

## *CAROA Conference*

*Caribbean Ombudsman Association 5th Biennial Conference, Bermuda*



**The Hon. Terry Lister, Acting Premier  
Minister of Energy, Telecommunications and E-Commerce**

It is my pleasure to open this Conference. I bring greetings and apologies on behalf of Premier Brown.

The Ombudsman institution in Bermuda was created by a Constitutional Amendment Order in 2001. Then in 2004 we passed legislation under the former premier, Alex Scott.

The office of the Ombudsman has served us very well in investigating things like administrative inefficiency at the Department of Planning and allegations of institutional discrimination at our hospital. Bermuda's Ombudsman has shown dedicated commitment toward getting to the truth and sharing the truth with the public. This job is made even more difficult in our sometimes politically charged community.

Like Ombudsman everywhere, our Ombudsman is an independent advocate for rights, justice and truth. When an Ombudsman is in place, it better ensures that the public is getting good governance, transparency and accountability.

We find ourselves as a government constantly plagued with charges of not being open, not being transparent and not being accountable. So we rely on Ms. Brock and her office to assist in raising the confidence of those who don't have that confidence.

*CAROA Biennial Conferences aim to promote the development and defend the independence of the Ombudsman institution as well as strengthen professionalism through the exchange of experiences and research.*



The Ombudsman's office has the full support – and I underline that – the full support of the Government of today. In one of my previous Ministries, one of my staff came in and said "you know that matter, it's with the Ombudsman now". Oh my gracious! But it was handled to the satisfaction of all around. It's important that Ms. Brock has open access, which I believe she does.

Our journey to this point has been greatly benefited from the assistance of the Caribbean Ombudsman Association. Every Bermudian owes this Association a great debt of gratitude for the assistance it provided in creating our Ombudsman legislation and office. As Acting Premier, allow me to thank you on behalf of the people and Government of Bermuda. You have strengthened our democracy – and I don't say that lightly.

Strengthening democracy in every country is something that people should be striving for. In Bermuda, we are very conscious that we want to maintain the high standards of government that has existed here and see an open, fair place that people can be able to feel free to live. So this certainly assists us.

Our government is on to a new democratic task now – Public Access to Information – or, as we call it, PATI. As we did with the Ombudsman legislation, we are seeking the input and experiences of other jurisdictions. Our friends in the Caribbean region have once again been a tremendous resource. We believe that PATI will further strengthen our democracy in the same way that the Ombudsman has made us stronger.

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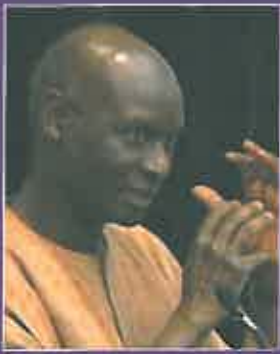
#### **Opposite: CAROA Members, Advisors & Central American affiliates**

*Standing, Back Row:* **Frederik Wiel**, Ombudsman of Curaçao • **Dr. John Epp**, Complaints Commissioner of the Cayman Islands • **Earl Witter**, Public Defender of Jamaica • **Dr. Deryck Brown**, Economic Consultant, Governance & Institutional Development Division (GIDD), Commonwealth Secretariat • **Dr. Victor Ayeni**, Nigeria, former Director of GIDD, Commonwealth Secretariat

*Standing, Middle Row:* **Pedro Ascencio**, General Secretary for Human Rights, Office of the Defensor del Pueblo (Ombudsman) for Guatemala • **Susan Duguay**, Administrative & Investigative Officer, Office of the Complaints Commissioner, Cayman Islands • **Sharon Flowers**, Admin. Officer, Office of the Ombudsman for Belize • **Sadie Williams**, Complaints Commissioner, Turks & Caicos Islands • **Nekker Dessables**, Protecteur du Citoyen (Ombudsman), Haiti • **Barbara Taylor**, Investigations Officer, Office of the Ombudsman for Barbados • **Eusalyn Lewis**, Ombudsman for Antigua & Barbuda • **Sir Frank Blackman**, former (first) Ombudsman for Barbados • **Dr. Hayden Thomas**, Honourary CAROA Council member, former Ombudsman for Antigua & Barbuda

*Seated:* **Lawrence Laurent**, CAROA Secretary / Treasurer, former Parliamentary Commissioner of St. Lucia • **Arlene Brock**, Ombudsman for Bermuda • **Madison Stanislaus**, Parliamentary Commissioner of St. Lucia, CAROA President • **Lynette Stephenson**, Ombudsman of Trinidad & Tobago • **Lorena Gonzalez**, Director, Inter-American Institute for Human Rights, Costa Rica

Sir Frank Blackman, former Ombudsman for Barbados: *"The Ombudsman should give the kind of attention to each of the complainants that would indicate that respect is being shown to them regardless of personal or whatever other differences; that they are being listened to; and that their needs are understood."*



## FROM SETTING STANDARDS TO COMPLIANCE: THE ERA OF APPLICATION

**Olara Otunnu, World's Children's Ombudsman**

I want to pay tribute to the distinguished Ombudsman and the work that you are doing – because your work is a critical role in building a genuine architecture of democratic governance and of ensuring that government power is exercised in a manner that is responsive, that is transparent and that is fair. Above all, you serve as advocates on behalf of those who are not so powerful in our polities; those who may have weakened voices and those who need to ensure that there is equal protection for all citizens. Your role plays such a critical role in giving content – not just formality – to democratic governance.

The theme of my remarks this morning is “Saving our Children from the Scourge of War”. I believe that few missions could be more compelling in the world today. This is a central issue of rights, of protection and of peace. I wanted to share this with you because it is analogous to the regimes you are seeking to build in your national jurisdictions. It is a regime which I worked to build at the international level but applied both internationally and at the domestic level.

When adults wage wars, children pay the highest price – they are the primary victims of armed conflict. They are both its targets and increasingly also its instruments. Their suffering bears many faces in the midst of armed conflict and its aftermath. Children are killed and maimed, made orphans, abducted, deprived of education and health care and are left with deep emotional scars and trauma. They are recruited and used as child soldiers, thus forced to give expression to the hatred of us adults. Uprooted from their homes, displaced children become particularly vulnerable. Girls among them face additional risks particularly sexual violence and exploitation.

I can think of no group of persons more completely vulnerable than children exposed to war. Yet, until very recently, their fate did not constitute specific and systematic focus and response by the international community. Indeed when policy makers convened to discuss the breakdown of peace and security, the fate and well-being of children did not feature in their deliberations.

This has now changed. Let me emphasize that children do not only deserve but indeed **have** a right to protection and well-being. Those who brutalize children and deny them schooling and medical care in situations of war are committing two crimes simultaneously. They are destroying the present as well as destroying the future. These violations need to be identified, named and shamed...

We are now faced with a cruel dichotomy. This dichotomy is not unique to this issue – the protection of children exposed to war. It is a perennial problem of the United Nations and other multinational efforts: of moving from the creation to the enforcement of international norms and standards.

*As the former UN Under-Secretary General and Special Representative for Children of Armed Conflict, Mr. Otunnu was the architect of UN Security Council Resolution 1612 that created a compliance mechanism for naming and shaming governments and rebel groups that victimize children in war-affected regions.*

It is my view that the key to overcoming this gulf lay in the embarking on a systematic campaign of what I call the Era of Application for transforming international instruments and standards into an actual protection regime on the ground – which is what you Ombudsmen are seeking to do at the domestic level.

The Era of Application had to be developed and anchored within a formal and structured compliance system of mechanisms. Words on paper, important as they are – and words are important: we begin with words; they express our thinking and intentions – but words on paper alone cannot save children and women in danger, any more than they can protect the vulnerable and the not so powerful within your countries.



The time has come for the international community to redirect its energies from the normative task of the development and elaboration of standards to the compliance mission of ensuring their application on the ground. That is where your task, your road meets the road I travelled. Without accountability, corruption and impunity take root and flourish. And corruption, like cancer, corrodes and distorts everything in its path – making development and genuine democratic governance virtually impossible. These and more are the costs to our society when there is no overarching and binding structure of democratic and legal accountability.

These are part of the challenges that you Ombudsmen face. You are at the forefront of that struggle to establish best practices in building democratic governance. Your role is critical. Without it, we lose the genuine article and remain with the shell of the formality. We all must do much more to ensure the building and enforcement of a genuine and effective rule of law regime in our countries. Your practice, your role is a cornerstone of this challenge. So much turns on this because without the rule of law, there is no good governance, no democratic accountability; there is no justice and equality.

*His Excellency Sir Richard Gozney, Governor of Bermuda, enters the Welcome Ceremony escorted by Aylene Brock, Ombudsman for Bermuda. Berkeley Institute student, Deandra Braugman, led them with the Bermuda flag.*

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Thank-you to Lunch-time Bermuda Speakers: **The Hon. Mrs. Justice Norma Wade-Miller**, Puisne Judge; **Major Kenneth Dill**, Head of the Civil Service; **Ed Ball, Jr.**, General Secretary, Bermuda Public Services Union



## ETHICS IN THE PUBLIC SECTOR

**Baroness Rennie Fritchie, former UK Commissioner for Public Appointments**

Public Services, using public money, require a strong system of moral values, a set of principles of right conduct in order to not only have the confidence of the public, but also to provide a comprehensive framework to enable a coherent and connected basis for the design and delivery of public services. The Seven Principles of Public Life are drawn heavily from the work of The Committee on Standards in Public Life.

The public wants office-holders to be more honest or truthful about policies and services, acknowledging difficulties and competing pressures, and also admitting or owning up when things go wrong or have unintended consequences.

- Three of the Seven Principles have an ethical content, namely Integrity, Honesty, Selflessness. These ethical principles are absolutes. You are honest or you are not. You cannot be half-honest, and the same goes for integrity and selflessness, there are no half way houses.

- The second set of principles are procedural. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

A holder of public office is given one or both of two privileges. The first privilege is the power to spend tax payers' money. The second is the power to compel or restrain the actions of citizens through the use of public law. These privileges carry responsibilities. One is the requirement to account for the exercise of that privilege and the other is to show how that privilege is being used – in short: Accountability and Openness.

- The remaining two principles, Leadership and Objectivity concern performance. The role of the leader is to choose the strategic direction of the organisation, to set the direction of travel, the future agenda. But it also means to behave in the right way to model ethical behaviour.

The tension between the choice between doing the right thing, taking an ethical stand or the choice of building a successful track record is one we all face.

*'We must do what we conceive to be the right thing,  
And not bother our heads or burden our souls whether it will be successful.  
Because if we don't do the right thing we will be doing the wrong thing,  
And we will just be part of the disease and not part of the cure.'*

*E. F. Schumacher,  
"A Guide for the  
Perplexed"*

## **PANEL: CHALLENGES OF OMBUDSMAN WORK IN SMALL JURISDICTIONS**

**Madison Stanislaus, Parliamentary Commissioner, St. Lucia**

Many complaints occur simply because of poor communications between the complainant and government officials. Citizens should have clear information about what they have a right to expect from the government or agency and, equally importantly, government officials need to protect the rights of citizens. To do this effectively, these officials must be familiar with the elements of good administrative practice. The latter could help to prevent maladministration, to identify and to correct it promptly when it happens. This will also go a long way in promoting good governance. One good thing which comes out of being a small jurisdiction is that the Parliamentary Commissioner, with discretion, could conduct friendly discussions with certain Government Ministers, Permanent Secretaries and Heads of Departments or resolve informal investigations by a mere telephone call.

## **PANEL: CHALLENGES OF OMBUDSMAN WORK IN SMALL JURISDICTIONS**

**Mario Hook, Public Services Ombudsman, Gibraltar**

There are always some officials who form their own opinion that the Ombudsman is just an inconvenient entity. Nothing could be further from reality. Without exception, the legislative provisions to create an office of the Ombudsman in any territory, has been put in place by its Government and it is therefore the express wish of the people to have such an institution. It follows that all officers, no matter their rank must comply with the requests of the Ombudsman for information and in a timely manner. I must emphasize, delays are not acceptable and should not be tolerated. The Ombudsman in a small jurisdiction has a very important role to play in the daily well being of his fellow citizens. They rely on him and look for his assistance when they are aggrieved by the machinery of bureaucracy. This may be true for all Ombudsmen around the world, but is more apparent to those in small jurisdictions.

## **INVESTIGATION ASPECTS OF THE OMBUDSMAN'S ROLE**

**Frederik Wiel, Ombudsman of Curaçao**

The United Nations' guideline on Ombudsman investigations starts with the observation that the legal basis for an Ombudsman to conduct inquiries and investigations of complaints is in the country's constitution and/or law creating the institution. The guidelines recognize that no one set of practices fits every local situation. In nearly all Ombudsman offices around the world, investigations are inquiries, not adversarial processes. Based on powers provided in law, the Ombudsman determines how each investigation will be conducted. Not every complaint requires investigation. The majority of concerns and allegations raised by complainants will be able to be resolved at an informal level by intervention or through other processes such as mediation.





## THE OMBUDSMAN: PAPER TIGER OR VITAL WATCHDOG?

**André Marin, Ombudsman for Ontario**

I think you can guess which side of the question that I am on as we have “watchdog” in our motto. As Ombudsman, we have to watch for the predators prowling the bureaucratic jungle. If your office is not demonstrating its value by taking a robust stance, the paper tigers may very well get you.

Our office created a model for doing the greatest good for the greatest number of people. We created a Special Ombudsman Response Team (SORT). This is a specialized fast acting unit of investigators who are trained to take on big, complicated cases and get to the bottom of them quickly and efficiently. The essential elements of such cases are: issues of strong public interest; strong evidence on the face of it of maladministration; and, little chance of resolving problems informally without an investigation.

The Government’s response to most of our investigations and recommendations has been very constructive. There has been a recognition among Government leaders that our work is not about exposing or embarrassing them or making them look bad – although we certainly have exposed some bad things. They recognize that our investigations and recommendations are revealing problems and solutions that are going to benefit millions of people and that by acting on them, they are going to look good.

One of our very first investigations involved a medical issue – the tests that are done on newborn babies to see if they have a genetic disease or disorder that can be treated early – things like cystic fibrosis or sickle cell anemia or a number of metabolic disorders. These conditions can and have killed children in Ontario or left them permanently disabled if they are not treated.

In fact in our province, this was happening to about 50 children every year because our province was doing only two tests on babies since 1978. Think about it, 50 deaths or severe disabilities in babies. Some places, like some states in the US, were doing more than 90 tests. Just about every country in the world was doing more tests than Ontario even though we had access to and were developing the technology for some of these tests right in Toronto.

When we revealed the shocking situation, the Government immediately announced that it would start doing more tests. It has recently announced that the number of tests is up to 29 – a long way from 2. The Premier in Ontario likes to say that “we have gone from one of the worst in the world to one of the first”. It is now a point of pride for the province because there are now 50 fewer children suffering or dying needlessly each year.

We saw another dramatic reaction from the Government in response to an investigation we did last year. In Ontario, we have a Government agency, the Criminal Injuries Compensation Board that is supposed to help people who are victims of violent crimes. If your child is murdered, for example, the CICB will help you pay for the funeral. If you have been badly beaten up, it might be that you need to be compensated for lost work or need counseling.

Ms: L. Laurent, former Parliamentary Commissioner, St. Lucia. *“Guyana was the first constitutionally enshrined Ombudsman in the Western Hemisphere (1966). Unfortunately, no Ombudsman has been appointed there since 2005.”*

The problem is that this generous agency was a bureaucratic mess. Instead of helping victims it was actually re-victimising them by snarling them in red tape and making them wait years and years to get a single nickel. Our investigation found all kinds of administrative horror stories.

There was a man whose little girl had been raped and murdered who was given the third degree over the funeral bill he submitted. There were people snowed under a ton of paperwork. One man – and this is a true story – had his application form sent back to him because he forgot to dot an “i” in his name! We exposed all of this publically and blamed it on a succession of governments that had failed to fund the agency properly.

The government realized that it had to act. It immediately doubled the Compensation Board’s budget to \$20 million and promised to change its heartless bureaucratic procedures. A year later, just a couple of weeks ago, the Government announced \$100 million to get rid of the backlog and pay compensation to the thousands of people caught in the waiting. So, not only has government politely said ‘thank-you for your report Mr. Ombudsman, but it has put its money where its mouth is – because that is the right thing to do.’

To me, that is a good sign that you as an Ombudsman are demonstrating the value of your office – you have helped make things better for the public. This is not something that is just measured in money. After all, governments increase spending all the time and it doesn’t always improve things.

The Lotteries Commission responded to one investigation: “in hindsight, the shock of the Ombudsman’s report brought about deep and systemic change within the corporation in very short order. It is unlikely that this could have been achieved through traditional or conventional means of organizational reform.”



*Foreground:  
Dr. Richard Kirkham,  
University of Sheffield; Ms. Caterina  
Alari, UK Dept. for  
International Development*

*Professor Kirkham's  
presentation, **The  
Ombudsman's Place  
in the Constitution**,  
will be published in  
Vol. 10 of the *International  
Ombudsman  
Yearbook* (Int'l Ombudsman  
Institute).*

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**We also thank the following speakers for the CAROA Conference:**

- L. Gonzalez**, Inter-American Institute for Human Rights
- G. Jones**, SORT, Ontario Ombudsman
- V. Memari**, Bermuda Human Rights Commission
- G. Sibblies**, Ontario Human Rights Commission
- Q. Sherlock**, Lecturer, Bermuda College
- E. Witter**, Public Defender, Jamaica





*"Do not let officiousness become the enemy of the efficient, perfection the enemy of the good."*

## **'PRINCIPLES OF GOOD ADMINISTRATION': HUMANISING THE STATE BUREAUCRACY** **Ann Abraham, UK Parliamentary Ombudsman & Health Service Ombudsman for England**

I want to present to you a vision of principles of good administration as an essential building block of any accountable and democratic society, and so of any state, whether large or small, that is serious about the business of enabling a flourishing and sustainable future for all its citizens. The task [of the Ombudsman is to] investigate 'maladministration', of unearthing individual instances of bad practice and, by implication, of proposing individual remedy after the event.

There is much debate about exactly what 'maladministration' means: things like bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness. This need to classify bad practice reflects one dominant view of the role of Ombudsman: the role of 'fire fighter'.

But of course fire fighting is not, and cannot be, the whole Ombudsman story. It was not long before the rather different role of 'fire watching' – of proactive prevention rather than remedial cure – came to assume its proper place in the accepted ingredients of a viable Ombudsman institution. It was the task of 'humanising' the interaction between state and citizen that had pride of place and that justified the importation of what in many ways looked like a rather alien inquisitorial intruder upon the customarily adversarial territory of a common law jurisdiction.

Just as public sector ethics and human rights can serve to soften the edges of the otherwise sharp and painful encounters between citizen and state, so the dissemination and adoption of 'principles of good administration' can also serve to 'humanise' those encounters, to restore to citizens their status as human persons of dignity and worth, and to encourage an ethos of good governance that is integral to any meaningful form of democracy. The essential principles of good administration [act] as an indicator or touchstone of what I take to be the Ombudsman's key constitutional role:

- *'Getting it right'* – acting in accordance not just with 'hard law' and with due regard to rights, but taking proper account of 'soft law', such as guidance and good practice models, providing effective service and taking reasonable decisions. Getting it right must be the first aspiration of any worthwhile public administration, recognition of the importance of the task in hand and of the reasonable expectations of citizens.

- The obligation to be *customer* focused cuts to the chase and proclaims without reservation that the administration is there to serve the citizen, and not the other way round. Being customer focused means ensuring ease of access for everyone (including people, e.g., who are disabled, or who come from minority language groups or who have low levels of literacy), being clear about expectations, keeping to commitments, tailoring services as far as possible to meet individual circumstance, and above all being flexible so that the citizen-as-customer comes first. It is about keeping a sense of perspective and a sense of purpose, and behaving with the sort of good sense that does not let officiousness become the enemy of the efficient, perfection the enemy of the good.

- There is the need to be *open and accountable*, about the reasons for decisions, and about the information held on citizens. There is the associated need to keep proper records and accept responsibility for actions taken. This is about transparency, a further recognition of where priorities lie, not in self-serving and inward-looking processes but in delivering a public service in which the ethos is collaborative and citizens are recognised as equal partners, whatever their social or economic status.

- There is the duty to act *fairly and proportionately*, in the sense of treating citizens impartially, and with courtesy and respect, avoiding discrimination, being objective and ensuring that decisions are balanced and proportionate in outcome to the issues raised. This is a matter of putting the principle of individual dignity into practice, giving concrete realisation to the principle of equality, so that it enables the achievement of shared high standards not acquiescence in treatment that is simply shabby for everyone.

The final two principles are remedial and of a slightly different order, forward-looking in that they seek to ensure that mistakes are corrected and the lessons learned.

- There must be the will to *make amends* by acknowledging and apologising for mistakes, by putting things right quickly, providing suitable information about how to complain or appeal, and by operating an effective complaints procedure that itself has the ability to provide a fair remedy when a complaint is upheld. It's about putting your money where your mouth is, giving apology where apology is due, and demonstrating that you mean it by making restoration wherever possible. This is an exhortation to practise restorative justice, not in a legalistic way but in a way that recognises the plight of the wronged citizen and restores a sense of equilibrium.

- There is the desire to *seek continuous improvement* by reviewing policies and procedures regularly, seeking customer feedback, and ensuring that the fruits of any lessons learned are disseminated to improve services and future performance. Without insisting on that forward-looking aspect, public administration will be unnecessarily constrained in its ambitions and the prospect of maximizing the common good will be all too easily betrayed. This is about saying 'never again', and meaning it.

The exercise of defining principles of good administration sets the standards against which the performance of public authorities can be judged. The existence of such principles gives notice of my Office's expectations when it comes to evaluating performance in the light of individual complaints.

The principles also relate to the broader Ombudsman ambition of fire watching, of taking preventive action and feeding back into the administrative system the fruits of Ombudsman investigation. This constitutes a significant part of the 'added value' and the public benefit that Ombudsmen offer over and above the dispute resolution function they share with the courts and conventional tribunals. This is the gilt-edged Ombudsman dividend, the extra-special return on Ombudsman investment that underpins the success of the Ombudsman institution as an increasingly worldwide phenomenon.

*The full conference proceedings will be available on our website: [www.ombudsman.bm](http://www.ombudsman.bm) (currently under reconstruction) by mid-April.*



## **FREEDOM OF INFORMATION INTERFACE WITH THE OMBUDSMAN: THE IOWA EXPERIENCE**

**William P. Angrick II, Citizens' Aide / Ombudsman, State of Iowa; and  
President, International Ombudsman Institute**

Open meetings and open records are important in a democracy. They combine to keep government transparent, responsible, and accountable. Open government instills trust and confidence. Its opposite breeds suspicion and alienation.

After a 2000 Freedom of Information (FOI) audit by Iowa's media, the Iowa General Assembly authorized a new position in the Ombudsman's office to respond to inquiries and complaints about public records, open meetings, and privacy.

Last summer I told an Interim Legislative Study Committee that "absent a commitment to aggressively investigate and prosecute violators of Iowa's open meetings and open records law, I question whether whatever we do will accomplish much. We can refine the definitions, close the technical loop holes, and admonish those caught in violation but a stronger message must be sent. If we cannot promise to place greater effort across our state to actively prosecute violations of these laws, then I suggest finding another way to level the playing field and hopefully stop the bending, stretching, and ignoring of our FOI laws."

Investigating public records and open meetings issues is interesting and challenging. Many of the complaints presented go to the bedrock of participatory democratic government such as who voted for a budget increase, a new tax, or a policy change.

Interesting questions include: Must a request be made at the office of the custodian of the record, or can it be by telephone, email, or letter? Are all the names of applicants for a position of authority to be made public or is it permissible to publicly identify only the finalists? Does a requestor of a public record have to identify themselves when making the request or can they do so anonymously?

Technology and technological change impacts public records and open meetings issues dramatically. Are all emails of a government employee or official public record? If so, how are they to be managed, archived, or retrieved? Should audio and video recordings be preserved even after minutes are published? What kinds of redactions need to be considered before government records are made easily available on government websites? Do forms which collect personally identifiable information need to be redesigned?

Being responsible for investigating public records and open meetings issues (to which I would also argue there is value in adding privacy) presents an important opportunity for the Ombudsman to positively impact government in a proactive way.

*A day-long Mediation  
Workshop (Ombuds-  
man only), based on  
the methodology of the  
Harvard Negotiation  
Program was led by E.  
Collins and J. Voigtick.*