Assessing Effectiveness in Ombudsman Programs

HOWARD GADLIN

ABSTRACT

Assessments of ombudsman effectiveness should not be governed by consideration of cost-effectiveness, nor by measures that demonstrate "customer" satisfaction. Instead it is argued that there should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated. Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

KEY WORDS

assessment, ombudsman, effectiveness, standards, practice, dispute resolution.

In every historical era, many people have sought to carry out good work. It has always been true that some people do their work expertly but not very responsibly. People who do good work… are clearly skilled in one or more professional realm. At the same time, rather than merely following money or fame alone, or choosing the path of least resistance when in conflict, they are thoughtful about their responsibilities and the implications of their work.

— (Howard Gardner, Mihaly Csikszentmihalyi, and William Damon, Good Work 2001)

Assessments of ombudsman effectiveness ought to support our efforts to do good work. Toward that end assessments should focus on meeting our responsibilities and examining the implications of our work. Our responsibilities are shaped and continuously reshaped within the framework established by our standards of practice; the implications of our work are discernable within the organizations in which we practice. Consequently there ought to be two audiences for any examination of the effectiveness of an ombudsman program: the organization within which the ombudsman functions and the ombudsman program itself. Since our responsibilities are shaped by our SOPs, to my mind any discussion of assessing ombudsman effectiveness should meet two criteria:

1. There should be a parallel between the standards for designing an ombudsman program and the dimensions along which an ombudsman program is evaluated.
2. Any assessment of an ombudsman program ought to provide information that helps the ombudsman staff improve the quality of their work and the ombudsman's organization improve the effectiveness of its program.

To better understand this approach it can be helpful to differentiate between the reasons for establishing an ombudsman program and the motives for establishing an ombudsman program. In my experience there are many motives for developing an ombudsman programs. Among the ones I have heard mentioned most frequently are: controlling the costs of conflict; reducing lawsuits or EEO complaints; improving morale among an organization's employees/members; a legally mandated need for an alternative dispute resolution program. In many instances an organization has decided it needed an ombudsman program after a major organizational crisis such as the revelation of undetected or overlooked major ethical violations.

Events such as these point to the primary reason for establishing an ombudsman program – the need for an informal, confidential, independent channel by which all members of an organization can explore and pursue complaints and grievances and raise concerns without fear of retaliation and with the knowledge that they will be treated fairly and that their issues will be addressed honestly and impartially. It is in the nature of large, bureaucratic organizations that their internal dynamics create impediments against people bringing forward issues and concerns that point to individual and structural problems within the organization. It is in the nature of large bureaucratic organizations that important information that could matter enormously for the better management and functioning of the organization is kept from the very people who could use it. An ombudsman program that is doing "good work" can be an effective way to address these needs.

Most discussions of Ombudsman effectiveness make me nervous because they appear to ignore the core principles of neutrality, confidentiality and independence and they are not anchored in a consideration of the standards of practice. Instead, these discussions seem informed by an (often unacknowledged) desire to determine the best approach to selling or justifying the ombudsman program to the organization within which it functions. Mind you, in a tight economy where organizations are scrutinizing many of their programs to decide what can be cut and what is too costly, such an orientation makes a certain sense. Indeed there have been several instances in the past few years of organizations dropping their ombudsman programs. Still, the concern to provide a justification of an ombudsman office in terms of cost-effectiveness moves us away from recognizing and reinforcing the reasons for an ombudsman program.

Over many years in the dispute resolution world I have seen a large number of reports claiming to demonstrate the effectiveness of ombudsman programs, mediation programs and integrated conflict management systems and not a single one of those reports was grounded in the standards of practice. Why is that? Is there a view that the SOPs are an essential or important part of the practice? Probably not. In fact, they may be rather unimportant to the organizational leadership, relegated to the arena of the Ombuds' preferred jargon. Instead, reports focus on matters such as the number of cases handled or persons seen, settlements rates, disputant satisfaction ratings, increases or decreases in the number of complaints filed, and most annoyingly, claims of savings in time and money. These latter often take the form of calculating the costs in terms of time and personnel of the ADR program's handling of a case, from intake through settlement and then comparing that cost with what the cost would have been had the case gone thorough to litigation. You can imagine the astronomical savings one can project through this methodology. Aside from the suspect nature of such statistical manipulations, approaching the assessment of effectiveness in this way is a direct insult to the very idea of ombudsman independence. Ella Wheaton, one of the most distinguished ombuds practitioners, always used to remind us that we need to be careful not to subtly make management decisions by settling cases in order to produce the right results for the head of the organization.

Let me be clear, I am not, in principle or in reality, opposed to using various legitimate measures of cost-effectiveness, customer satisfaction, lawsuits avoided, conflicts resolved, etc. to point to some of the value added to an organization by having an ombudsman. But I am opposed to having the value-added sensibility being the primary and most important framework within which the ombudsman program is assessed. I will return to the measuring effectiveness issue below, but first I want to address the importance of placing our standards of practice at the very center of any efforts to think about effectiveness.

When I first arrived at NIH there was in place an existing mediation program that served support staff for the infrastructure, a small proportion of the roughly 20,0000 NIH workforce. The program had a very high settlement rate and had gathered a variety of mea-

sures meant to prove its value to the parts of the organization it served. However, when I looked into their actual functioning I found a very different picture - mediators who were far from neutral in their conduct, and a director who bullied people into settlements and who regularly violated confidentiality (she was not an ombudsman but mediation programs have a similar commitment to confidentiality and neutrality). Fortunately I was able to demonstrate to the organization that this program, despite its ostensible success, could undermine the very rationale behind the establishment of an ombudsman program. While I do not know exactly how, I do think we must find ways of assessing whether or not our ombudsman programs actually follow our standards of practice. And the only way I know we can do this is to move toward opening up our practices to researchers who can study, first hand what it is we actually do. I am not alone in this view. Our professional Journal of the International Ombudsman Association recommended this practice and received the Board of Directors approval. It is with this in mind that I turn back to the assessing effectiveness issue.

In recent years there has been considerable discussion about measuring teacher effectiveness in the schools. This is an incredibly complex issue and it has elicited a very complicated discussion. One aspect of this debate has to do with measuring effectiveness in terms of the scores a teacher's students achieve on the standardized tests of achievement. A major point of controversy about using this measure is whether it forces teachers to choose between teaching general knowledge and the skills to acquire it and "teaching the test." There are significant implications of the criteria selected. Massive amounts of potential funding are distributed in part based on this one criteria of success.

When I listen to our discussions about measuring effectiveness I worry about creating a schema within which Ombudsmen will "practice to the measures," pushing for higher resolution rates or (unconsciously) altering their styles in ways that are not neutral, informal, confidential and independent in order to receive higher customer satisfaction ratings. This is not to argue against the use of quantitative measures. Among the most thoughtful participants in the teacher effectiveness discussion has been a group called "Teach for America." But this group, while employing students' test score results as one indicator of teacher effectiveness, has also begun an intensive observational based analysis of what it is exceptional teachers do that leads to their success. If I believed that we as a profession were prepared to expose our practice to comparable scrutiny, I would have more faith that we might learn something useful for our actual practice worthwhile from quantitative measures. Of course there are significant confidentiality issues to be addressed but they can be addressed and ought not to be an excuse for shielding ourselves from critical examination. As Steven Farr, from Teach for America said recently, "Strong teachers insist that effective teaching is neither mysterious nor magical. It is neither a function of dynamic personality nor dramatic performance."[1] Anyone who has ever been to a gathering of Ombuds is aware of how often we romanticize what we do and who we are. While such talk may reassure and affirm us it does little to advance our work or our profession. And certainly when an ombudsman colleague for another institution is hired to assess the functioning of our programs we cannot really fool ourselves into believing that such an assessment constitutes an impartial and objective analysis.

Fortunately, in addition to teacher effectiveness there are other domains in which the quest for data-based understanding promises to help us understand matters where previously we were totally dependent on the opinions of the designated experts. We all understand the importance of getting an independent and impartial assessment of an activity or a treatment or an intervention. Considerable attention has been paid recently to the area of comparative effectiveness research:

> Comparative effectiveness research is the conduct and synthesis of systematic research comparing different interventions and strategies to prevent, diagnose, treat and monitor health conditions. The purpose of this research is to inform patients, providers, and decision-makers, responding to their expressed needs, about which interventions are most effective for which patients under specific circumstances. To provide this information, comparative effectiveness research must assess a comprehensive array of health-related outcomes for diverse patient populations. Defined interventions compared may include medications, procedures, medical and assistive devices and technologies, behav-

> ioral change strategies, and delivery system interventions. This research necessitates the development, expansion, and use of a variety of data sources and methods to assess comparative effectiveness. (Amanda Ripley, "What makes a great teacher" The Atlantic, Jan/Feb 2010).

Of course what we do is not the same as what doctors do, and the tasks of measurement of effectiveness are not at all comparable, but they are similar and there could be lessons for us regarding the sort of stance we ought to take towards our work. Luckily for us the academic world is filled with researchers interested in the study of organizational dynamics, institutional change and dispute resolution processes and programs. I believe it is time for us to develop collaborative relationships with researchers guided by accepted ethical guidelines and protections, who can independently examine and assess the work that we do, the way that we do it and the impact that we have. For years now we have argued that organizations have much to benefit from establishing an ombudsman program to function as an independent and impartial site for organizational self-analysis. Surely we can see the wisdom of following our own advice and applying it to ourselves.

ENDNOTE

1 "What makes a Great Teacher?" Amanda Ripley The Atlantic Jan/Feb 2010, 58-66