

# COMMITTEE REPORT

## SENATE

Mr. President:

Date 3/13/74

The Committee on FINANCE has had SB 1  
*office of ombudsman*  
under consideration. A Majority of the members of the Committee

- ( ) recommends it DO PASS
- ( ) recommends it DO NOT PASS
- ( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- ( ) recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- ( ) "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- ( ) reports it back WITHOUT RECOMMENDATION
- "other" BE PASSED OUT WITH A MINOR RECOMMENDATION

Members signing the Majority report:

<u>[Signature]</u>	<u>NO REC</u>	_____
<u>[Signature]</u>	<u>[Signature]</u>	_____
<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

[Signature] Chairman

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST  
 Bill No. SB 1  
 Title: An Act Creating the Office of the Ombudsman  
 Requested by: Danny Bowman Date: January 27, 1975  
 Return Date Requested: February 1, 1975  
 Agency: Administration Program: Budget and Management

II. FISCAL DETAIL  
 Budget Request Unit(s) Affected:  
 A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES	0	97.9	107.7	118.5	130.4	143.4
200 TRAVEL	0	5.8	6.4	7.0	7.7	8.5
300 CONTRACTUAL	0	12.0	12.0	11.0	12.1	13.3
400 COMMODITIES	0	.8	.5	.6	.7	.8
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0					

B. FUNDING: (Thousands of dollars)

GENERAL FUND		116.5	126.6	137.1	150.9	166.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3 / 0	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	/	36.0 / 0	36 /	36 /	36 /	36 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Ombudsman  
 Assistant Ombudsman  
 Secretary III

IV. ATTACHMENTS

V. DATE: February 4, 1975 PREPARED BY: Wayne E. Weeks

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

The Legislature of the State of Alaska  
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. HB 45  
 Title: Creating Office of Ombudsman  
 Requested by: Danny Bowman Date: January 1975  
 Return Date Requested: Unk  
 Agency: Administration Program: Budget & Management

II. FISCAL DETAIL

Budget Request Unit(s) Affected: \_\_\_\_\_

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES	0	97.9	107.7	112.5		
200 TRAVEL	0	5.9	6.4	7.0		
300 CONTRACTUAL	0	12.0	10.0	11.0		
400 COMMODITIES	0	.8	.5	1.0		
500 EQUIPMENT	0	2.0	1.0	1.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	118.5	125.6	138.5		

B. FUNDING: (Thousands of dollars)

GENERAL FUND	0	118.5	125.6	138.5		
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	3 /	3 /	3 /	/	/
MAN MONTHS (P./T.)	0 /	36 /	36 /	36 /	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The basic unit funded at \$118,500 in Juneau would include: Salaries of the Ombudsman (\$40,000), deputy Ombudsman (\$31,236), range 26A, and a Secretary 111 (\$11,724), range 12, plus benefits; travel and per diem for 15 intrastate trips, (\$5,800); (\$12,000 in contractual services to cover possible use of temporary investigators; (\$800) in commodities; (\$2,000) to cover purchase of equipment for office. 10% used as wage increase factor in personal services.

IV. ATTACHMENTS

V. DATE: 1/31/75

PREPARED BY: [Signature]

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

IN THE SENATE

BY KERTTULA

SENATE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the office of the ombudsman; amending Rule 43(h) of the Rules of Civil Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 55. OFFICE OF THE OMBUDSMAN.

ARTICLE 1. ORGANIZATION.

Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for appointment as the ombudsman shall be selected by the ombudsman selection committee composed of the president of the senate and a member of the senate appointed by him, the speaker of the house and a member of the house of representatives appointed by him, the chairman of the senate judiciary committee and the chairman of the house judiciary committee.

(b) The ombudsman selection committee shall examine persons to serve as the ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination before the legislature for appointment as the ombudsman. The appointment of a person nominated as the ombudsman by the committee is effective if his candidacy is approved by two-thirds of the membership of the legislature sitting in joint session.

Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman

(1) within two years of the last day on which he served as

1 a member of the legislature;

2 (2) while he is a candidate for or holds any other national  
3 or state office; or

4 (3) while he is engaged in any other regular occupation for  
5 which he receives compensation.

6 Sec. 24.55.040. TERM OF OFFICE. The term of office of the  
7 ombudsman is five years. An ombudsman may be reappointed but may not  
8 serve more than three terms.

9 Sec. 24.55.050. REMOVAL. The legislature, by a two-thirds vote  
10 in each house, may remove or suspend the ombudsman from office, but  
11 only for neglect of duty, misconduct, or disability.

12 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to an  
13 annual salary of \$40,000.

14 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman may  
15 appoint assistants and clerical personnel necessary to carry out the  
16 provisions of this chapter.

17 (b) The ombudsman may delegate to his assistants any of his  
18 duties except those specified in secs. 190 and 200 of this chapter.

19 (c) The ombudsman and the staff appointed by him are in the  
20 exempt service under AS 39.25.110.

21 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The  
22 Department of Administration shall provide suitable office space and  
23 equipment for the ombudsman and his staff.

24 (b) The salary of the ombudsman and his staff shall be paid  
25 according to the same procedures used for the payment of the salaries of  
26 other state employees.

27 (c) The ombudsman shall submit a budget for each fiscal year  
28 to the finance committees of the legislature and shall annually submit  
29 an estimated budget to the governor for informational purposes in the

1 preparation of the executive budget.

2 Sec. 24.55.090. PROCEDURE. The ombudsman may establish procedures  
3 for receiving and processing complaints, conducting investigations,  
4 and reporting his findings. However, he may not levy fees for the  
5 submission or investigation of complaints.

6 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

7 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdiction  
8 to investigate the administrative acts of agencies.

9 (b) The ombudsman may exercise his powers without regard to the  
10 finality of any administrative act.

11 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall  
12 investigate any complaint indicating an appropriate subject for inves-  
13 tigation under sec. 150 of this chapter, unless he believes that

14 (1) there is presently available an adequate remedy for the  
15 grievance stated in the complaint;

16 (2) the complaint relates to a matter that is outside the  
17 jurisdiction of the ombudsman;

18 (3) the complaint relates to an administrative act of which  
19 the complainant has had knowledge for too long a time before the  
20 complaint was submitted;

21 (4) the complainant does not have a sufficient personal  
22 interest in the subject matter of the complaint;

23 (5) the complaint is trivial or made in bad faith;

24 (6) the facilities of the ombudsman's office are insufficient  
25 for adequate investigation; or

26 (7) there are other complaints more worthy of the ombudsman's  
27 attention.

28 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The  
29 ombudsman may investigate on his own motion if he reasonably believes

1 that an appropriate subject for investigation under sec. 150 of this  
2 chapter exists.

3 Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman  
4 decides not to investigate, he shall inform the complainant of that  
5 decision and shall state his reasons unless he reasonably believes it  
6 is inappropriate to do so.

7 (b) If the ombudsman decides to investigate, he shall notify the  
8 complainant of his decision.

9 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides  
10 to investigate, he shall notify the agency of his intention to  
11 investigate.

12 ARTICLE 3. INVESTIGATIONS.

13 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An  
14 appropriate subject for investigation by the ombudsman is an administra-  
15 tive act of an agency which might be

- 16 (1) contrary to law;  
17 (2) unreasonable, unfair, oppressive, or unnecessarily  
18 discriminatory, even though in accordance with law;  
19 (3) based on a mistake of fact;  
20 (4) based on improper or irrelevant grounds;  
21 (5) unaccompanied by an adequate statement of reasons;  
22 (6) performed in an inefficient manner; or  
23 (7) otherwise erroneous.

24 (b) The ombudsman may investigate to find an appropriate remedy.

25 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,  
26 the ombudsman may

- 27 (1) make inquiries and obtain information as he thinks fit;  
28 (2) enter without notice to inspect the premises of an  
29 agency; and

1 (3) hold private hearings.

2 Sec. 24.55.170. POWERS. (a) Subject to the privileges which  
3 witnesses have in the courts of this state, the ombudsman may

4 (1) compel at a specified time and place, by subpoena, the  
5 appearance and sworn testimony of any person who the ombudsman reason-  
6 ably believes may be able to give information relating to a matter  
7 under investigation; and

8 (2) compel any person, by subpoena, to produce documents,  
9 papers, or objects which the ombudsman reasonably believes may relate  
10 to a matter under investigation.

11 (b) If a person refuses to comply with a subpoena issued under  
12 (a) of this section, the superior court may on application of the  
13 ombudsman compel obedience by proceedings for contempt in the same  
14 manner as in the case of disobedience to the requirements of a subpoena  
15 issued by the court or refusal to testify in the court.

16 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

17 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an  
18 opinion or recommendation that is critical of an agency or person,  
19 the ombudsman shall consult with that agency or person.

20 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombudsman  
21 shall report his opinion and recommendations to an agency if he finds,  
22 after investigation, that

- 23 (1) a matter should be further considered by the agency;  
24 (2) an administrative act should be modified or cancelled;  
25 (3) a statute or regulation on which an administrative act  
26 is based should be altered;  
27 (4) reasons should be given for an administrative act; or  
28 (5) any other action should be taken by the agency.

29 (b) The ombudsman may request the agency to notify him, within

1 a specified time, of any action taken on his recommendations.

2 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reason-  
3 able time has elapsed, the ombudsman may present his opinion and  
4 recommendations to the governor, the legislature, the public, or any  
5 of these. The ombudsman shall include with his opinion any reply  
6 made by the agency.

7 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable  
8 time has elapsed, the ombudsman shall notify the complainant of the  
9 actions taken by him and by the agency.

10 ARTICLE 5. MISCELLANEOUS.

11 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman  
12 thinks there is a breach of duty or misconduct by any officer or  
13 employee of an agency, he shall refer the matter to the chief executive  
14 officer of the agency.

15 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to  
16 the legislature and the public an annual report discussing his  
17 activities under this chapter.

18 Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or decision of  
19 the ombudsman may be reviewed in any court, unless it contravenes the  
20 provisions of this chapter.

21 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has the  
22 same immunities from civil and criminal liability as a judge of this  
23 state.

24 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The  
25 ombudsman and his staff shall not testify in any court with respect  
26 to matters coming to their attention in the exercise or purported  
27 exercise of their official duties except as may be necessary to enforce  
28 the provisions of this chapter.

29 Sec. 24.55.270. PENALTY. A person who wilfully hinders the

1 lawful actions of the ombudsman or his staff, or who wilfully refuses  
2 to comply with their lawful demands, is guilty of a misdemeanor and  
3 upon conviction is punishable by a fine of not more than \$1,000.

4 ARTICLE 6. GENERAL PROVISIONS.

5 Sec. 24.55.280. DEFINITIONS. In this chapter

6 (1) "agency" means a department, office, agency or board in  
7 the executive branch of the state government and an officer, employee  
8 or member of an "agency" acting or purporting to act in the exercise  
9 of his official duties, but "agency" does not include the governor or  
10 his personal staff;

11 (2) "administrative act" means an action, omission, decision,  
12 recommendation, practice, or procedure, but does not include the  
13 preparation or presentation of legislation.

14 Sec. 24.55.280. SHORT TITLE. This chapter may be cited as the  
15 Ombudsman Act of 1975.

16 \* Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

17 (16) The ombudsman and staff appointed by him.

18 \* Sec. 3. Sec. 24.55.260 of this Act amends Rule 43(h) of the Rules of  
19 Civil Procedure by establishing an additional privilege not to testify in a  
20 court and must receive an affirmative vote of two-thirds of the full member-  
21 ship of each house in order to be effective.

22 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.10-  
23 070(c).

Original Sponsor: Kerttula, Miller,  
Croft, Willis, Hohman, Rader, Huber  
and Rodey

Offered: 2/12/75  
Referred: Finance

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 1

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the ombudsman; amending  
7 Rule 43(h) of the Rules of Civil Procedure; and pro-  
8 viding for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 24 is amended by adding a new chapter to read:

11 CHAPTER 55. OFFICE OF THE OMBUDSMAN.

12 ARTICLE 1. ORGANIZATION.

13 Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in  
14 the legislative branch of the state the office of the ombudsman.

15 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) The rules  
16 committee of the senate shall examine persons to serve as the ombuds-  
17 man regarding their qualifications and abilities and shall place the  
18 name of one or more persons recommended before the senate for appoint-  
19 ment as the ombudsman.

20 (b) A candidate for appointment as the ombudsman shall be nomi-  
21 nated by the senate by a concurrent resolution adopted by a roll call  
22 vote of a majority of its members entered in the journal. The appoint-  
23 ment of a person nominated as the ombudsman by the senate is effective  
24 if his candidacy is

25 (1) confirmed by a roll call vote of a majority of the  
26 members of the house of representatives entered in the journal; and

27 (2) approved by the governor.

28 (c) However, the governor may veto the appointment and return it,  
29 with a statement of his objections, to the senate. Upon receipt of a

1 veto message the legislature shall meet immediately in joint session  
2 and reconsider approval of the vetoed appointment. The vetoed appoint-  
3 ment becomes effective by an affirmative vote of two-thirds of the  
4 membership of the legislature in joint session. The vote on reconsider-  
5 ation of a vetoed appointment shall be entered in the journals of both  
6 houses.

7 (d) The appointment of the ombudsman becomes effective if, while  
8 the legislature is in session, the governor neither approves nor  
9 vetoes it within 15 days, Sundays excepted, after its delivery to him.  
10 If the legislature is not in session and the governor neither approves  
11 nor vetoes the appointment within 20 days, Sundays excepted, after its  
12 delivery to him, the appointment becomes effective.

13 Sec. 24.55.030. QUALIFICATIONS; PROHIBITION AGAINST POLITICAL  
14 ACTIVITY. (a) No person may serve as ombudsman

15 (1) within two years of the last day on which he served as  
16 a member of the legislature;

17 (2) while he is a candidate for or holds any other national,  
18 state, or municipal office;

19 (3) while he is engaged in any other occupation for which  
20 he receives compensation; and

21 (4) unless he is at least 21 years of age and is a quali-  
22 fied voter who has been a resident of the state for at least three  
23 years.

24 (b) The ombudsman and members of his staff shall maintain the  
25 integrity and impartiality of the ombudsman's functions and services  
26 by refraining from joining or supporting a partisan or nonpartisan  
27 political organization, faction or activity which would tend to  
28 undermine the essential nonpartisan nature of their functions and  
29 services, including but not limited to the making of political

1 contributions. However, this subsection does not restrict the ombuds-  
2 man or members of his staff from expressing private opinion, registering  
3 as to party, or voting.

4 Sec. 24.55.040. TERM OF OFFICE. (a) The term of office of the  
5 ombudsman is five years. An ombudsman may be reappointed but may not  
6 serve for more than three terms.

7 (b) If the term of an ombudsman expires without the appointment  
8 of a successor under this chapter, the incumbent ombudsman may continue  
9 in office until a successor is appointed. If the ombudsman dies,  
10 resigns, becomes ineligible to serve, or is removed or suspended from  
11 office, the deputy ombudsman becomes acting ombudsman until a new  
12 ombudsman is appointed for a full term.

13 Sec. 24.55.050. REMOVAL. The legislature, by a two-thirds vote  
14 in each house, may remove or suspend the ombudsman from office, but  
15 only for neglect of duty, misconduct, or disability.

16 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to  
17 receive an annual salary equal to that of the chief justice of the  
18 supreme court.

19 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman shall  
20 appoint a deputy ombudsman; he shall also appoint assistants and  
21 clerical personnel necessary to carry out the provisions of this  
22 chapter.

23 (b) The ombudsman may delegate to his deputy or assistants any  
24 of his duties except those specified in secs. 190 - 200 of this chapter;  
25 however, during the ombudsman's absence from his principal business  
26 offices, the ombudsman may delegate the duties specified in secs.  
27 190 - 200 of this chapter to his deputy for the duration of his absence.  
28 Those duties specified in secs. 190 - 200 of this chapter shall be  
29 performed by the deputy ombudsman when he is serving as acting ombudsman

1 under sec. 40(b) of this chapter.

2 (c) The ombudsman and the staff appointed by him are in the  
3 exempt service under AS 39.25.110.

4 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The  
5 Alaska Legislative Council shall provide suitable office space and  
6 equipment for the ombudsman and his staff.

7 (b) The salary and benefits of the ombudsman and his permanent  
8 staff shall be paid through the same procedures used for payment of  
9 the salaries and benefits of other permanent legislative employees.

10 (c) The ombudsman shall submit a budget for each fiscal year to  
11 the finance committees of the legislature and shall annually submit an  
12 estimated budget to the governor for information purposes in the  
13 preparation of the executive budget.

14 Sec. 24.55.090. PROCEDURE. The ombudsman shall, by regulations  
15 adopted under the Administrative Procedure Act (AS 44.52), establish  
16 procedures for receiving and processing complaints, conducting investi-  
17 gations, and reporting his findings. However, he may not levy fees  
18 for the submission or investigation of complaints.

19 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

20 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdic-  
21 tion to investigate the administrative acts of agencies.

22 (b) The ombudsman may exercise his powers without regard to the  
23 finality of an administrative act.

24 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman  
25 shall investigate a complaint which is an appropriate subject for  
26 investigation under sec. 150 of this chapter, unless he believes that

27 (1) there is presently available an adequate remedy for the  
28 grievance stated in the complaint;

29 (2) the complaint relates to a matter that is outside the

1 jurisdiction of the ombudsman;

2 (3) the complaint relates to an administrative act of which  
3 the complainant has had knowledge for an unreasonable length of time  
4 before the complaint was submitted;

5 (4) the complainant does not have a sufficient personal  
6 interest in the subject matter of the complaint;

7 (5) the complaint is trivial or made in bad faith;

8 (6) the resources of the ombudsman's office are insufficient  
9 for adequate investigation; or

10 (7) there are other complaints more worthy of the ombudsman's  
11 attention.

12 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The  
13 ombudsman may investigate the administrative act of an agency on his  
14 own motion if he reasonably believes that it is an appropriate subject  
15 for investigation under sec. 150 of this chapter.

16 Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman  
17 decides not to investigate a complaint, he shall inform the complainant  
18 of that decision and shall state his reasons unless he reasonably  
19 believes it is inappropriate to state his reasons.

20 (b) If the ombudsman decides to investigate a complaint, he  
21 shall notify the complainant of his decision.

22 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides  
23 to investigate a complaint, he shall notify the agency of his intention  
24 to investigate unless he believes that advance notice will unduly  
25 hinder the investigation or make it ineffectual.

26 ARTICLE 3. INVESTIGATIONS.

27 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An  
28 appropriate subject for investigation by the ombudsman is an admini-  
29 strative act of an agency which the ombudsman has reason to believe

1 might be

2 (1) contrary to law;

3 (2) unreasonable, unfair, oppressive, arbitrary, capricious,  
4 an abuse of discretion, or unnecessarily discriminatory, even though  
5 in accordance with law;

6 (3) based on a mistake of fact;

7 (4) based on improper or irrelevant grounds;

8 (5) unaccompanied by an adequate statement of reasons;

9 (6) performed in an inefficient manner; or

10 (7) otherwise erroneous.

11 (b) The ombudsman may investigate to find an appropriate remedy.

12 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,  
13 the ombudsman may

14 (1) make inquiries and obtain information as he considers  
15 necessary;

16 (2) enter without notice to inspect the premises of an  
17 agency, but only when agency personnel are present; and

18 (3) hold private hearings.

19 Sec. 24.55.170. POWERS. (a) Subject to the privileges which  
20 witnesses have in the courts of this state, the ombudsman may

21 (1) compel by subpoena, at a specified time and place, the  
22 appearance and sworn testimony of any person who the ombudsman reason-  
23 ably believes may be able to give information relating to a matter  
24 under investigation; and

25 (2) compel any person, by subpoena, to produce documents,  
26 papers, or objects which the ombudsman reasonably believes may relate  
27 to the matter under investigation.

28 (b) If a person refuses to comply with a subpoena issued under  
29 (a) of this section, the superior court may, on application of the

1 ombudsman, compel obedience by proceedings for contempt in the same  
2 manner as in the case of disobedience to the requirements of a subpoena  
3 issued by the court or refusal to testify in the court.

4 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

5 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an  
6 opinion or recommendation which is critical of an agency or person,  
7 the ombudsman shall consult with that agency or person.

8 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombuds-  
9 man shall report his opinion and recommendations to an agency if he  
10 finds, after investigation, that

- 11 (1) a matter should be further considered by the agency;
- 12 (2) an administrative act should be modified or cancelled;
- 13 (3) a statute or regulation on which an administrative act  
14 is based should be altered;
- 15 (4) reasons should be given for an administrative act;
- 16 (5) any other action should be taken by the agency;
- 17 (6) there are no grounds for action by the agency; or
- 18 (7) the agency's act was arbitrary or capricious, constituted  
19 an abuse of discretion, or was otherwise erroneous or not in accordance  
20 with the law.

21 (b) The ombudsman may request the agency to notify him, within a  
22 specified time, of any action taken on his recommendations.

23 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a  
24 reasonable amount of time after the ombudsman reports his opinion and  
25 recommendations to an agency he may present his opinion and recommen-  
26 dations to the governor, the legislature, the public or any of these.  
27 The ombudsman shall include with his opinion any reply made by the  
28 agency.

29 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable

1 time has elapsed, the ombudsman shall notify the complainant of the  
2 actions taken by him and by the agency.

3 ARTICLE 5. MISCELLANEOUS

4 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman  
5 believes there is a breach of duty or misconduct by an officer or  
6 employee of an agency in the conduct of his official duties, the  
7 ombudsman shall refer the matter to the chief executive officer of the  
8 agency or, when appropriate, to a grand jury or to any other appropri-  
9 ate official or agency.

10 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to  
11 the legislature and the public an annual report of his activities  
12 under this chapter.

13 Sec. 24.55.240. JUDICIAL REVIEW A proceeding or decision of  
14 the ombudsman may be reviewed in superior court only to determine if  
15 it is contrary to the provisions of this chapter.

16 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. No civil action  
17 may be brought against the ombudsman or a member of his staff for  
18 anything done, said or omitted in performing his duties or responsi-  
19 bilities under this chapter.

20 Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The  
21 ombudsman and his staff may not testify in a court regarding matters  
22 coming to their attention in the exercise or purported exercise of  
23 their official duties except as may be necessary to enforce the pro-  
24 visions of this chapter.

25 Sec. 24.55.270. LETTERS TO OR FROM OMBUDSMAN. A letter to the  
26 ombudsman from a person held in custody by an agency shall be forwarded  
27 immediately, unopened, to the ombudsman. A letter from the ombudsman  
28 to a person held in custody by an agency shall be delivered immediately,  
29 unopened, to the person.

1           Sec. 24.55.280. TIME FOR JUDICIAL REVIEW OF AGENCY ACTION. This  
2 chapter in no way extends the time limit in which judicial review of  
3 agency action must be sought.

4           Sec. 24.55.290. PENALTY. A person who wilfully hinders the  
5 lawful actions of the ombudsman or his staff, or who wilfully refuses  
6 to comply with their lawful demands, or who wilfully violates sec. 270  
7 of this chapter, is guilty of a misdemeanor and upon conviction is  
8 punishable by a fine of not more than \$1,000.

9           Sec. 24.55.300. ADMINISTRATIVE PROCEDURE ACT. The administrative  
10 acts of the ombudsman are not subject to the provisions of the Adminis-  
11 trative Procedure Act (AS 44.62), except as provided in sec. 90 of  
12 this chapter.

13           Sec. 24.55.310. CONFLICT OF INTEREST. The ombudsman, the  
14 deputy ombudsman and their professional staff are subject to AS 39.50  
15 (conflict of interest).

16           Sec. 24.55.320. DEFINITIONS. In this chapter

17           (1) "administrative act" means an action, omission, decision,  
18 recommendation, practice, policy, or procedure of an agency, but does  
19 not include the preparation or presentation of legislation or the  
20 substantive content of a judicial order, decision or opinion;

21           (2) "agency" includes a department, office, institution,  
22 corporation, authority, organization, commission, committee, council  
23 or board of a municipality or in the executive, legislative or judi-  
24 cial branches of the state government, and a department, office,  
25 institution, corporation, authority, organization, commission, com-  
26 mittee, council or board of a municipality or of the state government  
27 independent of the executive, legislative and judicial branches; it  
28 also includes an officer, employee or member of an "agency" acting  
29 or purporting to act in the exercise of his official duties, but does

1 not include the governor, lieutenant governor, a member of the legis-  
2 lature, justice of the supreme court, judge of the superior or district  
3 court, magistrate, member of a city council or borough assembly,  
4 elected city or borough mayor, or a member of an elected school board;

5 (3) "municipality" means a home rule or general law borough  
6 or city including but not limited to a unified municipality organized  
7 under AS 29.68.

8 Sec. 24.55.330. SHORT TITLE. This chapter may be cited as The  
9 Ombudsman Act.

10 \* Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

11 (16) the ombudsman and his staff.

12 \* Sec. 3. Sec. 24.55.260 in sec. 1 of this Act amends Rule 43(h) of the  
13 Rules of Civil Procedure by establishing an additional privilege not to  
14 testify in a court and must receive an affirmative vote of two-thirds of  
15 the full membership of each house in order to be effective.

16 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
17 10.070(c).

he received 195 complaints and from December 18, 1973 to March 18, 1974, he received 68 complaints.

4. HAWAII. The Hawaii Ombudsman's powers include jurisdiction over state and local prisons (see C-12).
5. IOWA. The Citizens' Aide Office has a Deputy Citizens' Aide for Correction, an office now made permanent by S.F. 73 which passed in 1974 (see C-14). The 1973 annual report of the Citizens' Aide states that 105 complaints were received against the Bureau of Adult Correction and its institutions.
6. KANSAS. S.B. 72 providing for an Ombudsman of Correctional Institutions became effective July 1 (see C-15).
7. MICHIGAN. The Office of Legislative Corrections Ombudsman was established by 1973 legislation. The Ombudsman, James Spivey, was appointed on March 11, 1974 by the Legislative Council (under whose authority the office functions).
8. MINNESOTA. S.F. 672 creating the Office of Ombudsman for the State Department of Corrections was enacted in 1973. Ombudsman Theatrice Williams who held office since 1972 under executive order of Governor Wendell R. Anderson reported 927 complaints received in his July 1, 1972--June 30, 1973 annual report. From July 1, 1973--June 30, 1974, he received 1,008 complaints.
9. NEBRASKA. Murrell B. McNeil, State Ombudsman, states in his 1973 annual report that he is receiving an increase in complaints from prisoners. (See C-23)
10. NEW YORK. The State Department of Correctional Services has established the Office of the Inspector General to, among other duties, receive complaints. Federal Judge Morris E. Lasker ordered the city to establish an Ombudsman to handle grievances of children held in New York City detention centers. It is expected that the office will be established shortly. The New York State Division for Youth has an Ombudsman program in its facilities.
11. OHIO. The Department of Rehabilitation has established the in-house position of Chief Ombudsman held by George E. Miller.
12. OREGON. L. L. Oliver serves as Ombudsman at the Oregon State Penitentiary, an office established in 1971.
13. SOUTH CAROLINA. The Department of Corrections has appointed an Ombudsman under the supervision of its director.
14. WISCONSIN. Alan Lee, Assistant Attorney General, serves as Corrections Complaint Examiner, receiving appeals from the Inmate Complaint Review System. From November 20, 1972 to March 19, 1974, he received 396 complaints on appeal from the Inmate Complaint Review System which had received 2,891 complaints in the same period.

INTERNATIONAL BAR ASSOCIATION  
OMBUDSMAN COMMITTEE

AMERICAN BAR ASSOCIATION  
SECTION OF ADMINISTRATIVE LAW  
OMBUDSMAN COMMITTEE

DEVELOPMENT REPORT  
JULY 1, 1973 -- JUNE 30, 1974

This report represents an effort to compile information concerning non-judicial complaint-handling mechanisms with major emphasis on Ombudsman and Ombudsman-like systems. This report makes no effort to evaluate the performance of the institutions described.

On the international level, the information contained in this report was obtained from correspondence with scholars, government officials, lawyers, Ombudsmen, and Ombudsman proponents in 134 countries and 80 subdivisions. In the United States, correspondence was maintained with Ombudsmen, lawyers, officials, legislators, legislative reference bureaus, political scientists, and Ombudsman proponents in 50 states, Puerto Rico, Virgin Islands, Micronesia Trust Territory, District of Columbia, Guam, and American Samoa, and 269 cities.

It is quite obvious that the word "Ombudsman" has been used throughout the world to mean any complaint-handling mechanism. Whether Ombudsman should and can be reserved for the independent and non-partisan officer of the legislature who deals in specific complaints from the public against administrative injustice and maladministration is a problem not resolved in this report. It should be noted if an official terms himself an Ombudsman, that name is used in this report.

The international section of this report is issued in the name of the Ombudsman Committee, International Bar Association, and the United States section in the name of the Ombudsman Committee, Section of Administrative Law, American Bar Association.

Bernard Frank, Chairman  
832 Hamilton Mall  
Allentown, Pennsylvania 18105

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## A. INTERNATIONAL

The summary which follows deals with the varied non-judicial institutions throughout the world (not including the United States) which are concerned with the receipt and handling of complaints against government for abuses of authority. Its major stress is on the Ombudsman concept but other systems which have ombudsman-like characteristics (although not classified as Ombudsmen) are included where known to the Committee.

1. AUSTRALIA--FEDERAL. Legislation is being drafted to establish an Ombudsman to investigate complaints of unjust treatment by Federal government departments and agencies. (See A-122)
2. AUSTRALIA--STATE OF QUEENSLAND. The Parliamentary Commission Act 1974 was introduced by the Government on March 22. Jurisdiction will apply to all government departments and authorities including local authorities. The Act was passed in April. (See A-127)
3. AUSTRALIA--STATE OF NEW SOUTH WALES. The Cabinet has approved the preparation of legislation to provide for an Ombudsman. Legislation now being drafted by Parliamentary Counsel should be introduced at the next session of Parliament which begins in August.
4. AUSTRALIA--NORTHERN TERRITORY. An Ombudsman bill passed by the Legislative Council two years ago is still awaiting assent. The Federal Government has indicated sympathy with the proposal but sees difficulty in conferring power over federal public servants to a territory Ombudsman. The National Times, April 8-13, reports that the legislation being drafted by the Federal Government (See A-1) includes a deputy Ombudsman for the Territory as well as one for the Capital Territory.
5. AUSTRALIA--STATE OF SOUTH AUSTRALIA. The Ombudsman Act was assented to on December 14, 1972 and on the same day Gordon D. Combe, M.C., was appointed as the first Ombudsman. 308 complaints were received in the six and one-half month-period to June 30, 1973. Seventy were fully investigated of which 16 were considered to be justified in full or in part. 731 complaints were received for the ten-month period to April 30, 1974. By Governor's proclamation and effective from April 1, 1974, all local government bodies in the State were added to the jurisdiction of the Ombudsman which also includes state government departments and state statutory authorities.
6. AUSTRALIA--STATE OF TASMANIA. A Select Committee of the Legislative Council appointed to inquire into and report on complaints of administrative action by various agencies is in operation and receiving complaints: 1972, 19; and to 7/31/73, 9.
7. AUSTRALIA--VICTORIA. The Ombudsman Act 1973 was proclaimed on October 30, 1973 and on the same date John V. Dillon assumed office. He had been retired as Under Secretary of the Department of Chief Secretary. His first report will be presented to Parliament in September and official statistics will not be available until that time. The National Times article (See A-4)

- F. UNITED STATES--BUSINESS OMBUDSMAN. The trend toward governmental business complaint-handling offices frequently bearing the term "Ombudsman" instituted by the United States Department of Commerce in 1971 with its Ombudsman for Business continued (see B-4). The list on the state level includes Pennsylvania with the Office of Business Ombudsman (see C-32), Ohio with the Businessman's Ombudsman Bureau (see C-29), Tennessee's Ombudsman to Industry, Maryland's Office of Business Liaison, and Michigan's Pro-Businessman's Program.
- G. UNITED STATES--HEALTH. The use of patient advocates, patient representatives, and Ombudsmen continued to increase.
  1. NURSING HOME OMBUDSMAN DEMONSTRATION PROJECT. The U. S. Department of Health, Education and Welfare funded projects in Idaho (Arlene D. Warner, State Ombudsman for Nursing Homes, under the general supervision of the Department of Special Services); Massachusetts (John J. Donovan, Nursing Home Ombudsman under the direction of the Executive Office of Elder Affairs); Michigan (Marilyn A. Schiff, National Director, Nursing Home Ombudsman Program under contract with the National Council of Senior Citizens, Inc.); Oregon (Ruth Hocks, Assistant Ombudsman for Nursing Homes); Pennsylvania (Carol Delany, Director, Nursing Home Ombudsman Project); South Carolina (William V. Bradley, State Nursing Home Ombudsman; see C-36 for legislation authorizing the Nursing Home Ombudsman to investigate complaints); and Wisconsin (Lieutenant Governor, Martin J. Schreiber, is the head of the Nursing Home Ombudsman program).
  2. STATE LEGISLATION. Bills for Health Ombudsmen were introduced in Florida (C-10), Massachusetts (C-18), Pennsylvania (C-32), South Carolina (C-36), and Washington (C-41). The only bill to be enacted into law was the South Carolina legislation.
- H. UNITED STATES--CORRECTIONAL INSTITUTIONS. The Ombudsman concept has attracted a great deal of attention in the correctional institution area.
  1. FEDERAL PROPOSALS. The Administrative Conference of the United States issued a study on grievance procedure for prisoners (see B-1). Legislative correctional Ombudsman proposals introduced into Congress were H.R. 11146--(see B-7), H.R. 8848--(See B-8), and S. 2160--(see B-12). The House of Representatives Select Committee on Crime recommended an office of National Correctional Ombudsman and state Correctional Ombudsman in its report, No. 93-329.
  2. STATE PROPOSALS. California (see C-5), Massachusetts (see C-18), New York (see C-26), and Washington (see C-41).
  3. CONNECTICUT. James R. Bookwalter serves as Connecticut Correctional Ombudsman under an agreement between the Hartford Institute of Criminal and Social Justice and the Department of Correction. From September 18, 1973 to December 18, 1973,

of the activities of the Community Grievance Officer and submit a report on the same to the Board of City Commissioners and the City Manager. Operations began on July 10, 1972. Frederick Linde who serves as Grievance Officer reports that a total number of 2,300 grievances have been received from July 10, 1972 to May 24, 1974.

E. UNITED STATES--LOCAL GOVERNMENT--SCHOOL DISTRICTS.

Information concerning school districts is rather limited. The following school districts have some type of Ombudsman mechanism to handle complaints.

1. ANN ARBOR PUBLIC SCHOOLS, MICHIGAN. Robert L. Potts heads the Office of Human Relations Ombudsman which handles grievances from students, parents, and staff, among other duties.
2. DALLAS, TEXAS. Jack Roten serves as Ombudsman. His services relate to teachers.
3. DAYTON, OHIO. The jurisdiction of the Joint Office of Citizen Complaints includes the Dayton School District. The 1973 annual report shows 54 cases involving the school district.
4. MONTGOMERY COUNTY PUBLIC SCHOOLS, MARYLAND. Thomas S. Fess serves as Ombudsman and staff assistant to the Board of Education. He was appointed by the Board on the advice of the Superintendent and reports both to the Board and the Superintendent. Mr. Fess handles complaints from employees, students, and citizens, among other duties.
5. NIAGARA FALLS, NEW YORK. Lt. Alfred Bakula of the Police Department serves as Ombudsman for the secondary school students.
6. PHILADELPHIA, PENNSYLVANIA. The Student Bill of Rights and Responsibilities of the School District provides for discretionary appointment by each high school student government of Ombudsmen. Training sessions are held for newly elected Ombudsmen.
7. SEATTLE, WASHINGTON. In 1973, the Office of Ombudsman was established for the Public Schools. The Ombudsman is appointed by the Superintendent of Schools and reports to him. He handles complaints from citizens, students, and employees. Carroll Hanson, who heads the office, reported 121 grievances and more than 700 routine inquiries in his first six months in office. Funding is shared by the district and the U. S. Office of Education.
8. WICHITA, KANSAS. The League of Women Voters in 1973 received grants from H.E.W. to fund a School Ombudsman project. The Board of Education voted to co-operate and adopted a policy proposed by the League. Robert D. Wright was selected by the League and an Advisory Committee in August, 1973. He resigned and Rex Krieg was appointed in July as School Ombudsman. From September, 1973 to April, 1974, 429 cases were received.

stated that he had received 762 complaints and out of 135 fully investigated 25 were found to be justified.

8. AUSTRALIA--WESTERN AUSTRALIA. O. F. Dixon, Parliamentary Commissioner for Administrative Investigations, issued his report for the year ended June 30, 1973, which showed that he had received 806 complaints. 480 had been fully investigated and of these 93 considered justified. The report for the year ended June 30, 1974 will be available at a later date.
9. AUSTRIA. The National Assembly still has under consideration the 1971 Government proposal for a "People's Advocate," a collegial body, consisting of one member from each political party represented in the Main Committee of the lower legislative chamber. The opposition Austrian People's Party has proposed a Standing Committee on Complaints composed of members of the lower chamber.
10. BANGLADESH. Article 77 of the Constitution adopted in 1972 provides that Parliament may by law provide for the establishment of the office of Ombudsman. No legislation has been passed.
11. BELGIUM. It has been reported that the Parliament is currently considering legislation similar to the French Mediateur Law but this has not been confirmed.
12. BERMUDA. The subject of the Ombudsman has been discussed at high governmental levels but no decision has been reached.
13. BOTSWANA. Attorney General M. D. Mokama is making a study of the Ombudsman institution.
14. BULGARIA. The Procurator General exercises control in matters relating to the observance of the law by government organizations, officials, and the people.
15. CANADA--FEDERAL. Bills C 106 and C 151 for the establishment of a Canadian Ombudsman were introduced on March 12, 1974 in the House of Commons. The Government in December, 1973, proposed the establishment of a five-man Commission on Human Rights and Interests to handle human rights violations and citizen grievances against government, large businesses and unions and characterized the Commission as a combination of ombudsman and anti-discrimination tribunal. The House of Commons was dissolved in May before a bill could be introduced.
16. CANADA--FEDERAL--COMMISSIONER OF OFFICIAL LANGUAGES. The third annual report of the Commissioner, Keith Spicer, for the year ending March 31, 1973 shows that he received 943 complaints. The 1974 statistics will be available after presentation to Parliament. On June 6, 1973, Parliament passed a resolution reaffirming the principles of the Official Languages Act of 1969.
17. CANADA--FEDERAL--PRISONS. Miss Inger Hansen was appointed by the Solicitor General on the authority of the Privy Council

- on June 1, 1973 to serve as a Commissioner under the Inquiries Act with the title of Correctional Investigator. She will handle inmate complaints, on her own initiative, and problems that come within the responsibility of the Solicitor General. During the period from June 1, 1973 to May 9, 1974, she received 676 complaints. Approximately 10% were rectified. It should be noted that the inmate population is 9,000.
18. CANADA--ALBERTA. George B. McClellan retired as Ombudsman on April 30, 1974. A former Commissioner of the Royal Canadian Mounted Police, he had served as Ombudsman since September 1, 1967. His annual report for the period November 1, 1972 to October 31, 1973 shows that 776 complaints were received. 255 were investigated with 56 of these justified. Dr. Randall Ivany, Dean of Edmonton and Rector of All Saints Cathedral, assumed office as Ombudsman on May 1, 1974. 1973 Bill 212 introduced by Albert Ludwig, Q.C., would have extended the jurisdiction of the Ombudsman to municipalities. Professor Karl A. Friedmann of the University of Calgary delivered a paper on "Complaining--Comparative Aspects of Complaint Behavior and Attitudes towards Complaining in Canada (Alberta) and Britain" at the Canadian Political Science Association Annual Meeting in August, 1973.
  19. CANADA--BRITISH COLUMBIA. The new Labour Code of British Columbia Act provides in Part VIII for a Labour Ombudsman with power to investigate actions of the Department of Labour, trade unions, and employees' organizations. It has not as yet been proclaimed. (May 14, 1974)
  20. CANADA--MANITOBA. G. W. Maltby, Ombudsman, issued his report for the year 1973, showing that he received 441 complaints, of which 64 are recorded as rectified.
  21. CANADA--NEW BRUNSWICK. Charles Edouard Leger died on September 29, 1973. He had served as Ombudsman since June 1, 1971. He was succeeded by G. A. McAllister, who issued the seventh report for the year, 1973. 192 complaints were received and of these 14 were rectified.
  22. CANADA--NEWFOUNDLAND. The Parliamentary Commissioner (Ombudsman) Act, 1970 has not been proclaimed as yet. The Government intends to proclaim the Act as soon as it has found a suitable candidate for the position of Ombudsman.
  23. CANADA--NORTHWEST TERRITORIES. At the request of the legislature a paper discussing the advisability of an Ombudsman was presented to the legislature in June by the Department of Public Services.
  24. CANADA--NOVA SCOTIA. The Ombudsman, Dr. Harry D. Smith, received 335 complaints in 1973, according to his third report just received.
  25. CANADA--PRINCE EDWARD ISLAND. The Ombudsman office has been discussed from time to time at Cabinet level but no other steps have been taken.
  32. SAN JOSE, CALIFORNIA. The Office of the Ombudsman was established by City Council in 1971 as part of the City Manager's Office and funded by Model Cities monies. Sam Sanchez was appointed to the position. He can only be removed by a two-thirds vote of City Council and the Board of Directors of Model Cities. Mr. Sanchez has issued an annual report covering the period from October 15, 1971 to October 15, 1973, showing 337 complaints received. The office is now fully funded by the City.
  33. SAN LEANDRO, CALIFORNIA. The position of Community Relations Representative was created by City Council in 1968 to receive and investigate complaints, among other duties. City Council elected C. H. Gustafson to serve under the supervision of the City Manager. He can be discharged only by City Council.
  34. SEATTLE AND KING COUNTY, WASHINGTON. The Office of Citizen Complaints was established by the Home Rule Charter of King County in 1968. In 1971, King County and the City of Seattle agreed upon a Joint Office of Citizen Complaints and also upon an ordinance. The Director of the Office of Citizen Complaints was selected by the City and County Councils for a five-year term, subject to removal only by two-thirds vote of both Councils. The Ombudsman appoints a deputy for Seattle and a deputy for the County together with the necessary supporting staff. The Director is authorized to investigate complaints filed by the citizens against city and county administrative agencies but is prohibited from investigating the Councils, the Courts, the Chief Executive, and the County Prosecutor. Mr. Fred L. Maxie serves as Acting Ombudsman. The City of Seattle also has a Citizens Service Bureau within the Office of the Mayor.
  35. TROY, NEW YORK. The new City Charter provides for an assistant to the Manager appointed by the Manager to provide a Citizen's Information and Complaint Service.
  36. WHITEHALL TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA. The proposed Home Rule Charter to be voted on in November provides that the Board of Commissioners may by ordinance establish an Office of Information and Complaints headed by an Information and Complaint Officer appointed by the Board. The ordinance must include a number of powers based on the Ombudsman concept.
  37. WICHITA, KANSAS. In 1972, the Wichita City Commission established a Community Grievance Office. The Grievance Officer is appointed by, reports to, and is accountable to a five-member Citizens Advisory Board appointed by the Board of City Commissioners. He is independent of city government control and by ordinance is empowered to investigate complaints involving any aspect of city government, of policy or practices. The Advisory Board is also responsible for evaluating the performance of the Community Grievance Officer and must review, at least quarterly, the statistical reports and narrative summaries

- of Ombudsman by the press. The position is held by Ron Ulmer.
25. PHILADELPHIA, PENNSYLVANIA. The Home Rule Charter of 1952 established the Mayor's Office for Information and Complaints which had 197,691 contacts with the public in 1972 and 179,141 from January 1, 1973 to December 27, 1973. The Charter Revision Commission issued its report in July, 1973, recommending the Mayor's Office for Information and Complaints be continued as part of a new Department of Consumer Affairs. In addition, the seven councilmen-at-large (out of a council of 17 members) would constitute a Committee for Public Hearings meeting at least four times a year. The Commission rejected the proposal of the Citizen's Council on Charter Revision, recommending an Ombudsman Commission of three full-time members to receive and resolve complaints against any administrative agency or agent.
  26. PITTSBURGH, PENNSYLVANIA. The discussion draft of the Government Study Commission provided for the Office of Controller-Ombudsman setting forth, in addition to Controller duties, Ombudsman powers and duties. The Home Rule Charter to be voted on in November omits the Ombudsman portions but the commentary states that, "Traditionally, the controller has recognized and responded to citizen complaints and nothing in this charter prevents a controller from continuing this practice."
  27. PORTLAND, OREGON. The Metropolitan Human Relations Commission proposed to City Council that an office of Ombudsman be created. A report by Management Services assisted by a committee of administrative review members recommended instead that an Information Co-ordinator to receive complaints be appointed by and make reports directly to City Council.
  28. SACRAMENTO, CALIFORNIA. The Charter Commission has under consideration in its preliminary draft provisions for an Ombudsman.
  29. SAGINAW, MICHIGAN. The Charter provides for a Bureau of Public Information and Complaint to furnish information and receive complaints of citizens relative to the public service for investigation and report. The Bureau is under the direction and supervision of the City Clerk. In addition, there is a Community Information Officer, a position held by Gerald O. Werle, who is a member of the City Manager's staff.
  30. ST. PETERSBURG, FLORIDA. A position with the title of Ombudsman was instituted in 1970 in the City Manager's Office. Don Donley receives citizen requests sent to the City Manager's Office.
  31. SALT LAKE COUNTY, UTAH. The County Commission appointed a Senior Citizens Ombudsman in 1973, to, among other duties, investigate complaints. Mrs. V. Lucile Hutchings holds the position.
  26. CANADA--QUEBEC. Louis Marceau, Public Protector, has issued his fifth annual report. It shows he received 5,320 complaints and investigated 2,872. 850 were justified of those fully investigated.
  27. CANADA--SASKATCHEWAN. E. C. Boychuk, who took office on May 1, 1973 as the first Ombudsman, issued his first annual report for the period from May 1, 1973 to November 30, 1973. He received 316 complaints during that period, of which 112 were investigated and 44 rectified.
  28. CANADA--YUKON TERRITORY. The Legislative Council passed a motion recommending that the Government of the Territory introduce legislation establishing an Ombudsman.
  29. CANADA--CONFERENCE. A conference of Canadian Province Ombudsmen sponsored by the Ministry of the Solicitor General was held on May 2-4, 1974 at Ottawa. The six provincial Ombudsmen attended with their assistants. A representative of the Commissioner of Official Languages, Miss Inger Hansen, the Canadian Correctional Investigator, and Professor Donald C. Rowat were also present.
  30. CANADA--PROFESSOR DONALD C. ROWAT. We again call your attention to his new book, "The Ombudsman Plan Essays on the Worldwide Spread of an Idea." The Canadian publishers are: McClelland and Stewart, 25 Hollinger Road, Toronto, Ontario, Canada.
  31. CANADA--T.V. OMBUDSMAN. The Canadian Broadcasting Corporation appointed Robert Cooper as T.V. Ombudsman. He runs a show bi-weekly and receives complaints against government administration.
  32. CHILE. The Comptroller General, in addition to fiscal duties, investigates complaints relating to the functioning of public services and to the correct application of laws and regulations. He can raise objections to decrees and regulations that he considers illegal.
  33. CHINA--REPUBLIC OF CHINA (TAIWAN). Control Yuan (Inspectorate--Censorate) exercises the powers of consent, impeachment, censure, and auditing. It may propose corrective measures on the basis of investigation and divide the country into control zones and establish regional control offices to exercise circuit supervision power and receive the people's complaints. When a public functionary violates the law or neglects duty, the Control Yuan may impeach or censure him. The Chinese control system has a long history dating back to 221 B.C.
  34. CHINA--PEOPLE'S REPUBLIC. The Supreme People's Procuratorate exercises procuratorial authority over all departments of the State Council, local organs of state, persons working in organs of state and citizens, to ensure observance of the law. Local organs of the people's procuratorate and special people's procuratorates exercise procuratorial authority within the limits prescribed by law.

35. COUNCIL OF EUROPE. Resolution 549 adopted by the Standing Committee, acting on behalf of the Consultative Assembly of the Council of Europe, on July 4, 1973 proposed that the Legal Affairs Committee convene a meeting of Ombudsmen and Parliamentary Commissioners of the member states to exchange information and experiences on their various systems and to advise on the desirability of extending the system to the European level. Pursuant to the resolution, the Legal Affairs Committee organized a meeting which was held in Paris on April 18 and 19, 1974. Present were Ombudsmen and Parliamentary Commissioners from member states, representatives from the European Court of Human Rights, the European Council of Human Rights, the Committee on Experts on Human Rights and several experts and observers, as well as members of the Legal Affairs Committee. A report will be presented by the Legal Affairs Committee to the Consultative Assembly in September.
36. COUNCIL OF EUROPE--EUROPEAN COMMISSION ON HUMAN RIGHTS. Applications by individuals, groups of individuals, or non-governmental bodies claiming denial of rights under the Convention for the Protection of Human Rights and Fundamental Freedoms are brought to the Commission. The Commission investigates complaints and endeavors to bring about a settlement. If no settlement is reached, the Commission files a report with the Committee of Ministers of the Council of Europe and gives its opinion whether there has been any breach of the convention. At that stage, cases may be referred by the Commission or the government concerned to the European Court of Human Rights for binding judicial decision; otherwise the Committee of Ministers must decide whether there has been a violation.
37. CYPRUS. By law 107/72, a Commissioner for Administration has been established whose functions are to enquire into the activities of any administrative service especially on representations and complaints made to him and to report to the President of the Republic by whom he is appointed. No appointment has been made as yet.
38. DENMARK. Ombudsman, Lars Nordskov Nielsen, reports that he registered 1,461 cases in 1973, of which 68 were taken on his own initiative. A bill was introduced in Parliament on April 3 concerning marketing which contained provisions for an Ombudsman for Consumers. It is expected to pass. The Danish Medical Association in September 1973 discussed an Ombudsman office to receive complaints against improper medical treatment. Ombudsman Nielsen has pointed out that his office in its present form could not function as a medical Ombudsman. There is available a book in English entitled, "The Danish Ombudsman 1955-1969" covering 75 cases taken from then Ombudsman Hurwitz's annual reports edited by Mogens Lerhard and published by Schultz, Copenhagen, 1972.
39. ETHIOPIA. A Commission is working on a revision of the Constitution. The Ethiopian Bar Association is campaigning for the establishment of the Ombudsman.
- Urban County Council. Information has not been received as to the appointee.
16. LITTLE ROCK, ARKANSAS. The city has funded a one-man office with the title of "Ombudsman" to receive complaints from residents of the Model Cities Neighborhood.
17. MAUI COUNTY, HAWAII. The County Board of Appeals was established by Charter adopted in 1968. It is a three-man citizen board, which handled only one complaint to June 3, 1974.
18. MILWAUKEE, WISCONSIN. The Milwaukee Urban Observatory in 1973 submitted a feasibility study on the Ombudsman concept to Common Council. A committee was appointed to review the study and make recommendations. No further action has been made as of June 13, 1974.
19. NASSAU COUNTY, NEW YORK. The Commissioner of Accounts, under the Nassau County Charter, is assigned investigative duties on behalf of the County Executive. By executive order, the Commissioner assumed the additional duties of County Public Protector to receive complaints against the various departments of the county, town governments and special districts. Commissioner Benedict P. Ciaraviano handled 1,002 matters in 1972 and 1,295 in 1973.
20. NEWARK, NEW JERSEY. An Ombudsman ordinance was passed by City Council in 1972 but was never established. The Mayor, Kenneth A. Gibson, returned funds granted by the OEO for the office.
21. NEW YORK CITY. City Council President, Paul O'Dwyer, introduced Bill #333 on February 26, 1974 providing for the Office of Citizen Redress. Its director would be appointed for a six-year term by City Council from names selected by a Citizen's Selection Board. The director has power to receive complaints from any person in regard to the conduct of any agency, officer, or employee, and to investigate the conduct and affairs of any agency and the official conduct of any officer or employee. Hearings are scheduled to be held on the bill in September.
22. OMAHA, NEBRASKA. City Charter provides for a Taxpayer Complaint Office, in the office of the Mayor, to receive complaints and inquiries. The office is known as the City Services Office.
23. OXNARD, CALIFORNIA. City Council by resolution in 1969 created the position of Community Relations Representative under the general direction of the City Manager. Catarino Soria, Community Relations Representative, handles complaints and inquiries about city government, among other duties.
24. PEORIA, ILLINOIS. The Field Representative, an Administrative Assistant to the City Manager, has been given the title

12. HONOLULU, HAWAII. The 1959 City and County Charter provides for an Office of Information and Complaint in the Mayor's office to receive complaints and inquiries. James L. Loomis, Director, reports that in fiscal year 1973 he received 5,622 complaints, mainly requests for services.
13. JACKSON COUNTY, MISSOURI. The Constitutional Home Rule Charter of Jackson County, approved on November 3, 1970, established an Office of Human Relations and Citizen Complaints. Within the office there is a Commission on Human Relations and Citizen Complaints consisting of eight members appointed by the County Executive. The Commission selects the Director of Human Relations and Citizen Complaints. The Director may be removed by the vote of a majority of the members of the Commission. The Director has the power to receive and investigate complaints and to make findings and recommendations. The Commission may hold hearings with respect to any complaint which the Director is authorized to investigate and has the right to subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production for examination of books and papers relating to any matter under consideration by the Commission. Jurisdiction is limited to offices that by ordinance are under the control of the Jackson County legislature. Agencies not covered are the courts, municipal police departments, and state and Federal governments. The County Charter became effective January 1, 1973. Lawrence B. Guillot became the first Director on June 11, 1973. In the first year, from about July 1, 1973 to June 30, 1974, the Office received over 1,300 contacts from the public and worked on nearly 800 cases.
14. JAMESTOWN, NEW YORK. In 1970, City Council passed Local Law No. 3 establishing the Office of Ombudsman. Appointment of the Ombudsman is made by the Mayor subject to the approval of a majority of all the members of City Council. The Ombudsman has the power to receive complaints, suggestions and requests for information from any person concerning administrative matters of government and to assist citizens with problems in dealing with city government. The Ombudsman is also authorized to perform such other duties as may be assigned to him by the Mayor. Sam J. Nalbene was appointed Ombudsman on February 1, 1970. In 1973, he received 2,149 complaints, many of which related to service. From January to April, 1974, he received 648 complaints.
15. LEXINGTON AND FAYETTE COUNTY, KENTUCKY. The Charter of the Lexington-Fayette Urban County Government adopted in November, 1972, merges the county and city governments. The Charter provides for an Office of Citizens' Advocate to investigate complaints, disclose any abuses or irregularities on the part of the Government, officers, agents or employees, and to recommend substantive or procedural policies required to reduce or eliminate problems of citizen access to the Government. The Citizens' Advocate is to be appointed by the
40. FIJI. Justice Moti Tikarem submitted his first annual Ombudsman report for the period from March 1, 1972 to February 28, 1973. He had received 239 complaints (although 226 cases were registered) and out of 181 disposed of, 23 were justified or rectified.
41. FINLAND. Dr. Jorma S. Aalto was elected as Ombudsman to serve for the four year term, 1974-1977. Aapo Lehtovirta is Assistant Ombudsman serving 1972-1975. Both are elected by Parliament. In 1973, the Ombudsman received 997 complaints, of which 44 complaints were referred from the Chancellor of Justice and 14 were self initiated cases. The powers of the Ombudsman and the Chancellor of Justice in the investigation of complaints are very similar. The Chancellor of Justice is Risto Leskinen, who had served as Ombudsman. The Chancellor who is appointed by the President received 988 complaints in 1973 of which 214 were self initiated cases. Mikael Hiden's "The Ombudsman in Finland: The First Fifty Years" has been published by The Institute of Governmental Studies, University of California, 109 Moses Hall, Berkeley, California, 97420.
42. FRANCE. In June, 1974, Aime Paquet succeeded M. Antoine Pinay as Mediateur. Under French law No. 73 - 6 of January 3, 1973, complaints must be processed through members of Parliament. The Mediateur's first annual report for the year 1973 shows that he received 1,773 dossiers. 564 cases were rejected as being non-applicable and 469 cases were processed, of which 70 were justified and 112 partly satisfied. Dr. Henri Desfeuilles, Chairman of the Advisory Council to the Mediateur, has written the book, "Le Pouvoir de Controlles des Parlements Nordique," published by R. Richon et R. Durand Auxes, 20 rue Soufflot, Paris, France.
43. GERMANY--FEDERAL REPUBLIC OF GERMANY--MILITARY OMBUDSMAN. The Parliamentary Commissioner for Military Affairs, Fritz-Rudolph Schultz, issued his annual report for the year 1973. He received 6,673 applications but fully processed 7,412. 1,966 applications were successful and 658 partly successful.
44. GERMANY--FEDERAL REPUBLIC OF GERMANY--PETITIONS COMMITTEE. Legislation is pending to extend the powers of the Petitions Committee of the Bundestag in dealing with complaints relative to administrative measures for which the Federal Government is responsible. Several states have in the past several years enacted laws which extend the powers of their Petitions Committees to handle complaints: North Rhine-Westphalia, Schleswig-Holstein, Rhineland Palatinate, Berlin, and Bremen.
45. GERMANY--FEDERAL REPUBLIC OF GERMANY--STATE OF RHINELAND-PALATINATE. In May, the Assembly passed the Citizen's Representative Law and Dr. Johannes Baptist Rosler, Assembly Member, became the first Citizen's Representative on May 16. He had served as Petitions Committee Chairman and in his new capacity is also the Commissioner of the Petitions Committee.
46. GHANA. Constitutional provisions for an Ombudsman contained in the 1969 Constitution lapsed with the suspension of the 1969 Constitution in 1972. The National Redemption Council

by decree No. 80 established the Special Actions Unit with a wing known as the Expediting Committee (thus reviving the 1966 Expediting Committee) which has Ombudsman-like duties. Its functions are performed through the Investigations and Complaints Division which receives and investigates complaints.

47. GREAT BRITAIN. The 1973 annual report of Sir Alan Marre, Parliamentary Commissioner for Administration, shows the receipt of 571 complaints through Members of the House of Commons. 133 uncompleted cases were brought forward from 1972. Out of the total of 704, 536 were completed during 1973. Investigation was completed and results reported to Members in 239 cases, and in 88 of these, the Parliamentary Commissioner found elements of maladministration which led to some measure of injustice. In addition to the annual report, reports are issued quarterly containing the full but anonymised texts of completed investigations.

Following the enactment of the National Health Service (Scotland) Act 1972 and the National Health Service Reorganization Act 1973, Sir Alan Marre was appointed Health Service Commissioner for England, Scotland and Wales. Complaints against the National Health Service are received directly from aggrieved persons. His first report covering the first six months has been issued. Sir Alan Marre has integrated the staffs working for him in his several capacities.

The Local Government Act 1974, Part III, provides for local commissioners to investigate complaints of maladministration against local authorities in England and Wales. Complaints will be received through local counsellors or directly if counsellors refuse to pass them on. Ultimately, there are expected to be nine commissioners for local administration for England and one or two for Wales. Lady Serota, D. B. Harrison and J. P. Cooks were appointed on June 12, 1974 as the first three of the local government commissioners. (See A-128)

The handling of complaints against the police is still not resolved. The report of the Working Group for England and Wales on the handling of complaints against the police stated that investigations of complaints should in the first instance remain with the police. The general view was expressed in the report that the scope of an independent ex-post factor review should be limited to scrutiny of the handling of the complaint. The Home Secretary is now expected to decide what form the new procedures should take.

48. GUYANA. G. A. S. van Sertima, Ombudsman, reported that he had received 179 complaints in 1970, 447 in 1971, 284 in 1972, and 307 in 1973. In 1971, his jurisdiction was extended to local councils and local authorities.
49. HONG KONG. The Unofficial Members of the Executive and Legislative Councils operate an office (known as the UMELCO Office) to which a member of the public may report a grievance at any time. Although the Office has no statutory powers, the Government undertakes to ensure that the Unofficial Members have access to official information including policy papers and departmental files. The Unofficial Members also have

of the School Board, the City and the County Commissioners. The Joint Office of Citizen Complaints was incorporated in 1972. Any political subdivision in the Dayton, Ohio metropolitan area is eligible to become a member of the corporation upon the affirmative vote of not less than a majority of the Board of Trustees. The initial members of the corporation are the City of Dayton, Ohio, the Dayton School District, and Montgomery County. Each member of the corporation elects three Trustees. The Board of Trustees elects an Ombudsman to be the Chief Executive Officer of the corporation. Complaints are received in person, by telephone, or in writing. The duty of the Ombudsman is to investigate complaint, and also includes the ability to review upon reasonable notice all of the documents of the agency, departments, and boards, subject to her jurisdiction. The office has seven full-time staff and 19 students and volunteers. Its present sources of funds are the City, School Board, County, and the United Fund. The 1973 annual report shows 2,368 cases were received. A report evaluating the Dayton Ombudsman was submitted to the Charles F. Kettering Foundation in 1972. The Foundation has commissioned Anthony Wolff to write a book-length report on the Dayton Ombudsman Office and its role in the community.

7. DETROIT, MICHIGAN. The Detroit new Charter which provided in Chapter 3 for an Ombudsman was passed on November 6, 1973. The Ombudsman to be appointed by two-thirds vote of City Council will serve a single term of ten years. He may investigate any official act of any agency which aggrieves any person but excluded from jurisdiction are elective offices. Reports are to be made periodically to the City Council. At the end of ten years, the question of retention of the Office of Ombudsman will be submitted to the electorate. A seminar on the Ombudsman was held on May 4, 1974, sponsored by the Michigan Assembly for the Ombudsman. Retired Swedish Ombudsman, Alfred Bexelius, was among the speakers.
8. ERIE, PENNSYLVANIA. Louis A. Colussi serves as Ombudsman. The office, funded by H.U.D., originally was a Model City project and now is a Planned Variation City project. A staff of approximately 20 operates the main office, a field office, and two mobile vans, receiving about 800 cases per month, most of which concern city services. The office is not provided for by ordinance and is dependent on the Mayor.
9. FAIRBANKS, ALASKA. The Fairbanks area charter containing an optional Ombudsman clause was not approved by the voters.
10. FORT WAYNE, INDIANA. Betty Elliot heads the Department of Citizens' Assistance, as Ombudsman. Mayor Ivan Lebanoff created the position to fulfill a campaign promise that if he were elected he would establish such a post to handle complaints. The Department handles about 1,000 calls per month, most of them requests for services.
11. GRAND RAPIDS, MICHIGAN. The City Council has endorsed the Ombudsman concept and an ordinance is in the process of preparation.

1. ATLANTA, GEORGIA. H.B. 85 amending the City Charter to provide for an Ombudsman was passed and enacted into law in 1974. However, the City Attorney rendered an opinion that the state law was illegal and City Council then passed an ordinance on May 20, 1974 establishing the Office of Ombudsman. Calvin O. Carter was appointed by the Mayor, Maynard Jackson, as Ombudsman and confirmed by City Council.
2. BUFFALO, NEW YORK. The Buffalo Citizens Administrative Service was an ombudsman-like demonstration project sponsored by the Law School of the State University of New York at Buffalo and funded by a grant from the OEO. The Service was in operation for 71 weeks in 1967 to 1969 and received a total of 1,244 complaints and inquiries. A report on this project has been published by the Institute of Governmental Studies, University of California, Berkeley, California 04720, entitled "Buffalo Citizens Administrative Service: An Ombudsman Demonstration Project."
3. CHARLESTON, SOUTH CAROLINA. The Charleston Ombudsman program was established by City Council ordinance and provided for a Chief Ombudsman and 16 Ward Ombudsmen. It was reorganized in 1974 and consists of an Ombudsman who heads the Office of Citizens' Complaints and a Board of Directors of ten members who act as advisors. It is not clear how the Board members are designated and whether the reorganization was pursuant to ordinance. Approximately 961 complaints were received in 1973. The Ombudsman is elected by the Board of Directors. James B. Moore serves as Ombudsman.
4. CHESAPEAKE, VIRGINIA. M. Reid MacCallum, Administrative Assistant to the City Manager, holds the title of Ombudsman. He handles about 500-600 complaints per year.
5. COLUMBUS, OHIO. Nodine Henniger-Miller serves as Ombudsman under the general direction of the Mayor. From December 18, 1972 to November 15, 1973, the office acted on 3,308 cases. Nineteen volunteers assist the program.
6. DAYTON, OHIO. Bonnie Z. Macaulay succeeded Theodore C. Bingham, who died on July 3, 1973, as director of the Joint Office of Citizen Complaints. The Congressional Record of July 12, 1973 contains a tribute to Ted Bingham. The Joint Office of Citizen Complaints opened on March 1, 1971, funded by the Charles F. Kettering Foundation and the OEO. It was established as an independent agency reporting to a community-based Board functioning within the corporate limits of Dayton but dealing with municipal public, educational, and county problems. The office receives complaints of acts done or omitted by any department (where the board or agency is responsible to the Dayton City School Board, the City of Dayton, or the Montgomery County Board of Commissioners), which act or omitted act causes any citizen in Montgomery County to be aggrieved. A Board of Trustees of the Joint Office of Citizen Complaints was created with the approval

ready access to senior Government officers and are able to raise questions by personal discussion, by letter, or by question or debate in the Executive and Legislative Councils. In addition, there are throughout the territory district offices, staffed by Government officers, which receive and investigate complaints from citizens. In the urban areas, there is also a ward system through which the urban councilors deal with complaints from members of the public. In view of all these channels being available, the Government has concluded that there seems to be no real need for an Ombudsman in Hong Kong. Robert Primrose is Administrative Secretary, Office of Unofficial Members of Executive and Legislative Councils. The third annual report of the UMELCO Office for the period, 7/1/72-6/30/73, shows 268 cases were brought forward from the previous year and 1,689 new cases were received. 1,631 cases were completed. In 359 cases, the complaint was rectified or the client's difficulty fully overcome. In 524 cases some degree of help, advice, information or explanation was given to the person concerned even though his problem could not be fully solved.

50. ICELAND. At the request of the Prime Minister, Attorney Sigurdur Gizurarson drafted an Ombudsman bill in 1973. It was submitted to Parliament last fall but no action has been taken to date.
51. INDIA--CENTRAL GOVERNMENT. Ombudsman legislation, the Lokpal and Lokayuktas Bill, was introduced in 1971 and is awaiting further action. It is somewhat identical to the bill which was passed by the Lok Sabha (House of the People) in 1969 but which lapsed on dissolution of the Lok Sabha.  
  
A Central Vigilance Commission has been functioning since 1974. It can inquire into any transaction where a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner or into any complaint that a public servant had exercised or refrained from exercising his powers with an improper or corrupt motive or into any complaints of misconduct or lack of integrity or any malpractice or misdemeanor on the part of a public servant. Shri B. K. Acharya is Central Vigilance Commissioner. The Commission's annual report covering the period from April 1, 1972 to March 31, 1973 shows that the Commission received 1,059 complaints.  
  
The Petitions Committee of the Lok Sabha receives petitions regarding public grievances. The Petitions Committee of the Rajya Sabha (Council of States) receives petitions from organizations (not individuals) with respect to grievances.
52. INDIA--STATE OF BIHAR. The Bihar Lokayukta Act 1973 (Bihar Act VI of 1974) was enacted in 1973. Dr. S. V. Sohoni took office as Lokayukta on May 28, 1973.
53. INDIA--STATE OF GUJARAT. The Chief Minister had in 1973 stated that the Government intended to introduce Lok Pal legislation. The Cabinet on February 1, 1974 was reported to have decided to appoint a Lok Pal. However, before any further action could be taken, the President's Rule intervened in the State on February 9, 1974.

54. INDIA--STATE OF JAMMU AND KASHMIR. Information has been received that two institutions, the Anti-Corruption Organization and the Grievance Commissioner, receive complaints from citizens for abuses of authority by government officials.
55. INDIA--STATE OF KARNATAKA. The Lokayukta and Upa-Lokayukta Bill was introduced on September 12, 1973. Action is still pending.
56. INDIA--STATE OF KEPALA. Under the 1969 Interim Probe Machinery Executive Order, petitions may be addressed to the Chief Secretary requesting an inquiry into an allegation of misconduct against any public man specified in the petition. The Government will then appoint a Commissioner to report if a prima facie case has been made out justifying reference of the case to a Commission of Inquiry and upon consideration of the report take such action as may be necessary.
57. INDIA--STATE OF MADHYA PRADESH. A Lokayukta Bill was introduced on April 24, 1974 and was referred to a Select Committee.
58. INDIA--MAHARASHTRA. Shri S. P. Kotval took office as Lokayukta on October 25, 1972, the first to be appointed in India, under the Lokayukta and Upa-Lokayuktas Act 1971. Shri Kotval has given the information that "Lok" means "the people," "Ayukta" means "care taker" or "Commissioner" and the prefix "Upa" means "deputy." He received 288 complaints from October 25, 1972 to December 31, 1972 and 767 during the year, 1973. His first report for the period from October 25, 1972 to October 24, 1973 was submitted to the Governor on November 17, 1973.
59. INDIA--MANIPUR. The Director of Vigilance acts also as the Director of Public Grievances.
60. INDIA--STATE OF ORISSA. The Assembly passed the Lokpal and Lokayukta Bill on October 28, 1970 but no Lokayukta has been appointed as yet.
61. INDIA--STATE OF RAJASTHAN. Under the Lokayukta and Upa-Lokayukta Act of 1973, Shri I. D. Dua, a retired Judge of the Supreme Court, has been serving as Lokayukta. Shri L. M. Nadkarni became Upa-Lokayukta on October 1, 1973.
62. INDIA--STATE OF TAMIL-NADU. The Public Men (Criminal Misconduct) Act, 1973, enables a citizen to set into motion machinery for investigations into charges of misconduct against ministers and legislators.
63. INDIA--STATES--GENERAL. Vigilance Committees are functioning in the States of Andhra Pradesh, Assam, Gujarat, Karnataka, Madhya Pradesh, Tamil Nadu and West Bengal. Petitions Committees in the state legislatures also receive petitions from the public against the administration.
64. INDONESIA. The Pengabdian Hukum (Law Upholder) is a private institution sponsored by non-governmental organizations (5 legal associations and the Indonesia League of Human Rights).
35. AMMOA (AMERICAN). 1973 - H.B. 113 - did not pass.
36. SOUTH CAROLINA. 1973 - no legislation; and 1974 - S. 860 (authorizing the Nursing Home Ombudsman of the State Commission on Aging to investigate complaints) - enacted into law. Governor John C. West created within the Office of the Governor the Office of Citizen Services to receive complaints. Its activities are reviewed by a Citizens Service Review Board. Judy S. Hodgins serves as Coordinator of the Office of Citizen Services.
37. TEXAS. 1973 - H.B. 12 and H.B. 1973 - both died in committee; and 1974 - no session.
38. UTAH. 1973 and 1974 - no legislation. The Governor, Calvin L. Rampton, appointed Daniel L. Cope as Black Ombudsman and Gilbert Rameriz as Chicano Ombudsman to serve in liaison positions between their respective communities and the Governor.
39. VIRGIN ISLANDS. 1973 - Bill 5852 - did not pass; and 1974 - no legislation. Information has been received that the President of the Senate has appointed an Ombudsman for the Legislature but no details are known concerning the office.
40. VIRGINIA. 1973 and 1974 - no legislation. Pursuant to House Joint Resolution No. 8, 1972, the Virginia Advisory Legislative Council issued a report in 1973 recommending that the Governor's Secretaries establish a complaint resolving procedure but at the same time incorporating without recommendation the report of a special committee which favored Ombudsman legislation. The Governor then established the State Citizens' Service Assistance Office headed by Roy L. Farmer, Director of Consumer Affairs in the Department of Agriculture and Commerce, with each agency designating an agency's Citizens' Service Assistance Officer.
41. WASHINGTON. 1973 - H.B. 954 (Ombudsman for nursing home patients within the Department of Social and Health Services - did not pass, H.B. 1326 and S.B. 3054 (both Office of Ombudsman for Corrections), and H.B. 1331 - did not pass.
42. WEST VIRGINIA. 1973 - H.B. 712 (Legislative Ombudsman) - died in committee; and 1974 - H.B. 788 (Legislative Ombudsman) and H.B. 1058 (Juvenile Ombudsman) - died in committee.
43. The American Bar Association Ombudsman Committee has issued a Model Ombudsman Statute for State Governments, a joint product of the Committee and the Yale Legislative Services. Copies may be obtained by writing to Bernard Frank.
- D. UNITED STATES--LOCAL GOVERNMENT--CITIES AND COUNTIES

Although many cities have some form of complaint-handling mechanisms, those described following are limited to those having true legislative Ombudsmen or to those offices although under the control of the executive which bear the Ombudsman title or to mixed types of offices under the supervision of the executive but created by the legislative body.

investigate complaints submitted by legislators for citizens - passed the Senate but was defeated in the House; and 1974 - no session.

29. OHIO. 1973 - H.B. 457 (co-operation and financial assistance to nonprofit Ombudsman corporations) - passed and enacted into law; and 1974 - no legislation introduced. The State has several self-termed Ombudsman type of services, each located within an administrative agency: Businessman's Ombudsman Bureau, Department of Economic and Community Development; Insurance Ombudsman, Department of Insurance; Environmental Protection Agency Ombudsman; Consumer Protection Ombudsman, Department of Commerce; and Local Government Ombudsman, Department of Community and Economic Development.
30. OKLAHOMA. 1973 - no legislation; and 1974 - H.B. 1789 - died in committee.
31. OREGON. 1973 - S.B. 244 (sponsored by the Committee on Judiciary at the request of the Administrative Law Committee of the Oregon State Bar), S.B. 189, and H.B. 2280 - none passed; and 1974 - no legislation introduced. Governor Tom McCall created the office of Ombudsman by executive action on July 1, 1969. The New York Times, July 21, carried an article stating that Marc Ted Winters, an ex-convict, was serving as Ombudsman.
32. PENNSYLVANIA. 1973 - H.B. No. 239 (Office of Grievance Commissioner) - carried over to 1974, and S.B. 170 (a revision of the Mental Health Act providing, inter alia, for a Mental Health Ombudsman Service); and 1974 - H.B. No. 239 (1973) - still under committee consideration. The Office of Business Ombudsman was established in the Department of Commerce in 1971 by executive order. The Governor's Action Line established in June, 1973 for the 814 exchange area was extended to the 412 area in October, the 717 area in January, and the final area, the 215, in June. The Action Line is a toll-free line for complaints or inquiries about state government. In 1971 the Insurance Commissioner appointed an Insurance Department Commissioner. The Auditor General in reviewing the Insurance Department considered the position ineffective because the Ombudsman viewed his position in a broader perspective than did the Department. The Auditor General recommended a definition of the duties and a re-examination of the performance of the Ombudsman.
33. PUERTO RICO. 1973 - H.B. No. 11 - carries over to 1974-1975-1976; and 1974 - H.B. No. 11 (1973) - pending.
34. RHODE ISLAND. 1973 - no legislation introduced; and 1974 - 74-S 2566 and 74-S 2579 - neither passed. 74-S 2579 introduced by Senator Julius C. Michaelson was the first bill based on the American Bar Association Model Ombudsman Statute for State Governments. The Little State House program established by S. 473 enacted in 1969 was eliminated in 1973.

It receives complaints from individuals against public agencies and has many of the characteristics of the Ombudsman system, operating through a joint secretariat of six from its member organizations.

65. INTER-AMERICAN. The Inter-American Commission on Human Rights was created in 1959. The Second Special Inter-American Conference at Rio de Janeiro in 1965 adopted a resolution extending the powers of the Commission to consider individual complaints of violations of certain basic rights. On receipt of such complaints, the Commission has the right to request information, and make recommendations to governments. The organ responsible for hearing individual petitions is the Inter-American Commission on Human Rights whose competence in the matter is automatically recognized by states parties to the Convention. The Convention set up a second organ, the Inter-American Court of Human Rights, with optional jurisdiction. Before the merits of the case can be studied by the Commission and perhaps eventually by the Inter-American Court, a petition must be declared admissible by the Commission. The Commission will, having notified the parties, look into the facts alleged in the petition. A friendly settlement may be reached and if not reached the Commission will publish the report. If the case is not finally settled, it can be taken to the Inter-American Court by the Commission or by the state or states concerned. If the case is neither settled nor submitted to the Court, the Commission may by a vote of the majority of its members set forth its opinion and conclusions on the case and make any appropriate recommendations and prescribe a period within which the state concerned is to take the measures necessary to remedy the situation. At the end of the period, the Commission will decide whether such measures have been taken and whether or not to publish its report.
66. INTERNATIONAL BAR ASSOCIATION. Sir Denys Hicks, President, is expected to make appointments in the near future to the Ombudsman Committee, which is headed by Bernard Frank. Two supplemental components have been established: the I.B.A. Member Organizations Liaison to which 28 national bar associations have made appointments and the I.B.A. Ombudsman Advisory Board on which 32 Ombudsmen throughout the world have accepted membership. A newsletter was issued in May and July to a mailing list of about 350, including the Member Organizations Liaison and Advisory Board.
67. IRAN. Lieutenant General Yazdan Panah who headed the Imperial Inspection Organization died in 1973 and has been succeeded by Lieutenant General Fardoust. Under the 1969 Law for the Establishment of the Imperial Inspection Organization, the organization under the supervision of the Shahanshah (who appoints its head) deals with grievances of the people against government agencies, police, local government, public utility institutions and affiliated government institutions. Complaints against ministries and governmental organizations can also be made under the Constitution to Petitions Committees of the two Houses of Parliament.
68. IRELAND. There has been some discussion on the Ombudsman but no definitive move has been made as yet. The Irish Times

(1/10/74) states that a report on the implications of appointing an Ombudsman is being prepared by the Department of Public Service.

69. ISRAEL--COMMISSIONER FOR COMPLAINTS FROM THE PUBLIC. The State Comptroller, Dr. I. E. Nebenzahl, by law has jurisdiction as Commissioner for Complaints from the Public to handle complaints against acts including delay in performance or omissions contrary to law or without lawful authority or contrary to sound administration or unduly harsh or manifestly unjust. The Commissioner is assisted by a special unit called the Office of the Commissioner for Complaints from the Public. Gershon Avner resigned the post of Director of the office to become Secretary to the Cabinet. Yehuda Salant is Director, an appointment made by the Knesset House Committee. From September 1972 to September 1973, the Office of the Commissioner received 6,762 original complaints.
70. ISRAEL--SOLDIERS COMPLAINTS COMMISSIONER. Major General Haim Laskov, former Chief of Staff, who became Soldiers Complaints Commissioner on November 1, 1972 under the Military Justice (Sixth Amendment) Law 5732-1972 received from that date until March 31, 1973, 2,258 complaints. 1,626 complaints were dealt with, of which 539 were justified.
71. ISRAEL--POLICE. The Police Commissioner of the Israel Police by order created the Office of Public Complaints to receive complaints against police officers headed by Deputy Commander Ze'ev Margalit.
72. ISRAEL--JERUSALEM. Shelomo Kaddar, who has been serving as Jerusalem Ombudsman since 1967, reports that he received 759 cases in 1973 and carried over 42 from 1972. He completed 771 cases, of which 307 were found justified.
73. ISRAEL--HAIFA. Sources report that the Mayor of Haifa has appointed an Ombudsman, Jacob Lvav.
74. ISRAEL--TEL-AVIV. Yehuda Greener, City Ombudsman, reports that he received 8,368 complaints in 1973.
75. ITALY. Dr. G. Treves of the University of Turin had been appointed by the Italian National Research Council to collect materials and prepare proposals for the institution of the Ombudsman in Italy. The volume "L' Ombudsman (Il Difensore Civico)," has been published by UTET in Turin. Sources report that the Liberal Party has again proposed Civil Defender legislation in Parliament.
76. ITALY--REGION OF TUSCANY. Regional Law no. 8 of January 21, 1974, establishing the Civic Defender, was passed, the first region (out of 20) to do so. No appointment has been made yet.
77. ITALY--REGION OF LIGURIA. Legislation similar to the Tuscany Civic Defender Law has been passed in June in Liguria. No appointment has been made yet.

Advocate Act of 1974, the Department is headed by a Commissioner who is the Public Advocate. Included in the Office of the Public Advocate is the Office of Inmate Advocacy to represent the interests of inmates, a Division of Rate Counsel, a Division of Mental Health Advocacy, a Division of Public Interest Advocacy, and a Division of Citizen Complaints and Dispute Settlement. Included in the Division of Citizen Complaints and Dispute Settlement are the Office of Citizen Complaints and the Office of Disputes Settlement. The Office of Citizen Complaints handles complaints from any citizen relating to administrative action or inaction of agencies and its findings and recommendations are reported to the Public Advocate. Stanley C. Van Ness became Public Advocate on May 21. John Gleeson heads the Division of Citizen Complaints and Dispute Settlements. The New Jersey Ombudsman Committee has concluded that despite reservations the new legislation is a worthwhile experiment.

25. NEW MEXICO. 1971 legislation (Chapter 138 of the Laws of New Mexico) gave to the Lieutenant Governor, in addition to his other duties, the power to (1) facilitate and promote the cooperation and understanding between the people of this state and the agencies of state government, by assisting them in their dealings with such agencies, and by assisting the agencies to explain their functions, duties and administrative procedures insofar as they affect the people of this state; and (2) refer any complaints or special problems of the citizens of this state to the proper agency. The third annual report for the year 1973 issued by Robert A. Mondragon, Lieutenant Governor, contains a section entitled "Ombudsman." He reports having had 8,000 contacts by individuals and groups during the reporting year.
26. NEW YORK. 1973 - A. 413, A. 1050 and S. 2185 (both Office of Public Redress), A. 1052, S. 2184, S. 2227, S. 2603 (Office of Correction Ombudsman), A. 3840 (Office of Public Redress), S. 4823 (Office of Correction Ombudsman), S. 5013 (Office of Correction Ombudsman), A. 5355 (Inmate Counsels with authority to appoint Facility Ombudsmen), A. 6117 (Office of Correction Ombudsman), A. 6305 (Correction Facility Ombudsman), A. 6438 (Office of Correction Ombudsman) - no bill passed; and 1974, S. 7009, S. 8829 and A. 10647 (both Office of Public Redress headed by Ombudsmen within Banking Department), S. 7645 (Correctional Facility Ombudsman), A. 9369 (Correctional Facility Ombudsman) - no bill passed.
27. NORTH CAROLINA. In March, 1973, Governor J. Holshouser created the office of "People's Man" to receive and investigate complaints from the public about illegal, unreasonable, unfair, or discriminatory actions by officials or employees and to recommend suitable action. Fred M. Gallagher, who serves as "People's Man," uses the term "Governor's Ombudsman."
28. NORTH DAKOTA. 1973 - S.B. 2367 - an Ombudsman bill amended in its entirety to provide for a special interim committee of legislators appointed by the Legislative Council to

19. MICHIGAN. 1973 - H.B. No. 4359 and S.B. No. 377 (State Education Ombudsman within the Department of Education) carried over to 1974; and 1974 - H.B. No. 4359 and S.B. No. 377 still in committee - no further bills introduced. Joint house resolution for a constitutional amendment to provide for an Ombudsman introduced in April, 1974 still in committee.
20. MINNESOTA. 1973 - S.F. 1048, H.F. 182, H.F. 1220, H.F. 691 (Lieutenant Governor to hold office of Ombudsman) - did not pass; S.F. 672 creating the office of Ombudsman for the State Department of Corrections did pass and was enacted in law; and 1974 - S.F. 2652 (Ombudsman of State Forms within the Department of Commerce) and H.F. 3500 (fixing salaries of Ombudsman and Deputy Ombudsman) died in committee.
21. MISSOURI. 1973 - S.B. 130 (Commissioner of Administrative Investigations to be known as Ombudsman) and S.B. 323 (Lieutenant Governor as Ombudsman) - both died; and 1974 - S.B. 465 (Commissioner of Administrative Investigations to be known as Ombudsman) - died. Lieutenant Governor William C. Phelps announced on July 11, 1973, he would voluntarily assume Ombudsman duties. He has been receiving 100-150 complaints per month but lacks an adequate staff. A first year summary of activity is in the process of preparation.
22. MONTANA. 1973 - S.B. 89 (Office of Ombudsman with Lieutenant Governor as Ombudsman) - did not pass; H.B. 597 (appropriations for Office of Ombudsman) - held over to 1974; and H.B. 439 passed on March 16, 1973, but the Senate, on the request of the Governor, voted to reconsider and referred the bill to the Rules Committee; and 1974 - H.B. 597 and H.B. 439 held over from 1973 were killed in committee. In return for the actions of the Senate on H.B. 439, the Governor appointed in 1973 a Citizen's Advocate as part of his office. For the period from July 1, 1973--December 31, 1973, the Citizen's Advocate, Kent Kleinkopf, received between 4,000-5,000 phone calls, responded to approximately 1,200 pieces of correspondence and had almost 500 visitors.
23. NEBRASKA. Murrell B. McNeil has been serving as Public Counsel (Ombudsman) since June, 1971. The Public Counsel Law was enacted in 1969. Mr. McNeil's third annual report shows that he received 579 documented contacts, of which 383 were complaints. 77 of the complaints were justified and 34 were partially justified. Alan J. Wyner, Ombudsman Activities Project, Department of Political Science, Santa Barbara, has issued a report to the Office of Economic Opportunity entitled, "The Nebraska Ombudsman: Innovation in State Government." Bernard Frank's article on "The Nebraska Public Counsel--the Ombudsman" will be published in the Cumberland-Samford Law Review shortly. Persons desiring reprints should write to Bernard Frank.
24. NEW JERSEY. 1973 - S.34 and A. 495 filed in 1972 and carried over to 1973 - did not pass; 1974 - A. 1409 (Department of the Public Advocate) - passed and enacted into law on May 13, 1974. Under the Department of the Public
78. ITALY--REGIONS--GENERAL. Sources report that Civil Defender Bills have been introduced in four regions--Emilia, Lombardia, Trentino, Alto Adige and Umbria.
79. JAMAICA. The report of the Ombudsman Working Party was issued on August 27, 1973 recommending the establishment of the Ombudsman. The report is being examined by a subcommittee of the House of Representatives.
80. JAPAN. The Civil Liberties Bureau, a part of the Ministry of Justice, handles various matters relating to the protection of human rights. Civil Liberties Commissioners, not to exceed 20,000 in number, are appointed by the Ministry of Justice to serve in cities, towns and villages. The Administrative Inspection Bureau of the Administrative Management Agency, inter alia, receives, investigates and seeks to redress grievances. Local administrative counselors in localities receive grievances and forward to the Bureau those deserving of attention. The Ministry of Justice has published a 1973 16-page booklet on "The Governmental and Non-Governmental Machinery for the Protection of Human Rights and Legal Aid in Japan" which discusses in Part I the Civil Liberties Bureau and the Civil Liberties Commissioners.
81. MALAYSIA. The Government did not implement the 1968 report by Sir Guy Powles, New Zealand Ombudsman, but considers the reorganized Anti-Corruption Agency as working satisfactorily. The Agency deals, among other functions, with individual cases of inefficiency, delay, and nepotism. The Public Complaints Bureau became operational on August 1, 1971. It is an administrative division of the General Planning Unit of the Prime Minister's Department under the portfolio of the Minister with Special Functions. An essential feature of the organization setup is the appointment of Bureau representatives in local areas to receive public complaints and refer them to the Bureau. The Bureau receives complaints against administrative acts done or omitted relating to a matter of public administration by a Federal department (includes all Federal statutory bodies).
82. MALAYSIA--STATE OF PENANG. A special committee known as the Efficiency, Good Relationship and Complaints Committee has been appointed by the state Government. Its terms of reference include investigation of complaints received from the public, the taking of appropriate action, and when necessary the making of recommendations to the proper authorities.
83. MALAYSIA--STATE OF PERAK. There has been a proposal for the Ombudsman but nothing further has developed pending the outcome of a special study initiated by the Federal authorities.
84. MALTA. The Labour Party Programme, on which platform the present Government won the last elections in June, 1971, proposed the institution of the post of Ombudsman. No legislation has as yet been presented in the House of Representatives.
85. MAURITIUS. The Ombudsman, S. Mootoosamy, who took office on January 23, 1973, issued a report covering the period from March 2, 1970 (when his predecessor, Judge Gunnar Lindh assumed

office) until December 31, 1973. 315 complaints were received during this period, of which 91 were considered justified. In 1973, 89 complaints had been received, 29 investigated, and 5 considered to be justified.

86. MEXICO. The Mexican Constitution provides for the writ of amparo--special and extraordinary in nature--which protects individual rights and properties. It can be brought against acts of administrative tribunals, ordinary bureaucrats, police officers, judges, legislators, and even against the President. In administrative matters, amparo may be invoked against decisions which cause an injury that cannot be remedied through any legal resource, trial, or defense.
  87. NAURU. Some thought had been given to Ombudsman in the Republic of Nauru. However, in view of the size of the Island with a population of approximately 6,000 persons, the need for the Ombudsman does not exist at present.
  88. NETHERLANDS. This year the Government requested G. E. Lange-meyer, former Attorney General, to draft a plan for an Ombudsman. In 1971, Government proposals for an Ombudsman receiving complaints from Parliament only was discussed and rejected. The Second Chamber instead voted for an independent Ombudsman who would receive complaints from the public directly. Dr. H. H. Kirchheiner's "Ombudsman En Democratie" published in 1971 contains a nineteen-page English summary.
  89. NETHERLANDS--TV OMBUDSMAN. The Vara broadcasting company has established an Ombudsman program on TV and radio. In addition, an Ombudsman Foundation was established in 1972 in connection with the Vara Ombudsman TV and radio program but at the same time independent. The media Ombudsman is Hans Ouwerkerk. The Foundation with a staff of 30 is headed by Guido M. Zuur.
  90. NEW ZEALAND. The report of the Ombudsman, Sir Guy Powles, for the year ended March 31, 1974 shows he had received 865 complaints in that year, making the total since the inception of the office on October 1, 1962, 9,610. In the year, 373 complaints were fully investigated, and of these 114 were found to be justified. The Government has in preparation legislation to extend the jurisdiction to all local government authorities and ad hoc local bodies. The Bill is expected to be introduced into Parliament towards the end of the year, and, if passed, will require major changes in the structure and operation of the Ombudsman's office.
  91. NIGERIA. Complaints against officials and department may be made to the appropriate Permanent Secretary. If the complaint is against the Permanent Secretary of a Ministry or the Head of an Extra-Ministerial Department, it is made to the Secretary to the Military Government in the case of a state or to the Secretary to the Federal Military Government in the case of the Federal Government. Complaints against the Government, ministries and departments may also be made to the Attorney General of the Federation and Commissioner for Justice and occasionally complaints are sent
15. KANSAS. 1973 - S.B. 98 - stricken from the calendar; S.B. 72 (providing for an Ombudsman of Correctional Institutions) was enacted into law and became effective July 1, 1974; and 1974 - S.B. 703 (amending the 1973 Correctional Ombudsman Act) was enacted into law. The 1974 Legislature also approved Senate Concurrent Resolution 96 which provided for a special committee to make a legislative study of the feasibility of establishing offices of Ombudsman at the state and local levels.
  16. KENTUCKY. No legislative session was held in 1973. The Governor by executive order in 1973 established the Office of the Ombudsman in the Department for Human Resources to handle complaints with respect to services rendered by the Department. J. E. Reeves was appointed to serve as the Ombudsman. In 1974, the legislature enacted S.B. 112 into law, making the office a statutory office.
  17. MAINE. 1973 - L.D. 1515 and L.D. 576 (Office of Constituent Services) - both failed to pass; and 1974 - no legislation.
  18. MASSACHUSETTS. 1973 - Senate No. 1209 (Office of Ombudsman appointed by the Secretary of State and an Information and Referral Agency in the Ombudsman Office), House Bill No. 1129 (the Office of Ombudsman elected by the Legislature and an Information and Referral Agency under the direction of the Ombudsman), House No. 2371 (Ombudsman for direct case personnel working in the schools for retarded of the Department of Mental Health), House No. 4024 (a Division of Citizen Inquiry and Complaint headed by an Ombudsman within the Department of the State Auditor), and House No. 5188 (Office of Ombudsman within the Executive Office of Elder Affairs) - all killed; and 1974 - Senate No. 1287 (Office of Ombudsman for Corrections), Senate No. 1316 (Ombudsman and Information and Referral Agency in the Office of the Secretary of State), House No. 912 (Ombudsman and Division of State Inquiry and Complaint within the Department of the State Auditor), House No. 1113 (Ombudsman and Information and Referral Agency in the Department of the State Secretary), House No. 2033 (residential care Ombudsman), and House No. 3040 (Ombudsman and Division of Citizen Inquiry and Complaint within the Department of the State Auditor) - all killed except House No. 3040, which was substituted by House No. 5520. House No. 5520 directed the Legislative Research Council to investigate and study the matter of establishing a State Ombudsman Office. No further information concerning House No. 5520.

rendered by state government. The service was opened to the general public on January 16, 1974. A report (referring to it as an Ombudsman service) for the period June 4, 1973 to February 26, 1974 issued by Committee Chairman J. H. Williams shows 800 inquiries were received. An Ombudsman was appointed by the Department of Health and Rehabilitation Services in October, 1973. The title of the position was subsequently changed to Co-ordinator of Client Relations since the position was not in line with the true concept of the Ombudsman.

11. GEORGIA. 1973 - H.B. 85 (City of Atlanta Ombudsman); and 1974 - H.B. 85 - carried over from 1973 - passed - approved by Governor on March 22, 1974 as Act 1047.
12. HAWAII. Herman Doi has been serving as the Ombudsman since July 1, 1969, the first to serve under the Ombudsman Act of 1967. His Report No. 4 for the period July 1, 1972 to June 30, 1973 shows a total of 2,041 inquiries, of which 509 were outside of his jurisdiction, 573 were requests for information, and 959 were complaints. 6% of the inquiries were by mail, 12.6% by visits, and 81.4% by telephone. Complaints against specifically named persons must be reduced to writing. 34% of the complaints were justified or partly justified. The Ombudsman's jurisdiction extends over local and state government. During the period from July 1, 1973 to December 31, 1973, the Ombudsman received 968 inquiries. H.B. 1711 (1973-1974 sessions) providing for the establishment of a consumer arbitrator in the Office of the Ombudsman died in committee. H.B. 2431 (1974 session) amending the Ombudsman Act of 1967 in several particulars passed and was signed into law by the Governor as Act 46, Session Laws of Hawaii, 1974.
13. ILLINOIS. 1973 - H.B. 530 and H.B. 2053 (the latter providing for an Office of Citizen Information and Assistance in the Office of the Lieutenant Governor) were both tabled; and 1974 - no legislation introduced. Governor Dan Walker established a Mail Control Center to receive inquiries, complaints and problems by mail or telephone and to respond by mail. In addition, he established a Citizen Affairs Office to deal with emergency referral, telephone inquiries, complaints, problems and letters of an emergency nature. The Mail Control Center receives approximately 700 grievance letters per month. The Citizen Affairs Office receives an average of 360 grievances per month, 90% of which are by telephone.
14. IOWA. Thomas Mayer was appointed as Citizens' Aide under the Citizens' Aide Act 1972 to succeed Lawrence D. Carstensen who resigned effective May 21, 1973. Mr. Mayer, a lawyer, had served as Deputy Citizens' Aide and Acting Citizens' Aide. Files were opened in 1,200 cases, according to the report issued by the Citizens' Aide for 1973. The Iowa Crime Commission funded the appointment of a Deputy for Corrections, Raymond Cornell, in September, 1973 to handle

to the Head of State, Commissioners, or other Government officials.

92. NORTHERN IRELAND. Stephen McGonagle succeeded J. M. Benn who retired as Parliamentary Commissioner for Administration and Commissioner for Complaints on January 1, 1974. As Parliamentary Commissioner for Administration he receives complaints against central government through members of the Northern Ireland Assembly. In 1973 he received 43 complaints. As Commissioner for Complaints, he receives complaints against local government and public authorities from the public directly. In 1973 he received 659. The effect of the recall of the Assembly in May and direct rule by British Parliament will be to require reports to the Parliament at Westminster.
93. NORWAY--PARLIAMENTARY OMBUDSMAN. The Parliamentary Ombudsman, Andreas Schei, retired on July 1, 1974, and was succeeded by Judge (of the Supreme Court) Erling Sandine. During 1973, the Ombudsman received 1,395 complaints, 52 informational inquiries, and took up 21 cases on his own initiative. 1,373 cases were handled during the year, of which 562 were investigated and 178 were considered justified.
94. NORWAY--MILITARY OMBUDSMAN. Edg Andreassen, Military Ombudsman, received 248 complaints in 1972 and 230 in 1973.
95. NORWAY--CONSUMER OMBUDSMAN. The Law on the Control of Marketing came into effect on January 1, 1973. The function of the Consumer Ombudsman is to see that advertising and other marketing measures are in accordance with the law and that advertising is not untrue or misleading. Mrs. Inger Louise Valle, the Consumer Ombudsman, is on leave to serve as Attorney General and Judge Charles Philipson serves as acting Consumer Ombudsman. In 1973, 1,191 cases were registered, of which 300 were on the Consumer Ombudsman's own initiative.
96. PAKISTAN. The Permanent Constitution adopted in 1973 contains a Fourth Schedule which includes the subject of the Ombudsman as being under the competence of the Federal Legislature. A bill is in the process of preparation. The office of the Prime Minister's Representative on Administrative Inspection handles complaints against central government officials on corruption, delay, inefficiency, unfair treatment and discourteous behavior.
97. PAPUA--NEW GUINEA. The motion by Mr. Anton Paroa, an opposition member of the House of Assembly, to appoint an Ombudsman was debated on September 20, 1973 and March 7, 1974 with negative results. The Constitutional Planning Committee proposed an Ombudsman Commissioner consisting of a chief Ombudsman and two Ombudsmen. It is currently being debated in the House of Assembly.
98. PHILIPPINES. On January 17, 1973, the President proclaimed that the Constitution proposed by the 1971 Constitutional Convention had been ratified and had then become effective. Section 6 of Article XIII provides for an Ombudsman to be

established by the National Assembly and to be known as the Tanodbayan. The Secretary of Justice has submitted to the President the draft of a presidential decree creating the office of the Philippine Ombudsman to be called the Tanodbayan. Pending the President's action on the draft decree creating the Philippine Ombudsman, he issued Letters of Instructions No. 137 dated October 15, 1973, constituting a Special Cabinet Committee to deter "backsliding" of government officials and employees. In addition to the Letters of Instruction, the President, late in 1973, directed all cabinet members to set up Public Assistance offices to receive citizen complaints. The Special Action Unit in the office of the President receives complaints which are brought to the attention of the department head concerned.

99. POLAND. Under the Code of Administrative Procedure, complaints may be filed by individuals pertaining to "negligence or an irregularity on the part of organs or their staff members in performing their duties, to violations of law or disregard of legitimate interest, and to undue delay or bureaucratic attitude in disposing of matters." The Council of Ministers has provided for an Office of Complaints. The Procurator General, among other duties, supervises the strict fulfillment of the law by all institutions, authorities and departments, on district, regional and village levels, as well as by the various components of the public economy, public institutions and by individual citizens; supervising the conformity to the law of the acts and activities of the institutions and the organizations mentioned above; and supervising the safeguarding of citizens' rights. The supervision does not extend to the acts and activities of central institutions. The Code of Administrative Procedure also permits a citizen to submit a complaint or suggestion to the press, radio and television networks, producers of news films, and the institutions concerned must act as if complaint had been filed directly by the citizen. They must submit their reply both to the citizen and the media.
100. ROMANIA. The Procurator General is elected by the Grand National Assembly for the duration of the legislative term. The Procurator General appoints the procurators in the regions, districts and towns. The Procuratura keeps watch over compliance with the law by the ministries and other central organs of state administration, the local organs of state administration, the penal prosecuting authorities, the courts, the civil servants and other citizens.
101. RUSSIA. The Soviet Procuratura is the supreme national institution fulfilling the constitutional function of control over the exact observance of the law by government departments and bodies and institutions subordinate to them, by various officials of all grades and by the public. The Procurator General is appointed by the Supreme Soviet of the U.S.S.R. for a period of seven years. He appoints the procurators of the union republics and of the autonomous republics, the territories, the regions and the autonomous regions. The lower grades of procurators are appointed by

Complaint-handling mechanisms, legislative Ombudsman proposals and other Ombudsman or complaint-handling developments in the states, territories, and districts are summarized as follows:

1. ALABAMA. 1973 - S. 280 - died in committee; and 1974 - no session.
2. ALASKA. 1973 - H.B. 15 - continued over to 1974; and 1974 - H.B. 15 - died in committee.
3. ARIZONA. 1973 - H.B. 2235 - provided for Ombudsman appointed by and responsible to Governor - Legislature adjourned without passage; and 1974 - no legislation.
4. ARKANSAS. 1973 - H.B. 274 (Publi. Protector) - Legislature adjourned without passage; and 1974 - no information.
5. CALIFORNIA. 1973 - S.B. 130 - died in committee; S.B. 1105 (Ombudsman for Corrections) - died in committee; and 1974 - no information.
6. COLORADO. 1973 - H.B. 1277 - died in committee; and 1974 - no legislation.
7. CONNECTICUT. 1973 - no bills; and 1974 - no bills. The Governor, Thomas J. Meskill, established on June 29, 1973, the Governor's State Information Bureau, which permits persons to call toll-free from any area of the State to the Bureau. The Bureau personnel will answer inquiries, supply information, and provide, if required, "in depth" follow-up service. Calls from the deaf are handled by special telephone facilities. An interpreter is available for the Spanish-speaking populations. Twenty case workers are employed to handle the approximately 500 daily inquiries.
8. DELAWARE. 1973 - no bills; and 1974 - H.B. 869 - Legislature adjourned without passage.
9. DISTRICT OF COLUMBIA. The City Hall Complaint Center originated in 1964. It handles problems that citizens may encounter with city agencies. Volunteers and one paid staff member handle about 200 calls per week. During the second half of 1973, 3,755 complaints were received. It is reported that one of the Senators is considering introducing a District Ombudsman bill. Senators Edward Long, Philip Hart, and Robert Kennedy introduced a District of Columbia bill in 1967 without success.
10. FLORIDA. 1973 - H.B. 1715 and S.B. 852 - Legislature adjourned without passage; and 1974 - H.B. 3665 (Nursing Home Ombudsman). On May 23, 1973, the Senate President announced that the Senate Governmental Operations Committee would offer commencing June 4, 1973, a service allowing any Senator or his staff to phone or write the Committee for the central processing of constituent inquiries or complaints dealing with services

appealable to a federal district court. An advisory council would be established which, among other functions, would be responsible for distributing grants to local and state governments for establishing local citizen appeal boards.

Senator Nelson has appointed a member of his staff to act as an Ombudsman in his Milwaukee office.

11. CONGRESSIONAL OMBUDSMAN. Congressman Wayne Owens and eleven other members introduced HR 7680 on May 9, 1973, a Bill to establish an Office of Congressional Ombudsman. The Congressional Ombudsman would be responsible only to Congress and would principally do case work referred to him by members of Congress with the help of a staff trained in the different case work areas. Information would be released only to the member or Senator who referred the case originally who could then communicate directly with his constituent. There would be no access to the Ombudsman except by specific referral from the member or Senator. The Ombudsman would be chosen by a twelve-man board which would consist of six Senators and six Representatives. The Chairmanship of the Board would alternate between members of the two Houses of Congress each session. The bill was referred to the House Administration Committee.
12. FEDERAL CRIMINAL JUSTICE SYSTEM. Senator Charles H. Percy introduced S.2160 on July 12, 1973, which contains provisions for the Office of Ombudsman of the Federal Criminal Justice System. The Office would handle complaints and disputes of confinement or other related matters and would also consider petitions for collateral review filed by any state or federal prisoner with a federal court and endeavor to resolve the matter out of court within 90 days.
13. WATERGATE. The Senate Watergate Committee in its report made public on July 13, 1974 recommended the establishment of the Office of Public Attorney to be chosen by members of the judiciary subject to Senate confirmation. The Public Attorney would have power to investigate and prosecute where conflicts of interest in the executive branch exist and also to inquire into (with power to gain access to executive records) the status and progress of complaints and criminal charges concerning matters pending in or involving the conduct of Federal departments and regulatory agencies. The report terms the Public Attorney as not only a "special prosecutor" but also as an "ombudsman" having power to inquire into the administration of justice in the executive branch.
14. HEALTH OMBUDSMAN. The federal phase of this aspect is covered in Section E - United States - Health of this report.

C. UNITED STATES--STATES

Ombudsman bills were introduced in 1973 in 28 states, Puerto Rico and the Virgin Islands, and in 1974 in 21 states and in Puerto Rico.

the procurators of the Union Republics subject to the confirmation of the Procuratura General. The General Military Procurator is appointed by the Procuratura General of the U.S.S.R. on the recommendation of the Ministry of Defense. Carrying out the general supervision of Procurator over legality or administrative orders and administrative activity, among other methods, the Procurator receives written and oral communications from members of the public and also observes cases reported in the press. In addition, a 1968 law regarding "Procedure for Handling of Suggestions, Requests and Complaints from the Public," deals with the procedure for handling complaints from the public.

102. SINGAPORE. The Corruption Practices Investigation Bureau deals with allegations involving corruption by government employees. The Central Complaints Bureau under the Ministry of Social Affairs handles complaints not involving corruption such as discourtesy, misconduct, unnecessary delay, and discrimination. From 1962-1973, about 10,000 cases were handled. The Government has never accepted the recommendation of the 1966 Constitutional Commission recommending the establishment of the Ombudsman system.
103. SOUTH AFRICA. Several years ago, the House of Assembly debated a motion proposed by Mr. D. D. Baxter to consider the appointment of a judicial commission to report on the establishment of an Ombudsman. The motion was withdrawn, but members of the Government termed it a "very interesting motion." The Association of Law Societies reports that it is arranging a law conference in March 1975 on Administrative Law and has invited one of the Swedish Ombudsmen to speak.
104. SRI LANKA. The Government has formed Janatha Committees (People's Committees) in each district to receive grievances but with no power of investigation. The People's Committee Act was passed in 1971.
105. SUDAN. The Central Bureau for Public Control Act 1970 consists of the Public Commissioner, a Deputy Public Commissioner and other members. The Bureau, among other functions, is to conduct the necessary investigation and inquiry for the detection of the administrative and financial contraventions committed by government employees, which include negligence in carrying out the duties of the office, misuse of discretion and abuse of power.
106. SWEDEN. Sweden has three Parliamentary Ombudsmen who all have the same rank but are responsible for different spheres of supervision. Mr. Bertil Wennergren supervises the field of social welfare and is also in charge of matters relating to social insurance and education as well as those concerning the access of the general public to official documents. Ulf Lundvik handles cases on taxation and execution of judgments and all other matters concerning civil administration not supervised by Mr. Wennergren. Gunnar Thyresson supervises the courts of justice, the public prosecutors, the police and the armed forces including authorities responsible to the latter. The Ombudsmen are elected by the Swedish Riksdag for a term of four years and it also elects two

- Deputy Ombudsmen, the latter being Mr. Anders Wigelius and Mr. Tor Sverne. In 1973, 3,699 new cases were registered with the Ombudsman, of which 445 were cases initiated by the Ombudsmen themselves. Seven proposals were submitted to Parliament. Prosecution or disciplinary proceedings were instituted in 9 cases. There were 551 admonitions.
107. SWEDEN--ANTI-TRUST OMBUDSMAN. The Ombudsman for Protection of the Freedom of Trade is Judge Torsten Lowbeer appointed by the King in Council. His activities are based on the Restrictive Trade Practice Act. Judge Lowbeer handled 473 cases in 1973 of which 351 arose during this year.
  108. SWEDEN--CONSUMER OMBUDSMAN. The Consumer Ombudsman, Judge Sven Heurgren, is appointed by the King in Council and he ensures that laws for the protection of consumers are observed--the Marketing Practices Act and the Act Prohibiting Improper Contract Terms. Professor Donald B. King has written a book entitled "Consumer Protection Experiments in Sweden," published by Fred B. Rothman & Co., 1974. (See A-123)
  109. SWEDEN--PRESS OMBUDSMAN. The Press Ombudsman, appointed by a special committee, is a voluntary institution of the Swedish press. Judge Lennart Groll, Press Ombudsman, reports 391 complaints in 1972 and 392 in 1973.
  110. SWITZERLAND--FEDEPAL. The Federal Justice and Police Department is considering the introduction of Ombudsman legislation and will prepare a report. The National Council is considering proposals for a Military Ombudsman.
  111. SWITZERLAND--CANTONS. Basel, Zurich and Solothurn are considering cantonal Ombudsmen.
  112. SWITZERLAND--CITY OF ZURICH. Dr. Jacques Vontobel has been serving as Zurich Ombudsman or Complaints Commissioner since 1971. In 1972, he received 396 complaints and in 1973, 344 complaints.
  113. TANZANIA. The Permanent Commission of Enquiry consists of three members. Chief Erasto A. M. Mang'anya, Chairman of the Commission, was elected Speaker of the National Assembly on November 20, 1973. Information has not been received as to the name of his successor as Chairman. An article on the Permanent Commission of Enquiry by Bernard Frank was published in the Denver Journal of International Law and Policy, Volume 2, No. 2, Fall 1972.
  114. THAILAND. On May 21, a seven man committee was appointed by the Prime Minister to investigate allegations of corruption on the part of Government officials. The status of the committee following the Prime Minister's resignation and then return to office is unknown. Judge Sansern Kraichitti, International Bar Association Council Member, was one of the members of the committee.
  115. TRINIDAD AND TOBAGO. The Constitution Commission submitted its report to the Governor-General on January 22. It
- officials managing such programs or other abuses or capricious acts of public officials.
5. OFFICE OF CONSTITUENT ASSISTANCE. Senator Vance Hartke, for himself and Senator M. Gravel, introduced S.2500 on September 28, 1973 to establish an Office of Constituent Assistance, similar to his S.2134 introduced in 1971. The Office of Constituent Assistance would be headed by a Director who would receive complaints through members of Congress. Hearings may be held on the bill by the Committee on Government Operations.
  6. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE. HEW had established in 1972 the position of Ombudsman in the Office of Civil Rights to monitor alleged abuses in affirmative action programs in the higher education community. The position was disbanded recently.
  7. CORRECTIONAL OMBUDSMAN. Congressman William J. Keating introduced on October 19, 1973, HR 11146 which provides for an Office of the United States Correctional Ombudsman to handle complaints with respect to any administrative act of the Bureau of Prisons or of the Board of Parole pertaining to the treatment of a Federal prisoner or parolee or conditions in any Federal penal institution. It also would amend the Omnibus Crime Control and Safe Street Act of 1968 to provide for states seeking correctional improvement funds to set up a state Correctional Ombudsman program. The bill was referred to the Judiciary Committee.
  8. CORRECTIONAL OMBUDSMAN. On June 20, 1973, Congressman Ralph Metcalfe introduced HR 8848 which would establish the Office of Correctional Ombudsman to investigate any administrative act of the Bureau of Prisons or the Board of Parole pertaining to the treatment of a Federal prisoner or parolee or conditions in any Federal penal institution. The bill was referred to the Judiciary Committee. The bill was re-introduced on July 12, 1973 as HR 9270 with six additional co-sponsors, on July 24, 1973 as HR 9543 with 17 additional co-sponsors, and on September 12, 1973 as HR 10216 with two additional co-sponsors.
  9. NAVY. Rear Admiral C. F. Rauch, Assistant Chief of Staff of Navy Personnel to Human Goals, also holds the official title of "Navy Ombudsman." In addition, the Navy has a Navy Wives Ombudsman program. Anyone who feels that she has been unfairly dealt with by a government agency, local command, or service member may complain to a Navy Wives Ombudsman.
  10. FEDERAL CITIZENS APPEAL BOARD. Senator Gaylord Nelson introduced on February 21, 1974, S.3043 which sets up Federal Citizens Appeal Boards in each of ten Federal districts. Each board is to consist of five members and will review complaints against agency action after agency appeal procedures have been exhausted. Decisions would be

B. UNITED STATES--FEDERAL

Federal legislative proposals continue to be introduced without success. However, the affection that government agencies have for the term "ombudsman" still exists.

1. ADMINISTRATIVE CONFERENCE OF THE UNITED STATES. The Administrative Conference does not contemplate altering its position taken in the past--that the Conference is not suited to serving as an Ombudsman for citizen complaints. Its role will be to suggest improvements in the agencies themselves. It issued a study by Professor Victor G. Rosenblum of federal agency procedures and procedures in handling citizen-initiated complaints and a report by Professor Howard Lesnick on grievance procedures for federal prisoners. The latter did not consider the institution of an Ombudsman feasible in the special circumstances of prison life. The Committee on Informal Action did not propose any action to be taken on Professor Lesnick's report by the Administrative Conference Assembly, principally because it felt that the members of the Conference do not have the required expertise to speak authoritatively in the field. The Conference announced in May a major study of certain administrative procedures of the Internal Revenue Service including the handling of citizen complaints.
2. DEPARTMENT OF AGRICULTURE. The Office of the Inspector General has been dissolved and in its place an Office of Investigation reporting to the Secretary of Agriculture and the Office of Audit reporting to the Assistant Secretary for Administration were established. The two offices will independently inquire into allegations of irregularity on the part of personnel or in the operations of the Department's programs. Congressman Whitten stated in Congress on June 21, 1974 in the consideration of HR 15472 that the committee had seen fit to restore the Office of Inspector General to its former status. No further information has been received.
3. HR 11257. Congressman Les Aspin of Wisconsin introduced on November 6, 1973, HR 11257 which would permit each Congressman to appoint an Ombudsman for his or her district. In addition, the bill provides for an Ombudsman Center to train, assist, and certify the Ombudsmen. The bill is pending in the House Committee on House Administration, Subcommittee on Accounts. In March 1971, the Congressman appointed Tim Cullen to serve full time as his Ombudsman in his Wisconsin district. Mr. Cullen handles 200-300 complaints and requests monthly.
4. DEPARTMENT OF COMMERCE. The Department of Commerce established on March 26, 1971 the Office of Ombudsman for Business. John P. Kearney has been appointed to succeed Thomas E. Drumm, Jr., who resigned in August, 1973. Mr. Kearney will serve as Director of the Office of Business Relations and also as Ombudsman for Business. About 9,600 inquiries were received in 1973, of which about 5-10% were complaints involving improper operation of government programs relating to business or action by government

recommended the creation of the office of Ombudsman and proposed that the Government redraft its draft Ombudsman Bill in accordance with the Commission's recommendations. Dr. Selwyn Ryan, disagreeing with a single Ombudsman system, recommended a plural Ombudsman of at least three persons with a rotating chairmanship.

116. UNITED NATIONS. The Commission on Human Rights in 1967 adopted Resolution 14 proposing the creation of the office of a United Nations High Commissioner for Human Rights which, among other functions, would seek communications concerning human rights addressed to the United Nations which it may draw to the attention of the government concerned. (See A-125)
117. VENEZUELA. An English summary of an article in the International Review of Administrative Science (Vol. 38, No. 3, 1972), Summaries xiv and xv discuss the office of the Commissioner of the President of the Republic appointed under the Decree of July 16, 1969. The Presidential Commission receives complaints of citizens against officials with regard to inefficiency of the public services, the mismanagement of public funds, trading on influence, and generally, any maladministration.
118. VIETNAM (REPUBLIC OF). It has an institution known as the Inspectorate (Censorate) with power of audit, inspections, control and investigation of all public and private agencies, engaged as accessory or accomplice in corruption, speculations, influence--peddling, or acts harmful to the national interests; may propose disciplinary measures or request prosecution. A 1974 law broadened the powers of the Censorate over Government agencies, state owned industrial and commercial corporations, public agencies with financial autonomy status, and semi-public corporations.
119. WORLD PEACE THROUGH LAW. The Geneva World Conference on World Peace Through Law in 1967 recommended in its future work program that, "The Center disseminate widely information about the role which an ombudsman can perform in protecting citizens against violation of their rights by administrative authorities; and seek to assist financially or otherwise projects designed to encourage research on the establishment of ombudsmen."  
  
The Belgrade World Conference on World Peace Through Law (1971) adopted Resolution No. 19 which called upon states "to make every effort towards the establishment of effective national machinery for the protection of human rights including, where appropriate, the institution of ombudsman or similar institutions."
120. YUGOSLAVIA. The Public Prosecutor is authorized to carry out general supervision over the legality of administrative acts and the protection of citizens' rights. There is a Bureau for Complaints within the Cabinet of the President of Yugoslavia. In addition, citizens can lodge requests and proposals to Petition Committees. There was some discussion in 1973 of the Ombudsman system.

121. ZAMBIA. The 1973 Constitution provides in Part IX, Articles 117-119 for a Commission of Investigations consisting of an Investigator General as the Chairman and three Commissioners, all appointed by the President. The Constitution became effective on August 25, 1973. On December 11, 1973, Justice Frederick Chomba was appointed Investigator General. He had been Puisne Judge of the High Court of Zambia, which is a qualification requirement. Removal of the Investigator General by the President requires a vote of 2/3 of the members of the National Assembly passing a resolution that the question of removal be investigated, appointment of a tribunal of three persons by the Chief Justice, and a finding by the tribunal that the Investigator General be removed for disability or misbehavior. The Commission has jurisdiction to investigate cases of alleged misconduct or abuse of office or authority by government, party and local officials, by members and employees of parastatal bodies, institutions of higher learning and commissions. Legislation is being drafted to supplement the Constitutional provisions.
122. AUSTRALIA--FEDERAL. (See A-1) The draft of a federal Ombudsman bill is in its final stage and is expected to be introduced in the near future. At the same time a bill to introduce a separate Defense Forces Ombudsman will be introduced.
123. SWEDEN--CONSUMER OMBUDSMAN. (See A-108) Judge Heurgren, the Consumer Ombudsman, reports receiving 4,286 cases and taking up 541 on his own initiative in 1973.
124. GREECE. The 1968 Constitution provides for a Parliamentary Commissioner. This provision has not as yet been implemented. A Government Administrative Ombudsman has been in operation since 1968 by the Legislative Decree No. 2/1968. The Government Administrative Ombudsman is Efstathios Latsoudis who has been in office since 1972 succeeding Spyridon Velianitis. He acts on his own initiative, or on receiving complaints from the public, or on requests from the Prime Minister.
125. UNITED NATIONS. (See A-116) The Commission on Human Rights now reviews cases of gross violations of human rights referred to it by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The creation of the post of UN High Commissioner for Human Rights has been incorporated by UN Resolution #3136 into an item entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms." This was adopted on December 14, 1973. This item will be considered by the 30th Session of the General Assembly in 1975.
126. AUSTRALASIAN AND PACIFIC OMBUDSMAN CONFERENCE. A Conference of Australasian and Pacific Ombudsmen from New Zealand, Western Australia, South Australia, Victoria, Queensland, Fiji, and Hawaii will be held in New Zealand in November. Sir Guy Powles, New Zealand Ombudsman, is chairman of the conference.
127. AUSTRALIA--STATE OF QUEENSLAND. (See A-2) The Parliamentary Commissioner Act 1974 was proclaimed by the Governor on June 27, 1974 with an operative date of July 1, 1974. The position of Commissioner has been advertised.
128. GREAT BRITAIN. (See A-47) Mr. Dafydd Jones-Williams has been appointed Local Commissioner for Wales.
- AA. OMBUDSMEN AND OMBUDSMAN PROPOSALS. The strong trend toward the Ombudsman system throughout the world continues. The following Ombudsman officials (using the word Ombudsman in its restricted meaning) are in office throughout the world: Australia (State of South Australia, State of Queensland, State of Victoria, and State of Western Australia), Canada (Commissioner of Official Languages, Provinces of Alberta, Manitoba, New Brunswick, Nova Scotia, Quebec, and Saskatchewan), Denmark, Fiji, Finland, France, Federal Republic of Germany (Federal Military and State of Rhineland-Palatinate), Great Britain (Parliamentary Commissioner for Administration, National Health Service Commissioners, and Local Government Commissioners), Guyana, India (States of Bihar, Maharashtra, and Rajasthan), Israel (Commissioner for Complaints From the Public, Soldiers Complaints Commissioner, City of Jerusalem, and City of Tel Aviv), Mauritius, New Zealand, Northern Ireland (Parliamentary Commissioner for Administration and Commissioner for Complaints), Norway (Parliamentary Commissioner and Military Ombudsman), Sweden, Switzerland (City of Zurich), Tanzania, and Zambia. In the United States there are Ombudsman officials in the states of Hawaii, Nebraska, and Iowa, and in the cities of Atlanta (Georgia), Seattle-King County (Washington), Detroit (Michigan), Jamestown (New York), Lexington-Fayette County (Kentucky), Wichita (Kansas), Dayton City and School District and Montgomery County (Ohio), and Jackson County (Missouri).
- Legislation has passed and awaiting assent in Australia (Northern Territories), Canada (Newfoundland and British Columbia Labor Ombudsman). Constitutional provisions have been enacted but there has been no implementing legislation as yet in Bangladesh, the Philippines and Greece. Legislation has been passed but no appointment of an Ombudsman made in Cyprus, India (State of Orissa), and Italy (Regions of Tuscany and Liguria). Proposals are under consideration in Australia (Federal, both civil and military, and the State of New South Wales), Austria, Belgium, Canada (Northwest Territory and Yukon Territory), Ethiopia, Iceland, India (Federal as well as states of Gujarat, Karnataka, and Madhya Pradesh), Ireland, Italy, Jamaica, Malaysia (State of Perak), Malta, Netherlands, Pakistan, Papua-New Guinea, Switzerland, and Trinidad and Tobago. In the United States, Ombudsman proposals are under consideration on the Federal, state and local government levels.

(Includes amendments  
enacted by the 1974 Hawaii  
State Legislature)

## CHAPTER 96 THE OMBUDSMAN

### Section

- 96-1 Definitions
- 96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, compensation, vacancy
- 96-3 Assistance, staff, delegation, funding
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§96-1 Definitions. (a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) The judiciary and its staff;
- (2) The legislature, its committees, and its staff;
- (3) An entity of the federal government;
- (4) A multistate governmental entity;
- (5) The governor and his personal staff;
- (6) The lieutenant governor and his personal staff;
- (7) The mayors of the various counties; and
- (8) The councils of the various counties.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation. [L. 1957, c 306, §2; HRS §96-1; am L 1974, c 46, §1]

§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, compensation, vacancy. The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years and thereafter until a successor shall have been appointed. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which he served as a member of the legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

For the period beginning on July 1, 1969 and ending June 30, 1970, the salary of the ombudsman shall be the same as the salary of the circuit court judges. Effective July 1, 1970, the salary of the ombudsman shall be the same as the salary of the circuit court judges. The compensation of the ombudsman shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term. [L 1967, c 306, §3; HRS §96-2; am L 1969, c 127, §6; am L 1974, c 46, §2]

§96-3 Assistance, staff, delegation, funding. The ombudsman shall appoint a first assistant and such other officers and employees as may be necessary to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at his pleasure. In determining the salary of each such employee, the ombudsman shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department. The first assistant's salary shall not exceed the percentage limitation established by law for a deputy director of a department. The ombudsman and his full-time staff shall be entitled to participate in any employee benefit plan.

The ombudsman may delegate to his appointees any of his duties except those specified in sections 96-12 and 96-13; provided that during the absence of the ombudsman from the island of Oahu, or his temporary inability to exercise and discharge the powers and duties of his office, such powers and duties as contained in sections 96-12 and 96-13 shall devolve upon the first assistant during such absence or inability.

The funds for the support of the office of the ombudsman shall be provided for in the act providing for the expenses of the legislature. [L 1967, c 306, §4; HRS §96-3; am L 1974, c 46, §3]

§96-4 Procedure. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for the submission or investigation of complaints. [L 1967, c 306, §5]

§96-5 Jurisdiction. The ombudsman has jurisdiction to investigate the administrative acts of agencies and he may exercise his powers without regard to the finality of any administrative act. [L 1967, c 306, §6]

§96-6 Investigation of complaints. (a) The ombudsman may investigate any complaint which he determines to be an appropriate subject for investigation under section 96-8.

(b) The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 96-8 exists. [L 1967, c 306, §7; HRS §96-6; am L 1974, c 46, §4]

§96-7 Notice to complainant and agency. If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons.

If the ombudsman decides to investigate, he shall notify the complainant of his decision and he shall also notify the agency of his intention to investigate. [L 1967, c 306, §8]

§96-8 Appropriate subjects for investigation. An appropriate subject for investigation is an administrative act of an agency which might be:

- (1) Contrary to law;
- (2) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
- (3) Based on a mistake of fact;
- (4) Based on improper or irrelevant grounds;
- (5) Unaccompanied by an adequate statement of reasons;
- (6) Performed in an inefficient manner; or
- (7) Otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy. [L 1967, c 306, §9]

§96-9 Investigation procedures. (a) In an investigation, the ombudsman may make inquiries and obtain information as he thinks fit, enter without notice to inspect the premises of an agency, and hold private hearings.

(b) The ombudsman is required to maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him except so far as disclosures may be necessary to enable him to carry out his duties and to support his recommendations. [L 1967, c 306, §10]

§96-10 Powers. Subject to the privileges which witnesses have in the courts of this State, the ombudsman may:

- (1) Compel at a specified time and place, by a subpoena, the appearance and sworn testimony of any person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
- (2) Compel any person to produce documents, papers, or objects which the ombudsman reasonably believes may relate to a matter under investigation.

The ombudsman may bring suit in an appropriate state court to enforce these powers. [L 1967, c 306, §11]

§96-11 Consultation with agency. Before giving any opinion or recommendation that is critical of an agency or person, the ombudsman shall consult with that agency or person. [L 1967, c 306, §12]

§96-12 Procedure after investigation. If, after investigation, the ombudsman finds that:

- (1) A matter should be further considered by the agency;
- (2) An administrative act should be modified or cancelled;
- (3) A statute or regulation on which an administrative act is based should be altered;
- (4) Reasons should be given for an administrative act; or
- (5) Any other action should be taken by the agency;

he shall report his opinion and recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations. [L 1967, c 306, §13]

§96-13 Publication of recommendations. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the legislature, the public, or any of these. The ombudsman shall include with this opinion any reply made by the agency. [L 1967, c 306, §14]

§96-14 Notice to the complainant. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency. [L 1967, c 306, §15]

§96-15 Misconduct by agency personnel. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency, he shall refer the matter to the appropriate authorities. [L 1967, c 306, §16]

§96-16 Annual report. The ombudsman shall submit to the legislature and the public an annual report discussing his activities under this chapter. [L 1967, c 306, §17]

§96-17 Judicial review, immunity. No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter. The ombudsman has the same immunities from civil and criminal liability as a judge of this State. The ombudsman and his staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter. [L 1967, c 306, §18]

§96-18 Agencies may not open letters to ombudsman. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. [L 1967, c 306, §19]

§96-19 Penalty for obstruction. A person who willfully hinders the lawful actions of the ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be fined not more than \$1,000. [L 1967, c 306, §20]

Source: Hawaii Revised Statutes.

## THE HAWAIIAN EXPERIENCE WITH THE OMBUDSMAN'S OFFICE

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I propose to discuss the subject matter of Hawaii's experience with the Ombudsman institution by posing questions and then attempting to answer the questions.

### Why did Hawaii enact an Ombudsman statute?

Hawaii was fortunate enough to have a few legislators who had the intelligence and foresight to recognize the effects of two major factors simultaneously affecting the people of the State.

First, they recognized that as our society became more complex, urbanized and interrelated, problems, which once were able to be solved by an individual or a group of individuals, were no longer resolvable by such means. Thus, complicated problems were and are being referred to government for solutions. In attempting to provide solutions to those problems, legislatures have enacted and will enact laws which establish broad standards either to restrict certain types of conduct, or to establish eligibility requirements for benefits. Those general laws leave to administrators the task of refining those broad standards with specific rules and regulations which can then be applied to individuals.

As more and more laws were enacted and as more and more rules and regulations were promulgated, the scope and magnitude of administrative discretion and the application of rules and regulations to individuals by administrative agencies became pervasive. Such administrative discretion in rule making and application increases the likelihood of mistaken, inequitable, unresponsive, or illegal application of laws or rules and regulations to individuals in our society. Thus, those perceptive legislators realized that more and more people are being affected by administrative action or inaction, and it appeared likely that many more people will be affected by administrative action or inaction in the future as more general laws are enacted.

Secondly, those legislators also recognized that each of the traditional modes by which an individual may attempt to resolve his problem with the administrators has its own inherent shortcomings. Let us briefly review those traditional modes and some of those inherent shortcomings.

1. A person adversely affected by an administrative decision may request reconsideration by that agency. However, self-review by the agency which promulgated the rule, applied it, and then reviewed it would most probably result in upholding the prior decision of the agency. In such a case, the decision of the agency would be suspect by the person who requested the review, even if the decision to affirm the prior decision was correct. The person affected would still feel that the agency had not objectively reviewed its own decision.

2. A person adversely affected by an administrative decision may request an influential friend to intercede on his behalf in attempting to reverse the administrative decision. First, most of us do not have such influential friends who can exert enough pressure to reverse an administrative decision. Secondly, even if we did have such friends and they were able to reverse the decision as it applied to us, such reversal may well create greater inequities for a larger number of people, for if we were the exception to a general rule, then what about all the others who may be similarly situated? Such specially created exceptions may well cause the administrative system to dysfunction and become ineffective.

3. A person adversely affected by an administrative decision may appeal the decision. First, not all administrative decisions are appealable. Secondly, even if the decision is appealable, the courts require that the person affected exhaust his administrative remedies before appealing to the courts. Thus, a person is required to go through administrative appeals before being able to reach the courts. This would require a substantial commitment of time and finances. Thus, those who may take advantage of this recourse are those who have the time and finances to spare, or who have great economic stakes involved in the outcome of a case.

Professor Walter Gellhorn in his book entitled, When Americans Complain, Harvard University Press, 1966, at page 218, succinctly stated those recourses, their shortcomings, and the need for an external critic in the following words:

If the formal means of reviewing administrative legality may be too massive for constant use, if intercession by influential outsiders may be too indiscriminating, if internal audits may be unpersuasive because too linked with the body whose acts have been challenged, then thought turns naturally toward systems of external criticism free of these shortcomings.

The legislature of the State of Hawaii, in recognition of those two factors--that more and more people are and in the future will be affected by administrative action or inaction, and that each of the traditional recourses had its own inherent problems or costs--came to the same conclusion as Professor Gellhorn; namely, that the people of the State needed an additional means by which administrative decisions could be reviewed. Although the legislators recognized the need for an additional recourse, they did not want to supplant the traditional means by which an individual may have an

administrative decision reviewed, but rather, wanted to supplement the available means with a system which avoided most of the shortcomings of the available recourses.

In other words, they wanted an Ombudsman--a nonpartisan officer of the legislature who receives and investigates specific complaints from the public about administrative injustice or maladministration and who has the power to criticize and publicize, but not reverse, administrative decisions. They also wanted the office to be accessible to the public and to receive and investigate complaints without undue formality and cost to the complainant.

Legislation authorizing the appointment of an Ombudsman and providing for such an office was enacted in 1967. The office became operational with the appointment of the Ombudsman effective July 1, 1969.

How does the statute and operating procedures of the Office of the Ombudsman avoid the shortcomings of the traditional modes of resolving administrative disputes?

In order to be responsive to the question, let us dissect the description of the Ombudsman into parts and discuss each part separately.

1. The Ombudsman is an independent nonpartisan officer of the legislature.

The statute provides that the Ombudsman shall be appointed by a majority vote of both houses of the legislature, meeting jointly, but voting separately. The Ombudsman is thus an officer of the legislature who is appointed for a term of six years in Hawaii. He can be removed or suspended by two-thirds vote of the members in joint session for neglect of duty, misconduct, or disability. The salary of the Ombudsman cannot be diminished except by general law applying to all salaried officers in the State. All staff members are appointed by the Ombudsman and they serve at his pleasure. Appropriations for the office are contained in the legislative expense bill and by a recent constitutional amendment, the Governor, although authorized to veto the entire legislative appropriation bill, may not item-veto items in that bill.

All of the provisions previously recited contribute toward making the Ombudsman independent of the executive branch, which houses the administrative agencies whose decisions the Ombudsman reviews, and also frees him from as much of the political pressures of the legislature as possible. The independence of the office, the fixed term of the Ombudsman, the difficulty of removal, and his ability to select his own staff all tend to provide him with the opportunity to be objective and impartial in the review of specific complaints.

Let me at this point state, for the record, that during the five and a half years that I have occupied the position of Ombudsman for the State of Hawaii, I have never experienced any political or other kind of pressure from the legislators or the Governor. I can honestly make the statement that neither the Governor nor any individual legislator has ever attempted to influence the office in its handling of complaints.

On the contrary, we have received assurances from both the legislature and the Governor that they wanted us to objectively review complaints; and if their assistance is needed on any particular complaint, such assistance would be forthcoming. These same types of assurances have also been received from the Mayors of the various counties.

2. The Ombudsman receives and investigates specific complaints from the public about administrative injustice or maladministration.

The statute makes it the primary duty of the office to receive, investigate and evaluate complaints from members of the public about illegal, unreasonable, unfair, oppressive or discriminatory actions or inactions by State or County administrative agencies. That primary duty is made evident by the statute in spelling out the jurisdiction of the Ombudsman. The statute, by stating specific exclusions, makes it clear that the Ombudsman should not concern himself with private transactions between individuals; nor with policy-making, the proper sphere of activity of the elected officials, such as the Governor, the Lieutenant Governor and the legislators on the State level, and the Mayors and councilmen on the County level; nor with the courts or with court decisions, the forum in which disputes between individuals and between an individual and his government are finally resolved; nor with agencies over which the State does not have jurisdiction, such as Federal and multistate agencies.

It should be pointed out that people contact the office with various types of inquiries. For our purposes, we have categorized all inquiries into three different groups-- complaints that fall within our jurisdiction, complaints that do not fall within our jurisdiction or no jurisdiction cases, and informational inquiries. At times, the dividing line between one category and the other may be very thin or nonexistent. Be that as it may, the statistics kept by the office reveal that during the first five completed fiscal years, FY 69-70 to FY 73-74, the office received a total of 8,622 inquiries. Of that number, 1,958 or 22.7% were no jurisdiction cases; 2,575 or 29.9% were informational inquiries; and 4,089 or 47.4% were complaints within our jurisdiction. (See Appendix A.)

In no jurisdiction cases, the inquirer is informed that we have no jurisdiction and is referred to a person or agency that may assist him. In the case of informational inquiries, we either attempt to provide the inquirer with the information desired, or if the information desired is too complex or too time-consuming to accumulate, we may refer the person to the appropriate source.

In the case of complaints that fall within our jurisdiction, we investigate the complaint by first obtaining all of the relevant facts from the complainant and his witnesses, if any, and from the agency involved. We then research and review the applicable laws, rules and regulations, and the agency's practices and procedures. Thereafter, the case is evaluated by comparing what was done by the agency against what is required by the law. It should be noted that the standard used is the law, for the law determines what an administrator or an administrative agency may or may not do. After evaluation, a determination is made as to whether the complaint is justified or unjustified. (See Appendix B.)

A complaint is justified or partially justified even though the complainant's principal contentions may have been incorrect, if, nevertheless, some improvement could have been made, or the agency's delay, error or deficiency has to be explained or rectified. Only if a complaint is totally unjustified and no remedial or corrective action is necessary or desirable is the complaint determined to be unjustified.

If the complaint is deemed to be justified, then the Ombudsman must try to resolve the problem with the administrator by reasoned persuasion. If, on the other hand, the complaint is deemed to be unjustified, then the complainant is provided with an explanation for the finding. In either case, the complainant and the administrative agency are assured of an impartial and objective investigation by a third party not involved in the original decision.

Our experience over the last five years indicates that about one-third of the complaints investigated are found to be justified. That statistic also means that approximately two-thirds of all complaints are unjustified or that the agency did everything that it could for the complainant. The experience in Hawaii, as well as in other jurisdictions, indicates that approximately one-half of all inquiries directed to the Ombudsman are either no jurisdiction or informational inquiries and that the remaining one-half are complaints within the jurisdiction of the Ombudsman.

In addition to investigating and evaluating specific individual complaints, the Ombudsman is also concerned with the effectiveness and equity of the agency's practices and procedures and its rules and regulations. If an investigation reveals some weaknesses or that improvements can be made, the Ombudsman may recommend to the agency appropriate means of improving the agency's practices or procedures or its rules and regulations. The Ombudsman may also recommend statutory changes to the legislature when he finds that the law may be inequitable. Recommendations are made when improvements are deemed necessary so that similar complaints will be precluded from occurring in the future. The fact that the Ombudsman is the focal point for administrative complaints presents the office with the opportunity to identify patterns of administrative inconsistency, or persistent problem areas. After investigation and study, appropriate solutions may be recommended.

Of course, not all complainants nor all administrators are pleased with what has happened as a result of an investigation. Complainants whose cases we have been able to resolve are pleased with the office and our performance. Some complainants whose complaints were found to be unjustified are very unhappy about it and may well disagree with our opinion. Surprisingly, however, many more complainants whose complaints we have found to be unjustified have stated that they were pleased with the thoroughness of the investigation and can now understand why their complaints were unjustified.

In order that the Ombudsman may conduct an investigation of a complaint that falls within his jurisdiction, he is given the power to make inquiries as he thinks fit, to inspect the premises, to hold private hearings, and to subpoena persons and records that may be necessary to an investigation. Those who hinder the lawful actions of the Ombudsman may be subjected to a fine. The Ombudsman, however, must maintain secrecy in respect to all matters and of the identities of complainants and witnesses, unless disclosure is necessary to carry out his duties or to support his recommendations.

3. The Ombudsman has the power to criticize and publicize, but not reverse, administrative decisions.

The statute makes it clear that the Ombudsman may not reverse an administrative decision, but the Ombudsman does have the power to recommend to the administrator an appropriate solution to a problem, and if the administrator refuses to accept the recommendation, to publicize the case. The statute contains other safeguards for the administrator in that it requires the Ombudsman to consult with the agency or person who may be the subject of criticism before criticism is expressed and to append to his opinion and recommendation the reply of the agency when publicizing a case, or when he brings that case to the attention of the Governor, the legislature or the public.

Upon reflection, one will come to the conclusion that the effectiveness of the Ombudsman and his office in persuading administrators to accept his recommendations and his ability to publicize a case really rests on the soundness of his recommendations. In turn, the soundness of his recommendations rests on thorough fact-finding; good research on the law, the rules and regulations and the practices and procedures of the agency; and sound evaluation of the facts and law. In turn, the ability of the Ombudsman to perform as required rests upon his own abilities, upon having very capable staff members, and upon the procedures adopted by the office to insure thoroughness and sound evaluation of the facts and law.

My personal philosophy has been that I wanted a small, highly qualified staff which was capable of meeting the challenge. Although the initial thought was to hire lawyers for the job, I soon realized that the cost would be too high and that we would not be able to retain lawyers for any appreciable length of time. Thus, I presently have on my staff two lawyers (myself

and my First Assistant) and four staff members, each of whom possesses a master's degree in one of the following fields-- counseling and guidance, business administration, political science, and social work. The responsibility of the staff member is to receive complaints, gather the facts, analyze the problem, search the law, evaluate the case, and recommend a course of action to the Ombudsman. Procedures in the office provide for constant quality and quantity checks of their work by the First Assistant and myself.

When a case has been well prepared and I am ready to make a recommendation, the administrator is called into the office and the facts of the case, the applicable laws and rules and regulations are presented to him. He is given the opportunity and encouraged to suggest an appropriate solution to the problem. If the case has been well prepared, the solution to the problem is readily apparent and the administrator is quick to grasp the situation and suggest an appropriate remedy. Since the administrator usually suggests the remedy, the implementation of the remedy follows shortly thereafter. In most, if not all, cases the problem is resolved at this stage.

If the problem has not been resolved after a conference, the Ombudsman has the opportunity of presenting his opinion and recommendation to the administrator in writing and requesting that the recommendation be implemented within a stipulated period of time. If the administrator refuses to implement the recommendation after it has been presented, the Ombudsman may thereafter present his opinion and recommendation to the Governor, the legislature or the public.

During the five years, we have not had to use publicity in any of the cases handled, and there have been but a miniscule number of cases in which we have had to present our recommendations in writing to the administrator.

Our style of operation--that of quietly attempting to resolve complaints without fanfare--has been of concern to some persons. They would like to see the office publicize agency shortcomings. Their argument is that by publicizing such cases, the office would then gain credibility among members of the public since it would then be recognized as a critic of government. What the proponents of that argument forget is that the Ombudsman is an objective intermediary--that he has to be fair and equitable to both the complainant and the administrator. He is not an advocate of causes but rather examines a complaint to decide whether or not the administrator has fulfilled his obligations as required by the law.

If the Ombudsman is to use reasoned persuasion as the means of resolving justified complaints, then it necessarily follows that his conduct must be fair. Our belief is that if we conduct ourselves in a professional, efficient and equitable manner and bring about changes in administrative decisions and processes without the glare of publicity, we would fulfill our obligations much more effectively, than if we were to continuously embarrass the agencies by publicizing their every deficiency. As Walter Gellhorn so aptly states in Ombudsmen and Others, at page 438:

...If the critic constantly depicts himself as a St. George slaying dragon after dragon, officials who do not relish being regarded as dragons may themselves become just a bit critical. An external critic needs the admiration and support of administrative personnel as well as newspaper men.

Our experience teaches us that administrators are interested in improving their operations for the benefit of the public and that they are most willing to rationally consider the most effective and fairest means of resolving a dispute between a member of the public and the agency.

From the foregoing discussion, one will recognize that the basic assumption for the Ombudsman institution is that rational men, the administrator, the individual citizen, the Ombudsman, can reason together to arrive at a rational and legal conclusion which is beneficial to the people. Many are surprised that the concept works, but it works because most administrators, most individuals, and the Ombudsman share the same objective--to arrive at a fair and equitable decision which is in conformance with law.

The fact that changes in administrative decisions occur only as the administrator is convinced that changes should occur precludes the dysfunctioning of the administrative process. Rather, the process of reasoning together strengthens the administrative process, for the system is incrementally improved by making it more efficient, humane and equitable.

#### 4. That the office be accessible.

Unlike the statutes of other jurisdictions, the Hawaii statute does not specify the method by which a complaint may be received. Thus, the Ombudsman opted for free access to the office. We therefore permit complaints to be registered with the office by telephone, by personal visit, or by letter. There are two exceptions from this general rule. They are: (1) that we will not investigate anonymous complaints, but we do forward such complaints to the agency complained about for their disposition; and (2) that complaints against specific governmental employees must be in writing. The reasons for the exceptions are apparent upon reflection--to prevent abuses caused by malicious or unfounded allegations and also to place some responsibility on the complainant to be accurate in his statements and to furnish additional information, if such is required during the course of an investigation.

The statute allows persons held in custody to bring their complaints to the attention of the Ombudsman, in confidence, for it requires that such letters be forwarded to the Ombudsman immediately and unopened. If persons in custody have access to a phone, they may call us by telephone or arrange for a meeting with a representative from the office through their counselors.

The statistics for FY 1973-74 indicate that the telephone is the much preferred method of contacting the office. 85.5% of all inquiries were brought to our attention by telephone; 8.8% by personal visit; and 5.7% by letter. (See Appendix C.)

The decision to accept inquiries by phone, visit, or letter seems to allow freer access to the office. Data of the number of inquiries per 100,000 population for various jurisdictions were gathered by Mr. Louis Marceau, the Public Protector, or Ombudsman, for the Province of Quebec from published reports in 1973 for 1972 data. (See Appendix D.) Those data indicated that Quebec was receiving 95.5 inquiries per 100,000; the Provinces of Alberta and Manitoba were receiving 49.3 inquiries per 100,000; New Zealand was receiving 45.4 inquiries per 100,000; and Sweden with 43.5 inquiries per 100,000. During that same time period, Hawaii's record indicates that 209.7 inquiries were received per 100,000 population. If 1973-74 data were used for Hawaii, it would be 270.25 inquiries per 100,000 population.

5. That the office informally and expeditiously investigate complaints without cost to the complainant.

The statute specifically prohibits the office from levying a fee for the submission or investigation of complaints. The rationale for this prohibition is aptly described by Professor Stanley V. Anderson in a paper entitled, "Proposals and Politics", which appeared in Ombudsmen for American Government?, at page 156, as follows:

The lawyer's fee often makes him inaccessible. When others help, they do so as a charity. Substitution of an Ombudsman means that evil imposed by government is rectified by government, and rectified as a primary responsibility rather than as a haphazard favor from a busy legislator. Lawmakers have a right to intervene, and so do we all; the Ombudsman has a duty to do so, in cases which he believes merit it. Others who volunteer usually lack expertise and impartiality; they are amateurs and advocates. Each of these characteristics makes them less effective. Partly, then, what the Ombudsman adds is simply that he does the job bigger and better.

The person who registers a complaint with the Ombudsman does so informally, by telephone, personal visit or by letter. Investigation of his complaint is also conducted informally. His only commitment of time is when we are extracting the facts of the situation from him, or to receive clarification during the course of an investigation, if such is required.

Insofar as time for the disposition of cases is concerned, we had an intern review all case files for the third fiscal year, FY 1971-72, to determine the length of time consumed to dispose of no jurisdiction, information, and complaint cases. The time periods consumed for cases during fiscal year 1971-72 were:

No Jurisdiction Cases-----	85% within a day
	96% within a week
Information Cases-----	70% within a day
	87% within a week
Complaints Within Jurisdiction-----	42% within a week
	54% within 2 weeks
	69% within 4 weeks

The arithmetic mean or the average time for that same fiscal year was 1.8 days for no jurisdiction cases, 4.7 days for information cases, and 28.65 days for complaints within our jurisdiction.

What then are some of the benefits that Hawaii residents may derive from the Ombudsman's Office?

The benefits that the complainant may derive from the Ombudsman's Office are as follows:

1. The Ombudsman equalizes the power of the complainant with that of the administrative agency.
2. Investigation and evaluation of his complaint are services which are offered without direct cost to the complainant and with very little expenditure of time.
3. The complainant is assured that his complaint will be objectively and impartially reviewed by a third party.
4. If the complaint is justified, the complainant receives the assistance of the office in resolving his complaint; and if unjustified, the complainant receives an explanation why the administrator could not rule in his favor.

Administrators are also benefited in the following ways:

1. The office substantiates the decision of the administrator when he is right and protects him from unfounded or unjustified criticism.
2. The office assists the administrators in identifying problem areas within their administration.
3. The office assists the administrators in finding an appropriate solution to complaints which are deemed justified.

The general public also receives some benefit from the Office of the Ombudsman. These benefits are as follows:

1. Centralizing the complaint function in the office gives the office an opportunity to discover patterns of administrative malfunctioning or frequent problem areas which need to be corrected.
2. The office identifies for the legislature statutes which, when applied, may be inequitable and thus may need to be reexamined and amended.

3. The presence of the office encourages administrators to be more responsive to the public and to develop good internal grievance mechanisms to handle public complaints.

What then is an Ombudsman?

An Ombudsman is an independent, nonpartisan officer of the legislature, who receives and investigates specific complaints from the public about administrative injustice or maladministration and who has the power to criticize and publicize, but not reverse, administrative decisions. The Ombudsman does not replace, but rather supplements, the traditional modes of resolving differences between administrators and citizens. He is an additional means by which an individual may have an adverse administrative decision objectively reviewed without formality and without an undue commitment of time and finances. Nor is the administrative process jeopardized by such review, since the Ombudsman may bring about changes only by recommendation, persuasion or publicity.

Thus, the Ombudsman is not a law giver or a social reformer, nor a knight in shining armor who challenges and defeats the administrative dragon at every turn, nor is he a bumbling fool who does little and accomplishes nothing. Rather, he is a knowledgeable human being who carefully investigates and evaluates the merits of complaints in the focused light of what the law requires. The Ombudsman determines whether a complaint is justified or unjustified by measuring administrative performance against the standards of the law-- the statutory law; the decisional law of the courts; the rules, regulations, practices and procedures of the agency involved; and the principles of equity and justice. If he finds that the complaint is justified or has merit, it is his job to persuade the administrator to change his decision, and if the administrator refuses, to publicize the case. If he finds that the complaint is not justified or does not have merit, he explains to the complainant why the administrator cannot rule in his favor.

An Ombudsman may not be necessary for the influential or powerful, but he is necessary as an alternate, or a final, recourse for those individual citizens who do not have powerful friends to intervene on their behalf, or who do not have sufficient funds or time to contest an administrative decision, or who do not have sufficient knowledge about the administrative system to cope with it. To that large majority of citizens, an Ombudsman is necessary, for he equalizes the power of each individual complainant with that of the administrative system when he investigates and evaluates specific complaints.

A government which is responsive and responsible to the people must be responsive and responsible to individuals in our society. One way that government can be responsive and responsible to the individuals in our society is for government to provide its individual citizens with an informal,

inexpensive, and efficient mechanism where their individual complaints against administrative decisions can be thoroughly investigated, researched and evaluated against the requirements of the law, and that in short is the task of the Ombudsman's Office.

APPENDIX A

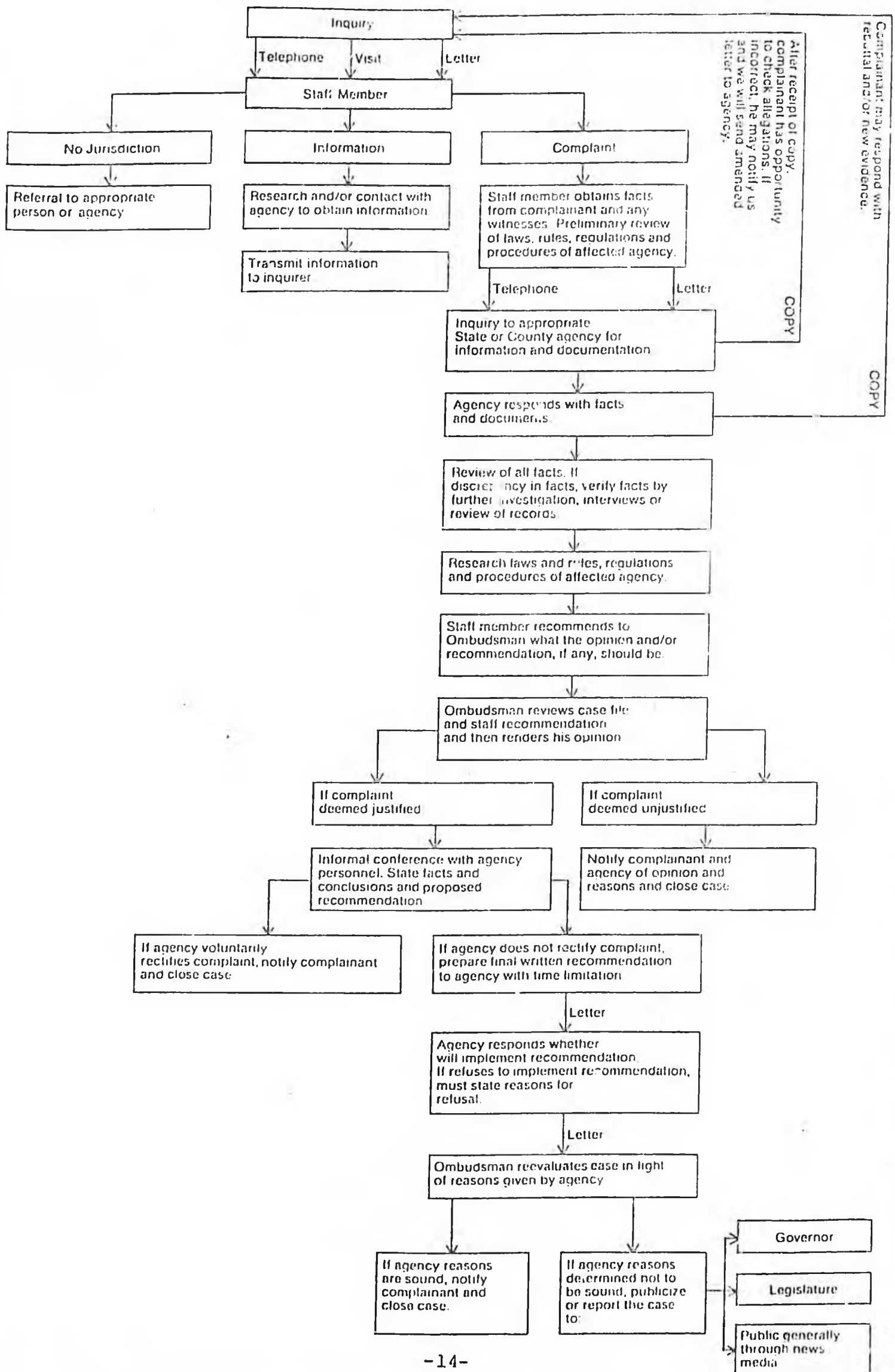
INQUIRIES FOR FIVE FISCAL YEARS

1969-70 THROUGH 1973-74

Fiscal Year	No Jurisdiction and %		Information and %		Complaints and %		Total
69-70	243	24.7%	129	13.1%	611	62.2%	983
70-71	315	18.0%	621	35.0%	822	47.0%	1,758
71-72	358	21.3%	513	30.6%	807	48.1%	1,678
72-73	509	24.9%	573	28.1%	959	47.0%	2,041
73-74	533	24.7%	739	34.2%	890	41.1%	2,162
Totals	1,958	22.7%	2,575	29.9%	4,089	47.4%	8,622

Note: For fiscal year 1974-75 (July through December), we received 1,531 inquiries.

STATE OF HAWAII  
OFFICE OF THE OMBUDSMAN  
PROCEDURE FOR HANDLING INQUIRIES



APPENDIX C

MEANS BY WHICH INQUIRIES ARE RECEIVED  
FY 1969-70 THROUGH FY 73-74

<u>Fiscal Year</u>	<u>Total Inquiries</u>	<u>Percent Telephone</u>	<u>Percent Visits</u>	<u>Percent Letter</u>
69-70	983	68.7%	18.1%	13.2%
70-71	1,758	74.0%	17.0%	9.0%
71-72	1,678	73.9%	15.4%	10.7%
72-73	2,041	81.4%	12.6%	6.0%
73-74	2,162	85.5%	8.8%	5.7%

APPENDIX D

	Year of establishment	Population served (millions)	Complaints received during year	Complaints per 100,000 inhab.	Complaints outside jurisdiction	Complaints receivable deemed justified
ENGLAND	1967	54.00	548	1.01	64.7%	36.8%
NEW ZEALAND	1962	2.50	1,135	45.4	52.8%	21.5%
SWEDEN	1809	8.12	3,531	43.5	47.1 (1)%	31.3%
DENMARK	1955	4.96	1,275	25.7	67.8%	18.5%
CANADA:						
Alberta	1967	1.63	815	49.3	65.0%	16.7%
New Brunswick	1967	0.63	280	44.3	64.6%	46.2%
Nova Scotia	1970	0.77	297	38.6	57.2%	36.2%
Manitoba	1970	0.98	487	49.3	56.6%	43.7%
Quebec	1969	6.03	5,758	95.5	57.2%	35.2%
UNITED STATES:						
Iowa	1970	2.80	1,200	42.9	39.0%	25-35%
Nebraska	1971	1.40	579	41.3	61.7%	51.0%
Hawaii	1969	.80	1,678	209.7	51.9%	28.7%

Note: Data included in the above table, except data for Iowa, Nebraska and Hawaii, were gathered by Mr. Louis Marceau, the Public Protector for the Province of Quebec, and published in his 1973 or Fifth Annual Report. He gathered data from the official reports published in 1973 for 1972, except for England, Sweden and Denmark where the last available data cover the year 1971. Iowa, Nebraska and Hawaii were added to the list from published reports in 1973 for 1972 data.

## ESTABLISHMENT OF OMBUDSMAN OFFICES

<u>Location</u>	<u>Year</u>
AUSTRALIA	
State of Queensland.....	1974
State of South Australia.....	1972
State of Victoria.....	1973
State of Western Australia.....	1972
CANADA	
Province of Alberta.....	1967
Province of Manitoba.....	1970
Province of New Brunswick.....	1967
Province of Nova Scotia.....	1971
Province of Quebec.....	1969
Province of Saskatchewan.....	1973
DENMARK.....	1955
FIJI.....	1972
FINLAND.....	1919
FRANCE.....	1973
GUYANA.....	1966
INDIA	
State of Bihar.....	1973
State of Maharashtra.....	1972
State of Rajasthan.....	1973
ISRAEL.....	1971

# AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER  
Box 292 Juneau, Alaska 99802

February 7, 1975

~~CONFIDENTIAL~~

The Honorable Terry Miller  
State Senator  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Miller:

Pursuant to your office's request of yesterday afternoon, I am providing you with the following back-up materials which our committee used in preparing the draft of the Ombudsman bill which we submitted to Governor Hammond:

- 1) The Hawaii Statute
- 2) "A Statute to Create the Office of Ombudsman," Harvard Journal on Legislation, 213-238 (June, 1965).
- 3) Gary E. Wilson, The Ombudsman: Its Potential Applicability for the State of Alaska.
- 4) The Southeast Alaska Chapter, American Society for Public Administration's proposed draft of an Ombudsman bill.
- 5) Ombudsman Herman Doi, The Hawaiian Experience with the Ombudsman's Office, presented in Juneau, February 1, 1975.
- 6) International Bar Association Ombudsman Committee, American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, July 1, 1974-June 30, 1974.
- 7) American Bar Association, Model Ombudsman Statute for State Governments, February, 1974.

May I ask you to note that items #5, #6 and #7 were not received before we presented our draft to Governor Hammond? I am forwarding them to you and the other members of the Senate State Affairs Committee, The House Judiciary Committee and the sponsors of Senate Bill 1, because of their potential usefulness in examining the ombudsman bills which have been introduced.

Thank you for your interest.

Sincerely,



Robert E. Newton, Chairman  
Ombudsman Committee

# AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER  
Box 292 Juneau, Alaska 99802

DRAFT  
12/31/74

## A BILL

For an Act entitled: "An Act creating the office of the ombudsman, amending AS 39.25.110, and amending Rule 43 (h) of the Rules of Civil Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. AS 24 is amended by adding a new chapter to read:

### CHAPTER 55. OFFICE OF THE OMBUDSMAN.

#### ARTICLE I. ORGANIZATION.

Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of the president of the senate, the minority leader of the senate or a minority member of the senate appointed by him, the speaker of the house, the minority leader of the house or a minority member of the house appointed by him, the chairman of the senate judiciary committee, and the chairman of the house judiciary committee.

(b) The ombudsman selection committee shall examine persons to serve as the ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination before the legislature for appointment as the ombudsman. The appointment of a person nominated as the ombudsman by the committee is effective if his candidacy is approved by a majority of the members of the legislature in joint session.

Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman

(1) within one year following his term of office as a member of the legislature;

(2) while he is a candidate for or holds any other national or state political office; or

(3) while he is engaged in any other regular occupation for which he receives compensation.

Sec. 24.55.040. TERM OF OFFICE. The term of office of the ombudsman is six years. An ombudsman may be reappointed but may not serve for more than three terms. In the event the term of an ombudsman expires without a successor having been appointed under this chapter, the incumbent ombudsman shall continue in office until a successor is so appointed.

Sec. 24.55.050. REMOVAL. The legislature, by a two-thirds vote in each house, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

Sec. 24.55.060. COMPENSATION. (a) The ombudsman shall receive an annual salary equal to that of a superior court judge.

(b) This first assistant to the ombudsman shall receive an annual salary equal to that of a district court judge.

Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman shall appoint a first assistant and such other assistants and clerical personnel as may be necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to his assistants any of his duties except those specified in secs. 190 and 200 of this chapter;

provided that during the ombudsman's absence from his principal business offices, the ombudsman may, at his discretion, delegate the powers and duties specified in secs. 190 and 200 of this chapter to the first assistant for the duration of the absence; and provided further, that during any temporary disability of the ombudsman to exercise and discharge the powers and duties of his office, the powers and duties specified in secs. 190 and 200 of this chapter shall devolve upon the first assistant for the duration of the disability.

(c) The ombudsman and the first assistant and other staff appointed by him are in the exempt service under AS 39.25.110.

Sec. 24.55.075. VACANCIES. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term at a regular or special session of the legislature.

Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION.

(a) The Legislative Council shall provide suitable office space and equipment for the ombudsman and his staff.

(b) The salary and benefits of the ombudsman and his permanent staff shall be paid through the same procedures used for payment of the salaries of other permanent legislative employes.

(c) The ombudsman shall submit a budget for each fiscal year to the Executive Director of the Legislative Affairs Agency for submission to the Legislative Council.

Sec. 24.55.090. PROCEDURE. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for the submission or investigation of complaints.

ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise his powers without regard to the finality of any administrative act.

Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall investigate any complaint indicating an appropriate subject for investigation under sec. 150 of this chapter, unless he believes that

(1) there is presently available an adequate remedy for the grievance stated in the complaint;

(2) the complaint relates to a matter that is outside the jurisdiction of the ombudsman;

(3) the complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

(4) the complainant does not have a sufficient personal interest in the subject matter of the complaint;

(5) the complaint is trivial or made in bad faith;

(6) the facilities of the ombudsman's office are insufficient for adequate investigation; or

(7) there are other complaints more worthy of the

ombudsman's attention.

Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION.

The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under sec. 150 of this chapter exists.

Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons except in exceptional circumstances in which he reasonably believes it is inappropriate to do so.

(b) If the ombudsman decides to investigate, he shall notify the complainant of his decision.

Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides to investigate, he shall notify the agency of his intention to investigate.

ARTICLE 3. INVESTIGATIONS

Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION.

(a) An appropriate subject for investigation by the ombudsman is an administrative act of an agency which the ombudsman has reason to believe might be

(1) contrary to law;

(2) unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law.

- (3) based on a mistake of fact;
- (4) based on improper or irrelevant grounds;
- (5) unaccompanied by an adequate statement of reasons;
- (6) performed in an inefficient manner; or
- (7) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(b) The ombudsman may investigate to find an appropriate remedy.

Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation, the ombudsman may

- (1) make inquiries and obtain information as he thinks fit;
- (2) enter without notice to inspect the premises of an agency but only when agency personnel are present; and
- (3) hold private hearings.

Sec. 24.55.170. POWERS. (a) Subject to the privileges which witnesses have in the courts of this state, the ombudsman may

- (1) compel at a specified time and place, by subpoena, the appearance and sworn testimony of any person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and

- (2) compel any person, by subpoena, to produce documents, papers, or objects which the ombudsman reasonably believes may relate to the matter under investigation.

(b) If a person refuses to comply with a subpoena issued under (a) of this section, the superior court may on application

of the ombudsman compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

(c) Any papers, records, documents, memos, bills, receipts, photographs, letters, correspondence, invoices, work orders, working papers, agreements, notes, reports and any other manner of writing or document possessed by or in the custody of an agency may be inspected and copied by the ombudsman, notwithstanding any statutory provision of the state making any of these items or the information contained in them confidential. However, access to information does not extend to any information made confidential under federal statutes or regulations. The ombudsman shall not make or cause public disclosure of any confidential information acquired under this chapter. To the extent any papers, records, documents, memos, bills, receipts, photographs, letters, correspondence, invoices, work orders, working papers, agreements, notes, reports any any other manner of writing or document contain information in part discoverable and in part non-discoverable by the ombudsman under this subsection, the agency shall take the steps that may be necessary to segregate and release discoverable information to the ombudsman.

#### ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving any opinion or recommendation that is critical of any opinion or recommendation that is critical of any agency or person, the ombudsman shall consult with that agency or person.

Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombudsman shall report his opinion and recommendation to an agency if he finds, after investigation, that

- (1) a matter should be further considered by the agency;
- (2) an administrative act should be modified or cancelled;
- (3) a statute or regulation on which an administrative act is based should be altered;
- (4) reasons should be given for an administrative act;
- (5) any other action should be taken by the agency;
- (6) there are no grounds for any action by the agency; or
- (7) the agency's act was arbitrary or capricious, constituted an abuse of discretion, or was otherwise not in accordance with the law.

(b) The ombudsman may request the agency to notify him, within a specified time, of any action taken on his recommendations.

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the legislature, the public, or any of these. The ombudsman shall include with his opinion any reply made by the agency.

Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency.

#### ARTICLE 5. MISCELLANEOUS

Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency in relation to his official duties,

the ombudsman shall refer the matter to the chief executive officer of the agency, or, when appropriate, to other appropriate officials and bodies.

Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to the legislature and the public an annual report of his activities under this chapter.

Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter.

Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has the same immunities from civil and criminal liability as a judge of this state.

Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The ombudsman and his staff may not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter.

Sec. 24.55.265. AGENCIES MAY NOT OPEN LETTERS TO AND FROM OMBUDSMAN. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter to a person held in custody by an agency from the ombudsman shall be forwarded immediately, unopened, to the person.

Sec. 24.55.270. PENALTY. A person who wilfully hinders the lawful actions of the ombudsman or his staff, or who wilfully refuses to comply with their lawful demands, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000.

ARTICLE 6. GENERAL PROVISIONS

Sec. 24.55.280. DEFINITIONS. In this chapter (a) "agency" means a permanent department, office, entity, commission, organization, institution, or board of the state government, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

- (1) The judiciary and its staff;
- (2) The legislature, its committees, and its staff;
- (3) The governor and his personal staff; and
- (4) The lieutenant governor and his personal staff.

(b) "administrative act" means an action, omission, decision, recommendation, practice, policy, or procedure, but does not include the preparation or presentation of legislation.

Sec. 24.55.290. ADMINISTRATIVE PROCEDURE ACT. The actions, decisions, recommendations, practices, policies, and procedures of the ombudsman shall not be subject to the provisions of the Administrative Procedure Act (AS 44.62).

Sec. 24.55.300. CITIES AND BOROUGHES. After July 1, 1978, any city or borough in this state may by ordinance elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If any city or borough shall so elect, it shall send notice to the ombudsman of that election. Upon receipt of notice by the ombudsman, permanent departments, offices, entities, commissions, organizations, institutions, or boards of the city or borough, and any officer, employees, or member thereof acting or purporting to

act in the exercise of his official duties shall thereupon be considered an agency for purposes of this chapter, except:

- (1) The mayor of a city or borough;
- (2) The manager of a city or borough;
- (3) The assembly of a borough; and
- (4) The council of a city.

Sec. 24.55.310. SHORT TITLE. This chapter may be cited as the Ombudsman Act.

\*Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

- (16) The ombudsman and staff appointed by him.

\*Sec. 3. Sec. 24.55.260 of this Act amends Rule 43 (h) of the Rules of Civil Procedure by establishing an additional privilege not to testify in a court and must receive an affirmative vote of two-thirds of the full membership of each house in order to be effective.

\*Sec. 3. This Act takes effect immediately in accordance with the provisions of AS 01.10.070 (c).



# AMERICAN BAR ASSOCIATION

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You will find attached a Model Ombudsman Statute for State Governments (pages 1-15), the American Bar Association resolution on the Ombudsman (page 16), and a recommended bibliography on the Ombudsman (pages 17-19).

The Ombudsman Committee, Section of Administrative Law, American Bar Association, concluded several years ago that a uniform State Ombudsman Act was not needed in this country but that a Model Ombudsman Statute would serve a very useful purpose.

At the request of the Ombudsman Committee, Yale Legislative Services undertook to prepare a Model Ombudsman Statute for State Governments. Edward G. Grossman, a student at Yale University Law School, acted as project co-ordinator and prepared a first draft of a Model Ombudsman Statute for State Governments. The Model Statute as prepared by Yale Legislative Services was reviewed by a special committee of the Ombudsman Committee and the comments of the committee members are reflected in the final draft of the Model Statute attached hereto. The Model Statute draws heavily on Professor Walter Gellhorn's Unofficial Model Ombudsman Statute. Professor Gellhorn, who is a member of the special committee, gave his consent to the use of his Unofficial Model Ombudsman Statute as a base to prepare the Model Ombudsman Statute for State Governments.

The Model Ombudsman Statute for State Governments meets the twelve (12) essentials of an Ombudsman Statute set forth in the resolution adopted by the House of Delegates of the American Bar Association in 1969 as recommended by the Ombudsman Committee then headed by Professor Kenneth Culp Davis and amended in 1971.

This Model Ombudsman Statute for State Governments is issued by the Ombudsman Committee, Section of Administrative Law, American Bar Association, but represents a joint work product of the Yale Legislative Services and the Ombudsman Committee, Section of Administrative Law, American Bar Association. The bibliography was prepared by Mr. Grossman.

The Ombudsman Committee extends its appreciation to Yale Legislative Services and to Edward G. Grossman.

Bernard Frank, Chairman  
Ombudsman Committee  
Section of Administrative Law  
American Bar Association  
832 Hamilton Mall  
Allentown, Pennsylvania 18105

An Act

To establish the office of Ombudsman  
in \_\_\_\_\_

COMMENT. Enactment clause would be in  
an appropriate form for the state.

Section 1. Legislative Purpose

It is the intent of the Legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the Legislature, empowered to investigate the acts of state [and local] administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the administration of state [and local] laws.

COMMENT. This suggested section provides a concise description of the characteristics of the office and its goals.

If jurisdiction over political subdivisions of the state is included (see §3(a) (4) comment), the phrase "and local" should be included.

Counsel must determine whether the inclusion of the phrase "and local" will be interpreted as pre-empting to the state jurisdiction over both state and local agencies and prevent local governmental units from establishing their own Ombudsmen.

Section 2. Short Title

This Act may be cited as "The \_\_\_\_\_ [name of  
state] Ombudsman Act of \_\_\_\_\_ [year]."

COMMENT. The title "Ombudsman" is both well-publicized and distinctive in character. The American state experience has varied: Hawaii, "Ombudsman"; Nebraska, "Public Counsel"; and Iowa, "Citizen's Aide." But it should be noted that in Nebraska and Iowa the term "Ombudsman" is used by the public, the media, and even by

the incumbents, who found that their original titles were easily confused with other very different offices and concepts.

If a term other than "Ombudsman" is selected, appropriate changes must be made throughout this Act.

However, the term "Ombudsman" should be used only when the legislation provides for an independent official who receives complaints against government agencies and who, after investigation, may, if the complaints are justified, make recommendations to remedy the complaints.

### Section 3. Definitions

As used in this Act,

(a) "Agency" means any department, organization, board, commission, council, institution or other governmental entity of \_\_\_\_\_ [name of state], and any official, officer, employee, or member thereof acting or purporting to act by reason of his connection with \_\_\_\_\_ [name of state], except:

(1) any court, or judge and appurtenant judicial staff;

(2) the Legislature, its members, its committees, its staff and its employees;

(3) the governor and his personal staff;

[(4) (Alternate A) any political subdivision of the state;]

[(4) (Alternate B) mayors, council members, and judges of any political subdivision and their personal staffs;]

(5) any multi-state governmental entity.

(b) An "act of an agency" means any action, decision, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) "Person" means any individual, aggregate of individuals, corporation, partnership, or unincorporated association.

#### COMMENT.

(a) Rather than specifying by name those agencies under the Ombudsman's jurisdiction, the Act permits jurisdiction over all state-

related governmental operations and personnel (in pursuance of public function) with certain limited exceptions which should be minimized.

(a) (1) An exclusion of the judicial branch rests on its traditional independence and immunity from investigation; its internal review mechanisms (e.g., judicial conference); its continuous review by the profession (viz., Bar); and, in some states, its review by judicial commissions.

The wording ('appurtenant judicial staff') and judicious experimentation and experience should permit review of those peripheral to the adjudication itself.

(a) (2) The Legislature--an independent policy-making body; whose actions are conspicuous and subject to public scrutiny; whose tenure is subject to periodic popular review--is excluded. Committees and staff members who assist in policy formation are, likewise, excluded.

(a) (3) Elected state officials (e.g., Lt. Governor, Treasurer) who deserve exclusion for the same reasons as (a) (2) above, may be added to (a) (3) but they must be distinguished from other elected state officials who should be included and who are less immediately involved in policy-making and are engaged chiefly in administrative matters indistinguishable from those performed by non-elected officials generally. Thus, appropriate officials to be excluded may vary from state to state. Alternatively, this exclusion might read, "(3) elected constitutional officials and their personal staff;".

(a) (4)

Alternate A. Where local jurisdiction is not included, (a) (4) should read, "(4) any political subdivision of the state".

Alternate B. If jurisdiction over a political division is included, Alternate B should be used to give an exclusion parallel to that for state officials, "[a) (4) mayors, council members, and judges of political subdivisions and their personal staff]".

(a) (5) The specific exclusion of multi-state entities, such as regional transportation and planning authorities, and implicit exclusion of federal agencies (including the local offices thereof) as 'agencies' are limited to 'entities of the state', are based on practical and constitutional limitations on sovereign power of the state over such agencies.

(b) "Acts of Agency" is broadly defined.

(c) "Person" is defined broadly.

#### Section 4. Creation of Office

The office of Ombudsman is hereby established.

#### Section 5. Nomination and Appointment

(Alternate A)

The (insert name of legislative body) shall elect the Ombudsman

by a two-thirds vote of the members of each house present and voting.

(Alternate B)

The Governor shall appoint the Ombudsman subject to confirmation by a two-thirds vote of the members of each house of the (insert name of legislative body) present and voting.

COMMENT. In foreign countries the Ombudsman has been elected by the legislature. This appears to be the method favored to date by the state legislatures which have adopted Ombudsman legislation. Alternate A follows this pattern.

However, in view of the American tradition of appointment by the Chief Executive, Alternate B provides for such appointment, subject to confirmation by the legislature.

The American Bar Association Resolution on the Ombudsman sets forth both alternatives.

#### Section 6. Qualifications

(a) The Ombudsman and Deputy Ombudsman shall be persons of recognized judgment, objectivity and integrity who are well-equipped to analyze problems of law, administration, and public policy.

(b) No person while serving as Ombudsman, Acting Ombudsman, or Deputy Ombudsman:

(1) shall be actively involved in political party activities;

(2) shall be a candidate for or hold other public office, whether elective or appointive;

(3) shall be engaged in any other occupation, business, or profession;

(4) shall remain in office after the last day of December in the year in which he reaches the age of seventy years.

COMMENT. The Ombudsman, Acting Ombudsman and Deputy Ombudsman should be full-time impartial experts in whom the public can have confidence.

(a) This sub-section expresses succinctly the desirable traits of an Ombudsman, more clearly expressing the legislative intent than by merely listing restrictions on the official. Experience points to the desirability of a legal background,

but this section does not prevent the appointment of qualified individuals from other professions.

(b) (1-3) These provisions, while insuring that the Ombudsman's work is performed on a full-time basis, inhibit politicization of his office and conflicts of interest in his outside professional contacts (whether or not for profit).

While (b) (2) inhibits an Ombudsman's using the office as an immediate political stepping-stone, some states have proposed to go further and to add a section reading, "shall not have served as a member of the Legislature for two years prior to his appointment and shall not serve as a member of the Legislature for three years following completion of the term for which he was appointed," which would prevent use of the office as a political plum as well. However, this would also unnecessarily prevent appointment of a highly qualified legislator, governor or judge; the appointment process should provide a sufficient screen against outright political favoritism.

(b) (4) This suggested section is parallel to the mandatory retirement requirement for judges in many states.

#### Section 7. Term of Office

The Ombudsman shall serve for a term of \_\_\_\_\_ years and until his successor is appointed and qualified. [(Alternate A) He may be re-appointed for additional terms.] [(Alternate B) He may not be re-appointed for additional terms.]

COMMENT. A long term is desirable: to permit the Ombudsman sufficient time to become proficient at his duties; to provide a measure of independence from politics; and to provide prestige and security to attract qualified people to the position. An excessively long term (e.g., 15 years) prevents the desired periodic accountability to the Legislature. The term should not be less than five (5) years.

Either Alternate A or Alternate B should be used to make it clear the Ombudsman should be limited to one term only or may be re-appointed for additional terms.

#### Section 8. Removal and Vacancy

(a) The Legislature by a vote of two-thirds of the members of each house present and voting may remove the Ombudsman or Acting Ombudsman from office, but only for mental or physical incapacity to perform the duties of his office for at least three months, or other grounds sufficient for removal of a judge from state court.

(b) If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

COMMENT. (a) Removal is made difficult and for cause to prevent the sudden attacks or political threats against the office more likely to occur in this country without an Ombudsmanic tradition. Alternatively, this sub-section might provide that the Ombudsman, et al, could be removed from office according to state constitutional provisions for removal of judges or other public officials.

(b) In filling vacancies, full-term appointment is preferable to remainder-of-term appointment as it provides the desirable longer term of office.

#### Section 9. Compensation

The Ombudsman shall receive the same salary and benefits as the chief judge of the \_\_\_\_\_ [highest court of state].

COMMENT. This high salary reflects the responsibility and prestige of the office and should be sufficient remuneration to attract qualified people. Rather than fixing the salary at a specific sum, which would shortly become obsolete (leading inevitably to legislative wrangling), it is pegged to a judge's salary and benefits (see §10 (c)). Of course, normal reimbursement of expenses is not included in compensation. If a specific dollar sum is desired, an additional provision is appropriate: "Compensation shall not be diminished during his tenure in office, unless by general law applying to all salaried officers of the State." Permitting a legislative committee or council to set salary and benefits--which might fluctuate with political moods--is neither fair to applicants for the post, nor promotive of independence of the office, and may effectively abrogate stiff removal provisions (§8 (a)).

#### Section 10. Organization of Office

(a) The Ombudsman shall select, appoint and fix the compensation (within the amount available by appropriation) of a person as Deputy Ombudsman and may select, appoint and fix the compensation (within the amount available by appropriation) of such other officers and employees as he may deem necessary to discharge his responsibilities under this Act. All officers and employees of his office shall serve at the Ombudsman's pleasure.

(b) The Ombudsman may delegate to members of his staff any of his

authority, powers, or duties except this power of delegation and his duty to make any report under this Act. However, the Ombudsman may authorize the Deputy Ombudsman to act in his stead during illness, absence, leave, or disability.

(c) The Ombudsman and his staff shall be entitled to participate in any employee benefit or retirement plan available to state employees.

COMMENT. (a) The experimental nature of the office and the close, personal relationship engendered in such a small staff implies the Ombudsman should be free of civil service and political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such (cf., §11 (j)). The appointment of a Deputy Ombudsman is compulsory, while selection of other officials, including an Assistant Ombudsman or Ombudsmen, is optional.

(b) This same desire for flexibility should permit a broad delegation of powers. The Ombudsman, however, remains responsible for the organization of his office and for whatever reports leave the office (§16)--unless the Deputy Ombudsman has assumed his duties in his absence or when the office is vacant (§8 (b)). Rather than requiring within the text of the bill that such delegation be in writing, or that staff members take an oath of office, such matters should be left to the Ombudsman's discretion to impose, if found desirable, by regulation (§11 (b)).

#### Section 11. Powers

The Ombudsman shall have the following powers:

- (a) to investigate, on complaint or on his own motion, any act of an agency without regard to its finality;
- (b) to adopt, promulgate, amend and rescind rules and regulations required for the discharge of his duties--including procedures for receiving and processing complaints, conducting investigations, and reporting his findings--not inconsistent with this Act. However, he may not levy any fees for the submission or investigation of complaints;
- (c) to examine the records and documents of any agency;

- (d) to enter and inspect without notice the premises of any agency;
- (e) to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably material to his inquiry;
- (f) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies as might lead to improvements in the functioning of agencies;
- (g) to obtain such information and make such inquiries from any agency or person as he shall require for the discharge of his duties;
- (h) to maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him;
- (i) to bring suit in           [name of court]           to enforce the provisions of this Act;
- (j) to establish and administer a budget for his office;
- (k) to concern himself with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

COMMENT. Powers are enumerated for clarity; additional powers of staff selection and compensation and delegation of these powers are contained in §10.

(a) His investigatory power is limited to acts of an agency (§3 (b)). As he can act on complaint regardless of source, he can receive anonymous or oral complaints, though his regulatory powers (subsection (b)) permit him to require complaints in writing if experience dictates. His power to investigate on his own motion is most applicable when others are unwilling to come forward (see (c) below).

(b) This broad, internal regulatory provision is relevant to many provisions in this bill. To insure accessibility (and avoid discrimination against the poor), charging of fees for his service is forbidden.

(c-d) The Ombudsman has the power to inspect any agency without notice, as advance notice might negate the value of such a visit. Such visits might provide subjects for investigation on his own motion.

(e) Protections and privileges for witnesses, regardless of whether or not they have been subpoenaed, are provided in §18. §§11 (i) and 19 provide means of compelling compliance. Implicitly, he and his staff are empowered to administer oaths to such witnesses.

(f) Though most of his time will be preoccupied with individual complaints, he can embark on such studies of a general nature as may improve the efficiency of agency work--alone or with other govern-

mental bodies or non-governmental research enterprises.

(g) There is no requirement of formal hearings of an adversary nature. If a proceeding for the taking of testimony were in fact to occur, it should be perceived as an element of an investigation rather than a proceeding in the nature of a trial. Hence its content need not be the same as would normally be demanded in a formal adjudication hearing.

(h) This suggested sub-section expresses the desirability of maintaining confidentiality in the Ombudsman's investigations.

(i) The office of Ombudsman may bring suits: for a declaratory judgment to obtain jurisdiction (under §§3 (a) and 11 (a)); to enter and inspect agencies (§11 (d)); to show cause for not appearing after subpoenaed (§11 (e)); to enforce confidentiality provisions (§§13 (d,e); and to prosecute for willful obstruction or non-compliance (§19).

(j) A provision for budgetary powers may be necessary in some states, useful in others, to insure that the Ombudsman's budget is independent of outside (agency) administration.

(k) The Ombudsman should seek to prevent problems before they occur.

## Section 12. Investigation of Complaints

(a) The Ombudsman shall investigate any complaint alleging that an act of an agency is:

- (1) contrary to or inconsistent with law, regulation or agency practice; or
- (2) based on mistaken facts or irrelevant considerations; or
- (3) inadequately explained when reasons should have been revealed; or
- (4) inefficiently performed; or
- (5) unreasonable, unfair, or otherwise objectionable, even though in accordance with law;

(b) unless he in his discretion decides not to investigate because:

- (1) the complainant could reasonably be expected to use another remedy or channel, and then the Ombudsman shall furnish the complainant with written instructions on the procedural steps to be taken in connection with such other remedy or channel;
- (2) the complaint is trivial, frivolous, vexatious, or not made in good faith;

(3) the complaint has been too long delayed to justify present examination;

(4) his resources are insufficient for adequate investigation in which case the Ombudsman shall refer the complaint to the proper legislative committee and the Governor.

(c) The Ombudsman in his discretion may investigate any act of an agency not enumerated in (a).

(d) The Ombudsman's declining to investigate a complaint shall not bar him from reviewing on his own motion acts of an agency whether or not included in the complaint.

COMMENT. (a), (b) and (c). The Ombudsman has the duty to investigate any complaint which alleges the acts of an agency enumerated in (a) but has the discretion to decline to investigate for reasons stated in (b). He is not limited to the type of problems enumerated in (a) and has the discretion under (c) to investigate any act of an agency not enumerated in (a).

(b) Paragraph (b) (1) reiterates that the Ombudsman is not a substitute for agency's internal complaint procedures, nor can he be expected to absorb all the complaints that agencies generate. Citizens would normally exhaust such avenues before approaching the Ombudsman; however, the Ombudsman can waive this exclusion whenever he believes that he may provide a faster and more just method of review. Paragraph (b) (3) provides a flexible statute of limitation which the Ombudsman may determine by regulation (§11 (b)). Paragraph (b) (4) rechannels those complaints too ambitious or time-consuming (e.g., complex local complaints) for effective investigation.

(d) A series of complaints, though themselves inappropriate for investigation, may reveal acts which should be investigated on the Ombudsman's own motion.

### Section 13. Rights of Complainant--Communication With Complainant

(a) After the Ombudsman has decided whether or not to investigate a complaint, he shall suitably inform the complainant.

(b) The Ombudsman shall, if requested by the complainant, report the status of his investigation to the complainant.

(c) After investigation of a complaint, he shall suitably inform the complainant of his conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately, unopened to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened to the person.

(e) No person who files a complaint pursuant to this Act shall be subject to any penalties, sanctions or restrictions in connection with his employment because of such complaint.

COMMENT.

(a), (b) & (c) These sub-sections give the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

(e) This sub-section provides assurance that there will be no reprisals for filing complaints.

Section 14. Rights of Agency

(a) If the Ombudsman decides to investigate a complaint, he may, if he deems it appropriate, suitably inform the agency involved.

(b) Before announcing or reporting a conclusion or recommendation that criticizes or is adverse to an agency, the Ombudsman shall consult with that agency and permit the agency reasonable opportunity to reply.

(c) If any report that he issues criticizes or is adverse to an agency, the Ombudsman shall include any brief statement the agency may provide.

COMMENT.

(a), (b) & (c) These subdivisions insure that the Ombudsman has the views of the affected agency in mind to guard against oversight and bias. Under (a) it is discretionary with the Ombudsman to give notice to an agency before investigating a complaint and such notice will depend upon whether it will aid or hinder investigation; (b) further protects the agency by giving it reasonable time to reply to criticism. (c) In his special, general interim, and annual reports (§16), the Ombudsman is required to provide the agency's rebuttal (if any). Rather than permitting the Ombudsman to summarize the agency's reply, the agency has been limited to a "brief" statement which shall be printed unedited (regulations as to what is "brief" might be promulgated under §11 (b))

Section 15. Recommendations

(a) If, after investigation, the Ombudsman is of the opinion that an agency should:

- (1) consider the matter further,
- (2) modify or cancel an act,
- (3) alter a regulation, practice, or ruling,
- (4) explain more fully the act in question,
- (5) rectify an omission, or
- (6) take any other action,

he shall state his recommendations and reasons therefor to the agency. If the Ombudsman so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them. After a reasonable period of time has elapsed, the Ombudsman may issue a report.

(b) If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, he shall bring to the (insert name of legislative body)'s and agency's notice his views concerning desirable statutory change.

(c) If the Ombudsman believes that any person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities without notice to that person.

COMMENT.

(a) Though the Ombudsman will rarely have reason to make a recommendation if he does not find an error in what the agency has done or neglected to do, he should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus he may facilitate one agency's learning about and taking advantage of the experience of another. This sub-section contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. He is not a superior official, in a position of command. He cannot compel a change in an administrative act. His recommendation may, however, induce an agency to exercise whatever power it itself may still possess to right what the Ombudsman points out as a past mistake.

(b) The Ombudsman's duty extends beyond simply finding that an administrator acted in accord with existing statutory law; if the law itself produces

unjust results, he should bring this to legislative notice. He is not meant to be a general social reformer, but he does have an obligation to take note of statutory provisions that cause unexpectedly harsh administration.

(c) In Sweden the Ombudsman has power to prosecute miscreant officials. Here the Ombudsman has the duty of forwarding pertinent allegations to the appropriate agency, civil service office, or the attorney general. As such reporting might be construed under §14 (a) to require informing the person of such allegations--which, prematurely, might hinder adequate investigation--he is empowered to do this without notice to the individual involved. If the individual has testified before the Ombudsman, such testimony would bear the same privileges as testimony in court (§18).

#### Section 16. Reports

The Ombudsman may from time to time and shall annually report on his activities to the Governor, to the Legislature, or any of its committees, to the public and, in his discretion, to agencies.

COMMENT. Bringing his moves into the open is the Ombudsman's sole means of gaining the public's support.

Under this section, he may publish his recommendations in separate special reports or he may issue general interim reports in his discretion. The annual report, whose release date would be set by the Ombudsman (Paragraph 11 (b)) is mandatory.

He need not identify individuals in his report (§11 (h)), but must reprint brief replies of agencies which he criticizes (§14 (c)).

#### Section 17. Ombudsman's Immunities

- (a) No proceeding, conclusion, recommendation, or report of the Ombudsman or member of his staff shall be reviewable in any court;
- (b) The Ombudsman and his staff shall have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The Ombudsman and his staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT. (a) Sub-section (a) precludes judicial review of the Ombudsman's work, unless, of course, he has violated the Act.

(b) This sub-section avoids litigation and harassment by an uncooperative agency, but does not preclude prosecution for serious misconduct, or removal from office (§8 (a)).

(c) This sub-section acts with §11 (h) to protect the secrecy and confidentiality of information obtained--in order to instill public confidence in his work; it also prevents unnecessary interruptions of his work to testify, while allowing him to proceed in court whenever necessary (§11 (i)).

#### Section 18. Witnesses' Privileges

Any person required to provide information under this Act shall be paid the same fees and travel allowances and accorded the same privileges and immunities, including right of assistance of counsel, as witnesses whose attendance has been required in the

          [name of court]          .

COMMENT. Although nearly all testimony will be in private and confidential, witnesses required to testify (whether or not by subpoena) are given judicial privileges and immunities. A provision that, "However, a representative of an agency during business hours shall not be entitled to such fees and allowances" might be included to avoid possible double payment of public servants during working hours.

#### Section 19. Obstruction

Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman's powers, or willfully misleads or attempts to mislead the Ombudsman in his inquiries, shall be subject to a fine of not more than one thousand dollars (\$1,000.00).

COMMENT. Counsel must determine in each state whether necessity exists for indicating the court in which proceedings are to be brought and upon whose initiative.

Section 20. Relation to Other Laws

The provisions of this Act are in addition to and do not in any manner limit or affect the provisions of any other enactment under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision in any enactment to the effect that any administrative action shall be final or unappealable.

Section 21. Appropriation

The sum of \$ \_\_\_\_\_, or so much thereof as may be necessary, is hereby appropriated out of the general funds of the State for the fiscal year ending \_\_\_\_\_ for the purpose of carrying out this Act.

COMMENT. This section should be included where required by the fiscal regulations or practice of the state. If inclusion of such section is not necessary, its omission is recommended.

Section 22. Effective Date

This Act shall take effect immediately upon enactment.

COMMENT. The Act really becomes effective only after appropriation has been made and an Ombudsman has taken office.

Section 23. Severability

If any part of this Act shall be declared invalid, all other parts shall remain in full force and effect; the provisions of this Act are declared to be severable.

#### American Bar Association Resolution

The following Resolution dealing with the establishment of an Ombudsman was adopted by the American Bar Association at the Midyear Meeting of the House of Delegates in 1969 and amended in July, 1971:

*Be it Resolved*, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based upon the experimentation recommended.

*Be it Further Resolved*, That the Section of Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

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THE OMBUDSMAN:  
ITS POTENTIAL APPLICABILITY FOR THE STATE OF ALASKA

By  
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## PREFACE TO THE SECOND PRINTING

As a service to the public in July, 1974 the Southeast Alaska Chapter of the American Society for Public Administration published and distributed throughout the State of Alaska this meritorious study on the applicability of the ombudsman to the governmental system of this state. Commenced in the summer of 1972, this study is a governmental project report which Gary E. Wilson submitted to the University of Alaska in partial fulfillment of the requirements for a Master's Degree in Public Administration. An Alaska resident since 1966, Wilson is the Division Right-of-Way Officer for Alaska with the Federal Highway Administration. Professor Robert E. Newton, Coordinator of the University's Graduate Extension Program in Public Administration, directed the research.

The initial supply of this study was exhausted some months ago. Interest and requests for copies have continued. In Alaska, as in many other states and localities, indications are that the ombudsman idea has arrived at its time. We have gone to this second printing in response to this widespread interest.

Donald P. Fisher  
President  
Southeast Alaska Chapter  
American Society for Public Administration  
January, 1975

## INTRODUCTION

"Governmental activities nowadays touch so many people in so many ways that bruises and scratches are inevitable."<sup>1</sup> How can these bruises and scratches be alleviated? The enormous growth and diversity of government functions, the size and elaborateness of the administrative mechanisms, the maze of interrelationships among national, state, and local levels are often highly bewildering. Many citizens regard government as remote and inaccessible. The aggrieved person is often thwarted and gives up when he comes up against a defensive government professional.<sup>2</sup> A proposed solution to these problems is to establish a centralized grievance bureau of "Ombudsman." The purpose of this paper is to explain who and what an ombudsman is, discuss the attempts to adopt the concept in this country, and explore the feasibility of establishing a statewide office of Ombudsman in the State of Alaska.

The strange-sounding name, ombudsman, is a Swedish word which means agent, representative, or deputy. The present, generally accepted concept of an ombudsman is a spokesman representing a citizen who has a grievance against a government agency. A grievance may result from ". . . for example, unreasonableness, miscalculation, mistaken application of rules, improper

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<sup>1</sup>Walter Gellhorn, When Americans Complain: Government Grievance Procedures, 1966, p. 1.

<sup>2</sup>Dalmas H. Nelson and Eugene C. Price, "Realignment, Readjustment, Reform: The Impact of the Ombudsman on American Constitutional and Political Institutions," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 129.

discrimination, prejudice, bias, neglect of duty, inattention, delay, incompetence, perversity, turpitude, and arbitrariness."<sup>1</sup> These are probably overly harsh adjectives; however, even the best of bureaucracies will have flaws due to its size and human idiosyncrasies.

With the increasing complexity and growth of all levels of government, individual citizens need a place to air their grievances concerning administrative action or inaction. Today's citizen can protect himself against just about everyone except the bureaucrat. It is sometimes argued that several avenues already exist through which complaints may be expressed. For example, there are administrative appeals boards, courts, and state and federal legislators. Each of these, however, has definite limitations for serving as grievance reviewing bodies.

Administrative appeals boards many times include the person making the original decision. While a re-review by a superior or an individual's own review of his decision may be helpful, it certainly lacks impartiality. The agency is likely to try to justify its decisions and is, therefore, not inclined to admit a mistake has been made.

The courts are congested. They usually require legal counsel and are generally frightening to underprivileged or uneducated citizens who many times feel their chances of a success are nonexistent. This is graphically shown in William Stringfellow's book, My People is the Enemy.<sup>2</sup> Stringfellow, as a recent law school graduate, moved into Harlem's ghetto and opened a law office.

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<sup>1</sup>Geoffrey Marshall, "The British Parliamentary Commissioner for Administration," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 88.

<sup>2</sup>(New York: Holt, Rinehart and Winston, 1964).

The lack of knowledge as to personal rights and to whom to complain that Stringfellow encountered was astounding. The fear of authority and the feeling that no one would listen or care was the prevalent attitude. This study shows the need for a compassionate ombudsman by whatever name in whom the poor and uneducated would have enough faith to ask where help can be found and what they are entitled to. "Phrases like 'he is the champion of the people,' 'he is like God,' and 'he is the protector of the little guy,' appear repeatedly in interviews with persons who have witnessed the system in operation."<sup>1</sup>

While many legislators feel the "casework" keeps them in closer touch with their constituents, the variety of legislative temperaments cannot give complaints consistent treatment due to differences of motivation, expertise, or ability to communicate with administrators. With so many different people receiving the complaints, it is difficult to detect patterns of grievances that may be obvious if all complaints were received by one office. Handling grievances also detracts from the legislator's primary purpose, which is the formulation of legislation. Many state legislatures meet for only a few months annually, or even biennially. Thirty-five state legislatures meet annually; however, they are often limited to sixty to ninety-day sessions. The other fifteen have similar time restrictions and meet only biennially. Thus, the aggrieved citizen has nowhere to send his complaint during the major part of the year unless his particular legislator considers his office a year-round one.

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<sup>1</sup>John M. Capozzola, "An American Ombudsman: Problems and Prospects." Western Political Quarterly, (June, 1968), p. 300.

## CHAPTER I

### Historical Development of the Office of Ombudsman

The concept of an ombudsman originated in Sweden in 1809. The ombudsman was appointed by the Riksdag (Parliament) to act as a representative of the Parliament to protect individuals against unfair assertions of power by the king's administrative appointees. The ombudsman was "available to hear the complaint of any citizen against the erroneous, unfair or even impolite action by government officials, having the power to investigate a complaint, to publicize any abuse, to recommend corrective action, and to report to the legislature."<sup>1</sup> The intention was to provide a vehicle whereby a citizen regardless of his economic, social, or political status could challenge the actions or decisions of a public agency.

The Swedish ombudsman's jurisdiction now covers national, regional, and local levels of government. It also covers the courts as well as the bureaucracy and is somewhat unique in this regard. He may not take action affecting the king, legislature, or a private citizen.

The office of the Swedish ombudsman formerly included two individuals, a civil ombudsman and a military ombudsman. These were merged in 1965. Legal as well as administrative training are considered requirements for the office in Sweden.

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<sup>1</sup>U.S. Congress Joint Committee on the Organization of Congress, Hearings on the Organization of Congress, 89th Congress, First Session, Part 1, 1966, p. 83.

For over 100 years the ombudsman idea remained exclusively a Swedish innovation. In 1919 the idea was exported to Finland following that country's gaining its independence from Russia. Finland actually has had a type of ombudsman, the Chancellor, dating from the days of Swedish-Russian rule. He is appointed by the President and is actually a part of the executive branch. He no longer handles complaint work, concentrating instead on cabinet work and his duties as Supreme Public Prosecutor.<sup>1</sup> Due to the Chancellor's ties to the executive, Parliament created the ombudsman to oversee the executive branch. As in Sweden, he has investigatory jurisdiction over the courts as well as the executive.

Despite the Swedish and Finnish institutions, the ombudsman idea did not receive much worldwide attention until 1955 when Denmark created the Parliamentary Commissioner, their version of ombudsman. The first appointee was Stephan Hurwitz, a doctor of law and a professor at the University of Copenhagen. Professor Hurwitz has done much to publicize the office through extensive writing and worldwide speaking engagements. He feels the success of the office is greatly dependent upon its prestige and the impartiality of the man in the office.<sup>2</sup>

Denmark gave the office a different emphasis by denying the ombudsman jurisdiction over the courts. Thus he concentrates his efforts on the executive and administration sectors. As in Sweden and Finland, he has jurisdiction

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<sup>1</sup>Walter Gellhorn, Ombudsman and Others: Citizen's Protectors in Nine Countries, p. 48.

<sup>2</sup>Harvard Journal on Legislation, "A State Ombudsman," (June, 1965), p. 218.

over local governments. In the Danish system, jurisdiction extends not only to illegal actions, but also to all phases of administration, which may involve substance, procedures, delay, convenience, and even impoliteness.<sup>1</sup>

The idea next spread to New Zealand in 1962 where a Commissioner of Investigation was established as the result of an election promise of the National Party's platform in the 1960 general election.<sup>2</sup>

Although generally patterned after the Danish model, the New Zealand office is at a relatively lower level. The salary level is lower and his jurisdiction is more restricted. He has no authority over local affairs, the courts, or the military.

In 1963, Norway's ombudsman took office. Thus all four of the Scandinavian countries now have a form of ombudsman. This office was also patterned after Denmark. Norway was followed by the United Republic of Tanzania in 1965, Guyana in 1966, and the United Kingdom in 1967.

The first jurisdiction to create a version of the office in North America was Nassau County, New York, on May 31, 1966. Although the official is referred to as an ombudsman, he is not an independent agency of the legislature but is appointed by the executive.<sup>3</sup> Five Canadian provinces have adopted the idea--Alberta and New Brunswick in 1967, Quebec in 1969, Nova Scotia and Manitoba in 1970.

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<sup>1</sup>Western Political Quarterly, "An American Ombudsman: Problems and Prospects," (June, 1968), p. 291.

<sup>2</sup>Henry S. Reuss and Stanley V. Anderson, "The Ombudsman: Tribune of the People," The Annals of the American Academy of Political and Social Sciences, (January, 1966), p. 45.

<sup>3</sup>Donald C. Rowat, ed., The Ombudsman: Citizen's Defender, (1965), p. xii.

While not specifically ombudsmen, there are similar institutions in India, Japan, Nepal, the Philippines, Mauritius, Australia, Ghana, Greece, Israel, Poland, West Germany, and several other countries. Bills have been introduced in at least thirty-five state legislatures (including Alaska) to create some form of ombudsman. Bills have also been regularly introduced in the United States Congress since 1965 to create a national office of ombudsman.

The basic idea of an ombudsman has become so popular that it has been adopted in one form or another by schools, newspapers, radio stations, citizen's organizations, the military, etc. There is such a diversity of applications that the original concept is becoming somewhat blurred. There are three basic features essential to retaining the original system: (1) he must be an independent, non-partisan officer of the legislature to supervise the administration; (2) he deals with specific complaints against the administration; and (3) he has the power to investigate and to criticize, but not to reverse administrative action.

The flexibility of the ombudsman is probably what has made the office adaptable in so many countries at a national as well as lower level of government. There are common threads running through each of these adaptations. For example, high standing as a jurist is usually a prime qualification. In the Scandinavian countries legal training is required by statute.

Typically, the ombudsman is selected by the legislative bodies. In New Zealand, the Lieutenant Governor (the Queen's delegate) appoints the ombudsman but he acts on the recommendation of the legislature.<sup>1</sup>

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<sup>1</sup>State of Washington, Legislative Council, Committee on State Government, The Ombudsman in Scandinavia: Advantages and Disadvantages for State Government, Olympia: Legislative Council, n.d., p. 7.

The ombudsman is generally appointed for four to six years. In New Zealand he continues in office until a successor is named. Removal from office generally takes at least a two-thirds vote of the legislature. In Finland removal is impossible.

Salary is universally set high, usually fixed at the equivalent of the highest ranking judges. The staff is generally small and selected by the ombudsman. In most cases they are not covered by civil service and thus serve at the pleasure of the ombudsman.

The jurisdiction of the various ombudsmen is the area of largest variance. None may inquire into the work of the legislature, and of the principal countries having ombudsmen, only in Sweden and Finland may inquiry be made of the courts. In all the Scandinavian countries the acts of local officials come under the jurisdiction of the ombudsman, but this is not always true elsewhere. There is a universal tendency to limit the ombudsman to areas where either there is no reviewable avenue or where all available legal remedies have been exhausted.

Most ombudsmen have the authority to act on their own initiative. A variation found in Great Britain is that direct complaints may not be made by citizens, they must be made to the commissioner (ombudsman) via a member of Parliament. In Sweden, Finland, and Denmark the ombudsman makes periodic inspections of government establishments mainly for the purpose of gaining familiarization with the operation of the different agencies.

The Swedish and Finnish ombudsmen are prosecutors who can bring charges against officials. These powers have seldom been used. They rely instead on the power of persuasion and publicity which is generally the only powers other

ombudsmen have. The press, particularly in Sweden and Denmark, gives considerable publicity to findings that reflect adversely an official or an administrative unit.<sup>1</sup>

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<sup>1</sup>State of Washington, Advantages and Disadvantages, p. 10.

## CHAPTER II

### A National Ombudsman for the United States?

It is generally accepted that the idea of an ombudsman will work at a national level when the country is relatively small with a homogenous population. Ake Sandler suggests that twenty million may be the ultimate population an ombudsman can handle effectively.<sup>1</sup> Great Britain is the possible exception to this; however, the British concept is not actually an ombudsman in the full sense of the term since he cannot receive complaints directly. It seems fairly obvious that no one man can supervise a bureaucracy the size of the United States or be responsive to 200,000,000 people. However, even in the Scandinavian countries the work is not done by one man but by a staff. In the United States the size of the staff could be overwhelming.

John M. Capozzola of New York University questions whether a successful institution in a small country can be implemented in a vast and complex society. He states, "there is validity to the doubts of some that the plan is inapplicable except on the local level in the United States. The Danish Ombudsman, Professor Stephan Hurwitz, had questions about its successful implementation in a country the size of Britain. This is compounded by the

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<sup>1</sup>Ake Sandler, "An Ombudsman for the United States." The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 105.

emphatic belief of Professor Hurwitz that an organization cannot achieve the same degree of public confidence that an individual can attain."<sup>1</sup>

The doctrine of the separation of powers in the United States could prove to be an additional problem to the one of size when a national ombudsman is considered. Although the legislative branch has the right to investigate administrative performance when it is in the pursuit of legislative purposes, the doctrine of executive privilege can be invoked whenever national security is involved. Although this would apply at the federal level, national security would not apply at the state or local level. Clearly the separation of powers with an independent judiciary would place the courts outside the ombudsman's jurisdiction.

One of the largest problems to overcome with instituting the ombudsman concept on the national level in the United States is the legislative branch itself. Congress is the branch most accountable to the people. Legislators naturally do not want to do anything to build a wall between themselves and the voters. It is traditional for the voters to seek help from their representatives in Congress. Senator Mike Monroney stated, "I am afraid there will be boys thinking, 'Well, I elected this guy to serve me up there in Washington. The first thing I catch him doing is passing the buck over to some Ombudsman.'"<sup>2</sup> "Probably the most important mail received by a congressman is the 'case' mail . . . . Denied a favorable ruling by the bureaucracy on a matter of direct concern to him, puzzled or irked by delays in obtaining a decision,

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<sup>1</sup>Capozzola, American Ombudsman, p. 292.

<sup>2</sup>U.S. Congress, Joint Committee, p. 91.

confused by the administrative maze through which he is directed to proceed, or ignorant of whom to write, a constituent may turn to his congressman for help . . . . A person who has a reasonable complaint or query is regarded as providing an opportunity rather than as an extra burden to an already busy office. The party affiliation of the individual even when known to be different from that of the congressman does not normally act as a deterrent to action."<sup>1</sup>

Thus in a sense the United States already has 535 ombudsmen with its 100 Senators and 435 Congressmen. These lawmakers each have a staff of from ten to thirty who spend a great deal of their time handling "casework," inquiries, or complaints from constituents.

Congress also has available to it an organization to investigate the administration, the General Accounting Office. Although not actually an ombudsman since they do not receive complaints from private citizens, this organization does keep executive agencies somewhat in check since they are always susceptible to a surprise audit. The actual responsibility of the G.A.O. is to audit federal agencies to determine whether or not they are carrying out legislation the way Congress intended.<sup>2</sup>

Even so, Congressman Henry S. Reuss from Wisconsin has long been a proponent of a national ombudsman. In his view, a congressman's time could be better spent researching and enacting meaningful legislation instead of spending so much time on casework. "As Vice-President Hubert Humphrey said recently, 'Many members of the Senate and the House spend up to ninety percent of their

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<sup>1</sup>Charles L. Clapp, The Ombudsman: His Work as He Sees It, p. 84.

<sup>2</sup>Scot MacDonald, "Reorganizing Along Functional Lines Makes Congress' GAO More Responsive," Government Executive, (June, 1972), pp. 54-57.

time--and the time of their staff--answering mail, meeting with constituents and handling individual constituent complaints or requests.' 'I thought I was going to be Daniel Webster,' remarked another member, 'and I found that most of my work consisted of personal work for constituents.'<sup>1</sup> Reuss also thinks the complaining citizens would receive more uniform treatment if they were all handled by one agency or individual. The Reuss-Pell bill (H.R. 4273 and S. 984) introduced in 1965 read in part:

Section 2. The Congress hereby finds and declares that the increasing complexity of the Federal Government has created difficulties on the part of private citizens in dealing with the Government, that there is a clear need for the Congress to be informed of the nature of such difficulties, particularly those of a recurrent nature, in order that remedial legislative action may be taken, and that, under existing procedures, such information is only sporadically available and frequently is inadequately developed or fails entirely to reach the appropriate legislative committees. The Congress further finds that the necessary and proper efforts of its individual Members to deal with these problems have increasingly become so burdensome as to constitute a serious impediment to the discharge of their other legislative duties.<sup>2</sup>

Another reason for the ombudsman thus emerges from this bill, that of informing the legislature where corrective legislation is needed to raise the level of service to the public. The Reuss bill varies somewhat from the usual concept of an ombudsman. In the first place the name was to Administrative Counsel of the Congress. He was only to be given a term of two years, receive complaints through an individual Congressman or committee and report back to the same source. He would also make an annual report to Congress. He would have a staff of approximately 100 experts to replace the many staffs of

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<sup>1</sup>Henry S. Reuss, "We Need an American Ombudsman," The Christian Century, (March, 1965), p. 270.

<sup>2</sup>Reuss and Anderson, Tribune of the People, p. 49.

generalists now attached to the individual Congressmen's offices.<sup>1</sup> Reuss gives several reasons for having complaints go through Congressmen. There is already a tradition of citizens complaining to their representatives. Congressmen are not apt to give up a source of votes and would, therefore, be more inclined to pass the bill if the complaints and replies were funneled through them.

One flaw in Mr. Reuss' plan is the size. One of the outstanding characteristics of the ombudsman is the small staff and personal rather than bureaucratized attention. Although personal attention can also be given with a large staff, it is apt to become just another government agency. Many of the various ombudsmen so far established have substantially increased the size of their staff from its original conception. Granted, their increases have not represented very many people, but percentagewise the increase has been substantial. If Mr. Reuss' plan is to start with a staff of 100, it is highly conceivable that the agency would lose all semblance of personal attention through size in a relatively short time.

Perhaps if one central office became unmanageable due to size, regional offices could be set up, or even state offices similar to that of federal district attorneys. This, however, would be getting further and further away from the idea of a one-man public watchdog. Regional offices would also require some degree of duplication. This would further increase the size of the staff and the proliferation would just keep snowballing. Another alternative might be to establish several ombudsmen, for different functional areas, such as welfare, resources, etc.

From the above it can be seen that at the national level in the United States the problems of creating an ombudsman may be insurmountable.

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<sup>1</sup>Reuss and Anderson, Tribune of the People, pp. 49-50.

## CHAPTER III

### Ombudsman at the State Level

As stated earlier, as of 1972, bills had been introduced in thirty-five states to create some type of ombudsman. The first state to introduce such a bill was Connecticut in 1963.<sup>1</sup> The first state to enact a bill was Hawaii in 1967.

The Hawaiian ombudsman, Herman Doi, took office July 1, 1969. Prior to becoming Hawaii's ombudsman, Mr. Doi had extensive experience as both a private and government attorney. He had served as the director of the University of Hawaii's Legislative Reference Bureau just before assuming the ombudsman post.<sup>2</sup> During his first year in office 983 inquiries were received. This total includes inquiries received during the three months prior to Mr. Doi taking office. Of these, 68.7% were received by telephone, 18.1% by visits and 13.2% by letter. Of the inquiries received, 243 or 24.7% were considered outside the jurisdiction of the office. Another 129 or 13.1% were not considered as complaints but as informational inquiries. This left 611 actual complaints against governmental agencies.<sup>3</sup>

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<sup>1</sup>Jesse M. Unruh, "The Ombudsman in the States," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 112.

<sup>2</sup>Jack H. Stephens, "Hawaii's Ombudsman," National Civic Review, (February, 1970), p. 83.

<sup>3</sup>Office of the Ombudsman, State of Hawaii, Fiscal Year 1969-1970/ Report Number 1, p. 13.

The city and county of Honolulu with three-quarters population of the state provided the source for 93% of the inquiries.

By the end of the third year of operation, the total number of complaints had risen to 1,678 (this is down from the second year when 1,758 were received). Of these, 358 or 21.3% were outside the ombudsman's jurisdiction and 513 or 30.6% were informational. This left a total of 807 actual complaints against an agency.<sup>1</sup>

The initial staff of Hawaii's Office of Ombudsman consisted of the ombudsman himself and an executive secretary. By January, 1970, the staff also included an associate analyst and a stenographer. The staff had increased by the end of the third year to include a first assistant, three other professional analysts and four secretaries. The educational backgrounds of the professionals included law, political science, education and guidance, and management.<sup>2</sup>

Oregon's governor, by executive action, created the post of ombudsman in 1969. During the fiscal year July, 1969 to June, 1970, 922 complaints were received. Two individuals have held the post in Oregon.<sup>3</sup>

The 1969 Nebraska Legislature enacted a bill calling for the appointment of an ombudsman who took office June 1, 1971. During his first year, 383 inquiries were received.<sup>4</sup>

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<sup>1</sup>Office of the Ombudsman, State of Hawaii, Fiscal Year 1971-1972/ Report Number 3, p. 7.

<sup>2</sup>State of Hawaii, Report Number 3, p. 61.

<sup>3</sup>American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 12.

<sup>4</sup>Ibid.

Iowa's governor appointed a Citizen Aide in 1970 and the 1972 Legislature passed the Citizens Aide Act. The act does not exclude local government from the jurisdiction of the Citizens Aide. During the year October 1, 1970 to September 30, 1971, 1,185 inquiries were received.<sup>1</sup>

The Governor of South Carolina, on May 4, 1971, created the Office of Citizens Service. During the period ending September 13, 1971, 1,338 inquiries were registered with this office.<sup>2</sup>

In 1971, the Lieutenant Governor of New Mexico was given the added duties of ombudsman by statute.<sup>3</sup>

In Minnesota, an Ombudsman for Correction was appointed by the governor on April 21, 1972. This office is funded in a large part by federal aid. In May, 1973, the legislature passed a bill creating the Office of Ombudsman for Correction.<sup>4</sup>

Various other proposals have been made for ombudsmen in specific areas such as mental health, welfare, and dependent children. While the need for these specific ombudsmen exists, it points out the need for a general ombudsman since it would be impossible to state that grievance problems exist in only one selected area.

Despite the widespread use of the term ombudsman, ignorance of the capabilities of an ombudsman still appears to be the greatest hindrance to its

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<sup>1</sup>American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 13.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ombudsman for Corrections, 1972-1973 Annual Report, State of Minnesota, July, 1973.

adoption. With bills having been introduced in thirty-five state legislatures over the past ten years, the instances where an ombudsman was established as cited above represent a small proportion of these attempts. Former Speaker of the California State Assembly, Jesse Unruh, points out that most state legislators have sincere doubts about the need for and the feasibility of the institution.<sup>1</sup> The question that is usually not answered for legislators is whether or not existing procedures are adequate.

What then are these existing procedures and how adequate are they? A study by Professor Gerald McDaniel of the complaint mail received by the California Governor's Office showed that more people bring their complaints to him than to their legislators.<sup>2</sup> Although to the aggrieved citizen this may seem to be a logical area of recourse, the governor is more apt to be defensive of his appointees rather than admit they have erred. To some extent this would also hold true for a legislator when he is of the same political party as the executive. On the other hand a legislator of the opposite party may be overzealous in pursuing complaints against the administration. These suppositions lead to the conclusion that perhaps all complaints are not being treated equally.

If the governor is not the most ideal recipient of complaints against the administration, is the legislature the answer? As stated earlier, legislators are reluctant to give up any opportunities to improve their public relations by assisting a constituent. This applies to the state level as well as the national. However, the arguments in favor of giving up casework at the state level are greater than at the national level. In the first place, state

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<sup>1</sup>Unruh, "The Ombudsman," p. 113.

<sup>2</sup>Cited from Unruh, "The Ombudsman," p. 116.

legislatures are in session for a short time. Committee work, research and homework on bills not before his committee should require nearly all the legislator's time while in session.

Election to public office seldom constitutes full-time employment for a state legislator. During the non-session months the legislator returns to his primary occupation. Here he must make up for the two to six months he has been away and typically lacks sufficient time for constituents' problems. Being away from the capitol, he also lacks access to heads of the administrative agencies.

Another handicap is lack of facilities provided a legislator. A state legislator is usually fortunate to have office space. A private secretary and/or research assistants are not at his disposal. At the national level such assistants handle most of the legwork on constituents' grievances.

The British concept of an ombudsman has resolved these problems to some extent by requiring complaints to be directed through a member of parliament. This has definite drawbacks, however, since the individual may feel he has too little influence to attract the attention of a senator or representative he may or may not have even voted for. He may also feel his problem is not significant enough to take the legislator's time away from his primary duties. However, if he knew there was an agency set up specifically to listen to his complaints, he would be more inclined to voice his grievance.

". . . [T]he legislator who wants to find solutions to problems and to enact the laws implementing those solutions will have less time for casework."<sup>1</sup> Instituting an ombudsman may have a detrimental effect on a legislator. By

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<sup>1</sup>Unruh, "Ombudsman in the State," p. 119.

spending most of his time on casework he can demonstrate how he is assisting his constituents. A legislator with little influence within the legislature or with no real expertise to offer the legislature may depend very heavily upon casework to get re-elected.

In addition to registering complaints with the governor and individual legislators, a third avenue for citizen complaints lies through the appeals procedures contained within the agency making the original decision. In practice, however, these procedures may be so cumbersome and difficult to initiate that they are rarely used. They are generally not understood by the affected citizen either.

Even though impartiality is attempted by these appeal procedures, the affected citizen is going to question why he could be expected to believe he would get any better treatment or the outcome would be any different when he is still being handled by the same agency.

Despite the drawbacks of an agency being its own source of appeal, how many agencies even go this far? Although most agency decisions are appealable, have provisions been set up for appeals? Mr. Unruh estimates that eighty to ninety percent of administrative action has no appeal provisions.<sup>1</sup>

Less than one-third of the states have adopted explicit administrative procedures governing their agencies. Attorneys for claimants regularly find themselves unable to locate the rules of state agencies, prevented from seeing the factual basis for agency determination, and thwarted by influences channeled through ex parte communications by agency administrators and hearing examiners.

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<sup>1</sup>Unruh, "Ombudsman in the State," p. 113.

In cases possessing little monetary value, these difficulties easily discourage citizens from retaining counsel and counsel from accepting such cases.<sup>1</sup>

During the last few decades, the vastly increased demand for government services has placed a real burden on government agencies. In order to be handled fairly, each individual contact with an agency should be handled individually. However, standardizing procedures is a prerequisite to handling the volume of cases. Thus, dissatisfaction with services performed is bound to occur.

" . . . [T]he citizens . . . should have rapid, inexpensive and reliable access to an impartial 'public watchdog' who is not involved in the governmental decision-making process, and who is clothed with powers of public criticism and the initiation of requests for remedial action . . . ."2

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<sup>1</sup>Ralph Nader, "Ombudsmen for State Governments," The Ombudsman, p. 243.

<sup>2</sup>Henry F. Abraham, "The Need for Ombudsmen in the United States," The Ombudsman, p. 240.

## CHAPTER IV

### Legislative History of Ombudsman Bills in Alaska

The original Alaska ombudsman bill was Senate Bill No. 276. It was introduced by Sen. Yule Kilcher (D-Homer) February 24, 1966 during the second session of the Fourth Alaska Legislature. It was referred to the Judiciary and Finance Committees. The bill was reported out of the Judiciary Committee March 31, 1966 with a do not pass recommendation. The recommendation further stated that should the bill pass, the sponsorship should be changed to the Rules Committee. The report was signed by Sen. Robert H. Ziegler (D-Ketchikan), the Chairman, Sen. John B. Hall (D-Fairbanks) and Sen. James Nolan (D-Wrangel). Two of the committee members not concurring in the report were Sen. Nick Begich (D-Anchorage) and Sen. Howard Pollock (R-Anchorage). The bill was then referred to the Finance Committee. No further action was taken.

The next ombudsman bill was House Bill No. 52, introduced by Rep. Jalmar M. Kerttula (D-Palmer) with co-sponsors Rep. Bill Ray (D-Juneau) and Rep. Gene Guess (D-Anchorage) January 25, 1967 during the first session of the Fifth Legislature. The bill was referred to the State Affairs, then the Finance and Judiciary Committees. It was never reported out of the original committee.

During the first session of the Sixth Legislature, an ombudsman bill was again introduced by Rep. Kerttula with co-sponsors Rep. Mike Bradner (D-Fairbanks) and Rep. Ray. This was House Bill No. 132, introduced February 11,

1969. It was referred to the State Affairs, Judiciary and Finance Committees, and again never reported out of the original committee.

In the Seventh Legislature during the first session, separate ombudsman bills were introduced in each house. House Bill No. 7 was introduced by Rep. Bradner January 12, 1971. Rep. Kerttula continued his support of the ombudsman measure by signing on as a co-sponsor. Rep. John Huber (D-Fairbanks), Rep. Richard Randolph (R-Fairbanks) and Rep. Helen M. Fischer (D-Anchorage) also signed on as co-sponsors. The bill was referred to the State Affairs and Finance Committees. It was never reported out of the original committee. Sen. Bob Palmer (R-Ninilchik) introduced Senate Bill No. 13 January 18, 1971. It was referred to the State Affairs and Judiciary Committees and never reported out of the original committee.

House Bill No. 15 in the Eighth Legislature was introduced January 10, 1973 by Rep. Randolph. The bill was referred to the State Affairs Committee. It was reported out January 23, 1973 with a do pass recommendation. The committee proposed a minor amendment which will be discussed later. The bill was brought up in the Judiciary Committee during the week of March 19 and tabled until the second session of the Eighth Legislature. There was no further action taken on the bill during the second session in the spring of 1974. The do pass recommendation of January 23, 1973 by the State Affairs Committee represents the furthest an ombudsman bill has ever progressed in an Alaskan legislature.

Senate Bill 276 of the Fourth Legislature, House Bill 52 of the Fifth Legislature, House Bill 132 of the Sixth Legislature, and House Bill 7 of the Seventh Legislature were all identical. The first changes to the original wording came in Senate Bill 13 of the Seventh Legislature. In the original bill

the selection committee for filling the ombudsman office was to include a member of the Senate appointed by the Senate President and a member of the House appointed by the Speaker of the House. Senate Bill 13 revised this to read a minority member of the Senate appointed by the Senate President and a minority member of the House appointed by the Speaker of the House. This insured minority representation since the remainder of the committee was to be the President of the Senate, Speaker of the House, Chairman of the Senate Judiciary Committee. Senate Bill 13 also changed the term of office. Prior bills had established the term of office at three years with reappointment of no more than four terms. This was changed to a six-year term with no re-appointment restriction. The salary was also revised in Senate Bill 13 from \$22,500 per year to an annual salary equal to that of a Superior Court judge. Under investigation of complaints, the statement allowing the ombudsman to decline an investigation if there are other complaints more worthy of his attention was omitted from Senate Bill 13.

The most recent bill, House Bill 15, contained the same revisions as Senate Bill 13 with the exception of changing the salary to an annual amount equal to a range 28C position in the classified service. The clause allowing the ombudsman to decline an investigation if there were more worthy complaints was also reinstated. A new statement was added under procedures after investigation; i.e., the ombudsman shall report his opinion and recommendation to an agency even when there are no grounds for any action by the agency.

An article appeared in the June, 1965 issue of the Harvard Journal on Legislation containing a draft model statute for state legislatures creating

an Office of Ombudsman.<sup>1</sup> This was followed by a section-by-section analysis of the draft. With only a few minor exceptions, House Bill No. 15 is identical to this model statute.

Some of the differences between the model and House Bill 15 are: The model provides for appointment by the Governor with advice and consent of the Senate. Another is that the ombudsman be limited to three six-year terms. An interesting section of the model, but not found in House Bill 15, is a section entitled, "Agencies may not open letters to Ombudsman." The section states, "A letter to the Ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the Ombudsman."

As stated earlier, House Bill 15 of the eighth legislature was reported out of the State Affairs Committee with one substantial amendment. Under compensation, range seventeen of the classified service was deleted and the salary of a State Supreme Court Judge was inserted.

Although no committee records are available to determine what discussion occurred on any of the previous bills, it appears that there has been very little interest in its passage. At least no apparent pressure has been exerted that would bring it out of committee. On one of the two occasions the bill was reported out of the original committee, the recommendation was do not pass; however, it was a close committee vote, three to two in favor of the recommendation.

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<sup>1</sup>"A State Statute to Create the Office of Ombudsman," Harvard Journal on Legislation, (June, 1965), pp. 221-238.

## CHAPTER V

### Conclusion

The American experience with the ombudsman idea to date indicates that there are widespread, practical and immediate benefits to be accrued by the Alaska public from this institution at a modest cost. That experience, particularly in Hawaii, demonstrates conclusively that the ombudsman idea represents much more than a nebulous, idealistic notion with little or even negative practical application. The tabulation in the appendix indicates the diversity of citizen inquiries and complaints in Hawaii. There is no reason to believe there would be any less diversity or magnitude if adopted in Alaska.

Lacking the legal authority either to prosecute wrongdoing or to compel administrative agencies to act against their will, the ombudsman can still correct inequities in government agencies dealing with individual citizens. The ombudsman's office can preserve a measure of confidence among the public that their governmental agencies have been established to serve them. The power to persuade and to conciliate can be very powerful when provided with an adequate forum.

In implementing the ombudsman idea into its complex system of federal-state-local government, the American experience also indicates that the state level of government offers the greatest potential for the ombudsman. Alaskans can benefit from the same results the people of Hawaii have enjoyed in the

recent years since the ombudsman was established in that state. As this proposal for an Alaska ombudsman is developed, questions such as the following arise: Is the concept of an ombudsman feasible in Alaska? Whom would it benefit? What would be required to implement it? The following conclusion is an attempt to answer each of these questions.

From the standpoint of feasibility, the geographic vastness of the state presents formidable obstacles to the effective functioning of a sparsely staffed ombudsman's office. There are, however, definite population centers (Anchorage, Fairbanks, Juneau, and Ketchikan) which could be visited by the ombudsman on a frequent, scheduled basis. The smaller towns and the bush areas could be visited by the ombudsman and his staff on a less frequent basis. The twelve new native regional corporations might be induced to play a liaison function between the ombudsman and the bush areas to bring a much needed improvement in state governmental services to the outlying areas of the state. Complaints from these villages might be channeled through the corporations on a scheduled basis. Hawaii, made up of islands, also has a geographical problem, although not of the magnitude of Alaska.

Lack of a homogenous population presents another feasibility obstacle. The Hawaii experience indicates, however, that a geographically and culturally disparate population can be well served by an ombudsman on the state level. From this, Alaskans have good reason to conclude that a state with a scattered and heterogenous population needs an ombudsman all the more and that the office can be successfully implemented to meet the needs of all the people in all of its regions.

If implemented successfully, the people of the state themselves would be the chief beneficiaries of the ombudsman. They would have a sympathetic intermediary who is knowledgeable of the internal workings of governmental agencies. Legislators and their staffs, the Governor and his staff, and the departmental commissioners and their line and staff agencies would also be benefitted as shown in the succeeding paragraphs. The widespread popular benefits, however, that the ombudsman could produce need to be stressed primarily. It is designed to serve the people now in a myriad of practical ways which they can understand and appreciate. Open to all who need its services, the ombudsman's office is essentially a classless type of agency. It meets, however, the needs of those less articulate and knowledgeable about governmental affairs to a greater extent than the more fortunate members of society.

The American experience with the ombudsman, and worldwide experience as well, demonstrates that the existence of the office does not affect existing political and administrative power structures or the distribution of power between legislative, executive and judicial agencies. This experience also demonstrates that the ombudsman does not challenge existing structures at the top of the power pyramid or become a meddlesome nuisance in its lower reaches. The justification for the office rests on the simple, observable facts that modern government is complex and that the public often fails to understand its processes and how to avail itself of its services.

What effect then would the ombudsman have on existing legislative and executive agencies in Alaska? (Proposals for an Alaska ombudsman do not include the state judiciary within the jurisdiction of the office.) Generally

speaking, experience indicates that the ombudsman would increase their efficiency. Individual legislators and their staffs would have an agency at their disposal to which they may refer all citizens' complaints for investigation and action. This would relieve them of a burden which hampers the primary function of the legislative process, that of formulating and deliberating upon legislation. The year-round service of the ombudsman's office would assure that all meritorious complaints would be received and processed in even fashion. As a central receiving office, the ombudsman would be situated to observe patterns of grievances and be able frequently to suggest administrative remedies which would benefit all persons similarly affected when an individual complaint is processed.

This proposed system of citizen complaint processing under the auspices of an ombudsman could serve to clarify to the public the essential nature of the legislative process and the inherent limitations under which an individual legislator attempts to serve the public who elected him or her and the state at large. Aside from those who have shouldered the burden of serving in the state legislature, there are relatively few who understand the extent of the demands which legislative service imposes upon the time and the financial resources of the individual. Even though there is little prospect that the public will ever understand this very well, the ombudsman offers to the individual legislator a realistic hope that he or she, as well as constituents, will be served by the ombudsman.

Assessing the impact of the ombudsman on the executive branch presents a more complex and elusive problem than that of assessing its effects on the

state legislature. But, again, both the American and the worldwide experience with the ombudsman experiment should serve to allay any doubts that the office is designed to effect a significant shift of either political or administrative power.

Given the broad scope of the ombudsman's investigatory powers over the executive branch, the most formidable objections to the creation of the office have usually come from this source when ombudsman proposals have been advanced. However, after overcoming the initial negative reaction to the idea, it has proved to be an even more welcome addition to the governmental scene among executive branch agencies than among legislators and their staffs wherever the experiment has been tried. How does one account for this ready acceptance of the ombudsman in practice?

The essential role of the ombudsman as a conciliation service between the public and its governmental agencies has quickly emerged when the experiment has been tried. In the evolution of the office, ombudsmen have been armed at various times with the power to prosecute and to take lessor yet stern corrective measures in resolving citizen's complaints. Such powers have not proved to be consistent with the style and the technique of the successful ombudsman. It is noteworthy that where the power to prosecute is vested in the office, as it presently is in some of the Scandanavian countries, it has seldom been exercised. One does not find any American ombudsman experiment where the power to prosecute is vested in the office. Such powers have not been included in any of the proposals for an Alaska ombudsman.

Typically, the ombudsman has had an extensive background in the governmental system in which he is appointed to serve and is aware of the policies and procedures of the system's various governmental agencies. When specific citizens' complaints do arise, the formal, legal power of the ombudsman to compel the disclosure of specific information seldom needs to be invoked. Informal and semi-formal procedures in complaint processing are characteristic of the ombudsman's practice.

There are a variety of complaint processing patterns to be found among governmental agencies. There is one characteristic problem, though, which one regularly encounters. Too many complaints are either received at or are referred up to a too high level in the administrative hierarchy. The typical citizens' complaint neither requires the attention of top management nor can it be satisfactorily resolved on that level. Its merit is difficult to assess on that level and even when such problems are resolved to the citizen's satisfaction, top management officials may have disrupted agency policies and procedures which have been soundly devised at the operating level.

The higher the complaint is lodged and accepted, the more agency officials in the chain of command hierarchy are brought into confrontation with each other, frequently in a crisis type of atmosphere. Relatively simple citizens' complaints have been known to demoralize an agency seriously from top to bottom, to substantially reduce its capacity for productive work output and to leave it in a state of tense anticipation that such an event will soon recur with similar results.

The impartiality of the ombudsman also benefits the entire administrative organization when unreasonable citizens' complaints are received or when service demands are made of an organization which either lie beyond the resources of the agency to fulfill or which would disproportionately divert agency resources to the benefit of one person. Ombudsmen are perceptive to such situations and assume the responsibility of explaining to the dissatisfied citizen why his demands cannot be met. Fair-minded citizens tend to regard an ombudsman's explanation as more objective and reliable than that of a representative of the agency and as a result they tend to accept his conclusions rather than to press their case further or to renew it at a later date. In those instances where the complaining citizen demonstrates a lack of concern for fairness and reasonableness, the ombudsman serves as a protective buffer for the agency against overly aggressive conduct.

Top management in an administrative agency are less involved in the entire citizens' complaint process when the services of an ombudsman are available. From their point of view the ombudsman provides both a species of consulting service affording them reliable reports on the performance of their operating personnel and a species of in-service training for their operating personnel when the job can be done better.

The ombudsman intervenes at the lowest level of the administrative hierarchy where citizens' complaints can be resolved. In this manner he may correct inequitable practices of which top level administrators are unaware. His very presence can stimulate first line supervisors and their personnel into re-examining problems within the framework of agency policy and to attempt to

resolve citizens' complaints without referring the issue to higher administrative officials. In modern management terminology, the ombudsman brings "positive reinforcement" to the first line supervisor and his personnel.

During the first year of operation in Hawaii, \$103,000 was provided as an operating budget.<sup>1</sup> The first year of operation in Alaska would require only a small staff, probably the ombudsman himself and a secretary. The objective during the first year would be setting up the office and publicizing it. Some travel outside Alaska would be involved to observe other ombudsmen in action. Extensive use of long distance telephone service would be necessary in a state the size of Alaska. No matter in which city the ombudsman were to be located, extensive travel within the state would be required.

A budget figure of \$100,000 would appear to be adequate for the first year of operation. This would allow \$50,000 for salaries, \$20,000 for travel and \$30,000 for office expenses, depending upon what facilities and equipment were made available. This figure would probably double or triple during the second year of operation due to increases in staff, travel and related expenses as the services provided became more widely known. The budget would then level off and remain fairly static (subject to inflation) since primary advantages of the concept are small size and personal attention.

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<sup>1</sup>State of Hawaii, Report Number 1, p. 2.

## APPENDIX

The actual record of the Hawaii experience with its Office of the Ombudsman presents the kind of data which concretely demonstrates the broad range of problems with which their ombudsman has been concerned and his effective disposition of a heavy caseload.<sup>1</sup> The following summaries of cases were taken from the Hawaiian Ombudsman's Report Number 2 for the fiscal year 1970-1971. The cases were selected to give a general idea of the types of complaints received and their resolution. They cover areas where agency corrective action was indicated, where the agency had taken appropriate action, and where legislative action was required. Following the summaries is a chart indicating complaints broken down by department and whether or not they were justified.

### Selected Cases

An unsuccessful bidder on some office equipment complained about bidding irregularities. The Department of Education was contacted and a subsequent Attorney General decision called for rejection of all bids and re-advertisement.

A community schools instructor complained about being underpaid for actual number of hours taught. After interviews with students and the

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<sup>1</sup>See State of Hawaii, Office of the Ombudsman, Fiscal Year 1969-1970/Report Number 1, Fiscal Year 1970-1971/Report Number 2, and Fiscal Year 1971-1972/Report Number 3 (Honolulu: Office of the Ombudsman, 1971, 1972 and 1973). A Report Number 4 was not yet available when this governmental project report was finalized.

registrar it was determined that an error had been made and the Department of Education voluntarily agreed to pay the contested amount.

A State Board was accused of being prejudiced against a certain racial group in its work. The ombudsman made a study of statistics, board files and actions and then determined the charges were unfounded.

A citizen complained of unsanitary odors coming from a neighbor's hog farm. Following the ombudsman's inquiry, a sanitarian inspected the farm and found waste from the pigpen being discharged into a non-functioning cesspool. Orders were issued by the Department of Health to remove the hogs.

A complaint was received regarding the lack of school bus service to an area. The ombudsman investigated and found the reasoning for not serving the area justified, but suggested ways in which the situation might be resolved. The suggestions were followed and the situation was resolved by the complainants themselves.

A claimant for unemployment compensation complained that he was experiencing undue delay in receiving his compensation. The ombudsman investigated and found that corrective action had already been instigated by the department.

A citizen complained of rude and uncalled for treatment by the Parks Division personnel while camping in a state park. The employee did not furnish any identification at the time. Following the ombudsman's inquiry, the employee was reprimanded and all employees were provided identifying shoulder patches.

Welfare recipients claimed rental allowances were not sufficient to maintain health and comfort. The ombudsman found the rates were set by the

legislature, not the agency, and suggested the group testify before the appropriate legislative committee.

A citizen action group complained they were denied a copy of a public hearing transcript. The ombudsman informed the responsible official that a Hawaii Statute made minutes of boards and agencies public records and thus available to the general public with a fee assessed for copying. Subsequently, arrangements were worked out whereby the complainant was provided a copy.

A complaint was received that the State of Hawaii should provide parking for citizens on jury duty. The ombudsman investigated and found there was no reasonable way the State could provide parking until additional parking lots were made available.

A welfare recipient complained that despite repeated requests to the Department of Social Services, she had not been assigned a social worker. The ombudsman's investigation disclosed that the Department had tried repeatedly to contact the complainant, but she was never at the address given. The complainant was informed she must make an effort to be available.

A taxpayer complained that although he had paid a previous year's State Income Tax, he had been notified of tax delinquency. He could not locate any records and could not afford to pay the bank to search for a copy of his cancelled check. The ombudsman convinced the Department of Taxation to make a more thorough search and the return was found misfiled.

A resident living on a narrow dirt road that was nevertheless a public thoroughfare complained of lack of garbage collection. The ombudsman investigated and agreement was reached with the City and County of Honolulu that they would service the area with a smaller than normal vehicle provided the resident would allow turning around in his driveway.

TABULATION OF CASES  
OFFICE OF OMBUDSMAN, STATE OF HAWAII  
FISCAL YEARS, 1969-1970, 1970-1971, 1971-1972  
(by department)<sup>1</sup>

Department	1969-1970				1970-1971				1971-1972			
	Received <sup>2</sup>	Justi- fied	Unjusti- fied	Infor- <sup>3</sup> mation	Received	Justi- fied	Unjusti- fied	Infor- mation	Received	Justi- fied	Unjusti- fied	Infor- mation
Accounting and General Services . . . . .	33	19	7	5	24	12	7	11	24	12	5	6
Agriculture . . . . .	10	1	7	2	6	2	4	3	3	0	2	1
Attorney General . . . . .	10	4	3	3	6	2	3	7	8	2	4	7
Budget and Finance . . . . .	11	5	3	1	18	7	6	3	18	7	8	6
Defense . . . . .	1	0	1	0	3	0	2	2	2	0	1	0
Education . . . . .	68	38	17	7	61	29	22	18	66	23	25	23
Hawaiian Home Lands . . . . .	5	1	1	0	13	4	5	1	8	4	4	2
Health . . . . .	60	29	18	4	45	17	15	37	40	8	19	24
Labor and Industrial Relations . . . . .	56	22	20	10	81	27	36	47	93	43	43	47
Land and Natural Resources . . . . .	29	9	14	3	25	9	14	10	30	12	10	13
Personnel Services . . . . .	18	5	5	6	15	3	11	8	12	2	7	6
Planning and Economic Development . . . . .	4	0	0	4	2	0	1	2	4	1	2	6
Regulatory Agencies . . . . .	50	11	16	11	58	23	15	55	41	7	24	34
Social Services and Housing . . . . .	83	22	38	14	103	27	59	56	147	32	76	62
Taxation . . . . .	38	7	14	8	50	18	25	34	42	10	22	20
Transportation . . . . .	52	13	27	5	46	19	14	13	43	12	14	6
University of Hawaii . . . . .	41	20	9	7	50	23	10	19	57	16	19	20
Counties . . . . .	229	65	82	40	209	64	72	115	155	40	71	65
Lieutenant Governor . . . . .	1	1	0	0	1	0	0	7	0	0	0	2
Consumer Protection . . . . .	11	3	4	3	6	2	2	37	8	0	7	14
Hawaii Office of Equal Opportunity . . . . .	1	0	0	0	0	0	0	1	1	1	0	0
TOTAL . . . . .	811	275	286	133	822	298	323	496	807	232	364	365

<sup>1</sup>Abstracted from State of Hawaii, Office of the Ombudsman, Fiscal Year Reports No. 1, 2 and 3.

<sup>2</sup>At the end of each fiscal year there were Received complaints which were either subsequently withdrawn or in the process of investigation and resolution. Therefore the sum of the figures in the Justified and Unjustified columns does not usually equal the figure in the Received column.

<sup>3</sup>As the Hawaii Ombudsman's office developed over the three years shown, it was perceived that certain inquiries should not be classified as citizens' "complaints" since the inquiring citizen needed only to be given correct information and guidance to solve his problem. For fiscal years 1970-1971 and 1971-1972 informational inquiries were not included in the total of Received complaints. For the purpose of this study the Information column has been included because it lends perspective to the broad range of public services which the Hawaii Office of Ombudsman performs.

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