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# Ombuds Effectiveness

ca. 1980s - 1991

# OMBUDSMAN CIVILIAN

*News*

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## Measuring the Perception of the Ombudsman's Role

Rob Portnoy and Robert Handkins

The role of the Ombudsman in corporations continues to grow, but remains incompletely understood. Many people have trouble understanding what the role encompasses. Yet, success as an Ombudsman depends a great deal on how employees perceive that role in the organization. Everyone in the organization should become familiar with the concept of an Ombudsman, know what is expected of the position and where to find the office.

To measure how well certain segments of our employees (new hires and experienced supervisors) understood our role, the Ombudsman at the McDonnell Douglas Missile System Company conducted a survey that was administered both before and after a presentation designed to explain our function. The questions addressed such concepts as what an Ombudsman does, whose interests the Ombudsman represents, confidence in the Ombudsman's problem solving capabilities, probability of reprisal for contacting an Ombudsman, trust in the confidentiality the Ombudsman offers and belief that the Ombudsman is an effective first step for changing unfair, unethical and/or unsafe policies and procedures.

Following the first administration of the ten item & rating-scale questionnaire, we delivered a thirty minute presentation covering the history of ombudsmanry as a profession as well as its developing role within our Company, the mission of our Office,

types of concerns often brought to the Office, methods of intervention, the issue of trust and confidentiality and our reporting relationship to senior management. A question and answer period followed the presentation and then the questionnaire was readministered.

Comparing the responses before and after the presentation demonstrated a number of shifts away from the "no opinion" response category, especially in the new hires group, verifying the educational effect of the presentation. The shift in both groups to heightened understanding of our functions supported this as well. Post-presentation responses also demonstrated that the respondents gained a sense of confidence in the Ombudsman's problem solving abilities, experienced a notable reduction in the "fear of reprisal for taking problems to the Ombudsman" and increases their confidence in the Ombudsman's commitment to confidentiality.

Overall, the results of the survey demonstrate that a formal presentation can be an effective way to familiarize employees with the functions of an Ombudsman. In our study, new hires who were unclear about the issues measured became better educated and supervisors (who had been with the Company an average of 15 years) also changed their opinion in the direction of increased trust and confidence in the abilities of the Ombudsman.

## Washington Highlights

### Accusers Become the Accused

The Washington Court of Appeals recently held that a supervisor accused of sexual harassment by his subordinates could maintain defamation claims against the accusers, but could not maintain defamation claims against the employees assigned to investigate the accusations. Twelve female employees accused the supervisor of making sexually explicit comments and propositions. The supervisor denied the accusations. The employer assigned five investigators, who conducted an inquiry and issued a written report concluding that the supervisor had probably engaged in sexual harassment. The supervisor sued the accusers and the investigators for defamation.

The court dismissed the claims against the investigators, finding that the statements in their report were conditionally privileged and that no evidence suggested they had abused the privilege. Underlying the court's reasoning was the concern that a contrary decision would eliminate the incentive for employers to make internal investigations and attempt private settlement of sexual harassment claims, essential to the elimination of employment discrimination. The court ruled that the accusers were not protected by the same conditional privilege. The court reasoned that if the accusations were false, the accusers were obviously aware of the falsity. Therefore, because the supervisor denied the accusations, a jury had to determine whether the accusations were false and, thus, defamatory.

## Highlights of 8th Annual Conference Minneapolis, Minnesota

May 14-16, 1991

by Dawn L. Duquet

- 35 new members! Two more from Canada! This was the good news from President Mary Simon (Ombudsperson, AT&T) at our **New Member Orientation**, prior to the opening of the Annual Conference - hosted this year by Control Data Corporation. The most exciting news from Mary: Our first training and development seminar for ombudsmen would be launched in July 1991 (see article entitled "COA Training Seminar").

For new ombuddies and the more "chronologically advantaged" of us, Mary Rowe (Board Member Emerita and Special Assistant to the President, MIT) reviewed the origins of the ombudsman function (the 2nd oldest profession). She highlighted evidence of recent progress:

- The appointment of neutrals in federal agencies (for clients).
- The administrative Dispute Resolution Act of 1990, also calling for the establishment of Federal neutrals in every agency.
- In his welcoming remarks the following morning, Control Data Corporation Executive Vice President Glen Jeffrey emphasized the importance of reassuring employees regarding the corporate commitment to values, especially during what he termed "the dark times," when major cutbacks in staff are unavoidable. He reiterated his corporation's commitment to fair treatment and fundamental respect for every employee.
- Mary Rowe's Crystal Ball this year bounced onto the 1st day's agenda,

sparing many of us the pain of choosing between her and making our flight home! During her state-of-the-art review she touched on the widening variety of issues facing ombudsmen today: income disparity, diversity, violence, layoffs, witchcraft, obsessed persons, transexuality, AIDS, anonymous calls, etc.

But there was good news too: While globalization increases problems relating to diversity, it is also pushing us into solutions - "more persons of difference are getting along better." Mary sees a bright future for the spreading use of the ombudsman function. Apart from recent progress in the federal domain, she cited the current push for internal ombudsmen in the health care field.

Mary closed with a plea for ethical practice at all times on the part of ombudsmen, particularly in light of the campaign to be included under Shield Law.

- Cheryl Divine, Legal Problems Specialist for Control Data Corporation's Employee Advisory Resource Center (EAR), provided us with a comprehensive update on legislative changes affecting ombudsmen. She elaborated on the:
  - Administrative Dispute Resolution Act of 1990, authorizing internal settlement of disputes through mediation, arbitration, etc. provided all parties agree to use (expires 1995).
  - Americans with Disabilities Act, intended to protect the disabled from discriminatory employment

practices. In the latter context, Ms. Divine provided a compliance check list for employers covering job interviews, pre-employment medical examinations, employment tests, etc. She emphasized the importance of understanding key definitions, such as "disability," "reasonable accommodation," "essential job function," "undue hardship," etc. She warned that employers can expect to have employment practices tested by disabled persons well-informed on the new legislation. The urgency to revise job descriptions to reflect essential job function BEFORE jobs are advertised was particularly emphasized.

- Stephen Dolny, Consultant in Personnel Relations for General Electric Corporation, gave us an emotional high. Speaking on better leadership through greater sensitivity to human values, he presented a kaleidoscope of visual images from the past that left few ombuddies unaffected. The impact of historical events in shaping individual value systems cannot be overlooked, he stated. Even though each age group may have a dramatically different set of values, each has something to offer. We need to respect and take advantage of individual experience. We need to LISTEN.
- Dr. Robert Bramson, author of "Coping with Difficult People" gave us some good hints on how to deal with all types of people, particularly the intimidating ones - those he calls "Sherman tanks"! These are

people, he said, who have a need to validate themselves by taking immediate action, but who do it aggressively without reflection or courtesy toward others. What do you do? Depersonalize the behavior by asking questions on the ISSUE, without criticizing the person - try humor! Using several examples from his book, Dr. Bramson stressed the strategic advantage of never insulting the difficult person and focussing exclusively on the issue.

- Professor Howard Gadlin, Ombudsman for the University of Massachusetts, led a stimulating session on the advantages of using mediation in resolving sexual harassment complaints. In many cases, he stated, the harassee does not want to file a formal complaint, but does "want something done." Mediation can be of great use when common interests exist for both harassee and harasser: both desire confidentiality, both want their reputation protected, both want the situation to return to normal, etc. Mediation can be quick, lessens the adversarial atmosphere, and may lead to restoring the relationship - all while preserving confidentiality.

Professor Gadlin recommended meeting both parties separately, prior to mediation, in order to reframe individual thinking, perceptions and goals. He warned against supporting one party over another, advocating instead the ombudsman's greatest advantage: neutrality.

- Lou Garcia, Chief Ombudsman & Vice President with TIAA - CREF, and Therese Clemente, Ombudsman with McDonnell Aircraft Corporation, addressed questions of confidentiality, privilege and the ombudsman.

Referring to the Federal Rules of Evidence, Lou explained that, for information to be considered privileged, it must have been

communicated with an expectation of confidentiality. He reminded us that confidentiality is a major component of the COA's Code of Ethics - without the promise of Confidentiality the ombudsman's office "would probably wither on the vine."

Therese Clemente discussed her personal experience regarding the motion she had recently taken for an order protecting from pre-trial discovery communications she had received in her position as ombudsman. The motion for protective order had been sustained. We all benefitted from listening to our fellow ombuddy's experience, knowing any one of us could easily be faced with a similar situation.

- Bob Morrissey, Corporate Ombudsman for United Technologies Corporation, and John Murphy, Corporate Employee Relations Consultant for Digital Equipment Corporation, discussed cost saving contributions of an ombudsman's office - the best justification for our existence!

Bob's office had successfully assisted the corporation avoid the loss of a very qualified person in whom much had been invested, at significant cost saving. The ombudsman's office also frequently helps the company avoid litigation. It receives and passes on suggestions regarding safety of operations - more savings. What he called the "little daily interventions" all contribute to ensuring a good return on investment for the employer.

John Murphy's office had successfully intervened in threats of violence. John's participation in an ad hoc task force made up of several units directly involved contributed in a major way to a positive resolution. Significant cost savings resulted from having quickly returned the workplace to a productive

environment (see article entitled "Managing Threats of Violence").

- In her closing remarks, outgoing President Mary Simon thanked all for coming and participating so enthusiastically. She urged us to get our ideas in for the next annual conference, to be held in Cincinnati, OH. and to STAY IN TOUCH! Especially with Board members! Call us any time with your ideas.
- Incoming President, Vincent Riley, Ombudsman for the World Bank, added his thanks, invited members to send in suggestions, and wished us all a safe trip home.

Au revoir, friends - until next year!

## Chapter Three

You may recall our Spring 1991 issue contained an article titled "The Case of the CEO Who Cared" Chapters One and Two. A group leader had been accused of making inappropriate remarks and subsequently found himself on the layoff list. Chapter Three follows:

The meeting took place as scheduled and the four managers felt that it was the Ombudsman's responsibility and obligation to discuss the situation with Mr. X's immediate supervisor and/or manager.

The Vice President explained the function of the Ombudsman and the responsibility of maintaining strict confidentiality, particularly when an individual has requested that "no action take place."

Mr. X's impending layoff was discussed and all agreed that it was inappropriate to lay him off at this time.

Presently, all is quiet on the homefront. Mr. X has remained employed and hopefully is cautious about his behavior.

# Managing Threats of Violence

by John D. Murphy

Many companies have indicated to me that they have been experiencing increasing instances of threats of violence in the workplace. Numerous cultural, social and economic factors may be the cause of these increases. We do know that individuals may act with violent behavior when they feel a loss of power, trust, self-respect or dignity.

Our experiences have shown us that reactions to a threat of violence may range from fright to denial. We believe that when a threat is made, the threatening words or behavior should be taken very seriously until sufficient information and evaluation convinces us otherwise. We have also found

that by working these threatening situations as a team, it is possible together the information and resources that permit potentially dangerous situations to be resolved without violence.

This internal team is comprised of individuals from the Human Resource, Medical, Employee Assistance, Security and Legal Departments. The team also has access to external expert consultants, such as forensic mental health specialists, if this type of consultation is considered appropriate.

In addressing a threat of violence situation, the team has responsibility

for making an initial risk assessment and then for developing an action plan to deal with the threat. This plan would establish investigative steps, special emergency response and security procedures and necessary privacy protection to ensure that all data collected remains confidential.

As mentioned previously, this team approach has been very effective in managing threats of violence situations. The team has been able to quickly gain control of the situation by developing a well thought out action plan and therefore defuse many potentially serious situations with minimal impact on employee productivity.

## Sort of a Shaggy Dog Story

Allegation: This is sort of a shaggy dog story. It seems that Mr. Jones' seventy pound Labrador Retriever proceeded to establish male dominance over a more diminutive Golden Retriever (following appropriate sniffing routines as described by Mr. Jones) whilst the respective owners were touring neighborhood fire plugs preparatory to bedding their charges for the evening. As described by Mr. Jones, in order to establish some kind of balance among the foursome, the owner of the Golden proceeded to establish dominance over Mr. Jones by bashing him several times with a flashlight, much to Mr. Jones' distress. Mr. Jones came to the Ombudsman and stated he was even

more distressed that the company wants him to record his recuperative time as "personal time." Mr. Jones believes his employer should sue his assailant for recovery of monies to be paid by his company (and charged to government contracts?) for criminal actions allegedly caused by his assailant which gave rise to Mr. Jones' absence being charged to personal time.

After establishing with Mr. Jones that I understood how dogs always greet each other and how dog owners sometimes greet each other, I told him that while my opinion was not based on legal expertise, it did not seem highly probable to me that the Company would have a cause of

action on its own or in his own behalf against his assailant. Our discourse wandered into the similarities of whether the Company would sue the person from whom an employee might have contracted some communicable disease (such as a common cold) causing the employee to be out of work for a paid absence such as sick leave, personal time, vacation, etc.

Mr. Jones had thought of all that and was still fretting so, thinking that a company lawyer might be better able to explain the improbability of Company of legal action, I referred Mr. Jones to Legal, promising he should call us again if he still had some kind of insoluble dilemma.

# Support For Ombudsman Privilege

by Janet L. Newcomb

## Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a growing national trend with federal and state law to support the concept and buy-in at many Fortune 500 companies. Creative and innovative approaches to dispute resolution are growing inside and outside the corporation.

### Ombudsman is ADR

An ombudsman, as an integral part of an effective dispute resolution system, is becoming more prominent in corporations and federal agencies. Recent federal legislation encourages this trend along with other ADR concepts.

### Confidentiality Critical to Ombudsman Function

There is growing support for the concept that a process which involves Ombudsmen (and other third party neutrals) requires confidentiality to be effective.

- a. Federal Laws
- b. Federal Court decisions
- c. Corporate Ombudsman Association professional standards for members
- d. Numerous professional articles
- e. Policy and procedure at companies that have Ombudsmen
- f. State laws which could be construed to support the concept

### Key to Privilege

The key to upholding confidentiality for Ombudsmen, with or without applicable statutes, appears to be:

- a. A clear corporate policy
- b. Communication of the policy

- c. Consistent and disciplined adherence to the policy

### Non-Advocate vs. Advocate Focus

While company attorneys have the responsibility of protecting and defending the best interests of the company, the Ombudsman role has a different focus. Our mission is to provide a confidential, neutral and informal process which facilitates fair and equitable resolutions to work-related concerns. This process takes into consideration the rights and responsibilities of all concerned employees and managers and the company, and seeks to reconcile all sides (win-win) rather than "help the company prevail" (win-lose). The roles of both the attorney and ombudsman are necessary in an effective dispute resolution system.

## Late News Flash

At the Board of Directors meeting on September 10, 1991 the following motion was approved:

Effective January 1, 1992, the name of the association will become The Ombudsman Association. This was done in response to the questionnaire distributed at the annual conference in May. "Almost half of the respondents (27) indicated as one choice 'The Ombudsman Association' or 'The Ombuds Association'" reported Vince Riley, President.

The Board felt using the term Ombudsman versus Ombuds conveyed a more professional, consistent image.

## Code Of Ethics

*This Code of Ethics was adopted in 1986 by the Board of Directors.*

I. The Ombudsman, as a designated neutral, has the responsibility of maintaining strict confidentiality concerning matters that are brought to his/her attention. The only exception, at the sole discretion of the Ombudsman, is the instance of threat to the physical safety of others and/or threat to company assets. This duty to warn, however, shall be initiated only after the ombudsman has strongly counseled with the client involved to encourage the client to personally come forth. In the event the client still refuses, the Ombudsman has an obligation to notify the client of the intended breach of confidentiality in this situation. Even then, the Ombudsman has the responsibility and obligation to discuss the situation only with those who have a need to know.

II. The Ombudsman has the responsibility to insure that any records or files pertaining to confidential discussions with clients are safe from inspection at all times by other employees, including management at all levels.

III. The Ombudsman has the responsibility, when recommending actions as a result of impartial investigations, to make recommendations that will be equitable to all parties and reflect good business practice.

IV. The Ombudsman has the responsibility to behave in a professional manner at all times, to maintain the credibility of the Ombudsman function.

## 24 Attend COA Basic Training

by Bob Morrissey

"Apply what you've learned here, listen carefully to the people who seek you out, raise their issues for consideration at appropriate levels and you will make a positive difference in helping your organizations be successful," COA President Vince Riley of the World Bank assured 24 attendees at the conclusion of the association's first basic training course for ombudsmen.

The three-day session began July 30th at the Hyatt Regency Hotel in Arlington, VA. Participants represented manufacturing companies, utilities, financial firms, government agencies and academic institutions in 10 states, the District of Columbia and Toronto, Canada.

Called "Ombudsman 101," the seminar presented a combination of basic information about the ombudsman profession and skill training in effective listening and influencing without authority. "Our intent was to tell participants all the things we wished someone had told us during our first week in these jobs," said Bob Morrissey, corporate ombudsman of United Technologies.

Morrissey and Brian Gimlett, ombudsman at the U.S. Secret Service, developed the course at the urging of COA board of directors. Topics included the history of ombudsmen, maintaining confidentiality, conflict resolution, shuttle diplomacy and mediation, key legislation governing workplace conduct, communications, and tips on establishing and operating an Ombudsman's office.

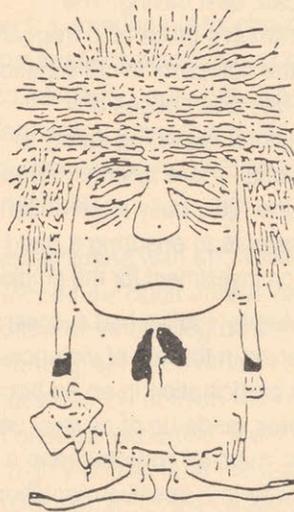
Speakers, lead by COA founder Mary Rowe of the Massachusetts Institute of Technology in Cambridge, MA, included Virg Marti, retired

ombudsman at McDonnell Aircraft, St. Louis, MO; Sam Scott Miller, attorney at Orrick, Herrington and Sutcliff in New York and ombudsman for two Wall Street firms; Dave Nassef, ombudsman at Pitney Bowes, Stamford, CT; Carole M. Trocchio, franchise liaison manager for the Southland Corporation, Dallas, TX., and Morrissey.

Diane Blecha and Tim Timmerman of Ridge Associates, Cazenovia, NY, conducted the effective listening skills training course. Lauren Powers of Situation Management Systems, Hanover, MA, worked to develop participants' influencing skills.

The fee for the course was \$590 plus Travel and Living expenses. The COA board will review feedback from attendees and cost factors in determining if another session will be scheduled. "Early comments were quite positive," Morrissey said.

I try to take just  
**ONE DAY AT A TIME**



but lately several days  
have attacked me at once

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Notes On Useful Steps For A University

In Addition To "Compliance," To Help Make EO Really Work\*

Mary P. Rowe

1. Frequent, outspoken, consistent, detailed expressions of EO "commitment" from the top, in public and in private.
2. Multiple Helping Relationships for junior faculty and middle managers ("mentoring"). The mentoring framework should be for everyone but can be especially monitored for minorities and women.
3. Steady-state, one-to-one recruitment of minorities and women as well as white males by the faculty wherever they go on normal, professional travel ("using the traditional Old Boy Network to recruit minorities and women").
4. Steady-state involvement of senior officers in monitoring all faculty and staff appointments and promotions, (in Academic Council, on a weekly basis).
5. A (non-union) "grievance procedure" to channel upward the inquiries, concerns, and complaints of the community.
6. Fostering responsible "networks" especially among minorities and women.

\*These notes describe some attempts at MIT to build beyond the EO/AA "compliance" efforts required by the Federal Government. To the extent that any of it works however, much credit is due to the distinguished Vice-President, John Wynne, who is our EO officer. He is largely responsible for an excellent posting system, for salary equity, managerial training programs, job analyses, a day care system, extraordinary personnel officers and dozens of other administrative achievements all of which help create a vital positive "ambiance" for equal opportunity.

1. Commitment: In the case of MIT the senior officers and now many department heads and lab directors talk about EO casually, officially, frequently, ubiquitously, in public and private, hopefully, determinedly, occasionally even fiercely. It makes an enormous difference.

2. The pieces of our "mentoring framework" are:

.the top administration "legitimizes" the idea by talking about it, especially with department heads.

This is critical to overcome the normal white male diffidence and embarrassment in dealing with minorities and women;

.department heads are responsible to be sure all junior faculty have a talk with them at least once a year and that there are other , "multiple helping relationships" supporting junior faculty;

.the women faculty frequently organize lunches for discussion of promotion and tenure processes and other professional questions;

.the Special Assistant works with all visitors, especially junior faculty, to help teach them to take responsibility to seek and form mentee relationships and to help support them in learning how to do it.

"Mentoring" is thus encouraged steadily from top-down and from grass roots up. We believe all these steps are necessary for adequate mentoring to take place.

3. We are working to encourage all our faculty to introduce themselves to all "non-traditional" (minority and female) professionals wherever they "normally" go. This is of

course simply an extension of the Old Boy Network to include minorities and women and is the most successful recruiting device we have, especially when practiced by senior white males.

4. The President, Chancellor and Provost, and other senior officers personally supervise all serious search plans and reports for all appointments, on a weekly basis.

5. Our non-union "grievance procedure" has several unusual features. In our case it is:

.universal: there is one easily-understood procedure available to all pay classifications (and for all students beyond the Deans' Offices) and for all kinds of inquiries, concerns and grievances. The policy begins "anyone (not in a union) who feels unjustly treated for any reason...."

.full of redundancies: the "one procedure" has several different options at each step so everyone has more of a chance to find a hearing they can believe in. At the end of the line there is a male Special Assistant to the President and Chancellor (who is black) and a female Special Assistant to the President and Chancellor (who is white). Beyond us are the President and Chancellor (who are white and male). The procedure is, thus, for everyone (like the mentoring framework) but with a special likelihood that minorities and women will not feel (or be) forgotten.

.informal as well as formal; one may bring a formal complaint which then must go up through channels. Or one may seek counsel, advice and mediation informally

at any stage including the last. In practice we have extremely few formal grievances and several thousand "concerns" in our offices each year.

This means also that such an office can work on a mediation basis even in institutions where multiple formal grievance procedures already exist. If an informal mediation service is set up where many formal procedures already exist, it should be a universal procedure anterior to all the formal procedures. It should be very "low-barrier" and expect a high case load, in distinction to formal procedures which typically are rarely used.

.charged with the responsibility to "communicate with line management:" we are specifically charged to do two things: a) to help each visitor individually as well as we can;

b) to help the line managers of the Institute with data and recommendations to support them to keep MIT in an orderly process of change. Our responsibility to communicate and recommend is, in practice, reasonably compatible with the constraints of confidentiality under which we operate. We are not "company spies;" we do not talk (and therefore often cannot directly act to help) if a visitor asks for confidentiality. But frequently we are able to help on a system-wide basis even if we cannot directly investigate the concerns of an individual. (For example, when a number of individual students alleged sexual harassment, but

were afraid to make open complaints, we asked the Faculty Committee on Educational Policy to survey the general topic and give it some publicity. Our policies and procedures and "public education" on this matter will be thereby both improved and better understood. By the same token, when a shy female faculty member asked about her apparently inequitable pension payments to come, we recommended and (are now grateful for) changes in the pension plan. This "upward feedback" process has led to hundreds of changes in policies and procedures and structures (some slow, some swift, some small, some extensive) nearly all of which came about in an orderly, non-polarized way.

6. We have rather extensive informal networks of women and minorities. In the case of women, at any given time 20-30 women's groups bring women together on a functional or geographic basis. The groups are self-formed. Any responsible group may send a representative to the President's Women's Advisory Group. The W.A.G. meets monthly with the Special Assistant; each month different groups set agendas and lead discussions.

Such networks help recruit women to MIT and help women support each other. They serve as "upward feedback channels," giving orderly warning of serious problems, recognition to excellent administrators, timely analysis of difficult issues. They serve as an information channel to the community on budget constraints, safety issues, policy changes. Groups help organize relevant programs, (for example the extraordinary presentations

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at Women's Faculty meetings). The W.A.G. and its constituent groups at MIT have regularly coordinated women's efforts in a non-polarized way, and appear to have contributed very greatly to orderly progress for women the Institute.

It will be noticed that much of the effort described in these notes is designed to help everybody. If mentoring, grievance procedures, recruitment, etc. really work "equally for everyone," then women and minorities are in fact immediately better off than they were. We have therefore attempted to build structures appropriate for everyone, in a context where minorities and women are not so likely to be overlooked. This has the effect that new "EO" measures can also powerfully benefit white males, incite less backlash, and still serve the special needs of non-traditional colleagues.



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