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Report on the Ombudsman (or Public Protector) Concept, and Grievance Handling and Citizens' Services in Oregon

City Club of Portland (Portland, Or.)

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REPORT
ON
**THE OMBUDSMAN (OR PUBLIC PROTECTOR) CONCEPT,
AND GRIEVANCE HANDLING
AND CITIZENS' SERVICES IN OREGON**

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*Deceased.

**Until June 1969 when he assumed Presidency of the City Club of Portland.

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REPORT
ON
OMBUDSMAN

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

A. Committee Assignment

By action of the Board of Governors April 17, 1967, this Committee was charged:

(1) to study and report on the feasibility and desirability of implementing the Ombudsman or Public Protector concept within various levels of non-federal government structures in the State of Oregon; and

(2) if the Committee concluded that an Ombudsman is feasible and desirable, also to recommend:

(a) the level or levels of government to which Ombudsmen should be assigned,

(b) the qualifications for the position,

(c) the method of appointment,

(d) the term of office,

(e) the extent of authority to investigate and inquire, and

(f) the scope of powers as well as the means whereby a Public Protector can improve the fairness, efficiency and effectiveness of the administrative process;

(3) to examine any constitutional or other legal impediments to the creation and implementation of the office.

B. Background, Scope of Research, and Bibliography

In the course of its efforts, this Committee, often through subcommittees and occasionally by individual member, interviewed the persons listed in Appendix A and reviewed the written materials identified in the bibliography which is Appendix B.⁽¹⁾ As the appendices indicate, the Committee's investigation ranged widely among areas and conditions of citizen-government relations. Touched upon in some degree were such relevant aspects as: conceptual, philosophical, and historical background; experience and evolution in grievance-handling and citizens' services in various levels of government; civil rights, equality and discrimination; justice, law enforcement and penology; legal aid; public and community services; housing; welfare; education; recreation; employment and economic opportunity; and governmental organization and administration.

The Committee gratefully acknowledges its debt to the sources indicated.

It has been the aim of the Committee, in accordance with its assignment and through its research and consultations, to bring out the conditions and needs—with respect to citizens' grievances and citizens' services, to lacks in communication with government, and to desirable directions of corrective action in these connections—in the Portland Metropolitan and State communities. The general, wide-ranging studies were considered significant in illuminating the road ahead at both of these governmental levels. Because of potential values in further research and planning, the results of the Committee's investigations are discussed with some particularity, both in the body of the report and in the supportive Appendix C.

⁽¹⁾The Committee gratefully acknowledges assistance from Larry Thomson, then a law student at the University of Oregon, who voluntarily and gratuitously rendered research help and, specifically, prepared the comparative analysis of proposed statutes, Appendix D; and also the research assistance of Michael Opton whose help during part of the summer of 1967 was made available through the Portland City Club Foundation, Inc. student intern grant program.

The Committee assignment is consistent with and supplements prior efforts of the City Club which have recorded the Club's dedication to government outreach and citizen involvement.

For many years the Club has advocated reorganization and modernization of local and state government to structure and equip it better to cope with the problems and needs of an expanding, changing and increasingly complex society.

A 1961 report on Portland City Government suggested that a "strong" Mayor in an executive mayor-administrator-council form and his general staff would be concerned, among other things, with citizens' interests and expectations:⁽²⁾

What the urban citizen expects, or what we may assume he expects, of his government is a question basic to any consideration of form and operation of government. A citizen . . . would look to his government to *lead* an effort to secure and insure good environment and good living and to establish the basic conditions, facilities and services to achieve that end.

He would expect his government to be efficient and to have integrity. He would expect that, in the performance of its functions, his government would give fair and courteous hearing to individual and group interests, and would show a concern for justice and fairness in the solution of social conflicts. The urban citizen, like all citizens, would like to feel that his government is democratic and responsive and that it welcomes his participation.

At the state level, a 1967 City Club report on Constitutional Revision stressed the need for reorganization to advance the concepts of liberty, personal rights, public will and popular sovereignty basic to our governmental aspirations. It said:⁽³⁾

Enhancement of the qualities of responsiveness and responsibility in state government is a major goal with respect to the rights and needs of all the people—of the "invisible community" including "those who are living, those who are dead, and those who are to be born" (Edmund Burke). Oregon's constitutional revision movement seeks this reenforcement of democratic government . . . and, over all, a general government better equipped to meet, cooperatively and effectively, the needs of the people, the economy, and the environment under conditions of rapidly increasing complexity and urgency.

Your Ombudsman Committee's investigation was interrupted in mid-course in the interest of pursuing a special, expedited study of problems of racial justice in Portland.⁽⁴⁾ This action was considered desirable by the Club in view of the nationwide civil disorders in 1967 and a report of a national commission (Kerner Commission) on related problems, published early in 1968.⁽⁵⁾

Some of the views expressed by the Kerner Commission and by the City Club Racial Justice Report respecting the interrelationship of citizen grievances, civil injustices and civil disorder are relevant to consideration of the Ombudsman principle.

The Kerner Commission recognized the prevalence of discrimination and frustration, the inadequacy of means for redress of citizen grievances, the alienation of citizens and resulting hostility toward institutions of law and government, as among factors significant in civil disorder. It recommended that local governments establish comprehensive grievance-response mechanisms in order to bring all public agencies under public scrutiny. The Commission proposed local government action, with state and federal support, to strengthen its administration and services, to advance citizen communications and involvement, to bring institutions of local government closer to the people they serve, and to respond effectively to community needs before they become community grievances. The Commission said:⁽⁶⁾

(2) City Club of Portland, *Portland City Government*, May 19, 1961.

(3) City Club of Portland, *Constitutional Revision Review*, Feb. 17, 1967.

(4) City Club of Portland, *Problems of Racial Justice in Portland*, June 14, 1968. The City Club Committee for the Racial Justice study was drawn from three then-existing research committees—on Race Relations, Law Enforcement, and Ombudsman. The Ombudsman Committee supplied four members, including its chairman, for the Racial Justice Committee: Messrs. Nahstoll (Chairman), Ater, Bessey, and Jolles.

(5) National Advisory Commission on Civil Disorders ("Kerner Commission"), *Report*, Feb. 1968.

(6) *Ibid.*

We are convinced, on the record before this Commission, that the frustration reflected in the recent disorders results in part at least, from the lack of accessible and visible means of establishing the merits of grievances against the agencies of local and state government. . . .

The City Club Racial Justice Committee reported, with respect to government-citizen relations:⁽⁷⁾

One common denominator is found in each of the problem areas, and, indeed, is a basic, fundamental and essential factor characterizing local government generally. For shorthand purposes this common denominator is referred to as the "neglect of citizen involvement." It encompasses the failure on the part of local government to maintain lines of effective communication with the citizens it serves and, most significantly, with residents of Albina and other depressed areas. . . .

A factor in the communications and confidence gap increasingly recognized as crucial lies in the area of citizen grievance and governmental response. The general lack of effective machinery for equitably and justly handling complaints is getting new attention at all levels of government in our country. . . .

The Racial Justice Committee recommended, for the Portland area, immediate and enlightened cooperative action to involve the citizens more closely in the processes of government as they relate to citizen and community problems, services, and relationships.

The relationship of social unrest, disorder and violence to the need for improvement of facilities for the handling of grievances is reiterated in the report more recently filed by the National Commission on the Causes and Prevention of Violence (referred to as the "Eisenhower Commission").⁽⁸⁾

Analyzing basic causes underlying contemporary violence, the Commission reported:

We state emphatically that aggrieved groups must be permitted to exercise their constitutional rights of protest and public presentation of grievances.

We must have the perception to recognize injustices when they are called to our attention, and we must have the institutional flexibility to correct these injustices promptly. To enable the less affluent to obtain effective and peaceful redress of grievances, we recommend that additional steps should be taken to meet their needs for lawyers, and that state and local jurisdictions should be encouraged to experiment with the establishment of grievance agencies to serve all the citizens.

A still more recent national commission report on urban problems includes disorderly, uneconomic, and anti-social patterns of social development and citizen unrest among the basic problems deeply troubling most Americans.⁽⁹⁾ The Commission's report is directed primarily toward the improvement of governmental and inter-governmental effectiveness in meeting the urban crisis. It aims at "civilizing the local government jungle," through improvements in political unity, governmental structure, public services, visibility of government, and accountability to the people, as well as stimulation of enlightened civic interest and participation, and abatement of anti-social behavior.

Following upon completion of the Racial Justice Report, the City Club's Law Enforcement Committee resumed its own special study and completed a report later in 1968.⁽¹⁰⁾ Among the problems of concern in this project was the effective handling of complaints in the Portland Police Bureau, with a view to greater responsiveness of the Bureau to citizen and community needs.

Against this background of prior City Club action and of national commission reports, the Ombudsman Committee's inquiry has been to analyze the character of citizen grievances and to determine what role the Ombudsman might perform in their proper and efficient resolution.

⁽⁷⁾*Op. cit.*

⁽⁸⁾National Commission on the Causes and Prevention of Violence, *Report*, Dec. 1969.

⁽⁹⁾Advisory Commission on Intergovernmental Relations (Merriam Commission), *Urban America and the Federal System*, Oct. 1969.

⁽¹⁰⁾City Club of Portland, *Law Enforcement in the City of Portland*, Aug. 30, 1968.

II. THE OMBUDSMAN CONCEPT

A. Definition of "Ombudsman"

The office of the Ombudsman, as conceived in various operations and writings, has no universally accepted definition. In Swedish, the term means "representative." From the standpoint of potential for adaptation to the needs of a jurisdiction, it is important to retain flexibility and avoid having the concept circumscribed by rigid definition. For its purposes, this Committee adopted the definition employed by the 32nd American Assembly (of Columbia University) which considered the Ombudsman as:

. . . an independent, high-level officer who receives complaints, who pursues inquiries into the matters involved, and who makes recommendations for suitable action. He may also investigate on his own motion. He makes periodic public reports. His remedial weapons are persuasion, criticism, and publicity. He cannot as a matter of law reverse administrative action.

B. General Background of Concept

The concept of an Ombudsman, which is of long standing in one form or another in Europe, has been only lately a matter within popular notice in the United States. But, the idea has engendered an astonishing amount of discussion and serious consideration. Within the past few years, bills have been introduced in the legislatures of almost every state to establish the office in some form. Adaptations of the idea are in process in many units of local government. The establishment of Ombudsman-type officers on a large and growing number of college and university campuses is significant. Many in the legal profession, including the American Bar Association's House of Delegates, are supporting the principle.

The rapid spread of interest in the Ombudsman institution during the past ten years, not only in the Scandinavian countries but in Great Britain, some Canadian provinces, the Commonwealth of New Zealand and, most recently, in the United States, suggests it is more than a fad in institutional gadgetry. It reflects a growing concern about the performance of governmental administrative arrangements as they affect individual rights to life, liberty, and the pursuit of happiness. The civil programs of government agencies cover the social landscape in all "advanced" societies; the Ombudsman idea is even attracting some of the "underdeveloped" peoples entering upon the tasks of democratic self-government and of creating social forms to meet forces accompanying accelerated industrialization.

Public dissatisfaction with government at all levels is real—to a degree which exceeds the apparent understanding and appreciation of many in government today. Government services, formerly regarded as elective projects of government to be withheld or delayed if discretion assigned priority to other programs, are now regarded as legal rights. Thus, beneficiaries of those services come to government as applicants, not as supplicants. As government has tended to involvement in an ever greater part of the life of the individual, it has been increasingly unsatisfactory to the citizen to accept the role of passive receiver of whatever government, at one level or another, may grant him. His demands are not limited to claims of his rights under the law as it exists, but include, in addition, claims of rights under the laws as he believes the laws should be. He has become increasingly unwilling to accept the adage that "you can't fight City Hall." In many cases, for the first time, his voice is now being raised in protest, demand and defiance; but his words do not often reach a listening ear in government which will produce a satisfying response to his expressed needs. When government fails to hear, his appeals and complaints are registered to the public in the streets. It is necessary to understand the sources of this dissatisfaction to understand whether, and how, the office of Ombudsman may offer some prospect of functioning as a viable organ of government capable of introducing affirmative assistance to bridge in two directions the relationship between government and the subjects of government. Functioning ideally, the influence of the office would extend beyond the processing of complaints, and would serve to reduce fundamental dissatisfactions and smooth the course of citizen-government cooperation.

C. Nature of Citizens' Complaints

In varying degrees citizen complaints arise from three general classifications of government weakness or ineffectiveness discussed illustratively below. These are sometimes mixed, often not understood, identified, or distinguished by the grievant:

- (1) Dissatisfaction or frustration because of inaccessibility of government and its services.
- (2) Dissatisfaction with improprieties in administration.
- (3) Dissatisfaction with the substantive provisions of laws.

1. Inaccessibility of Government and Its Services

Individual consumers of government are in need of more accessible information about where to go, whom to see and what to say to bring their respective situations to the notice of those who distribute government and governmental services.

(Example: A mother entitled under existing law to Aid for Dependent Children (ADC) is not informed of her entitlement and/or does not know where to go, whom to see or what to say to bring her situation to the notice of those authorized and responsible to assist her.)

The problems of a single individual may cover more than one agency, or even more than one level of government.

(Example: One who has suffered an "on-the-job" injury may be involved with several federal, state and local agencies.)

Sophisticated business and professional men frequently despair of their difficulties in "getting action out of the Government," or "the State," or "the County," or "City Hall." No person of normal sensitivity can deny the potential for frustration and defeat when one who, relatively inarticulate and lacking in confidence and ability to cope, undertakes a similar effort. One has trouble enough in seeking his way to the place where government assistance is available or decision is to be made. His problem is compounded if he is also uninformed as to a possible source of government concern with or relationship to his problem.

Opinion has been voiced that a substantially greater effort should be extended by government at all levels to make available to people, at points and hours convenient to them, information and assistance in making contact with the government agency or agencies which could deal with their problems. Moreover, the effort should go beyond supplying of information. The same facility should extend assistance in coordinating and expediting solutions of the applicant's problems and needs.

The informed persons interviewed generally agreed that inquiries, requests, expressions of grievance or complaints in search of this type of assistance are frequent. For many years, apparently for the reason that a more visible and promising source of assistance has not been accessible, the Office of the Governor has processed a large amount of business of this character. That office has not been specifically equipped to provide this service, and the handling of the matters, though done generally with concern and good will, has been burdensome and inefficient in many respects.

The urgent need for effective ways and means of establishing rapport between citizens and government has already been publicly recognized by the City Club (see "Introduction" above). In addition to action in executive branch reorganization mentioned below, the State government has recently established its Model Cities Area Multi-Service Center to serve these purposes in the Albina district of Portland. The need for other centers has been recognized. Governor Tom McCall requested the 1969 Legislature to extend the provision for such services, and it is believed that such a request should be supported. Similar services should be afforded at other neighborhood locations readily accessible to citizens, by Multnomah County, the City of Portland, and CRAG.

Facilities to serve this need have been elsewhere established. Appendix C to this report includes a review of this subject.

2. Dissatisfactions with Improprieties of Administration

Another frequent source of citizen dissatisfaction or grievance lies in real or imagined impropriety, error, and inadequacy in the functioning of government in its many public services.

(Example: A mother entitled to Aid for Dependent Children, a builder seeking a building permit, and a homeowner with a hole in the street near his home, or a backed-up sewer, is each entitled to have his request heard and equitably processed without unjustifiable delay and without arrogance or rudeness from government personnel.)

3. Dissatisfactions with Substantive Provisions of the Laws

Shortcomings in substantive, structural and other statutory provisions for citizen services are deep-rooted causes in the broad pattern of dissatisfactions among concerned members of the public.

(Example: A mother receiving Aid for Dependent Children complains that her needs require \$90 per month, instead of the \$68 which the "law" [statutes plus administrative policy] currently affords her. Incorrectly appraising the reason for her deprivation, she complains that the case-worker or other staff member is treating her unfairly. In actuality, her complaint manifests dissatisfaction with the substance of the controlling law, which may or may not be adequate, equitable, or otherwise valid.)

Summary: To a considerable extent, these problem sources are the product of the development in recent years of vast and pervasive "administrative government." The doctrine of separation of powers, inherent in the American governmental structure, theorizes that the legislative branch conceives and declares the rights and relations of persons between themselves and respecting the government; and that the executive branch administers and enforces those declared rights and relations. The development of administrative government has invaded the technical niceties of that doctrine. Now, administrative boards, commissions, agencies, services and offices have proliferated beyond citizen comprehension in both number and influence. This is particularly true in a state such as Oregon in which vital governmental services are presently the responsibility of a plethora of independent and overlapping local special districts.

These various units of the executive branches of government at the several levels affect and control the legislatively enacted rights of citizens in the process of administration. This result is one of the necessary products of government consistent with the separation of powers. But, the administrative bodies also affect and control the substance of legislatively enacted interests of citizens through regulations, rules and statements of "departmental policy" which define, amplify, declare and implement the statutory statements of the legislature.

The overriding influence of administrative agencies as a function of government has been pointed up by Murray Edelman in this provocative comment:

What people get from government is what administrators do about their problems, rather than the promises of statutes, constitutions or oratory. Administrators have wide leeway in practice to respond to the interests of groups that can exert economic, political, moral, or organizational sanctions against them. In doing so, they are not selling out; they are simply taking the roles their organization positions make them recognize as viable.⁽¹¹⁾

It is, however, a somewhat more difficult task to assess the extent to which an Ombudsman has potential as a viable solution to these citizen dissatisfactions with benefits sufficient to justify the office and its attendant public expense.

III. FINDINGS AND DISCUSSION

At the outset, the Committee found it desirable to provide a firm conceptual and cognitive foundation for its examination of the state and local problem in Oregon. To this end its research included review of the evolution and status of political philosophy, and of principles and measures for the protection of citizens' rights and interests and the maintenance of civil justice in the administration of government. The results of that review are summarized in Appendix C, presented as relevant in the consideration of the issues faced, and may be of potential value in advancing further studies by administrators, legislators, citizens, and scholars.

(11) Murray Edelman, *Symbolic Uses of Politics*, 1967 University of Illinois Press, p. 193.

Broad findings relating to the Ombudsman and related concepts and their possible applications in our governmental order are discussed below.

A. The Classical Ombudsman

From the historical and political point of view, the Committee's review looked to Europe and particularly Western Europe. The majority of European governments has long had provisions—of greater or less efficacy in application and effort—for defense of the citizen against arbitrary, capricious, or illegal acts of government. In Eastern Europe the central organizational principle in citizens' defense is that of a "procuracy" with the dual responsibility of enforcement of the laws of the state and of protection of citizens' rights. However, the principle of protection of those rights has reached fullest flower in Sweden and other Scandinavian countries. Thus, the Committee's inquiry has focused primarily upon the development of principles and organizational arrangements in that area.

What may be considered the essence of the "classical" Ombudsman role is outlined below as a basis for consideration in the American context. The Ombudsman functions evolved in Sweden as principal inventor and innovator are exercised through a Chancellor of Justice, an Ombudsman for Civil Affairs, and an Ombudsman for Military Affairs.

Essentially the classical role of the Ombudsman exemplified by the office in Sweden is to receive complaints from any citizen about abuse of official powers resulting from illegal decisions, or arbitrary or discourteous conduct on the part of an administrative official (and this includes judicial and military officials also). If, after preliminary inquiry he believes a complaint has merit, he makes a full-scale investigation. He reports his findings both to the complainant and to the agency concerned. But he does not have to wait for a complaint. He may initiate an inquiry on his own motion, if alerted by a news report or some other source of information. In the case of official violation of the law in Sweden and some other countries, he may initiate or recommend prosecution of the erring official, and the making of suitable recompense to the wronged citizen. But he may also suggest (and this is the more frequent action) that the agency reconsider the case and perhaps change its procedures in this and similar cases. The latter kind of recommendation frequently arises because one of the basic causes of many grievances is administrative delay in reaching a decision. The Ombudsman may also prod an agency to give complaining citizens adequate explanations of the legal or policy reasons for its inability to grant their requests, when that is the case. Thus the Ombudsman works toward justice and understanding by persuasion, by a full collection of the facts, by careful determination of the meaning of the law involved, and by his freedom from bias. All this service is provided to the complainant with expedition and usually without charge.

The functions of the Swedish Ombudsman are expanded upon in Appendix C, which undertakes a more comprehensive review of the office as it exists in several jurisdictions.

Professor Walter Gellhorn, a leading American authority on the subject, has stated that at the local levels of government—where citizens' rights, interests, and well-being are intimately involved—the necessary role is broader than that performed by the classical Ombudsman:

An Ombudsman, I conclude, can isolate mistakes, he can point out better pathways to goals that right-minded people want to reach; he can suggest new applications of already accepted concepts. What he cannot do is compel unwilling officials to adopt an outlook that he has freshly dictated. . . .

. . . An Ombudsman will perforce leave untouched many of the things that most deeply irritate some elements of the citizenry. . . .⁽¹²⁾

American cities populous enough to need an Ombudsman probably also need a counterpart of the English and Japanese citizens' bureaus which furnish information, give advice and extend a helping hand in connection with just about any perplexity that may beset an individual. As Professor

(12) Walter Gellhorn, *The Ombudsman's Relevance to American Municipal Affairs*, in *American Bar Association Journal*, Feb. 1968, Vol. 54, p. 135.

Alfred J. Kahn has remarked of the English bureaus (and the same is true of the Japanese), their services are not limited to the poor, the uneducated or the maladjusted. The assumption is that in a complex bureaucratized society any citizen may require information, guidance, advice, application forms or explanatory pamphlets. . . . The real issue is to devise a system . . . that will humanize the urban environment because of the general alienation of people from government.⁽¹³⁾

It is the opinion of Professor Gellhorn that the function of the classical Ombudsman is not sufficiently broad to meet many of the related needs of the urban community. But, whereas he would assign to a different entity, i.e., "a counterpart of the English and Japanese citizens' bureaus," the handling of other "perplexities which may beset an individual," the following section of this report regarding the modified Ombudsman considers the possibilities of expanding or adapting the classical role of the Ombudsman to meet the needs of our people.

B. Capacity of a Modified Ombudsman to Contribute to Solution of Citizen Dissatisfactions

This Committee is in agreement with Professor Gellhorn that we should aspire to "devise a system that will humanize the urban environment." Having accepted that goal, the issue then becomes whether the essential comprehensive service afforded by "a counterpart of the . . . citizens' bureaus" must be performed by a separate entity, or whether it might, or should, be joined in the functions of an Ombudsman.

As suggested, in Part II, citizen complaints about government generally spring from one or more of three sources of dissatisfaction: (1) inaccessibility of government, (2) improprieties of administration, and (3) substantive provisions of laws.

The classical Ombudsman confines his function very largely to complaints founded in the second of these sources—review and inquiry into complaints regarding alleged improprieties in administration. With his jurisdiction thus limited, some believe it unlikely that his office would function satisfactorily in this country. This is not to say that he should be insensitive to dissatisfaction with improprieties or ineptness in administrative performance. To the contrary, such complaints should be accorded a prompt reception and effective and appropriate action.

But practical difficulties which must be realistically acknowledged arise from the fact, discussed in Part I, that a complaining citizen frequently does not segregate his grievances according to the neat classification of source adopted here. In such case, his sense of frustration might be enhanced if told that his complaint is not within the jurisdiction of the Ombudsman because it is "substantive, rather than procedural," or because he seeks to establish contact with government, rather than to gain relief from some abuse or discourtesy, experienced or sensed during a past contact. An Ombudsman obliged to turn from his office door for jurisdictional reasons, those whose inquiries or grievances are ambiguous or ill-defined might soon be regarded as simply "another government run-around."

1. The Horizontal Scope of the Ombudsman's Function

It is suggested that, to fulfill to an acceptable degree the justifiable public expectations of the office, an Ombudsman must be in a position to receive—and concern himself with—a broad spectrum of citizen needs and should function as:

a. An Expediter

He should participate in the dissemination of and accessibility to information about government and its services. But his effort should not stop with advice or information communicated to the inquiring citizen who is then, once again, set adrift to wallow in the forbidding mysteries of bureaucratic seas. It is important in many cases that information be supplemented by practical follow-up (telephone contacts, memoranda, etc.) to establish productive contact between the citizen and a specific government staff member who can consider and take timely action with reference to the citizen's need. This is the type of service performed often, and

(13) Gellhorn, *op. cit.*, p. 139.

effectively, by congressional representatives of constituents who have business with the federal government in Washington.

Assistance can, and should, be furnished by other offices as well, including multi-service centers. Indeed, quite apart from considerations of Ombudsmanship, it is imperative that the county and city governments greatly extend their facilities, *at locations readily accessible to the people* (See Appendix C). Were this service to be his sole task, the office of the Ombudsman would quite clearly not be justifiable. But it is an important corollary of his *raison d'être*.

It should be noted that the experimental office of Ombudsman in Buffalo, New York, funded for a period ended May 31, 1969 by the Office of Economic Opportunity, reported that whereas a substantial portion of its business was of this character,⁽¹⁴⁾ "the project directors . . . concluded that efficiency is better served if regular governmental employees spend their time working in their area of expertise and allow someone who is an expert at 'knowing where to go' to lead the citizen to the proper agency."⁽¹⁵⁾ This, of course, does not foreclose the possibility that such an "expert" might be made a part of the Ombudsman's staff.

b. A Protector

Efficient, fair and courteous administration of government is obviously a valid public goal. By definition this is a proper and usual concern of even the classical Ombudsman. Certainly the office would receive and undertake to investigate, resolve and recommend correction of causes of inept administrative performance.

The substantial values of effective legal aid services for the disadvantaged have been noted by the Committee. However, these services deal with matters of law and rely chiefly on the judicial process for implementation. Most of the problems contemplated for Ombudsman handling are not suited to efficient resolution by the litigation or judicial process. Accordingly, legal aid must be considered as a complement and not a substitute for protective services dealing primarily with administrative affairs.

c. A Commentator on Substantive Law

Concern for substantive law reform has not been the responsibility or proper function of the classical Ombudsman. It is not here suggested that the Ombudsman as conceived by this Committee should be vested with power to establish or innovate, on his own authority, changes in substantive law. He is not omniscient and should not be regarded as a substitute for the collective wisdom of the legislative arm of government in determining public policy or establishing the controlling priorities of public effort. This limitation was recognized by the reporting directors of the Buffalo Project as follows:

Basically, the project directors agree with Professor Gellhorn's thesis that the Ombudsman should not attempt to substitute his judgment for either the policy decisions made by legislators or the priority decisions made by administrators; that is, he should neither try to be a substitute for the democratic political process nor attempt to be a super-administrator.

But, it is inevitable that grievances based essentially on inequities in substantive law will be comingled in the potpourri of complaints which reach his office. It is suggested that with respect to these, and also on his own initiative, the Ombudsman should have a role which, though restricted in scope, would allow meaningful action. This role would involve him, not as a "substitute for the democratic process" but as a participant in it.

His duties would include authority to comment on substantive law by suggestions made to the Governor and Legislature, or legislative committees, in formal reports identifying substantive changes, the need for which is suggested to him by matters coming to his attention from complaints or inquiries, or, more likely, from a repetitive pattern of either. This Committee does not propose that the Office of the Ombudsman should undertake to supply a source of representation for those now unheard in the normal course of the legislative process. Some persons

(14) Personal interview with Lance Tibbles, Service Director, Office of Economic Opportunity, May, 1969.

(15) Comprehensive report on the Buffalo program filed with OEO July 31, 1969.

close to the practical problems of local government have indicated that this is a matter of primary and overriding concern.⁽¹⁶⁾

The democratic process is felt by some to be out of balance where legislation under consideration affects interests of opposing groups, only one of which is organized, financed, cohesive, articulate and assisted, quite legitimately, by those who "lobby" on its behalf. If a group whose interests are affected are unorganized, unfinanced and inarticulate, they lack "clout."

Too often, then, the information upon which the legislative function is based and resolved is necessarily a unilateral presentation, understandably interest-directed, and one-sided. Much of our legislation defines the "equal rights" of sizable portions of society which make up amorphous groups unheard in the legislative process. While this inadequacy presents a problem which may warrant remedial measures of a different sort, this Committee believes that it would prejudice the performance of the Ombudsman's duties as a monitor over improprieties in administration and as an expeditor if he were to assume the additional role as a partisan "lobbyist" or advocate for the interests of special groups in the legislative process.

2. The Vertical Scope of the Ombudsman's Function

Just as the horizontal jurisdiction of the Ombudsman should be influenced by the full range of matters which may be anticipated to come to his office, so should the vertical scope be responsive to those practicalities. The report of State Ombudsman Marko Haggard referred to below indicates, for example, that of 104 "cases" processed by his office in November, 1969, three involved "city" problems, twelve involved "county" problems, and four involved "federal" problems.

It is inevitable that the governmental affairs which leave people confused, annoyed or ineffectual will include some which cover more than one level of government, or involve a citizen with a single level which he has not accurately identified. Accordingly, the Ombudsman office will be in a position to respond most satisfactorily if he is jurisdictionally qualified to act, on behalf of the citizen, with comprehensive vertical effectiveness at the state, county, municipal, and metropolitan subdistrict (e.g., CRAG) levels. Thus, the applicant for assistance would not be denied help by a State Ombudsman because his problem involved his relationship to a county or city government. Accordingly, this Committee believes, ideally, the office should be so established and structured as to have this multi-level coverage.

The Committee does not believe that possible constitutional obstacles to the vesting of such jurisdiction by state statute are insoluble. Even restrictive constitutional provisions for county and city "home rule" autonomy do not appear insurmountable. An analogy may be found in the jurisdiction of the Circuit Courts of the State of Oregon which are essentially creatures of state conception but have authority over matters at the county and municipal levels as well. This Committee's inquiry into the problems and possibilities of a multi-level Ombudsman have not been exhaustive because it is believed to be politically unrealistic to anticipate that the office could be established in optimum form initially, without prior experience as a single-level entity. However, this possibility should receive continuing review as a valuable future development objective.

C. Structure of the Ombudsman Office

The nature of the office and the qualifications of the incumbent are matters of great significance in the effective functioning of any Ombudsman-type operation that may be established.⁽¹⁷⁾ Committee views on the subject are offered for consideration by State and local government in the formulation of any legislative and executive enabling actions that may be decided upon.

1. Qualifications of an Ombudsman

The holder of the office of Ombudsman in the four Scandinavian countries in which this office originated is required to be a lawyer or one who has a legal background or education. In Denmark, the holder of the office since its initial establish-

⁽¹⁶⁾Dale C. Freeman, *The Poor and the Political Process; Equal Access to Lobbying*, 6 Harvard Journal on Legislation 369, March, 1969.

⁽¹⁷⁾See comparison of proposals, Appendix D.

ment in 1955 has been Stephan Hurwitz, a noted professor of criminal law, a member of a highly regarded Danish family who had long been active in public and cultural affairs. Likewise in Norway a former judge of the Supreme Court with an excellent reputation as a lawyer was appointed Ombudsman after establishment of the office in 1962. In Sweden and Finland, where this office has had a longer history, distinguished former judges or lawyers have traditionally been picked as Ombudsmen.

New Zealand, which patterned its law after the Swedish model, did not include the requirement that the holder of the office have legal qualifications, but after enactment of the law in 1962, a lawyer and diplomat was selected for the position and he has held the office ever since.

In all of these countries it is expressly stipulated that the holder cannot be a Member of Parliament or holder of any other public office during his term of office as Ombudsman, and in some cases he cannot have been a Member of Parliament prior to his appointment.

In those cities and counties of the United States that have adopted some form of the Ombudsman concept, there have generally been no specific qualifications set forth for the office. Walter Gellhorn proposes in his "model statute" simply that "the Ombudsman shall be a person well equipped to analyze problems of law, administration and public policy, and shall not be actively involved in partisan affairs."⁽¹⁸⁾ Gellhorn agrees that a legal background would be desirable, because many grievances deal with analyses of statutes, regulations and rulings, but does not believe that there should be any specific ground of qualification or disqualification, leaving the matter solely to the judgment of the appointing body.⁽¹⁹⁾

The State of Hawaii likewise does not set forth any particular qualifications for its Ombudsman in its statute; however Herman S. Doi, the first holder of this position, is a lawyer and former Director of the Legislative Reference Bureau of the University of Hawaii. (He was also the major proponent of the legislation setting up the position, and his research paper on the subject was credited with influencing many legislators to vote for the bill.)⁽²⁰⁾

Bills introduced in the Oregon Legislature in 1967 (SB 19) and 1969 (SB 4) to authorize the establishment of this office required that the incumbent be "qualified by training and experience in administrative procedures and standards." The present holder of the office (referred to as Ombudsman) created by Governor McCall under his executive authority is an educator and political scientist.

It is the opinion of this Committee that the qualifications of the holder should not be spelled out except possibly in broad terms. The Committee is not convinced that the holder of the office must necessarily be a lawyer, although a person of this background would obviously bring certain desirable qualities to the office. It is believed that the appointing authority should have full power to appoint whomsoever it believes would best fill the position, and that the process of appointment and confirmation, as discussed below, will adequately protect the people from an unwise choice.

2. Selection of the Ombudsman, Term of Office and Removal Procedures

In the Scandinavian countries, the Ombudsman is appointed by majority action of the Parliament, and his term runs concurrently with the term of the Parliament under which he is appointed, usually four years. In all of these countries, except Finland, he may be removed from office for any reason during his term by action of the Parliament. (In Finland he cannot be removed from office during his term.) He may be re-elected for succeeding terms.

In New Zealand he is appointed by the Governor General on the recommendation of the Parliament, and he may be removed from office during a term only for certain specified reasons at the instance of the Parliament.

Appointive officials in the United States, unlike those in European countries, are customarily chosen by the Chief Executive, subject sometimes to legislative confirmation, and this pattern has been followed generally in those states and

(18) American Assembly, *op. cit.*, p. 162.

(19) *Ibid.*

(20) Los Angeles Times, Aug. 10, 1969.

local governmental units which have considered the Ombudsman concept. In Oregon, for example, the bills introduced in the 1967 and 1969 sessions of the Legislature provided that the Ombudsman would be appointed by the Governor and would be subject to confirmation by the Senate by an affirmative vote of two-thirds of those voting. The term of office was set at four years, and the Governor would have the right to dismiss him during a term for good cause, but only after a hearing at which members of the legislative assembly would be present.

This Committee believes that at the state level the procedure outlined in the Oregon bills for appointment, term of office and removal would be satisfactory. (It is possible that confirmation of the appointment should be by both the Senate and the House of Representatives, in order to remove any possible partisanship in consideration of the appointment, but this may not be of great significance.) However if the principle of the Ombudsman is to be introduced at the metropolitan, county, and city levels in Oregon, it is the view of this Committee that a different procedure must be followed. The governing bodies of the counties and cities are usually of a different composition than of the state, and the basic principle of appointment by the executive with confirmation by the legislative body would not generally be applicable. It is important that the Ombudsman have the confidence and respect of the people whom he will serve, particularly in view of the magnitude of some of the problems he is likely to face at the local level. It is thus important that the appointment procedure be somewhat responsive to the desires and needs of the public.

In the Scandinavian experience, the power of surveillance over local government is only a recent development. The Ombudsman originally had jurisdiction only over matters pertaining to the central government, but recent changes in all Scandinavian countries have extended his authority to all levels of government, and this has apparently been a satisfactory arrangement. In the United States, it would be somewhat unique for a public official to have this kind of "vertical jurisdiction" over different levels of government, but if such authority were to be granted this would certainly lessen the problem of having a fair method to select an Ombudsman at any local level, since the state official would be the sole Ombudsman, and he would be selected under what your Committee considers to be satisfactory procedure.

Otherwise, if an Ombudsman is to be selected at a local level—city, county, or metropolitan—it is the opinion of this Committee for reasons indicated that great care should be given to the manner of selection. Your Committee is unable at this time to offer a specific procedure which it considers satisfactory, and it is possible that no procedure can be devised that will have all of the safeguards and elements of responsiveness to the public which are desirable under our present forms of city and county government. To be considered in a workable design of organization and procedure are such matters as selection, appointment, term of office, removal, and independence from unwonted pressures.

D. Problems of Application of the Function in Oregon

1. The Situation in Oregon

The problem of effective citizens' grievance and service handling is compounded at the state level by structural inadequacies of government. Oregon's state government is awkward and ill-structured, and it has been stated:

The State of Oregon has an inadequately conceived and fragmentary role in problem-identifying and solving at the local level. The whole field of state-local relations is characterized by fragmentation, neglect, suspicion and frustration. It is also characterized by unevenness.⁽²¹⁾
and further,

. . . the people of Oregon cannot really hold any one official really accountable for what happens or for developing and carrying out resourceful solutions to the state's problems; or for not doing so. . . . We have per-

⁽²¹⁾Report of Project 70's Task Force to Governor Tom McCall and the 55th Legislative Assembly, Dec. 1968, p. 17.

petuated a governmental system that functions to defy responsible executive action and confuses the public.⁽²²⁾

In response to these observed needs and the leadership of Governor McCall, the 1969 Legislature enacted a substantial restructuring of state government. Governor McCall established 14 administrative districts and centers for facilitating operation of the executive branch and bringing it closer to the citizens served. One of the districts would conform substantially to the area under the purview of the Columbia Region Association of Governments (CRAG), now engaged, on a voluntary basis, with other local government jurisdictions, in coordinated planning and programming for the Portland metropolitan area.⁽²³⁾ CRAG is also engaged in some further coordinative activities in behalf of state government. As already mentioned, a multi-service center has also been established by the Governor for the Portland Model Cities project area which includes the disadvantaged Albina district.⁽²⁴⁾ Specific complaint-handling mechanisms are under consideration for district multi-service centers.

It is anticipated that the adopted changes will tend to relieve, to an extent not now predictable, some of the weaknesses of executive government and the difficulties of fixing executive responsibility. However, it cannot be realistically hoped that the general problems will not remain to some degree at the state level.

Exercising existing executive powers, reinforced in some degree by legislation passed in the 1969 Session with respect to an Executive Department and certain elements thereof, the Governor acted in that year to bring about new organization arrangements in the executive branch dealing with grievance-handling and with general citizens' services.

The Executive Department Act (SB 232) established such a department in the executive branch of the government and transferred to it departments dealing with finance, emergency services, planning, economic development, intergovernmental coordination, and personnel. Other significant reorganization legislation (HB 1714) created a Department of Social Services.

The Executive Department operates under a Director appointed by and at the pleasure of the Governor. The act includes a provision that the Governor himself was authorized to assume the office of Director. Another provision states that the Director of the Executive Department, with the approval of the Governor, shall organize and reorganize the Department in the manner he considers necessary to conduct the work of the Department properly. More general reorganization powers were sought by the Governor and legislation (HB 1594) was introduced to that end but did not pass in the 1969 Assembly.

Governor McCall recommended in 1967 enactment of legislation creating the office of Ombudsman on a state level. A bill introduced by Senator Ted Hallock as Senate Bill 19 died in the Senate Judiciary Committee. In slightly revised form, the latter proposal was introduced at the 1969 Session as Senate Bill 4, and that bill died after referral to the State and Federal Affairs Committee. Senate Bill 4 would have established an office of Ombudsman empowered to investigate administrative actions of state agencies for legality, equity and quality. It would have

(22) *Ibid*, p. 14. Similar observations are valid, and have been asserted, with respect to the government of the City of Portland. (See "Introduction" to this report.)

(23) CRAG was formed in 1966 as a voluntary association of the municipal governments, county and city, of the Portland metropolitan area. Membership includes four counties (Multnomah, Washington, and Clackamas in Oregon and Clark in Washington) and 21 cities besides the core city of Portland. Funding is by assessment upon member governments and by grant from the federal Department of HUD. CRAG functions as forum for elected officials, metropolitan regional planning agency, and reviewer of federal grants to local government for projects of regional effect; it also functions, with the administrative district organization of state government, in fields of coordination of intergovernmental and citizen relations.

(24) A multi-service center, in principle, provides for the handling of citizens' inquiries and services on a decentralized and coordinated basis and at a "one-stop" location readily visible and accessible, physically and psychologically, to the people served. The "Model Cities" Center was established in April 1969, thus to provide for state and related (city, county and federal) services for citizens, particularly the disadvantaged, in a problem urban district. The area selected is part of the central city included in the federally-aided Model Cities demonstration project and encompassing the depressed Albina area. The Governor expressed the intention to open other centers in other communities as needs and budgets allow.

authorized the Ombudsman to make recommendations to state agencies and required him to report annually to the Governor and the Legislative Assembly.⁽²⁵⁾

By Executive Order effective July 1, 1969, Governor McCall designated Marko Haggard of his staff as "Ombudsman." The assignment was defined by the Governor as follows:

He is a state officer charged to investigate on his own initiative or upon complaint of any person, administrative action of state agencies.

Whenever he finds that any agency action is objectionable, the Ombudsman is directed to submit his criticism to the agency concerned—including any recommendations he wishes to make to the agency in question.

The Ombudsman also is required to report regularly to the Governor and the Legislature.

This executive concept operates from the premise that the Governor is the true Ombudsman for the people—and that his access to and from the people of the state is enhanced and increased by the amplifying efforts of the new officer.

The office of State Ombudsman, so established and lacking a legislative base, may be unable to function in a manner or scope significantly different from that heretofore covered on an *ad hoc* basis by the Governor's office and its staff. Nevertheless, the assignment is in capable hands, and it will assuredly serve productively as an interim, experimental establishment to be observed and evaluated with a view to statutory modification.⁽²⁶⁾

To an even greater degree, these problems of citizen-government relations plague the City of Portland, Multnomah County, and the encompassing multi-county metropolitan area.

Multnomah County has made a start on a limited scale. Effective November 3, 1969, David Hain was appointed Citizen Affairs Coordinator, a newly-established position within the County Department of Public Safety. As a part of his responsibility for implementation and coordination of a community relations program for that law enforcement agency of the County, is the specific duty "to review citizens' complaints, to insure their appropriate resolution and the need for the development of improved policy and procedure to prevent recurrence." His jurisdiction is limited to the Department of Public Safety, and he is responsible to the Sheriff, who is Director of that Department.⁽²⁷⁾ On an informal basis, however, some complaints are handled for other branches of the County government and for the Board of Commissioners. A flow of citizen complaints is in being, about one-quarter of which are sustained. Some extra-departmental complaints are referred to and followed up on in departments other than Public Safety.

Staff assistance to the Coordinator is minimal and not full-time, but divisions within the Department are drawn upon for assistance in investigations as required. The operation is reported as becoming well-integrated, effective in its role, and well supported in the County governmental scene.

In the case of the city, no real effort is being made to solve the structural deficiencies in the field in question.⁽²⁸⁾ The City Club of Portland has called

⁽²⁵⁾ See Appendix D, Comparison of Legislative Proposals.

⁽²⁶⁾ Mr. Haggard's reports for August through November, 1969 disclose a number and variety of matters coming to his attention:

(a) The use of the Ombudsman's office has been markedly increased: August, 75 cases; September, 87 cases; October, 87 cases; November, 104 cases. These "cases" have been in addition to numerous less formal contacts, inquiries and requests for assistance handled on a routine basis.

(b) The change in sources of matters coming to the attention of the Ombudsman indicates that the office is tending to relieve the Governor's office of initial handling of such business.

(c) The total of 313 "cases" reported during the four-month period involved complaints related to at least 54 different agencies, boards or offices.

(d) Though the percentage varies from month to month, the Ombudsman has reported that his office has been able to "somewhat help" or "appreciably help" in about one-half of those cases reaching his attention.

⁽²⁷⁾ Department of Public Safety General Order 69-44, Nov. 21, 1969.

⁽²⁸⁾ See discussion of City Club reports above respecting the government of the City of Portland.

attention to the urgent need to improve the communications between the Albina area and the officials at City Hall. While Portland and New York City have vastly different scale characteristics, the situations that give rise to multitudinous citizen grievances have their roots in many of the same traits of city life. Portland also has anonymity, frequent alienation, confusing complexity, absence of adequate information and understanding, unequal pressure access in ordinance-making and administrative decision-making, and inadequate devices for sensing the desires of groups and areas which lack articulate and representative spokesmen. These impediments to effective democratic city government are serious and have an important bearing upon such questions as the creation of an Ombudsman for handling urban grievances.⁽²⁹⁾

2. Relevant Experience in Other Jurisdictions

The Committee's review of the Ombudsman principle and its applications may be of assistance in the evaluation of its possible uses and adaptations in Oregon and the Portland area. The broad scope of this investigation is shown in Appendix C; however, comment and interpretation that may be relevant to present and potential development in this area are presented here.

In the Scandinavian countries, where the Ombudsman originated and has had its longest use, there have been real benefits to the cause of just government. In New Zealand, also, in the brief period of use, similar good results have been obtained. But the evidence of its effects elsewhere is still meager. It seems quite likely that the British adaptation, which limits the initiation of constituent grievances to those sent to the Commissioner by members of the House of Commons, may also be a valuable device for revealing and righting administrative wrongs. But if the Scandinavian mode of initiating the complaint procedures had been followed in Britain, a flood of complaints might have resulted, vitiating some of the essential traits of this institution, namely: the speedy consideration and personal judgment of the Ombudsman. Thus far, the largest number of Ombudsmen in a single country is three, and their staff assistants are a mere handful. Nowhere has there developed a considerable volume of local government grievance cases, largely because of the statutory limitations placed on their consideration.

The history of this institution also indicates that a nation's peculiar development, social structure and political culture will greatly influence how the Ombudsman system operates. Its story in Sweden and Finland is intertwined with that of an evolution, first from kingly absolutism to feudal checks on royal power, and then to the achievement of full-fledged parliamentary democracy and the abandonment of feudal social structures. These relationships gave the Ombudsman initial public esteem which, nurtured by the circumstances of well-qualified appointees to this office and a high quality of performance, plus generous press publicity, have provided a tradition that transcends the mechanics of structure.

Can this be done in the American scene? A full answer will not be available until more experiments are pursued. Doubtless the American political culture differs in important respects from area to area. Certainly the attitudes toward "spoils" appointments to public office are not the same in New York City or Chicago as they are in Milwaukee, Berkeley, Minneapolis or Portland. But we do not know how many other encumbering attitudes—such as indifference to racial bias, or satisfaction with the political and social status quo—might handicap an Ombudsman effort in Portland until it is tried.

One major difference which may handicap the design of a successful appointive system for the position concerns the focal point of Ombudsman control. In the European countries his role centers in his selection by a Parliament in which for this purpose the political parties eschew partisanship. He is Parliament's watchdog over all administrators. Its parties may govern alternately under a system that compels group responsibility within each party. Thus a consensus between them about such an office as the Ombudsman makes for a choice based on the criteria of high competence, judicial objectivity and dedication to a speedy redress of grievances, while showing appreciation of the necessity for administrative discretion in the performance of a great many administrative decisions.

⁽²⁹⁾Racial Justice Report, *op. cit.*

There is no comparable situation in the structure or behavior of a state legislature, such as in Oregon. Party is too often a pasted label, particularly on our senators, which splits apart on legislative organization and on important substantive matters that come before it. For a number of years, Oregon has witnessed the spectacle of a nominal majority of one party out-organized and out-voted by a minority party with the crucial assistance of a small number of the majority party. (The national Congress has a comparable pattern of party irresponsibility.) In the government of Portland, the role of party was abolished, and five separate "non-partisan" personal kingdoms substituted, one of them slightly elevated above the other four. The usual political situation is "every-fellow-for-himself" when stands are taken on controversial ordinances or policy issues.⁽³⁰⁾ There is, however, unanimity when (1) there is manifest danger of a voter backlash which might strike all of them, or (2) when some strong economic interest which may help or hinder in the next election wants to block or obtain an ordinance about which no general public interests have been alerted. These are not favorable environments for appointing and retaining an effective Ombudsman. Perhaps some adaptation of the plan proposed by Senator Edward Long of Missouri could be designed. Oregon does not, however, have the Missouri system of judicial appointments on which that system was based.⁽³¹⁾

Two other observations seem warranted. First, if an Ombudsman for urban affairs in the Portland area should be attempted, it must be recognized that not only will he have to consider the performance of local officials but that frequently state and/or federal officers may also be involved. This was quickly discovered by the Nassau County (New York) Ombudsman in the early months of his service, as related in Appendix C. There are now many government programs, usually including some federal grant-in-aid stimulus, which can raise such issues. Housing, welfare, highway, airport, crimes, water and air pollution, and education are fields of activity in which two or three levels of administration are likely to be involved. Other local bodies politic in metropolitan areas may also affect the program performance of the central metropolitan city as was found in the Ombudsman grievance work in Nassau County.

A second problem is the impact of the Ombudsman's check on administrative performance which might magnify the problems of delay. Delay has been universally found a frequent cause of citizen grievances. To govern effectively today, action must often be taken promptly. Land acquisition programs for road and sewer construction, flood control structures, etc., have been held up by litigation at great cost to programs, public services, and people. Zoning code changes chronically suffer from long delays due to lack of staff, or failure of the recommending agency to meet promptly, or duplicated hearings, etc. Most of these ills cannot be cured by an Ombudsman, but he may suggest internal administrative analysis and structural or procedural changes. Many changes cannot be accomplished except by the administrators themselves, or sometimes the legislature. The Ombudsman is not equipped, in most instances, to improve the administrative processes, though he has occasionally noted some previously overlooked factors. Your Committee has no data on the problem of delay while his investigations proceed, but Gellhorn points out examples in Sweden where the Ombudsman completed his generalist inspection without noting antedeluvian operational practices which a specialist inspection might have discovered.⁽³²⁾

Two very able observers, each with much experience in city administration, caution of another danger in the movement for Ombudsman adoption.

Frank P. Zeidler, former Mayor of Milwaukee, member of the Executive Board of the American Municipal Association and a consultant to it on urban and metropolitan problems, feels that the attention now riveted on the Ombudsman turns upside down our sense of what is important in making improvements in urban government. The real problems, in his view, are problems of public policy which, until overcome, will prevent any great improvement in city administration. Until such

⁽³⁰⁾City Club of Portland, *Portland City Government*, May 1, 1961.

⁽³¹⁾See Appendix C.

⁽³²⁾Gellhorn, *op. cit.*

problems as housing, race relations, crime, traffic, pollution, and unemployment have been solved, the Ombudsman's work would fall short of need in considerable degree. While the Ombudsman might help a few persons—as in housing or police administration—the major problem for dozens, hundreds or even thousands of people will remain untouched. He cannot produce the number of decent houses required, or the police department changes that are necessary, or the money for decent welfare standards. Mayor Zeidler thinks that instead of seeking a new Messiah entitled "Ombudsman," the "city had better address itself to the solution of the underlying and fundamental problems: This is the best way to employ its human and financial resources." As these problems are solved, more effective attention can be given to the refinements in administrative processes to provide administrative appeals for citizens entrapped in administrative regulations.

A further quotation from Zeidler is similarly oriented to fundamental urban ills:

One of the most frustrating things about American urban society is that, at the present time, it seems to reward those people and forces busily trying to break it down, either consciously or unconsciously. The racial extremists often triumph at election. The polluters of land, water and air are so politically influential that they cannot be prevented from carrying out their unethical practices. The slum landlords can hire attorneys to frustrate the city ordinances. The vice lords and the gambling syndicates seem to have partial control of many city governments. The social snobbery of an upper-middle income group prevents the solution of the problems of the racial ghettos in housing. The private motorist, who refuses to allow himself to be properly taxed to meet municipal government costs that arise from his motor vehicle use, is the dominant factor in municipal voting. The mass transit rider has little political power, and the pedestrian almost none at all.⁽³³⁾

A related but less pessimistic view of the Ombudsman is presented in a thoughtful statement by Randy H. Hamilton, a former city manager and former director of urban studies for the National Institute for Public Administration and currently Director of the Institute for Local Self Government at Berkeley. He too feels that an Ombudsman cannot be a substitute for civic reform which should center on the great policy problems that today confront American cities. He emphasizes the fact that during the short period in 1966 when the Mayor of Buffalo tried to bring citizen grievances to his own office, of the 5,000 complaints that reached him only a few had anything to do with the work of an Ombudsman. Most of the difficulties were concerned with setting the priorities in spending administrative effort and money. While the Ombudsman might induce an occasional priority change, decisions in important priority matters will be made by departmental and bureau officials, working hand-in-hand with the Council. The Ombudsman is not "snake oil" nor should he be expected to replace genuine reform in the structure of government, and in overhauling the methods of personnel selection, training and management which might develop able people-oriented public servants who will handle, quickly, cheaply, and fairly, most of the grievances that develop. At best, he insists the Ombudsman would be a supplemental remedy, a "band-aid where surgery is necessary."⁽³⁴⁾

A final handicap for either an Oregon or a Portland area Ombudsman attempting to provide prompt service is the still not well-integrated administrative structure in the state. The difficulty in the City is the dispersed administrative responsibility within the city hall, and the clashes between city and county government which arise as the county assumes more urban functions for the growing suburban populations. Basic structural improvements may result from the establishment of a multipurpose metropolitan service district under 1969 Oregon legislation. With regard to the state, its complex, fragmented, "leased out" form of administration has mocked the presumed constitutional responsibility of the Governor for operating state administration and has heretofore seemed beyond effective repair except for an occasional tinkering act squeezed out of the legislature. Since the days of W. S.

(33) *Annals, op. cit.*, Frank P. Zeidler, *An Ombudsman for Cities*, p. 123 ff.

(34) Randy H. Hamilton, *Ombudsman or What?*, *National Civic Review*, March, 1968, p. 132 ff. See also reference to report on Buffalo demonstration project, above.

U'Ren's People's Power League's plans for drastically revamping the state's administrative and legislative system, only one comprehensive effort to overhaul our ramshackle administrative organization had received legislative approval prior to 1969. In that year significant beginnings were made in executive branch reorganization by the Legislature and Governor McCall. One earlier effort occurred during the depression, when the Legislature allowed Hector MacPherson's cabinet government amendment to go to the voters, who defeated it. Other efforts in the administrations of Governors Holmes and Hatfield also failed. Most of the fragmentation in state administration and the checks on gubernatorial responsibility for administration could be removed by the Legislature. But proposals systematically to simplify structure and make the Governor really accountable, which numerous governors have urged, have generally fallen on deaf legislative ears over the years. It is doubtful that unless there is further legislative action and constitutional revision reform, Governor McCall's current effort will adequately and lastingly revitalize the legislature's atrophied auditory nerves.⁽³⁵⁾ Until related and overlapping activities are unified, results—however valuable inherently—will fall short of meeting major needs. Broad, fully effective and prompt grievance resolution, either by an Ombudsman or any other office, will be difficult to obtain.

Because of its newness and its exploratory character, no attempt is made at this place and time effectively to evaluate the Governor's Ombudsman and Multi-Service Center program. The program should be observed carefully during the coming months.

Local activity in the grievance-information-citizen relationship field shows the rising local and nationwide concern and movement for meeting this part of the urban crisis. The movement is embryonic, experimental, and in flux; the activities are expanding and evolving. A need is evident for any metropolitan city—Portland not excepted—to keep informed of developments and to keep pace with rising needs for citizens' services.⁽³⁶⁾

Review of current experience, however limited as yet, will bring to light principles, policies, measures, and proposals that will be worthy of consideration, trial and development in the Portland area. Such consideration might encompass the various forms of "citizens' relations," "citizens' services," "investigations," and "information" staff offices at city hall, city-county and neighborhood levels. The following devices should be considered:

- (1) The use of university and law school and urban studies center cooperation in planning and manning such establishments.
- (2) The "night mayor" institution for continuous and emergency access of citizen to government.
- (3) The "neighborhood planning councils" and "neighborhood city halls" concept for contacts for purposes of involvement, information, consultation, guidance, and of planning and coordination of public facilities and services at that level.

Experimental projects and other experience in municipal jurisdictions—New York City, Buffalo-Erie County, and Nassau County—cover a wide range of activities in response to recognized needs in all of these indicated fields.⁽³⁷⁾

Also to be noted is an Ombudsman-type post experimentally established for constituents in the office of a U.S. Congressman.⁽³⁸⁾

The Angus-Kaplan article in the American Assembly review pointed out that "we live in an age of government" in which "society can ill afford public mistrust of its governmental machinery," and in which "procedures for resolution of complaints against public administration are . . . of fundamental concern."⁽³⁹⁾ The authors observe:

⁽³⁵⁾Note both of reports above. Also City Club of Portland, *Constitutional Revision Review*, Feb. 10, 1967.

⁽³⁶⁾Annals, *op. cit.*, *An Ombudsman for Cities*, p. 125.

⁽³⁷⁾These experiences are recounted in some particularity in Appendix C for reference purposes in investigations and planning in Oregon. New York City and Buffalo activities were also referred to in the City Club's Racial Justice report, *op. cit.*

⁽³⁸⁾Annals, *op. cit.*, p. 125.

⁽³⁹⁾American Assembly, *op. cit.*, pp. 101-2, 127.

Many of these problems are most acute at the local level. Shifting population patterns and urban decay have brought scores of municipal administrations to the brink of economic and social disaster. Recent outbreaks of violence in a number of our heavily populated cities reflect the critical condition of many urban communities. Although federal and state government policies are unquestionably important to the individual citizen, he is more directly affected by local government administration. Hence the everyday public services like garbage collection, road maintenance, street lighting, planning and zoning, public utilities, public transportation and a host of other mundane but essential community functions, strike home to everyone.

People do not readily distinguish between levels of government. Attitudes toward public administration are general in nature, and shaped by personal contact. They are not significantly influenced by federal, state and local distinctions. Since a citizens' dealings with local government are closer and more frequent, public administration on the local level becomes of critical importance. . . .

The article concludes that local government offers distinct advantages as a testing ground for use of the Ombudsman principle. It warns, however, that care must be taken to assure that indiscriminate use of the Ombudsman label and proliferation of his function do not soil his reputation, and that the institution does not degenerate into just another complaint bureau. It recapitulates:

. . . grievances on the local government level may seem trivial compared to federal and state fields of public information. Nevertheless, these relatively small issues are of substantial importance to the complaining citizen. They arise more frequently and touch him more closely. His attitude toward government in general is largely shaped by his experience with local authorities. Thus the present experiments with local government Ombudsmen are of critical importance on the American scene.

Charles S. Ascher, of the City University of New York, cites Ombudsman scholar Donald C. Rowat's warning, in 1964, that "the greatest dangers to the success of the scheme in either Canada or the United States are that it might be discredited by being adopted in an unnecessarily truncated form, or in a form that may subject it to too much partisan pressure." Ascher continues that "today the warning may rather be that the Ombudsman is looked upon as a cure-all, an officer who will do things for a puzzled, baffled, or disgruntled citizen that are already being done or can better be done by others—including the administrator himself." In his review of Ombudsman literature, Ascher recognizes the citizen's needs for clearer grievance and information channels, saying that "in a complex urban society, the baffled citizen is more often lost than aggrieved." He concludes ". . . this is the perpetual business of the public service—to maintain the citizen's sense that the bureaucrat is indeed the servant. Is it not the task of the heads of services in Rowat's 'reasonably well-administered state' to nurture this sense of dedication among their staffs? How does one better strengthen a sense of morale in an organization: By leadership from the top, or by prodding from without? Is this not the basic issue?"⁽⁴⁰⁾

IV. SUMMARY OF CONCLUSIONS

The Committee's studies have disclosed the very wide recognition of the basic need for application of Ombudsman-type and other citizens' services at local and state government levels. Such recognition of requirements for improved citizens' services and citizen-government relations includes, notably, several national commissions, national and regional assemblies and symposia, bar associations, and political and civic leaders at all levels.⁽⁴¹⁾ Questions still remain as to the best means of meeting the needs in the various jurisdictions.

⁽⁴⁰⁾ Charles S. Ascher, *The Grievance Man or Ombudsman*, in *Public Administration Review*, June 1967.

⁽⁴¹⁾ See Introduction, above, the background data and discussion of Appendix C, and the bibliography of Appendix B.

When a new political institution develops in a democratic polity and responds to problems formerly overlooked—especially if it has been given a catchy name such as “Ombudsman”—some other related but significant institutional arrangements may be neglected. A kind of verbal inebriation takes over for a time and the fumes inhibit consideration of possible alternatives.

It may be assumed, from all accounts, that the role of the Ombudsman as developed in Scandinavian countries has been a very real contribution to justice and equity there. Its adoption may also result in genuine advances toward the “good life” for people in other places. But there are other institutional needs which would supplement its values and perhaps provide even greater contributions for the values it has brought to “good government” abroad. Reference here is to the efforts made in Britain, Japan, and more recently in New York and Buffalo, as well as recent beginnings in Oregon, which help the private citizens to learn how to help themselves in their relations with the maze of administrative entities that operate within all levels of government, particularly within the larger metropolitan cities.

Where does one go to find the public or quasi-public agency that can best provide assistance or advice in dealing with a particular problem? Only the sophisticated, with special experience or wide contacts with officials of public agencies can make their way comfortably. In the interest of the citizen, and of government itself, the way should be made easier for all.

The over-all conclusion of the “Arden House” American Assembly, reached after discussion in depth, was that “there is need in today’s large and complex government for mechanisms devoted solely to receiving, examining, and channeling citizens’ complaints, and securing expeditious and impartial redress.”⁽⁴²⁾

In consideration of views in favor of and opposed to Ombudsman proposals for national, state, and local government, and those with reservations, the foreword for the Annals symposium states: “The consensus . . . is that eventually some kind of Ombudsman system will be accepted.” A final comment is added: The use of the Swedish term “Ombudsman” in most countries of the world can be explained only in the same terms that one would use in explaining the universal use of such French terms as *laissez faire* and *coup d’etat*.⁽⁴³⁾

A 1968 resolution of the American Bar Association recommends that “States and local governments of the United States should give consideration to the establishment of an Ombudsman authorized to enquire into all administration and to make public criticism.” The resolution further proposes that enabling statutes or ordinances contain certain essentials relating to the office of Ombudsman and its authority, powers, independence, appointment, term, salary, staff, investigational scope, access to records, and liability.⁽⁴⁴⁾

The City Club’s Racial Justice Committee, composed of representatives of Ombudsman, Race Relations and Law Enforcement committees, has already been cited on the basic situation and need in Portland.⁽⁴⁵⁾

Pursuant to the Board of Governors’ charge, the Committee has directed its study and findings primarily to citizens’ grievances and services at the local and state levels of government. Conditions and needs at these levels—particularly as to the Portland area and to disadvantaged, alienated, or aggrieved individuals and groups—occupied a dominant place in the Committee’s interviews, consultations, research and deliberations. At the same time, the Committee sought perspective and balance in its findings through careful inquiry into the basic and general philosophy, history, evolution, and experience in the protection and handling of citizens’ rights and interests generally.

Consideration has been given in the past two Oregon Legislative Assemblies to the statutory establishment of a State Ombudsman, and the Governor has recently established such an appointive office in his executive branch. In either case, the Committee concludes the powers and duties of the office should lie in the expediting, protecting and commenting-upon fields of citizens’ rights. They should not be admin-

⁽⁴²⁾American Assembly, *op. cit.*, p. 3.

⁽⁴³⁾Annals, *op. cit.*

⁽⁴⁴⁾American Bar Association, *Reports*, 1968, Vol. 98, p. 637.

⁽⁴⁵⁾Racial Justice report, *op. cit.*, p. 62. Note also pp. 7-9, 46-50, 62-65 of that report, and Part I, Introduction, Review, above.

istrative in any sense—that is, the Ombudsman should not be empowered to *direct* any agency of government with respect to its policies and procedures. The Committee saw no constitutional impediments to the establishment of such an office.

The Committee considers effective narrowing of the citizen-government gap should receive urgent consideration of the major governmental agencies concerned—city, county, state, and administrative district. Studies and applications of the Ombudsman concept, as reviewed herein, indicate a range of needs and opportunities and of desirable directions of effort in this connection. Some of the more significant of such directions are briefly recapitulated:

Continuation and intensification of the state's "pilot plant" grievance-handling and citizens' multi-service centers at state, state subdistrict and problem-area levels. Encouragement and support of such centers and activities at municipal (county and city) and governmental metropolitan-area (including CRAG) levels. Support of correlated legal aid services.

Engendering of institutional (including university and college) participation and cooperation, and fostering of public information, interest, and involvement in these activities.

Establishment of covering government-organization arrangements and procedures and passage of enabling legislation to accomplish the ends.

Mindful of the present evolutionary situation and the experience to be gained during the remainder of the current biennium, the Committee presents recommendations, following, that are general in character rather than specific as to detailed provision of enabling statutes and ordinances.

They reflect, in short, a generalized conclusion as to the demonstrated need of continued, intensified, progressive and coordinated action on the part of governments at the several levels, in the improvement of organization and procedure for handling citizens' grievances and services on an effective and equitable basis. Such a governmental action program warrants the continued attention, for follow-up purposes, of The City Club itself.

V. RECOMMENDATIONS

The Committee recommends that:

1. The State Government should continue its pilot, appointive, Ombudsman office, including cooperation with grievance-handling operations at district and municipal levels, and that the experience of this operation be reviewed for effectiveness and support, as may be found appropriate, by executive and legislative action.
2. The State Government should continue and extend its programs for bringing government closer to the people, through administrative districts and multi-service centers conveniently accessible and open to citizens, and that it support and cooperate with the Columbia Region Association of Governments (CRAG) and municipal governments in the Portland metropolitan district in this connection.
3. The State Government, through legislative enactment if required, should enable CRAG to establish an office of Ombudsman with jurisdictional authority extending within the boundaries of CRAG and with authority to exercise its responsibilities respecting CRAG and all Oregon subdivisions of government within the boundaries of CRAG.
4. When enabled so to do, CRAG should establish, as a pilot project, the office of Ombudsman with jurisdiction authorized in accordance with Recommendation 3, and that CRAG and its constituent governmental agencies assume the leadership, in cooperation with educational institutions at all levels, in the development of a continuous educational program to enhance the understanding by all elements of the metropolitan community respecting the mechanics of all levels of county and municipal government.
5. The Ombudsman contemplated by Recommendations 1 and 4 should be charged to function primarily as a "protector" but authorized also to function as an "expediter" when appropriate to the handling of business brought to his office and authorized to comment on indicated substantive law reform in periodic reports filed by their respective offices.

6. Municipal governments of the Portland Metropolitan area, including the central city and county of Portland and Multnomah, should improve and extend provisions for grievance-handling and for conveniently located multi-service centers, in cooperation with CRAG and State Government.

Respectfully submitted,

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*Dr. McKinley, deceased March 21, 1970, contributed most notably and professionally to investigations, research, analyses and report drafting but, because of illness, did not participate in final Committee approval of report and recommendations.

Approved by the Research Board March 19, 1970 and submitted to the Board of Governors.

Received by the Board of Governors March 30, 1970 and acted upon April 6, 1970.
Ordered printed and submitted to the members for discussion and action.

APPENDIX A

PERSONS AND AGENCIES INTERVIEWED OR CONSULTED
BY THE COMMITTEE

Grant T. Anderson, Attorney, Counsel, School District No. 1
Claire Argow, Penologist, Member, Advisory Committee to Department of Corrections, and former head, Oregon Prison Association
Lawrence A. Aschenbrenner, former Public Defender, State of Oregon
George Birnie, Attorney, representing several special service districts
Robert M. Blum, Assistant to the Mayor (for Neighborhood City Halls), New York City
Edward "Skip" Bracken, Mallory Avenue Christian Church
John Buttler, Attorney, former member, Oregon State Board of Parole
Homer Chandler, Executive Director, Columbia Region Association of Governments
Donald E. Clark, County Commissioner, Multnomah County, former Sheriff, Multnomah County, former faculty member, Law Enforcement Department, Portland State University
Charles Davis, President, American Civil Liberties Union of Oregon
Mrs. Andries Deinum, Executive Secretary, American Civil Liberties Union of Oregon
Kenneth Gervais, then Associate Director, Urban Studies Center, Portland State University
Ron Gevurtz, head, Multnomah County Legal Aid
Gordon Gilbertson, Director, Public Welfare Division, Multnomah County
Marko L. Haggard, Ombudsman, State of Oregon; formerly of Department of Political Science, Portland State University
David Hain, then Research Assistant, Law Enforcement Committee, City Club of Portland; now Citizens' Affairs Coordinator, Department of Public Safety, Multnomah County
Ted Hallock, member, Oregon State Senate
H. J. Belton Hamilton, Jr., Assistant Attorney General, Department of Labor, State of Oregon
Leon Harris, Director, Model Cities Area Multi-Service Center, State of Oregon, Portland
Loren Hicks, Legislative Advisor to Governor, State of Oregon
James C. Holzman, then Director of Public Safety and Sheriff, Multnomah County
Dwight Hunter, Assistant Executive Director, Columbia Region Association of Governments
Andrew Juras, Director, Oregon State Welfare Commission
William Knouff, then Principal, Jefferson High School
Fay Layday, then Chairman, Multnomah County ADC Mothers
Dorothea Lensch, Director, Bureau of Parks and Recreation, City of Portland
Hans A. Linde, Professor of Law, University of Oregon
Hon. Tom McCall, Governor, State of Oregon
Charles Merten, then Director, Albina League Services Division, Multnomah County Legal Aid
Edward Mitchell, Secretary, North Branch, Portland YMCA
William Moshofsky, member, Advisory Committee, Department of Correction, State of Oregon
Robert E. Nelson, Chairman, School Community-Citizens' Committee
Lt. William Newell, member, Oregon State Board of Parole and Probation, former member, Oregon State Police and Governor's Aide
Warne Nunn, formerly Executive Assistant to the Governor, State of Oregon

Russell Peyton, Director, Human Rights Commission, City of Portland
A. McKay Rich, Director, Portland Metropolitan Study Commission, State of Oregon
Ted Runstein, Attorney, Albina League Services Division, Multnomah County Legal Aid
Hugh Smith, Attorney, Chairman, Administrative Procedures Committee, Oregon State Bar Association
Robert Y. Thornton, Attorney, then Attorney General, State of Oregon
Larry D. Thomson, Attorney, Salem, Oregon
Lance Tibbles, former Service Director, Buffalo, N.Y. Ombudsman Project; currently Assistant Dean, Law School, State University of New York, Buffalo, N.Y.
Calvin Toran, Assistant Director, Model Cities Area Multi-Service Center, State of Oregon, Portland
George Van Hoomissen, District Attorney, Multnomah County
Vern Weiss, Director, East-CAP Project, Portland
Jack Wiseman, Deputy Director, State Board of Parole, State of Oregon

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APPENDIX C

ADDITIONAL NOTES ON OMBUDSMAN AND RELATED CONCEPTS,
INSTITUTIONS, PROCEDURES AND PROPOSALS

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APPENDIX C

A. INTRODUCTION: ROLE OF OMBUDSMAN**1. Purpose of Notes**

The following notes represent a digest of research into and discussion of the Ombudsman background carried out by Committee members as a basis for knowledgeable consideration of "the feasibility and desirability of implementing the Ombudsman or Public Protector concept within various levels of non-federal government structures in the State of Oregon . . ." It has been reproduced in this form for background and reference purposes of the Committee itself and of others who may be concerned with developments in this field.

2. The Classical Role of the Ombudsman

Essentially the classical role of the Ombudsman, exemplified by the office in Sweden, is to receive complaints from any citizen about abuse of official powers resulting from illegal decisions, or arbitrary or discourteous conduct on the part of an administrative official (and in Sweden this includes judicial and military officials also). If, after preliminary inquiry, he believes a complaint has merit, he makes a full-scale investigation. He reports his findings both to the complainant and to the agency concerned. But he does not have to wait for a complaint. He may initiate an inquiry on his own motion, if alerted by a news report or some other source of information. In the case of official violation of the law in Sweden and some other countries he may initiate or recommend prosecution of the erring official, and the making of suitable recompense to the wronged citizen. But he may also suggest (and this is the more frequent action) that the agency reconsider the case and perhaps change its procedures in this and similar cases. The latter kind of recommendation frequently arises because one of the basic causes of many grievances is the delay in making a decision. The Ombudsman may also prod an agency to give complaining citizens adequate explanations indicating why he is unable to grant their requests, when that is the case. He has found that many complaints arise because the complainant does not understand the legal or policy reasons for denial of his request. Thus the Ombudsman, by persuasion, by a full collection of the facts, by careful determination of the meaning of the law involved, and by his freedom from bias, works toward justice and understanding. All this effort is provided to the complainant with expedition and usually without charge.

B. HISTORY OF THE OMBUDSMAN INSTITUTION**1. Sweden Originates the Ombudsman Office**

History provides occasional illustrations of governmental institutions which have originated as instruments for an authoritarian purpose but over a long period of time have been trans-

formed into tools for democratic use. The Swedish Ombudsman function grew out of such an instance. In the early 18th century the King appointed an officer, the Chancellor of Justice, to see that public officials properly performed their duties during the King's frequent and prolonged absences. In 1809 a new Swedish constitution formally limited the King's powers in favor of the Four Estates. It also gave the latter an Ombudsman to share the controls over officials. A half century later the Estate system was superseded by the Swedish Parliament (the Riksdag) which took over the appointment of the Ombudsman, while the Chancellor was also shorn of his duties as a minister of the King. The Chancellor and the Ombudsman for civilian affairs divided the Ombudsman role between them, although the former retained some other functions as legal advisor to the King and Cabinet. Then in 1915 a new position of Ombudsman for Military matters was created to provide impartial and continuous civilian investigation of complaints, with necessary intervention in cases of abuse in military administration.¹ Thus today there are three Swedish officers functioning as Ombudsman, each with a small professional staff and clerical assistants. Informal conferences between the three seem to have avoided jurisdictional disputes and to have achieved a smooth working collegueship.

Before we examine the working and results of these Ombudsman offices, we should note that Sweden also makes wide use of administrative appeals inside the hierarchies which manage its many nationwide programs. Thus, its social insurance-welfare programs have their own patterns of appeals, hearings, advisory committees and conferences with their citizen "customers." Consequently, few complaints come to the Ombudsman or Chancellor from persons involved with these new programs. In addition, Sweden has a series of Administrative Courts which culminate in a Supreme Administrative Court. Appeals within this judicial system relating to administrative decisions are guaranteed—with a minimum of two, often three, and, in property tax and income tax matters, four hearings to test the legality and fairness of such decisions.

The Swedes also have judges and civil servants holding important positions with penal responsibilities which are enforced by the ordinary courts. If, "through neglect, imprudence, or want of skill," he disregards his duties according to the statutes, instructions, or the nature of his office, "he shall be condemned . . . to a fine or the suspension for neglect of his duty . . ."²

Appreciation of these liabilities as well as of the Ombudsman institution in Sweden requires an understanding of the special protection of

¹All military personnel above the rank of corporal, except the Minister of Defense, are subject to the jurisdiction of the Military Ombudsman. During World War II, even though Sweden was a non-combatant, the military build-up produced about 2,000 cases yearly for this Ombudsman, based chiefly on complaints by conscripts.

²Ronald C. Rowat, ed., *The Ombudsman: Citizens' Defender*, 1965, p. 23.

the judges and civil servants against the loss of their offices. The constitution requires, that except for persons holding "posts of confidence," removal for disciplinary reasons cannot be made without hearings. Moreover Swedish top Ministers do not actually administer the programs within their Departments. These tasks are turned over to high permanent civil servants or to Boards and Commissions which are independent of the Ministers. Hence Swedish officials have wide latitude in applying statutes and regulations to the public. While superior officials may issue directives to the officials actually entrusted with decision making, these are not binding. "Once an official makes his decision, it cannot be overruled by his superior and it is subject only to administrative appeal. In most of the administration as well as in the judiciary, the Swedish public official is to make his decision 'according to his own understanding of the law and his own judgment' . . ."³

While the penal sanctions against erring public officials are stiff, the ordinary citizen cannot initiate a case and bring his claim before the courts. This is left to a public prosecutor. However, any aggrieved person can take his claim to the Ombudsman or the Chancellor of Justice, either of whom may start prosecution.

Except in the minority of cases in which an official has misapplied the law and whom the Ombudsman may prosecute in the courts, the powers of this Ombudsman rest on his moral influence, i.e., on the quality of his inquiries, on the belief of the public in his integrity, fairness and knowledge. Such "public opinion" support rests on a number of processes. First is his election. This begins with the tradition that the candidate must be trained in law and, usually, a member of one of the higher courts. While his term is four years, frequently with a renewal for a second and occasionally a third term, on his retirement he may choose either permanent retirement with full pension or return to the judiciary. These safeguards as to tenure are coupled with the practice of non-partisanship in election, the Ombudsman being chosen by a body of 48 electors, 24 from each house of the Parliament. Since World War I, selection of the Ombudsman has been unanimous save for one Military Ombudsman for whom 24 votes were cast while 23 favored reelection of his predecessor. While Parliament may dismiss an Ombudsman it has never done so.

The Ombudsman's responsibility to Parliament requires the filing of an annual report which discusses and illustrates the cases he has handled. He hands over to the standing First Law Committee his records and minutes for examination. That Committee may also call for the complete documentary file for any case in which its members may be interested, particularly in those cases which have brought criticism. The Committee's secretary examines these records and reports and brings to the Committee's attention anything that he thinks it should

be aware of. The Committee's report is considered by both Houses. A few debates on the report may occur and occasionally members rise to criticize a particular decision, with the chairman or some other member supporting the Ombudsman. On a few occasions an official criticized by the Ombudsman has complained to the Committee. But thus far no action on such complaint has been taken by the Committee.⁴

It seems clear that Parliamentary disciplinary action against an Ombudsman has occurred only when he has not been reelected. On the other hand, Parliament does not itself investigate particular administrative acts. The Swedish constitution forbids this. Parliament may create special Commissions to study problems that may call for new administrative legislation and members of Parliament may serve on such a Commission. Even so, these bodies do not resemble American Congressional committees. Such phenomena as the Senate McClellan Committee's inquiry into the administration of the Office of Economic Opportunity could not occur under Swedish law and practice.

One more Ombudsman-Parliamentary relationship requires notice. The annual report may contain a recommendation for statutory changes in the interest of good administration. Or it may also suggest the need for more funds in order to carry out administrative duties more promptly or satisfactorily. Parliament sometimes responds to these advisory recommendations.

There seems to be widespread satisfaction that the Ombudsman office is free from party bias despite its accountability to Parliament. Ombudsman reports to Parliament are printed for use of administrative and parliamentary personnel, and for use of the press, libraries, scholars and special public interest groups.

An officer of the national association of newspapers visits the civilian Ombudsman's office every day to scan the files for new cases or to follow up on particular investigations. Sweden makes official papers available to any newspaper or citizen asking to see them. Other Ombudsman countries place some limitation on "pitiless publicity" without, however, preventing reporters from obtaining the essential stories about their Ombudsman's activities. The Swedish Ombudsman cannot overrule an administrator's or a court's decision but the respect which he seems to have generated in the Scandinavian countries (and in New Zealand) for his competence and fairness, plus the general public esteem for his role and performance, are said by all the studies reviewed to have made for widespread acceptance of his indispensability.

This opinion seems to be shared even by citizens and economic groups who rarely make use of the Swedish Ombudsman's offices. It must be remembered that during the course of the 19th and 20th centuries even small countries such as Sweden underwent great economic, industrial and social changes which revolutionized not only the political and social systems but so enlarged the functions of government as

³Stanley V. Anderson, in *American Journal of Comparative Law*, Vol. II, page 225, Spring 1962.

⁴Rowat, *op. cit.*, p. 47.

to create a galaxy of regulatory and public service agencies comparable to the most advanced polities of western Europe and North America. Along with these new and expanded public activities, appellate devices within the many administrative agencies were set up to deal with special problems related to "customer" acceptance of proposed regulations, many of which require a fairly continuous process of change to meet differences in impact of programs on varying client groups and to respond to the need for change as developments occur.

Because of these new consultative and review devices inside the administrative agencies, the Swedish Ombudsmen have been able to carry the guardianship work load that comes their way with small staffs and with expedition. The underlying fact of small national population also influences this situation. But the expectation of the complainants and the public that cases will receive the personal attention of the Ombudsman or his deputy (who is appointed in a similar manner) and that the problem at issue will not be allowed to drag along unanswered makes this position a very demanding one.

In 1957 the Civil Ombudsman was given the added duty of receiving complaints against municipal officials. Even though a number of limitations have been placed on local matters subject to his supervision the volume of such cases seems to be steadily growing.

During the 19th century civil liberties questions predominated in the Ombudsman work load. There is no doubt that the evils of prison administration and mental institution restraints were first systematically exposed by the investigations of the Ombudsman, whose findings were the chief stimuli for reforming the practices of these institutions that now are generally models of good management. Even today, however, as illustrated by the data for 1964 and the four preceding years, the five most numerous categories to which he gave his attention were, in descending order, court behavior, police authorities, prison administration, public prosecutors, and mental hospitals.⁵ Gellhorn estimates that because about 90 percent of the complaints are found by the Ombudsman's preliminary review to be not justified, the small staff allowed him can keep fairly current with the thorough investigation of the remaining 10 percent. A similar small ratio of valid to unwarranted complaints is found in the other Ombudsman systems.

It is also true that many complaints are filed because the citizen complaining did not understand why his request to an administrator was denied. Once the situation has been clarified by the Ombudsman's report he usually accepts the action taken. It is because of this misunderstanding that the Ombudsman carries on a continuous campaign to persuade public officials to give written explanations of their denial of citizen requests. The Ombudsman takes his own medicine by attaching a reasoned explanation to his own denials of the complaints he finds without merit. But he has not yet convinced

Parliament that it should require both courts and administrative officials to do this.

While the Ombudsman's long-run purpose is to improve future administrative action he does obtain results for most of the citizens victimized by wrongful action, even though *he cannot order a change of decision*. Says Gellhorn: "In cases involving withholding of licenses, illegally seizing private property, or some privilege arbitrarily withheld, the official whose action he finds to be wrong practically always changes his action voluntarily. Even more distasteful, the Ombudsman may recommend to the official that he pay damages to the wronged party and this is usually accepted. The sanction behind this behavior is the threat of prosecution by the Ombudsman if the latter believes the decision taken was clearly illegal."⁶

It is apparent that the Swedish Ombudsmen have been performing very useful services in relieving citizen abrasions suffered from bureaucratic hands. But a modifying conclusion well expressed by Gellhorn seems also warranted. He points out that most grievances, even most important ones, are not brought to the Ombudsmen. Thus in 1962 and 1963 the Central Medical Board disposed of over 3,000 complaints concerning the operation of mental hospitals, while the Ombudsman during the same period handled only 225. Gellhorn also says:

. . . spokesmen for major elements of Swedish life indicated during interviews in 1964 that the Ombudsman had no significance for them or their members despite their frequent and important contacts with other public authorities. Among those consulted were such diverse groups as associations of retail enterprises, civil servants, school teachers, labor unions, shipping concerns, forest owners, insurance companies, agriculturalists, heavy industries and banks. Even among the unorganized elements in society, such as those who use free legal aid services and those touched by social insurance or health administration, recourse to the Ombudsman is so rare as to be all but disregarded.⁷

Nevertheless, the spokesmen for these groups outside the orbit of Ombudsman effort unanimously agreed that the office was a "good safety valve for the community" when no other means of securing suitable official attention may exist. But they also felt that "regularized methods of obtaining specialized review have been brought into being in modern times, so that the citizen with a problem is no longer helpless beneath a bureaucratic thumb as perhaps he once was. 'In olden days', a representative of a large economic interest declared, 'everybody needed the Ombudsman because there was no place to turn when an official or a judge did something outrageous. The office holders had all the power and the people could not stand against them. Nowadays, if we have a problem, we usually have a good route to follow in order to get suit-

⁵Walter Gellhorn, *Ombudsman and Others, Citizens Protectors in Nine Countries*, 1966.

⁶*Ibid.*

⁷*Ibid.*, p. 217.

able attention. In my opinion, not many normal people are likely to complain to the Ombudsman. As a generality he gets the unduly combative, hypersensitive, the off-beat types, while others look for more direct channels and go through them.'"

Gellhorn concludes: "While this is an overstated opinion, it seems essentially sound. Swedes do like the idea behind the Ombudsman, and are happy to have his office as a protection in reserve. But a general bureau of complaints is an inefficient means of dealing with modern government's perplexities. Sweden's sophisticated citizenry chooses to use sophisticated review procedures when they are available."

The inspection role assigned the Ombudsman to visit every national public agency once in 10 years (this includes the courts) is impossible for him properly to fulfill. First, he cannot reserve sufficient time from the individual cases he receives to meet such a schedule. Second, while he may provide some valuable insights about administrative operations as a generalist, he cannot match the value of specialist inspections at frequent intervals. Gellhorn gives several striking instances of the limitations of the Ombudsman's inspection performance because he and his small staff lack specialized qualifications.

2. Ombudsman in Other Scandinavian Countries

The basic elements in the Ombudsman institution as it has spread to other Scandinavian countries are very similar to those in Sweden. However, a few important characteristics will be briefly noted.

a. Finland

This country was a part of Sweden until 1809 when it was taken over by the Russian Tsars. It has also shared during the 17th century the surrogate role of a Chancellor of Justice who served the Swedish King to keep his officials within the law. But after Russian dominance was established the Tsar also provided a Governor General to whom the Chancellor was legally subordinate. Nevertheless the 17th century official (renamed the Procurator) now also watched the Governor General to see that he observed the law. (The Swedish legal system had continued when Finland came under Russian rule.) But when the active Russification program developed late in the 19th century the defensive task of Procurator became increasingly difficult and some were fired by the Tsar. With the Revolution of 1917 and the Constitution of 1919 the protective role of this official, renamed Chancellor of Justice, was re-established. He attends all sessions of the Council of State, chaired by the President of the Republic, or the Prime Minister. Though he cannot veto action taken there he keeps check on official action proposed or taken. If any action is proposed or taken by a Cabinet officer which he deems contrary to law, he is supposed to point out this fact and the nature of the illegality. If his advice is disregarded, his views

must be recorded in the minutes of the Council of State. If the President ignores his recommendation for prosecution of an offending officer, the Chancellor can then take the case to Parliament. Should the Chancellor be accused of an illegal action he may be tried in the same High Court of Impeachment as would a Minister of State.

To ease the strain arising from prosecutions the Chancellor is today consulted in advance of preparing the agenda for the Council of State. And his advice is solicited frequently by Ministers in advance of action. The tradition surrounding the Chancellor office built up during the period of Russian oppression provides a public opinion support that has preserved the independence of the Chancellor in the exercise of his guardianship role.

But in its constitution of 1919 Finland also copied the example of Sweden's Parliamentary Ombudsman. Since 1932 this position has reached a status of importance rivaling that of the Chancellor. The younger judges of the lower courts usually provide the candidates for the position. Parliament may not dismiss him—although it can refuse to re-elect him. His independence of action was strengthened in 1961 when pension rights were guaranteed to him and his dependents and his staff was given the pension rights of permanent officials. Yet because of differences in the political climate in Finland and its traditions about government, there has been much more connection between the Ombudsman and politics than in Sweden. A few have become cabinet ministers after their resignations. One qualified observer asserts that the recent trend is away from partisan association.⁸

Between the Chancellor and the Ombudsman the whole body of public officials, including the judges and municipal and church organs of self-government, are superintended. But the Ombudsman usually uses one of the public prosecutors to take over a prosecution which he has recommended. In 1933 the Chancellor's job was lightened by turning over to the Ombudsman all duties of enforcing law in the military establishment, in penal camps, penitentiaries and other detention institutions. The Ombudsman of Finland uses periodic inspections much more fully than does the Chancellor. Their jurisdictions coincide in the field of penal administration but their emphasis is different. The former is chiefly concerned with the rights of the individual prisoner, while the Chancellor centers his interest in prosecution and law enforcement. The Ombudsman is also frequently appealed to by professional organizations of state officials in such cases, for example, as the alleged erroneous filling of certain vacancies, or failure of the Cabinet to negotiate with association representatives over official salaries before presenting their budget to Parliament.

The Finns follow the general Swedish practice with regard to access to public documents,

⁸Annals of the American Academy of Political and Social Science, *The Ombudsman or Citizen's Defender: A Modern Institution*, M. J. V. Fliden, "Finland's Defenders of the Law," p. 33.

including the right of the Chancellor and Ombudsman to internal minutes and attendance at any meetings of a public agency. Each guardian is enjoined to study the case of anyone who presents a sufficiently convincing written statement that his rights have been trespassed upon by an official or by a public agency. No fee is charged. If the letters come from some civil servant in a public agency they must be forwarded, without opening. This does not apply to letters from patients in a mental hospital.

The processing of cases follows a pattern similar to Swedish practice. Even obviously unfounded complaints are turned over to staff lawyers and will be answered by a short letter from that officer or occasionally by the Ombudsman or Chancellor himself. When valid complaints are thoroughly studied the decision is drafted by the lawyer aide to whom the case has been assigned. But it is checked and signed by either the Chancellor or Ombudsman and countersigned by the staff deputy. As in Sweden, neither guardian has the right to overrule the official or agency. But if a legal requirement has been ignored or misinterpreted, then either prosecution may follow or the appropriate internal disciplinary action within the agency itself may be recommended. Increasingly, it is reported, a milder action known as a "reminder" is used. This is a critical statement about the action taken which may also be accomplished by an admonition that the official should follow a different procedure in future instances of the kind. Professor M. S. V. Hiden of the University of Helsinki Law School and part-time legal advisor for the Parliamentary Ombudsman, says that while the official or agency is technically free to disregard the "reminder" if the officer's disregard is brought to the guardian's attention, prosecution may result. Consequently "the officials in the whole administrative branch in question follow the advice in such reminder closely."⁹

The Swedish practice is followed by making annual or special reports suggesting improvement in the existing legal rules when it is believed this will improve administrative results. Both offices observe the same rules of public access to documents in their files as govern other public agencies. They usually notify the press of their decision in cases of wide interest. Each of these officers makes an annual report, the Chancellor to the President and Parliament and the Ombudsman to Parliament alone. But these appear not to have been taken so seriously as in Sweden.

The work load of these officials as measured in numbers of cases, from all sources, for the period 1956 to 1965 was a yearly average of slightly over 1,000 for the Ombudsman and for the Chancellor slightly less than 800. But the percentage of complaints judged to have merit was only 5.8 percent in the case of the Chancellor and 8.5 percent for the Ombudsman.

Public attitudes toward these Finnish protectors of individuals from officialdom are reported in the study by Professor Hiden. He says

that only in the last few years has significant criticism been made by Finns. These he says have borrowed from adverse comments by Walter Gellhorn, an American legal scholar. Their gripe is that the Finnish Guardians hide behind narrow legalisms and do not champion individual freedoms. Hiden thinks that the mass media of Finland do not pay nearly so much attention to the role of these officers as such media do in Sweden. In his own view the potential of these institutions to develop the rights and freedoms of citizens has not been used to the fullest extent. They might play a more active role in taking the feed-back from the public into account. This is especially relevant to the Ombudsman, who does not have the distracting burdens of the Chancellor of Justice as the highest prosecutor and advisor to the government. This plea for more Ombudsman "activism" does not contradict the view that, "in the framework of Finnish society, the guardians have done a good job and have undoubtedly exerted a significant positive influence on public administration."¹⁰

b. The Norwegian Ombudsman

Two Norwegian Ombudsmen, one established in 1952 for Military Affairs and the other in 1963 for civilian matters, were set up to provide the "little man" assurance that his complaints against public officials and agencies would be given competent attention, expeditiously and without cost. Their powers resemble those of the similar officers in other Scandinavian countries. The civilian protector may report a valid complaint to the administrative agency in which the offense occurs, expecting the latter to act in compliance with his decision. But if he does not do so, the complainant may apply to a court. Normally the agency takes the appropriate action without such recourse. Included within this Ombudsman's jurisdiction are national, and a few aspects of municipal, administration—especially civil rights—but not decisions of the Cabinet or of the Courts. Before the Ombudsman acts on the complainant's behalf the latter must have exercised his right of administrative appeal. No one may complain to the Ombudsman about a grievance that is more than a year old. However, the Ombudsman can, on his own motion, initiate a complaint in such a case. Any private person, individual or corporation (except a municipal corporation), citizen or foreigner can take his complaint to the Ombudsman. Occasionally the Ombudsman calls on the legal aid of an attorney to represent the private party in a case involving an elaborate factual inquiry, including testimony.

As in the other countries a large proportion of the complaints (in Norway about two-thirds) are rejected. But if a complaint, however insignificant, is valid and within the Ombudsman's jurisdiction it is given serious consideration. As in the other countries, the first step is to obtain the relevant documents from the agency where the alleged error or injury occurred. If these data raise doubts about the

⁹*Ibid*, p. 37.

¹⁰*Ibid*, p. 40.

agency's decision, the agency is asked to provide the Ombudsman with its opinion, particularly about the points in the case which are unclear or raise doubts of the correctness of the decision. During this procedure the complainant is kept informed of developments and these facts are also made available to the public. Of course the Ombudsman has access to the offices and premises of every agency lying within his jurisdiction. As in Sweden and elsewhere, the staff counsellor chiefly involved in assembling and reviewing the data drafts a statement. In case this denies the complaint, it is sent to the complainant with a copy to the agency involved. If the conclusion is critical of agency action, or involves a recommendation concerning it, the statement goes to the agency or official responsible, with a copy to the complainant. All draft statements are finally formulated by the Ombudsman. As elsewhere, he has no authority to order a change in administrative decisions but he is free to note errors or negligence. He may also declare that a decision was invalid and suggest that compensation should be paid unless a new decision can be made to remedy the situation. This right of criticism applies to discretionary powers if the Ombudsman feels that the decision was "clearly unreasonable" or "contrary to proper administrative practice."¹¹

The Norwegian Constitution, voicing a separation of powers doctrine, excludes court functions from the Ombudsman. The administrative functions of the courts, however, can be reviewed by the Ministry of Justice, and that department's decisions are subject to complaint before the Ombudsman. But he must keep his investigative nose out of those ministry decisions relating to judicial administrative acts. Where a case raises doubtful legal questions, which can only be resolved by the courts, the Ombudsman may point this out to the complainant and recommend legal aid from the Ministry of Justice to permit the complainant to bring suit.¹²

As in most other Scandinavian countries the Ombudsman is elected by the Parliament (Storting) for a four-year term. His salary and pension are equivalent to those of a Supreme Court Justice. His staff is appointed by the President of the Storting. Many complaint cases are referred to him by members of the Storting, but if a complaint has been considered by that body he cannot deal with it.

His annual report must be submitted by April 1 of the following year. During the annual debate on this report the Storting has always expressed its satisfaction with the Ombudsman system. The annual work load has involved about 1,000 complaints, about two-thirds of which have been rejected as invalid. On his own volition the Ombudsman has also initiated from 14 to 28 cases each year. Of the complaints accepted for investigation, about 100 are found to be unfounded and 150 are rejected because the complainants did not exhaust their right to administrative appeal. Unlike the

situation in Sweden, a large group of cases concern social security benefits; many are also about employment conditions and wages. Prison inmates constituted 26.2 percent of his complainants in 1966 and 18.2 percent in 1967. About one-fourth of all complaints considered related to administrative procedure, chiefly about excessive slowness. Out of 1,719 cases given consideration during the first five years 26.8 percent were successful, but it may well be that the deterrent effect of the Ombudsman system has been equally important.¹³

The Military Ombudsman, also appointed by the Storting, must visit all military camps once a year to study personnel conditions, particularly for the conscripted men. He also receives complaints from military employees of the military establishment. Their gripes center on employment, wages and promotions. While the Military Ombudsman has an Advisory Board to aid him, he does not refer cases to it unless some issue of principle or of particular public interest is involved. Members of the Board, however, undertake inspection tours with the Ombudsman and take part in important cases. They also second the proposals for legal or other improvements which he includes in his annual report. Board members can require that particular cases be discussed with it. It files an annual report with the Storting, with a copy to the Minister of Defense. The annual case load of the Military Ombudsman runs between three and four hundred. The complaints deal chiefly with questions of conscription, exemption, discipline, and criminality.

c. Denmark—a Star Performer

All of the studies read give high praise to Denmark's Ombudsman system which was adopted in 1954 and made operative in 1955. Much of this praise seems due to Professor Stephan Hurwitz, the first Ombudsman, elected in 1955 by the Folketing (the unicameral Parliament) and re-elected after each general election since. His jurisdiction covers all administrative personnel in national administration except the courts. It even includes the Lutheran Church's civil servants, except for matters relating to doctrine and preaching. It embraces private institutions (such as children's homes) whose expenses are paid by the government and whose administrators are subject to final approval by the Government. Even the privately owned National Bank of Denmark comes under his jurisdiction because it performs important currency, trade and other public functions. His jurisdiction also extends to cabinet members. In 1962 it was broadened to cover municipal authorities in any matters for which an appeal to a national authority may be lodged. But he cannot consider complaints arising from the behavior of the Folketing or of its committee.

As elsewhere in Scandinavia the Ombudsman cannot reverse or change an administrative order. But the law permits him, in a case in which a minister would be held responsible

¹¹Annals, *op. cit.*, Sverre Thune, "The Norwegian Ombudsman for Civil and Military Affairs," p. 47.

¹²*Ibid.*, p. 49.

¹³*Ibid.*, p. 52.

under the civil or criminal law, to recommend that prosecution. He may also order the proper prosecuting authority to begin action against any other person coming under the purview of his office. He may order the appropriate administrative authorities to start proceedings against civil servants and may state his views on these matters to the person concerned in the complaint. But these powers he has not used. Even his right to initiate complaints has seldom been exercised. As Professor Abraham writes: "He is kept amply busy by the complaints that reach him for the public (most of which, incidentally, are brought against a unit of government—a department, agency, or bureau—rather than against an individual)."¹⁴

In performing his inquiries he is given powers comparable to the Ombudsman in Sweden. Similarly, he cannot reverse an administrator's decision or punish the erring official. Very seldom however does an official ignore the Ombudsman's "suggestion," "observation" or "advice." The Ombudsman may "instruct" the administrative superior of an erring civil servant to take the appropriate disciplinary action and he can ask the public prosecutor to start court action against an official he finds has committed a criminal offense. But these ways of obtaining punishment are practically avoided. His powers of criticism and the support given him by the press have, as in Sweden, brought acceptance of his recommendations. Anyone may initiate a complaint in his office who has some degree of personal involvement in the situation complained about. But the available appeals in the administrative agency must have been exhausted before the Ombudsman will accept the complaint, and the basis of the complaint must have occurred within one year.

The volume of complaints received by this Ombudsman during nine of the twelve years of this office has ranged from slightly over 1,000 to 1,370. Complaints which he has initiated have added not more than 24 per annum. The most frequently voiced gripes have concerned: (1) the qualifications of an official in the decision-making process; (2) bias on the part of an official; (3) incorrect or incomplete available data resulting in harm to the petitioner; (4) failure of an official to specify a reason (or reasons) for a decision; (5) undue delay in the administrative process; (6) arbitrary, unreasonable or capricious procedure; (7) rudeness or other untoward official behavior; (8) willful official negligence; (9) any other act of mal-, mis-, or non-feasance in office."¹⁵

The Ombudsman's personal attention is given to every complaint on its arrival; it is then passed successively to his chief assistant and a legal assistant who also read it and make notes; then the complaint is turned over to a legal assistant to make the full investigation if it is decided to go ahead. These assistants brief the Ombudsman on every case, and occasionally he carries out the full-fledged inquiry himself. The

rejected complaints (which are about 90 percent of those filed) are given preliminary investigation and answered within two weeks.

Whether or not the extravagant praise given to Professor Hurwitz, who occupied the Chair of Criminal Law at the University of Copenhagen before he was unanimously chosen Ombudsman in 1955 is fully warranted, it seems remarkable that all members of the Parliament from rightists to Communists have voted for him in each election.

3. Eastern Europe

In Eastern European countries the long-standing and principal reliance for citizens' protection has been upon the principle and institution of the Procurator, with powers and responsibilities both for the enforcement of laws and edicts of the state and for safeguarding the civil rights of the citizens.¹⁶

For these countries, information and appraisals are less comprehensive than for western countries, and measures, situations, and accomplishments are more difficult to evaluate. However, some pertinent information is summarized.

In the USSR, the procuracy, which originated with Peter the Great, has broad powers, not unlike those of the Ombudsman, directed toward preservation of the rights of individuals. Complaint units and procedures are provided for in each ministry or important institution of government. A basic theory is that the legislatures are the major protectors against administrative acts that may adversely affect the citizen. Communist party machinery also has a role in supervision of many enterprises, including that of protection of people's rights.

In Poland, a Procurator General exercises the dual functions mentioned. In that country a Code of Administrative Procedures has been established together with citizens' rights of complaint. An Office of Letters and Complaints is provided for in the Council of Ministers. Communications media are also used as channels and clinics for the airing of complaints concerning deficiencies of governmental organizations.

Yugoslavia has a Public Prosecutor with powers, similar to those of Poland's, relating to the legality of administrative acts and the protection of citizens' rights. There are also Bureaus of Petitions and Proposals in the several republics, through which complaints may be channeled. The President and Vice President also maintain complaint services of their own.

¹⁴Walter Gellhorn, *Review of Administrative Acts in the Soviet Union*, in *Columbia Law Review*, June 1966.

....., *Protecting Citizens Against Administrators in Poland*, in *Columbia Law Review*, November 1965.

....., *Citizens' Grievances Against Administrative Agencies—The Yugoslav Approach*, in *Michigan Law Review*, January 1966.

Glenn C. Morgan, *Soviet Administrative Legality, The Role of the Attorney General's Office*, Stanford University Press, 1962.

Annals, *op. cit.*, Helmut Bader and Henry Brompton, "Remedies Against Administrative Abuse in Central Europe, the Soviet Union, and Communist East Europe."

¹⁴Annals, *op. cit.*, Henry J. Abraham, "The Danish Ombudsman."

¹⁵*Ibid.*, p. 59.

4. New Zealand

Professor Hurwitz, the Danish Ombudsman, gave a paper at a United Nations Seminar in Ceylon in 1959 which is credited with stimulating the interest of certain top officials of the New Zealand government who were present. From that interest ultimately came the adoption in 1962 of the New Zealand "Parliamentary Commissioner (Ombudsman) Act." It was the conservative National Party which placed before Parliament the proposal for this new office. The Labor Party also voted for it. The New Zealand Ombudsman is an officer of Parliament but he may not be a member. He serves for the life of a Parliament. The first appointee was chosen without dissent and has been re-elected. He names his staff with the approval of the Prime Minister.

The jurisdiction of this Ombudsman covers a long list of central departments and 22 corporate autonomous organizations exercising nationwide functions. Local government is excluded, as are some nationwide corporations such as the New Zealand Broadcasting Service. While the armed services are not excluded, so many matters within these organizations are excluded as to give minimal authority to the Ombudsman in this area. Disputed jurisdictional matters would be settled by declaratory judgments of the Supreme Court, but thus far, despite many ambiguities in the basic statute, no application for the Court's service has been made.

Where there is an adequate right to appeal to the courts or administrative agencies the Ombudsman may decline to receive a complaint. A matter that has been known to the complainant for more than a year, a frivolous complaint or one not made in good faith, may also be rejected. But the Ombudsman is otherwise to inquire into actions he believes contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, or based on an error of fact or law, or made for improper or irrelevant reasons or considerations, or just plain "wrong." Thus the area over which this official may roam is much broader than that of his Scandinavian counterparts. This notion of a general "equity" jurisdiction is underlined by a further statutory clause that authorizes investigation not only into a valid law or practice but also into the question whether a rule, enactment or practice is itself unreasonable, unjust, oppressive, or improperly discriminatory. (Solon had no broader authority!) But Ombudsman's powers over these matters are limited to recommendations. He must report his recommendations, with findings, to the indicated department or agency as well as to the minister supervising that agency. He may follow up by requesting that within a specified time a report be made to him of the steps the agency proposes to take. If the steps indicated do not satisfy him, he has no compulsive powers, such as those possessed by his counterpart in Sweden or Finland, to bring court action. However, he may report such a situation to the Prime Minister and, if nothing happens, to Parliament. The latter body may authorize the Ombudsman to disclose the re-

fusal of a department or agency to accept his recommendations. Very few reports to the press have been made, and the agencies have usually, in some cases tardily, accepted his recommendations. On his part he has withdrawn some recommendations when departmental or agency representatives have convinced him that his initial suggestions were wrong. His annual report to Parliament also helps to minimize indifferent agency behavior. The only ground upon which his decisions may be challenged is that of lack of jurisdiction.

Any person may lodge a complaint in writing with the New Zealand Ombudsman, but he must pay a small fee, though this is often waived. Parliamentary committees may refer petitions made to it for investigation and report. The Ombudsman's powers of investigation are very extensive, but the Attorney General may shut off inquiries or documents relating thereto which may reveal cabinet proceedings and deliberations or prejudice security, defense or international relations. Unlike the Swedish and some other Scandinavian practices, the New Zealand Ombudsman and his staff must keep confidential the information they obtain except that which is essential to their ultimate report. Even so, the reports usually do not give names of individuals or refer to them in such manner as to reveal their identity.

The Ombudsman's annual reports give excellent statistical data. They show that the annual case load of complaints registered is about 720 and increases rather slowly. The number of justified complaints has declined each year and the percentage warranting full investigation is about 16 percent. Many of the justified cases were remedied so promptly after the first inquiry by the Ombudsman that no investigation was necessary. A very considerable portion of the early complaints was rejected because they were outside his jurisdiction. The largest number of complaints was from the Department of Social Security, but many of these were not justified. Internal Revenue, next in number, had a much higher proportion of justifiable complaints, although in the last two years it reported they had greatly declined.

It is clear that in the brief period of operation a number of important modifications in agency regulations have been made which have markedly improved the services affected and will forestall comparable complaints in future. They have also responded to the Ombudsman's campaign for improved standards of clarity in the drafting of regulations and the preparation of official forms so that citizens can more readily understand what they mean. Ombudsman decisions have also resembled in a good many cases the position of the old English Chancellor when, without disagreeing with the official "law," he has discovered an "equity" in the particular circumstances which require a remedial action.¹⁷

Professor G. Sawyer concludes his review of the New Zealand experience thus far with the following comment:

¹⁷Annals, *op. cit.*, Geoffrey Sawyer, "The Ombudsman and Related Institutions in Australia and New Zealand."

The basis for an improved type of administrative justice has already been established by the New Zealand Ombudsman, a much cheaper justice than the regular legal system can offer, having qualities of flexibility and adaptability associated with the Conseil d'Etat. The absence of compulsive process is of little importance, so long as the government and its servants so readily concur with, or even anticipate, the recommendations of the Ombudsman.

5. The Japanese "Hybrid" Plan¹⁸

Since the end of the second World War, official Japan has made great effort to democratize its society and government. One aspect of that effort has been to provide for review of administrative decisions by the courts. But the old feudal attitudes of Japanese society inhibit the report to such checks save on a minor scale. However, a unit within the Prime Minister's office concerned with administrative management inspection—created to make nationwide studies of the structure and operating methods of national administrative agencies with a view to improving the conduct of public business—has also taken on the role of listening to citizen grievances. Such a flood of grievances descended upon it that the Director General of Management in 1961 issued a call for the appointment, in every locality, of unpaid administrative counsellors. These honorific officers receive citizens' complaints, winnow out the undeserving and send the others to the Bureau's head office. A recent report says that the number of local Counsellors had grown to nearly 4,000, many of whom are retired persons.

It does not seem necessary to describe the role and operations of this new adventure in democracy because the whole historical background out of which it has grown is so different from that of the European states we have described and from our own political culture. The work of these Counsellors and of the Inspection Bureau has undoubtedly released a pent-up volume of grievances and has started a shift in the relationship between officialdom and ordinary citizens away from the feudal subordination to which they have been accustomed for generations. But the changes now occurring and institutions that go with them have little value as examples for the United States. For advocates of democracy, however, the Japanese story is both interesting and encouraging.

6. Great Britain's Parliamentary Commissioner and Citizens' Advice Systems

As early as 1962 the British section of the International Commission of Jurists produced the Whyatt Report. This detailed an Ombudsman plan which did not appeal to the Conservative government then in power.¹⁹ The Labor Party however endorsed the idea. After its victory in 1965 it produced a plan which was

adopted in March 1967. This first effort to install the Ombudsman institution in a nation with a large population differs markedly from all its predecessors. It created the office of Parliamentary Commissioner to which Prime Minister Wilson appointed the retiring Auditor General.

Complaints cannot come to this new official directly from citizens but must be sent to him by a member of Parliament. This procedure expands an M.P.'s prospects of getting information about and of rectifying administrative mistakes which had formerly been brought to light occasionally during the question and answer period of the House of Commons. The Commissioner may not investigate a matter on his own initiative. Further, the statute contains a considerable list of agencies that cannot be investigated. Excluded are not only local government officials, international relations, the armed forces and security matters, but police action, personnel matters in the civil service, regional hospital boards, government contracts, the government of Northern Ireland, and government corporations. Moreover, when a Minister believes it "is in the public interest" he may tell the Commissioner to omit the publication any documents or information that he has obtained during an investigation.

The Citizens' Advice Bureau System, discussed further below, was set up during World War II to handle wartime needs, and now consists of several hundred offices handling over a million inquiries annually. Information and advice cover the gamut of citizen services.²⁰

The people of Great Britain, during the blitzes of World War II, were compelled, because of the physical disorder and the urgent distresses of that crisis time, to invent ways for helping one another to essential services. Out of this urgent wartime need grew the scheme of the Citizens' Advice Bureau to help any person to locate the official or private agency that could provide him with the assistance he required. After the war this information-assistance organization grew to about 450 units. A statement attributed to Dr. Alfred J. Kahn, Professor of Social Work at Columbia University, who made a special study of this British CAB system, indicates that any perplexed Englishman "can go to his local bureau for information and advice concerning travel, currency, scholarships, apprenticeships, employer-employee agreements, insurance, medical services, personal finance, housing, military services . . . in fact, information is provided at this one location on almost any subject imaginable." Dr. Kahn is also quoted as follows:

Bureau services are not limited to the poor, uneducated or the maladjusted. The assumption is that in a complex bureaucratized society any citizen may require information, guidance, advice, application forms or explanatory pamphlets. What is unique about the CAB is the broad range

¹⁸Gellhorn, *Ombudsman and Others*, *op. cit.*

¹⁹For background see Annals, *op. cit.*, Geoffrey Marshall, "The British Parliamentary Commissioner for Administration."

²⁰Alfred J. Kahn, *et al.*, Columbia University, *Neighborhood Information Centers, A Study and Some Proposals*, 1966. Report of the Parliamentary Commissioner for Administration, Her Majesty's Stationery Office, London.

of services available to all citizens regardless of their economic standing. There apparently is no social stigma attached to a bureau visit.²¹

While a few of these CAB's are operated by local government agencies, most of them are independent private associations registered with the national CAB office. They are funded by the national government, private sources and local governments, with the latter contributing the lion's share. While some have professional staffs, most are run by volunteers. A national field staff trains volunteers to run the offices and also supplements this initial training with periodic short courses. It also furnishes each office with a system of manuals and bulletins containing up-to-date information "on almost any subject of interest to the public."²² Since each local bureau has access to a committee of local experts and to all levels of government the local personnel can readily obtain the information requested even though it does not have it in its files or bulletins. However, to satisfy some personal problems it may require a series of interviews at the local CAB and then a referral to a specialized agency.

C. EXPANSION AND ACCELERATION OF INTEREST IN ADOPTION OF OMBUDSMAN PLANS IN NORTH AMERICA

A widespread interest in the Ombudsman institution or some counterpart has swept across the world since 1965. An overview of the nature and extent of the movement under various jurisdictions is pertinent to planning for the further evolution of measures for effective citizens' service and grievance handling in Oregon and elsewhere. The selective and analytical discussion here seeks to provide a general indication of the nature, scope, and diversity of such activities, but the accelerating pace of development tends quickly to make any spot review less than complete and up-to-date. In addition to the new British Parliamentary Commissioner statute, Hawaii, the Canadian provinces of New Brunswick and Alberta, the newly liberated colonies of Guyana and Mauritius have created this office. The Mexican "Amparo" is a Latin American version of the Ombudsman.²³ In many other countries the idea is under active discussion and many proposals have been made.

Although Ombudsman bills have been introduced in over half the American states, Hawaii led in adopting a statute. Jesse Unruh, the Speaker of California's House of Representatives, introduced a bill for such a post in his state in 1965 and again in 1967. The idea is being discussed and proposals formulated in many other states including Connecticut and New York. Model bills for state and local gov-

ernment have been drafted by a number of interested citizens and legislators. The American Assembly sponsored by Columbia University has presented an annotated model bill in the volume prepared for discussion at its October 1967 meeting and endorsed the idea in its final Report.²⁴

One of the stumbling blocks to state Ombudsman legislation seems to be the difficulty of finding a satisfactory mode of selection. The European and New Zealand plans depend on bi-partisan consenses and the ultimate responsibility of this official to a Parliament. That seems to have assured a haven of detachment from partisanship and bias in the conduct of the office. The absence of party responsibility in American state governments, and the frequent warring between the Governor (as Chief Executive and proposer of legislation) with at least one house of the legislature make precarious the fulfillment of the ideal of detachment by the Ombudsman because of the pulling and hauling of political factions. No satisfactory substitute for the Parliamentary arrangement seems yet to have been found.

Hawaii. The State of Hawaii, by 1967 Act of its legislature, was the first state officially to adopt the Ombudsman idea. This State Ombudsman office was filled in July of 1969 by the appointment of Herman S. Doi, 43, lawyer and former Director of the Legislative Reference Bureau of the University of Hawaii. He was unanimously named for the post at a joint session of Hawaii's state legislature last April. He is empowered to investigate administrative acts which are contrary to law, as well as those which are "unreasonable, unfair, oppressive or discriminatory, even though in accordance with the law." His investigative power does not extend to the legislature and its committees, to the governor and his staff or to federal agencies, but it does extend to all levels of state government, and presumably, to all municipal agencies, since it covers the acts of any "permanent governmental entity, department, organization or institution, and any officer, employee or members thereof acting or purporting to act in the exercise of his official duties."

The City Charter of Hawaii, 1951, included provision for an Office of Information and Complaint, and for operating an inside City Hall service under the Mayor.

New York. Proposed legislation in this state is intended to bring all levels of government within the jurisdiction of a state Ombudsman. It would try to spare the public from proliferation of the Ombudsman office and the confusion and frustration of having to choose between multiple Ombudsmen. Yet it would not bar the establishment of municipal Ombudsmen—providing that the state Ombudsman could refuse to investigate any complaint which is already under investigation by another office.

The special problems of New York City and the urban predominance in New York State have produced numerous proposals in that state.

²¹Columbia University News Office Press Release, Feb. 28, 1968.

²²*Ibid.*

²³Institute for Local Self-Government, Berkeley, *The Mexican "Amparo" as Supplemental Remedy for Redress of Citizen Grievances in California*, Jan. 1967.

²⁴The American Assembly, Stanley V. Anderson, ed., *Ombudsmen for American Government*, 1968. Note also part II of Committee report, and Appendix D.

But the proposed inclusion in a state Ombudsman office of jurisdiction over both state and local administrative grievances raises serious questions of staff size and of the retention of the personal touch of the Ombudsman in handling grievances. That seems to have been one of the factors making for success in Europe.

New York City. This city's experience was reviewed by City Club of Portland Ombudsman and Racial Justice Committees in correspondence and interviews with New York City officials as well as in available literature. Contacts included interviews with Assistant to the Mayor Robert M. Blum and an address by him to City Club membership in 1968.²⁵

In January 1968 the Ford Foundation allotted \$25,000 for a study which Professor Kahn headed to determine whether or not large American cities, and in particular New York City, need the counterpart of the British CAB's and what relationship these might have to Mayor Lindsay's community-level city halls. One of the advantages said to have been reaped in Britain from the CAB system has been the "feed-back" provided by reports from the CAB people which inform officials of the public reaction to existing and proposed legislation.

In 1968, Mr. Blum described to members of the City Club of Portland the nature and operations of the Neighborhood City Halls program, and the related roles of the Mayor's Action Center, the Night Mayor, the Department of Investigation and other official devices to deal with emergencies, and civil rights and other grievances.

The background of these arrangements is relevant.²⁶ Since 1963, a long-existing Department of Investigation has been a full-fledged central instrument for dealing with public grievances. In 1965 a Police Department Civilian Complaint Review Board promoted substitution of an independent civilian review panel operating outside of the Police Department. But a proposal barring use of outsiders on the Review Board carried in a 1966 referendum. In 1968, Mayor Lindsay began, by executive order, establishment of the "Neighborhood City Halls," including information, referral, and Ombudsman-type services. Proposals for an Ombudsman, or an office of "citizen redress" or "public complaints" had been made since 1965 but were not passed by the City Council.

The Club's 1968 Racial Justice report outlined the essentials of the New York City arrangement, as obtained from the Mayor's office, as follows:²⁷

Basically, the Executive Branch of the City Government deals with citizen complaints in five ways: (a) The Mayor's Action Center and Information Office in City Hall itself; (b) The Department of Investi-

gation, which operates a complaint bureau; (c) The Night Mayor; (d) the Neighborhood City Halls, of which there are presently four; and (e) grievance procedures within each department. In addition, there are two specialized grievance agencies, the City Commission on Human Rights, which receives complaints dealing with both governmental and private violations of Human Rights, and the Civilian Complaint Board of the Police Department.

The Mayor's Action Center is open 24 hours a day. It receives telephone calls and interviews persons needing help or making complaints. . . . In addition, the Mayor's Action Center operates a mobile information center in a large van. . . .

The Department of Investigation, a charter agency of the city, has two functions: It investigates charges of wrongdoing within the City Government, and it processes all mail complaints received by City Hall. . . .

The Night Mayor concept derives from the famous blackout of November 9, 1965 and a subsequent announcement by Mayor-elect Lindsay that he would have City Hall manned 24 hours a day by officials with the authority to command. Accordingly, City officials bearing the rank of Deputy Commissioner or higher are, on a rotation basis, required to serve as Night Mayor. The Night Mayor must stay in City Hall from 10:00 p.m. until 8:00 a.m. assisting the Mayor's Action Center. . . . He is available for any major emergency which may occur.

The Neighborhood City Halls Program . . . is the City's most dramatic outreach program. Four Neighborhood City Halls, staffed by Civil Service, and equipped with the most complete information directory of public and private social services ever prepared in the United States, receive complaints and offer information to the public and to citizen groups. Each office is staffed, as well, with a community organization social worker who offers guidance and liaison to church groups, tenant councils, block associations, neighborhood groups, etc., in dealing with the City or with other problems which they may encounter. A ready follow-up system is provided so that . . . an Assistant to the Mayor can make sure that all departments which are called upon to cooperate provide speedy responses. In addition, we have attempted to coordinate the services of those city departments which now operate on a decentralized basis. . . . Regular private meetings are held, under the aegis of the Neighborhood City Halls Director, and attended by the Commanding Officer of the Police Precinct, the Deputy Fire Chief, the Neighborhood Health Officer, the Neighborhood Welfare Officer, etc. Each Neighborhood City Hall averages about 4,500 citizen contacts annually, and as well touches the

²⁵Letter of Robert M. Blum, assistant to the Mayor, to Executive Secretary, City Club of Portland also address of Mr. Blum to City Club, "The City and the Slum: New York Experiment in Communication," March 29, 1968.

²⁶American Assembly, Angus and Kaplan, *op. cit.*

²⁷Report, *op. cit.*, p. 63. Also letter and address of Robert M. Blum, footnote 25.

lives of thousands more who belong to community and neighborhood groups for whom the Neighborhood City Hall provides service.

In addition, each city agency has a complaint mechanism of its own, some quite sophisticated and others fairly primitive. . . .

Mr. Blum's opinion at the time of his Portland visit was that the New York developments were more useful in that situation than an Ombudsman in the Scandinavian sense could be; that indeed the activities already undertaken there were much broader and more intensive in meeting individual citizen needs than would be the services of a traditional Ombudsman. In quantity of problems worked upon and variety of devices available both for grievances and information, New York has moved far and rapidly. But a comprehensive non-official evaluation of the quality of performance is needed for judgment on this plan and the general application. (A further Kahn study and report, not yet available, may help to refine judgment on this issue.)²⁸ New York City does not apparently yet possess an officer with the detachment from official administrative personnel and agencies that the Ombudsman has seemingly attained abroad.

But there are other considerations that should not drop from sight in the enthusiasm for a quick and simple solution of the ills which accompany the necessary administrative or legislative tasks of municipal, state and national governments.

One of these has also been the object of considerable thought and effort in New York City. That is the development of institutional arrangements for citizen-city council and administrator communication. It is hoped to widen the knowledge and intensify the awareness, as between these two essential participants, about policies to be undertaken by the city and how a particular proposed program may affect different members in the body politic, before new policies are adopted. These efforts were initiated by the Citizens Union and the Citizens' Housing and Planning Council during the 1940's and resulted in the inclusion in the New York City charter of 1961 of a provision calling for the creation of Community Districts. These would elect District Boards which would serve as advisors to the Borough Presidents, the City Planning Commission and the Borough Improvement Boards with reference to "any matter relating to the development or welfare of its district."

In 1964 a report prepared jointly by the two citizen groups mentioned recommended that the 1961 charter provision be implemented by the creation, in all boroughs, of community districts, with boundaries coincident with "the historic communities from which the city has developed, so that it will be easier for local citizens to think of them as 'home town in the big city.'" To each District Board would be

assigned the role of articulating the desires of its community relating to any or all matters of local government concern. While eschewing any intent to give these boards administrative powers, it was proposed that they be consulted by public officials on any matter for which public hearings are required prior to any major decisions by the city government. To operate efficiently and with a sense of responsibility it was urged that each Board be furnished with a convenient headquarters, suitable for meetings, record keeping, etc.; that it also be provided with a small staff, plus occasional special staff competent to make special studies. These sub-city centers might also be tied in with any suitable decentralization of the city's public services. They would operate particularly in the development of the city's master plan and the planning of public school developments.²⁹

Mayor Lindsay has moved a few steps in the direction of this citizen blueprint for sensitizing New York's policy and administrative agencies more intimately to the needs of citizens in various parts of the city. The proposed 1964 plan for a more complete embodiment of this institutional elaboration of metropolitan democracy bogged down in a political stalemate in the City Council. The essential argument for such a new urban institutional program included the following:

New York's officials have "very limited means of seeing the picture whole. They may study the physical facts with which they have to deal and make their own assumptions about what is good for the people, but they have no systematic machinery for actual understanding contacts with the people in all parts of this vast city. . . . Local government is largely guided by bureaucratic decisions swayed by individual official's preconceptions and by pressures that are partial.

"The need to bring the people and their public servants closer together is now emphasized by new fields of service accompanied by growing complexities. Urban renewal is a prime example. Each publicly assisted housing or neighborhood reclamation or conservation project affects all the people in a particular part of the city and the policies employed set patterns for the city as a whole. At the same time this new and vital service introduces complications in procedure which make the city government still harder for the average citizen to understand and influence."

Immediately upon re-election to a new term, in November 1969, Mayor Lindsay announced that his administration had developed a new plan for the network of little City Halls merging in them urban action task forces and community planning boards.³⁰

Buffalo, New York. A cooperative city-county-university demonstration project carried out in

²⁸Alfred J. Kahn, et al., Columbia University, *Neighborhood Information Centers: A Study and Some Proposals*, 1966.

²⁹Joint Committee of the Citizens Union and Citizens Housing Council of New York City, *A Program for Community Districts*, June 1964.

³⁰New York Times, Nov. 1969.

Buffalo is noteworthy as a pioneering citizens-service and grievance-handling effort.³¹ After initial efforts in information and complaint handling by the Mayor in 1964 and the City's newspaper in 1967, a demonstration agency was established under plans formulated by the City of Buffalo and the Law School of the State University of New York. Salient features of that project, a "Citizens' Administrative Service" for a city of about half a million and metropolitan area of about a million and a quarter, are briefed:

The purposes, an adaptation of those of the Ombudsman, are to assist citizens, particularly those of low-income areas, in their inquiries and complaints against government agencies operating with the City, for the most part local government agencies. The Service operates as intermediary between citizen and government, in matters of rights, grievances, error, friction, communications, of repairing damages from misconception, of "cooling citizen tempers," of "oiling small wheel movements," and, where required, of disclosure and correction. The Service will make inquiries on its own motion into administrative procedures and practices. Benefits are anticipated in citizens' service, administrative improvement, public awareness in civic affairs, university service, university research and instruction, public information and participation.

Service, through a downtown office, plus neighborhood offices, is provided by the Faculty of Law and Jurisprudence of the State University of New York at Buffalo. Activity will be carried forward under the supervision of a Faculty Committee and with the assistance of a number of law students and a small number of full-time personnel.

Participating will be City and County and special purpose authorities with other government agencies in the City as co-operating parties.

The background of Buffalo's effort to provide services which resemble those of the Ombudsman is instructive.³²

The demonstration project was preceded by efforts on the part of the Mayor, resisted by the City Council, to establish an effective Division of Complaints and Investigations.

Erie County was also involved in the grievance situation because it administered the welfare, health and sanitation, and other services so productive of dissatisfied clients. The Welfare Department's own grievance unit alone handled approximately 1,500 complaints each month.

The two Buffalo metropolitan papers stepped

into this situation in 1967 by running their own grievance columns as a means of airing complaints and getting officials to "right the wrongs." Readers were invited to send in their letters (which replaced telephone calls that had swamped the papers' problem-solvers). Many of the letters (and calls) were simply requests for information. The information sought and the complaints voiced were predominantly about local government matters, but there was a considerable sprinkling of queries and complaints about state and federal government and non-governmental agencies. Local government complaints in the column of the Buffalo Evening News included 18 different categories plus a miscellaneous group. Although this tabulation is for only the grievances which were given attention (the paper received many more which were not published or explored), it probably indicates the loci of services which would give rise to citizen complaints under a full-fledged Ombudsman system. The ten most frequently involved were, in descending order, road repairs and street maintenance, vacant buildings and land, traffic control, trees, parks and recreation, vehicle parking, sidewalks, welfare, littering, and water and sewage.

Out of this background the Law School developed a plan for an Ombudsman Service for the City which the School would undertake. This program began during the summer of 1966 with the selection of a limited number of grievances which a faculty member would handle in Ombudsman fashion. The City administrative officials offered their full cooperation, stipulating only that advance notice of critical findings be given to the appropriate officers so that they might take remedial action promptly. "In all instances" it has been reported, "the allegations contained in the complaints were explained or resolved to the satisfaction of the parties concerned without proceeding beyond the particular department concerned against which the grievance had been leveled."³³

From this experience the Law School in 1967 set up a seminar on the Ombudsman for senior students. After preliminary study of the Ombudsman institution each of the nine students enrolled was assigned complaints to process under supervision of the professor. The procedure included interviewing the complainant, visiting the locus of the difficulty if necessary, investigating the facts, running down the applicable law and meeting with the appropriate responsible officials in the effort to resolve the problem. A written report ended the assignment. In addition, the students were asked to research selected grievances published in the Buffalo Evening News and to offer solutions based on case studies reported by the New Zealand Ombudsman.

During this phase of the seminar, each student was also required to investigate two or three cases arising from Erie County govern-

³¹City Club of Portland, *Problems of Racial Justice in Portland*, June 14, 1968, Appendix E. Also: Prospectus, releases, report, and correspondence of City of Buffalo. The American Assembly, *op. cit.*, William H. Angus and Milton Kaplan, "The Ombudsman and Local Governments." John H. Hollands, *Ombudsman in Buffalo*, in BRIEFCASE, June 1968.

³²American Assembly, *op. cit.*; Hollands, *op. cit.*

³³Angus and Kaplan, "Ombudsman for American Government?" Chapt. 4, Citizens' Administrative Service, Buffalo, New York, Report to the U.S. Office of Economic Opportunity, *Ombudsman Demonstration Project*.

ment complaints. The County Executive readily agreed to the inclusion of his administrative organization in the program. The most important single source of grievances in county administration was the welfare program. The original intention to exclude state and federal grievances was soon modified. Since many state and federal programs are carried out at the local level, a few of these were therefore handled. It turned out that these cases could be cared for without "undue inconvenience" because of the existence of local field offices which could deal with the situations.

In 1967 a grant from the federal Office of Economic Opportunity made possible an extended operation that began in the autumn of that year. It functioned for 71 weeks, terminating May 31, 1969. A report to OEO on operations was submitted shortly thereafter.

The report includes a comprehensive account of the background, situation, problems, methods, complaints handled, and conclusions drawn from the operation of this demonstration project.

The range of complaints handled was summarized:

A total of 1,224 complaints and inquiries were docketed by the Service during the 71 weeks that the project was open to the public. The Service investigated 1,054 complaints and inquiries and 170 were rejected or withdrawn. Of the 1,092 contacts with governmental agencies, 65% were with the City of Buffalo, 25% with Erie County, 6% with New York State, and 4% with the United States government. The topics receiving the largest number of complaints and inquiries were: social service, 1953; public housing, 119; building demolition, 109; public health, 103; street paving, 54; police-traffic, 55; police-nontraffic, 44; and garbage removal, 46. Ethnically, 66% of the complainants were Negro, 25% were white, and 8% were Puerto Rican. With respect to income levels, the calculations were necessarily rough, but it is estimated that complainants with incomes of less than \$3,000 comprised 25%, \$3,000-\$5,000 comprised 33%, and \$5,000-\$7,000 comprised 30% of the caseload. Of the 1,224 complaints received by the project, only 263 came directly to the main office. The remainder came through the neighborhood offices and especially through the neighborhood aides.

Conclusions particularly relevant to the nature and structure of a municipal operation, are cited:

1. By and large an American ombudsman can and should use the Scandinavian ombudsman as his model. This statement is subject to such exceptions as are indicated by differences in tradition and form of government. For example, an American ombudsman should respect our separation of powers: he should not try to intervene in judicial proceedings or to criticize judicial acts; nor should he ordinarily promote or oppose legislative or other political

measures. In calling the Scandinavian ombudsman the model, it should be understood that his tradition of independence, his practice of making regular public reports, and his power to act on his own motion, are all included. The ombudsman's independence is the main distinction between him and various other possible complaint-handling mechanisms. It is, we believe, a distinction of importance. The power to act on his own motion is less important, though desirable as a weapon held in reserve for use in unusual cases. probably, he should also have subpoena powers, though this is a point as to which the writers have had no persuasive experience.

2. He or some member of his staff should have had legal training.

3. A fairly concentrated population of 250,000 probably will, and one as small as 100,000 may, justify the establishment of a municipal ombudsman's office, particularly if more than one local government is involved.

4. His function is better discharged by a separate office than by combining it with a neighborhood legal office or an information bureau. It is worth noting that even the American Bar Association recognizes the value of the ombudsman's distinct function. However, the ombudsman can without too great loss of effectiveness be combined with such a legal office or an information bureau if the volume of complaints does not justify setting up a separate office, as for example would probably be the case in a community of less than 100,000.

5. Except for the purpose of gaining experience, an ombudsman's office should not function as an information or complaint-routing office. Those functions can be more economically performed by a separate central office within the municipality or other government.

6. Whenever requested, he should cooperate with legislators in investigating and disposing of the complaints they receive regarding administrative matters.

7. In recognition of the fact that conditions giving rise to complaints against local government more often exist in the poorer neighborhoods, he should have aides indigenous to those neighborhoods (with or without setting up neighborhood offices to which they can be assigned). This procedure is particularly desirable if racial or other tensions exist.

8. While police departments and public hospitals present special problems which should be recognized, no good reason appears for excluding them from the administrative agencies with which the ombudsman deals.

9. Law students are potentially good office aides, but some time is required to

give them the experience they need to develop into first-rate assistants.

10. While the existence and availability of the ombudsman should be widely advertised, care must be taken not to exaggerate his powers or hide his limitations.

11. The local ombudsman is more effective if his activities are not confined to the local governments but allowed to extend to the local offices of the state and national governments.

12. Finally, although we obviously cannot prove it, our experience leads us to believe that over a period of years an ombudsman's office properly run, will gradually gain prestige, will be consulted more often, and will find itself entrusted with increasingly important matters. In short, we believe that the day would come when the observant citizen would say, "It's odd to think that only a few years ago there was no ombudsman."

Nassau County, New York. on Long Island, inaugurated on an experimental basis, the first Ombudsman type office solely for local government in the United States.³¹ The action was initiated in May 1966 by the county Executive Officer who authorized the county Commissioner of Accounts to undertake the duties of Public Protector which were also set forth in a proposed local law presented simultaneously to the Board of Supervisors. The Executive Officer appointed to this position, Judge Samuel Greason, a respected judge of the County District Court.

After some months, during which a special advisory committee made inquiry into western European experience with the Ombudsman, the Board drafted a local law that would have placed all county officials except the police under the Protector's jurisdiction. But this proposal was subject to approval by the county voters, who rejected it in August, 1967.

The Public Protector was assured of freedom from executive and political interference—an assurance that he said was kept. The small staff resembled that of the Scandinavian Ombudsman. During the first year, 470 complaints were handled, mostly from middle-class persons. However, it was the Protector's belief that many disadvantaged citizens would seek his services once their availability became known. In most cases of administrative error or omission the department head had been anxious to make correction when informed of the situation. Even when the department head disagreed with the complainant's view, hearings were usually granted.

In Nassau County cities and villages by home rule law lie outside the county's jurisdiction. But in all cases of complaint against their operations the county Protector reported the details of the complaint to the appropriate local officers who then cooperated fully to resolve the difficulty. When a complaint involved a federal or state agency, although acknowledging

that he had no power to act, the Protector reported the matter to the federal or state authority involved and, if necessary, followed the matter up. It has been suggested that in case of a federal or state Ombudsman, the local counterpart might operate as a clearing house for him.

Among the complaints handled by the Protector were 75 which did not involve government administration. A majority of these did involve need for legal assistance and were turned over to the legal profession, which took them on. Another group of cases was about judicial behavior. In these, the presiding judge of a court involved was telephoned. Usually these grievances were concerned with discourtesy toward a lawyer or witness, or with the arrogance of a judge. Because of his personal acquaintance with judges and his own experience in the courtroom, the Protector was successful in this intervention, though it was outside his legal jurisdiction.

The result of this pioneer American Ombudsman experience (lying beyond the support of the law, as it did) was the resolution of most of the 20 percent of valid grievances. Another 35 percent was the result of delay in the administrative process, and these were cured by immediate attention accorded to the Ombudsman's report by proper officials. These may also have resulted in a review of procedures looking toward more prompt action in the future. Welfare case problems were the largest source of complaints in Nassau County, due primarily to the complex legislative and administrative checks to frustrate "chiselers." Because of the large number of such complaints sent him by the Nassau County Protector, the head of the County Commission of Welfare Services assigned a special assistant to speed up the handling of these cases. These two officials also inaugurated effort to develop more expeditious procedures to process complaints about welfare administration.

In a number of cases the Protector found that the real culprit was not administration, but the legislation under which governmental tasks are assigned. By persuasion, the Protector had some effect in mitigating sources of grievance in the County and town governments.

This Nassau County experiment was then the only experience in the United States of an office entitled to the name of Ombudsman, and it is now extinct. In a number of cities there have been appointments of Assistants to the City Manager or the Mayor to ride herd on complaints coming into the City Hall. While such arrangements are doubtless desirable in lubricating the pathway to better grievance-handling performance relating to urban administration, they are not guarantees of prompt and impartial handling of valid grievances.

Other Municipalities. A number of additional municipalities have moved toward creation of Ombudsman-type offices and such developments are reported from time to time in current literature. A number of these may be briefly mentioned.

³¹American Assembly, Angus and Kaplan, *op. cit.*

Washington, D.C. Legislative proposals have been introduced in Congress by Senator Edward Long of Missouri since 1966 to create an Ombudsman for the District of Columbia. A bill, S. 3783, of that year proposed appointment by the President of such an office with "jurisdiction to investigate the administrative acts of any agency of the District of Columbia on his own motion or on complaint of any resident." Washington should be a good target because of the absence of self-governing institutions. But each of the bills has been buried in the District of Columbia Committee.

Missouri. In Missouri a bill for **Jackson County**, which is largely occupied by Kansas City, was introduced in the 1967 legislature by Representative Growney. He also offered a companion bill for a State Ombudsman. But both bills died. These bills tried to adapt an American invention to solve the appointment and removal problem. It proposed the selection process which Missouri has used for some years for judges. The Ombudsman would be appointed from a list of three persons selected by a non-partisan judicial commission. That body, now used for nominating judges, would be called into action also for the Ombudsman. A comparable body composed of Circuit Judges would propose a list of nominees from which the county court would make the appointment. Moreover, the electors of the county would have the right to vote at the next election on the retention or rejection of the county Ombudsman.

Philadelphia, Pa. In 1962, a "watchdog" committee established by Mayor Richardson Dilworth recommended appointment of a City Commissioner of Public Affairs with powers similar to those of the Danish Ombudsman. This proposal, opposed by the City power structure, was killed in a City Council committee. The Mayor did establish, by executive order, an office of "Director of Citizen's Relations," characterized as more of a complaints and trouble-shooting operation than a tribune of the people.

Chicago, Ill. A complaint center, operating around the clock and seven days a week, was established in an Office of Inquiry and Information in July, 1966. The center functions in the quick reception of complaints and in improved handling of grievances by City Hall, rather than as Ombudsman.

Oakland, Cal. In this city, the rejection of a civilian review board for the Police Department

led to the proposal by the Mayor early in 1967 that an Ombudsman for handling citizens' grievances be established. But the Council rejected this. In the election campaign two months later the Mayor was re-elected on a platform that urged an independent grievance officer, whom he asserted was necessary to gain the confidence of the minority groups in that city.

San Diego, Cal. A 1967 reorganization of the City Manager's office, approved by the City Council, provided for a "watchdog" assistant to the Manager, with a new office empowered to receive and investigate complaints, rectify wrongs through the City Manager, and make referrals to appropriate departments and recommendations to the City Council.

Other Municipal Arrangements. Citizen-relations arrangements are, or were, in effect or under trial in other cities, according to information coming to your Committee. **Boston** has opened a number of neighborhood city halls. **St. Louis** is making broad use of "storefront" offices manned by the police. **Tampa** has involved many of its youth in a "white hat" movement, working with the police and other agencies in ghetto neighborhoods. **Trenton, Savannah, Saginaw** and **Tucson** have established Ombudsman-type or citizens' service officers of some kind. Undoubtedly, other cities are experimenting with various governmental arrangements looking to more effective citizen contact and involvement.

A significant recent development in **Multnomah County, Oregon**—in the form of a citizens-relations desk in the Department of Public Safety—is mentioned in the body of the Committee report, above.

Colleges and Universities. Another important development is the current establishment of an Ombudsman or similar officer in a very substantial and expanding number of American institutions of higher learning.³⁵ Although this movement is primarily a response to contemporary unrest, alienation and grievance among students, it reflects the general societal need and is relevant to the wider purpose of improved relations between citizen and government.

³⁵M. A. Guitar, (*Ombudsman*) *New Man on Campus*, in SEVENTEEN, June 1969.
H. R. Rowland, *Campus Ombudsman*, in TODAY'S EDUCATION, Oct. 1969 (including features considered essential for successful operation).

APPENDIX D

A COMPARISON OF SELECTED OMBUDSMAN PROPOSALS AND ONE ACT

COMPARISON CLASSIFICATIONS*	GELLHORN MODEL STATUTE (American Assembly 1967)	HARVARD MODEL STATUTE (Harvard J. Legis. 1965)	HAWAII ACT (Enacted 1967)
TITLE OF OFFICER	Ombudsman	Ombudsman	Ombudsman
QUALIFICATIONS	"... well-equipped to analyze problems of law, administration, and public policy..."	No affirmative. May not have been in Legislature within two years prior to appointment. May not hold or be candidate for other state office. May not be engaged in another occupation for reward or profit.	No affirmative. May not have been in Legislature within two years prior to appointment. May not hold or be a candidate for other state office. May not be in another occupation for reward or profit.
METHOD OF APPOINTMENT	Chief executive appoints, 2/3 of each house present and voting must confirm. Deputy assumes office in acting capacity upon permanent vacancy until new officer appointed for full term.	Governor appoints with advice and consent of Senate. First Assistant is Acting Ombudsman on permanent absence of Ombudsman until new officer appointed for full term.	Majority of each house in joint session. First Assistant is Acting Ombudsman in permanent absence of Ombudsman until new officer appointed for full term.
ORGANIZATIONAL RELATIONSHIP	Independent agency.	Independent office.	Independent office.
TERM OF OFFICE	Five years. No limit on reappointment.	Six years. Limited to three terms.	Six years. Limited to three terms.
REMOVAL	For incapacity, neglect of duty or misconduct by 2/3 vote of each house.	For neglect of duty, misconduct or disability by 2/3 vote of each house. May be suspended under same procedure.	For neglect of duty, misconduct or disability by 2/3 vote of Legislature in joint session. May be suspended under same procedure.
SALARY	Salary, allowances, and benefits of Chief Justice.	Compensation equal to Chief Justice.	\$22,000 a year to be diminished during term only by general law applying to all state salaried officers.
STAFF	"... may select, appoint, and compensate ... such assistants and employees as he may deem necessary..." One assistant to be designated Deputy with authority to act in temporary absence of Ombudsman.	"... shall appoint a First Assistant" and others as necessary.	"... shall appoint a first assistant" and others as necessary. All serve at pleasure of Ombudsman. Shall follow as closely as possible Department of Personnel salary recommendations. First assistant's salary limited by formula. All may participate in any employee benefit plan.
DELEGATION OF AUTHORITY	May delegate except as to power to delegate and duty of making formal recommendations or reports to executive or Legislature.	May delegate except as to duty to report or recommend to agency after certain investigations, or to report to Governor, Legislature, or public.	May delegate except as to duty to report or recommend to agency after certain investigations, or to report to Governor, Legislature, or public.

*These classifications are based, for the most part, on those used by Stanley V. Anderson in Chapter 2 of his book, **Canadian Ombudsman Proposals**, Institute of Governmental Relations, 1966, where he compared four Canadian province proposals and selected European and Commonwealth models.

(Prepared September 1968 by Larry D. Thomson for the City Club of Portland)

CALIFORNIA S.B. 33 (1968)	WASHINGTON S.B. 29 (1967)	OREGON S.B. 19 (1967)	ALTERNATE OREGON PROPOSAL (Revised 1968)
<p>Ombudsman</p> <p>Distinguished by intellectual standing. Be learned in law and government. May not have been in Legislature within two years prior to appointment. May not be elected to Legislature or state-wide office within two years of service as Ombudsman. He or assistants shall not hold other state office; engage in outside paid employment; be a member of any association of state or governmental employees or keep unnecessary contacts with persons against whom complaints may be made.</p> <p>Select commission of State officers and citizens submit one or more candidates to standing joint legislative Ombudsman committee who shall nominate one person by majority vote, who will then be appointed by concurrent resolution.</p>	<p>Ombudsman</p> <p>IDENTICAL TO CALIFORNIA S.B. EXCEPT AS NOTED BELOW.</p>	<p>Ombudsman</p> <p>Qualified by training and experience in administrative procedures and standards.</p>	<p>Ombudsman (Inspector of Administration.)</p> <p>Learned in processes of law and government. May not have been in Legislative Assembly within two years prior to appointment. May hold no other government office during term or for two years thereafter except in judicial branch after term. Must be lawyer if deputy is not. Limited to two full terms and may not be appointed if over age of 70 years.</p>
<p>Independent office.</p> <p>Four years from July 1 following appointment. May be reappointed by concurrent resolutions.</p> <p>Concurrent resolution. Chief Assistant serves in event of vacancy.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>Independent office.</p> <p>Four years from appointment.</p> <p>For good cause by Governor after a hearing at which members of Legislative Assembly may be present.</p>	<p>Independent office.</p> <p>Four-year terms ending on July 1 of a year legislature is in regular session.</p> <p>For good cause by majority of quorum in each house.</p>
<p>At minimum, that of Associate Justice of Supreme Court.</p> <p>In consultation with joint legislative committee shall employ and fix compensation for assistants as necessary. One assistant shall be designated Chief Assistant.</p>	<p>Compensation prescribed by law for judge of Supreme Court.</p>	<p>Unless otherwise provided by ORS 292.505 to 292.790, fixed by Governor not to exceed \$17,500. Subject to legal limitations, shall be reimbursed for actual and necessary expenses.</p> <p>Subject to State Civil Service Law, appoints subordinates necessary, prescribes their duties and fixes their compensation.</p>	<p>Same as justice of Supreme Court. Also to be reimbursed within legal limitations for actual and necessary expenses. May participate in retirement under ORS 173.210.</p> <p>Selected by Ombudsman to include at least a deputy. Ombudsman sets salary and prescribes duties. Deputy to resign upon appointment of new Ombudsman. May participate in retirement under ORS 173.210.</p>
<p>No special provision.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>No special provision.</p>	<p>Except for reporting duties, may delegate in writing. All appointments and delegation revocable in writing at will of Ombudsman. Speaker of House and President of Senate to be advised when Deputy is Acting Ombudsman by the deputy in writing and by Ombudsman in writing when he resumes his duties.</p>

COMPARISON CLASSIFICATIONS*	GELLHORN MODEL STATUTE (American Assembly 1967)	HARVARD MODEL STATUTE (Harvard J. Legis. 1965)	HAWAII ACT (Enacted 1967)
WRITTEN COMPLAINTS	At his discretion.	At his discretion.	At his discretion.
FEES	No prohibition.	May not levy for submission or investigation of complaint.	May not levy for submission or investigation of complaint.
STATUTE OF LIMITATIONS	No express limitation. May decline to investigate stale claims.	No express limitation. May decline to investigate stale claims.	No limitation.
INVOCATION OF JURISDICTION	Upon any person's appropriate complaint in any form established by Ombudsman, and upon own motion.	Upon any person's appropriate complaint in any form established by Ombudsman, and upon own motion.	Upon any person's appropriate complaint in any form established by Ombudsman, and upon his own motion.
SCOPE OF JURISDICTION	Any administrative act of any agency, but to exclude the judicial and legislative branches, chief executive and his personal staff, political subdivisions of the State, and interstate compact instrumentalities.	Any administrative act of any agency, but to exclude courts, legislative branch, political subdivisions, entities of federal government, multistate governmental entities, Governor and his personal staff. Excluded also is preparation or presentation of legislation. Finality of administrative act no bar.	Any administrative act of any agency, but to exclude courts, legislative branch, entities of federal government, multistate governmental entities, Governor and his personal staff. Excluded also is preparation or presentation of legislation. Finality of administrative act no bar.
ADVISORY OPINION ON JURISDICTION	No special provision.	No special provision.	No special provision.
OPTIONAL REJECTION OF JURISDICTION	"Shall" investigate unless he "believes" that other remedies not exhausted, matter is outside jurisdiction, complainant lacks sufficient interest in matter, matter is trivial, etc., other complaints more worthy, resources are insufficient, or complaint is stale.	"Shall" investigate unless he believes that adequate remedy available, matter is outside jurisdiction, complainant has known of act too long a time, complainant lacks sufficient personal interest in matter, complaint is trivial or in bad faith, facilities are insufficient, or other complaints are more worthy of attention.	"Shall" investigate any complaint determined appropriate subject for investigation. (See standards below.)

CALIFORNIA S.B. 33 (1968)	WASHINGTON S.B. 29 (1967)	OREGON S.B. 19 (1967)	ALTERNATE OREGON PROPOSAL (Revised 1968)
<p>Must be in writing and signed by persons directly interested. Shall name person or agency complained against. Can provide stenographic assistance but not solicit complaints.</p>		<p>No requirement.</p>	<p>Required. But can investigate on own initiative complaints received by other means.</p>
<p>No charge shall be levied as prerequisite to presenting a complaint.</p>		<p>No prohibition.</p>	<p>May not levy fees for submission or investigation of complaints.</p>
<p>No express limitation, but may decline to investigate matters known of but not reported within a year.</p>		<p>No limitation.</p>	<p>No limitation.</p>
<p>Proper complaint by affected, interested or aggrieved person, or based on information received by other means.</p>		<p>Proper request or complaint of any person or his agent or on own initiative.</p>	<p>Written complaint of any person or on his own initiative. Any complaints forwarded by member of Legislative Assembly to be treated as a complaint by individual legislator, who then shall receive all replies.</p>
<p>Action, recommendation, or omission of any state department, board, commission, or other state agency or the officers or employees thereof.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>Administrative action by state agency (any exercise of state authority in rulemaking, licensing, or adjudicatory function that subjects violator to penalty, changes hearing procedures where specific parties entitled to appear, changes benefits or privileges set by law or changes license requirements, changes mandatory product standards, or invokes proceedings where state agency changes rights, privileges or duties of any person) considered objectionable or subject to improvement or change. Officers and Committees of Legislative Assembly or courts excluded, as well as state officers in performance of Constitutional duties.</p>	<p>Appropriate administrative acts of any agency, except court of record; Legislative Assembly, committees and staff; political subdivision of state; entity of federal government; multistate governmental entity; Governor or other elected officials and their immediate personal office staffs.</p>
<p>No special provision.</p>		<p>No special provision.</p>	<p>May apply to Marion County Circuit Court under ORS Ch. 28 procedures for a declaratory judgment.</p>
<p>May decline to investigate or entertain complaint if other adequate remedy available; matter is of policy and not execution of it as determined by Legislature; in his opinion further investigation unnecessary; trivial, etc. matters; matters known of and not brought to Ombudsman's attention within one year; based on decision under Tax Code where complainant not substantially affected.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>At his discretion.</p>	<p>At his discretion.</p>
	<p>Tax Code exceptions omitted.</p>		

COMPARISON CLASSIFICATIONS*	GELLHORN MODEL STATUTE (American Assembly 1967)	HARVARD MODEL STATUTE (Harvard J. Legis. 1965)	HAWAII ACT (Enacted 1967)
INVESTIGATORY PROCEDURES	Scope and manner largely at his discretion. Agencies required to assist on request. May examine all records and documents of agencies. May enter and inspect premises under any agency's control. "Any person" can be compelled to appear by subpoena to testify or produce documents. Witnesses get fees and allowances as if in state court. May do general studies unrelated to particular agency or act if he believes such may improve administration.	Scope and manner largely at his discretion. Agency shall be notified of any intended investigation. May enter agency premises without notice. May hold private hearings. "Any person" believed able to give relevant information may be compelled to appear by subpoena to testify or produce documents.	Scope and manner largely at his discretion. Agency shall be notified of any intended investigation. May enter agency premises without notice. May hold private hearings. "Any person" believed able to give relevant information may be compelled by subpoena to testify or produce documents.
APPROPRIATE SUBJECTS FOR INVESTIGATION	Administrative acts contrary to law or regulation; unreasonable, etc.; mistake at law or arbitrary finding of fact; improperly motivated or based on irrelevant considerations; unclear or inadequately explained; inefficiently performed; or acts otherwise objectionable.	Administrative acts contrary to law; unreasonable, etc.; based on mistake of fact; based on improper or irrelevant grounds; unaccompanied by adequate statement of reasons; performed inefficiently; or otherwise erroneous. May investigate to find appropriate remedy.	Administrative acts contrary to law; unreasonable, etc.; based on mistake of fact; based on improper or irrelevant grounds; unaccompanied by adequate statement of reasons; performed inefficiently; or otherwise erroneous. May investigate to find appropriate remedy.
BASIS FOR RECOMMENDATION	If belief after consideration that agency should consider matter further; modify or cancel an administrative act; alter a regulation or ruling; explain more fully the act in question; or take any other step, "shall" state recommendations to agency.	If finding after investigation that matter should be further considered; administrative act should be modified or cancelled; statute or ruling should be altered; reasons should be given for act; or any other action should be taken, he "shall" report such to agency.	If finding after investigation that matter should be further considered; administrative act should be modified or cancelled; statute or ruling should be altered; reasons should be given for act; or any other action should be taken, he "shall" report such to agency.
ENFORCEMENT AND REPORTS	In certain circumstances shall make his recommendations to agency. If requested, agency must inform him as to action taken on recommendations. After consulting with agency or person criticized, may report to Chief Executive, Legislature, the press, or any other persons concerned, such report to include defensive statement by person or agency adversely reported on. Shall bring to attention of Legislature laws he believes unfair or objectionable. Must report annually to Chief Executive and Legislature in any event. Must "suitably inform" complainant after completing consideration of complaint. Up to \$1,000 fine for willful obstruction. May certify contempt of witness to [circuit] court which will issue contempt show cause order in same manner as for contempt in civil action before the court.	In certain circumstances shall make his recommendations to agency. Agency may be requested to notify him of action taken or recommendations. Shall consult with agency or person criticized before making any report or recommendation. May report to Governor, Legislature, or public, such report to include any reply by agency. Must report to Legislature and public annually in any event. Must inform complainant of reasons (unless inappropriate) a matter is not to be investigated, the fact that the matter is to be investigated and results of any investigation. Up to \$1,000 fine for willful obstruction. Subpoena powers may be enforced in [circuit] court.	In certain circumstances shall make his recommendations to agency. Agency may be requested to notify him of action taken or recommendations. Shall consult with agency or person criticized before making any report or recommendation. May report to Governor, Legislature, or public, such report to include any reply by agency. Must report to Legislature and public annually in any event. Must inform complainant of reasons a matter is not to be investigated, the fact that the matter is to be investigated and results of any investigation. Up to \$1,000 fine for willful obstruction. Subpoena powers may be enforced in appropriate state court.
DISCIPLINARY ACTS AGAINST PUBLIC PERSONNEL	If reason to believe act committed warranting criminal or disciplinary proceeding, "shall" refer to appropriate authorities.	If breach of duty or misconduct thought to exist, matter "shall" be referred to appropriate authorities.	If breach of duty or misconduct thought to exist, matter "shall" be referred to appropriate authorities.

CALIFORNIA S.B. 33 (1968)	WASHINGTON S.B. 29 (1967)	OREGON S.B. 19 (1967)	ALTERNATE OREGON PROPOSAL (Revised 1968)
<p>May hold hearings in furtherance of investigation with powers of head of a department under Govt. Code. May hear testimony or obtain information from "any person" with relevant information. May consult with joint legislative committee as he deems necessary. Agencies shall give full cooperation. May enter agency premises, may consult with agency officers or employees, or examine any books and records as necessary to investigate.</p>	<p>Powers of head of agency under Chapter 34.04 RCW.</p>	<p>Priority given to administrative actions not otherwise reviewable. State agencies shall cooperate by giving full disclosure except where such would violate any statute or conditions of any federal grant or program.</p>	<p>Chief officer of agency involved to be advised of intent to investigate and subject matter of investigation. After notice, Ombudsman shall have full cooperation of agency and may enter premises of agency or question its personnel. May issue subpoenas for witnesses or documents, such witnesses to be reimbursed up to that payable under ORS 44.010 and 44.430.</p>
<p>Action, recommendation, or omission that might be unreasonable, etc.; based on mistake of law or fact; based on law or regulation; unreasonable, etc. in application; discretionary power exercised for improper purpose or arbitrarily or on irrelevant grounds or without stating reasons when such are required.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>Administrative actions as above with concern for legality and equity of the action and quality of action as judged by accepted practices of public administration. Concern not only with abuses but also unwarranted or unexpected excesses of authority.</p>	<p>Administrative acts contrary to law; unreasonable, etc.; based on mistake of fact; based on improper or irrelevant grounds; unaccompanied by an adequate statement of reasons; performed inefficiently, or otherwise erroneous.</p>
<p>If investigation discloses that an action, recommendation, or omission on the list of appropriate items for investigation does in fact exist, rectifying action and reasons therefor "shall" be recommended to appropriate authority.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>If investigation discloses that administrative action is subject to criticism, "shall" submit written criticisms to agency.</p>	<p>No special provision. (At discretion of Ombudsman.)</p>
<p>In specified cases, shall make recommendations to appropriate authority, requesting Ombudsman be notified of action taken in specified time. If no timely action, complainant to be notified of recommendations. Where no written complaint, recommendation to authority may be made verbally. May report to Legislature at any time, but at least annually, such annual report to be made available to Governor and public and to contain recommendations regarding legislation and administrative procedures. Any person or agency that may be adversely affected shall be permitted to state his position during investigation to Ombudsman. In any event complainant to be advised of results of investigation in manner Ombudsman deems proper. Shall notify complainant and give reasons for not taking or investigating a complaint.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>Where action investigated is subject to criticism, shall submit written report to state agency. May make recommendations to any state agency relating to administrative actions or practices and procedures of the agency. May make special reports and shall make annual report to Governor and members of Legislative Assembly, such [annual?] report to be distributed among news media.</p>	<p>May state opinions or make reports to agencies or make written public reports to Legislative Assembly, elected state officers, or public, in any event having duty to report to Legislative Assembly annually. Before giving any opinion or recommendation critical of a person or agency he shall consult with that person or agency. Before publicly reporting any adverse matter, agency or person shall have opportunity to attach reply to Ombudsman's report. Complainant to be advised in writing of decision not to investigate along with reasons for not doing so, or of intent to investigate. Complainant to be informed in writing of result of investigation and any action taken by agency.</p>
<p>If investigation discloses breach of duty or misconduct by public officer or employee, proper authorities "shall" be notified.</p>	<p>IDENTICAL TO CALIFORNIA S.B. 33 EXCEPT AS NOTED BELOW.</p>	<p>No provision.</p>	<p>No provision (left to discretion of Ombudsman.)</p>

COMPARISON CLASSIFICATIONS*	GELLHORN MODEL STATUTE (American Assembly 1967)	HARVARD MODEL STATUTE (Harvard J. Legis. 1965)	HAWAII ACT (Enacted 1967)
SECURITY PROVISIONS AND IMMUNITIES	Letters from detained persons in institutions under control of an agency shall be immediately forwarded to Ombudsman, unopened. (No provision on status of Ombudsman's own records.) No proceeding, opinion or expression of Ombudsman may be reviewed in court. No civil action against Ombudsman or staff for acting in discharge of duties. Ombudsman or staff may not be compelled to testify in any proceeding concerning matters within their cognizance. Witnesses have privileges and immunities they would have in court.	Letters from persons in custody by an agency shall be immediately forwarded, unopened. (No provision on status of Ombudsman's own records.) No proceeding or decision of Ombudsman made in accordance with this Act may be reviewed in any court. Ombudsman has same civil and criminal immunities as a state judge. Ombudsman and staff "shall not" testify in court as to matters in exercise of their duties except to enforce this Act. May hold "private hearings."	Letters from persons in custody by an agency shall be immediately forwarded, unopened. Maintains secrecy as to all matters and identities of complainants or witnesses except as to necessary disclosures to carry out duties and support recommendations. No proceeding or decision of Ombudsman made in accordance with this Act may be reviewed in any court. Ombudsman has same civil and criminal immunities as a state judge. Ombudsman and staff "shall not" testify in court as to matters in exercise of their duties except to enforce this Act. May hold "private hearings." Witnesses have privileges they have in state courts.
PUBLICITY	No special provisions except power to report to the press.	No special provisions except power to report to public.	No special provision except power to report to public.
APPROPRIATION			None made (thus not as yet a functioning office).

CALIFORNIA S.B. 33 (1968)	WASHINGTON S.B. 29 (1967)	OREGON S.B. 19 (1967)	ALTERNATE OREGON PROPOSAL (Revised 1968)
<p>Except for reports or recommendations made after investigation, no part of investigation shall be made public. Ombudsman and staff shall not disclose matters transpiring during investigation. No public report or recommendation may contain information from tax returns or report filed under Tax Code unless authorized by person making report or return. Except in trial for perjury, no testimony given during investigation admissible in subsequent criminal or administrative proceeding against that person. No other information obtained in investigation shall be admissible against the person in any such subsequent proceeding. Any letter by person in custody or prisoner or inmate of state institutions shall be forwarded immediately, unopened.</p>	<p>Tax Code exception omitted.</p>	<p>No special provision.</p>	<p>Letters from persons in custody of any agency shall be promptly forwarded, unopened. Testimony of witnesses not to be used against them except for perjury prosecution and no other criminal or civil proceeding to be brought or account of testimony. Except for public officers, ORS 40.040 privileges can be claimed. Ombudsman judge of privilege applied to public officers. Ombudsman records not public under ORS 192.010 but excluded as Legislative Assembly records under ORS 192.005. Communications addressed to agencies are public. Except for violation of this Act, no judicial review of activities. No civil or criminal proceedings against Ombudsman or staff for acts in performance of duties except for bad faith or under ORS 30.265, 30.320, or 30.400. Except to enforce act, Ombudsman or staff shall not give evidence concerning official duties. Contempt of witness may be punished by any circuit court. \$1,000 fine for willful hindrance.</p>
<p>No special provision except duty to make annual reports to Legislature available to public. Inference that most other reports and recommendations may be made public.</p>		<p>No special provision except requirement that annual report be submitted to news media.</p>	<p>May use his office for information clearing house or to coordinate other Ombudsmen at their request. Shall inform public of availability of his services and encourage filing of complaints, but annual publicity expenses limited to \$5,000 after first year.</p>
<p>\$265,000 for first year from General Fund.</p>		<p>\$60,000 from General Fund for period beginning 1/1/68.</p>	<p>\$100,000 out of General Fund for biennium beginning 7/1/69.</p>

