we should elevate the problem to management. Because we have these quarterly discussions, Ombuds and Ethics and Compliance are better able to partner with each other and to communicate our distinct roles to employees. We both can be more effective listening posts for emerging and recurring issues.

Mark: I act as a sounding board for Jan. She comes to me to determine the existence of a policy or to better understand a policy. I assist her in framing her reports to Alliance Capital's various committees, knowing their current priorities and concerns. My office also assists her with her administrative requirements.

Our Ombudsman brings credibility to the position and furthers the credibility of management's commitment to this office. We assist her in learning our businesses, areas of sensitivity and conflict in our industry so that she can be a more intuitive, effective listening post. She devotes tremendous time and effort to reading, talking with Alliance Capital people, learning our businesses and becoming alert to how rules could be violated. It is impor-

tant that she can recognize an off-the-cuff comment as a possible code for a potentially serious issue and therefore can probe deeper for hidden messages.

Additionally, Jan acts as a communications channel between an employee and formal channels. She can provide employees with information that may answer their questions about policies and procedures. These employees, in turn, can direct other employees to the appropriate resources. She acts as a listening post. If Jan sees a lack of awareness or understanding of a policy, she can notify formal channels so that we can reissue or clarify it.

5. What types of issues have been brought to you via the Ombuds office?

Kathryn: We see many types of situations surfaced through the Ombuds office. Their involvement has been very beneficial in our understanding of certain issues, such as questions about conflicts of interest, relationships with vendors, business entertainment venues, fair treatment, fraud, or questions about policy or law.

After allegations are investigated, they may prove to be the result of misunderstanding or incomplete facts. Even so, we reinforce the value of raising issues and let employees know that they did the right thing and that their behavior sets an example that should be followed.

Jo: Occasionally, I get an allegation of retaliation via Ombuds.

Mark: It may be too early to

answer this completely. Jan may bring compliance issues related to our compensation programs, conflicts of interest, code of conduct, political and charitable contributions, policy interpretation, etc. We are communicating in our new ethics training the role of the Ombudsman in discussing workplace issues and in helping to get them surfaced.

6. Do you believe that these issues (or others surfaced elsewhere) would have been brought forward without an Ombuds office?

Kathryn: While the information may have surfaced eventually, I am fairly certain we receive it earlier because we have an Ombuds office and there are possibly problems that would not have come to light at all without the Ombuds.

Jo: Some issues are surfaced earlier. People have a place to go beyond HR or other resources which they may feel are arms of management. The Ombuds office is a place where they can be heard, a place they can go before they may go to court or the EEOC. People need to vent and be heard. People leave the Ombuds office appreciating that someone really listened to what they had to say.

Mark: I believe that with our Ombudsman program in place, issues will get surfaced earlier and will get to the most appropriate formal channel sooner.

7. How do you know that the Ombuds office is effective in executing its role?

Kathryn: Quarterly, without compromising confidentiality, the Ombuds review with me the types of issues that have been brought to the office. The rate of usage and types of calls indicate that the Ombuds office has become part of the culture at American Express. Employees use it. Employee feedback indicates that employees value having a listener to whom they can speak without concern about impact on their careers or compensation; this is a great bolster to our Code of Conduct.

Jo: There are fewer EEOC complaints and lawsuits because of the Ombuds office. Discussions with the Ombuds can lead to changes in behavior and to more effective communications. In order to help prevent issues, Ombuds provide training on listening and communications skills, for example. They help people develop skills to resolve their own problems and conflicts. They help promote collaboration throughout the organization.

Mark: Our bottom line is that our Ombuds program will help make us a better company. When the Office brings wrongdoing incidents to the attention of senior management at an early stage and we are able to intervene and stop the occurrence, effectiveness is attained.

Another effectiveness indicator is the Ombudsman's identification of corrective and preventative actions, e.g., retraining a business unit or reissuing policies. Actions such as these can alert employees to inappropriate behaviors and allow us to stop unethical behavior before it

becomes significant, mitigate risk and protect the organization.

Success is also achieved when employees say that the Ombudsman Office provided a comfort level to discuss potential malfeasance or to come forward earlier, or when employees feel that the Office helped to clarify the implications of their issues or to get them to the most appropriate resource.

8. What is your view of the relative capabilities of an employee help line versus those of an Ombuds program?

Kathryn: There is a distinct difference between a hotline and a channel-the Ombuds-that allows you to have a conversation with somebody who understands the culture, business and issues. An Ombuds acts as a sounding board and conducts interactive conversations. The job of the hotline is to receive information. Ombuds provide guidance towards a result, involve the right people, and, with the permission of the caller, facilitate fair resolution.

Working with an Ombuds is not a one-shot deal. While a hotline accepts "notice" of a problem, an Ombuds works the case. An Ombuds gets the initial call, does some informal fact-finding, and may have a subsequent conversation with the caller to get more facts.

This activity helps an Ombuds build a relationship with an employee. An employee may then be more comfortable sharing information or giving permission to the Ombuds to involve others to resolve an issue.

Unlike exchanges with a hotline, conversations with an Ombuds may not constitute notice to the Company. The explicit purpose of some "hotlines" is to give notice under Sarbanes-Oxley. Realizing that they are giving "legal" notice up front could have a chilling effect on the willingness of some callers to share information or reveal their identities.

Jo: Ethics and compliance help lines and Ombuds are like apples and oranges. The Ethics and Compliance Help Line is helpful in reporting alleged violations of the Code. The Help Line takes the information and refers it to Ethics and Compliance for investigation.

A third party line does not work well in an Ombuds function. When employees go to an Ombuds, they want to have a conversation and be heard. Ombuds listen to the issues and help problem-solve; there is a different level of engagement.

Employees use the HelpLine to establish contact with Ethics and Compliance. They are not using the HelpLine to work out the problem. When employees use the Help Line, issues are clear in their minds. Employees understand the differences between the Help Line and the Ombuds. They do not call the HelpLine to have a conversation or to problem solve.

Mark: We do not have a hotline. Hotlines cannot fulfill the role of Ombuds. I don't believe employees would feel comfortable discussing a serious issue with a distant operator, especially when they are unsure of the implications of a problem. To

be effective in probing and understanding issues below the surface, a person talking with an employee must have an in-depth understanding of our businesses, our ethics and compliance policies, priority risk concerns, and potential resolution resources. I don't know how distant telephone operators can gain the requisite knowledge, awareness and intuition.

9. Do you believe that the total confidentiality of the Ombuds office precludes serious issues from coming to light?

Kathryn: That does not concern me nor has it been my experience. Rather, the confidentiality of the Office facilitates surfacing of issues.

I am unaware of any instance where the Ombuds knew of an issue which should have been reported and was not successful in getting permission from the caller to share the information with a formal organization. Also, under the Ombuds' Standards of Practice and Code of Ethics, an Ombuds has a duty to surface issues where there is imminent threat of serious harm to the organization or to individuals. The Ombuds office uses outside counsel for guidance.

Jo: No, not at all; one of the purposes of the Ombuds office is to be a listening post. Under their Standards of Practice, they must get any issue of imminent threat of serious harm surfaced.

Wilbur's pledge of confidentiality is not a barrier. He explains to employees how issues can be sur-

faced and what processes may ensue once they are surfaced.

Mark: Initially, I was concerned that an employee might bring a serious issue to the Ombudsman, choose to not follow up with a formal channel, and that the problem would not be revealed until it emerged as a regulatory enforcement matter or litigation.

My concern is now completely gone. I have confidence in our Ombudsman and in her practices. Ombudsmen are obligated to get any issue surfaced that is of imminent threat of serious harm to individual(s) or a company. The executive team now understands that Jan is alert to serious issues. Her practice is to keep probing, to find an appropriate way to get issues surfaced and to follow up and ensure a fair process, while maintaining individual confidentiality. Additionally, Ombudsmen surface issues and trends that they personally observe.

10. What types of companies do you believe should have an Ombuds office?

Kathryn: Any company that is large enough that management can't know every employee, where all employees do not feel that they are a part of a small family, or where there are sufficient organizational "layers" that would prevent transparency should

have an Ombuds office.

Jo: Every organization should consider an Ombuds function, especially if it has a large number of lawsuits, EEOC filings or a large number of performance, pay, promotion, or workplace conflict issues directed to Ethics and Compliance.

Mark: I cannot conceive of a type of company that should not have an Ombudsman office.

11. Is there anything else you would like to add?

Kathryn: The Office complements but does not replace the formal resolution resources that are encouraged for use in raising issues or concerns at American Express. The formal resources include: Line management, Human Resources (Employee Online Services), Compliance, Audit, Employee Assistance Program, Employee Representative Bodies, Security, and the General Counsel's Office.

Jo: One of the reasons that the relationship between the Ombuds and Ethics and Compliance works is that both organizations are strongly supported by management. Employees clearly understand that both organizations have important roles. The partnership between the Ombuds and Compliance works due to three additional elements: clear sponsorship, clear communication of roles and our

respectful working relationship.

Mark: The Office is getting traction. It is a staple that allows us to build around it. It is an active manifestation of our mission—a tangible demonstration of our commitment to our values and ethics; it goes beyond the words on paper. There could be questions about whether the Ombuds Office is competing with Human Resources or Compliance, or about whether the Ombuds is dabbling in things she doesn't know anything about and potentially getting us into trouble. I can say, from my experience, that exactly the opposite is true. Matters are brought to Compliance, or HR in a much more efficient and organized way. By the time they reach us, the "noise" has been taken out; the employees understand what the issue is; they have been able to strip out their emotions. This creates efficiency which allows formal channel to hit the ground running and do what we do best: resolve problems and get procedures in place so that problems do not become serious or recur.

The professional associations for organizational ombudsmen are The Ombudsman Association (www.ombuds-toa.org) and the University and College Ombuds Association (www.ucoa.org). For additional articles about ombuds, please see www.redmond-williamsassoc.com. ■