



Facilitating Belonging: Ombuds as the Helpful Stranger

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ABSTRACT

Relying on ideas from diplomatic studies and the practice of immigration law, this article proposes a new metaphor for the work of Ombuds: the helpful stranger. The chapter explores how immigration into the United States and migration within, including the ongoing changes in the workforce, intensify the issues of diversity within the workplace. The article then notes the similarities and differences between the work of an attorney and an ombuds. It next provides a brief history of immigration in the United States noting how issues of diversity have been a constant source of debate in this nation. The article develops the concept of the helpful stranger as a description of how independence, impartiality, confidentiality, and informality frame the responsibilities of the ombuds. To support that conclusion, it offers several examples of how the helpful stranger can navigate the difficult discussions regarding DEIB. It concludes with a call to maximize the strengths of the helpful stranger in continuing to enhance belonging in contemporary workplaces.

KEYWORDS

DEIB, diversity, equity, inclusion, belonging immigration law, helpful stranger, diplomacy, impartiality, independent

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Although the current polarized debate on Diversity, Equity, Inclusion, and Belonging (DEIB) broadcasts itself as a current event, the historical discourse on equality of all human beings, participation in the public debate, and the welcome of immigrants have been in contention for centuries. The crux of DEIB stems from our nation's first principle that all humans are created equal.¹ Democracy only works well if all engage in full and fair participation. Engagement entails inclusion and belonging. Yet, today, diversity issues roil contemporary campuses and upset workplaces. DEIB, itself, has become the focus of attack. Polarization grows through fear of the other, whether as a newcomer to society, or a workplace, when new ideas, beliefs, and customs challenge a culture. Diversity and immigration are often yoked together when those who seek to divide invoke fear of the changes that occur when newcomers arrive.² Worldwide, the fear of the other has led to greater polarization in many nations undermining democratic values and inclusion, whether in the workplace or a nation.

The editors of this DEIB issue of the Journal invited me as an organizational ombuds, an immigration attorney, and a teacher in diplomatic studies to glean lessons from comparing those roles to assist our institutions address both the strengths that DEIB brings to a culture, and also mitigate the conflict that occurs when critics attack DEIB or newcomers to a society.³ Part I highlights the differences and similarities of the work and professional responsibilities of an immigration lawyer and an ombuds. Part II prefigures the contemporary debate on DEIB through a brief history of immigration law in the United States. Although immigration has caused conflict and increased polarization throughout the world, the limits of this article necessitate my focus on immigration in the United States. The lessons learned, however, can assist the ombuds wherever the DEIB debate incites controversy. Part III proposes the metaphor of a helpful stranger to describe the activities of an ombuds. By building upon Paul Sharp's designation of a diplomat as a professional stranger, this section examines how the field of diplomatic studies provides insight and guidance into the profession of the ombuds.⁴ An ombuds serves as an independent neutral, but simultaneously, is employed by the institution. Thus, to retain neutrality, the ombuds must deal with the uncertainty of not being linked to any one side or position in an organization, yet still foster trust to be effective in mediating and addressing issues that threaten the workplace. The helpful stranger claims allegiance to no specific position and works in the interstices between parties to further an organization's mission. Part IV explores how the helpful stranger metaphor addresses inclusion and belonging in the contemporary workplace by exploring two ombuds' proposals to enhance harmony and inclusion. Finally, Part V issues a call for the helpful stranger to address these challenges by nurturing belonging and full participation of all employees.

I. PROFESSIONAL RESPONSIBILITIES OF ATTORNEYS AND OMBUDS

A. DIFFERENCES IN THE ROLES OF AN OMBUDS AND AN ATTORNEY

¹ Declaration of Independence, July 4, 1776: <https://www.archives.gov/founding-docs/declaration-transcript>.

² For these purposes, I use a broad understanding of immigration as any movement of people from one nation or land to another or movement within a nation. Thus, I include within immigration, the earliest movement of colonists to what became the United States, the forced migration of Africans and others to the western hemisphere, but also the migration that occurs throughout the world. Migration within a nation entails the movement of individuals and families from different cultures to another location which may place stress on a society or a workplace.

³ Since 1984, I have practiced immigration law, initially as Director of the Midwest Immigrant Rights Center, since renamed the National Immigrant Justice Center (www.immigrantjustice.org). In 1990, I began teaching at the DePaul University College of Law and co-founded and co-directed DePaul's Asylum and Immigration Legal Clinic. From 2001-2023, I served as DePaul's University Ombuds. I continue to teach asylum and refugee law and also mediation at DePaul's Grace School for Applied Diplomacy.

⁴ I give thanks to David Wellman for introducing me to Paul Sharp's work and the concept of the useful stranger.



Individual state bar associations license individuals who meet their requirements to participate in a profession that is governed by Codes of Professional Conduct.⁵ No state nor national organization licenses ombuds. Instead, organizational ombuds often join a professional organization such as the International Ombuds Association (IOA)⁶ and seek additional certification through organizations such as CO-OP.⁷ Membership includes agreeing to conduct oneself according to IOA's Code of Ethics and Standards of Practice.⁸ Attorneys can typically fulfill their professional duties as advocate, counselor, or negotiator by adhering to their Codes of Professional Responsibility.⁹ The most distinctive difference between the professions stems from the relationship each establishes with the person they engage. Attorneys enter into attorney-client relationships which oblige that an attorney "zealously asserts the client's position under the rules of the adversary system."¹⁰ Ombuds, as independent and impartial actors, represent neither the institution that employs them nor any visitor who brings concerns to them. Charles Howard summarizes ombuds work as "communications and outreach, issue resolution, and identification of areas for systemic change, and issue prevention."¹¹ Among other differences, attorneys keep records, whereas ombuds maintain no records that would disclose any visitor's identity or issues. Clients can waive attorney confidentiality, but visitors cannot unilaterally waive confidentiality, although an ombuds requires a visitor's permission if the visitor requests that the ombuds discuss their issues with others. That disclosure will only occur if the ombuds agrees to divulge the requested information.

B. SIMILARITIES IN THE ROLE OF AN ATTORNEY AND AN OMBUDS

Attorneys and ombuds listen to stories. Clients seek out advocates or negotiators to pursue their claims. Visitors seek options on resolution of issues or information about procedures or mores of a particular institution. A key skill focuses on hearing what the individual seeks and knowing how to ask questions to further delineate the scope of their concerns.

Representing asylum-seeking clients, an immigration practice offers outstanding training for engaging DEIB issues. Eligibility for asylum, for example, includes demonstrating that one has been persecuted or possesses a well-founded fear of persecution.¹² Clients often experience at

⁵ See e.g., American Bar Association Model Rules of Professional Conduct, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

⁶ IOA. <https://ioa.memberclicks.net/learn-about-our-organization>

⁷ CO-OP Certification Credential. <https://www.ombudsassociation.org/about-the-co-op-credential>

⁸ IOA Code of Ethics (2022): https://ioa.memberclicks.net/assets/docs/SOP-COE/IOA_Code_of_Ethics_English.pdf IOA Standards of Practice (2022): https://ioa.memberclicks.net/assets/docs/SOP-COE/IOA_Standards_of_Practice_English.pdf

⁹ See, e.g., the Illinois Code of Professional Responsibility lists the following activities: "[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. [2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others. [3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter." ARTICLE VIII. ILLINOIS RULES OF PROFESSIONAL CONDUCT OF 2010, Preamble: a Lawyer's Responsibilities, <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f3cf2ca7-e67d-4105-9683-ef91541b33d6/ARTICLE%20VIII%20preamble.pdf>

¹⁰ American Bar Association Model Rules of Professional Conduct, Preamble (2), *supra*.

¹¹ Howard, C. L. (2010). *The Organizational Ombudsman, Origins, Roles and Operations A Legal Guide* (p. 75) ABA Publishing.

¹² 8 U.S.C § 1101(a)(42) (2023).

least three types of traumas that impact their ability to tell their story. First, the threats or actual persecution in their native land may leave them traumatized or suffering from post-traumatic stress syndrome (PTSD). The dangerous conditions surrounding the flight and travel from one's home nation, often over water, through deserts, jungles, or mountains, with few financial or legal resources, cause a second level of trauma. Finally, responding to a new legal system, often without an understanding of English and surrounded by a militarized enforcement regime, adds a third trauma, exacerbating any previous harm they may have experienced.¹³

An immigration attorney must encourage trust to enable a client to provide intimate or embarrassing details of their life and flight without causing further harm. Although most visitors to an ombuds office may not have suffered the same degree of trauma, workplaces can challenge those whose culture, gender, race, or national background do not reflect the dominant nature of the workplace. Further, the ombuds must be aware that issues at home including illness, family violence, poverty, or dysfunction may further silence an aggrieved employee and make it difficult to pursue successful strategies. Although not all attorneys or ombuds will have trauma-informed training to comprehend all the difficulties, certainly they should be aware of issues and know how to recommend other resources to alleviate harm.

II. DIVERSITY THROUGH IMMIGRATION

If the world consisted of simply homogenous communities, issues related to race or diversity might not plague a workplace. Historically, immigration—whether voluntary or forced—has contributed to the benefits received from the introduction of multiple cultures and nationalities within our workplaces, but also fostered controversies that challenge harmony. Immigration has led to backlash, anger, fear, racism, and xenophobia.¹⁴ Welcoming immigrants into the body politic, however, has fostered innovation, a spirit of invention, and the power to implement them. Diversity would not be a gift of creativity and wonder without newcomers entering our communities. The controversy over who belongs in the workplace or even which members constitute the body politic will not be solved easily as long as human beings migrate and seek welcome within our society. Thomas Nail suggests, “the twenty-first century will be the century of the migrant.”¹⁵ Migration teaches, moreover, that internal migration and the movement of people make us all migrants who impact the workplace. Nail adds, “While many people may not move across a regional or international border, they tend to change jobs more often, commute longer and farther to work, change their residence repeatedly, and tour internationally more often.”¹⁶ Thus, the workplace changes as new employees bring new voices, new cultures, and new responses to isolated remote workplaces, and new generations provide a different lens to view the culture of work. Ombuds, as participants in the daily negotiations towards productive and fulfilling work, will often find themselves at the center of these challenges. Ombuds, acting as helpful strangers, model how the independence and impartiality of ombuds encourage institutions to fulfill their mission and enhance belonging and inclusion.

¹³ Mousin, C. (2019). Health Inequity and Tent Court Injustice. *AMA Journal of Ethics*, 23(2): E132-E139: <https://via.library.depaul.edu/omvpubs/149/>

¹⁴ See, e.g. Deb, S. (March 21, 2024). Vaughan's Gething of Wales Is Europe's First Black Head of Government, *The New York Times*, <https://www.nytimes.com/2024/03/21/world/europe/vaughan-getthing-wales-parliament.html?searchResultPosition=1>; G'day, goodbye, Australia's enthusiasm for immigration is being tested, (February 8, 2024) *The Economist*, <https://www.economist.com/asia/2024/02/08/australias-enthusiasm-for-immigration-is-being-tested>; Cossé, E. (December 20, 2023) French Lawmakers Adopt Regressive Immigration Bill, *Human Rights Watch*, <https://www.hrw.org/news/2023/12/20/french-lawmakers-adopt-regressive-immigration-bill>; Kasai, T., (June 14, 2023), Japan Immigration Law Creates New Obstacles for Asylum Seekers, *Human Rights Watch*, <https://www.hrw.org/news/2023/06/15/japan-immigration-law-creates-new-obstacles-asylum-seekers>

¹⁵ Nail, T. (2015). *The Figure of the Immigrant* (p. 1). Stanford University Press.

¹⁶ *Ibid.*

The theological and legal theories that provided the foundation for the first migration of European colonists contributed to the decimation of indigenous communities that had lived for thousands of years in the North and South American continents. Elements of those theories continue to resonate. As Robert Jones argues, the contemporary debates on DEIB and anti-racism were nurtured in the initial doctrines relied upon to seize native land, exile indigenous communities, enslave Africans, and support theories of racism that have yet to be extinguished.¹⁷ Although the critique of the merits of DEIB leads some to conclude it is a novel theory only now raised to win a political debate, history reveals a different conclusion. For example, in 1875, Frederick Douglass maintained that immigration established a foundation for racism as early as 1619 when “two races arrived in North American in the early seventeenth century, one on the *Mayflower* at Plymouth and one on a Dutch galliot...at Jamestown.”¹⁸ Many histories of United States immigration neglect the tragic involuntary migration of enslaved Africans into the United States. We cannot ignore the catastrophic consequences of slavery, the benefits African Americans have contributed to the culture, and the dovetailing of immigration and race in the current diversity debates.

Lawyers from the earliest days of the Republic have also engaged in the question of who may enter the nation, who may become citizens, and who can be deported, all addressing the central question of membership in the body politic.¹⁹ The Declaration of Independence proclaimed that King George III had restricted immigration. In the mid-nineteenth century, amid the debate over slavery, a backlash to immigrants and Roman Catholics fueled the rise of the Know Nothing Party. Abraham Lincoln noted that immigrants constituted almost half of the nation’s population by 1858. Lincoln claimed that the newcomers, flush with their belief in the Declaration of Independence’s claim of equality of all human beings, had a greater sense of belonging to the national community than the nativist Know Nothing speakers.²⁰

The surge of immigration in the late nineteenth century led to the first federal legislation stifling Chinese immigration. It took more than half a century before litigation and legislation eliminated that discriminatory bias. New waves of immigrants from southern and eastern Europe in the early twentieth century provoked a nativist outburst against immigrants that led to new discriminatory laws limiting immigration from non-northern European nations. Recognizing immigration’s impact on race and nationality, Alice Thatcher Post proclaimed on June 4, 1920, “if we are to create a great solidarity out of diversities...we must hear and ponder what all the various elements have to offer.”²¹ Nevertheless, the national mood led to restrictive laws and increased deportations. Some lawyers fought the law, or at the very least, worked to ensure minimal legal protections. Convinced that Attorney General Palmer violated the law in rounding up and deporting alleged anarchists without proper process, Acting Secretary of Labor Louis Post refused to sign deportation orders, thus enabling many to avoid deportation and remain with their families.²² But

¹⁷ Jones, R.P. (2023). The Roots of Christian Nationalism Go Back Further Than You Think. Time. <https://time.com/6309657/us-christian-nationalism-columbus-essay/>.

¹⁸ Frederick Douglass, quoted in Blight, D.W. (2018). Frederick Douglass, Prophet of Freedom (p. 555) Simon & Schuster, 555.

¹⁹ This historical summary is based, in part, on the extended history of immigration and the laws that impacted admission and deportation in Johnson, K., Aldana, R., Ong Hing, B. Saucedo, L., and Trucios-Haynes, E. (Eds.). (2019) Understanding Immigration Law, Third Ed. (pp. 43-103). Carolina Academic Press.

²⁰ Abraham Lincoln. (1908). July 10, 1858, speech at Chicago, The Speeches of Abraham Lincoln, Including Inaugurals and Proclamations (pp. 72-74). Lincoln Centenary Association.

²¹ Post, L.F. and Storey, M., (1923). The deportations delirium of nineteen-twenty: a personal narrative of an historic official experience. (p. 319). C.H. Kerr & Co. The Making of Modern Law: Legal Treatises, 1800â 1926, link.gale.com/apps/doc/F0152517990/MOML?u=uiuuc_depaul&slbid=bookmark-MOML&pg=339

²² See generally, Ibid.



despite his efforts, new laws and policies restricted immigration to certain nationalities and deportation became an ever-increasing tool of government enforcement.

It took over forty years to achieve reform, but the civil rights movement inspired changes in the immigration laws that diminished discrimination based on nationality and ushered in one of the most remarkable experiments in encouraging immigration from all parts of the globe. Seeds of the current opposition to diversity sprouted, however, from the change of the demographics based on the 1965 laws as diverse newcomers threatened cultural homogeneity. Moreover, race and immigration remained entangled. For example, this nation's courts began to unwind the shackles of slavery's consequences in the 1950s. In *Loving v. Virginia*, Chief Justice Warren castigated the racist logic of the lower court that upheld the Virginia law that banned an interracial marriage. In holding the law unconstitutional, Warren critiqued the District Court's conclusion:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix.²³

That a federal judge could write those sentences in 1959 suggests how much we must still struggle to eradicate racism.

It also demonstrates the intricate interweaving of immigration, race relations, and gender issues that contribute to the current DEIB debate. Through it all immigration lawyers have contributed to the development and regression of the law with its consequences in our workplace. The lawyers who litigated the initial Chinese Exclusion cases raised important due process and constitutional concerns that, although not successful in the early cases, continue to raise challenges to improper government actions to this day. The battles between Attorney General Palmer and Commissioner Post reverberate within contemporary disagreement as exemplified by the opposite positions taken by former Attorney General Jeff Sessions and former Chief Counsel of U.S. Citizenship and Immigration Services, Stephen Legomsky.²⁴ After fueling polarization by critiquing immigrants in his 2016 campaign, then President Trump's administration implemented over 1,000 new immigration policies, almost all negatively impacting the admission and regulation of immigrants, and thereby diminishing diversity within our nation.²⁵ Immigration attorneys challenged many policies. Courts enjoined some and modified others. Thus, immigration lawyers have encouraged diversity within our nation. They continue to seek ways to bring more justice to the immigration arena.²⁶ Certainly, lawyers have helped draft discriminatory policies and laws and defended racist policies.²⁷ At the very least, however, advocacy and lobbying from both sides has certainly helped fabricate the legal framework for diversity in our nation. If Nail is

²³ *Loving v. Virginia*, 388 U.S. 1, 3 (1967) Warren, Chief Justice. I thank James Halstead for pointing out Loving's connection between racism and immigration.

²⁴ See, Post, Delirium, supra. Cf. Legomsky, S. H. (March 15, 2022). Removing Barriers to Legal Migration to Strengthen our Communities and Economy. <https://www.judiciary.senate.gov/imo/media/doc/Legomsky%20Testimony.pdf> with Sessions, J. (October 2017). Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review: <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>

²⁵ See: Immigration Policy Tracking Project (February 2022). <https://immpolicytracking.org/home/>. See also, Bolter, J., Israel, E., and Pierce, S. (February 2022). Four Years of Profound Change, Immigration Policy during the Trump Presidency, Migration Policy Institute. <https://www.migrationpolicy.org/sites/default/files/publications/mpi-trump-at-4-report-final.pdf>

²⁶ See, e.g., Paul Wickham Schmidt (July 19, 2017). Join the New 'Due Process Army' – Fight for Due Process in the United States Immigration Courts: <https://immigrationcourtslbide.com/join-the-new-due-process-army-fight-for-due-process-in-the-united-states-immigration-courts/>

²⁷ See, e.g., Legomsky, S. H. (2018) Bold Executive Action and False Equivalence Roger Williams University Law Review: Volume 23(2), Article 2: https://docs.rwu.edu/rwu_LR/vol23/iss2/2 (lawyers from the political left and political right debate the merits of the Deferred Action for Childhood Arrivals).



correct that the twenty-first century will be the century of the migrant, we have a responsibility to continue to resolve issues of DEIB.

John Higham concluded that nativism expands when immigration threatens confidence in cultural homogeneity.²⁸ Jennifer McCoy and Benjamin Press have shown that immigration's demographic shift incites politicians to exploit insecurities. They conclude that "pernicious polarization is a uniquely corrosive and dangerous force in democracies."²⁹ Should we fail to mitigate the rhetoric and policies that pit one group against the other or end divisiveness in the workplace, we face Barbara Walter's conclusion that the alternative consequence is violent conflict.³⁰

College and university campuses have become a focal point of that debate, both internally, and externally as they have been placed under the microscope of state legislatures and the public.³¹ Scholars decry that campuses are roiling in issues unseen in over four decades.³² Offices dedicated to "religious pluralism, interfaith literacy, community engagement, social cohesion, ideological freedom, mutual respect and civility and environmental stewardship" have been closed.³³ College presidents have been dismissed with fear trickling down to silence dialogue, academic freedom, and free speech. DEIB, finds itself branded an unwelcome theory.³⁴ Centers dedicated to fostering welcome and belonging are closed in the wake of state legislation or public outcry. Even groups, previously viewed as relatively united, now face internal "civil wars" as DEIB challenges earlier unity.³⁵

This turmoil that threatens education for all calls for a new metaphor with additional tools to encourage ombuds to negotiate among dissenting voices on campuses or corporations. Polarizing rhetoric critiques visual diversity and simultaneously undermines the purpose of the 14th Amendment to the Constitution to repair harm through color consciousness which sought ameliorative solutions to over three centuries of federal, state, and colonial laws that impaired full democratic participation.³⁶ In light of these critical debates about free speech and academic freedom, the ombuds serves a particularly critical role in mediating conflict and encouraging open negotiations for a healthier organization. This becomes especially critical when universities often claim ambitious goals to provide a home for welcome and vigorous debate. For example, Robert Manuel, President of DePaul University, has stressed that DePaul's Vincentian mission, characterized by "radical hospitality" and "radical service," invokes a call "to become a community in which diversity, equity, and inclusion are the very foundation of our peaceful and meaningful coexistence."³⁷ Given that call, when critics call for silence in the face of unremedied harm or

²⁸ Higham, J. (1958). Another Look at Nativism (p. 151). *The Catholic Historical Review*, volume 44(2), 147.

²⁹ McCoy, J. and Press, B. (January 18, 2022). What Happens When Democracies Become Perniciously Polarized Carnegie Endowment for International Peace: <https://carnegieendowment.org/2022/01/18/what-happens-when-democracies-become-perniciously-polarized-pub-86190>

³⁰ Walter, B. F. (2022). *How Civil Wars Start and How to Stop Them* (p. 76). Crown (Immigration is often a source of conflict that causes civil wars.).

³¹ Holtschneider, D. (February 27, 2024) How a campus interfaith center fell to Florida's anti-DEI legislation, Religion News Service, <https://religionnews.com/2024/02/27/how-a-campus-interfaith-center-fell-to-floridas-anti-dei-legislation/>

³² Carter, S.L., (January 1, 2024), *The New York Times*, College Is All About Curiosity. And That Requires Free Speech, <https://www.nytimes.com/2024/01/24/magazine/college-free-speech.html?searchResultPosition=2>

³³ Holtschneider, D., *supra*.

³⁴ Saul, S., (April 12, 2024), With State Bans on D.E.I., Some Universities Find a Workaround: Rebranding, *The New York Times*, <https://www.nytimes.com/2024/04/12/us/diversity-ban-dei-college.html?searchResultPosition=1>

³⁵ Kim, R. Y., *Evangelical Civil War on the College Campus, White Evangelical Right Framing Resistance to Racial Justice in 2020s America*, *Journal for the Scientific Study of Religion* (2023) 0(0):1-17

³⁶ Hannah-Jones, N. (March 3, 2024) *The New York Times*, Whitewash, The Color Blindness Trap: How A Civil Rights Idea Got Hijacked: <https://www.nytimes.com/2024/03/13/magazine/civil-rights-affirmative-action-colorblind.html?searchResultPosition=2>. See e.g., Rothstein, R., (2017) *The Color of Law*, Liveright Publishing.

³⁷ Manuel, R. L., "Radical hospitality and service," *DePaul Newslines*, September 27, 2022, <https://offices.depaul.edu/president/notes-from-rob/2022-2023/Pages/feast-day-2022.aspx>

ongoing challenges, the need for a skilled third-party neutral, trained in mediation and negotiation methods, arises.

III. OMBUDS AS THE HELPFUL STRANGER

Responding to these concerns, Shannon Burton challenges ombuds to seek new definitions and understandings of the role of ombuds.³⁸ Although IOA summarizes this position as a designated neutral, over the last half-century, ombuds have proposed metaphors to define the organizational ombuds' responsibilities. These metaphors for ombuds have spanned a spectrum such as Lorleigh Keashly's "bystander,"³⁹ Brian Bloch's "agent of cultural change,"⁴⁰ and Marsha Wagner's and Jan Morse's "change agent."⁴¹ I have previously called ombuds "advocates for justice"⁴² which concurs with Robert Shelton's claim that for an organizational ombuds, "justice is, indeed, 'pre-eminent!'"⁴³ Early in my ombuds career, an administrator half-jokingly told me that he never knew when I came to his office whether I was a fire-fighter or an arsonist,⁴⁴ suggesting a calling that might be similar to Gilles Paquet's designation of ombuds as "agent provocateur."⁴⁵ Each of these metaphors navigates the presence of an ombuds within an institution, while acknowledging that their independence, impartiality, informality and confidentiality offer no apparent power, yet the particular elements permit observation, response, challenge, and action from the unique perch of the ombuds office.

Polarization divides campuses and society threatening a healthy debate and flourishing democratic institutions demonstrating the need for skilled negotiators to encourage dialogue. Given the similar interstitial space diplomats and ombuds occupy, ombuds may seek ideas from diplomatic studies. Costas Constantinou describes diplomacy as "*how we can live together in difference*," which, when examined through the DEIB lens, also describes the role of the ombuds.⁴⁶ Diplomatic studies scholars have identified that within the twenty-first century, diplomacy, long regarded as state-based representatives negotiating between sovereign nations, has transformed with multiple roles including citizen-based relationships engaged in the field. Geoffrey Wiseman notes the growth of a "*cosmopolitan, non-state or humanist* conception of diplomacy."⁴⁷ The skills and responsibilities of a diplomat may therefore be akin to an ombuds.

Diplomats owe loyalty to their native land, yet much of their experience and work occurs in a foreign territory. To be effective they must understand the mores and laws of a foreign land and build relationships not only with the diplomats of that nation, but also with similarly situated diplomats. They may raise their children in a foreign nation and respond to family issues within

³⁸ Burton, S. L. (2017). Ombudsing in the New Era (p. 10) Journal of the International Ombuds Association.

³⁹ Keashly, L. (2018). Ombuds and Bystanding: Embracing Influence (p. 2) Journal of the International Ombuds Association.

⁴⁰ Quoted in Bloch, B., & Nancy, E. (2010). The Organizational Ombudsman as Change Agent for Organizational and Social Capital (p. 73) Journal of the International Ombudsman Association, 3 (number 2).

⁴¹ Wagner, M. L. (2000). The Organizational Ombudsman as Change Agent 16 Negot. J. 99.

⁴² Mousin, C. B. (2005). Vincentian Leadership--Advocating for Justice. Vincentian Heritage Journal, 26 (1, Art. 14), 46. <https://via.library.depaul.edu/vhj/vol26/iss1/14>

⁴³ Shelton, R. L. (2011). Justice as Basis of Equity and Fairness in Ombudsman Practice (p. 24) Journal of the International Ombudsman Association, volume 4(1)18-25, 24.

⁴⁴ Although some have expressed concern that the arsonist designation was too harsh, given my previous working relationship with this individual, I took his claim in good faith that similar to current forest fire prevention tactics, an ombuds might encourage the burning of old wood and or dried out vegetation to avoid it becoming fuel for a larger uncontrollable wild forest fire that could irreparably damage an institution.

⁴⁵ Cited in Bloch, Change Agent, supra, (p.73).

⁴⁶ Constantinou, C. (2013). Between Statecraft and Humanism: Diplomacy and Its Forms of Knowledge (p. 142) International Studies Review (emphasis in original).

⁴⁷ Wiseman, G. (2020). Diplomacy in Berg-Schlosser, D., Badie, B., and Morlino, L., (Eds.), The Sage Handbook of Political Science (p. 1202). Sage Publications Ltd. (emphasis in the original).

that cultural context far from home. While away, they may not face the same pressures of politics, media, and inner office politics others deal with in the home office. They may view their nation with a different lens as multiple voices from outside a nation add to their knowledge that might not be available should their daily routine be based at home instead of abroad. Viewing a particular issue from the perspective of the host nation may glean ideas that suggest alternative solutions not easily understood in the diplomat's native land or government offices. Given this particular perspective, diplomats from different nations may find they have more in common with diplomats posted abroad than colleagues remaining at home, permitting them to exchange observations and ideas. Many ombuds work as solitary individuals in their institutions. Bound by confidentiality constraints, they can share little of their work, their joys, and their frustrations with others. These demands can make the vocation a very lonely one that resembles the loneliness often felt by a stranger. Therefore, organizations such as the IOA or informal groups such as the Midwest Academic Ombuds offer the growth of a community where individuals who too frequently work alone in this interstitial zone can seek collaborative assistance from the ombuds community.⁴⁸

Thus, one defining characteristic of the diplomat, whether state-based or citizen-based, stems from their particular location living between their native land, yet not quite at home in the foreign land in which they work and live. As Constantinou states, the diplomat who remains in the middle, “acquires legitimacy from the interstitial—from the *international* or *intercommunal*—making the most of not taking sides or by functionally distancing oneself from the sides; in other words devoting one’s craft to support actions that re-engage and re-position the ‘sides.’”⁴⁹ Merje Kuus urges diplomats to exercise “flexibility and mutability”⁵⁰ to effectively work within this constantly challenging environment. The life of a diplomat, filled with “ambiguity, paradox, and confusion”, leads Fiona McConnell to name the liminal spaces where diplomats function as they navigate between state and non-state issues.⁵¹ Ombuds facilitating confrontations and debates on DEIB without taking sides may frequently face ambiguity, paradox, and confusion in attempting to ensure all voices are heard and responded to with integrity.

Robert Shelton observes that this middle ground often requires ombuds to call their institutions to account to their highest principles to seek justice.⁵² Similarly, Sasson Sofer proposes, “As an interpreter both of his own society and of the society of his mission, the diplomat appears to be less an obedient civil servant and more a challenger of accepted truths, and the initiator of new interpretations not grounded in either society.”⁵³ When viewed from the outside, a diplomat’s loyalty to a nation may be challenged as not sufficiently loyal to the homeland’s priorities or mission. From the viewpoint of the foreign nation, a diplomat’s honesty may be challenged as they are seen as agents of their home state. An ombuds faces similar challenges when claiming to be independent and impartial despite receiving a paycheck from the institution while housed in its facilities.

The work of an immigration attorney has elicited similar criticisms. Immigration attorneys primarily litigate against the United States.⁵⁴ Fulfilling their professional responsibility to be a

⁴⁸ See, e.g. Griffin, T. (2011, July 29). Attendance Rises at Ninth Annual Summer Meeting of Academic Ombuds. The Ombuds Blog. <https://ombuds-blog.blogspot.com/2011/07/attendance-rises-at-ninth-annual-summer.html>

⁴⁹ Constantinou, Statecraft, supra, (pp.15, 145) (emphasis in original).

⁵⁰ Kuus, M. (2023) Interstitial expertise and international governance: cultivating diplomatic practitioners in Europe, 4, *Geografiska Annaler: series B, Human Geography*, <https://doi.org/10.1080/04353684.2023.2211078>

⁵¹ McConnell, F. (2017). Liminal geopolitics: the subjectivity and spatiality of diplomacy at the margins, 2017 *Transactions of the Institute of British Geographers*, 42, 139-152, doi:10.1111/tran.12156, citing Turner, V. (1967) *The forest of symbols: aspects of Ndembu ritual* Cornell University Press, Ithaca NY.

⁵² Shelton, Justice, supra, (p. 19).

⁵³ Sofer, S. (1997) *The diplomat as a stranger* (p. 179) *Diplomacy and Statecraft*, volume 8(3), 179-186.

⁵⁴ Not all attorneys are United States citizens: Medina, J. (July 17, 2017). *A Defender of the Constitution, With No Legal Right to Live Here*: <https://www.nytimes.com/2017/07/17/us/undocumented-immigrants->

zealous advocate for their client, may require critiquing their native land's regulatory or due process failures. Former United States Attorney General Sessions decried all immigration attorneys' loyalty and character by demeaning the work of some. Sessions condemned immigration backlogs because "smart attorneys have exploited loopholes in the law court rulings, and lack of resources to substantially undermine the intent of Congress" while also lambasting "dirty immigration lawyers who are encouraging their otherwise unlawfully present clients to make false claims of asylum...."⁵⁵ Sessions ignores an attorney's duty to zealously advocate for a client.

His loophole theory demonstrates his failure to appreciate the hard-fought remedies established by Congress in the aftermath of the tragedies when the United States exiled refugees back to Europe or refused them entrance during the Holocaust. Litigation has consistently led to the withdrawal, revision, or reversal of Sessions' policies. Moreover, the integrity of the federal immigration courts has been consistently criticized for lack of judicial independence.⁵⁶ In the polarized political debate over immigration, Sessions deflected blame for his own unlawful actions by calling immigration attorneys dangerous strangers to our land. The overwhelming reversals in policy due to litigation demonstrate, however, that those immigration attorneys were the ones fulfilling the intent of Congress.⁵⁷

Diplomats share the ambiguity of ombuds and immigration attorneys. This ambiguity led Sofer to characterize the diplomat as a stranger.⁵⁸ Paul Sharp expands Sofer's diplomat as a stranger to suggest a more specific stranger:

Diplomats, however, are examples of a particular kind of stranger. Like other strangers, they seek to become familiar with and to those with whom they have relations. Unlike them, however, they also work to maintain a distance. This is not just the distance that all professionals—doctors, lawyers, teachers—need to prevent personal relations getting in the way of what they sometimes must do. It is a distance bound up with their professional identity. They are, as it were, professional strangers and need to remain so to do their job.⁵⁹

He adds a critical designation—the useful stranger:

The notion of diplomat-as-strangers sheds light on their predicament. It also provides the beginnings of the answer to why the rest of us find them useful. They can do some things more effectively than the rest of us because of the skills and priorities their predicament encourages them to develop.⁶⁰

Once again, location and responsibility distinguish this particular role. Diplomats have a responsibility to represent their home nation but also respond to the concerns and issues of the

[illegcitizenship.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news](https://www.jioa.org/illegal-citizenship.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news)

⁵⁵ Sessions, *supra*.

⁵⁶ Tsankov, M., (2024) Immigration Courts in Need of an Article I Overhaul, in Soltes, O. and Stern, R., eds, *Welcoming the Stranger, Abrahamic Hospitality and Its Contemporary Implications*, (pp. 155-58) Fordham University Press; Kerwin, D., & Millet, E. (2023). The US Immigration Courts, Dumping Ground for the Nation's Systemic Immigration Failures: The Causes, Composition, and Politically Difficult Solutions to the Court Backlog. *Journal on Migration and Human Security*, 11(2), 194-227. <https://doi.org/10.1177/23315024231175379>

⁵⁷ See, e.g., Stillman, S. (February 1, 2021). The Race to Dismantle Trump's Immigration Policies *The New Yorker*: <https://www.newyorker.com/magazine/2021/02/08/the-race-to-dismantle-trumps-immigration-policies>

⁵⁸ Sofer, *Diplomat*, *supra*, (p. 181).

⁵⁹ Sharp, P. (200) *Diplomatic Theory of International Relations* (p. 100) Cambridge University Press.

⁶⁰ *Ibid*.

nation where they have been assigned. An ombuds' professional obligations necessitates understanding and articulating the ideas and positions of different parties within an institution.

Sharp keenly cites one other distinction between diplomats and other professionals. All of us, on occasion, experience the dizziness of changing locations, whether it be between home and office or a middle manager who manages others but also reports to senior staff. Sharp writes, "The difference with diplomatic relations, however, and, hence, with diplomats, is that this point between becomes a resting place rather than a place to pass through, the site of operations, rather than a barrier to be negotiated before operations can commence."⁶¹ The locus of one's work for an ombuds as well as for diplomats calls one to remain in a place of uncertainty. Sharp adds that the locus suggests that the work of diplomats "is like conducting relations in an earthquake zone where the interplay of different people's thought and actions...are principal determinants of the frequency, duration and intensity of earthquakes."⁶²

In the contemporary polarized world, ombuds serve as helpful strangers to mitigate the threat to clear communication and understanding. They seek to uphold the mission of an institution, but as different perspectives will result in different conclusions whether conduct violated the mission, the ombuds must delve deeply into hearing and understanding how different parties to a conflict come to their conclusions. In Walter Benjamin's words, as they wander within an organization, they possess "'an all-embracing and quiet knowledge', with 'the honorable look of a priest and the investigative sense of a detective.'"⁶³ Similarly, Constantinou argues, "it is never enough for the diplomat to just represent one's side. One must learn to represent—mentally and privately—the other side as well, not merely to sympathize but to empathize. One must learn to appreciate the other."⁶⁴ Grounded in empathy, the ombuds, as helpful stranger, employs the role of neutral and impartial to seek out the competing positions in a conflict. Robert Shelton observes that given the complexity of modern organizations, decisions will frequently fall harshly on some, raising issues of justice, even when the proposed outcome is generally beneficial.⁶⁵ To apprehend how organizations determine policy and procedure, implement decisions, and plan while also recognizing how those negatively impacted by those decisions and policies underscores the value of the ombuds.

The stranger metaphor also recognizes the need to constantly introduce oneself to distinct audiences that might not fully understand an ombuds' responsibility. In the contemporary corporate culture, roles are often rigidly defined in hierarchies or ranks with job titles and compensation grades and percentiles, all within distinct colleges or divisions. Employees know their rank and may be seeking to move up the ladder, but most frequently, within the silo of a particular college or division. Outside of these rigid structures, the diplomat or ombuds stands liberated from traditional channels of promotion. Charles Howard speaks of the advantage of his role as an "inside outsider" to offer "unvarnished observations" about ombuds.⁶⁶ Within an institution, the ombuds may flip that script as an outside insider, able to view an organization without being trapped in a particular silo or rank. Thus, the ombuds must continually reach out, meet individuals in their roles, find linkages between silos or divisions, and introduce employees to allies they might not even know they have to formulate collaborative strategies.

⁶¹ Ibid.

⁶² Ibid (p. 108).

⁶³ Sofer, *supra* (p. 182) quoting Walter Benjamin.

⁶⁴ Constantinou, *Humanism*, *supra*, (p. 155).

⁶⁵ Shelton, *supra*, (pp. 21-22).

⁶⁶ Howard, C. (2015). Observations of an "Inside Outsider" on the Future and Challenges Facing IOA and the Organizational Ombudsman Profession, (p.8) *Journal of International Ombudsman Association*, volume 8(1), 8-17. <https://ioa.memberclicks.net/assets/docs/JIOA-15-V8-1-FNL-FULL.pdf>

Like the diplomat, the ombuds' role functioning impartially between the parties permits "more flexibility by seeking ever new knowledge and insights from plural locations, across national frontiers, from within humanity's contrasting histories, value systems, and beliefs."⁶⁷ An ombuds mines value from the many different world views that arise in diverse workplaces to increase the options for resolution of issues. Two or more parties in a conflict may view a particular event truthfully, but differently. An employee may face the brunt of an overbearing manager and describe their experience as a victim of bullying. The manager, perhaps inexperienced, believing that a strong manager must examine every detail of the employee's work may slide from micromanaging into practices that suggest discrimination based on a protected category. If challenged, the manager might even respond with greater control that elides to bullying or retaliation. In such a situation, conflict defeats the benefits of diversity. When talking to the ombuds, each may believe they speak truthfully, but the ombuds impartiality offers an opportunity to seek a perspective that allows each to view a more complicated puzzle of competing cultures, experiences, work expectations, and beliefs which may offer more options to resolve the issue. Diversity may contain seeds of conflict but, when nurtured properly, may present many new options for resolution.

Merje Kuus's description of the diplomat's specialized preparation provides guidance because "an effective diplomat...is one who knows where to go to meet the person who can solve a problem when a not-yet-knowable problem comes up."⁶⁸ Moreover, a diplomat needs to have the network of potential contacts in place *before* they need to approach anyone with a problem. Diplomacy is a profession of anticipation: it requires a capacity to navigate the boundaries between institutions, networks, and cultures, to be let in and out with ease, and be at ease in all those settings. This need to mediate and translate knowledge claims from different contexts....⁶⁹ As professional strangers, the diplomat and the ombuds navigate without clear maps, seeking allies, and charting new responses to diversity's complexity. Residing in Sharp's earthquake zone necessitates serving all parties despite the ambiguity and the continually evolving challenges.

The in-between zone, independent of any institution or program, impartial between competing interpretations of a particular experience, adds one additional element demonstrating how the ombuds as a helpful stranger navigates challenges. Because of their independence and neutrality, the helpful stranger often experiences the vulnerability of living within a dominant culture not one's own. That knowledge provides a greater understanding of visitors from historically minority communities who enter a dominant culture and seek to succeed despite the institution's failure to provide the tools necessary to achieve their goals. R. Roosevelt Thomas' fable of the giraffe and elephant demonstrates how a neutral workplace built for one culture may undermine newcomers who must adjust to what appears to be a normal workplace that instead stacks the deck against the newcomer.⁷⁰ Typically, organizations sought to make the newcomer conform to the workplace rather than changing the institution to enhance belonging. Thomas suggests we look at the workplace through the experience of the newcomer to eliminate these traps. The helpful stranger may point out how some policies or procedures, neutral on their face, confine and restrict newcomers from meeting work expectations. Without that fresh examination the status quo can leave a mistaken reliance upon existing practices.

⁶⁷ Constantinou, *supra*, (p. 146).

⁶⁸ Kuss, *supra*, (p. 6).

⁶⁹ *Ibid*.

⁷⁰ Thomas, R. R. Jr. with Woodruff, M.I. (1999). Building a House for Diversity: A Fable About a Giraffe & an Elephant Offers New Strategies for Today's Workforce. Amacon. In Dr. Roosevelt's fable, the metaphorical giraffe has established a successful woodworking shop and must hire a new employee—the elephant. The shop, however, was built for a giraffe. The work benches are too high, the doorways too narrow, and the stairs too weak for an elephant. Instead of changing the workplace, the giraffe tries to make the elephant change its physique or seek new skills to navigate narrow doors.



Historically, the stranger often brought new wisdom to a community through fresh eyes not dimmed by years of a dominant culture's practices. Beyond diplomatic studies, moreover, the stranger reveals practices that seem acceptable but instead undermine an institution's aspirations thus precluding belonging. In the biblical narrative, for example, the stranger often reveals the divine's hopes for a people.⁷¹ Indeed, by welcoming the stranger, societies "transcend our differences" and find ways to avoid the violence or polarization that might arise.⁷² Even the foreigner or perceived enemy may be the one who reveals "great things" and encourages us to welcome the stranger.⁷³ Likewise, in the secular world the stranger to a village also highlights how accepted truths may exclude necessary points of view.⁷⁴

The immigration lawyer, like the ombuds, as a helpful stranger dwells in those vulnerable interstitial areas, and thus is more open to understanding the riskiness of venturing into a dominant culture. Representing asylum-seekers necessitates demonstrating how a culture denies dignity, and often persecutes those who are vulnerable due to gender, sex, religion, race or other vulnerable populations. That enables lawyers, much like the ombuds, to assist an institution struggling with incorporating individuals from diverse cultures. Based on their experiences, they are better prepared to work with easily intimidated clients or visitors facing difficult procedures by an institution's policies that, on their face seem fair, but in practice establish barriers to belonging in the community or achieving its goal of justice.

Of course, not all strangers bring benefits. Rabbi Sacks acknowledges that the stranger is often perceived as threatening.⁷⁵ In a polarized environment, the public falls prey to the rhetoric of fear and the conundrum of the stranger-danger warning. This concern, however, must be mitigated through the ombuds' skill to build trust within an organization by empathy and by reliance on IOA's Code of Ethics and Standards of Practice.

PART IV: THE IMMIGRATION LAWYER/OMBUDS AS A HELPFUL STRANGER NAVIGATING THE CONTEMPORARY WORKPLACE

A. LISTENING TO THE NARRATIVE

An ombuds, acting as a helpful stranger, models how to encourage institutions to fulfill their mission and enhance belonging. Conflict contains seeds of miscommunication. Those who tell their tale of outrage or violations of policy or mission often misconstrue responses or fail to fully listen to the opposing side. Differences in culture, experiences, language, and age multiply the possibilities for miscommunication. Immigration law imposes a steep learning curve in listening to a client's story especially when an asylum-seeker explains why exile forced them to escape their native land. Their experiences, their love of family, and their fear make it critical that the lawyer comprehend the depth of their claim. Failure to properly understand a client's narrative may doom the client and their family to deportation, detention, or death. At the same time the law's requirements necessitate that the lawyer ensure that they fully respond to the questions that the adjudicating official will need before granting asylum. Dina Nayeri, an Iranian refugee, dissects the difficulty of discerning truth in such situations which provides useful guidance to anyone who wants to serve as a helpful stranger. She offers three distinctive stories that are each true but, if

⁷¹ Hamilton, M.K. (2019). *Jesus King of Strangers What the Bible Really Says about Immigration*. (p.137) William B. Eerdmans.

⁷² Sacks, Rabbi J. (2015). *Not in God's Name, Confronting Religious Violence* (p. 194) Schocken Books.

⁷³ LaCocque, A. (2004). *Ruth, A Continental Commentary* (Hanson, K.C. Trans.) (p. 154) Fortress Press.

⁷⁴ See, e.g., Twain, Mark, (1923). *The War Prayer*. <https://www.people.vcu.edu/~toggel/prayer.pdf>.

⁷⁵ Sacks, *supra* (p. 181).



not understood, will sabotage an asylum claim. First, there is the truth of the asylum officer who has a narrow understanding of the law. Faced with an overwhelming number of cases to process, the adjudicator looks for the conflicts in a story that undermine credibility, and thus, gives cause to deny the case. The second truth may be the immigration attorney who attempts, without any distortion, to translate the client's narrative in terms that meet all the legal requirements of asylum eligibility. Finally, the client knows deep in their heart why they fled but may have difficulty in explaining it through a language interpreter or in terms that fit the constraints of asylum law in a different culture. She writes, "refugees will spend the rest of their lives battling to be believed. Not because they are liars but because they're forced to make their facts fit narrow conceptions of truth."⁷⁶ She adds, "When you lift your babies into a dinghy, you show your truth. Shame, trauma, and fear may strike you mute, but that act is enough."⁷⁷ If a client has been persecuted or tortured, moreover, they may be subject to PTSD. Therapists working with PTSD survivors warn that a legal proceeding that requires specific detail may call for the survivor to "re-live" the torture more than remember.⁷⁸ As a result, the client may fail to reveal critical details that would otherwise strengthen the case.

By understanding the demands of a trauma-informed context, the ombuds, as helpful stranger, enables a visitor to discern how best to navigate the labyrinth of formal procedures. Visitors to the ombuds office may not have experienced the horror of persecution but the challenges of diversity—racial, gender, generational, ethnic, educational and economic differences—call for reliance on many of the lessons learned as an immigration lawyer. Studies reveal, however, that modern workplaces throughout the world suffer from substantial bullying.⁷⁹ An inability to navigate all the hidden truths may lead to disastrous consequences if visitors enter an institution's formal procedures in pursuing or defending a claim based on a protected legal category. Moreover, it calls upon the skills learned as a helpful stranger in truly listening and respecting the dignity of the one who tells the tale. Refugees may offer an extreme case, but historical racism, sexism, and ageism—to name a few—may bring visitors to the ombuds office facing similar challenges when encountering an institution's formal procedures. Given that an employee will often continue to work for the same manager after a complaint has been addressed, the fear of retaliation, subtle or explicit, may frighten a visitor into abandoning a claim. Or a manager, fearing they have been falsely accused, may feel handcuffed and unable to manage an employee they believe might claim retaliation for making a prior claim. An ombuds, representing neither side, can work with each to encourage a safe and productive workplace with a greater sense of belonging.

The demands of the modern workplace also place increased burdens on the staff working in Human Resource Offices or Title IX offices. A high caseload, limited staff resources, increasingly technical legal issues on elements of proof, for example in Title IX claims, and the inherent difficulty of discerning truth from competing narratives with little physical evidence to corroborate claims all stress the dedicated staff person. The ombuds, as a helpful stranger, can work with staff without violating confidentiality issues, to help frame questions, share institutional knowledge or best practices from other ombuds offices, and seek to address these structural problems. At a minimum, ombuds can strategize with them to mitigate stress. Walking that tightrope of remaining impartial and confidential yet being responsive to both sides, is rarely easy, but nonetheless, a necessary ombuds duty.

⁷⁶ Nayeri, D. (2019) *The Ungrateful Refugee, What Immigrants Never Tell You* (p. 243) Catapult.

⁷⁷ *Ibid* (p. 262).

⁷⁸ Martinez, A. and Fabri, M. (1992) "The Kovler Center: the dilemma of revictimization" (pp.47-8) *Torture* 2(2). ("The story is rarely recounted without an actual sensory re-living of the experience (physical pain, tastes, sounds, smells. It is not simply a re-collection of events.")

⁷⁹ See e.g., Sutton, Robert L., (2010) *Good Boss, Bad Boss, How to Be the Best and Learn from the Worst*, (pp 210-20) Grand Central.

B. NAVIGATING THE MODERN WORKPLACE

The contemporary workplace contains perplexing, polarizing, and contradictory forces that make even the best map of the territory confusing. IOA's Code of Ethics emphasize equality, fairness, and individual empowerment. Yet workplaces frequently favor top-down decision-making with legacies of patriarchy and racism still lingering, if not dominating, in some cultures. Additional distinctions raised by generational divides, cultural diversity, and gender-related issues raise questions of how to determine fairness, let alone preserve human dignity.⁸⁰ Legislation offers protection for individuals from historically vulnerable groups, but legislation alone does not solve the issues. Indeed, federal and state legislation adds burdens of regulations that may stifle institutional ability to address unique challenges as general laws passed to address concerns in one industry may not apply to others such as academic institutions. Litigation costs and risks loom over many decisions.

Modern bureaucracies sought both efficiency but also alleviated injustice based on power-based regimes. Bureaucracies developed to avoid the unfairness and inequality that result from unregulated discretion, but, as Martha Minow points out, "rules applied without individualized treatment can also produce overly harsh responses."⁸¹ Even when it operates at its best, bureaucracies fail to offer all the potential responses to address concerns raised by DEIB.⁸² Although affirmative action encourages diversity by assisting in recruitment, Mary Rowe argues that affirmative action by itself fails to achieve "a productive mosaic society where women and men of all races are randomly distributed throughout the world of paid and unpaid work" and fails "to achieve healthy diversity."⁸³

Legislation and litigation can coerce institutions to structure their organization to regulate employment, but they may also have indirect influence. Rhys Williams and John Massad questioned whether the Constitution and its religious liberty promises inspired religious organizations to structure themselves primarily with their theological and ecclesiastical precepts. Given the diversity of faith traditions in the United States with significantly different historical and cultural roots, they expected to find a variety of organizational configurations, but they found surprisingly few differences between religious organizations. They concluded that in addition to bureaucratization and professionalization, the *mimetic isomorphism* of contemporary organizational development led to this consistency.⁸⁴ They added, "If the regulatory environment is uncertain, leaving organizations unsure what demands might be made of them, mimetic adaption is one way to anticipate and possibly avoid coercive power."⁸⁵ In both the spheres of immigration and diversity, where our polarized nation debates the relative merits of increased immigration versus increased enforcement or whether academic institutions can make admissions decisions based on race, mimetic adaption discourages inclusion and belonging. The rise of professional organizations such as the National Association of College and University Attorneys provides both a great resource for academic attorneys but also contributes to isomorphism that may compete against a particular institution's mission. The ombuds, as a

⁸⁰ See, e.g., Mousin, C. (2015). The Ombudsperson and Mission. In Steele, M. (Ed.), *A Mission Officer Handbook: Collaborating With Partners*, Vol. II, Association of Catholic Colleges and Universities. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562492

⁸¹ Minow, M. (2019). *When Should Law Forgive?* (p. 26). W. W. Norton & Company.

⁸² Indeed, some bureaucracies can intentionally harm citizens. The initial idea for an ombuds arose in Sweden to address the violations of the peoples' rights by overreaching bureaucracies. See: Wennergren, B. (1968). *The Rise and Growth of Swedish Institutions for Defending the Citizen against Official Wrongs* (p. 7) *The Annals of the American Academy of Political and Social Science*, Vol. 377, pp.1-9. *The Ombudsman or Citizen's Defender: A Modern Institution*.

⁸³ Rowe, M. (1995). *Fostering Diversity, Some Major Hurdles Remain When Playing Field is Tilted* (p. 14) *Program Manager*, March April 1995.

⁸⁴ Williams, R. H. and Massad J. P.N. (2006) *Religious Diversity, Civil Law, and Institutional Isomorphism*. In Serritella, J., Berg, T., Durham, W.C., Gaffney, E., and Mousin, C. (Eds.), *Religious Organizations in the United States, A Study of Identity, Liberty, and the Law*. pp125-126. Carolina Academic Press, (emphasis in original).

⁸⁵ *Ibid.* (p. 125, fn. 24).



helpful stranger, may pose questions others are afraid to ask and offer resources to dovetail an organization's response to the law consistent with its mission. At a time when the Supreme Court has limited legal approaches to diversity such as affirmative action, it is more critical than ever that as many options as possible be explored.⁸⁶ Helpful strangers with their networks and research may expand options in encouraging greater belonging.

1. Employer Sanctions and a Mission-based Organization

Congress enacted the Immigration Reform and Control Act of 1986 (IRCA) to limit unlawful immigration into the nation by turning off the magnet of jobs and by requiring almost all employers to require I-9 forms from new employees that documented they were either United States citizens or otherwise authorized to work.⁸⁷ Controversy has followed IRCA over almost four decades. Employers have witnessed varying levels of enforcement yet face significant civil fines or criminal liability for failing to properly obtain and file I-9 forms. Despite non-discrimination language within IRCA, opponents had argued that it would lead to significant discrimination as employers might refuse to hire individuals who appeared to be foreign-born or whose accents suggested they might not be citizens. Several faith-based organizations sued the government alleging that the law violated their free exercise of religion because the Bible instructed them to welcome the stranger and honor the dignity of all human beings. To file an I-9 that distinguished between citizens and undocumented persons would force them to violate their religious beliefs. Federal courts denied these claims, thus limiting the rights of faith-based organizations that attempted to fulfill their missions that were grounded in theology or biblical principles.⁸⁸ Moreover, enforcing a discriminatory law increased the stress on staff who were required to implement the I-9 requirements or terminate the employment of individuals who could not meet the letter of the law. A helpful stranger, hearing the cry of the vulnerable while understanding the demands of maintaining the legal integrity of the institution, can offer alternative approaches not necessarily grounded in any mimetic isomorphism engaged in by institutional leaders and General Counsels. For example, ombuds can speak truth to power and encourage leadership to find ways to, at the very least, mitigate the harm of IRCA. An ombuds can ask if their faith-based mission would call it to exercise its constitutional freedom of religion by not requiring I-9s of new employees. If a board of trustees decides to forego that option, an ombuds can search for ways to reduce the law's harm. A subsequent United States Supreme Court decision offered an intriguing possibility that faith-based organizations could hire an undocumented person as a minister under the Constitution's protections enabling religious entities to choose their leadership without governmental restraint.⁸⁹ An undocumented staff minister could contribute to inclusion and belonging by teaching students and staff about the difficulties immigrants experience or by revealing different faith responses to injustice. That option might even be too risky for most General Counsels as well as raising the risk of deportation to the individual hired as a minister. Instead, institutions could explore ways to assist recruited employees obtain documents necessary for the I-9, work with community activists to mitigate the harsh provisions of IRCA, or lobby to rescind the law. Rather than simply following a harsh law, employers could lead community or national efforts to transform the law. Any of these actions would enhance

⁸⁶ The United States Supreme Court held most race-based admissions policies unconstitutional. *Fair Admissions v. Harvard*, 143 S. Ct. 2141 (2023). See also: Mark, J. and Telford, T. (August 8, 2023). Conservative activist sues 2 major law firms over diversity fellowships, *Washington Post*: <https://www.washingtonpost.com/business/2023/08/22/diversity-fellowships-lawsuit-affirmative-action-employment/>

⁸⁷ 8 C.F.R. § 274a.2(2) (2023).

⁸⁸ See, e.g., *American Friends Service Committee v. Thornburgh*, 961 F.2d 1405 (9th Cir., 1992) and *Intercommunity for Peace and Justice v. I.N.S.*, 910 F.2d 42 (2nd Cir., 1990). See also, Mousin, C. B. *Polarizing Precarious Perplexing*. (p. 13) ACCU Update, Spring 2014: file:///Users/cmousin/Downloads/Polarizing%20Precarious%20Perplexing_stamped-4.pdf

⁸⁹ *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012). See: Mousin, C. B. 2012. (2012) *The Messenger Matters*, (p.10). ACCU Update, Summer 2012: https://works.bepress.com/craig_mousin/36/ Secular institutions might not have this constitutional argument, but their commitment to employee well-being and dignity would permit them to seek additional secular ways to mitigate the harm of IRCA, as discussed, *infra*.



recruitment and diversity while inspiring belonging amongst its employees. Without any power to implement decisions, the ombuds offers these as options to consider matching an institution's mission with the nation's laws, permitting leadership choices instead of simply caving into discriminatory laws.

2. Ensuring the dignity of each employee and avoiding labor as a commodity

Difficult economic times challenge institutions when labor costs consume a large part of the annual budget. The decreasing student-aged population makes demographics a fearsome word in higher education as institutions scramble to admit applicants from a smaller pool of eligible students. Immigration restrictions and a broken immigration bureaucracy increase the difficulty of attracting international students to meet budgeted expectations.⁹⁰ As budget issues loom, some employers consider employees a commodity, simply to be rearranged to meet bottom-line expectations creating a "bad jobs problem."⁹¹ Many employers reduce training, schedule either part-time work, or move employees into exempt positions, avoiding overtime costs. The Department of Labor highlighted a national problem that arose when employers shifted hourly employees to exempt positions resulting in longer hours without overtime pay. The Department established minimum salaries before assigning staff to exempt positions.⁹²

In addition, many employees find themselves in stressful positions because they serve as employees-at-will where an employer can discharge them for any reason except when protected by federal, state, or municipal law. Such uncertainty may promote fear and poor morale in difficult economic times. In a 2023 national survey, the American Psychological Association found that almost one in five workers find themselves in a toxic work environment and almost as many believed discriminatory practices haunted their work.⁹³ Fear of loss of employment or a toxic environment in the workplace undermine efforts supporting inclusion and belonging. Nation-wide, fewer employees participate in unions, and therefore, lack the protection of a negotiated collective bargaining agreement. Many of these issues fall disproportionately on employees from protected categories, increasing the existing challenges in the workplace. The Department of Treasury concluded that collective bargaining reduces gender and wage gaps in the workplace—something all who support equity and inclusion would seek to achieve.⁹⁴ The call to collective bargaining has been a divisive issue often activating Sharp's earthquake zone. The ombuds, as a helpful stranger, can seek other resources to transform the zero-sum debate. For a Catholic institution, Catholic Social Thought (CST) might address the conundrum that stifles debate on the advantages and disadvantages of collective representation in Catholic institutions.⁹⁵ Through the centuries CST has examined multiple viewpoints on how work fosters human fulfillment. This offers distinctive resources to diminish pressures that reduce labor to a commodity.

⁹⁰ In one more way that a discussion of immigration law, diversity, and ombuds work intersects, Alex Nowrasteh argues that "U.S. immigration restrictions are the most anti-meritocratic policies today, and they are intended as affirmative action for native-born Americans." Nowrasteh, A., "Immigration Restrictions Are Affirmative Action for Natives," (July 29, 2023) *Cato Institute*: <https://www.cato.org/blog/immigration-restrictions-are-affirmative-action-natives>

⁹¹ Ton, Z. (2014). *The Good Jobs Strategy: How the Smartest Companies Invest in Employees to Lower Costs & Boost Profits* (p. 3) New Harvest.

⁹² "Department of Labor announces proposal to restore, extend overtime protections for 3.6 million low-paid salaried workers August 30, 2023": <https://www.dol.gov/newsroom/releases/whd/whd20230830>.

⁹³ American Psychological Association (September 5, 2023). "2023 Work in American Survey, Workplaces as engines of psychological health and well-being," (pp. 6, 10): <https://www.apa.org/pubs/reports/work-in-america/2023-workplace-health-well-being>

⁹⁴ U.S. Department of the Treasury, "Labor Unions and the Middle Class," (August 28, 2023): <https://home.treasury.gov/system/files/136/Labor-Unions-And-The-Middle-Class.pdf>

⁹⁵ See, e.g. Mousin, C. B. (2001) *Is It Just the Horns of a Dilemma?* ACCU Newsletter, Update, Spring 2001: file:///Users/cmousin/Downloads/Horns%20of%20a%20Dilemma_stamped-3.pdf

CST also offers a way to break through polarizing debate, by expanding it beyond an either-or conversation. Ombuds can investigate the history and mission of their organization—faith-based or secular—to find similar resources. Robert Manuel’s characterization of DePaul’s Vincentian mission as “radical hospitality” and “radical service,” is based, in part, on CST that names work as a prime opportunity for human fulfillment. Human dignity calls for a workplace that eliminates exclusion or less than full participation. A helpful stranger would not violate impartiality by convening all parties to discuss how radical hospitality responds to stress in the contemporary workplace. At the very least, one can ask what collective bargaining achieves that leads to more equitable race and gender relations. Secular institutions, moreover, possess similar resources. Robert Shelton emphasized that individuals and institutions seek justice through “attributes of character – creativity, respect, empathy, and humility, which constitute the substance of civility.”⁹⁶ By seeking justice through those four characteristics, the ombuds addresses complicated and complex conflicts.⁹⁷

One advantage of working from that liminal space in the middle permits the diplomat or the ombuds to challenge an institution’s failure to live up to its mission. In stressing the interstitial space of a diplomat, Constantinou observes that the profession “involves activity that brings different sides together, a third actor that puts two (or more) sides in a constructive ‘relationship.’”⁹⁸ Because they are independent and impartial, they navigate the shoals of conflict without a position that others can perceive as the cause of the problem. Both examples raised above also raise the question of whether an ombuds might engage in activism and fail to be impartial. Reliance on well-tested mediator techniques such as expanding the pie by seeking mutually beneficial options (working with community groups to rescind IRCA) or using object criteria to test suggestions (asking why collective bargaining reduces racial and gender gaps in the workplace) will assist the ombuds navigate that difficulty. Neutrality, nonetheless, may also incite some to doubt the ombuds. Georg Simmel suggests “This freedom, which permits the stranger to experience and treat even his close relationships as through a birds-eye view, contains many dangerous possibilities.”⁹⁹ Because of that freedom and the necessity to call one’s institution to its highest aspiration, Cynthia Joyce posits that ombuds threaten leadership when they are blamed as the messenger or more challenging, they are seen as the cause of the problem by raising it.¹⁰⁰ She urges action, however, because “not acting is untenable.”¹⁰¹

In Shannon Burton’s conception ombuds cultivate “brave spaces” to address conflict. Burton also acknowledges that the ombuds will not always succeed in eliminating bias in their own lives. Thus, an ombuds needs national or regional communities to both hold the ombuds accountable, but also provide support in difficult times.¹⁰² Diplomats, like ombuds, will not always succeed. Paul Sharp notes that diplomats often face the tragedy of working within this middle ground. Representing institutions or autocratic leaders, that do not represent the best of a nation’s ideals, may lead to catastrophe “which successful diplomacy is supposed to head off.”¹⁰³ Ombuds face similar dilemmas. Not all conflicts will be resolved amicably. Some parties may give up, resign, or carry burdensome memories of disappointment. Sharp’s response stresses the necessity of a fair process over specific results. Ombuds advocate for fair process but may still face those disappointed with the results. Nonetheless, ombuds must persevere by continuing to nurture opportunities for dialogue and greater understanding.

⁹⁶ Shelton, *supra*, (p. 23) quoting Douglas Sturm (1988) *Community and Alienation – essays on Process Thought and Public Life* (pp. 109-110) University of Notre Dame Press.

⁹⁷ See, e.g., Mousin, C. (2016) *Knowing the Ropes Winter 2016 Update*, Association of Catholic Colleges and Universities, volume 42 (4). http://works.bepress.com/craig_mousin/33/

⁹⁸ Constantinou, “Statecraft,” *supra* (p. 145).

⁹⁹ Simmel, G. (1971). *On Individuality and Social Forms*, Selected Writings (p. 146) U. of Chicago Press.

¹⁰⁰ Joyce, C. (2014) “Courage in Ombuds Work (p. 13) *Journal of the International Ombudsman Association*, volume 7(1).

¹⁰¹ *Ibid* (p. 20) citing Gentile, M.C. (2010) *Giving Voice to Values*, Yale University Press.

¹⁰² Burton, *supra* (p.4).

¹⁰³ Sharp, *Diplomatic*, *supra* (p. 102).



PART V: CONCLUSION: WORKING TOWARD THE CENTURY OF DIGNITY FACILITATING BELONGING

Working as helpful strangers, ombuds can join a long history of those exercising voices to bring justice to the workplace. For those who work in faith-based institutions, Helen Boursier's words offer a powerful call to look not backward, but instead "injustice requires the public witness of living saints. It cannot be up to the revered saints who have gone before us to be transformative agents of change amidst the injustice now"¹⁰⁴ For those in secular institutions, Sturm calls for empathy that respects each person and creatively seeks new answers. The ombuds profession markedly coincides with the work of diplomats who serve as professional strangers. Both professions seek resolution in disputed matters in liminal space. The metaphor, helpful stranger, describes the ombuds. It is especially relevant today. Our nation's polarized debate on diversity, equity, inclusion, and belonging calls for no less as our inability to nurture harmony threatens productive workplaces, and indeed, even democracy.

This debate is not new, but has threatened civility for centuries. Abraham Lincoln's second inaugural address predicted that the nation might require centuries to overcome the tragedy of slavery.¹⁰⁵ We are living those consequences of his prediction. Immigration has helped build our nation and provide innovative ideas and workers, yet we rarely have had consensus on its benefits. Immigration, like DEIB, continues to enflame the public debate and ripple through the workplace. If Nail is correct, then the twenty-first century as the century of the migrant will continue to fuel debate and polarization. We must be vigilant. Nail's conclusion must be amended by Dina Nayeri's observation, "I am confident that, though refuge is undeniably today's battle, dignity is tomorrow's."¹⁰⁶ Ombuds embody a profession that calls for empathy and creativity that is well served to encourage belonging resulting in more harmony and justice in the workplace. Thus, ombuds serve to honor that dignity as helpful strangers.

¹⁰⁴ Boursier, H. T. (2019). *The Ethics of Hospitality, An Interfaith Response to US Immigration Policies* (p.255) Lexington Books.

¹⁰⁵ Abraham Lincoln's Second Inaugural Address: <https://www.nps.gov/linc/learn/historyculture/lincoln-second-inaugural.htm>

¹⁰⁶ Nayeri, *Refugee*, supra, (p. 175).



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