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[International Ombudsman Association, Crystal Ball handout...]

2011

Crystal Ball Report 2011

the last one to appear on paper

The Crystal Ball in the Future: The Crystal Ball (CB) began in 1984. It was intended to collect the wisdom of many OOs, to help each of us to pick up “new things” on the job, and then to share with each other the issues of the future. The CB has reported on issues that will be facing OOs, on new characteristics in the work force, and on problems or aspects of problems—especially “disruptive” problems—new to our employers¹.

Last year a hundred OOs responded with items for the 2010 Crystal Ball. Items were summarized, identifiers removed, the topics were organized. But the 2010 CB represented a once-only appeal, and only one “catch,” instead of picking up new things all year round. The CB Report was compiled over a six-month period, and summarized by just one person. The list was presented to a minority of OOs—that is, only to those who were able to come to an annual conference. The final 2010 Report appeared on the web almost a year after data collection had begun.

Looking Forward: We are proposing a new format for the Crystal Ball. Will you comment on this idea in Portland and on email?

---OOs are in a unique position to observe their whole organization. OO offices are appearing all over the world; we can collate bits of information that may add up, significantly, to an understanding of coming issues.

---Many of us have, in fact, been picking up new issues, and new wrinkles on old issues, and new kinds of inquirers, and “disruptive” issues, ahead of the media and even ahead of senior managers.

---With so many OOs accustomed to both discretion and teamwork, we may be able to share our observations and ideas both safely and usefully. Here are two ideas about creating a Members Only CB website:

“I envisage a **“Members Only Crystal Ball Website”** that IOA members can log into (sign up to) where members can leave a note on an up and coming issue. When you access the site you are able to view all the topics that are posted and add your comments. *It could be set up such that if you ‘sign up’ for ‘New Things’ or for a specific topic, you will receive an email when a new entry has been posted.* With this website set up, you have an ‘opt in’ or ‘opt out’ facility. I think it could be quite powerful. People will add their comments and views for others. We probably need an index, and a search function; people can add keywords. An added benefit is that a topic can be there for many years, for people to update, over time, on what they actually did see or do. This might be useful for other similar topics that may crop up.”

Numerous OOs suggested a **Wish List section for the Crystal Ball.**

One OO provided three examples of what might appear on a Members Only website, hoping that these topics would be useful to the IOA Board and to Conference planners:

- “Do we need a group in IOA to focus on increasing awareness in the federal investigative offices—such as the Office of the Inspector General of the Department of Health and Human Services—in order to include Ombuds as one option in consent decrees after an investigation?”
- “Do we need reach-out groups in IOA, to focus on the medical community and all of health care, and to all of the faith-based communities, to develop awareness of the value added of an Ombuds?”
- “Do we need a university/grad school/law school project, with great visibility, funded by a huge federal grant (!), to examine the effectiveness of disclosure channels including Ombuds, for example, in the healthcare sector? And to help with bullying and violence, in schools?”

What can we do as a profession to collect—year-round—the pool of all our observations and insights on a **Members Only Crystal Ball**? If you learn anything new from the pared down “CB Report” below, will you share your views about how we can do better in letting OOs hear about coming issues and new things we will meet this coming year?

Crystal Ball 2011

Health Care²:

Many OOs wrote about the need for OOs in the field of health care.

¹ See the 2010 Crystal Ball under “Conference Presentations: at <http://www.ombudsassociation.org/conference/2010/>. One can read about the “new problems” reported by OOs over the last forty years in *JIOA, Vol 3, No 2, October 2010*.

² Please see the Conference Workshop: Wednesday, April 6: Every Hospital Should Have (at least) One: Moving Healthcare Ombuds to the Tipping Point.

"With the rising need for health care, world-wide, and expanding private and public support of medical programs, all over the world, and the frequent *changes* in health care programs (expansion and contraction) in virtually every country, there are many more opportunities for unscrupulous people to steal. And to abuse those in most need of help. **We need OOs in every health care program and institution.**"

"New challenges for healthcare ombuds? We need *more OO offices*. (We need more gas money for travel.) I foresee a trend toward *further decentralization of healthcare services*—with the exception of critical care there are fewer hospital stays, more services completed on an outpatient basis. The effect for someone in my position, then, is greater difficulty in getting to the people I serve. This also will represent a real change to health care practitioners in their relationships and communication with each other, because of greater distance. In healthcare, organizational communication is difficult enough, so OOs who train as I do will have to help employees focus keenly on communication standards—and conflict management processes—that can help bridge the distance gap. Otherwise, the healthcare system won't function as a system for the patients; it will function as many tiny little stations, placing a huge burden on the (already sick and vulnerable) patients to be the connecting element.

"Our already large and dispersed systems have created positions that seem to have been created as an attempt to mitigate this problem; they call them patient navigators. Indeed, some patient-focused, classical ombuds function in this way already; the need, I think, will increase. Classical ombuds will not offer the same value to the system as an organizational ombuds—offering daily feedback to improve systemic frailties, and hearing from employees—but they will at least protect patients."

"Chairs of some of the departments in the medical school are asking for facilitation and coaching. This suggests acknowledgment on the part of some medical faculty leaders that **they need to know how to manage people**, not just drugs and IVs."

"An area I see in my local environment, and hear from friends and colleagues, is the need for the Ombudsman role in the medical community, whether it be hospitals, practices, doctor groups or whatever. I know we have some colleagues in this sector, but with medicare fraud and similar issues in the news here in our state, **it is an area that has growth potential**. A recent case here locally resulted in the doctors' group having to implement a Corporate Integrity Agreement, part of which included a 'disclosure channel'."

"I believe that the **corporate OO model is a good one to apply to the medical community**: partially because of the hierarchical nature of the institutions, partially because of the management/staff relationships (read doctors for management) and partially because of the entitled mind-set of some physicians. I am trying, slowly, in a very small way to do this on a local level, however I am sure there is greater potential for the Ombuds Profession. Collecting successes would be useful, in pursuing this area."

"What we need most is to let people know about OOs in health care. They save money. They lead to system change. They come up with win-win solutions far more often than people think. Many cases are resolved at lowest cost for all those who are involved—including the lowest emotional damage and least pain."

Privacy

Dozens of OOs wrote in about privacy problems. Cases included: illegally installed video cameras in bathrooms, in offices, in locker rooms; rifling through office wastebaskets and home trash of personnel; hacking into social media sites by learning a password for one site and applying it to another. OOs reported dozens of concerns about Facebook and other social media—including the posting of compromising and altered pictures—of managers, fellow employees and fellow students in Facebook. OOs dealt with numerous cases where social media postings had resulted in someone's not getting a job, in someone being fired (in two cases because of pictures that included weapons) and in turning down applicants for college. There were cases where families apparently recalled students, to come home from the US because of "unchaste behavior;" in one case a marriage was called off.

There are cases of unauthorized pictures of sedated patients, dying patients, women in OB-Gyn examinations. Health care employers need to review their social media policies and adjust them to their cultures and regulatory environments and enhance their training on the acceptable use of social media. One OO asked:

- "Should all camera-enabled and/or media storage devices be banned from health care facilities to prevent HIPAA violations—or are they useful when used for an ethical purpose—to prove HIPAA violations in the facility?"
- "Should training on social media policies also include an ethics component?"
- "Should employers engage peer focus groups in their institutions to discuss what potential social media uses may arise that the employer may not have even considered?"

OOs reported several dozen unusual cases—where privacy allegedly was invaded to prove ethical violations.

Unauthorized pictures have been taken of alleged unethical behavior, in a number of organizations. Angry employees have

followed managers to take pictures of their accepting kickbacks and gifts; of public drunkenness, or doing drugs; of affairs and other activities seen to be immoral. Documents and photos have been posted on the internet. People are reported to have looked into the home trash of alleged violators, and into a purse or briefcase of someone in an office who is seen to behave in an unethical way. Managers and faculty who were apparently yelling, intimidating, threatening and abusing people in the workplace have been recorded and photographed. There are numerous reports of arranging, in various ways, to read the emails of peers and managers. In some cases these cases have been welcomed as a way to limit abusive behavior. In some cases the behavior is very controversial, as in Wikileaks. Infringing on privacy to prove unethical behavior would appear indeed to be a "disruptive" new problem.

Privacy concerns in OO practice

Numerous OOs have discovered taping of OO phone calls, and VOIP calls turned into email and circulated. An OO discovered that a SKYPE call from a visitor was recorded.

"I'm certainly seeing more cyber bullying, and yes, it is generally from a person who is known to the one getting harassed. It's often stories that—according to the visitor, are either made up, or interpreted in a malicious way when the action could easily be seen as benign—and which invade the privacy of the targets. I have had cases of people using anonymous e-mail addresses and bombarding visitors. The record is 470 e-mails in less than a year." (Other OOs have described many forms of "outing.")

"I'm also seeing a spike in the number of students with psychological issues that are electronically harassing/stalking faculty, staff, and/or other students. What makes this issue so interesting and time consuming is that **many institutions, recognizing the legal rights of those with psychological disabilities and afraid of being sued, are refusing to take intrusive actions unless or until a direct threat to physical well-being is communicated.** As a result, I have even seen the target(s) of the harassment leave the institution and the harasser still not receive the assistance he or she needs."

One OO sent in the following:

"One court has described what is sought in e-discovery as:

Computerized data and other electronically recorded information includes, but is not limited to: "voice mail messages and files, backup voice mail files, email messages and files, backup email files, deleted emails, data files, program files, backup and archival tapes, temporary files, system history files, web site information stored in textual, graphical or audio format, web site log files, cache files, cookies, and other electronically recorded information." Furthermore, the disclosing party should take "reasonable steps to ensure that it discloses any backup copies or files or archival tapes that will provide information about any 'deleted' electronic data." (footnotes omitted). *Super Film of America, Inc. v. UCB Films, Inc.*, 219 F.R.D. 649, 657 (D. Kan., 2004).

"In addition, consider metadata—this includes all the information a computer records each time a file is opened, closed, or edited, and any action to help show that the documents disclosed have or have not been altered since the request for discovery. Metadata includes "descriptive and historical information about an electronic file such as the date of creation, modification, or deletion, its location on the hard drive and the name of the person who created it."³ Courts have asked for 'mirror images' which are 'byte for byte copy of everything on a hard drive' to ensure all electronic discovery can be obtained."⁴ **Such an expansive definition requires Ombuds to review their own understanding of what is a record or a file, even when under best practices one might think that they do not normally maintain files.**

"Each time an Ombuds uses a computer for document creation, record keeping, or emails or simply opens the computer, a metadata trail has been established. Thus, it becomes imperative to know how one's organization archives or keeps records on all work computers (and personal computers if any work is processed through personal electronic computers or other devices) and email accounts. It is imperative to know how information is maintained in edited documents that might contain sensitive information. If requests are made of an Ombuds computer, the company may require that all metadata may be turned over to ensure that nothing has been deliberately left out or deleted. Moreover, the uncertainty of the legal landscape may force companies to be exceedingly cautious and compile all electronic data, not just records of any contact with a visitor, notwithstanding an Ombuds claims to confidentiality.

"Other issues of concern include the proliferation of electronic devices that make it easy for Ombuds to merge work and personal life on the same device. Experts suggest that increased use of iPads has forced companies to evaluate policies of how persons use company equipment.⁵ **Ombuds should be aware if they use home computers, or any electronic devices for**

³Mark E. Borzych, "Avoiding Electronic Discovery Disputes: Practice Questions Answered," 41 Arizona Attorney 36 (January 2005) quoted in Richard Zitrin et al, *Legal Ethics in the Practice of Law*, 3rd ed., (Newark, LexisNexis, 2007), p. 471.

⁴ *Ibid.*

⁵ See, e.g., Miguel Helft, "After iPad's Head Start, Rival Tablets Are Poised to Flood Offices," *The New York Times*, Business Day, B1, February 21, 2011. See also, "What Does the 'Year of the Tablet' (or of the iPad) Mean for Employers?" January 13, 2011, <http://privacyblog.littler.com/2011/01/articles/data-security/what-does-the-year-of-the-tablet-or-of-the-ipad-mean-for-employers/#more>

personal *and* professional use, General Counsel may issue litigation hold letters for personal devices, when litigation occurs, to seize home computers to ensure that e-discovery requests are responded to accurately and promptly. Similarly, if devices such as iPads, are issued by the company, policies need to be set, as to whether they can also be used for personal benefit. (There may be similar problems with cell phones.) Ombuds need to continue to work with their IT Security Departments to ensure they have taken all reasonable steps to protect computers and electronic devices.

OO Confidentiality

Many OOs wrote about the importance of more OO training about SoP practice citing a need for much wider communication of Frequently Asked Questions about evolving OO practice.

There were numerous questions about **modern technology and OO practice**:

"I have had a couple of minor problems with email, but so far, the advantage of using email far outweighs the disadvantages, as I may only see ~50% of my clients in person. The rest is done via phone and email, and I think the next wave, of using social media, in conjunction with the Ombuds office is now upon us. Although I have avoided social media like the plague, I would like to see this topic discussed."

We need discussion of the use of electronic communication devices by ombudspersons and their consultees for confidential communications. The devices of which I speak generate virtually permanent records of the content of the communication (e-mail) or at least the fact that some communication occurred on a specific date and time (texting, cell phone, tweeting, and others, in addition to e-mail). Those who consult with us expect (if not demand) that we utilize these media, and yet simultaneously demand that we keep all record of the communication strictly confidential. I have found many of them (and more all the time) dismissive at best and indignant at worst in response to my attempts to make them understand that they can't have it both ways. I'm afraid that soon, **one of us will be sued in court or persecuted in the press for not following our Code of Ethics and SOPs by someone whose communication was later discovered and made public. This makes me anxious and also frustrated** as I don't know what can be done about it."

"We've even got ombudspersons at solely "on line" universities who communicate exclusively through these non-confidential media, yet they advertise their services as confidential. Who are we kidding? I am also surprised and disappointed in some of my otherwise respected colleagues who, when I raise this issue with them privately, refuse to recognize the hypocrisy, disingenuousness, and risk in which we are engaged."

"Ombuds Offices are starting to establish Facebook pages. Many questions are being raised. For example, if one employee is a Friend of the Ombuds Office, or lists the OO as a Friend, will an employee who has a conflict with that employee, but is not a Friend, doubt whether the Ombuds is a neutral? Might someone find information about a person they are in conflict with by searching the Ombuds Facebook page and thereby gain access to any postings by the other employee? Similarly, what happens if a Visitor who is listed as a Friend on an Ombuds Facebook site posts a wonderful review of how helpful the Ombuds was in particular dispute? Depending on how the review is phrased, will the Ombuds be in the position of being asked to disclose identities of parties in a particular dispute? Will the Visitor taint the OO's impartiality, and the neutrality of the office? **Attorneys have been embarrassed by their lack of control about what clients post about them on Facebook pages; Ombuds should be similarly vigilant about how information becomes disclosed on Facebook pages.**"⁶

"Have you ever gotten a **request from a visitor to provide written documentation** of their visit to the office? I received that request today—said they wanted to have proof of a good faith effort to problem-solve if things ever got sticky. I said I don't do that but *might* consider—with their explicit permission—letting someone who called the office know that the visitor had been in. The visitor was persistent about written documentation so I said I would check with a few colleagues on this one." (The OO subsequently reported deciding not to do this.)

Disabilities⁷

Many OO's reported concerns of the following kind:

"I've had several complaints this year having to do with **environmental complaints**; such as one student who had allergies and asthma complaining about odors/scents in the room which caused her respiratory distress while taking an exam; and another student with head injuries, complaining about student teaching placement sites too close to cell phone towers which allegedly caused adverse reactions. We also have a fair number of cases where students have both **physical and mental disability/mental illness combined**, complicated by the fact they often want to focus on the physical issues ("You're not accommodating me properly!") but without recognizing how their mental state plays into the issues."

⁶ *Ibid.*

⁷ See the workshop, Tuesday, April 5, Nuts and Bolts of a Universally Accessible Ombuds Office, and the Tuesday, April 5 General Session Preventing Targeted Violence: What Organizations and their Ombuds Might Want to Know.

“Although it's not a “new” issue, I'm seeing a spike in the number of visitors—students, staff, parents, etc.—raising **issues related to the accessibility of web pages and “on line information”** for persons with disabilities.”

“2010 brought us **angry complaints about our privacy policies with respect to mentally ill and sometimes frightening employees and students**. I have met several supervisors who are furious that they are not allowed to learn about the mental health diagnoses of people in their offices and labs.”

“We need to do much more training about mental illness and violence, since the attacks this past year. Some people are scared but they know very little about attacks and little about mental illness. Should all mentally ill people be dismissed?”

It would appear that apparent lack of congruence between disability law and practice, and privacy law and practice, contributes to a variety of “disruptive” new cases and new issues for organizations and for OOs.

Veterans

OO's may be hearing more issues with respect to veterans as employees and students. Concerns range from the shock felt by returning vets, who see their home surroundings as soft and spoiled—to a few vets who return with serious mental illness and PTSD:

“I had a vets issue, mostly related to financial aid processes under the new Chapter 33. In dispensing funds—funds now go directly to the university and not to the student, a new process for both the government and the university. In this case, many students received 'overage' checks, and subsequently the federal vets office recalculated the awards and sent 'bills' to the students after they had spent the overage checks issued by the university.”

“A veteran still performing occasional military service (1-month leaves) visited me a few months ago with some issues, one of which is that his Manager “treats him differently” from others in his position. He says she doesn't respect his legal right to military leaves: he contends that by law he is allowed leaves without providing coverage, and that she has accused him of not providing coverage. He says he has fulfilled his responsibility by giving advance notice when he will be away and doing as much work as possible before leaving. He also claims the latter is documented by emails. Since his initial visit, issues about his performance have arisen and he's received a Performance Improvement Plan. His Section Leader told him very recently he has seen some improvement. I encouraged him to continue on this path.”

Teflon managers and employees⁸

Many OOs are discouraged by people being treated unequally and by inadequate performance being ignored. There were at least a dozen stories of apparently unequal treatment—and the OOs' frustrations and grief.

“In my work I am being challenged in many different ways. For example, I have more questions now related to what is a “realistic organization”? What kind of law, policy, values are good for both organization and employees? I find that there are many people who do not work hard, and do not even pretend to work hard and yet they stay in the organization. I am sure that if they worked in some other companies, they might be fired. However, our company cannot do it. The company just waits. Sometimes there is indirect pressure to get someone to leave the organization.”

OO exhaustion⁹

In my private life, friends want to talk to me about their own concerns. You know, I would like to listen to friends, as a friend—but sometimes I feel it is all too much!

I listen to people in my work. Then I listen to friends... Sometimes I do not want to listen to my friends' concerns, then I started to question myself—what does it mean to be a friend? I feel guilty, and—I am still exhausted.”

Here again there were many comments about exhaustion. OOs have been dealing with increasing loads in some organizations where EAP, health care, HR, and other services have been heavily cut.

Emotional distress

“We've had several instances of written communications harassing or scaring others, some obviously delusional and paranoid

⁸ See the workshop, Tuesday, April 5, Journal Authors' Panel: Advocating for Fairly and Equitably Administered Processes . . . as a Designated Neutral.

⁹ See the workshop, Tuesday, April 5, Emotional Well-Being - R U OK?

(talk of battling demons, aliens, etc.). In these cases we might select two members of our Behavior Intervention team (which includes several licensed mental health professionals, campus police, etc.) to sit down and talk with the perpetrator (to assess danger to self or others), and to the recipient to support them and discuss how the situation can be handled; all in the interest of helping everyone to be successful on campus, and to minimize risk of causing harm or damage."

"Many universities are seeing the rising number of concerns about providing adequate mental health services, and we are no different. Some 52% of first-year college students rated their emotional health as above average or in the highest 10% in the survey taken last fall. That's down from 55.3% in the year-earlier survey, and well below the nearly 64% of respondents who gave themselves high ratings in 1985, the first year students were asked about their emotional health."

"I'm continuing to see more students who suffer **anxiety/panic attacks when they are "unconnected."** This translates into serious problems when faculty ban the use of cell phones during class or the taking tests."

"The poor state of the economy is on everyone's mind. A family member has lost a job or their home was foreclosed. I have tried to help people to locate some kind of local financial counseling services. Just the idea that "there are no jobs out there" instills a generic fear among many; it seems people are less inclined to take risks, more inclined to stay under the radar and not get too creative if doing so would be seen as even slightly risky. Professional schools have gotten very serious about expecting high productivity in practice and in research. On top of this, there is great trepidation about the expected cuts in funding and government services."

How to get attention to problems that need address¹⁰?

"Two very serious allegations of research misconduct contributed to a much needed redrafting of the university's integrity guidelines—as well as discussion about how to help researchers understand what misconduct is, how to meet expectations for ethical conduct, and how to report misconduct. **Do we need crises to get action?**"

"I see heartfelt and grassroots interest among academic administrators for creating and publicizing ethical expectations for all individuals (students, faculty and staff) in their schools. I am working with this group and expect to have lots of work to do in the future. I have had two requests to help departments conduct workplace climate surveys. I think some ombuds may be wary of getting involved with such undertakings, but for a number of reasons I have assisted with these efforts."

"Many, many, many staff and faculty problems are seen as a direct result of poor personnel management. I just started giving workshops on how to give effective feedback; also a workshop on steps researchers can take to create a successfully functioning lab; and another that will end up being more or less on civility (among other topics: apology, conflict resolution, negotiation skills.)"

"Can OOs possibly fill the needs for training? What can we do to illuminate how badly our organizations need training?"

This CB Report was unusually hard to write because many "entries" could be listed under more than one heading.

This Report, also does not repeat some on-going topics: bullying; arrogance; vanishing or declining quality of services; cross-generational conflicts; ever-present racist, sexist conflicts; LGBT issues; and religious and other cross-cultural conflicts. OOs continue to report more "complex cases" that cross over organizational, national boundaries and include multiple sets of rules and regulations. OOs report **many cases that include multiple issues, and many different cohorts, and cases where groups—or anonymous people—are visitors or seen to be the source of the problem.** In addition, many more cases are reported that take months or years.

Ombuds continue to stress the importance of being able to demonstrate and communicate their usefulness.¹¹

¹⁰ See the Conference discussions, Monday, April 4, Supporting Organizational Integrity: Speaking the "Second Language" of Values; and Building and Maintaining Cultures of Integrity.

¹¹ See various workshops, including: Monday, April 4, Safeguarding the Role of the Ombudsman in College and University Settings; Tuesday, April 5, The Untold Millions - Demonstrating Organizational Ombudsman's Value Return; Wednesday, April 6, Adding Value: How Do Ombudsmen Across Sectors Collect, Use and Report Data? Values in Action Dialog - Putting IOA's Decision Model into Practice; Wearing Multiple Hats: How a Collateral Duty Ombudsman Succeeds; Every Hospital Should Have (at least) One: Moving Healthcare Ombuds to the Tipping Point.

*Defending ourselves - in orgz
on internet
in court?*



Department of Distinctive Collections
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139-4307
libraries.mit.edu



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