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The Ombudsman in Denmark

by Walter Gellhorn *

In 1955 Denmark's first Ombudsman — the Folketingets ombudsmand, or Parliamentary Commissioner, to give him his proper title — took office and began to function. This was 146 years after a similar activity had commenced in Sweden and 36 years after a Finnish version had appeared. For most of the world, however, interest in the ideas behind the ombudsman institution was all but nonexistent until Denmark's Ombudsman came on the scene. Then, suddenly, the institution began to attract attention not only in the western world, but also in Asia and Oceania.

This spate of interest may be attributed in part to the enthusiasm with which the Danish Ombudsman himself — Professor Stephan Hurwitz [1] — has described his work and its fruits. Mindful from the first that his own countrymen were insufficiently aware of the powers and possibilities of his newly created office, Professor

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[1] Professor Hurwitz was the Professor of Criminal Law at the University of Copenhagen when elected to be the Ombudsman. A member of a highly regarded family, he had long been prominent in public and cultural affairs, though without political identification. Newspapers had often sought his views concerning matters of current moment and he had written influential articles for popular consumption. He had been recognized as an energetic and resourceful leader of Danish *émigrés* during Germany's occupation of Denmark in the 1940's. His professional advice was widely sought by business interests, public authorities, and reformist groups. He was identified with all manner of socially useful activities. He was, in short, a well know "community figure" long before he became Ombudsman.

Hurwitz energetically engaged in a campaign of public education in his homeland.[2] Early successes as a lecturer abroad created a lively demand for appearances by Professor Hurwitz in distant places. Responding to that demand, he widened the range of his expository and exhortatory efforts, almost as though he were an apostle of a new faith or, perhaps, the salesman of an export commodity. His persuasive speeches and writings,[3] well supported by the writings of other enthusiasts,[4] transformed an ancient institution into one seemingly designed specifically to meet current needs.

Speechmaking and writing of articles may explain why persons in far-off lands know about a Danish governmental activity, but they do not explain why that activity has aroused such enthusiasm. For that explanation one must look to the Danish Ombudsman's actual accomplishments. These indeed have been substantial. The office has been a marked success, well deserving the applause given it.

At the same time, foreign enthusiasm has perhaps occasionally run ahead of the information at hand. The Ombudsman of a country other than Denmark recently remarked, "The ombudsman institution is certainly justifying its existence, but it isn't as great a thing as some people outside Scandinavia apparently believe. Professor Hurwitz is a man of magic — or perhaps I should describe him as a

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[2] Today, instruction about the Ombudsman has become a routine element of a required course on Danish institutions given in all primary schools.

[3] An interview during a British Broadcasting Corporation program had an extraordinary impact upon opinion in Britain. It is published as "The Danish Ombudsman and His Office", 63 *The Listener* 835 (1960). Professor Hurwitz's writings about his office appear in French, German, and Italian, as well as in Danish and English. Articles by him in English include Control of the Administration in Denmark: The Danish Parliamentary Commissioner for Civil and Military Government Administration, 1 *J. Int. Comm. of Jurists* 224 (1958) and [1958] *Public Law* 236; Denmark's Ombudsman, 1961 *Wis. L. Rev.* 170; The Folketingets Ombudsman, 12 *Parl. Affairs* 199 (1959); Public Trust in Government Services, 20 *Danish Foreign Office J.* 11 (1956); The Scandinavian Ombudsman, 12 *Pol. Sci.* 121 (1960). A brochure written by him, *The Ombudsman: Denmark's Parliamentary Commissioner for Civil and Military Administration,* was published in Copenhagen in 1961 by Det Danske Selskab.

[4] The leading work in English is B. Christensen, The Danish Ombudsman, 109 *U. Pa. L. Rev.* 1100 (1961). See also I. M. Pedersen, The Danish Parliamentary Commissioner in Action, [1959] *Public Law* 115, and The Parliamentary Commissioner: A Danish View, [1962] *Public Law* 15, as well as the same author's Denmark's Ombudsman in D. C. Rowat ed., *The Ombudsman* 75 (1965); H. J. Abraham, A People's Watchdog Against Abuse of Power, 20 *Pub. Admin. Rev.* 152 (1960). And see K. C. Davis, Ombudsmen in America, 109 *U. Pa. L. Rev.* 1057 (1961). Among foreign writings, an especially noteworthy contribution has been made by J. G. Steenbeek, *De Parlementaire Ombudsman* (Haarlem, 1964).

man with magic eyes who has bewitched the world. Because he has aroused so much admiration, the office he holds has seemed to be even more significant than it really is. If expectations about what ombudsmen can accomplish become too greatly inflated, their genuine achievements may be forgotten when the inflated expectations explode. For myself, I fear that the ombudsman idea may have been a bit oversold by those who are enthusiastic about it."

The present sketch of the Danish Ombudsman's functioning attempts to describe briefly what he does and how he does it, and also to gauge its significance.

Creation of the Office

The Danish Constitution of 1953 empowered the Folketing (Parliament) to provide by statute for the appointment by it "of one or two persons who shall not be members of the Folketing to control the civil and military administration of the State."

The committee upon whose recommendation this action was based had stated the objective in view as "the establishment of increased guarantees for the lawful conduct of the government's civil and military administration." Existing guarantees, the Committee asserted, were widely regarded as insufficient in view of "the extraordinary expansion of the administration" during the past several decades. Legislative power had been extensively delegated to administrative authorities, and this in itself "makes it natural that there be more stringent supervision and that Parliament be allowed better access than at present to follow the administration's use of its extensive powers." To that end the committee thought that "a Parliamentary Commissioner arrangement similar to the Swedish prototype" should be created.

Despite some degree of opposition, spearheaded by civil service groups and local governments, the committee's views were adopted. A 1954 statute created the office of a single Parliamentary Commissioner, to deal with both civil and military administration.[5] While

[5] Act No. 203, of June 11, 1954.

The Ombudsman is elected by the Folketing after every general election; but he may be dismissed whenever he "no longer has the confidence of the Folketing", which may then choose a successor (Sec. 1). While the Folketing lays down general rules to guide his activities, he is otherwise "independeut of the Folketing in the performance of his duties" (Sec. 3) — an independence that has been scrupulously observed. His relationship with the Folketing is maintained through

not wholly ignoring "the Swedish prototype," the Danish Parliament improved upon rather than slavishly copied what had previously existed in Sweden and Finland.[6]

Controls over Administration

Before the duties and powers of the newly created Ombudsman are described, the pre-existing body of legal controls over public administration may be quickly outlined.

Denmark has a strongly centralized governmental system. Ministers exercise ultimate administrative power over the departments they head. They are politically answerable to (though they themselves need not be members of) the unicameral parliament, sitting in Copenhagen.

Approximately 1400 local governments carry on activities within the small country. Denmark's population is roughly the same as Georgia's; Georgia's land mass is more than three times greater than Denmark's. Administration is complicated because apart from the mainland peninsula of Jutland projecting northward from West Germany, Denmark's territory is scattered over some five hundred islands, of which about a hundred are inhabited.

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an annual report and through contact with a special seventeen-member committee which comprises representatives of all major parties seated in the Folketing. He brings to that committee's notice his recommendations concerning changes in existing statutes or regulations, as well as "any mistakes or acts of negligence of major importance" (Parliamentary Directives, Arts. 11, 12). The Ombudsman has attended most of the committee's sessions, by its invitation.

The statute fixes the Ombudsman's salary at the same level as a Supreme Court judge's and makes generous pension provision under a statute applicable to members of the Cabinet (Sec. 12). The Ombudsman's salary is exceeded, in the public sector, only by those of the President of the Supreme Court, the Permanent Secretary of the Foreign Ministry, the Postmaster General, and the head of the state railways. In fact an additional non-statutory allowance has been provided for the present Ombudsman because the statutory salary would have caused a steep drop in his income.

Sec. 13 authorizes the Ombudsman to engage and dismiss his own staff, whose number and salary are to be determined, however, by the Folketing's Committee for Procedure. The Committee has thus far wholly accepted the Ombudsman's recommendations. The salary scale for the Ombudsman's assistants approximates that of the Ministry of Foreign Affairs for its resident officials; this is somewhat above the general civil service level.

[6] Discussion of the ombudsman systems in those two countries may be found in W. Gellhorn, The Swedish Justitieombudsman, 75 *Yale L. J.* 1 (1965), and Finland's Official Watchmen, 114 *U. Pa. L. Rev.* 327 (1965).

The work of the towns and rural districts is largely financed by the central government, whose statutes and regulations have established minimum standards for local authorities' direction of education, hospital, library, and social welfare activities. The central government directly provides the courts, the police and the main highway network. Public utilities such as waterworks, electric power, and gasworks as well as some public transport are usually owned and operated by local authorities, singly or in a cooperative organization. Local governments also have responsibility for town-planning with its attendant restrictions on land use. Population movements during the present century have made some of the old boundary lines meaningless (as has been true in most western countries). Considerable effort has been made, through voluntary cooperation, to achieve a functionally necessary regionalism or metropolitanism in place of the parochialism of the past, but local pride and vested interests have thus far prevented large-scale rationalization of administration. Supervision of the budgets, expenditures, borrowings, and decisions of municipal governments is exercised in general by the Ministry of the Interior. County (or provincial) governments similarly supervise the rural district councils. The provincial administrations are in turn answerable to the Ministry of the Interior.

Few national administrative determinations are immune from being appealed within the administration itself. The power of initial review is lodged in an official superior to the one who made the challenged decision. Usually the final reviewing officer is, nominally, the Minister himself. A few independent adjudicatory bodies — such as the Tax Court and the Disablement Insurance Tribunal — have been created, but for the most part an appeal is handled simply as an element of administration, just as was the original decision from which an appeal has been taken.

Until 1964 administrators were almost entirely free from statutory prescriptions of procedure. Then an Administrative Procedure Act[7] for the first time required that parties to an administrative proceeding, either local or national, be fully informed of the documentary materials and evidence bearing upon the case and that they be afforded an opportunity to comment orally or in writing before a decision is made.

Judicial review is available in the ordinary courts. Denmark, unlike Sweden and Finland, has no special administrative courts. A party aggrieved by a final administrative decision may sue for its annulment or modification. If monetarily injured, he may seek to

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[7] Act No. 141, May 13, 1964, effective October 1, 1964.

recover damages from the State. An official who has assertedly abused his powers may be prosecuted before the courts, which also have power to pass upon the propriety of disciplinary sanctions including removal from office.

While the scope of Danish judicial review seems at first glance to be broad,[8] it is in fact somewhat limited. When considering exercises of discretion, Danish courts ordinarily confine themselves to questions of ultra vires. So long as the administrator has jurisdiction over the subject matter and has not been shown to have been improperly motivated, the courts cannot candidly inquire whether he exercised his discretion arbitrarily.[9]

Furthermore, non-action seems not to concern the courts; they will not, for example, order an administrator to make a determination even when he has been unreasonably slow in acting upon a matter before him. The courts themselves act slowly on appeals from administrative orders, and their proceedings are rather costly, so that close questions may be abandoned rather than put to the test.

All these factors have discouraged recourse to litigation, which has been small in proportion to the volume of administrative decisions that, in theory, are judicially reviewable. "Where it operates," a prominent scholar has written, "the control of the courts is excellent; its operation, however, is sporadic." [10]

The Ombudsman's Duties and Powers

Persons within the Ombudsman's jurisdiction. The 1954 statute that created the Ombudsman confined him to supervising "civil and military central government administration" exclusive of the courts. His jurisdiction extended to "ministers, civil servants and all other persons acting in the service of the State" except those engaged in judicial administration.[11] Those who act "in the service of the State" include not only officials who control or command, but all those who are on the national payroll, such as university professors, museum curators, clergymen, and ballet directors (all of whom have been principals in cases acted upon by the Ombudsman). The civil employees of the national government in Denmark number only slightly more than a hundred thousand altogether, including the many office,

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[8] The Danish Constitution, Sec. 63, empowers courts to determine all questions concerning the limits of power conferred upon a public authority.

[9] The 1953 Constitution explicitly broadened the scope of review in cases involving the valuation of private property taken for public purposes.

[11] Act No. 203, of June 11, 1954, Sec. 4.

[10] Christensen, *op. cit., supra*, note 4, at 1103.

maintenance, and manual workers who are unlikely to have any contact with the public at large.

The Ombudsman's jurisdiction was broadened to embrace, commencing in 1962, local officials as well when acting "in matters for which recourse may be had to a central government authority." [12] The activities of elective bodies ("local government councils") remained beyond the Ombudsman's reach ordinarily, though he was empowered to "take up a case for investigation on his own initiative," even if it grew out of a collective action of a local council, "provided that the case involves a violation of material legal interests." The statute cautioned the Ombudsman to "take into account the special conditions under which local governments operate," thus reflecting residual support of the concept of local autonomy.

In terms of power, the Ombudsman today could perhaps, if he chose, deal with virtually every high level or low level exercise of governmental authority outside the courts. In terms of political tact, he appears to proceed very gingerly when dealing with local affairs. Municipal governments' hot opposition to extending the Ombudsman's authority caused Parliament to enact a somewhat confused statute, conferring power more grudgingly than the Ombudsman himself had urged.[13] In the circumstances, he has seemingly not been disposed to test the outermost limits of his authority.[14] Spokesmen for an organization of local governments declared during an interview in 1964, however, that opposition to the Ombudsman's supervision of local activities has now all but vanished.

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[12] Act No. 142, of May 17, 1961. As to the local government situation in Denmark, see P. Meyer, The Development of Public Administration in the Scandinavian Countries Since 1945, 26 *Int. Rev. Admin. Sciences* 135, 145 (1960).

[13] See S. Hurwitz, Scandinavian Ombudsman, 12 *Pol. Sci.* 121, 123 (1960), noting that national and local authorities often work together (as, for example, in tax matters) and, even when working separately, engage in similar activities. Citizens cannot understand, the Ombudsman argued, why he should be able to deal with a complaint against the administration of, say, a school or hospital operated by a national authority, while a precisely similar complaint against a locally-administered school or hospital should be beyond his reach. Since in the end he could not order anyone to do anything, but could only make recommendations, the Ombudsman did not see how his "subsequent control may constitute an interference with local autonomy". So he advocated a flat grant of power to look into governmental activities at all levels.

[14] Taxes, schools, and public assistance programs are examples of local matters "for which recourse may be had to a central government authority", and therefore clearly lie within the Ombudsman's jurisdiction. The condition of town streets and sidewalks, the setting of wage rates for local authorities' employees, and the direction of municipally owned public utilities are examples of matters dealt with entirely locally and, therefore, probably not suitable for the Ombudsman's attention under the statute as now drawn.

As indicated above, the Danish Ombudsman has no power to deal with judicial administration. This exception is a major departure from "the Swedish prototype," for much of the Swedish Ombudsman's energies are devoted to policing the judiciary. In Denmark complaints about the behavior of judges can be lodged either with the presidents of the several courts or with a Special Court of Complaints, founded in 1939. That court has other functions, however, such as deciding whether closed cases should be reopened because newly discovered evidence or some other development may have undermined the existing judgment. Apparently the Court of Complaints is little used by persons who have been offended by judges; the number of complaints received by that body annually is said to be on the order of six, while court presidents are thought to receive perhaps ten additional complaints that a judge has been unnecessarily sharp-tongued or dilatory. Few disciplinary decisions have been rendered by the Court of Complaints. In recent years one judge has been dismissed because of a tax delinquency wholly unrelated to his judicial work. Another has been censured for interfering with newspaper reporters' efforts to observe proceedings in his court. Many of the approximately 215 judges in active service have had considerable experience in the Ministry of Justice before being appointed to the bench. Confidence in their probity is universal, so far as one can gauge the matter on the basis of personal interviews with all manner of occupational groups. The severest criticisms encountered during conversations in 1964 were that one judge "is said to drink too much, but he is a very clever judge who handles his work well, anyway" and that "some of the judges in the community courts other than the City Court of Copenhagen are not very competent professionally, though all are thoroughly honest." These comments were more than offset by flattering appraisals.

The nature of the Ombudsman's responsibility. The statute and Parliament's accompanying "general directives" command the Ombudsman to inform himself constantly about the manner in which all officials within his jurisdiction perform their duty.[15]

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[15] The statute provides in Sec. 5 that the Ombudsman is to "keep himself informed" as to whether persons subject to his supervision "commit mistakes or acts of negligence in the performance of their duties." Section 3 authorizes the Parliament to give the Ombudsman general rules to guide his activities. Article 3 of the directives adopted by the Parliament on Feb. 9, 1962, expands the statute somewhat by saying: "The Parliamentary Comissioner shall keep himself informed as to whether any person comprised by his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties...."

The Ombudsman, it must be stressed, has no statutory power to change a decision he finds to be improper. He can comment on the quality of administration, but not directly overturn the results of poor administration. Later discussion will make clear, however, that the Ombudsman's suggestions do frequently have the effect of reversing or modifying determinations he has found to be unsound.

The Ombudsman's formal powers. If he believes that misconduct in public service has occurred, the Ombudsman may order the public prosecutor to investigate further or to commence a criminal proceeding in the ordinary law courts;[16] or, if he chooses, he may order that disciplinary proceedings be commenced by the appropriate authority. In point of fact, he has not once during the eleven years of his activity ordered either a prosecution or a disciplinary proceeding, though in a few instances he has requested prosecutors to carry on investigations.[17]

Chiefly the Ombudsman has acted in the far milder manner contemplated by Section 9 of the Statute: "In any case, the Parliamentary Commissioner may always state his views on the matter to the person concerned." [18]

At first glance this may seem to be a sword without a sharp cutting edge. As wielded by the Danish Ombudsman it has proved to be a potent and versatile weapon. He himself has written that the power to voice his opinion "enables the Commissioner to exercise a guiding influence on the administration and provides him with the legal basis for initiating oral or written negotiations with the min-

[16] While Section 9 of the statute grants the power to order prosecution, the Parliamentary Directives (Art. 9) place an explicit limitation on the Ombudsman's power to proceed against a Cabinet member: "If the Parliamentary Commissioner, on having made an investigation, finds that a Minister or a former Minister should be held responsible under civil or criminal law for his conduct of office, he shall submit a recommendation to that effect to the Folketing Committee on the Parliamentary Commissioner's Office."

[17] No such an investigation (the precise number of which has not been ascertained, though they are known to be very few) has eventuated in a prosecution. Although the Ombudsman has never ordered a disciplinary proceeding, apparently some have occurred as a consequence of his inquiries and perhaps directly in response to his suggestion. Reflections of his offering a "suggestion" without making an "order" appeared in two interviews during 1964. In both instances subordinate officials were found by their superiors to have been at fault and, though not dismissed, were told that they would never be promoted to higher posts.

[18] The Directives, Art. 9, say essentially the same thing: "Even if the subject matter of a complaint gives the Parliamentary Commissioner no occasion for action, he may always state his views on the matter to the person whom the complaint concerns."

isters or the services concerned in order to have decisions which he considers erroneous corrected or, if this cannot be done, to achieve revision of the general procedure." [19]

Furthermore, the Ombudsman has not hesitated to express criticism even when the outcome of a particular case has not been at stake. A reviewing court must (at least in theory) disregard a "harmless error." Not so the Ombudsman, who points out deficiencies of method, judgment, or personal manners in the hope of discouraging their later occurrence. Nor does the Ombudsman confine himself to stating his views about what administrators are legally required to do. Instead, he freely states what he thinks they would be well advised to do. Unlike the courts, a leading commentator has remarked, the Ombudsman "is not required to base his judgment solely on legal considerations; rather, he may include in his opinions more discretionary reflections on the justification and expediency of the conduct of administrative agencies, without having to disguise them in the garb of traditional legal analysis." [20] The Ombudsman has, for example, explicitly said that an official organ cannot be criticized for what it has done or failed to do in the particular matter under discussion, because its acts were consonant with existing law — and then has outlined what he believes would be a better practice for the future.[21]

For an example of a substantive suggestion, see Folketingets Ombudsmands Berenting for Aret 1962, at 36: A complainant asserted that an administrative organ had denied him cash sickness benefits because it had misinterpreted the health insurance law. The Ombudsman concluded that he could not criticize the interpretation given the statute, but he urged the Ministry of Social Affairs to consider whether the act should not be amended at the first opportunity in order to clarify the conditions of eligibility for benefits.

The Ombudsman sometimes nimbly oversteps the dividing line between passing upon the merits of a specific decision and suggesting methodological improvements. One of his recent reports, for example, discloses a textile importer's complaint that he had been forced to pay excessive customs duties on seven lots of nylon between July 29, 1959, and June 21, 1961.[22] As to five lots imported before 1961, the Ombudsman agreed with the Department of Customs and Excises

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[19] S. Hurwitz, The Folketingets Ombudsmand, 12 *Parliamentary Affairs* 199, 202 (1959); and see also the same author's Scandinavian Ombudsman, 12 *Pol. Sci.* 121, 124 (1960).

[20] B. Christensen, The Danish Ombudsman, 109 *U. Pa. L. Rev.* 1100,1116 (1961).

[21] The Ombudsman's contributions to administrative procedure reform are discussed in I. M. Pedersen, The Danish Parliamentary Commissioner in Action, [1959] *Public Law* 115, 116-120.

[22] Folketingets Ombudsmands Beretning for Aret 1962, at 27.

that the complaint was groundless. As to the two lots imported in 1961, however, a more troublesome question appeared because the applicable tariff rate had been reduced before the importation occurred. The Department had denied the importer's claim for a refund because he had paid at the preexisting (and higher) rate without protest, no samples of the imported goods now remained available for quality analysis, and an overpayment if it had in fact occurred was attributable to the importer's having neglected to provide all the information needed by the customs authorities. The Ombudsman, having reviewed a rather extensive file, concluded that the importer's factual presentations had not been so gravely deficient as to justify rejection of his claim. Without deciding that a refund should be made in any specific amount, the Ombudsman therefore requested the Department to reconsider the once rejected claim. This it agreed to do, and there the matter ended. In a technical sense, the Ombudsman did not overturn a decision he had found to be erroneous; the overturning was done by the Department itself. Realistically, of course, the Ombudsman's muscle provided the push.

Sometimes the muscle is not so clearly evident, but its presence is nevertheless strongly suspected. A ministry dismissed a civil service employee with loss of pension rights because of his faithlessness. Subsequently another administrative organ denied him an old age pension, as was apparently statutorily correct in view of the conditions of his past employment. The Ombudsman, when besought to relieve the former civil servant's plight of being pensionless in a country where not having a pension is indeed phenomenal, found nothing he could criticize. He neither publicly demanded a change in the rulings nor appealed for mercy in the penniless man's behalf. Soon afterward, however, the ministry relented. It substantially restored the civil service pension benefits previously ordered to be forfeited. Civil servants who tell this story ascribe the change to the Ombudsman's mediatory efforts. The correctness of their belief has not been officially confirmed, but its very existence is significant.

A more generalized administrative determination came under scrutiny when a convict complained that he had been unable to cast his ballot in a recent parliamentary election.[23] A registered voter may vote at his place of registration or, if he will necessarily be absent on election day, by previously depositing his ballot at another registration office. A prisoner requested permission to leave the penitentiary so that he might vote at a nearby registration office. The prison administration denied permission because escorting a stream of

[23] See *op. cit., supra* note 22, at 23.

prisoner-voters to the nearest town was impracticable; as to some strictly confined prisoners, excursions beyond prison walls were entirely out of the question. The Ombudsman, having received this explanation, said that the prison directorate could not be criticized for its decision. He added, however, that he thought the rules about prisoners' voting should be altered. Since Denmark does not regard loss of civil rights as an element of punishment for crime, the Ombudsman urged that prisoners should be encouraged to function as citizens to the fullest extent feasible. The Minister of Justice, to whom the Ombudsman had addressed these remarks, agreed with the position taken. He promised that he would be mindful of the Ombudsman's views when subsequently discussing the possible enlargement of absentees' voting opportunities.[24]

The power of persuasion. One should not conclude that the Ombudsman broods in splendid isolation and then "states his views" to a rapt audience of officials. On the contrary, many of his pronouncements merely record conclusions previously reached jointly by the Ombudsman and the administrative organs involved.

Sometimes, indeed, they might best be described as negotiated settlements, representing not what the Ombudsman may initially have proposed but, rather, what the administrators have been ready to accept. Mutual enlightenment and persuasion may beget conclusions agreeable to the officials and the Ombudsman alike, though perhaps not entirely to the taste of either. So far as the record may show, the Ombudsman simply made recommendations that were accepted; the record may not show with equal clarity whether the recommendations were modified to make them palatable.

The bargaining process, some cynics say, produces a spurious air of accomplishment. It creates, they contend, a misleading image of the Ombudsman as a fount of wisdom from which flow inspired ideas gladly adopted by all concerned.

That is too harsh a view. Discussion before pronouncement has been a functionally sound choice. It has encouraged cooperation and receptivity. The Ombudsman, a man of tact, believes that persuasion is more enduringly forceful than edict. He realizes, too, that Denmark's able civil servants possess a valuable store of experience which can fortify his own judgment; he is humble enough to realize

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[24] The problem of absentee voting affected hospital patients in the same manner as penitentiary inmates; patients, like prisoners, lost their votes if unable to deposit them in person. Despite the Minister's assurance in 1962 that the problem would be well considered, no change in the pertinent statutes had been made as of the end of 1965.

that one man cannot possess all human knowledge. Hence the negotiations that precede his recommendations are genuine opportunities for enlightenment and not merely for compromise.

The discussions have had another value. They have decreased the Ombudsman's workload because administrators who have come to understand and approve his approach have, in later instances, taken suitable steps without his having had to prompt them in each instance. So, for example, one of the Ombudsman's assistants recently remarked that the national police administration "has become quicker than we are. Cases have started with a complaint to the Ombudsman; a request has been made to the police for information; they have immediately investigated; and, after the investigation, they have reported not only the facts they have found, but what they propose to do unless the Ombudsman disagrees. Instead of having to belabor the cases, we have been able to close them".

Similarly, though on a different plane, the Ministry of Social Affairs recently revised the work methods of one of its bureaus in order to strike at slow action on difficult cases. "We knew from past experience", a Ministry spokesman declared, "that what seem to us to be troublesome decisions do not necessarily seem so to an outsider, and we also knew that the Ombudsman had been severely critical of what he regarded as undue delay in some of our other proceedings. So we developed new criteria for identifying the tough cases, which now go at once to senior personnel without first being put to one side by somebody who dreads having to tackle them."

"Preventive therapy" of this kind, perhaps stimulated by the Ombudsman but, in an immediate sense, voluntarily initiated by the administrators themselves, is especially valuable. Self reform has deeply penetrating and usually lasting consequences.

The Sources of the Ombudsman's Business and How He Disposes of It

The statute and directives under which the Ombudsman functions authorize him to proceed upon the basis of a complaint, upon his own initiative, or by direct inspection of official operations. All persons in the service of the State must furnish information and "produce such documents and records as he may demand for the performance of his duties."[25]

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[25] Parliamentary Directives, Feb. 9, 1962, Art. 3(4). Whether the Ombudsman can demand to see the "internal working papers" of a ministry is unclear. Some authorities maintain that they are not "documents or records" which must be

Inspections. Inspections do not bulk large in the Ombudsman's work.

Perhaps because of his own long-standing interest in penology, Professor Hurwitz has spent considerable time inspecting places of detention, where persons in custody have been enabled to confer with him privately.[26] A veteran prison administrator said in 1964, "The inmates look forward to his visits. It makes a nice change for them. They enjoy talking with him even if they have to invent a complaint."

The Ombudsman agrees that most prisoner complaints have proved to be unmeritorious, but he nevertheless believes that "these talks may well be considered important, since apart from the value they may have for the person confined, they may afford grounds for examining questions of more general interest." [27] Specific "questions of more general interest" that came to light through inspections and that would not equally have come to light by a written complaint could not be pinpointed in 1964. No doubt, in any event, the prisoners' conversations with a nationally important personage do have psychological value, for they may allay the feeling that prisoners have been wholly rejected and forgotten by society.

Apart from institutional inspections (which are somewhat a misnomer, for the institutions are usually not so much inspected as simply visited to facilitate personal conversation), the Ombudsman has also briefly visited military barracks. The infrequency of complaints by

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produced if requested. Some ministries have in fact been including them along with more formal materials, when the Ombudsman's office has asked to see a case file. Members of the Ombudsman's staff have expressed doubt that their production could be compelled, and the matter is unlikely to be put to the test. Denmark, unlike Sweden, does not have a sweeping requirement that the files of official bodies be open to general inspection by the public.

As for "secret" documents — as in military or foreign affairs matters — a member of the Ombudsman's staff has been given "top secret clearance" so that pertinent papers may be consulted when deemed necessary; for instance, in connection with a complaint that a permit to work in Greenland had been wrongfully withheld, a personnel security file was made available in this manner.

[26] Section 6 of the statute creating the Ombudsman provides, additionally, that "Any person deprived of his personal liberty is entitled to address written communications in sealed envelopes to the Parliamentary Commissioner." It has become a fairly open secret, however, that this pledge of privacy does not mean a great deal, because the Ombudsman asks the authorities to comment on the communications he has received, or he sends the authorities copies of his replies to his correspondents; hence both the identity of complainants and the nature of their complaints become known in fact. The Ombudsman's action in this regard is consonant with his duty, under Section 7 (3) of the statute, to provide officials an opportunity to respond to criticism.

[27] S. Hurwitz, *The Ombudsman* 15 (1961).

soldiers is said to have been a surprise, and he therefore thought it desirable to make himself personally accessible to military personnel. He paid four visits to military bases in 1963, looking at sleeping quarters, infirmaries, and eating places and also conversing with soldiers, who seemed to him to be reasonably well contended.[28]

So far as can be determined, he has never inspected an administrative organ, national or local. During an interview in 1964 the Ombudsman expresssed doubt that random sampling of administrative operations by pulling case folders from the files, would reveal anything useful. His remark reinforced the strong impression that Professor Hurwitz, unlike his Swedish counterpart, is skeptical about the value of routine inspections.[29] In any event, his annual reports call slight attention to this phase of his work, and it seemingly consumes only a small portion of his energy.

Initiative. While empowered to proceed on his own initiative, the Ombudsman rarely commences an investigation except upon complaint. During the five years 1960-1964, inclusive, the Ombudsman's office docketed 5,745 cases, of which only about sixty where launched on his initiative.

The qualitative importance of those few cases was, however, high.

In what is perhaps the most illuminating of his various published discussions, the Ombudsman has described at length six cases under the heading, "Some Examples of Cases of Special Interest."[30] Two of the six were self-initiated: "Because of widespread newspaper discussion of the case the Parliamentary Commissioner decided in 1955 to make an investigation of the Royal Veterinary and Agricultural College's treatment of a thesis . . . " and "In May 1958 Ejnar Blechingberg, Commercial Adviser at the Danish Embassy in Bonn, was charged with espionage . . . The case was debated in Parliament in February 1959 and thereafter the Parliamentary Commissioner found it expedient — on his own initiative — to investigate the steps taken by the Ministry of Foreign Affairs since 1940 relative to Blechinberg, and his position in the Foreign Office."

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28 Folketingets Ombudsmands Beretning for Aret 1963, at p. 7. After an inspection by the Ombudsman, the Army is said to have declared all-out war against cockroaches in military kitchens. The Ombudsman also used his influence with the state railways to obtain free transportation for soldiers while on leave.

29 See Gellhorn, The Swedish Justitieombudsman, 75 *Yale* L.J. 1, 22-31 (1965); as to Finnish experience, see Finland's Official Watchmen, 114 *U. Pa. L. Rev.* 327 (1966). The writer shares Professor Hurwitz's skepticism.

30 S. Hurwitz, *The Ombudsman* 31 (1961).

As these two examples may suggest, the matters into which the Ombudsman has inquired without having been bidden to do so tend to be scandalous and to have aroused public disquietude. "In such cases," a prominent scholar has written, "the Ombudsman's activities assume a special character. In each, his main business has been to get to the bottom of the case, to segregate the core of truth from the exaggerations and controversy, and to try to put an end to the affair. In most cases he has been successful, and his recommendations have often resulted in new regulations and procedures designed to prevent the recurrence of such episodes."[31]

The low number of avowedly self-initiated cases obscures the fact that the Ombudsman often goes far beyond the confines of a complaint, once an investigation has commenced. Danish lawyers give the Ombudsman very considerable credit, for example, for having speeded the final determination of tax matters. This he achieved by proposing procedural and organizational changes after a sweeping study of tax administration. The study was undertaken after a single taxpayer had complained about a seemingly unconscionable delay in obtaining a needed ruling. Investigation of that complaint broadened into a general survey. Statistically, the matter is still recorded as a complaint case. Realistically, it might well be included among the Ombudsman's self-initiated probes.

The same may be said of numerous other cases. What may at first have seemed to be narrowly personal grievances were later perceived to have implications that overshadowed the initial episodes. So, for example, a correspondent's complaint that a letter to the Ministry of Education had been unanswered led, in the end, to an examination of internal controls and suggested changes in supervisory practices. In the most literal sense all of this may have been "inatiated" by the disgruntled correspondent, but in truth he had probably never imagined that annoyance about one mislaid letter might cause a comprehensive inquiry into a ministry's work methods.

Complaints. The Ombudsman is not obligated to spring into action whenever a complaint reaches his desk. The statute (Sec. 6) requires a complainant to identify himself [32] and to lodge his complaint

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[31] B. Christensen, The Danish Ombudsman, 109 *U. Pa. L. Rev.* 1100, 1124 (1961).

[32] In a few instances a complainant has requested that his identity, though revealed to the Ombudsman, be withheld from the official or organ complained against. If the Ombudsman concludes that the request should not be honored, he simply writes the complainant that he may withdraw the complaint or allow his name to appear, whichever the complainant may prefer.

within a year after his grievance arose;[33] action by the Ombudsman must be withheld if available administrative remedies have not been exhausted; the Ombudsman may determine, in all events, "whether the complaint gives sufficient grounds for an investigation." The Parliamentary Directives provide, additionally, that complaints should ordinarily be written and supported by evidence (Art. 4), that the Ombudsman should take no action on a complaint beyond his jurisdiction or tardily filed, other than to refer it to the appropriate authority and "give the complainant reasonable guidance" (Art. 5), and that the Ombudsman may simply inform the complainant that "he finds no reason to take action in the matter" if he believes that a complaint is "unfounded" or that its subject matter is "insignificant" (Art. 6). Further, a "Supervisory Board" has been established by Danish law to deal with the treatment of patients in mental hospitals, alcoholism centers, and other institutions; the Ombudsman is directed to refer to that board all complaints "about the treatment of persons deprived of their personal liberty through any procedure other than the administration of criminal justice" (Art. 5), thus enabling him to slough off a type of case that has bedeviled ombudsmen in other countries. (Though the Board Seems now to be falling into the habit of asking the Ombudsman to investigate, after all).

These limitations have kept the Ombudsman's work within manageable dimensions, though new cases come in at the rate of more than a thousand per year.[34]

During the five years 1960-1964, inclusive, the Ombudsman took up for investigation only 856 cases, constituting but 14.9 percent of the 5,745 matters registered at the Ombudsman's office in that period. Readiness to investigate seems to be declining.[35] The increasing proportion of dismissals perhaps reflects the Ombudsman's sharpened awareness of what he can feasibly do.[36] Assuredly it also reflects a

[33] The Ombudsman notes that he can decide to proceed on his own initiative if a complaint has been barred by time, but he is not likely to do so in the absence of some "exceptional circumstance". Similarly, he can, if he chooses, proceed on his own initiative in respect of the subject matter of an anonymous complaint. So far as has been discovered, he has never yet chosen to act on an untimely or anonymous complaint, so one must guess at what circumstances he might deem to be exceptional.

[34] Total new matters registered in recent years have been as follows: 1961 - 1,065; 1962 - 1,080; 1963 - 1,130; 1964 - 1,370.

[35] In 1956, the first full year of the Ombudsman's service, 50.4 percent of the cases filed were investigated. In 1964, the figure had fallen to 12.4 percent.

[36] The Ombudsman has acknowledged a tendency to dismiss summarily complaints that relate to "certain groups of discretionary administrative decisions... where as a rule experience has proved that the Commissioner is not able to

statutory change that has enabled him since 1959 to ignore complaints about decisions still susceptible of being reversed by a superior administrative authority.[37]

The actions taken upon cases docketed in recent years is summarized in Table I immediately below, which reveals how exercising judgment at the threshold enables the Ombudsman to concentrate his energies on relatively few cases.

Table I. *Disposition of matters registered*

	1962	1963	1964
Total registered	1,080	1,130	1,370
Considered on the merits	152	151	170
Dismissed	928	979	1,200
(a) filed tardily	41	54	68
(b) outside jurisdiction (pertaining to judiciary, local councils, private persons, etc.)	281	313	394
(c) administrative remedies not exhausted	181	166	240
(d) anonymous or meaningless	28	38	38
(e) Ombudsman found no basis for complaint or subject matter was trivial though within his jurisdiction	293	254	281
(f) inquiry rather than complaint	119	124	146
(g) withdrawn by complainant	36	28	32
(h) initiated by Ombudsman and then dropped without action	3	2	1

To say that a case is "considered on its merits" is not to say that the Ombudsman has in every instance found grounds for criticizing the officials involved. In fact, criticisms of particular occurrences or general suggestions for future improvement (both of which may appear in the same case) were made in approximately a quarter of the cases closed after investigation during the years 1960-1964. Less

criticize. As examples of such groups may be mentioned, complaints concerning the amount of maintenance fixed by an administrative authority, refusal of a petition for free legal aid in law-suits against private persons, refusal of application for reduction of tax assessment and petitions for mercy. To these groups may be added complaints about the degree of disablement fixed in workmen's compensation case..." Hurwitz, *op. cit., supra* note 30, at 18.

[37] The amendment was embodied in Act No. 205 of June 11, 1959. The relationship of investigations to new filings, expressed in terms of percentage, was 37.3 in 1957. In 1958, the percentage was 26.5. This fell to 20.7 in 1959, and it has continued downward since.

than one in twenty of the total number of matters registered gave rise to censure or representations by the Ombudsman.

The Ombudsman's remarks, while not staggeringly numerous, have grown out of cases involving a very large number of governmental authorities. The cases carried to a conclusion in recent years have related to fifteen ministries, thirty-nine national administrative authorities, and five local organs, as well as the police and prosecutors.

Table II. *Official establishments involved in cases determined after investigation*

	Ministeries	*Other national agencies*	*Local agencies*
1962	12	31	0
1963	15	39	4
1964	14	26	5

Those chiefly involved in each year were the Ministry of Justice and the Ministry of Finance. The former generated sixteen cases in 1962, eleven in 1963, and seventeen in 1964. The Ministry of Finance was the object of inquiry in twenty-five cases in 1962 and fifteen in both 1963 and 1964. The conduct of police and prosecutors was brought into question in nine of the 1962 cases, fifteen of the 1963 cases, and seventeen of the 1964 cases. The Ministry of Defence was involved, during these three years, in a total of twenty-four cases, and state prisons in thirteen. In 1964 no ministry (except Justice and Finance) or other administrative body gave rise to more than ten cases.

The types of problems dealt with in recent years have been summarized in Table III, below, which shows that the substantive content of official decisions is the largest single cause of serious complaint. This is especially noteworthy because the ombudsman system has sometimes been represented as necessary chiefly to control bad manners rather than bad judgment. In fact, as the figures below disclose, the administrators' judgment arouses far more controversy than does their behavior.[38] The second largest cause of serious complaint has been summed up by the term "case handling," which includes all aspects of administrative procedure, but excludes complaints about alleged slowness, which have been tabulated under the heading of "delays."

[38] This is not a new development. Figures compiled by the Ombudsman for the years 1957-1960, inclusive, show in summary that 46.2 percent of all the cases taken up for investigation in that period related to official decisions, while only 6.3 percent had to do with official conduct. Hurwitz, *supra* note 30, at 21.

Table III. *Nature of issues involved in cases determined after investigation*

	1961	1962	1963	1964
General questions	11	14	10	10
Decisions	56	49	53	58
Case handling	44	33	31	33
Delays	22	19	28	32
Behavior, statements, etc.	23	15	7	13
Civil Service — appointment, discipline, wages, pension, etc.	18	22	22	24
	174	152	151	170

Civil servants as complainants. The final entry in the immediately preceding table, showing civil service disputes as a substantial ingredient of the Ombudsman's caseload, deserves particular attention.

When the ombudsman system was first proposed in Denmark, civil servants and their organizations were energetically opposed. Existing review mechanisms, they contended, provided ample protections against mistake. To create an overseer of public administration would be simply to invite harassment by cranks and malcontents. Uutimately, too, it might lead to debasing personnel safeguards that had, over the course of many years, created a professional, responsible, trustworthy Danish civil service envied by less favored countries.

When the ombudsman statute was enacted despite this opposition, it embodied clauses intended to mollify civil servants. Anonymous complaints were proscribed (Sec. 6) in order to lessen the risk of irresponsible accusation.[39] The new law also provided (Sec. 7) that a civil servant involved in a matter of interest to the Ombudsman "may always demand that the matter shall be referred to treatment under the provisions of the Civil Servants (Salaries and Pensions) Act," which meant in effect that he could insist upon being investigated by the agency in which he served rather than by the Ombudsman.

This provision, added to the original bill upon the demand of civil service groups, has never been used. "In the beginning," the president of a major organization recently said, "we were suspicious. As a matter of fact, we were scared. But we have found that we were mistaken." Instead of fleeing from the Ombudsman, civil servants

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[39] The Ombudsman can still, if he elects, take up "on his own initiative" a matter reported to him anonymously. Experience has persuaded him, however, that the writers of anonymous complaints are almost invariably "crackpots".

have fled to him. Many of their cherished "protections" had in fact not been legally enforceable through the ordinary courts, and Denmark has had no administrative court specially empowered to deal with personnel disputes. The Ombudsman's capacity to inquire into every type of official lapse was quickly seized upon by public servants who thought they had been ill treated by their superiors. Thus it has come to pass that over thirteen percent of all the cases fully investigated by the Ombudsman in 1962, 1963, and 1964 involved controversies about personnel matters.[40] The share of his time devoted to this type of problem seems all the more remarkable when one recalls that the group from which the cases arise numbers only a little more than 100,000 in a population of 4,500,000.

Another aspect of the Ombudsman's relations to civil servants deserves mention. When the statute was being considered in 1954, many low-ranking public employees opposed it because they feared the Ombudsman's weight would fall mainly on them. They were the ones who met the public face to face. They were the ones, they thought, against whom the public would complain, even when they were simply carrying out their standing orders. To avoid being involved in controversy, they forecast, many civil servants might refer matters to their superiors, thus delaying final action and destroying initiative at subordinate levels. These fears appear to have been wholly set at rest. The Ombudsman has declared that most complaints addressed to him have been made quite impersonally against the administrative organ concerned, rather than against individuals whether of high or low

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[40] Many of these are petty. In 1962, for example, the Ombudsman criticized an administrative authority for having answered an employee's letter by telephone instead of in writing. And he criticized another body for not giving a civil servant a copy of an adverse report about his work, though the report had been shown him. Folketingets Ombudsmands Beretning for Aret 1962, at pp. 38, 51. A more serious matter arose during the same year when a highly ranked official (near retirement age) was removed from an important technical post on the ground of alleged incompetence. Without reference to the issue of competence, which was seriously controverted, the official seems to have been markedly incompatible with associates. He was finally released from his post, but on full pension. This was in the nature of an agreed settlement. His attorney has expressed belief that had the Ombudsman not been involved in the case, the official would simply have been discharged without pension. No appeal from that action would have been possible.

In one interesting case the Ombudsman concluded that a civil service employee had been discharged in violation of applicable regulations. Besides criticizing the administrative action, he recommended that the discharged employee be given free legal aid to sue for damages. This was done and a settlement was made out of court; the wrongfulness of the discharge was acknowledged and damages were paid. See Hurwitz, *op. cit., supra* note 30, at 25-26.

rank.[41] Many of the decisions in cases he has taken up for investigation have stated explicitly that while no basis has been found for criticizing the civil servant whose actions have been in question, the Ombudsman has nervertheless desired to comment on a general administrative practice that, in his view, should be revised for the future; thus he has taken pains to avoid blaming an individual official for following paths others have mapped for his use. The president of the largest civil servants' organization unequivocally concluded, during a recent conversation, that the possibility of a citizen's complaining to the Ombudsman has not deterred civil servants from exercising appropriate judgment in matters within their authority. "We thought," he said, "that inflexibility, uncritical insistence upon rules, bureaucratic rigidity, and efforts to obtain advance approval were going to increase after the Ombudsman had found a few occasions to criticize officials. But we have been proved wrong. The civil service in Denmark has had a good tradition and the Ombudsman has not weakened it."

Sources of complaint. The Ombudsman's annual reports identify agencies against which complaints have been made, but do not describe the complainants. Persons close to the Ombudsman have estimated that civil servants have initiated about five percent of all the cases received in recent years, that ten percent of the complaints have come from persons in detention either before or after conviction of crime, that five percent of the complainants have been inmates in public institutions of one kind or another, and that attorneys have signed about five percent of the complaints and have perhaps prepared another five percent to which their clients' names have been attached. The remainder have come from "the public at large," without any significant occupational or geographical grouping that has been noted.

The attorney's relationship to the Ombudsman's work warrants a few additional comments.

Spokesmen for the advocates' association, to which every Danish lawyer must belong, tended in 1964 to minimize the Ombudsman's significance. As one of them said, "He is chiefly concerned with petty problems that don't affect businessmen. When a businessman has a problem, his lawyer sends him to the right office in the right ministry, and that will take care of the problem without going to the Ombudsman." Another remarked: "From our point of view, the Ombudsman is valuable mainly because we lawyers can refer quarrelsome people to him and get them out of our own offices, where they take up a lot of time but produce few fees."

[41] Hurwitz, *op. cit. supra* note 30, at 22.

Other practitioners' comments suggest that these reactions may not be representative. Several prominent advocates, interviewed separately, described their own recourse to the Ombudsman in behalf of clients who remained dissatisfied with final administrative acts for which judicial review had been unavailable. All agreed that the Ombudsman's accessibility had diverted no clients from them, but had instead given lawyers an additional avenue of redress. One of them, indeed, expressed surprise upon being told that attorneys were not the chief source of the Ombudsman's business. He proceeded to describe cases filed by him in which the Ombudsman, without criticizing decisions previously rendered, had made "clarifying statements" the "clients found very satisfying and regarded as valuable for public relations purposes." In another instance an administrative determination adverse to the client had remained unmodified but had been quietly ignored by officials in future years, a result the attorney attributed to questions asked by the Ombudsman. Another lawyer, after recounting a somewhat similar case that had had a favorable outcome, added: "As a matter of fact, I have found that just having the Ombudsman reject a complaint, saying that he finds nothing to criticize, sometimes helps me with a client. It serves at least to persuade the client that we have done everything we can, and puts an end to what might otherwise be a continuing doubt."

While so narrow a sampling of professional experience permits no confident conclusions, evidence is at hand that alert members of the bar can and do use the Ombudsman advantageously.

The Ombudsman's staff. Constant reference to "the Ombudsman" might suggest to the unwary that he singlehandedly copes with all the problems referred to him. He does in fact utter the final word in each instance, but he has able assistance in preparing to do so.

The Ombudsman's staff consists of seven lawyers and five clerical employees. The present "chief of office" and a senior assistant have been associated with the Ombudsman from the first. Three junior staff members joined the office immediately upon receiving their law degrees. Two others were "borrowed" for three years from permanent posts elsewhere. The demand for lawyers is greater than the available supply in Denmark. Moreover, the salary scale of Danish government employees is not impressive. The demand for their services coupled with their low official salaries has induced many legally trained civil servants to hold more than one job. Sometimes both their jobs are in the public sector. Sometimes they work in an attorney's office or serve as counsel to a private organization. Most of the Ombudsman's assistants are nominally part time employees

because they have dual employment.[42] They seem nevertheless to work at a full time pace.

Attachment to the Ombudsman's office is apparently regarded as a desirable assignment. A former chief of office has become a member of the High Court, and junior staff members have also moved on to attractive positions after service with the Ombudsman had given them broad exposure to governmental activities.

Staff conferences do not occur, nor do staff assistants generally have other direct associations with the Ombudsman. They consult the Chief of Office about difficult problems occasionally, but the Ombudsman's organization seemingly lacks informality and the personal touch despite its smallness. No doubt exists, however, about whose is the dominant personality at work in that establishment. The Ombudsman does not permit actions to be taken in his name. Even when he is on vacation, papers must be sent to him by post for his consideration and personal signature.

Processing complaints. Each incoming complaint is passed to the Ombudsman personally as soon as it has been numbered and entered in the official register.[43] He may jot down brief directions in the margin, or point out some special aspect that has aroused his interest. The file then passes to the Chief of Office for another quick glance before being assigned to a staff member. Each staff assistant receives, in turn, all the cases registered during a calendar week, an average of about twenty. Specialization according to areas of governmental activity or types of complaint has not been encouraged.

Cases that are clearly not cognizable by the Ombudsman (such as those, for example, pertaining to judges or to private legal problems) are quickly disposed of, as are those the Ombudsman has decided not to investigate because their subject matter is unappealing.[44] The

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[42] No rules have been laid down concerning possible conflicting interests arising from a staff member's dual employment. A few problems have in fact occurred, but have been disposed of informally. As for the Ombudsman himself, the governing statute (Sec. 12) forbids his holding any public or private office except with the consent of a Folketing committee; and the parliamentary directives (Art. 16) instruct him that if he "finds that a case involves circumstances which may give rise to doubt about his complete impartiality," he must inform the Folketing committee, which will then "decide who is to perform his functions."

[43] A few complainants have chosen to present themselves at the Ombudsman's office without reducing their complaints to writing. The governing statute and the parliamentary directives do not flatly require complaints to be written, though the directives do say (Art. 4) that they "should, as far as possible, be submitted in writing and be accompanied by the complainant's evidence."

[44] See pp. 16-18, *supra*.

staff member simply drafts a letter for the Ombudsman's signature, informing the complainant that the matter will not be pursued.

In many other instances, a telephone call to the agency concerned provides the basis for speedy action. Thus, for example, an agency may disclose that the complainant has not yet utilized his right of administrative appeal. In that event the Ombudsman may transmit the complaint to the agency (notifying the complainant that this has been done) or may advise the complainant to pursue the available remedies; the complaint to the Ombudsman will in either event be dismissed as premature.[45]

In other cases, a telephone call about a complaint against official lethargy may elicit information that the desired action has in fact already occurred; or it may reveal that the agency's non-action was caused by the complainant's failing to reply to the agency's request for additional data.

In all such matters, the staff member summarizes the complaint and the information he has informally obtained, proposes a suitable disposition of the case, and drafts a letter to the complainant for the Ombudsman's signature. The file then passes from the assistant to the Chief of Office and, if he approves, to the Ombudsman for final action.

Approximately half of all the complaints filed with the Ombudsman have been reviewed and finally disposed of in some such manner within a fortnight after their receipt.

Each staff assistant has full responsibility for developing the facts in the cases assigned to him. This may necessitate obtaining the official files bearing upon a complaint, but, more frequently, a directly informative statement is sought from the official or agency concerned in the complaint. When issues of fact are present, the agency's statement is usually sent to the complainant for his rejoinder, upon which the agency will in turn be given opportunity to comment. In these exchanges, the officials always have the last say. Occasionally complainants have been invited to come to the office for personal conference, but nothing in the nature of an adversary hearing or a confrontation of complainant and accused official has ever occurred. While the statute (Sec. 7) gives the Ombudsman the power to draw

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[45] See pp. 16-18, *supra*. The Ombudsman infrequently requests that he be informed of the cognizant agency's action on a case he has referred to it. His annual reports have suggested several times that an administrative decision adverse to a private party should be routinely accompanied by information about appellate processes and other available remedies. The suggestion has not yet been widely accepted.

upon judicial assistance in order to compel the giving of testimony and the production of evidence, no occasion has yet arisen for taking such a step.

When written observations or documentation have been sought, responses to staff inquiries have usually been made within a month; if no reply has been received within two months, a second inquiry occurs routinely. Approximately twenty-five percent of the Ombudsman's cases have been closed in less than two months but more than two weeks.

Most of the remaining cases have been decided between two and four months after filing, though some have dragged on for as much as a year, long after all the facts have been gathered, while discussions have proceeded about what recommendations should be made.

The individual staff members work with a considerable degree of independence and with opportunity to develop their own "contacts" within ministries, so that needed information can be speedily obtained. They are allowed to take far more initiative than their counterparts in other Scandinavian ombudsmen's offices, though the final product of their labors remains entirely subject to approval by the Ombudsman, who may return a file with a request for more data or a completely fresh approach.

His decisions ordinarily take the form of a letter addressed to the complainant, restating the complaint, reviewing the facts found (and, when pertinent, the applicable legal principles), and announcing the Ombudsman's conclusion. Copies of the letter are sent as a matter of course to any official personally involved in the matter as well as to the administrative bodies concerned. If the conclusion contains a criticism of a proposal for the future, a covering letter particularly directs attention to it.

Troublesome cases. One especially troublesome type of case has consumed considerable staff energy while producing results of somewhat uncertain value. When inquiry has disclosed that a case is beyond his statutory competence or involves an indubitably legal though arguably unwise exercise of official discretion, the Ombudsman has nevertheless sometimes chosen to explain the complaint at length and to discuss its significance in such a manner as to disclose his opinion about the merits.[46] Several ministry officials expressed strongly adverse sentiments about the Ombudsman's indulgence in lengthy dicta. "He upsets us most," one spokesman asserted, "when he writes about something we have done, says he cannot criticize us

[46] For discussion and examples, see Christensen, *op. cit., supra* note 4, at 1108.

for having done it, and then proceeds to criticize exactly the thing he said he had no power to criticize."

Substantial staff effort has been devoted, also, to cases cognizable by the courts though submitted instead to the Ombudsman as complaints against official determinations. Though every administrative remedy must be utilized before a complainant may turn to the Ombudsman,[47] the continuing availability of judicial review affects the Ombudsman's competence not at all. True, he will never consider a complaint concerning a matter already before a court, whether or not the court has yet reached a decision. And when the judges have spoken finally, he follows their lead. Often, however, complainants address themselves to him instead of the courts simply in order to save time and expense. He cannot then slough off their complaints as untimely.

Still he must recognize that his conclusions are indecisive so far as they deal with legal questions. His interpretations of statutes defining administrative powers or prescribing administrative methods, for example, may be held erroneous if the same issues are subsequently brought before the courts. Quite properly reluctant to be overruled by later judicial decisions, the Ombudsman has pressed his staff to make thorough legal studies before recommending action.

His final actions in cases of this type have been diverse. Sometimes, when sufficiently confident, he has stated a flat judgment. Sometimes he has expressed a much more tentative belief, coupling this with a reminder that the matter is still open for judicial consideration and suggesting that the case be taken to court, at public expense if the complainant be needy.[48] Sometimes he has simply stated mildly that he is dubious about the administrative agency's authority to act as it has done, perhaps adding a suggestion that parliamentary clarification would be desirable.[49] Questions of ultra vires are rarely

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[47] The Ombudsman may, however, take up a case on his own initiative at any stage of an administrative proceeding. Moreover, if a complaint has to do with official behavior or methods rather than with the content of the action taken by a subordinate official, it can be acted upon by the Ombudsman even though some administrative channel may remain open.

[48] Article 6(2) of the parliamentary directives states that the Ombudsman may, if the subject matter of a complaint brings it within judicial reach, "give guidance to the complainant with that possibility in view," and if the complainant intends to commence a law suit against a public authority or official in respect of any matter within the Ombudsman's competence, the Ombudsman may in appropriate instances "recommend that the complainant be granted free legal aid."

[49] Specific examples if these various approaches to questions of legal authorization appear in Hurwitz, *op. cit., supra* note 30, at 26-28; and see also Christensen, *op. cit., supra* note 4, at 1113, 1117-1118.

easy for the staff or for the Ombudsman. Often, when unable to come to a firm conclusion, he ends a discussion by "declaring that the question is doubtful and that it is for the courts to make the final decision." [50]

An Attempt to Appraise

A "cult of the personality" has grown during the incumbency in office of Professor Hurwitz (though not by his choice). Expressions of doubt about the accomplishments of his office seem virtually to be attacks upon the sacrosanct. This attempt to appraise the Danish Ombudsman must therefore be prefaced by the unusual statement that the appraisal is of an institution and not of a man.

Publications. The Ombudsman's relations with journalists have been cordial almost beyond belief. What he himself has characterized as "the extremely friendly attitude of the press" [51] has led to extensive newspaper coverage of his decisions. These have usually been described admiringly and have almost invariably been attributed to Professor Hurwitz by name, rather than to the Ombudsman as an official. He has consequently become very strongly identified in the public consciousness as a noble righter of wrongs. Even the Ombudsman's staff has been surprised by the enthusiasm with which relatively minor matters have been set forth in the daily press. Nobody with whom the matter was discussed in 1964 blamed Professor Hurwitz for the journalistic exuberance, but a number of sober observers, sympathizing with the Ombudsman's purposes and admiring his achievements, thought that publicity was sometimes almost too intense.

If any fault there be, it seems not to be the Ombudsman's. Danish law, unlike Sweden's, does not embody a "publicity principle" requiring that the Ombudsman lay bare to the public everything he officially knows.[52] The Ombudsman has taken advantage of his power not to name names, express alarm, and tell all every time a public servant lapses from absolute perfection.

Decisions have been announced with sufficient "blurring" (as one staff member put it) to protect both the complainant and the officials from needless personal embarrassment. An outstandingly able Danish judge, warning against regarding all promulgators of

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[50] Hurwitz, Scandinavian Ombudsman, 12 *Pol. Sci.* 121, 131 (1960).

[51] Hurwitz, The Folketingets Ombudsman, 12 *Parl. Aff.* 199, 208 (1959).

[52] Compare N. Herlitz, Publicity of Official Documents in Sweden, [1958] *Public Law* 50.

adverse discretionary decisions as "sinister power-seeking representatives of the New Despotism," has urged the public to realize that "even cases where administrative decisions are set aside or criticised are not necessarily evidence of bad faith or deliberate error. They ought, in the normal case, to be dealt with in the same spirit as when a judgment is set aside by an appellate court."[53] That seems clearly to be the Ombudsman's view. His press releases have been uninflammatory. They have had a personalized focus when this was necessary to make a point, as when the then head of the University of Copenhagen was criticized for evaluating his son-in-law's doctoral dissertation. But in the generality of cases the Ombudsman has dealt with problems, not with people.

The same is true of the annual reports to the Folketing. They are sober in tone. Individuals are often represented by an initial rather than by a patronymic. The cases that are discussed in detail are a conscientious sampling of the year's work and not a jungle of single instances amidst which the misguided or the malicious might pretend to find the seeds of scandal.[54]

Educational force of Ombudsman's work. The ombudsman institution is designed for educational as well as corrective purposes. Eliminating an isolated imperfection is a worthy objective, but the achievement becomes truly significant if the correction of one error induces avoidance of others. Since awareness of what the Ombudsman has done is a necessary precondition to its being powerfully influential, inquiry into the circulation of his opinions is appropriate here.

The favorable press relations described above have promoted dissemination of the Ombudsman's actions in colorful cases. The Ombudsman makes an effort, too, to reach specialized publications. Decisions particularly affecting the police forces are sent to the editor of a periodical circulated among policemen, and matters of interest to customs officers are similary directed to a magazine devoted to that branch of public service. "Technical" and generalized issues remain to be studied, if they are to be studied at all, only in the pages of annual reports which appear in print in the autumn of the year after the one to which they pertain.

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[53] I. M. Pedersen, The Parliamentary Commissioner, [1962] *Public Law* 15, 21, 23.

[54] The 1963 report, for example, describes only forty-one cases at length; the 1964 report describes only thirty-five. Each annual report contains a comprehensive cumulative index covering all the reports since the first, so that the document becomes a useful research tool and source book for future reference, and not merely a record of transient interest.

Until 1964, only 1700-1800 copies of the annual report were printed. In that year the number rose to 3600 because, the Ombudsman's jurisdiction having been extended to certain municipal activities, the report was for the first time sent to every local council in Denmark. The mailing list includes the members of the Folketing, all sitting judges, each ministry and administrative authority, every police chief, many high-ranking officials, and the top-level provincial administrators.

As every law professor well knows, students' attentiveness and receptivity are variables. Some minds seem impervious to even the most piercing professional thoughts. The Ombudsman, as educator of officialdom, sometimes similarly encounters mental impermeability that blocks the easy circulation of his ideas. His official writings are nevertheless widely and respectfully read. Supreme Court judges "almost always read each report carefully though it has no instant impact on our work;" a provincial governor reads "all the headlines in the report and, in depth, all the cases that bear on my own work, and I think that is what almost all superior civil servants do;" a copy goes to every unit in the Ministry of Justice, where it is circulated among approximately ten professional staff members for a perusal that "is not all routine. The higher up you go in the ministry, the more carefully you read the Ombudsman's report;" in the Finance Ministry, "most high officials really read the reports and most academical civil servants [that is, those with university training, who constitute the corps of professional public officials] at least run through them."

The question then arises whether the lessons the reports attempt to teach are well learned by the report's readers. Some enthusiasts for ombudsmanism have given too easy an answer. They have contentedly supposed that whenever an ombudsman has spoken, all officials have listened. They have imagined that whatever an ombudsman has said should be done has in fact been done for evermore. The realities of life are different. The reformer's lot is not easy, and the Ombudsman is a would be reformer.

The Ombudsman's work has indubitably had a tonic effect upon public administration. A number of administrators frankly acknowledge that laziness has diminished because during the past decade an outsider has been in a position to criticize. Work methods have in some instances been rationalized at the behest of superior officials, impressed by the Ombudsman's suggestions concerning other organizations. Moreover, staffs that had like aging humans become too "set in their ways" have sometimes been liberated from their bondage by the Ombudsman's fresh approach. The director of a maximum

security prison, for example, gives the Ombudsman large credit for his staff's increased receptivity to proposed changes. "Some of our habits were justifiable only because they were easy. Then conservatism — reluctance to try anything different — made us look for other reasons to justify the existing practices. Now the staff is more likely to deal with the real merits of suggestions instead of resisting them simply because they are new," he said.[55] The head of another large organization commented in a somewhat similar vein: "The Ombudsman, coming from the outside, sometimes sees things that are perfectly obvious, but that we have stopped noticing because they are constantly before our eyes."

Despite the Ombudsman's generally wholesome influence, however, some of his triumphs are more apparent than real.

In one much publicized case seven years ago, for instance, the Ombudsman told the police they had no right to keep the fingerprint record of an arrested person who had subsequently been absolved. The Ombudsman's advice was taken in that particular instance; the fingerprints of the complainant were destroyed. But the police have nevertheless continued to take fingerprint impressions and to retain them whether or not the persons suspected have afterward been released as innocent. The Ombudsman's decision has had no lasting consequence beyond the case to which it pertained. "The matter is

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[55] The staff's formerly resistant attitude first brought it into conflict with the Ombudsman in an extremely petty matter. A prison rule forbade smoking in workshops. To facilitate the rule's enforcement each prisoner was allowed to possess only one pipe, which had to be left in plain sight in the prisoner's cell when he was at work elsewhere. A prisoner complained to the Ombudsman. Himself an avid pipe-smoker who knew that a pipe loses its savor if too constantly in use, the Ombudsman counselled against restricting pipe ownership, saying tbat smoking in workshops could be prevented by other means.

Soon afterward prisoners complained that the prison commissary had rejected their request that powdered coffee be made available for sale; they desired to prepare coffee in their own cells at other than meal hours. The staff had voted against granting the request because hot water could not be made constantly available to the inmates. The Ombudsman deemed this unreasonable; he suggested, instead, that hot water be supplied at specified times when it was not needed for other institutional purposes and when most prisoners were in any event allowed to circulate outside their cells.

In a third episode a prisoner wrote the Ombudsman that bathing facilities were inadequately maintained, an objection that had apparently not seemed tonable to the staff members to whom it had first been voiced. When the prison director himself inspected the facilities after the Ombudsman had made an inquiry, he concluded that the complaint was indeed well founded. Suitable corrective steps were then promptly taken.

This succession of incidents, insignificant in themselves, apparently affected staff attitudes profoundly.

still under study," was the euphemistic reply of a high police official when recently asked whether the Ombudsman's opinion had affected police practices.

Similarly, the Ministry of Justice has resisted the Ombudsman's repeated urging that its adverse decisions be better explained, instead of being baldly stated conclusions as at present. Early in 1964 the Minister did at last appoint a committee to study the feasibility of adopting the Ombudsman's ideas.

Failure to formulate the reasons underlying an administrative judgment has been a prolific cause of complaint to the Ombudsman; often the Ombudsman's explanation of a previously incomprehensible decision has seemingly sufficed to make it acceptable. [56] In any event, whenever the Ombudsman has asked for elucidation of a determination concerning which he has received a complaint, the ministry has had to articulate its reasoning and has been unable merely to say, as did an official during a recent interview, "Maybe ten things are involved at the same time; it isn't easy to explain just what each of them contributed to the final result; judgment is more subjective than objective." Sooner or later every ministry encounters what Julius Stone calls the insistence that "even logically uncompelled choices are to be made with reasons publicly examinable." [57] The

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[56] See Hurwitz, *op. cit., supra* note 30, at 20: "Since in many instances the administration gives no reasons for its decisions, and since the complainant does not often have sufficient knowledge of the basis for the decision in question he often does not understand it. In many instances, by giving a detailed explanation of the whole matter, it has been possible for the Parliamentary Commissioner to make the complainant understand that the treatment of the case and the decision taken, gives no occasion for criticism."

And see also I. M. Pedersen, The Danish Parliamentary Commissioner in Action, [1959] *Public Law* 115, 121: "Quite often it is very difficult for [applicants] to grasp the principles behind the exercise of discretion especially if the subject is complicated and highly technical. In such circumstances a quick answer and a politely worded letter giving detailed reasons for the decision may not reconcile an applicant to an adverse decision, but it may lessen his irritation considerably and convince him that his case has been given careful attention. And as conditions of modern life seem to necessitate an ever-expanding administration it becomes increasingly important to establish good relations between official and the public."

[57] J. Stone, Reasons and Reasoning in Judicial and Juristic Argument, 18 *Rutgers L. Rev.* 757, 769 (1964).

The Ministry of Social Affairs has, alone among the ministries, been under statutory command for the past thirty years to state the reasons for its decisions. in a major area of administrative activity. A spokesman for that ministry described the requirement as "burdensome," but added his belief that the decisions are better because of the necessity of formulating reasons.

Ministry of Justice appears to a foreigner to have been unduly slow to heed the Ombudsman's counsel about giving explanatory statements. But the fact remains that the ministry dragged its heels (rather than clicked them) after the Ombudsman had spoken.

A similar intransigence appeared when the Ombudsman recommended that reports of police investigations into traffic accidents be readily shown to the persons involved, as is done in some but not all localities. The Ministry of Justice rather brusquely replied that it had considered the suggestion, but saw no reason to change existing practices. The matter remained under negotiation for several years while the Ombudsman unsuccessfully sought acceptance of his views.[58]

Repeated suggestions that administrative agencies provide fuller information about their internal procedures, so that the availability of appellate opportunities might become better understood, have generated few if any discernible advances. This has been one of many procedural proposals put forward by the Ombudsman, who has been especially keen to maintain a high level of rectitude in administrative practices. His ideas in the field seem eminently sound; his efforts to create, as it were, a common law of administrative procedure deserve applause.[59] But administrators, when asked point-blank whether their own methods had been changed, often responded simply (though not persuasively) that the Ombudsman's suggestions were not pertinent to their agencies' proceedings.

Sometimes, of course, change comes slowly, not in a sudden rush. Perhaps, therefore, the enduring influence of the Ombudsman's proposals can not yet be fully gauged, for some that have seemed to have narrow effects may in fact gain added support as time passes. An administrative procedure act of 1964 embodies two ideas adumbrated by the Ombudsman's criticisms in previous years, and possibly those criticisms hastened the new enactment.

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[58] The matter is discussed in the Ombudsman's annual reports for 1961 (at pp. 152-154), 1962 (at pp. 15-16), and 1963 (p. 14).

[59] Pedersen, *op. cit., supra* note 56, at 117-120, points out that Danish administrative law has laid down few procedural rules to guide administrators. Among the Ombudsman's contributions in this field, the author notes, have been criticizing *a)* an agency counsel's failure to disclose documents in the case file, *b)* a tax board's entering an adverse decision without affording opportunity for argument, *c)* use of *ex parte* evidence, and *d)* an appellate board member's sitting in review of a decision in which he had participated at a lower level; *e)* advising about processing auto drivers' license suspension cases; *f)* suggesting that applicants be informed of the cause of delay in acting on their cases; *g)* proposing that an unsuccessful license applicant be advised that denial of the license may be judicially reviewable.

Candor requires the statement, nevertheless, that until the present many of the Ombudsman's suggestions have been unproductive. While his proposals for legislative development (growing out of his consideration of particular cases) have not been ignored, some have been shelved without action. The Ombudsman has on the whole been rather unpugnacious when his advice has been unheeded. He has said that if one of his recommendations is not adopted and if he "feels that it is of appreciable importance that a change or correction be made," he can then "report the matter to Parliament which may take up the question with the Minister responsible." [60] In fact he has almost never sought to enlist parliamentary support when agreement has not been negotiable. One may speculate that the reasons are twofold: first, that he has been unsure of winning; second, that he has concluded that cooperative relationships with the major administrative organs will in the end bring more victories than would a heavily wielded bludgeon.[61]

Since nobody enjoys having his nose tweaked, the Ombudsman exercises a fairly cautious judgment about getting into fights he will probably lose. An especially astute Danish observer, discussing instances of non-conformity with the Ombudsman's proposals, made this concluding comment: "The Ombudsman is a devoted man, acting without partisan bias, neither for nor against the government in power. But at the same time he exercises what you might call a political judgment about what the ministries and civil servants will take from him. His work would fail if they did not, at bottom, support it. Knowing that, he does not go very far up paths they are unwilling to follow. The reason you do not find more cases of non-compliance than you do is that the Ombudsman does not often give advice unless he believes it will likely be taken."

The Ombudsman's big reach. The remark just quoted suggests that the Ombudsman prudently conserves his powers of persuasion. It should not be read, however, as an intimation that the Ombudsman has been timid. As a matter of fact, some doubt may be expressed as to whether he has undertaken to do too much rather than too little.

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[60] Hurwitz, *op. cit. supra* note 30, at 11. The governing statute provides (Sec. 10) that if the Ombudsman "informs the Folketing... of a case, or if he brings up a case in his annual report, he shall, in such information or in his report, state what the person concerned has pleaded by way of defence".

[61] His attitude in this respect, one may note in passing, has caused confusion or uneasiness in some quarters. A high official of a teachers' union, for example, declared that his organization regarded the Ombudsman as "Ministry-minded". It would therefore not have recourse to him if access to the courts were possible, despite the expense involved in seeking judicial redress.

He has, for example, sometimes come close to entering into competition with the Organization and Methods Office of the Finance Ministry, an internationally known body whose aid has been widely sought to improve the internal structures of governmental agencies. If what is needed is simple advice that an official should maintain a record of cases in his office to enable him to detect undue delays (advice given not long ago to a branch of the Education Ministry), the matter no doubt lies within the "common sense" competence of a generalist like the Ombudsman. If more searching investigations of organization or methods seem desirable, perhaps the Ombudsman should not make them himself (as he has done),[62] but should instead call upon the specialized staff agency created for just such purposes. In one instance he approached doing so; the Ombudsman proposed to a Minister that a study be made of a subordinate unit, the Minister requested the Organization and Methods Office to do the job, and the study was successfully completed.

Another staff agency with which the Ombudsman has almost competed is the "Revision Department," an examiner of official accounts that reports to the Folketing concerning the propriety of all expenditures of public funds. Upon complaint of the Royal Danish Automobile Club the Ombudsman allowed himself to be drawn into a long-simmering controversy about the propriety of spending certain motor taxes (the "road millions," as they had become popularly known) for purposes unrelated to automobile traffic. The matter had already been extensively discussed in the Folketing and the issue seemed, in any event, entirely suitable for consideration by the Revision Department. Undaunted, the Ombudsman proceeded to study the merits, concluding that no criticism by him was in this instance suitable. Had he reached the contrary conclusion, confusion and conflict would have been the most likely products of his labor. Since the Ombudsman is empowered to look into the actions of all "persons acting in the service of the State," no doubt he can concern himself with officials' disbursements of public moneys. Since, however, a professional agency exists for that specific task, his undertaking the assignment may be a misapplication of energy.

[62] Compare Hurwitz, *op cit., supra* note 30, at 30: The Ombudsman has not only investigated complaints about delay, "but has also undertaken a more detailed investigation of the whole system for the dispatch of current business in that office, with a view to the possibility of achieving a reduction in the time usually involved, by changes in the methods hitherto followed in the disposition of such business. As a rule these investigations have resulted in a recommendation from the [Ombudsman] to the responsible Minister suggesting that an attempt be made to implement the necessary changes in method or system."

Overextension may unfortunately be an inherent element of the ombudsman system. Those who vaunt the system greatly stress the importance of the Ombudsman's personality and his directly participating in every phase of official superintendence. This emphasis upon personalism may discourage the Ombudsman's using other governmental resources, lest he seem to have adopted "bureaucratic methods" and to be "passing the buck." In plain fact, however, a single official, aided only by a handful of assistants, cannot encompass all of organized society's problems. Ombudsmen everywhere tend to stretch themselves as close as possible to the unrealistic limits fixed by uninformed public desire. While unwillingness to stretch at all would be deplorable, willingness to stretch too far has its perils, too.

A problem of Danish public administration may perhaps serve illustratively. Child welfare programs of every kind are locally and somewhat inexpertly administered in Denmark. While the Ministry of Social Affairs is at the apex of the governmental pyramid, its involvement in decisional processes is sporadic and its superintendence of a traditionally communal activity has not been insistently firm. In recent years the methods of local bodies and various other aspects of child care have attracted the Ombudsman's interest. He has been in no position, however, to make the extensive surveys that might yield full insight into the problems of this branch of public administration. Improving the organization, standards, and procedures of child care agencies lay beyond his capabilities realistically, because in the nature of things his contributions would perforce be episodic rather than comprehensive.

At hand for possible use in matters of this nature is a tax supported institution — the Socialforskningsinstituttet, or Social Research Institute — specifically designed to conduct field researches and make empirical studies. This organization, staffed by persons with civil service status on the Ministry of Social Affairs payroll but having its own independent board of directors, can function as a national bureau of applied social research or, perhaps one might even say, as a social ombudsman. When resources like this fortunately exist, the Ombudsman might be well advised to use them rather than rely chiefly on his own capacity to draw valid general conclusions from sometimes extremely limited data.

Despite the breadth of his initial jurisdiction — which, it will be recalled, embraced every phase of national administration, military as well as civil, other than the judiciary — the Ombudsman has sought to add to his domain. He has been somewhat dissatisfied with the 1962 statutory grant of limited power to oversee local administration; probably his authority in that respect will be further enlarged in the

course of time. In 1964 he became enmeshed in controversy with the legal profession because he had entertained complaints against lawyers who had been designated and paid by the Ministry of Justice to serve impecunious clients. In his view they were "persons acting in the service of the State" and therefore within the Ombudsman's reach. He even intimated that lawyers as a class might be regarded as suitable objects of his concern since they perform a public function with a status derived from law. Discussion between the Ombudsman and the chairman of the Bar Association produced a retreat but not a complete surrender. The Ombudsman did agree that future complaints should in the first instance be handled by the Bar Association and he did withdraw any pretence of present jurisdiction over the entire profession.[63]

What the Ombudsman does best. The Ombudsman's greatest effectiveness appears in cases that involve departures from accepted norms, and not in cases where he must deal with clashes of values. He can usefully dispose of dissatisfactions engendered by an official's having strayed from common patterns of rightful conduct. Such cases, important though they may be to the persons immediately concerned, are likely to have petty dimensions.[64] They touch individuals

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[63] A letter from the Ombudsman to the Advokatradet, dated June 10, 1964, reads in part as follows: "At a meeting with the chairman... we agreed upon the following lines concerning the Ombudsman's jurisdiction over lawyers:

> "We agreed to avoid bringing the question to a head, but to consult one another if doubtful issues arise.
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> "From my point of view it was essential to seek agreement that the Ombudsman could sometimes be of assistance in dealing with complaints against the conduct of lawyers who had been designated to render free legal aid to clients.
>
> "If such cases arise hereafter, the Ombudsman will in each instance refer the complaint to Advokatradet, with a request to be informed about what is then done in that matter. Should problems emerge that seem suitable for special discussion, this can be arranged at the time.
>
> "As for the conduct of members of Advokatradet in general, I am willing to disclaim jurisdiction (as, in fact, has been the actual practice in the past), but I should nevertheless like to be informed about Advokatradet's attitude toward complaints that may arise, so that I may be in a position to initiate negotiations with Advokatradet if special reasons appear.
>
> "These understandings should eliminate the possibility of future conflict, but each question that may arise can be taken up for negotiation if the circumstances of a particular case warrant."

[64] Examples taken at random from the Ombudsman's report for 1962: *a)* A disabled person applied in January for special public assistance in order to obtain a telephone. A favorable decision on his application was made in March, but was not communicated to him until June, negotiations between the public authority and the telephone company having meanwhile occurred. The Ombudsman thought

and not society in the broad. In a sense, the Ombudsman is at his best when, like an American labor arbitrator, he deals with concrete grievances involving a claimed disregard of established rights. When cases lose personal focus, when they involve the community, the Ombudsman's touch is far more tentative and the chance of producing a concrete result is greatly lessened.[65]

Estimates of the Ombudsman's success. In the manageably narrow cases — the ones that involve applying accepted principles to unclear facts and the ones in which a sage jurist can enunciate new principles that commend themselves so quickly that they seem to have been accepted already as "natural justice" — the Ombudsman's

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that the time lapse was in this instance justifiable, but that the applicant should have been more speedily informed about what was happening (p. 38). *b)* A prisoner complained that money taken from his cell so that the police could investigate whether he had gained it legally, had not been returned to him until nine months after the police investigation had in fact ended without producing any evidence of illegality. The Ombudsman said that the prisoner's property should have been returned more promptly, and the police apologetically agreed (p. 30). *c)* An institutional employee had made a written request that had been forwarded by her immediate superiors to the Ministry concerned. The Ministry made a negative response to the request. The employee was informed of this by telephone. She complained to the Ombudsman that she was entitled to have a written rejoinder to her written letter. The Ombudsman agreed (p. 38).

[65] The 1962 report provides a good example at p. 52. Professor Steen Eiler Rasmussen, one of Denmark's leading authorities in the field of city planning, complained to the Ombudsman that Copenhagen had not been forced to adopt suitable plans, as required by law, for developing the Slotsholmen area, in which are located the parliament building, the stock exchange, and many public offices and in which a new governmental office structure had been commenced. Contending also that the Ministry of Housing could not impartially review decisions of the Copenhagen municipal authority concerning state-owned sites, he urged that such decisions be referred to an external board of experts. The Ombudsman wrote a long essay on the history of city planning laws and their administration in Denmark, reviewed the literature on the subject, found longstanding discord between law and practice, concluded that he could not criticize the absence of planning for Slotsholmen, and requested the Minister of Housing to broaden the terms of reference of an already existing study committee so that it might consider how area planning should be done. As for the suggestion that the Ministry of Housing should give way to some other appellate body, the Ombudsman engaged in a political science discussion, concluding that inevitably the State may have a proprietary interest in matters that must in the end be decided by public authorities of one kind or another, but the authorities should not be deemed incapable of making just decisions on that account.

One's imagination staggers at the thought of the Ombudsman's deciding otherwise than he did. He could not singlehandedly remake Copenhagen or supplant one appellate authority by another that would have to be endowed with powers not yet in existence.

work seems to have been almost spectacularly successful from the standpoint of citizen and official alike.

"The Ombudsman is squeezing the arrogance out of government," said a prominent social scientist. "Decisions are quicker all down the line," said an attorney. "The Ombudsman is a safety valve and all of us feel more satisfied than we did before," said the head of a major women's organization. "The civil service exercises power more justly, it is prompter, its methods are fairer," said a business leader.

"The Ombudsman has done us a lot of good. The public is likely to accept his decision and to stop grumbling at us after he has upheld us, as he does most of the time," said a ministry official who is also an official of a superior civil servants' union. "We have about 20,000 cases a year here, and there is bound to be some dissatisfaction with decisions. The Minister personally interviews complainants one day each week, seeing about twenty of them on each of those days. We all work hard on complaint cases, and still the dissatisfaction remains. Then people go to the Ombudsman, whom they regard as sitting on top of all the ministries. He gives his opinion and that's the end of the matter. Everybody seems to be satisfied once he has spoken," said an official in a second ministry. "Some persons have come in here again and again and have gone away without ever feeling they had received justice. Then they want to know where else to go and we suggest the Ombudsman. He makes a decision, maybe exactly the same as ours, but they respect him and accept what he says as just and as final," said yet a third ministry official.

Since remarks like these, uttered with obvious sincerity by both private persons and public servants, could easily be multiplied and since contrary sentiments are simply not heard, perhaps they should be accepted unhesitatingly. Their rather intangible underpinnings do nevertheless raise tiny uncertainties. For example, the business leader quoted above had never heard of a businessman who had turned to the Ombudsman; he personally knew nobody of any description who had done so; and he could not think of a single thing that might in any way serve to illustrate the asserted improvements in civil servants' justice, promptitude, or methods. The governmental spokesmen who say that the Ombudsman's words transform malcontents into cooing doves have no evidence of this fact other than that complainants fall silent. This quietude, for all anyone surely knows, may reflect despairing realization by still disgruntled passengers that they have reached the end of the line without yet arriving where they had wanted to go.

In the absence of any scientific sampling of the opinions of unsuccessful complainants, estimates like those quoted above may

be accepted. But they remain only estimates until confirmed by fuller evidence than is now available.

An outsider, scantily acquainted with Denmark, is poorly situated to offer a confident evaluation of what the Danish Ombudsman has accomplished. A few diffident impressions are, however, offered in conclusion.

First, ombudsmanship works in small ways its wonders to perform. Too exalted expectations are a disservice to the institution. The Ombudsman can be important without constantly dealing with important matters, just as judges are important though they deal chiefly with picayune conflicts. An Ombudsman's accomplishments are likely to be interstitial. He cannot create a solid structure of public administration. He can only do a bit of patching and sewing of minor rents in a basically sound fabric.

Second, the Ombudsman's greatest role is that of teacher rather than governor. He does not command. He persuades. Like most teachers, he will have to repeat his lessons often for the benefit of the slow learners; and even then some of his pupils will fail to absorb them. In any event, he cannot perform the work of an entire faculty. He succeeds as he does in Denmark because that country's civil servants have many other good teachers, notably their own colleagues and the high traditions of Danish officialdom.

Third, the Ombudsman should not be viewed as an acceptable substitute for parliamentary or ministerial responsibility. Because he is so readily identifiable, so embraceable as a kind of father-figure, some of his countrymen may call upon him for too large tasks of statesmanship; and, being devoted to rendering public service, he may be tempted to respond. The broad contours of public administration — how much power is to be conferred, for what purposes, upon whom, to be exercised by what means — are primarily questions for political determination. No matter how able an ombudsman may be, no matter how venerated he may be by the public, he cannot supplant the political processes that in the end control the administration of public affairs.

No panacea for the cure of governmental ills exists. The greatest injustice to the Ombudsman would be to regard him as the possessor of a cure-all.