



## ACUS Recommendation 90-2

- Initial Federal Ombuds Recommendation adopted in 1990
- Proliferation of the field since then
- Remarkably little was known about federal ombuds
- Lack of comprehensive information
- The 25<sup>th</sup> Anniversary Gift – a new study



## The Research Team

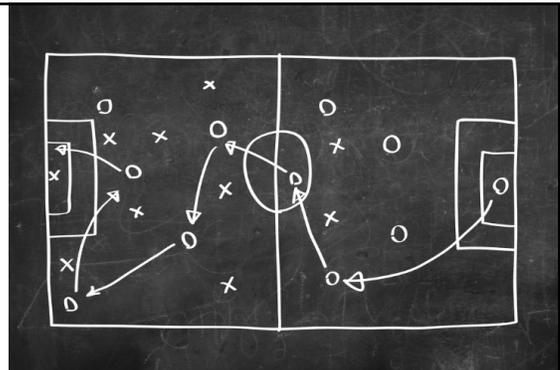
- chiResolutions, LLC: government contractor specializing in integrated conflict management systems (ICMS)
- The CHI Research Team
  - Carole S. Houk, J.D., LLM
  - Mary P. Rowe, Ph.D.
  - Deborah A. Katz, J.D.
  - Neil H. Katz, Ph.D.
  - Lauren Marx, M.S.
  - Timothy Hedeem, Ph.D.
- Research assistants



©2017 chiResolutions, LLC

## Mixed-Method, Multi-Stage Research Project

- Literature review & historical context
- Survey Results
  - N=Ombuds Office
  - 150 unique offices invited (known)
  - 46 multi-part Quantitative survey questions
  - Collection of program materials
  - 9 open-ended Qualitative questions via phone interviews or written responses
  - Responses from >50 ombuds offices
- Case studies & profiles
  - CFPB, DOE, DOI, IRS
  - LTC, Navy Family, COFO
- Standards of practice policy considerations & legal analysis
- Resulting in proposed **new** Recommendation for ACUS based on empirical evidence



©2017 chiResolutions, LLC

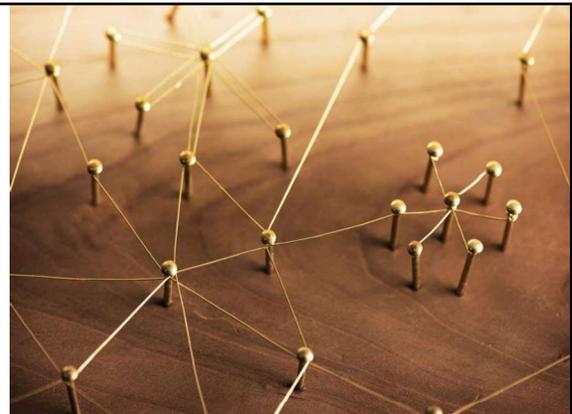
## There's an Ombuds for That...

- There are now many types of federal ombuds
- Major variations exist depending on:
  - How they are authorized
  - Who their constituents are
  - How they practice the standards
  - The type of data they keep
  - Their primary functions
  - Whether they focus on one or a wide range of issues
  - Whether they serve individuals or also groups
  - Whether they were intended also to identify, recommend & foster systems reviews & improvements



## New Addition: Federal Ombuds Taxonomy

- Needed a structure to describe & understand what we were finding
- Existing typologies did not translate well
- Wanted to include the widest range of offices with the ombuds title
- Began with two general types based on constituents rather than issues
  - Internally-Facing
  - Externally-Facing



Internals		
<i>Primarily serves constituents internal to the agency</i>		
Organizational Ombuds	Whistleblower Protection Ombuds	Analytic Ombuds
<p>Designated neutral who provides confidential, informal, independent, &amp; impartial assistance through dispute resolution &amp; problem-solving methods. Assist in the resolution of problems concerning the organization's actions, policies, or the application of regulations that affect internal constituents</p>	<p>Designated individual in an IG's office whose role is to educate employees, contractors, &amp; grantees about prohibitions on retaliation for protected disclosures &amp; their rights &amp; remedies if they have been retaliated against for making protected disclosures. Does not serve as a legal representative, agent or advocate.</p>	<p>Individual or office responsible for responding to concerns raised by intelligence community analysts about adherence to analytic (or tradecraft) standards. They provide impartial oversight of intelligence analysis &amp; production &amp; are charged with enhancing analytic integrity, excellence, &amp; objectivity.</p>
<p>Established by statute, agency regulation or management decision</p>	<p>Appointed by legislative action</p>	<p>Appointed by legislative action</p>
<p>E.g. Dept. of Energy, Dept. of State, Dept. of the Interior, National Institutes of Health, &amp; US Secret Service</p>	<p>E.g. Found in all IG Offices</p>	<p>E.g. Defense Intelligence Agency, Office of the Director of National Intelligence, &amp; NSA</p>

Externals		
<i>Primarily serves constituents external to the agency</i>		
Programmatic Ombuds	Subject Matter Ombuds	Advocate Ombuds
<p>Independent, impartial employee appointed to facilitate informal resolution of concerns about specific program areas</p>	<p>Independent, impartial employee with authority to receive, investigate or informally address complaints about their agency or agency officials.</p>	<p>An individual appointed to receive, investigate, &amp; attempt to resolve informally concerns about or within an agency; authorized to act on behalf of those aggrieved.</p>
<p>Authorized by 1) legislative action; 2) executive action; or 3) agency mandate</p>	<p>Authorized by 1) legislative action; 2) executive action; or 3) agency mandate</p>	<p>Typically Appointed by Legislative Action</p>
<p>E.g. FDA's Center for Biologics Evaluation and Research, USDA Humane Handling Ombuds, FCC Open Internet Ombudsperson, FAA's Aviation Noise Ombudsman</p>	<p>E.g. Consumer Financial Protection Bureau, US Citizenship &amp; Immigration Services Ombudsman, GSA's Task Order &amp; Delivery Order Ombuds, NASA Procurement Ombuds, FOIA Ombuds</p>	<p>E.g. National Taxpayer Advocate, Long-Term Care Ombuds, Wounded Warriors, Navy Family Ombuds</p>

## Federal Ombuds Value

- Reduction of legal costs
- Humanize government
- Agency ambassadors
- "Agents for Change"
- Improved employee morale & customer satisfaction
- Increased employee & customer engagement
- Better products &/or services that ultimately advance the agency mission
- Major contributions to systemic changes in agency policy or procedure



©2017 chiResolutions, LLC

## Standards of Practice are Essential

Why? Because they . . .

- Help develop trust & credibility
- Define a profession
- Create a community & consistency of practice
- Provide a platform for establishment of new offices & for education & training
- Help manage constituent expectations
- Are essential in order to defend ombuds confidentiality should it be subject to legal challenge



©2017 chiResolutions, LLC

## Standards of Practice

### Independence

- Supports neutrality and impartiality
- Enables flexibility
- Ensures access throughout the organization
- Necessary condition for trust

### Neutrality & Impartiality

- Supports fairness & confidentiality
- Contributes to the "safeness" of the ombuds
- Helps ensure the ombuds is viewed as credible
- Necessary condition for trust

### Confidentiality

- Encourages visitors to speak freely & honestly
- Often a "requirement" for participation
- Necessary condition for trust

## Definitional Characteristics

### Informality

- Reinforces perception as a safe, confidential resource
- Option to speak "off the record"
- Supplements formal procedures

### Credible Review

- Necessary if the ombuds is to be trusted to review & address conflicts & disputes
- Enables ombuds to build trust with constituents & stakeholders

### Fairness

- The raison d'être for many ombuds professionals
- Necessary guiding principle for neutrality & impartiality
- The product of the standards plus informality & credible review?

## Legal Analysis & Considerations

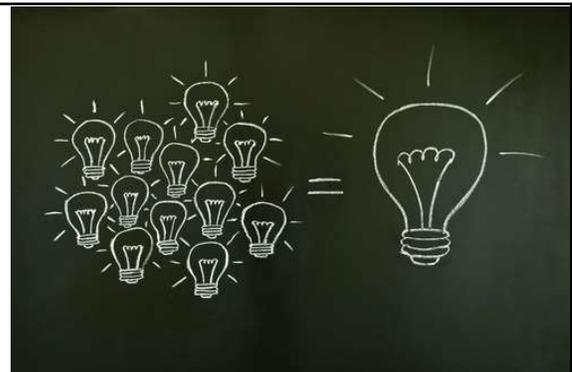
- To what extent & how the functions of federal ombuds are **covered by ADRA**, including its prohibitions & requirements, in particular those in § 574 on **confidentiality**
- How **adherence to ombuds professional standards** & the rights & obligations under ADRA are **affected by other statutes**, regulations & management directives
- **How case law & commentary** on the law of privilege & the inherent authority of judges to manage discovery might further **illuminate the scope of federal ombuds confidentiality**



©2017 chiResolutions, LLC

## ACUS' Updated Ombuds Recommendation

- Contains an extensive Preamble and 16 separate recommendations
- Explicitly acknowledges unique value ombuds provide
- Focuses on defining, standardizing, & promoting best practices
- Provides detailed suggestions to agencies & Congress regarding establishment & management of federal ombuds offices



©2017 chiResolutions, LLC

## ACUS Recommendation 2016-5

### 1. Establishment & Standards

- Agencies should ensure that the office is able to, & does, adhere to the standards
- Existing offices with the ombuds title that do not adhere to these standards should consider modifying their title
- Ombuds offices created by executive action should be established or governed by a charter or other agency-wide directive

### 2. Legislative Considerations

- Congress should consider creating additional ombuds offices observing the procedural principles contained in this recommendation
- Any action by Congress creating or affecting the operations of agency ombuds offices, should reinforce the core standards & maintain clarity & uniformity of definitions & purpose for federal agency ombuds

### 3. Leadership Support

- Agency leadership should provide visible support, renewed as leadership changes
- Agency leadership should consider recommendations provided by the ombuds.



©2017 chiResolutions, LLC

## ACUS Recommendation 2016-5

### 4. Independence

- Structure the office to be separate from other units of the agency.
- Ombuds should report to the highest level of leadership & have direct access
- Ombuds should not have agency duties that could impact their neutrality
- Publicly disclose the Offices' budget
- Ombuds should have access to pertinent agency information & records
- Communicate that the office is independent & not a conduit for notice to the agency.
- Ombuds should not be subject to retaliation for doing their jobs

### 5. Confidentiality

- Agencies should support ADRA's requirements for confidentiality to begin at intake
- The scope & limits of the ombuds confidentiality should be clearly articulated
- Leadership & management should not ask for confidential information
- Agencies should vigorously defend the confidentiality offered by ombuds offices.

### 6. Impartiality

- Ombuds should conduct inquiries & investigations in an impartial manner
- After impartial review, ombuds may appropriately advocate with regard to process



©2017 chiResolutions, LLC

## ACUS Recommendation 2016-5

### 7. Legal Issues: Potential Conflicts of Interest

- Statutory duties to report information, the requirements of ADRA § 574(a)(3) on confidentiality, agency's mission, & the standards
- FRA, FOIA, & the Privacy Act, with regard to agency records & other documentation.
- The effect on confidentiality of the provision in the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114, where applicable, pursuant to which the union may be entitled to notice & an opportunity to be present at meetings with bargaining unit employees.

### 8. Staffing

- Ombuds should have sufficient professional stature, & possess the requisite knowledge, skills, & abilities.
- Ombuds offices' staff should have a diversity of ombuds skills & backgrounds
- Agencies & OPM should consider working collaboratively, to craft & propose job descriptions, classifications, & qualifications



©2017 chiResolutions, LLC

## ACUS Recommendation 2016-5

### 9. Training and Skills

- Agencies should provide training to ombuds with regard to standards & practice
- Ombuds should work to build general competency & confidence within the office & to provide support during highly emotional or complex cases
- Ombuds offices should consider developmental details & mentoring.

### 10. Access to Counsel

- Agencies should ensure that ombuds have access to legal counsel for matters within the purview of the ombuds without conflicts of interest

### 11. Physical Facilities

- Agencies should ensure that the physical office & telephonic & online communications systems & documentation enable discretion

### 12. Evaluation

- Offices should periodically evaluate office management & program effectiveness



©2017 chiResolutions, LLC

## ACUS Recommendation 2016-5

### 13. Providing Information

- Ombuds should provide visitors with information about their options
- The ombuds office contact information & description should be on the agencies' public website
- Ombuds offices should explore ways to document their value for senior leadership

### 14. Records Management

- Ombuds offices should comply with record schedules while protecting confidentiality

### 15. Agency-wide Considerations

- Ombuds offices should undertake outreach & education
- Ombuds offices should work proactively with other offices & stakeholders to build collaborative partnerships

### 16. Interagency Coordination

- An entity should be designated to serve as a central resource for agency ombuds



©2017 chiResolutions, LLC

## Conclusions and Reflections

- Over the last 45 years, Federal ombuds offices have proliferated
- Their missions & functions are very diverse & have broadened far beyond the traditional, classical ombudsman model\*
- They provide tremendous value to both agencies and constituents
  - *In a challenging environment in which many federal agencies struggle to maintain the trust of the public they serve and even of their own employees, the ombuds is uniquely situated to provide both pertinent information and assistance in resolving issues to constituents and the agency alike*
- Ombuds Core Standards are absolutely critical to creating and protecting this value
- ACUS' Recommendation improves and advances the profession

\* Presently there are no traditional, classical ombuds in the U.S. federal government



©2017 chiResolutions, LLC

The complete **Report, Recommendation and Taxonomy** can be found at:

[www.chiResolutions.com](http://www.chiResolutions.com)

**ACUS** <https://www.acus.gov/research-projects/use-ombuds-federal-agencies>



If you would like to learn more about how **chiResolutions** can help you design, implement, and manage an ombuds program please contact us!

**Carole Houk**

[chouk@chiresolutions.com](mailto:chouk@chiresolutions.com)

**Lauren Marx**

[lm Marx@chiresolutions.com](mailto:lm Marx@chiresolutions.com)