

The Role of the Ombuds in a Knowledge-Intensive Corporation:  
A Partner for Conflict Prevention and Mitigation

Over 40 years ago, Peter Drucker observed that the U.S. corporate sector was shifting away from employing mostly industrial workers, toward employing increasing numbers of “knowledge workers” who “appl[y] to productive work ideas, concepts, and information rather than manual skill or brawn.”<sup>i</sup> At that time, Drucker believed that “making knowledge work productive will be the great management task of this century.”<sup>ii</sup> Today, well into the new century, we continue to discuss how management strategies can be adapted to meet the challenges of the knowledge economy. One area that should be receiving a lot more attention within this discussion is the role of conflict management in creating organizational success for knowledge-intensive corporations. The purpose of this article is to show that one particular decision – establishing an Office of the Ombuds – is very effective in enabling knowledge workers to perform better and the corporation to function smarter.

*The Attributes of Knowledge Workers Present Organizational Challenges that Can Be Effectively Addressed by a Specialized Approach to Conflict Management*

Thomas Davenport defines knowledge workers in the following way: “[k]nowledge workers have high degrees of expertise, education, or experience, and the primary purpose of their jobs involves the creation, distribution, or application of knowledge.”<sup>iii</sup> They are people who invent new products and services, design marketing programs, create strategies for distribution, and manage customer relationships.<sup>iv</sup> Although knowledge workers have many different areas of expertise, they share several common attributes with respect to the way they function in the workplace. Most notably, they are collaborators: knowledge workers are interdependent across physical locations and time zones, and must communicate with one another, many times across functional areas, in order to accomplish their tasks.<sup>v</sup> Knowledge workers are members of social networks, which they use to exchange information and gain knowledge that is helpful to them.<sup>vi</sup> They like autonomy and tend to work independent of management.<sup>vii</sup> As a result, they are subject to much less observation than the workers of the past and are to a large degree free from a supervisor’s daily instructions.<sup>viii</sup>

The common attributes of knowledge workers provide clues as to how the corporate organization should structure itself to manage them. For two main reasons, corporate leaders should consider creating a specialized position to address the challenges posed by a knowledge workforce, as part of a coordinated conflict management strategy.

First, interpersonal conflicts between knowledge workers can dramatically affect their performance.<sup>ix</sup> A conflict between two or more persons, whose duties require collaboration on tasks and projects, will have a ripple effect on the work of colleagues who rely on them. Relatedly, an unresolved conflict between leaders of functional areas can give rise to significant productivity issues for the corporation. Not every knowledge

worker has the skill to keep operational groups in sync and focused on task. Therefore, management must have ways to intervene in order to keep individuals and groups functioning together. One effective method of intervention is to contract for a skilled neutral facilitator to help resolve interpersonal tensions and encourage collaboration.<sup>x</sup> Consequently, integrating conflict resolution capacity into the organization is a smart way of maximizing performance of knowledge workers.<sup>xi</sup>

Second, in order to be protected from exposure to liability, corporate leaders must be made aware of potentially harmful problems if and when such problems develop. In the past, supervisors could be relied upon to observe potential problems at the ground level and report their findings through formal channels at the organization's Human Resources, Finance, or Legal departments. However, knowledge workers' autonomy in performing tasks and projects means that their supervisors will generally not have direct knowledge of *how* their work was produced. It is within this area of unknown activity that potential liability for the corporation exists. Therefore, knowledge-intensive corporations, rather than depending on supervisors for information, must receive notice of potential liability from the knowledge workers themselves. The prospect of receiving notice from knowledge workers is complicated by the fact that they tend to be reluctant to engage the corporation's formal bureaucratic processes.<sup>xii</sup>

At a time when laws such as Dodd-Frank, the False Claims Act, and Sarbanes-Oxley can penalize organizations for performing acts that management had no awareness or notice of occurring, knowledge-intensive corporations cannot afford to rely on their employees to make formal reports of potential problems. Instead, knowledge workers should be encouraged to provide information in a way that is simple and comfortable for them. This can be accomplished by providing an intermediary who is available to surface problem areas and make informed reports to formal channels if necessary. Early notice of risk is the only way for corporate leaders to be in position to mitigate damage.

The two areas of concern identified above overlap because both require intervention into the knowledge workforce in order to be properly addressed. Traditionally, each concern falls under the purview of two different components of the corporation's organizational hierarchy: the CEO is concerned with maximizing workers' performance and the corporation's productivity; while the Board of Directors is concerned with managing risk and limiting exposure to liability. The CEO and the Board should recognize the overlap and seek a way to get the results they need without interfering with the other's function. An Ombuds can provide the answer.<sup>xiii</sup>

### *What Is an Ombuds?*

An organizational Ombuds (historically sometimes referred to as an "ombudsman") is an expert in the field of conflict management who understands the sources of conflict in a workplace environment, knows how to discuss problems that arise from such conflict, and is experienced in encouraging interested parties to mitigate and prevent those and similar problems from arising in the future. The Office of the Ombuds offers a confidential setting for employees to visit and discuss their concerns without fear of

retaliation or judgmental criticism. In this connection, the Ombuds may act as a coach or confidante, and uses his or her expertise to advise employees on whether and how to address their concerns. With permission from the employee, the Ombuds may communicate information to others who could be helpful in solving problems raised by the employee. In doing so, the Ombuds may act as a mediator, assist with negotiations through shuttle diplomacy, or convene group meetings and act as a facilitator of constructive dialogue. Without violating employees' expectation of confidentiality, the Ombuds compiles data concerning observed trends and areas of concern, and makes reports of his or her findings to the CEO and Board of Directors.

An Ombuds should be expected to assist in building the conflict competency of the organization. In this regard, the Ombuds typically provides skills training to first-line supervisors and upper-level managers, consisting of: concepts from the interest-based bargaining model of negotiation; how to discuss difficult topics without assigning blame; group facilitation skills; and how to counsel individual employees about their organizational options for addressing a complaint or dispute. The goal of the Ombuds's activities is to encourage a problem-solving managerial culture aimed at preventing daily, standard, conflicts from metastasizing into problems that can harm the entire corporation. In theory, the Ombuds's success in building conflict management redundancies into the organizational system will maximize the likelihood that losses of productivity and violations of law will not occur.

#### *The Office of the Ombuds is Engaged in Early, Informal Conflict Management*

It is possible to visualize a corporation's conflict management functions as existing on a horizontal line, starting with "less formal" modes of conflict resolution, and moving toward "more formal" modes of conflict resolution. By describing some approaches to conflict management as "less formal," we mean approaches that tend to allow the parties involved in a dispute to resolve the matter themselves, with little external influence on their ability to make decisions; while "more formal" approaches to conflict management generally involve significant intervention from a theretofore uninvolved third party (such as from the Legal department, the CEO, or the Board of Directors), which may share in decision-making and restrict the number of options for resolving a dispute. More "formal" approaches to conflict management usually require contemporaneous record-keeping and written reports of investigation, whereas the Office of the Ombuds does not keep records of individual cases.

Pursuant to this visualization of the corporation's conflict management functions, the Office of the Ombuds exists on the "informal" section of the line. The Ombuds's informal role begins when he or she is first contacted by an employee. Upon receiving a call or visit, the Ombuds acts as a sounding board for the employee's belief that there is a problem. During the initial interview of the employee, the Ombuds listens, asks clarifying questions, and attempts to accurately summarize what has been said, in the effort to assist the employee in defining the problem that is believed to exist. More than one meeting may occur, where the Ombuds may offer advice and coaching to the employee.

The Ombuds's knowledge of the nature of workplace conflicts enables him or her to know when to promote resolutions at the ground level, or whether to encourage the employee to make a formal report or complaint to one of the corporation's formal departments (such as Finance, Legal, or Human Resources). If the employee is reticent to engage the formal reporting process, the Ombuds may make a tactful report in the employee's stead, without revealing the employee's name. In this connection, the Ombuds understands that some problems may hold such risk for the corporation that they cannot be solved without input from top level leaders.

### *How Does an Ombuds Encourage Excellent Performance and Mitigate Risk?*

An Ombuds is of high utility to the corporation because of his or her capacity to evaluate problems and act as a router for their appropriate method of resolution: as a result of the Ombuds's coaching, some problems can be resolved by the individual employee; some may be resolved through the Ombuds's intervention as a mediator, facilitator, or informal diplomat; while others should be referred to formal channels if they carry risk of exposing the organization to various forms of liability.

The following are three examples of common workplace problems: (1) an employee may believe that an unsatisfactory performance review is motivated by hostility from his or her supervisor; (2) an employee may believe a manager is covering up misuse of a corporate credit card; (3) coworkers may disagree about a particular strategy or design for a project.

With respect to the first two examples, the corporation's formal departments might be required to intervene if the employee reports the problem to them: the performance review would be a subject for Human Resources, and possibly the Legal department if the employee were to report an associated charge of discrimination; while the alleged misuse of a corporate credit card could be a subject for Finance or Legal departments. It must be recognized, however, that employees are reluctant to report problems for fear of retaliation. In addition, some problems risk not being reported to the organization's formal departments if employees do not believe the subject matter fits within one of the departments' areas of responsibility. For example, in the case of the third example, a dispute over work product is traditionally the responsibility of a supervisor and as such would probably not be reported to any formal department. But what if one of the disputants *is* the supervisor – in that situation, who would be available to intervene in order to address the problem? Or what if, as is often the case with knowledge workers, management is unaware of the coworkers' disagreement and the workers are left to try to resolve it without assistance?

These situations are where an Office of the Ombuds is valuable. Due to the informal nature of the Office, employees will approach the Ombuds with concerns that they might not ordinarily report anywhere else, and will do so at an earlier juncture than they would anywhere else. That is, employees are more likely to talk about a matter that concerns them, in an environment they consider to be safe and private, than they would in an

environment where they know their names will be on record and their concerns may be the subject of a formal investigation.

In the case of tensions between or among colleagues working on a project, an Ombuds can respond to a request for assistance by offering his or her services as a facilitator. Often, an Ombuds's ability to facilitate dialogue among affected workers allows them to address their problem in a different way, resolve it, and get back on task.

Again referencing the above examples, the Ombuds might suggest mediating a conversation involving the employee and his or her manager concerning the performance review, where a goal of the mediation might be to create a more positive working relationship between the two individuals. With respect to the alleged misuse of the corporate credit card, the Ombuds might advise the concerned employee of the availability of formal channels for filing a report; or might refer the matter to the CEO or Board, without sacrificing the employee's confidence, if the Ombuds believes the situation warrants such contact.

In a knowledge-intensive corporation, workplace problems such as these can negatively affect performance by impeding workers' ability to collaborate and gather essential information for doing their jobs. By addressing interpersonal tensions in the manner suggested here, the Ombuds's work can be expected to generate immediate results with respect to knowledge workers' performance.

The Office of the Ombuds also provides early warning of internal developments that may carry risk for the company. In this regard, the collapse of MF Global provides a timely example of the worst that can happen when a company does not have an effective system for identifying problems and mitigating exposure to liability. In a nutshell, MF Global's failure to heed the advice of its Chief Risk Officer set in motion a chain of events that led to its downfall. Specifically, in September 2010, then-Chief Risk Officer, Michael Roseman, warned CEO Jon Corzine that the company's bets on European sovereign debt, which at that time stood between \$1.5 billion and \$2 billion in exposure, presented a significant liquidity risk. Mr. Corzine disagreed with that assessment – and in October, he asked Mr. Roseman to seek permission from the Board to raise the stakes to \$4.75 billion. Mr. Roseman repeated his concerns to the Board, but the scenarios he presented were rejected as implausible. In January 2011, the company hired Michael Stockman to replace Mr. Roseman as Chief Risk Officer.<sup>xiv</sup> In his February 2012 testimony before congress, Mr. Stockman stated that in his first several months he relied on analysis performed by his department to conclude that the company's positions were acceptable. However, by the summer of 2011, when the company's exposure to European sovereign debt had grown to more than \$6 billion, Mr. Stockman recommended that the company take steps to mitigate the financial risks.<sup>xv</sup>

It was too late. Earlier, in May 2011, FINRA learned of MF Global's debt exposure and grew concerned there was not enough money set aside in case the trades went bad. As a result, FINRA enlisted the help of the SEC, which in late August required the company to put additional capital into reserve. News reports of this event emerged in early October,

causing MF Global's customers to flee and its stock price to plunge. A week later, Moody's cut its rating to one level above junk status. By October 31, 2011, MF Global declared bankruptcy.<sup>xvi</sup>

These facts suggest that MF Global's collapse could have been avoided if the Board had followed Mr. Roseman's advice in 2010. Although Mr. Corzine's contrary opinion was surely persuasive, an Ombuds's contribution, had it existed, would have added weight to Mr. Roseman's recommendation. In this connection, we know from reports that more than one senior manager shared Mr. Roseman's concerns in 2010, but were afraid to confront such an imposing figure as the CEO.<sup>xvii</sup> If an Ombuds had been available to compile and relay those concerns, MF Global's Board might have recognized that the presence of uneasiness with regard to the company's investment positions, from multiple sources within the organization, highlighted not only the financial risks inherent in the trades but also risk of exposure to legal claims should the trades result in damage to the value of the company. Indeed, these same employees may provide testimony to support civil lawsuits against MF Global's executives and the Board, for breach of fiduciary duty to the firm and its customers.<sup>xviii</sup> As of this writing, Corzine is the subject of a civil lawsuit brought by the Commodity Futures Trading Commission, in U.S. District Court in Manhattan, accusing him of misusing M.F. Global's customer's money during the final days of the company.<sup>xix</sup>

In sum, a corporation should not rely solely on formal complaints, or its formal departments, to identify and address potentially harmful problems. Instead, the organization should seek knowledge of problem areas at the earliest possible juncture, before real damage or illegality can occur. In each of the examples discussed above, an Ombuds would have the opportunity to either mitigate internal conflict or encourage the corporation resolve a problem before it develops into a larger problem. Ombuds' work can also have the effect of precluding similar problems from developing in the future. These attributes – continually active efforts at early problem resolution and conflict prevention – set the Office of the Ombuds apart from the other conflict management functions of the organization.

### *What Makes a Corporate Ombuds Successful?*

Trust is most important. In order to create and maintain trust, the Ombuds must demonstrate to all of the people who make up the corporation – knowledge workers, management, chief executives and the Board – that the Ombuds can be relied on to protect its core principles. The three core principles to which a corporate Ombuds must abide are confidentiality, independence, and impartiality.

Confidentiality. The Ombuds must be perceived as maintaining the confidentiality of interactions with employees, as they are more likely to fully disclose information if they are confident that their communications will not be repeated without permission. The Ombuds supports this interest by not maintaining case files for recordkeeping purposes, destroying any notes made during calls or interviews, and having no obligation to investigate allegations or report visitors' identities. A challenging area of the Ombuds's

work is how to report potentially damaging allegations of wrongdoing in situations where the source of the allegation wishes to remain anonymous. One way to accomplish this, for example, is for the Ombuds to report general areas of concern or trends to corporate leaders, without mentioning any employee by name. The Ombuds must be careful, however, not to describe any particular situation that could impliedly reveal the identity of an informing individual. The Ombuds's duty to maintain strict confidentiality may be breached only in a narrow exception: when the Ombuds discovers an imminent risk of serious harm to an individual or the entire corporation, and there appears to be no other reasonable option but to report the situation.

Independence. The Ombuds must be perceived as not beholden or responsible to anyone other than the top leadership of the corporation. For that reason, the Ombuds responds to directions from the CEO and the Board of Directors and no one else. Any other arrangement could be perceived as creating a conflict of interest should the Ombuds at some point intervene in a dispute involving a functionary located somewhere beneath the very top level. Also, the Ombuds must be perceived as not having a long-term personal financial interest in the corporation. This is important because the Ombuds should have no incentive to keep any conflict hidden, including those that might affect the Ombuds's Office or impact the value of the corporation. Ombuds' independence may be achieved by requiring the position to be filled for a term of office rather than for an indefinite period. If a corporation were to consider retaining a current or prior employee to fill the Ombuds position, the hiring committee should confirm that the candidate has no intention of remaining in another capacity after the term of employment ends.

Employees' communications to the Ombuds are not recognized as providing the corporation with legal notice of potentially illegal acts, as long as the Office of the Ombuds makes the following public announcements: the Ombuds is independent and free from control of the corporation's formal departments; the Ombuds has no management responsibilities outside its own office; and the purpose of the Office is not to receive notice of legal claims.<sup>xx</sup> This is significant because, in the event a corporation becomes aware of an alleged violation of laws, regulations, or policies, the corporation must take steps to mitigate the damage or else face exponentially worse exposure down the line for not acting. As such, there can be no promise of anonymity for an employee who reports a problem to a formal channel within the organization. When the proper public announcements are made, however, visitors to the Office of the Ombuds can feel secure that the Ombuds is under no legal obligation reveal their identity to the corporation without their permission (except under the narrow exception to confidentiality identified above).<sup>xxi</sup> In the event the Ombuds relays employees' concerns to a formal channel within the organization, legal notice occurs.

Impartiality. The Ombuds must be perceived by everyone as neither an agent of management nor an advocate for employees' concerns. An Ombuds cannot be effective if he or she takes sides in a dispute. For one reason, employees might not feel comfortable visiting the Ombuds if they believe the Ombuds might judge them negatively or act as a substitute for management. For another, management officials might be reluctant to give due consideration to what the Ombuds has to say if they believe the

Ombuds has a political agenda in favor of employees. Therefore, the Ombuds should be careful not to make a judgment against any person or be an advocate for any particular outcome; instead, the Ombuds should be focused on conflict management skill and effectiveness, by endeavoring to listen well, speak diplomatically, and help individuals to be aware of their options for addressing a particular problem.

For the corporate Ombuds, the value that gives life to these three core principles is good governance. It is a value that corporate leaders and employees should share; and is ultimately the motivation for creating and maintaining a position that everyone within the organization can trust. Therefore, the corporation should enact a charter for the Office of the Ombuds that states good governance as an underlying value, along with the three core principles referenced here. The charter should also state the Ombuds's authority to, among other things: (1) engage in prevention and resolution of workplace conflict; and (2) surface internal problems in order to prevent and mitigate the corporation's exposure to liability. In practice, this means that the corporate Ombuds must know when to encourage ground-level resolution of a problem, and when to advise that it be referred to a formal resolution process. In doing so, the Ombuds must be mindful of the core Ombuds principles and have an understanding of how they might be implicated by a multitude of fact patterns. Accordingly, the Board of Directors should search for candidates who have acquired skills and abilities necessary to support the Ombuds function. Practicing ombudspersons, mediators, or lawyers, who have demonstrated leadership qualities and ability to resolve conflict, should be considered.

### *Conclusion*

For today's knowledge-intensive corporations, impediments to collaboration can negatively affect the organization's performance and results. An Ombuds can facilitate collaboration by providing a forum for early intervention, resolution, and prevention of conflict within knowledge workers' offices. The Ombuds's presence as a liaison for remedying employee concerns doubles as an early warning system for problems that might, if unreported or left unchecked, develop into exposure to liability for the corporation. Given Ombuds' ability to clear impediments to performance and forestall risk, the CEO and Board of Directors should be strongly encouraged to establish an Office of the Ombuds if they have not already done so.

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- <sup>i</sup> Peter F. Drucker, *The Age of Discontinuity: Guidelines to Our Changing Society* (New York: Harper & Row, 1969): 264.
- <sup>ii</sup> *Ibid.*, p. 290. Drucker believed, presciently, that the knowledge worker “must be managed quite differently from the way we manage the manual worker.” *Ibid.*, p. 288
- <sup>iii</sup> Thomas H. Davenport, *Thinking for a Living: How to Get Better Performance and Results from Knowledge Workers* (Boston, Massachusetts: Harvard Business Press, 2005): 10.
- <sup>iv</sup> *Ibid.*, Chapter 1, “What’s a Knowledge Worker, Anyway?”
- <sup>v</sup> *Ibid.*, pp. 11-12, 86-88, 117-18, 168.
- <sup>vi</sup> *Ibid.*, pp. 152-54.
- <sup>vii</sup> *Ibid.*, pp. 15-16, 192-93.
- <sup>viii</sup> Peter F. Drucker, “Knowledge-Worker Productivity: The Biggest Challenge,” *California Management Review* *XLI*:2 (Winter 1999): 85-89.
- <sup>ix</sup> *Supra*, note 3, p. 159 (the highest performing knowledge workers “have the awareness and courage to deal early with tough interpersonal issues (either between themselves and others, or among members of in their group) rather than ignore the issues and let them fester.”).
- <sup>x</sup> Davenport found that successful leaders of knowledge workers bring in facilitators to help solve interpersonal problems. *Ibid.* As described in more detail, *infra*, an Ombuds brings skill as a facilitator, along with other means of intervention and guidance, to the organization.
- <sup>xi</sup> Davenport’s findings show that the highest performing knowledge workers are found in organizations that have taken steps to root out practices and values that impede collaboration, and have put into place procedures and practices that promote a collaborative culture. *Ibid.*, pp. 158-59, 161-62.
- <sup>xii</sup> *Ibid.*, pp. 199-200 (“Most knowledge workers have a justifiable antipathy toward bureaucracy. They would like to be able to do their work without excessive rules, policies, or formal processes.”).
- <sup>xiii</sup> For further reading, see, for example, Ben W. Heineman, Jr., “Avoiding Integrity Landmines,” *Harvard Business Review* (April 2007): 6-7 (describing, in part, how General Electric’s “ombuds system” is a partner for fusing high performance with high integrity).
- <sup>xiv</sup> Ed Beeson, *Ex-MF Global Risk Chief Said Warnings Likely Played Into His Firing* (February 02, 2012), [http://www.nj.com/business/index.ssf/2012/02/ex-mf\\_global\\_risk\\_chief\\_said\\_w.html](http://www.nj.com/business/index.ssf/2012/02/ex-mf_global_risk_chief_said_w.html), accessed April 2012.
- <sup>xv</sup> Ben Protess, *MF Global’s Former Risk Officers Defend Their Tenures* (February 02, 2012), <http://dealbook.nytimes.com/2012/02/02/mf-globals-former-risk-officers-defend-their-tenures/>, accessed April 2012.
- <sup>xvi</sup> Azam Ahmed, Ben Protess and Susanne Craig, *A Romance With Risk That Brought On a Panic* (December 11, 2011), <http://dealbook.nytimes.com/2011/12/11/a-romance-with-risk-that-brought-on-a-panic/>, accessed April 2012.
- <sup>xvii</sup> *Ibid.*
- <sup>xviii</sup> Ben Protess, *Trustee May Sue MF Global Officials* (April 12, 2012), <http://dealbook.nytimes.com/2012/04/12/trustee-may-sue-mf-global-officials/>, accessed April 2012; Tiffany Kary & Kit Chellel, *JP Morgan Pays \$100 Million in MF Global Trustee Accord* (March 20, 2013), <http://www.bloomberg.com/news/2013-03-20/mf-global-inc-trustee-reaches-agreement-with-jpmorgan.html>, accessed April 2013 (the settlement does not include potential lawsuits brought against individuals at MF Global, including Corzine, according to court papers).
- <sup>xix</sup> Ben Protess, *Suit Accuses Corzine of Failure at the Helm* (June 27, 2013), [http://dealbook.nytimes.com/2013/06/27/u-s-to-announce-civil-charges-against-corzine/?\\_r=0](http://dealbook.nytimes.com/2013/06/27/u-s-to-announce-civil-charges-against-corzine/?_r=0), accessed June 27, 2013.
- <sup>xx</sup> Charles L. Howard, *The Organizational Ombudsman: Origins, Roles and Operations – A Legal Guide* (American Bar Association, 2010): 193-97.
- <sup>xxi</sup> While the Ombuds is not considered an agent of the company for purposes of receiving notice, there is no federal statute creating a privilege for corporate Ombuds. The issue of whether an Ombuds may be compelled to testify is addressed differently by jurisdiction. Therefore, corporations should take institutional steps to protect the confidentiality of Ombuds’ communications from being breached in litigation. For more information, see *ibid.*, Chapter 3, “How Can Ombuds’ Confidentiality be Protected?” pp. 189-310.