

1 ABA Public Hearing - 10-25-02
2 that obligation, which I think they should,
3 there really does need to be some
4 protection, support or respect at least for
5 their wisdom and their training and the
6 fact that they are bound to do that.

7 If you compare that to going to your
8 family doctor, you don't want advice from
9 your doctor to be couched in terms of well,
10 he doesn't want to make you mad, you want
11 to know what is wrong, you want his best
12 judgment and hopefully that will be true
13 for lawyers as well.

14 A SPEAKER: Thank you so much for
15 joining us.

16 MS. MITTLEMAN: I was very honored
17 to have this opportunity, thank you.

18 CHAIRMAN CHEEK: Ms. Steinholz.
19 Good afternoon, we appreciate you being
20 here.

21 MS. STEINHOLZ: Thank you for having
22 us. I'm Bari Steinholz, I work at Pace
23 University in the ombudsman's office.

24 MS. WILLIAMS: I'm Randy Williams on
25 behalf of the Ombudsman Association also.

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 My background is primarily with American
3 Express, I was in line running operating
4 centers in HR quality, learning and
5 development and recently was the head of
6 the corporate ombuds program for American
7 Express and led their global ombuds
8 program.

9 MR. STEINHOLZ: Thank you for having
10 us here this afternoon. We would like to
11 commend the task force on being into the
12 issue of corporate responsibility. We
13 think that influential organizations like
14 the ABA can go a long way towards
15 re-evaluating corporate organizations and
16 restoring America's faith in America's
17 corporations, as well as the employee's
18 faith in their own corporations.

19 The Ombudsman Association would
20 particularly like to thank you for
21 recognizing the value of an organizational
22 ombudsman program as a means to ensure
23 ethical behavior beyond the minimum legal
24 requirements.

25 Today we would like to discuss the

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1 ABA Public Hearing - 10-25-02
2 creation of an ombudsman which you have
3 noted in section 2(b)5 on page 20 of your
4 preliminary report and we would like to
5 discuss particularly the characteristics of
6 an organizational ombudsman program. How
7 an organizational ombudsman program
8 consists of corporate governance,
9 compliance and how an organizational
10 ombudsman program is different from but
11 complements formal organization structures
12 such as ethics, compliance and hotlines.

13 MS. WILLIAMS: I'm going to cover
14 those three areas which lead to our
15 recommendations for amendment, those are
16 the characteristics of an ombuds program,
17 how it does fit into a corporate
18 compliance, a corporate governance
19 compliance strategy and then how it does
20 complement the formal channels.

21 An organizational ombuds program
22 provides really a confidential, neutral and
23 informal assistance in surfacing and
24 resolving more place issues and I think
25 that you are aware in the summer of 2001,

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1 ABA Public Hearing - 10-25-02
2 the ABA House of Delegates formally adopted
3 the ABA policy for establishing the
4 operation of an ombuds program and the
5 three critical qualifications that are in
6 that policy are, number one, independence
7 and as it says in the policy, an ombuds is
8 and appears to be free from interference in
9 the legitimate performance of duties,
10 independent from control, limitation or
11 penalty imposed for retaliatory purposes by
12 an official of the appointing entity.

13 The second critical qualification is
14 impartiality, that an ombuds person
15 approaches something without bias and
16 without conflict of interest. An ombuds
17 person is not an advocate for the person
18 coming to the program or for management,
19 but is an advocate for fair processing.
20 The third critical qualification is
21 confidentiality and this is very important
22 and I will talk about it a little later,
23 that an ombuds person does not disclose or
24 is not required to disclose anything that
25 goes on information in the confidential

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1 ABA Public Hearing - 10-25-02
2 conversation, unless there is a threat of
3 an immediate serious harm.

4 This is what really distinguishes
5 the ombuds from other formal channels
6 because this enables the people to feel
7 very comfortable in coming to an ombuds
8 person knowing of that confidentiality.

9 The Ombuds Association has created a
10 code of ethics and standards of practice
11 for organizational ombuds programs, which
12 reemphasize the importance of the
13 neutrality, confidentiality, independence
14 and importantly informality, that the
15 ombuds program is off the record and is
16 informal.

17 So basically the role of an ombuds
18 program is that a person will come to the
19 ombuds office and from my experience they
20 may come for three reasons. Number one,
21 they don't know where to take the issue,
22 especially in a large organization. They
23 may not know how to take the issue forward
24 and they need coaching and understanding or
25 they want to remain anonymous and keep the

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 confidentiality.

3 So the ombuds person will spend time
4 with this individual understanding what is
5 the issue and discuss options to get this
6 issue resolved. So the ombuds need to
7 understand very thoroughly the processes
8 and the organization structure. Then they
9 will either maybe help coach the individual
10 they are going to take the issue for or
11 they will take the issue, again as a
12 neutral, forward keeping the
13 confidentiality of the individual.

14 Secondly we are going to talk about
15 how an organization ombuds is a very
16 important component of a corporate
17 governance, compliance or risk mitigation
18 strategy and looking at that strategy we
19 feel like it includes the certain
20 appearances of strategy, that it will
21 minimize the possibility of criminal
22 liability and fines, injury to reputation,
23 financial loss.

24 It will also help reduce the
25 exposure to criminal prosecution or if

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1 ABA Public Hearing - 10-25-02
2 there is prosecution, reducing the fines
3 according to the unit sentencing
4 guidelines. Also important in helping to
5 comply to the new Sarbanes-Oxley Act and
6 also important is promoting the integrity
7 and ethical practices. The ombuds program
8 is unique in supporting those comparatives
9 because it provides a barrier free process
10 which enables early surfacing of issues,
11 eliminating the fear of retaliation,
12 escalating undetected or unreported
13 criminal or ethical behavior, policy
14 violations or leadership issues. Also as a
15 part of the effective issue resolution in a
16 changed management process within an
17 organization.

18 A SPEAKER: When you say escalating
19 what does that mean?

20 MS. MILLER: Undetected or
21 unreported. If a person is concerned about
22 bringing issues forward in a formal
23 process, this gives a safe haven for them
24 to bring issues forward that might not be
25 reported normally or detected, because it

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 can be brought to the organization with
3 protecting the confidentiality or keeping
4 the individual anonymous.

5 In essence, the benefits to an
6 organization of having an ombuds program
7 are protection, protection of the financial
8 and human resources, the reputation of the
9 company. Compliance, ensuring that the
10 company policies are in compliance with the
11 laws and regulation. Changes, helping the
12 organization make the changes that will
13 enable these things not to keep reoccurring
14 and then also providing the ethical work
15 environment.

16 I know in the earlier conversation
17 we talked about setting the tone that an
18 ombuds program is a process that sets a
19 tone in the organization, that the
20 organization wants to hear about issues and
21 it's going to provide a safe environment
22 for those. Some of the types of changes
23 that the organizations have experienced
24 because of having an ombuds program is that
25 discrimination and harassment lawsuits have

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1 ABA Public Hearing - 10-25-02

2 been avoided, policy violations have been
3 ended, incorrect financial reporting has
4 been stopped, fraudulent vendor relation
5 have been stopped.

6 From a point of employee retention
7 of productivity, leaders with inappropriate
8 behaviors have been terminated or
9 reassigned. Conflict has been resolved and
10 business practices have been improved.
11 Also the ombuds program helps systemic
12 changes take place. New control processes
13 are put in, new policies are written,
14 increased compliance with codes of ethics
15 and processes like that.

16 The third area we wanted to discuss
17 was how the ombuds program aligns with and
18 complements formal channels. If you look
19 at the blue sheet, basically this describes
20 how an ombuds program works with
21 organizations. Someone will come to the
22 ombuds program, an ombudsman and raise an
23 issue. So it is another listening post in
24 the organization, it provides increased
25 check and balance process for an

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1 ABA Public Hearing - 10-25-02
2 organization. So this issue gets raised
3 up.

4 What happens with that issue, it
5 gets into the hands of the formal channels
6 so that issue will go to human resources,
7 legal, compliance line to actually do the
8 investigation and to determine what needs
9 to be done at this resolution. It will be
10 either taken forward by the person coming
11 to the office or by the ombudsman person.
12 Then what happens is the ombuds person
13 taking two formal channels works with the
14 channels and coaches what can be done about
15 this, does a new policy need to be done, is
16 there an appropriate haven, are there not
17 lacking of controls.

18 Then the ombuds person reports back
19 to the organization in trend data. While
20 keeping the confidentiality of the
21 individual they could feed back to the
22 organization here are the issue trends
23 permeating through the organization, these
24 are the ones that are increasing and these
25 are the ones that are decreasing, these are

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1 ABA Public Hearing - 10-25-02
2 related to your business outcomes, your
3 goals, your code of ethics; so it helps the
4 organization see where they have to make
5 more systemic changes.

6 The ombuds person also aligns with
7 compliance HR and audit. They will sit
8 down and say, again keeping the
9 confidentiality of the individual, here's
10 what my inquirers are telling me and
11 compliance will say I'm hearing things here
12 and all of a sudden you start getting a
13 broader picture of what might be going on
14 in the organization. Also the ombuds
15 person, because they deal with all types of
16 issues across the organization, can take a
17 broader view of what's maybe happening in
18 the organization.

19 Leading onto that, looking at the
20 yellow sheet, this is trying to describe
21 what is the difference between an ombuds
22 program and hotlines, ethical officers and
23 other formal channels within the
24 organization. The back of this gives a
25 little bit more detail, we're not going to

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1 ABA Public Hearing - 10-25-02
2 go into all the detail now, but a couple of
3 things I did want to point out is the third
4 one down talks about the reporting
5 structure.

6 The advantage of an ombuds program
7 is it is outside the formal management
8 structure. I was hired and worked for
9 American Express, I reported into the CEO
10 and into the audit committee of the board,
11 so that the ombuds person has direct access
12 to the audit committee and once a year or
13 if need be more frequently, I would provide
14 reports back to the audit committee on what
15 were the trends, what are the issues we're
16 hearing, what is the organization doing
17 about it; again keeping confidentiality of
18 the individual.

19 I also had a contract, an employment
20 contract saying that the organization could
21 fire me for wrongdoing but they could not
22 fire me for maintaining my role as an
23 ombuds person, keeping the confidentiality
24 and doing that role. So I think that that
25 is an important distinction between some of

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1 ABA Public Hearing - 10-25-02

2 the other formal channels.

3 MS. PETERS: Would you conclude then
4 that was the most important distinction
5 between you usurping as an ombuds person as
6 opposed to certain circumstances where
7 there is a hotline that feeds into the
8 internal auditor and the internal auditor
9 reports back to the audit committee with
10 the same breadth and scope that you
11 described here?

12 MS. WILLIAMS: I think that is the
13 important distinction is that all the other
14 channels like ethics officers or hotlines
15 that reported the formal structures are
16 part of the formal management, and in the
17 eyes of the law it is considered part of
18 this formal process. For instance, if an
19 issue comes to them the company is put on
20 notice and has to do something about it.
21 Whereas if it comes to the ombuds office
22 it's off the record, it's informal and we
23 do have that independent communication that
24 is different from the formal channels.

25 MS. PETERS: With the proposed

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1 ABA Public Hearing - 10-25-02
2 changes to listing standards that we all
3 assume to be adopted by the SEC and some
4 rule of proposal or other, does it make a
5 difference that you're informal and apart
6 from management, as opposed to other
7 channels that are part of management where
8 the channel themselves will be required by
9 rule/and/or listing standard to have a
10 direct line of responsibility to the audit
11 committee, notwithstanding the fact that
12 they are a member of management?

13 MS. WILLIAMS: There is a
14 combination of other things besides the
15 independence, is the neutrality. The
16 formal channels have a responsibility to
17 the organization and a part of the
18 strategic part of the organization and
19 management. The ombuds person is neutral
20 and is not advocating a position for the
21 organization, so that helps. The other
22 thing is the total confidentiality. If
23 someone goes to the formal channel and it's
24 a wrongdoing, the formal channel has to
25 start a formal investigation. So their

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1 ABA Public Hearing - 10-25-02
2 confidentiality may be jeopardized.

3 The formal channels like the ethics
4 hotline human resources say we will keep
5 things confidential when you come to us,
6 but there are certain times when they can't
7 keep things confidential because they have
8 to start investigation. If someone comes
9 to the ombuds office about the issue and
10 wants to remain anonymous, the ombuds
11 office can take the issue forward without
12 the individual. So it gives the added
13 protection to the individual.

14 The ombuds office has been able to
15 maintain privilege by case law so far,
16 whereas a couple of times we were asked to
17 testify in cases and we said no because we
18 were able to demonstrate that everything we
19 do indicates that confidentiality is so
20 critical. I don't know that I'm answering
21 your question.

22 CHAIRMAN CHEEK: There is no
23 statutory basis?

24 A SPEAKER: There is none.

25 CHAIRMAN CHEEK: The one circuit

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 court went against the confidentiality.

3 MS. WILLIAMS: Right, I'm not going
4 to represent the attorney, but we have an
5 attorney that works with us on the ombuds
6 program, but some of the feeling is that
7 all the information was not provided about
8 how that particular ombuds program had
9 really throughout emphasized the
10 confidentiality of the neutrality and
11 stated the position to protect it. So you
12 have to talk to Chuck Howard and some of
13 these folks that are.

14 CHAIRMAN CHEEK: A quick point on
15 the confidentiality issue. I carve out an
16 exception for eminent risk ever serious
17 harm, what does that mean? If there is a
18 crime that has been called it your
19 attention, is that serious crime in?

20 MS. WILLIAMS: We let people come to
21 the office by telling them this, we say
22 there are two cases that we would say this
23 issue has to go forward, it cannot stay
24 here at the ombuds office. One is eminent
25 physical harm. If somebody comes in and

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1 ABA Public Hearing - 10-25-02
2 says I have a bomb or I know that somebody
3 is going to shoot somebody, we say this has
4 to go forward or if something is going to
5 cause significant financial harm to the
6 organization, something like huge money
7 laundering case or some of the situations
8 that we've read about in the corporations,
9 we would say we need to take this forward.
10 If you're not going to take it forward.

11 CHAIRMAN CHEEK: Where would you
12 take it forward.

13 A SPEAKER: It depends on who does
14 this go to the general counsel, does this
15 go to security, does it go to the CEO, it
16 would depend on what it is and where best
17 in the organization to take it.

18 CHAIRMAN CHEEK: Once you take it to
19 the general counsel, CEO, is that the end
20 of your responsibility with respect to that
21 matter?

22 MS. WILLIAMS: What we do is we have
23 the authority to keep escalating. So what
24 we try to do is get issues resolved at the
25 most immediate level. If we feel that

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1 ABA Public Hearing - 10-25-02
2 again under the fair process that it's not
3 being looked at or is not being seriously
4 taken, then we can take it to the next
5 level.

6 CHAIRMAN CHEEK: So you do this
7 follow-up?

8 MS. WILLIAMS: Yes.

9 A SPEAKER: What have you done with
10 this?

11 MS. WILLIAMS: Exactly. If we feel
12 the process has been fair and thorough.

13 MR. MUNDHEIM: When you say you, is
14 that an outside organization or are we
15 talking about an individual within the
16 organization or outside the organization?

17 MS. WILLIAMS: With us it was inside
18 the organization. The ombuds program that
19 I'm affiliated with American Express and
20 most ombuds program are within the
21 organization, but we are separate from the
22 management team.

23 CHAIRMAN CHEEK: You are an
24 employee?

25 MS. WILLIAMS: We are an employee

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02
2 but I had a contract that protected the
3 role that I was playing as an employee. So
4 I could for instance if it was an issue
5 that I felt that the head of human
6 resources needed to be resolved. If I
7 follow up and felt that it was not being
8 resolved, I could take it to the chairman,
9 that person's boss. If I felt that it
10 stopped at that point, that's the advantage
11 of having the reporting line into the audit
12 committee, because you could go to the
13 board and say here is an issue.

14 MR. MUNDHEIM: Is it a full-time
15 job?

16 MS. WILLIAMS: Yes, we had a
17 worldwide team of ten ombuds, we have
18 people located in Asia, Europe, Latin
19 America. This is not a huge investment, a
20 company with up to 12,000 person could have
21 been an ombuds. Sort of historically in an
22 organization about 4 percent of the
23 employee base will use the ombuds office at
24 one time or another.

25 MS. PETERS: Other than revising our

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1 ABA Public Hearing - 10-25-02
2 report to reflect the use of the term
3 organization or ombudsman, it is a section
4 you state in your final report. Is there
5 something else that you feel this group
6 should do or would be appropriate for it to
7 do in its final report on these corporate
8 governance issues.

9 MR. STEINHOLZ: In addition to
10 changing the terminology from just
11 ombudsman, organizational ombudsman,
12 separating the formal from the informal
13 whereas now ombudsman is lumped together
14 with compliance certification and with
15 hotline.

16 MS. PETERS: It is an alternative.

17 MR. STEINHOLZ: Right, but the way
18 that it's written with the parenthesis
19 having the clarification that there should
20 be the informal role of ombudsman in
21 addition to having these formal channels
22 hotline.

23 MS. PETERS: Tantamount to an
24 endorsement saying that you need both the
25 informal and formal channels?

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 MS. WILLIAMS: That's what we
3 recommend is in an organization you have
4 your formal challenge, you have your human
5 resources, you have your ethical office.
6 The ombuds program is a good checks and
7 balance because it is informal, it
8 compliments, it gives that barrier free
9 safe haven. For example, if you read the
10 code of conduct of American Express and it
11 talks about all the issues of conflict of
12 interest, gift giving and it will say where
13 you can grow in the organization to
14 formally have an issue, then it says or if
15 you want to have a confidential
16 off-the-record conversation go to the
17 office of the ombuds person. So it gives
18 that alternative as another source to get
19 issues surfaced and into the hands of the
20 organization to deal with it.

21 MR. OLSON: Once the issue has
22 surfaced with an ombuds person, doesn't the
23 follow-up then involve the ombuds office
24 directing the information to the
25 appropriate place in the organization for a

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02
2 response while protecting the
3 confidentiality of the complainant?

4 MS. WILLIAMS: If it comes through
5 the ombuds and it surfaces there are two
6 choices, the individual may after
7 understanding the options decide to take it
8 forward him or herself, so that person
9 would go to the source. The ombuds office
10 would follow up with that individual and
11 say okay, you went to compliance, you went
12 to HR, is there anything else you want to
13 discuss, what is your feeling about how the
14 issues are. Or if the person wants to
15 remain anonymous then the ombuds person
16 would take it to that formal channel.

17 MR. OLSON: I was in a law committee
18 meeting about a week and a half ago where
19 there was a discussion about how this
20 particular company was going to meet the
21 Sarbanes-Oxley requirement that there would
22 be a procedure for reporting concerns about
23 leaving controls and financial matters
24 ultimately up to the audit committee with
25 protection for the complainant, so I guess

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1 ABA Public Hearing - 10-25-02

2 against any retaliation.

3 The proposal was that the ombuds
4 office be used as a place where those
5 complaints could be made, but then later be
6 reported on a basis that protected the
7 anonymity the complainant to the internal
8 audit staff, of which they would do a
9 follow-up and bring the report to the audit
10 committee on the complaints that had been
11 received, what the follow up had been and
12 give the committee an opportunity to direct
13 further follow-up or remedial action and
14 whatever.

15 Is that inconsistent with the
16 organizational ombudsman concept or is that
17 consistent. The ombuds office's only job
18 is to receive the information and
19 communicate it. As I understand it, the
20 ombuds office might communicate back to the
21 complaining employee how to follow up,
22 again protecting confidentiality.

23 Then there was discussion about
24 adding to this large company's office an
25 additional member of the ombuds staff

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MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02
2 why should they care and what can they do
3 about it. So we would try to again say
4 here are the issues here, the specific
5 things we're hearing in your organization,
6 this is why you care, either it's against
7 the policy that you may have or it's not
8 helping you meet your business goals and
9 here are some of the things that even the
10 inquiries are suggesting can be done about
11 it.

12 MR. OLSON: Suppose it's very
13 specific and what comes to the ombuds
14 office is somebody saying my boss is
15 stuffing a bunch of invoices from suppliers
16 in the drawer and not processing them, so
17 that his division looks like it's more
18 profitable than it really is or the
19 converse of that is my boss or somebody I
20 know is sending out a bunch of phony
21 invoices and booking sales that aren't
22 occurring, that's very specific; what do
23 you do in that situation?

24 MS. WILLIAMS: Let's say the
25 individual wants to be kept anonymous but

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MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02
2 be that we emphasize more the informality
3 that those do and we do not do formal
4 investigations. We will do informal data
5 gathering but we leave it up to the audit,
6 the finance, the human resources to do the
7 formal investigation. We don't come back
8 with rulings that say this is right or this
9 is wrong or this is what you should do.
10 That would be the only thing that doesn't
11 pop out as much.

12 CHAIRMAN CHEEK: Do you have any
13 statistical information on how many
14 organization ombuds people there are?

15 MS. WILLIAMS: We have information
16 about how many members there are of the
17 Ombuds Association, there is also UCOAL,
18 which is the university ombuds program. I
19 don't know whether we could actually say
20 nationwide or even worldwide how many
21 organizational ombudsmen, but we certainly
22 do have statistics of all the folks that
23 are members of the Ombuds Association.

24 MR. STEINHOLZ: There are 500
25 members of the Ombuds Association.

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02

2 MS. HENNESSY: Do you have any sense
3 of how many publicly traded companies have
4 ombuds?

5 MS. WILLIAMS: American Express,
6 Fleet, Boston, GE Credit, Goldman Sachs
7 recently did one, Merrill Lynch, New York
8 Life, TIAA, Toronto Bank, Coca-Cola, Coors,
9 Costco, Eastman Kodak, Mars, McKinsey. A
10 couple of the companies created ombuds
11 programs because of court settlements.
12 Texaco and Coca-Cola part of the settlement
13 that they had with discrimination cases
14 where they had to start an ombuds program.

15 A SPEAKER: How is your organization
16 financed and are you concerned that it can
17 push too much and investigate too much your
18 money supply might be stopped or reduced?

19 MS. WILLIAMS: The organization is
20 financed by the entity where the
21 organization is.

22 A SPEAKER: Corporate money?

23 MS. WILLIAMS: Right, just the
24 corporate expenses. The important thing
25 for the ombuds program is to indicate where

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1 ABA Public Hearing - 10-25-02

2 the return on the investment is and we

3 would produce statistics that would show

4 here are the type of issues coming through

5 the company, this is where the issues are

6 going. So you have this trend line, here

7 are the issues, here's what's going to

8 human resources, here's what's going to

9 compliance, here's what's going to audit.

10 Once those issues get into the hands

11 of those folks, what kind of changes take

12 place because that issue was raised. So

13 you can look at the fact to your point that

14 we stopped inappropriate putting the

15 information on the door, et cetera, then we

16 would say how many took change and what

17 were the changes that took place. So the

18 organization can see that my investment in

19 an ombuds person is leading to these types

20 of changes in my organization and that is

21 what shows the value of the ombuds office.

22 That's what I would report back to the

23 audit committee, these are the trends, this

24 is where it's going, how many took changes.

25 These are creating changes in the

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1 ABA Public Hearing - 10-25-02
2 organization and these are the types of
3 changes that took place.

4 A SPEAKER: Do you think there is a
5 subconscious prejudice or leaning towards
6 one point of view, the point of view being
7 he or them that pay you?

8 A SPEAKER: What?

9 A SPEAKER: Is there a subconscious
10 leaning to the point of view of those who
11 pay you, are you biased in favor of
12 management?

13 MS. WILLIAMS: That's the
14 neutrality. We talked earlier about having
15 a contract that would protect the office
16 from bringing issues up and I think we
17 talked about earlier setting the ethical
18 tone. The critical point of an ombuds
19 office or any kind of corporate governance
20 process is it's got to be sponsored by the
21 senior executives in the organization and
22 they have to set the tone for the
23 organization using it. This is very, very
24 important.

25 A SPEAKER: With regard to publicly

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1 ABA Public Hearing - 10-25-02
2 traded organizations, do you think you have
3 a greater duty to the public as opposed to
4 people in the corporation who wish to bring
5 to the attention of corporate executives
6 alleged evil doing.

7 CHAIRMAN CHEEK: Could you identify
8 yourself?

9 A SPEAKER: My name is Howard
10 Gotbetter, I happen to be an NYU Law School
11 alumnus. I came here to use the library
12 but I saw we were having a conference so I
13 thought I would participate.

14 CHAIRMAN CHEEK: We are delighted
15 that you would participate.

16 A SPEAKER: Who are you sir?

17 CHAIRMAN CHEEK: I'm chair of this
18 task force holding a public hearing. This
19 is a public hearing to hear the testimony.

20 A SPEAKER: Not to ask questions?

21 CHAIRMAN CHEEK: Correct.

22 A SPEAKER: Why not?

23 CHAIRMAN CHEEK: Because that's not
24 the role of the public hearing.

25 MS. WILLIAMS: The role of the

MANHATTAN REPORTING CORP., A LegaLink Company

1 ABA Public Hearing - 10-25-02
2 ombudsman or person is neutral, they are
3 not advocates for management, they are not
4 advocates for the employer, they are
5 advocates for fair processing, they are
6 part of the corporate governance process.
7 So the neutrality would indicate that their
8 role is to be neutral and represent the
9 issue in a neutral way and ensure that
10 their processes are engaged in looking at
11 the issue.

12 CHAIRMAN CHEEK: Any further
13 comments?

14 MR. STEINHOLZ: In addition to the
15 proposed wording that we submitted in our
16 written comment, Exhibit A, the summary of
17 recommendations paragraph 5, we would also
18 like that paragraph to reflect the formal
19 and informal processes, the ombudsman
20 hotline and formal compliance functions.
21 We all know people who skip the report and
22 go right to the summary, so if it were
23 enunciated in the summary we would
24 appreciate that.

25 CHAIRMAN CHEEK: Thank you,