

THE YALE LAW JOURNAL

VOLUME 75

NOVEMBER 1965

No. 1

THE SWEDISH JUSTITIEOMBUDSMAN*

WALTER GELLHORN†

HOW IT ALL BEGAN

MUCH of the Swedish Constitution of 1809 has been forgotten; its delineation of royal powers and parliamentary structure has little relevance to today's realities. But the office it created, that of the Justitieombudsman, has lived and grown. It has inspired similar establishments in Finland, Denmark, Norway, and New Zealand, and has added the word "Ombudsman" to the international vocabulary.¹

When in 1713, Swedish King Charles XII appointed a representative, an Ombudsman, to keep an eye on the royal officials of that day, he simply responded to the passing moment's need. He was bogged down in seemingly endless campaigns at the head of his army and in diplomatic negotiations that followed them. And so, very possibly ignorant that an overly-occupied Russian monarch had previously done the very same thing, he sensibly commissioned a trusted subordinate to scrutinize the conduct of the tax gatherers, the judges, and the few other law administrators who acted in his name at home.

What had begun as a temporary expedient became a permanent element of administration, under the title of Chancellor of Justice. A century passed. The fortunes of the monarchy ebbed and then again grew large, but at last royal government was bridled and Sweden took hesitant steps toward representative democracy. Nothing would do then but that the parliament should have its own overseer of adminis-

* Copyright 1965 by Walter Gellhorn. The substance of this article will appear in a volume to be published by the Harvard University Press in 1966.

† Betts Professor of Law, Columbia University.

1. Historians, intent upon demonstrating that there is nothing new under the sun, have sometimes discerned resemblances between the Ombudsman and the Roman tribune of the people, the "censors" in seventeenth century American Colonies, or even the Control Yuan that functioned in China during the Han Dynasty, 206 B.C.-A.D. 220. See, e.g., W. HALLER, *DER SWEDISCHE JUSTITIEOMBUDSMAN* 16-27 (1964). But the nineteenth century Swedes who created their ombudsman were probably not antiquarians, nor have the later creators of ombudsmen looked farther than Sweden for inspiration.

trative behavior. The king had his man; let parliament have its man too, as a safeguard against royal officers' disregard of law. In 1809 a constitution, hastily composed during a period of domestic and international strife, defined new relationships between monarch and subjects. Among other things, it provided for a watchman over the law's watchmen who, unlike the already existing king's inspector, would report his discoveries to parliament.

Yet, despite the antiquity of the office and the present enthusiasm for the ideas that underlie it, the scope of the Swedish Ombudsman's power and his means of employing it are inadequately understood abroad. Foreign discussions have sometimes so romanticized this highly worthy Swedish governmental institution that a fresh look at actuality may now be useful.

SWEDEN'S GOVERNMENTAL SYSTEM

In order to understand the role of Sweden's Ombudsman, one must first understand the Swedish governmental structure as a whole. It little resembles that of other twentieth century constitutional monarchies with which western jurists are familiar. A country about the size of California with less than half of California's population governs itself admirably by means deemed outmoded elsewhere.

The Swedish king no longer exercises political power, though, in form, all important governmental decisions are his. The decisions he purports to make are in fact those of the seventeen Councillors of State who are generally characterized as cabinet ministers (in truth only the Prime Minister and the Foreign Minister officially bear a ministerial title). Ministers, chosen by the Prime Minister alone, need not be members of the Parliament, though all are entitled to address it. Most importantly for purposes of the present discussion, ministers do not head large administrative departments for whose functioning they bear ultimate responsibility. Ministries are small bodies, rarely with as many as a hundred employees including the lowliest clerical and custodial personnel. Their function is not so much to administer as to plan. They prepare Government bills and budgetary proposals, they promulgate regulations when specifically empowered by Parliament, they issue directives that may guide but do not necessarily command administrators,² they allocate funds and make appointments, and they entertain appeals that, in some classes of administrative matters

2. See N. Herlitz, *Swedish Administrative Law: Some Characteristic Features*, 3 SCAND. STUD. IN LAW 89, 93-94, 100 (1959). And compare F. SCHMIDT and S. STRÖMHOLM, *LEGAL VALUES IN MODERN SWEDEN* 26-30 (1964).

described below, may be addressed to the King. Action on these appeals is taken nominally by the King in Council, but the collective decision is almost invariably a routine confirmation of a minister's judgment, for the weekly session of the King in Council disposes of literally hundreds of matters within perhaps half an hour. Important issues are of course dealt with by more leisurely intra-Cabinet discussions, as well as by searching consultations between ministerial officials and others whose expert opinions or interested views may be relevant. The significant point to note here is, simply, that except for the Foreign Office, ministries are not themselves administrative bodies, nor in any immediate sense responsible for administration by others, though they assuredly influence administration by deciding appeals. The Cabinet or an individual minister may occasionally be under political fire for acts of administrative bodies structurally subordinate to him because their budgets pass through his ministry and appeals from them to the King are considered by him; but when this occurs, a minister may hunt with the hounds, joining in verbally castigating the administrators or promising to investigate them.

As for Parliament, its two chambers must approve and may amend proposals submitted by the Government—that is, by the Cabinet. Its 382 members—among whom are many local officials, a number of teachers, a few civil servants, and a handful of lawyers—may themselves initiate proposals only during the first fifteen days of each annual session. Parliament does not investigate individual administrators or the conduct of public administration in general; the Constitution, indeed, actually forbids parliamentary consideration of specific administrative acts, though discussion of general principles is permissible.³ As a result of such a discussion, Parliament does at times request a ministry (or a ministry can decide on its own initiative) to create a "commission" to consider problems that may call for new legislation. Members of Parliament may serve on a commission of inquiry, along with specialists drawn from any source, the secretariat being provided by the suitable ministry. Commissions, let it be stressed, are not primarily investigators or critics of the past. They are students of what should be done in the future by general legislation. A commission report, when

3. Article 90 of the Swedish Constitution provides in part that "matters relating to the appointment and removal of officials, the decisions, resolutions, and judgments of the executive or judicial authorities . . . shall in no case or manner be subject to consideration or investigation by the Riksdag, its chambers or committees, except as literally prescribed in the fundamental laws."

Compare S. Jägerskiöld, *The Swedish Constitution: A Survey*, 58 J. INDIAN L. INST. 1, 5, 17 (1963).

presented (probably after several years of deliberation), is circulated by the ministry for comment by all concerned. The report and the reactions to it may shape a later Government bill. The work of a Swedish commission rarely resembles American congressional investigations which, while nominally in aid of legislative understanding, are more often than not thinly veiled assaults upon administration of laws already in force.

If, then, Swedish public administration is subject to scant ministerial or parliamentary control, where does supervisory power lie? For a foreigner unattuned to the unwritten subtleties of Swedish government, that question is extremely difficult to answer. One is tempted to say outright that supervisory power is non-existent, each official being answerable only to The Law and his own conscience rather than to some higher official. No doubt that answer would ignore the realities of human relationships, for most persons find life easier when they follow orders than when they assert independence. Nevertheless, to a degree far beyond the generally accepted concepts of modern administration, a Swedish official is bound to apply statutory law as he alone believes it demands. If his belief differs from others', his is the one that counts. In some fields, however, Parliament empowers the King (that is, the King's ministers) to prescribe how statutes should be interpreted; thus uniformity may be nurtured.

In structure much of the responsibility for carrying out the commands of statutes and the Cabinet policies that sometimes elaborate them has been laid on "central administrative boards," each dealing with an indicated field—as, for example, social welfare, prisons, health, housing, social insurance, forestry, fisheries and agriculture. Each board has at its head a Director General, appointed by the Cabinet for a term of years or for life; the board members are full-time senior officials, sometimes with the addition of part-time representatives of special interest groups. When boards have overlapping concerns (as might occur, for instance, in connection with forestry and agriculture), they are expected to cooperate; no ministry can make them do so. The boards do not, however, have direct access to Parliament. Their budgetary demands come under ministerial scrutiny, as do their recommendations of new substantive legislation. So a strong measure of political control remains, for the boards are not free to make their own grand designs. Moreover, as has already been suggested, individual decisions of central boards may as a rule be appealed to the King in Council, so that a ministry may occasionally upset a board's judgment in a particular case. Reversal of a board's action in one case does not,

however, bind its behavior in the next, for the board remains duty-bound to obey The Law (as it conceives The Law to be) instead of obeying the Minister. One may suppose, realistically, that no official enjoys being reversed on appeal, so that reversals do no doubt shape future decisions in fact. Moreover, a rebellious or opinionated official is unlikely to be promoted rapidly, so here again the realities of life make for considerable uniformity of decision despite the officers' seeming freedom from ministerial control. In short, a Minister may possess a substantial measure of informal authority beyond what appears on the pages of law books.

Theoretically, a central board's independence is shared by the board's subordinates. An underling who thinks The Law is on his side may disregard a contrary view in superior quarters. If he does so, his superior may detest him, but may not discipline him severely.⁴ The serious punishment of all but the most minor civil servants—and especially the ultimate punishment, removal from office—is left largely in the hands of courts of law. An official may thus be penalized for wrongdoing, but, for practical purposes, only by a judicial decree after a formal trial and not by the methods of personnel administration ordinarily utilized by sizeable organizations.⁵

What has been said about civil administration is true, equally, of judicial administration in all its ramifications. Judges are not hierarchically organized so that the decisions of a higher tribunal control the work of the lesser courts. Each judge applies the law as he sees it. He may of course be influenced by the reasoning of other jurists whom he respects. He nevertheless remains free to determine whom he does respect, and how strongly. He and he alone is responsible for the correctness of his judgments.

Similarly, each public prosecutor must do his duty according to The

4. A 1964 case involving the central administration of the Swedish prison system suggests how difficult it is to centralize administrative responsibility. The governor of a prison ordered an assistant to assume certain duties. The assistant refused. The governor then asked the Legal Division of the prisons administration whether he could discipline the assistant in some way. The Legal Division instructed him not to do this because, among other things, the disobeyed order had not been in writing. The prison governor then complained to the Ombudsman that the central administration was not doing its duty. The Ombudsman proceeded to investigate this complaint by a subordinate official that his superiors would not support him against one of his own subordinates.

5. See S. Jägerskiöld, *Swedish State Officials and Their Position under Public Law and Labor Law*, 4 SCAND. STUD. IN LAW 103 (1960). A superior's imposition of an administrative disciplinary measure (such as transfer to a new assignment) is subject to de novo review by the Supreme Administrative Court. In 1963 the Court received 28 cases of that kind for review. Sweden has some 180,000 civil servants and officials, and additional thousands of public employees of other grades.

Law. True, a Supreme Prosecutor sits in Stockholm, attempting to harmonize the actions taken by prosecutors throughout the nation. But he is more counsellor than commander. The Law gives the orders.

How, one may well ask, can this individualistic system of public administration, perhaps well suited to a day when communities were scattered, communications were slow, and problems were few, meet the needs of a highly organized society? In part it does so simply because the individuals within the system are well educated, conscientious, and uplifted by professional morale; Sweden has long had a thoroughly justified pride in its able and honorable public servants.⁶ Furthermore, for all the folklore about "the stubborn Swede," willful adherence to opinion is not commonplace among officials; they seek consensus rather than dissent and are therefore receptive to other officials' views even when not, in theory, forced to accept them. Thirdly, to a degree far beyond the usual, Swedish officials function in the proverbial goldfish bowl. Their files are, with stated exceptions, open to the press and the public at large, so that reckless or too highly personalized patterns of action can perhaps be discerned and criticized more readily than in other countries; even papers bearing upon matters still under consideration are available to inquirers.⁷ Fourthly, since each official must apply The Law as he understands it, care is taken to draft statutes that cannot admit of many diverse readings, and the "legislative history" of each bill is carefully compiled so that doubts will not later arise about the intended purposes of a new law; explicit statutory detail reduces the area of administrative choice and thus the risk of administrative aberration, but, perhaps offsetting this virtue, it increases the administrative rigidity sometimes denounced as "bureaucratic inflexibility." Fifthly, statutes sometimes explicitly authorize the issuance of regulations or general instructions that will diminish the range of individual officials' choice. Finally, individual administrators' judgments

6. As has occurred in many other countries, however, Sweden now faces a real risk that talents needed in its public service will be drained off by other respectable and more remunerative callings. In times past officials were compensated highly not only in esteem but also in salary. The respect given them remains high, but not their income. Since 1900 the real income of workers in industry has increased about 250 per cent; that of agricultural workers nearly 400 per cent. The median real income of salaried employees has risen proportionately. During that same period the real income level of civil servants has remained stationary, so that, relatively to others, the financial position of public officers has been declining. The possible impact of this decline upon the prestige of the civil service cannot be wholly ignored.

7. For effective discussion of the scope of the publicity principle and its application, see N. Herlitz, *Publicity of Official Documents in Sweden*, 1958 PUBLIC LAW 50; H. Blix, *A Pattern of Effective Protection: The Ombudsman*, 11 HOW. L.J. 386, 387-89 (1965).

are, in varying degrees, subject to review by others, first within their own official establishment (such as a central administrative board) and then by appeal to the King, that is, to the cognizant minister.

When the volume of appeals became too great for effective consideration, Sweden in 1909 created a Supreme Administrative Court to which certain classes of cases (preponderantly those involving taxation) now go instead of to the King in Council.⁸ The Supreme Administrative Court has all the powers, in respect of the cases it is given to decide, that were formerly exercised by the King in Council; it can concern itself with issues of discretion as well as legality and can enter the finally dispositive orders it deems correct.⁹ A separate Supreme Court for Social Insurance has similarly taken over the final power to consider appeals from administrative judgments in its field. While a decision by one of these high administrative organs disposes only of the immediate case, the tribunals are so greatly respected that, without formally recognizing the doctrine of *stare decisis*, administrators do in fact pay great attention to their well-indexed volumes of judgments rendered.

8. B. Lagergren, *Le Conseil d'Etat de Suède*, 15 INT. REV. ADMIN. SC. 22 (1949). And see also N. Herlitz, *Swedish Administrative Law*, 3 SCAND. STUDIES IN LAW 89, 95-99, 104-07 (1959).

9. The Supreme Administrative Court has sixteen members who sit in three divisions, handling more than four thousand cases annually. The nature of its work is revealed by the following statistics culled from recent annual reports:

<i>Activity primarily concerned</i>	<i>Cases decided</i>	
	<i>1962</i>	<i>1963</i>
Agriculture	35	40
Communications	1,790	1,516
Culture & Education	59	62
Defence	2	4
Finance	1,628	1,746
Interior	282	376
Justice	215	140
Public Employment	34	20
Social Welfare	284	300
Trade	21	69
Totals	4,350	4,273

The backlog of undecided cases rose from 6,571 in 1961 to 7,127 in 1963. Of the undecided cases as of the end of 1963, 5,796 involved tax matters, which provide the bulk of the business now flowing into the court.

An Administrative Court of Appeals initially considers appeals in certain classes of cases having to do with public finances, including tax controversies which are further appealable to the Supreme Administrative Court.

As for the ordinary courts of law, they have power to apply the penal law to administrators—and nothing more. They cannot command an official to do an act, nor restrain its being done. They cannot issue declaratory orders that constitute authoritative interpretations of applicable law. They have no role to play, in short, in securing sound administration or in forestalling bad administration. They can only punish an administrator for having violated the law.

That power, however, is broader than it seems, for in Sweden an official commits the crime of "breach of duty" if through "negligence, imprudence, or unskilfulness" he fails to act in the manner required by a statute, a valid regulation or direction, or "the nature of his office;"¹⁰ and the court, when it finds the "crime" of negligence or incompetence to have been committed, may punish it by fining, imprisoning, suspending, or dismissing the sinning civil servant.¹¹

The judges themselves, it may now be remarked, are also civil servants, subject like the rest to being prosecuted for carelessness and ignorance without more. Lower level civil servants may be prosecuted in courts of first instance. The judges of those courts, along with superior civil servants and the heads of most Central Administrative Boards, are triable before a Court of Appeals. Appeals Court judges and the heads of a few Central Administrative Boards are triable before the Supreme Court. Ministers and members of the Supreme Court or the Supreme Administrative Court are triable only before a Special Court of Impeachment, which fortunately has had no occasion to convene for well over a century.¹²

In a technical sense the Ombudsman fits into this system of individual instead of institutional responsibility simply as a prosecutor who can proceed against official wrongdoers (or non-doers) before the tribunals authorized to mete out punishment. The technicalities of the Ombudsman's power do not, however, describe its actualities.

10. SWEDISH PENAL CODE, ch. 20, § 4.

11. A civil servant may also be required to pay damages to a private person he has injured; but a suit for damages cannot be privately initiated against a higher civil servant or against a judge. Only if the competent public prosecutor supports the claim against such an official can the possibility of assessing damages be considered. Compare S. D. Anderman, *The Swedish Justitieombudsman*, 11 AM. J. COMP. L. 225, 228 (1962): "The statutory coverage is so broad that were citizens left free with this weapon, the resulting harassment of public officials would unduly limit their effectiveness in office."

A private civil action for damages can, however, be maintained against a lower civil servant even if the public prosecutor has declined to prosecute, having found no breach of duty. Civil suits of that nature are said to be extremely rare; for practical purposes one may conclude that the possibility of private redress hinges on the public prosecutor's appraisal of the action or non-action which allegedly caused the injury.

12. See S. Jägerskiöld, *The Swedish Constitution: A Survey*, 5 J. INDIAN L. INSTR. 1, 9 (1963).

THE SELECTION OF THE OMBUDSMAN

The Swedish Constitution declares simply that the Ombudsman should be a person of "known legal ability and outstanding integrity."¹³ He is chosen by forty-eight electors, twenty-four from each chamber of the Parliament, themselves reflecting the proportional strength of the political parties in that chamber. The electors have only fifteen days in which to agree upon their choice. Because this leaves little time for exploration and discussion, at least preliminary canvassing of possibilities has sometimes been undertaken by the party leaders. As a matter of tradition, however, partisan considerations rarely weigh heavily. From the earliest days of the office the Ombudsmen have usually been drawn from the judiciary. Neither the press nor the citizenry seems to have taken much interest in past elections or speculated about possible future candidates. Those finally chosen have had solid professional capabilities that were unlikely to have been noticed by the public at large; as one parliamentary leader put it, "The man we select does not lend distinction to the office; the office distinguishes him." The Ombudsman now in office, Alfred Bexelius, had been a member of the career judiciary for thirty-four years and had served as Deputy Ombudsman before being elected to his present post.¹⁴

The Ombudsman's term of office is four years. His salary equals that of a Supreme Court Judge. Parliament may remove an Ombudsman during his term, though it has never done so. Reelection is possible, though service beyond three terms (that is, twelve years) is highly unlikely. An Ombudsman who is not reelected when his term expires may resume his previous career or may choose to be pensioned.

So far as can humanly be achieved, the Swedish system immunizes an Ombudsman against the political pressures of the day. He has absolutely no responsibility to the Government (the Cabinet) or to any of its elements. He reports annually to Parliament. His parliamentary relationships are with the First Law Committee, which happens to be under the chairmanship of an Opposition member.¹⁵ Such complaints

13. Art. 96, in an official English translation by SARAH V. THORELLI, *THE CONSTITUTION OF SWEDEN* (1954).

14. The Deputy Ombudsman is chosen in the same manner as is the Ombudsman himself. He is answerable directly to Parliament rather than to the Ombudsman. In the original conception of the office the Deputy was to serve only during the Ombudsman's incapacity or absence, but in fact his work is now performed on a full-time basis. See U. Lundvik, *Comments on the Ombudsmen for Civil Affairs*, in D. C. ROWAT, *THE OMBUDSMAN* 44, 48 (1965).

15. In budgetary matters, such as provision for additions to his staff, the Ombudsman also has contact with the Bank Committee. And when consideration is given to changing the scope of the Ombudsman's responsibilities, the Constitutional Committee is involved.

as may be addressed to Parliament concerning the Ombudsman's work are channeled to that committee. It may question the Ombudsman, but in recent times has apparently had no occasion to carry on any further discussion. The annual report is reviewed by the committee—or, perhaps more accurately, by the committee's secretary, usually a youthful judge on temporary assignment. Members may criticize the Ombudsman's past decisions or the general direction of his work, and these criticisms may possibly influence future activities; but the Ombudsman and members of the committee join in asserting unequivocally that at no time, directly or indirectly, has a parliamentarian sought to influence work in progress.

The leader of an Opposition party has privately commented that the Government needs no special mechanisms for controlling an Ombudsman because, he says, the persons who are chosen to be Ombudsmen "can be counted on not to rock the boat. They all have pretty much the same outlook as the Ministers, they understand one another without having to send blueprints, and they aren't likely to try to make a lot of trouble for one another. After he has been around for a while, an ombudsman becomes Government-minded." In support of his thesis he remarks that no Ombudsman has brought to light a single major scandal during the thirty-odd years of virtually continuous Social Democratic control over the Government.¹⁶ So long a rule, in his opinion, would certainly have produced skeletons that a diligent searcher might have found hidden in political closets. When asked to comment on this remark, Ombudsman Bexelius answered sharply: "This office has had no part in cleaning up large scale corruption in public administration because, fortunately, it has not existed. If we had any reason to suspect it, nothing at all would stand in the way of our investigation."¹⁷ His confidence is widely shared by Swedes. As an admirer

These are, however, such rare occurrences that, for practical purposes, the Ombudsman's parliamentary contact may be said to be exclusively with the First Law Committee.

16. The Social Democrats have remained in power as the Government since 1932 except for one hundred days in 1936 and a period during World War II when a coalition cabinet was formed. They receive only about fifty per cent of the votes, but the balance are spread among so broad a spectrum of opposition parties that parliamentary overturn has not been much of a threat.

Despite the long domination of the socialists, Sweden is not a very socialistic country. Of those employed at the time of the 1960 census, 89 per cent were employed by private enterprises, 5 per cent by producer or consumer cooperatives, 1 per cent by municipal governments, and only 5 per cent by the national government in all its aspects.

17. In one of his writings, the Ombudsman expressed a similar thought: "Certainly, the things that the JO's office has accomplished during the past 150 years are not very great or sensational. There have not been any general clean-ups of corrupt officials. Neither has the activity of the commissioners involved them in a dangerous struggle

has put it, "The importance of the office cannot be measured by the scandals it has revealed but rather by the absence of any major scandals."¹⁸

THE OMBUDSMAN'S POWER

The Ombudsman is by no means a super-administrator, empowered to overturn every error and to produce correct answers to all the difficult questions modern government confronts. The Constitution (Art. 96) says simply that, as a representative of the Parliament and pursuant to its instructions, he should "supervise the observance of laws and statutes" as they may be applied "by the courts and by public officials and employees."¹⁹ Supervision, as Parliament's instructions make clear, does not include control over what judges or administrators do. The Ombudsman gives no orders. He cannot reverse a decision he deems improper; he cannot even direct the reopening of a case or the reconsideration of a judgment by the officials who rendered it. What he can do, primarily, is prosecute an official he believes to be guilty of the crime of "breach of duty," marked by the official's non-observance of statutory commands because he was careless, imprudent, or unskilful.²⁰ Similarly, he can commence disciplinary proceedings leading to a rebuke, a fine, a suspension or removal from office.

In aid of those powers the Ombudsman has practically unlimited access to official files and records; he may call on any official for an explanation of his acts; he may demand the opinions of superiors concerning lowlier officials. He even has the right (which he almost never exercises) to be present as a silent observer during the deliberations of all courts and administrative bodies.

Because punishment for a past mistake is a rather antiquated way of encouraging sound administration, Ombudsmen have for many years

against injustice, simply because—disregarding social injustices outside the field assigned to the office—corruption of justice has not existed. No, the activity of the office has been on another plane. . . ." A. Bexelius, *The Swedish Institution of the Justitieombudsman*, 27 INT. REV. ADMIN. SC. 243, 255 (1961). And see also the same author's *The Ombudsman for Civil Affairs*, in ROWAT, *op. cit. supra* note 14, at 22, 36-37.

18. N. André, *The Swedish Ombudsman*, ANGLO SWEDISH REV. 1, 7 (1962).

19. Since 1915 the Constitution has also provided an ombudsman for military affairs, with the same qualifications and chosen in the same manner as the ombudsman for civil affairs. The Militieombudsman is to "supervise matters which by law are regarded as military, or affect employees remunerated from the appropriations for the armed forces." This work had previously been part of the Justitieombudsman's responsibilities. See H. Henkow, *The Ombudsman for Military Affairs*, in ROWAT, *op. cit. supra* note 14, 51.

20. See p. 8 *supra*. Before launching a prosecution, the Ombudsman is required, by parliamentary instructions, to afford the supposed offender a chance to justify or excuse himself.

tended to lessen their reliance on penal sanctions and have instead developed the practice of "giving reminders" to erring officials. At first without explicit authorization by Parliament (but more recently with that body's full awareness and consent), the Ombudsmen have commented on faults without launching prosecutions, in the belief that an admonition will influence not only the official immediately involved, but also others who may deal with similar matters in the future. Reminders vastly outnumber prosecutions by the Ombudsman. During the five years 1960-1964 inclusive, he initiated a total of only thirty-two punitive proceedings (twenty-seven prosecutions and five other disciplinary actions). During the same period he issued 1220 reprimands, suggestions, and the like. When admonishing, the Ombudsman does much more than simply rap the knuckles of an inattentive official. Rather, he prepares a reasoned opinion that, like the opinion of an American appellate court, may have considerable educational force. Behind the admonitory lecture lurks a thinly veiled threat to prosecute if the admonition be ignored.²¹

A few official matters are beyond the Ombudsman's reach. He has no power to deal with the Concillors of State—the Cabinet Ministers—who are subject to being impeached only upon the initiative of Parliament.²² As a corollary of his incapacity to proceed against ministers,

21. Consider, as an example, 1964 REPORT OF THE OMBUDSMAN, at 164: A defendant, acquitted after prosecution for perjury initiated upon the complaint of a private person, afterwards complained to the Ombudsman that the trial court judge had not examined the complainant before the trial, as he should have done according to an applicable procedural rule. The judge, in response to the Ombudsman's inquiry, expressed belief that the rule imposed no such duty. Having reviewed the pertinent legislative history, the Ombudsman disagreed with the judge; he remarked that examining the complainant is especially important in privately-initiated prosecutions of this character, and explained the possibly harmful consequences of failing to do so at an early stage of the proceeding. Then he added: "Since the examination did ultimately occur and there is no reason to believe that Judge Rune was improperly motivated in refusing to act or that he will hereafter fail to apply these rules, I leave the matter without further action."

22. Members of the Supreme Court or the Supreme Administrative Court, by contrast with Ministers, can be (but never have been) impeached by the Ombudsman. Swedish Const. Art. 101.

The present Ombudsman has adopted a policy of remaining altogether silent about Supreme Court matters unless (as has not yet occurred) a major fault were to come to light that would justify impeachment.

A former Ombudsman felt free in 1935 to tell the Supreme Court that it had wrongly applied a statute in a decedent's estate matter; the parties themselves had not noted the error, but it came to light during a law students' seminar. The judges, thus informed by the Ombudsman, obediently compensated the party who had lost the case because of the judges' imperfect reading of the Civil Code. (At least one prominent Swedish jurist argues that the Supreme Court justices, having made "an obvious mistake," should have been impeached had they not compensated the losing party. American judges, who make

he cannot review the propriety of a judgment of the King in Council, upon appeal from an administrative decision; but this does not at all restrict his ability to deal with a matter that could still be appealed to that august body, for access to the Ombudsman is not blocked by any requirement that other remedies first be exhausted.²³ He does not have power over government corporations engaged in economic operations, for which conventional governmental procedures are thought to be unsuitable. Finally, the Ombudsman's power to inquire into cases concerning local government is limited.

Until 1957 the Ombudsman was competent to act only in matters of national administration. Drawing the line between national and local administration is not always easy in Sweden because municipal authorities have long shared in executing nationwide programs as the paid agents, as it were, of central administrative bodies. Despite considerable opposition at the time, Parliament instructed the Ombudsman in 1957 (pursuant to a constitutional amendment) to concern himself with what are traditionally local governmental affairs, with special regard for the municipalities' right of self-government. The popularly elected members of local assemblies remain wholly outside the range of the Ombudsman's attention. Moreover, acts of municipal administrators that can be appealed further within the locality and that are subject to correction by the local legislature or otherwise are not handled by the Ombudsman unless personal liberty is immediately endangered. These limitations are reinforced by the present Ombudsman's policy of being somewhat slower to criticize local administrators than those who are attached to national organs. Even so, a substantial (and growing) part of the Ombudsman's work pertains to previously immune municipal affairs.²⁴

many mistakes deemed obvious by law review editors, are not expected to achieve perfection in order to escape impeachment.)

A still earlier Ombudsman, who had unsuccessfully sought to prosecute a high official and whose appeal to the Supreme Court had been rejected, gave a strongly critical account of the matter in his next report to Parliament, concluding that the court's decision "places in a strange light the opinions which now prevail in the King's Supreme Court." A. Bexélius, *The Swedish Institution of the Justitieombudsman*, 27 INT. REV. ADMIN. SC. 243, 251 (1961).

23. The present Ombudsman has in fact suggested informally on several occasions that the doctrine of exhaustion of remedies should be made operative as to him, but Parliament has been unresponsive. At times a case has been appealed to the King in Council and simultaneously has been made the basis of a complaint to the Ombudsman. "In those situations," the present Ombudsman remarked, "the ministers tend to wait for me to do something and I tend to wait for them to do something. But usually I give in first and go ahead with the matter."

24. The classification of cases in the Ombudsman's annual reports prevents a com-

THE NATURE AND SOURCES OF THE OMBUDSMAN'S WORK

The Ombudsman is more than a complaint bureau to which outraged citizens may turn. As Parliament's watchman, he can and does proceed on his own motion when problems come to his attention through newspaper stories, personal conversation, suggestions by officials themselves, or his own periodic inspection of courts and administrative agencies. Numerically, as the table below shows, citizens' complaints account for eighty-six per cent of the cases docketed by the Ombudsmen in recent years. The Ombudsman thinks, however, that his observations during inspections probably produce the most significant leads to official fault or carelessness, though they give rise to only thirteen per cent of his caseload.

TABLE I. *Sources of New Cases Docketed by Ombudsman*

	1960	1961	1962	1963	1964
Citizens' complaints	983	983	960	1224	1239
Initiated on basis of newspaper stories	15	14	14	16	11
Initiated as a result of inspection or other information	211	83	189	156	179

The range of subject matter comprehended by these cases is impressive, as appears from even a cursory examination of Table II below. In every year included in this summation, real or imagined derelictions by judges were the most numerous category of matters before the Ombudsman, while officials whose work is intimately connected with judicial administration were also frequently involved. On the other hand, the administration of social insurance and related "welfare state" activities was not a dominant element of the Ombudsman's caseload, nor were taxation disputes a major feature of his concern. These observations concerning the Ombudsman's work are emphasized here because both Swedish and foreign commentators have sometimes stressed that the Ombudsman system is especially needed in societies with elaborate social welfare and tax administrations. The available figures suggest, on the contrary, that the Ombudsman plays a minor part in resolving the undoubtedly numerous controversies that arise between citizens and officials in those fields. Those controversies are dealt with by other means, especially designed for the purpose.

pletely accurate counting of what might be called purely municipal cases. Excluding all doubtful cases, however, one finds an average of 73 municipal matters dealt with in the three years 1957-1959, and an average of 130 during the next four years, 1960-1963.

TABLE II. *Subject Matters Involved in Docketed Cases*

	1960	1961	1962	1963	1964
Courts (excluding administrative courts)	210	171	178	241	226
Public prosecutors	123	171	81	108	130
Police authorities	190	101	168 ^a	213 ^a	208
Distraining authorities	40	35	44	55	43
Prison administration	111	123	106	146	163
Mental hospitals	91	110	123	102	114
Other hospitals	27	28	19	31	46
Care of alcoholics	24	16	21	18	31
Child and youth welfare	29	32	53	50	59
Real property controls	31	33	44	42	47
School administration	20	11	24	36	34
Tax authorities	35	37	66	53	55
State monopolies	8	13	14	17	22
Church authorities	20	32	14	19	12
National administration not included above	150	182	181	183	195
Municipal administration not included above	78	59	58	81	87
Miscellaneous—outside Ombudsman's jurisdiction	118	117	86	130	90

^a Police matters were subdivided for the first time in 1962 into those pertaining to criminal law enforcement and those pertaining to other affairs (such as license issuance and revocation). The breakdown in 1962 was 99 criminal, 69 other; in 1963, 134 criminal, 79 other.

A mere counting of cases tells little about their significance and nothing about their disposition. We turn, therefore, to discussion of the Ombudsman's treatment of the matters before him.

PRIVATE COMPLAINT CASES

Anyone can complain to the Ombudsman—a citizen about an official, an official about an official, a lawyer or the Bar Association about a judge, one judge about another, an organization in behalf of its members. Some of the Ombudsman's clients are steady customers—"querulants"—whose repeated communications may reflect emotional disturbance or mental disease, but must nevertheless be considered. Some twenty percent of all incoming complaints are summarily disposed of, with no action other than a notification that the Ombudsman perceives no cause to intervene. Many are "crank" letters, sometimes altogether incoherent or filled with fanciful tales of high-level conspiracies and persecutions.²⁵ Others pertain to private or public corporations over

25. The Ombudsman's staff is aware, however, that one correspondent well known

which the Ombudsman has no jurisdiction. Few are discarded because they reflect ancient grievances; the Ombudsman is willing to docket complaints about episodes that occurred as long as ten years ago.²⁶

Of the approximately one thousand complaints each year, only about twenty-five are signed by lawyers either in their own behalf or on behalf of clients, though a few others may have been prepared by lawyers for their clients' signatures.²⁷ No artistry is needed. The Ombudsman's office deems one of its virtues to be its capacity to extract meaning from obscurely described—and, indeed, vaguely perceived—dissatisfactions. Roughly, the complainants include about seven hundred private citizens (many of whom file more than one complaint), the balance of the cases coming from organizations or officials.

From the complainant's point of view the great advantage of recourse to the Ombudsman is that no further effort (and no expenditure whatsoever) is demanded. The Ombudsman takes over the case as one to be pursued in the public interest. This, among other things, has often obviated the necessity of the complainant's utilizing remedies that may still be available to him within the judicial or administrative process.²⁸ True, the Ombudsman cannot quash an act he finds to be improper nor order additional moves to rectify the wrong done to the complainant. But many complainants are seemingly willing to surrender control over their own cases in the hope that criticism by the

for his excited imaginings finally complained about an impropriety in the manner of collecting taxes. Investigation showed the complaint to be well founded, and corrective steps were accordingly suggested. Recollection of that instance encourages attentiveness to every complaint, regardless of its source.

26. Experienced observers agree that "long term cases" almost invariably have strong psychiatric overtones. The Ombudsman's tolerance of these old grudges reflects Sweden's ten-year statute of limitations in tort actions.

27. Practicing lawyers in Sweden have a somewhat lesser role in the conduct of day-to-day affairs than do their American counterparts, perhaps simply because they are less numerous. Fully qualified advocates number only about 1200, though other lawyers may carry professional responsibilities without using the title of advocate.

28. This continues to be a controversial aspect of the Ombudsman system. In many instances the Ombudsman is burdened with cases that might well have been dealt with elsewhere just as cheaply and conveniently. So, for example, a complaint concerning brutality by a policeman or prison guard may be lodged initially with the Ombudsman and will be inquired into by him even though the complainant has never reported the matter to the offender's superiors, who, had they been apprised of the matter, might themselves have investigated and then initiated suitable punitive action. Only if the superiors are insufficiently attentive to the complaint should the Ombudsman have to become involved. Without an all-embracing rule that available remedies must invariably be exhausted before recourse is had to the Ombudsman, his responsibilities could well be redefined to permit rejection of some classes of cases that now occupy his time prematurely.

Ombudsman will induce some further and more favorable official step, or even, in extreme cases, the payment of damages.

The processing of complaints may be described briefly as follows:

The Ombudsman personally reads the incoming complaints and, indeed, often opens the envelopes that contain them. This extreme manifestation of the Ombudsman's personal responsibility for his work is linked with organizational problems to which later reference will be made. The opened letters, sometimes bearing the Ombudsman's suggestions concerning next steps, are docketed and are then taken to the Chief of Office, a permanent employee of long standing. He decides whether or not to request the official body involved in the complaint to forward the pertinent files for the Ombudsman's examination. He often hands over to the Deputy Ombudsman cases that may be disposed of at once. Others are referred to a staff member for further analysis along with the relevant documents when they are received. Some, but not much, specialization exists within the staff. When the staff member is prepared for the next step—which may be dismissal of the complaint, a request for further information, or whatnot—he prepares a draft for approval by the Ombudsman or the Deputy Ombudsman. Staff members do not themselves communicate informally with officials to discuss the facts or the implications of the matters before them; they work exclusively with papers. The personalization of the Ombudsman's work again comes to the fore in this context. Several officials in 1964 recalled having received telephone calls from the Ombudsman himself, who then proceeded to ask questions about an apparently minor complaint received by him in that morning's mail.

By far the greatest part of the complaints are disposed of quickly after the official files have been received in the Ombudsman's office. In most of these instances the Ombudsman's staff assistant can perceive an allowable basis of the decision complained against. The Ombudsman or the Deputy then sends a letter to the complainant, explaining in some detail why the original official action seems unobjectionable. The Ombudsman has on several occasions urged Parliament to require courts and administrative organs to state reasons for their decisions, believing that had they done so in the past, many of the persons who have complained to him would have been satisfied with the actions taken. In his view, mystification engenders dissatisfaction which could be dispelled by official explications, but his recommendations have not yet been followed. At any rate, many persons who have filed vigorous protests seem to have been made content by the Ombudsman's reasoned explanations. The Ombudsman adds, with philosophical resignation,

that even when the complainant continues to be unhappy with the outcome, he transfers his dissatisfaction to the Ombudsman so that future relations with the body complained against become less strained.

The present work method does, however, place on the Ombudsman's staff the burdensome responsibility of reviewing sometimes extensive documentary material to ascertain whether it lends legal, evidential, and technical support to a judgment reached elsewhere. Ombudsmen in other Scandinavian countries handle the matter somewhat differently. A complaint not dismissible on its face is sent to the affected official agency for comment; the agency's explanation is then forwarded to the complainant, who often accepts the reasons stated; only if the complainant questions the adequacy of the agency's answer does the Ombudsman's office demand all the pertinent papers for independent analysis. Thus unnecessary shuffling of papers back and forth is avoided.

Even the more cumbersome Swedish system does, nevertheless, manage to dispose of the bulk of the complaints reasonably quickly. During the first six months of 1964, for example, the Ombudsman closed 666 cases. Of these, fifty-one per cent had been in the office for less than a month; twelve per cent, one to two months; six per cent, two to three months; fourteen per cent, three to six months—a total of eighty-three per cent disposed of within six months after docketing. Signs of strain are nevertheless apparent in the backlog of cases remaining undecided at the end of a year; this number has mounted from 240 at the beginning of 1961, to 278 (1962), 385 (1963), 430 (1964), and 447 (1965).

Most complaints can be dismissed because their invalidity is at once clear or is disclosed by staff examination of the relevant documents. The Ombudsman's statistics do not reveal directly how many complaints led to affirmative steps by him, but one may infer from the figures shown in the table below that only a small number have been found to be justified; the estimate offered informally by experienced persons is "roughly ten per cent" of the total received.

TABLE III. *Ombudsman's Disposition of Docketed Cases*

	1959	1960	1961	1962	1963	1964
Referral to other authorities	13	15	17	4	12	8
Withdrawn by complainant	8	5	12	15	10	12
Dismissed without inquiry	184	263	190	217	287	381
Dismissed after inquiry	619	669	592	620	746	722
Prosecutions	5	8	7	4	6	2
Disciplinary proceedings	0	2	0	2	1	0
Admonitions or other remarks	247	271	208	192	275	288
Proposals for new legislation or rules	8	5	16	2	14	7

Redress for injured individuals is, in a sense, only a by-product of the Ombudsman's activity. His primary interest is in securing sounder government in the future. If, however, the Ombudsman concludes that a license has been wrongfully denied or that private property has been illegally seized or that a privilege has been arbitrarily withheld, the official whose action has been criticized almost invariably takes steps to put the matter aright, even though he cannot be commanded to do so. Furthermore, the Ombudsman sometimes expressly suggests that an official pay damages to a wronged complainant, intimating that failure to do so will indicate the official's adherence to a position the Ombudsman deems so clearly illegal as to be a prosecutable offense.²⁹ A less debatable exercise of authority occurs when the Ombudsman, having found injury to a citizen by an unidentifiable official, suggests that the Government should pay damages out of the public purse—as, for example, when a person has been assaulted by a policeman who cannot later be singled out from the mass. The Ombudsman's recommendations in this type of case have not invariably been accepted, but they at least partially take the place of the cumbersome legislative measures often needed in similar circumstances in the United States.³⁰

In another and more important respect, the Ombudsman may help wronged individuals. Release from improper detention is not easily achieved in Sweden, where the writ of habeas corpus has no precise analogy. Persons in custody may perhaps sue those who have restrained their liberty, but the possibility that their custodians may later be punished or be compelled to pay damages is considerably less alluring than immediate freedom. The Ombudsman, if persuaded that a conviction has been wrongfully obtained or that a sentence is excessive, has sometimes successfully sought pardons or shortened terms of im-

29. This practice has led to considerable criticism of the Ombudsman, who has been charged with using the threat of prosecution to induce acceptance of his opinion concerning debatable propositions of law. Compare S. Jägerskiöld, *The Swedish Ombudsman*, 109 U. PA. L. REV. 1077, 1089-90 (1961): "In the most extreme case, after the Ombudsman had stated that he would abstain from prosecuting the judges of a court of appeals if they would pay compensation to a citizen whose case they had decided (wrongly, it was said), the judges informed the Ombudsman that while they adhered to their earlier opinion, they would voluntarily pay the damages demanded because they did not want to be subjected to the inconvenience of a prosecution. Thus we have the remarkable outcome that qualified judges of an appellate court were forced to submit to consequences which only an adverse judgment on their conduct should have produced, despite the fact that the judges held fast to an opinion contrary to that of the Ombudsman." The same episode, involving the Stockholm Court of Appeals, is noted more approvingly in S. D. Anderman, *The Swedish Justitieombudsman*, 11 AM. J. COMP. L. 225, 235 (1962).

For further discussion of this issue, see pp. 49-51, *infra*.

30. Compare W. Gellhorn & L. Lauer, *Congressional Settlement of Tort Claims against the United States*, 55 COLUM. L. REV. 1 (1955).

prisonment when avenues of direct judicial redress had been closed by the lapse of time.³¹ And he has seen to it, too, that persons held against their will to receive treatment for alcoholism or psychiatric problems have someone to whom they can cry for help.³²

In another type of case the Ombudsman may relieve an individual from uncertainty that in the United States could be resolved by a declaratory judgment, a procedure not available in Sweden. An illustrative example is afforded by a controversy that arose when a fish and game warden threatened a fisherman with prosecution if he would not cease using certain nets. The fisherman, believing (but not being absolutely sure) that his conduct was within the law, had either to surrender or risk being penalized. He halted his fishing as commanded, but simultaneously complained to the Ombudsman that the official had arbitrarily interfered. After investigation the Ombudsman ruled against the complainant, thus in effect providing the declaratory judgment for which Swedish law makes no provision. To be sure, his opinion has no binding force, since if the matter were later brought before a court, the issues would be for the judges to decide. In actuality, however, his analysis of the applicable law, whether favorable to the complainant or to the official, is likely to be accepted as finally dispositive of the point in question.

In general, however, personal redress is not a likely outcome of complaints to the Ombudsman, though no doubt many an individual has gained keen inner satisfaction when the Ombudsman has given a

31. What has been said about the Ombudsman's attention to these cases should not be taken as suggesting that others in Sweden are insensitive to matters of that nature. On the contrary, the Minister of Justice himself twice weekly receives, without prior appointment, any caller who wishes to present a plea for clemency or other relief in behalf of someone in official custody.

32. In one case somewhat difficult to classify the Ombudsman concluded that a patient should be ousted from a mental institution against his will. First hospitalized in 1921 as a dangerous schizophrenic, the patient was found to be no longer dangerous in 1935 and was told that he could depart. He refused to do so unless the doctors would certify him to be "perfectly healthy," which they were unwilling to do. The patient was left completely at large, except that he had to be in bed in the hospital ward at ten o'clock each night. From 1935 to 1958 the patient remained in the hospital, "on strike" (as he said) and refusing to participate in work programs. In 1958 the patient complained to the Ombudsman that despite his being in good mental health, he had been detained by the hospital authorities. The Ombudsman expressed the opinion that the doctors should have excluded the patient from the hospital in 1935 and at all times afterward, since whether or not he was as "perfectly healthy" as he believed, he was by the doctors' own account well enough not to take up hospital space. So the patient was sent away, still without his desired certificate. Now living comfortably as an old age pensioner, he often pays social visits to the officials with whom he became acquainted during his long strike against authority.

judge or an official a rebuke or "reminder." Arrogance unfortunately can be a widespread occupational disease among judges. It stings even when it does not monetarily wound those who encounter it. The Ombudsman has spoken sternly, for example, to judges who have badgered witnesses and lawyers without committing reversible errors, and this has perhaps been a form of personal vindication of the complainants as well as a suggestion for the future.³³ "There is no reason why a judge cannot behave like a gentleman," the present Ombudsman remarked in a recent conversation. He believes that his and his predecessors' "countless reminders" have gained force by repetition and have definitely influenced the behavior patterns of all civil servants, including judges.

These remarks would mislead if they were to suggest that most grievances—or even the most important grievances—are brought to the Ombudsman. The contrary is assuredly the case.

Even in areas with which he is accustomed to deal, matters are, in the main, settled finally without recourse to him. So, for example, the Central Medical Board in 1962 acted upon 1,560 complaints concerning the administration of mental hospitals under its control, and in 1963 it disposed of 1,878 complaints of that nature; in those years, the complaints to the Ombudsman from the same sources numbered 123 and 102, respectively.

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

33. An individual complaint may generate a more sweeping inquiry. In 1964, for instance, a complaint asserted that a judge had insulted a witness and had conducted a needlessly noisy hearing. The Ombudsman telephoned acquaintances in that district to inquire informally about the judge's handling of cases. Upon learning from several sources that the judge had a reputation for irascibility, boisterousness, and disregard of the sensibilities of persons in the courtroom, the Ombudsman decided to investigate more extensively than the original complaint might have warranted, with the likelihood of prosecuting rather than simply admonishing the intemperate judge. "His loss of respect in the community," the Ombudsman commented, "will be offset by increased respect for the court, because the people will know that the State will not allow judges to behave in that manner."

man is so rare as to be all but disregarded. Nobody among those interviewed intimated that the Ombudsman was useless, even though wholly unused by the particular group to which the speaker belonged. All agreed, in fact, that the Ombudsman is, as one man said, "a good safety valve for the community" when no other means of securing suitable official attention may exist. They also agreed, however, that regularized methods of obtaining specialized review have been brought into being in modern times, so that the citizen with a problem is no longer helpless beneath a bureaucratic thumb, as perhaps he once was. "In olden days," a representative of a large economic interest declared, "everybody needed the Ombudsman because there was no place else to turn when an official or a judge did something outrageous. The office holders had all the power and people couldn't stand up against them. Nowadays if we have a problem, we usually have a good route to follow in order to get suitable attention. In my opinion, not very many normal people are likely to complain to the Ombudsman. As a generality, he gets the unduly combative, the hyper-sensitive, the off-beat types, while others look for more direct channels and then go through them."

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

THE OMBUDSMAN'S INSPECTION

In times when judges were few, governmental activities were limited, and office holders were measured by tens rather than by tens of thousands, direct and frequent inspection by the Ombudsman may have been practicable. The idea of personal inspection by him continues even today, despite changed conditions. As a matter of tradition the Ombudsman is expected to inspect every official establishment, including every court, at least decennially. Far from proclaiming the impossibility and the questionable value of this assignment, the Ombudsman asserts that periodic inspections are the surest guarantees of his success. He valiantly attempts to cover the whole of Sweden by devoting six weeks of each year to field trips among courts and administrative agencies. In truth, he has been unable to absent himself from his office for so long a period. As a consequence, general inspection (whatever may be its true worth) does not exist in fact, though

many Swedes in and out of public office prefer to ignore reality and to assume that the Ombudsman is, as it were, constantly peering over official shoulders.

While inspections are perforce less frequent and perhaps less searching than popularly supposed, they do occur in substantial numbers. On very short notice, and sometimes on none at all, the Ombudsman and members of his staff appear in an office to examine its records. In trial courts the docket book is reviewed to ascertain whether cases are being brought to trial seasonably. The files of twenty-five civil cases and twenty-five criminal cases are drawn at random, to be reviewed on the spot and to be sent to Stockholm for more leisurely analysis if the judge's record-keeping or observance of the laws seems questionable. Prosecutors' records are checked to ascertain whether suspected persons' rights have been observed during investigations and whether defendants have been prosecuted without delay. Institutions—prisons in particular—are physically examined with respect to sanitation and the like, and inmates are invited to present grievances. In the main, inspection means looking into the files since most governmental operations are not subject to direct sensory perception. Informal conversation relieves the boredom of this rummaging through piles of papers, and makes possible an exchange of information that may be valuable to both the inspectors and the inspected.

One must consciously avoid idealizing the inspection process. Inspections do not in fact reach every corner of the nation. An experienced officer in a community distant from Stockholm could recall no inspection during his thirty years of service; time has not as yet allowed a thorough examination of all the municipal and communal affairs that came within the Ombudsman's jurisdiction in 1957; in some fields of national responsibility, of which social insurance and health administration are notable examples, inspections by the Ombudsman are virtually unheard of. Having said that much, one must add that the Ombudsman and his staff do apparently accomplish surprisingly much during their field trips, despite the broad range of specialized activities this non-specialist group must seek to understand.

The chief administrative officials of two large provinces,³⁴ inter-

34. Twenty-five provinces (or counties or districts) are headed by governors appointed by the Cabinet, who may be removed but who are in practice permanent. They are staffed by civil servants, the most important of whom is the Province Secretary. The provincial administrations have many direct responsibilities as the regional executors of national authority. They also serve as reviewing bodies to which appeals may be taken from activities of agencies of the roughly 1000 communes, such as the committees dealing with child welfare and public assistance. Appellate decisions of the provincial govern-

viewed separately while the memory of the Ombudsman's most recent visitation was still green, used almost identical words in evaluating the inspection process. "The Ombudsman's staff," they said, "sometimes picks up mistakes we have been overlooking. They question things we have been taking for granted." In each instance the official drew from his desk the report the Ombudsman had sent by way of reviewing his inspection—seventeen pages, in one instance—with the recipient's own underlinings and annotations, and with indications that segments of the report had been brought to subordinates' attention. The storage of "Secret Documents" bearing on civil defense, the time delay in acting upon licenses because applications passed through too many hands, the inadequate consideration of alternatives to detaining a juvenile delinquent, the proper way to measure the running of a six months' stay of judgment when an appeal has been taken from the provincial government to the King in Council, the extent to which the province could delegate to a municipal agency the power to hold a supposedly dangerous alcoholic in custody, and the non-observance of certain requirements concerning placing stamps on documents were among the topics discussed. This is a mixed bag of rather small game. If provincial governments need reminders about such things, one wonders whether the widely separated visitations of the Ombudsman should be relied upon as the chief means of supervision and stimulation.

Judges and prosecutors with whom the matter was discussed in 1964 endorsed even more strongly than provincial administrators the utility of the Ombudsman's inspections. A provincial prosecutor, responsible for supervising a number of police chiefs and prosecutors whose offices he himself inspected at least biennially, thought the Ombudsman's visits a desirable guarantee of his own vigilance. "I might become too good friends with my police chiefs in the course of time, you see," he explained—thus recalling the ancient question, who will watch the watchman? An unusually outspoken judge who had at one time crossed swords with the Ombudsman asserted that inspections sometimes brought to light oft-repeated miscarriages of justice, citing an instance in which a judge had long and rigidly applied a statute that had been repealed, a fact he learned only when the Ombudsman prosecuted him for negligence. Even such glaring judicial oversights may not be challenged by appeals to higher courts because, the judge asserted, the advocates outside the major cities cannot be relied upon for the professional skill needed to keep courts on the right track; the judges

ments are in turn reviewable by the Supreme Administrative Court or, in some fields, by the King in Council.

themselves, prodded by the Ombudsman as well as by the appellate courts, must (he said) assume responsibilities that may elsewhere be borne by the parties' lawyers. Another judge, whose words were echoed by a colleague, spoke especially warmly of the opportunity an inspection gave him to discuss troublesome problems with a highly respected jurist. "Sometimes," he remarked, "I have to apply complicated procedural rules that are somewhat unfamiliar, and it helps me to know how the Ombudsman regards them or to learn what he can tell me about the way other judges are dealing with that matter. And sometimes I hear that a statute is being interpreted in different ways in various parts of the country, and I have found that discussion with the Ombudsman or one of his assistants may be clarifying." Still another judge commented: "The present Ombudsman is really a kind fellow, and I don't think that many judges are afraid of him. But they respect him enough not to want to be criticized by him, and so the fact that he may drop in to have a look at their records tends to make them more careful in their work." He added, however, that after a recent inspection had led the Ombudsman to suggest a change in handling default cases, "all six of the judges in this court agreed together to adopt the Ombudsman's suggestion, though all of us thought we were right and he was wrong. That happens more often than you would think. Theoretically we are not obliged to accept his advice, but it is easier to do so than to make a fight over it. I'm not sure that this always produces good results."

One broadly experienced trial court judge was markedly less ecstatic than many others about the inspection process. The defects discerned in the case files were, in his judgment, "just the small change of judicial administration—somebody was brought to trial eight days after arrest instead of after seven days, things like that." Then he added: "All this talk about personal contact is exaggeration. Most of the contact is with assistants, not with the Ombudsman. And, anyway, a personal contact that occurs once every ten years isn't much of a contact."

At the same time, while minimizing the significance of the Ombudsman's visits to the courts, the judge made a further highly suggestive comment: "Just as a public service, I am a member of the Child Welfare Committee of this city. I am the only law-trained person there, and I have the devil's own time getting the committee to do its work properly. What the Child Welfare Committee needs is an inspection by the Ombudsman about every other month."

This highlights a deficiency in the present system, which imposes

on the Ombudsman so large a task of supervising everybody that he cannot efficiently supervise anybody in particular. Sweden acutely (though no doubt less acutely than many other countries) needs additional provision of regularized supervisory activity, educative work among officials on the job, continuity and coordination of work by the wielders of widely dispersed authority, and sustained attention to organization and methods. The Ombudsman, with the best will in the world and with the utmost devotion to duty, cannot fill that need; but the very fact of his inspections may create undue complacency.

An example is supplied by a recent inspection of one of Sweden's thirty major tax collection offices. After a general inspection that included an examination of the files, the Ombudsman reported, in two pages, that all was well from the legal point of view and that the work of that office was being performed faithfully. No doubt this was an accurate appraisal. What it omits is an expert evaluation of the entire tax collection system, in which uniformity is cumbersomely achieved by inflexible statutory commands that even specify in detail the headings to be placed at the top of columns in the ledgers. The Ombudsman can perhaps say whether the tax collector is obeying those commands, but he is not well equipped to say whether the commands are suitably formulated, whether mechanization should replace handwork, whether computerization of tax records would be advantageous, whether, in short, the tax collection office is as efficient as modern management can make it be.

Using the Ombudsman as a general handyman instead of using technical inspectors for technical matters is an anachronism. In the nineteenth century the Ombudsmen then in office made tremendously valuable social contributions by reporting what they, and they alone, perceived in governmental establishments. The modernization of Swedish penology, for example, is widely attributed to Ombudsmen who were outraged by conditions in isolated prisons they had inspected. Today the Ombudsman's are not the only outside eyes that looks upon the jailers. Every prison in Sweden is inspected monthly by the regional director of the National Prison Board.³⁵ Annually it is inspected by a team of specialists—a structural engineer, an auditor, and so on. In between, travelling inspectors of the National Prison

35. The National Prison Board directs and supervises all penal institutions. In 1963 these institutions had a daily average population of 5,163; 12,773 new prisoners were admitted during the year. The Board (composed of a director general and four division chiefs) employed 2,900 persons, of whom only 132 worked at the Board's headquarters in Stockholm.

Board examine sanitation, kitchens, hospital quarters, and so on. Notwithstanding the change from the days when nobody cared about what happened to convicts behind walls, the Ombudsman continues personally to inspect prisons, though with understandably less spectacular results than his predecessors achieved.³⁶

Another demerit of the present inspection system is that it may focus attention on some facet of an office's work without taking into account other responsibilities that happen not to have come to notice during a hurried visit. The experience of a large provincial prosecutor's office is illustrative. That office, which was then exercising supervisory authority over police as well as prosecutors, was inspected recently for the first time since 1939. For several days two members of the Ombudsman's staff examined official files; for a few hours the Ombudsman himself conversed with the provincial prosecutor concerning problems of law enforcement. In the end, the Ombudsman had only one sharp criticism: the provincial prosecutor had failed ever since 1957 to require policemen throughout the province to undergo special training in the duties that would fall to them in case of war. The Ombudsman, observing a statutory direction that such training should be given, advised the prosecutor to mend his ways promptly. Within a few months more than a hundred policemen were summoned from their posts throughout the county and were instructed in what they should do if war were to come (and they were to survive its coming). "I wasn't going to argue the point," said the prosecutor, "because he was right in describing that statute. The only trouble is that we are terribly shorthanded here. I have been complaining for years about the understaffing of the police forces in the eighteen districts for which I am responsible. When we called in those men for war training, of course we had to take them away from doing other things the laws say we should do. We didn't suddenly have more men or more time. We simply used the men and the time differently, as the Ombudsman had said we should do. But if he were to come

36. In the spring of 1963, for example, the Ombudsman visited a central prison where he learned (through the prison officials and not in spite of them) that discipline was made difficult by the prisoners' possessing smuggled supplies of sleeping pills and "pep pills." Seven months later the Ombudsman described this as a "serious problem" and proposed that the risk of smuggling be lessened by abandoning the present practice of allowing prisoners to see wives and sweethearts without being constantly under a guard's eye. The prison governor felt that acceptance of this recommendation would create new and probably graver problems of maintaining discipline. The regional administrator and the National Prison Board agreed with him. The Ombudsman's report has been quietly ignored.

back now, he could criticize us for having left something else undone instead."

Another frequently heard criticism of the present inspection system is that it stimulates over-attention to paperwork at the expense of other activities. Since the Ombudsman is chiefly interested in documentary materials, both when he is making an inspection and when he is investigating a complaint, exactitude in record-keeping and amplitude of writings may at times be indulged in not to protect the persons to whom records and writings pertain, but to protect the record-keepers and writers. How much of this is a conscious or unconscious reaction to the Ombudsman's power to demand data is hard to say. One senior officer thinks that formality and detailed paperwork are part of Sweden's tradition, not at all confined to governmental offices. He adds, however, that this tradition "is very strongly reinforced, I think, by the civil servant's awareness that he may be prosecuted for any omission. That slows up everything because not only do civil servants take pains to see that every comma is in precisely the right place, but they also like to distribute responsibility over two or three other people whenever they can, and it takes time to obtain approvals." This exaggerated care may cause considerable hardship to those it purportedly safeguards. The Ombudsman has several times called attention to delays in completing psychiatric observations of persons under arrest, who may have remained in custody for as long as six months simply to ascertain their mental competence. A qualified observer, asked whether this did not reflect a shortage of psychiatrists, replied: "It's partly that, of course. But much of it is just the doctor's feeling that he needs to write a treatise on each case, so that nobody can subject him to criticism if his report is ever reviewed by someone else."³⁷

Still, even if the Ombudsman's inspections are not the unmixed

37. 1964 REPORT OF THE OMBUDSMAN 82, discusses a number of complaints concerning detention of persons for psychiatric observation beyond the normally allowable period of six weeks. As early as the 1940's, the Ombudsman noted, his predecessors had voiced criticism of this practice. Since then, efforts had been made to increase the available institutional resources, so that the Ombudsman felt that he need take no further initiative at this time. He repeated "certain previous suggestions aiming at temporary improvement, such as using medical personnel from outside the prison organization, simplifying the procedure, and shortening the reports." The present lengthy detentions "are incompatible with basic principles of legal security" and every possible effort should be made to eradicate "one of the darkest chapters in modern Swedish life."

An officer of the National Medical Board commented: "In one of our mental hospitals with 1100 patients we have three full-time psychiatrists and one half-time man. They are kept so busy writing reports they have little time left over for diagnosis or therapy."

blessings and triumphal processions many Swedes think them to be, they do produce some genuine accomplishments. Thus, inspections made the Ombudsman aware of diverse methods used by courts in determining whether tests showed an impermissible concentration of alcohol in the blood of automobile drivers. Driving under the influence of liquor is a stringently policed and heavily punished crime in Sweden. A suspect is tested while in police custody, but since the test occurs at some time subsequent to the driving itself, inferences must be drawn as to what it would have shown if the blood sample had been taken earlier. The Ombudsman, discovering that judges used a number of seemingly reasonable but nonetheless different formulas in this "counting back" from the blood tests, asked two well qualified scientists to help him analyze hundreds of case files drawn from various courts. Some of the courts, this analysis showed, in utter good faith committed serious technical mistakes. The Ombudsman then distributed to the judges and prosecutors a memorandum suggesting, in accord with the scientific advice available to him, how blood tests should be interpreted in the future. The need for harmonizing and improving judicial practices in this regard might never have been recognized—or, at any rate, not recognized so quickly—had the Ombudsman not detected the problem in the course of making inspections.

In another instance the Ombudsman encountered, during an inspection, the question of whether the plaintiff in a divorce action could prove the defendant's chronic alcoholism by summoning as a witness a person who had had official contact with the defendant. The answer to that question was far from clear. The Ombudsman concluded that a court could properly receive testimony by the official in some circumstances, which he set forth in his annual report for the future guidance of judges who had previously been in doubt.³⁸

Furthermore, the possibility that a dignitary of highest rank may concern himself with individual injustices no doubt has the beneficial effect of strengthening the sense of responsibility of those empowered to restrict freedom of the person.³⁹ In many instances persons may be too ignorant or too inert to assert their legal rights. In such cases official malpractices come to light through inspections, if

38. For additional illustrative material, see ROWAT, *op. cit. supra* note 14, at 32.

39. Personal liberty has always been one of the Ombudsman's paramount concerns, and some of his major accomplishments have pertained to custodial practices he found to be improper. See ANDERMAN, *op. cit. supra* note 29, at 234; JÄGERSKIÖLD, *op. cit. supra* note 29, at 1098.

at all. A moving testimonial to the significance of this fact came from the lips of an administrator in a northern area who dealt with child welfare problems. In that connection his administrative agency could seize parents for non-support of their children and put them into forced work programs;⁴⁰ it could take children from homes in which they were neglected; and it could detain juvenile delinquents. Discussing an inspection that had occurred in 1963 the administrator characterized certain of the Ombudsman's criticisms as "superficial," "petty," "reflecting inexperience." He was then asked whether this meant that Ombudsman's inspections served no purpose. "No, indeed, it does not mean that," the administrator answered with great feeling. "I can tell you this, if I had a child of my own under the jurisdiction of an official body like this one, I would certainly want to have an outside check on it. And I can't think of a better one than the Ombudsman. I said that, in my opinion, the Ombudsman doesn't have experience in the fields in which we in this office have to face real-life problems every day, and this causes him to overlook some of our difficulties when he makes suggestions about how we should do our job. But he has the job of protecting human rights. He has plenty of experience there—vastly more than we have. It is far better for him to be an expert in his own field than in ours, if it comes to making a choice. We can stand being reminded that freedom is a part of the welfare we are supposed to be thinking about." Three other officials, present during the interview, indicated hearty agreement with their colleague's spontaneous utterance.

Others have independently confirmed that an even remotely possible future inspection by the Ombudsman does influence present behavior, especially in matters involving detention of the person. "How do you think the Ombudsman would like *that*?" a superior was quoted as having barked at a junior whose recommended action was being

40. Power to commit parents to "workhomes" was ended by a statute that took effect on July 1, 1964. Routine inspections of the files of a "workhome" in 1958 had revealed to the Ombudsman that some of those detained had not received charges or been heard before adverse decisions were made. In other cases, "the real reason for failure to pay for support was not lassitude or indifference but rather, for instance, an overwhelming burden of support with regard to the family or physical or mental defects. . . . The cases often concerned chronic alcoholics, who ought to have been taken care of by the sobriety wards. Physical examinations were practically never made before deciding the case." Bexelius, *op. cit. supra* note 17, at 249. The Ombudsman, while critical of the particular institution that had been inspected, did not initiate any prosecutions. Instead, much more constructively, he called upon the Cabinet to formulate general instructions for the guidance of all the scattered authorities that bore responsibilities in this field. His recommendation was followed.

rejected. Discussing a colleague's proposal to make an arrest on somewhat inconclusive evidence, an official said: "I told him I wouldn't want to have such a case in my files if the Ombudsman were to come around to look at them, and that was the end of that." A young prosecutor acknowledged being conscious of saying to himself with considerable frequency: "I must be careful with this case, because it is just the kind the Ombudsman looks for." A former judge declared: "I can't point to a specific matter, but the Ombudsman entered into my thinking. He was a supervisory shadow, if I may put it so." A more youthful judge added: "The Ombudsman seems to me to personify The Law, the omnipotent force in Swedish administration." A prison governor who had not experienced an inspection for nearly ten years said: "Often when I'm making a decision, I ask myself, How would the Ombudsman decide things? It has a good effect on me."

Having heard similar remarks uttered frequently and with seeming sincerity, an interviewer must conclude that many officials do regard the Ombudsman as a vigilant watchman—even though, in all probability, the watchman will not complete his rounds within the next decade. Some of them, one suspects, are really consulting only their own inner conscience, to which they have attached the Ombudsman's title.

THE RELATIONSHIP OF THE PRESS TO THE OMBUDSMAN'S WORK

The Swedish press plays an important role, both in stimulating the activity of the Ombudsman and in publicizing its consequences. The Ombudsman, as has been observed, may initiate investigations on his own motion. Sometimes editorial exhortations bring issues to his notice. Sometimes direct "tips" by journalists lead him to make further inquiries. More frequently, newspaper stories written without the Ombudsman in mind suggest to his practiced eye the possibility of discovering "news behind the news." He has been especially vigilant to discern the civil liberties implications of matters that may be reported simply as interesting episodes of the day.

Thus, for example, in 1957 he plucked from the daily press an account of a Lutheran pastor's having torn down posters advertising an evangelical meeting of which he disapproved. In Sweden the clergymen of the tax-supported State Church perform such civil functions as recordation of deaths and births, and are therefore regarded as officials within the Ombudsman's reach. Dissatisfied with the pastor's explanation of his attempt to exclude a religious competitor, the Ombudsman suggested that the pastor's bishop should reprimand him.

When the bishop demurred, the Ombudsman prosecuted the pastor for interfering with religious freedom and the right of peaceable assemblage; the pastor was convicted and fined. In 1963 the Ombudsman again locked horns with the State Church when a pastor refused to permit funds to be collected in his parish for certain activities in which female clergy participated. A statute enacted in 1958 had for the first time made possible the ordination of women as pastors of the State Church. Seeking to interfere with the operation of the new law, the Ombudsman said, was a breach of duty; and since the anti-feminist pastor remained obdurately unrepentant (with his bishop's blessing), the Ombudsman launched another prosecution, leading to conviction and fine.

Just as the press makes business for the Ombudsman, so too does he make business for the press. The sweeping principle of Swedish law that the public's files should be open to the public indiscriminately⁴¹ means, among other things, that complaints mailed to the Ombudsman can be read by journalists, as can his subsequent correspondence with officials, their explanations and excuses, many of the documentary materials that bear on the cases, and of course the reports of the Ombudsman's own actions. A reporter for the Swedish news association visits the Ombudsman's office every day to examine the incoming mail, which in fact the reporter sometimes sees before the Ombudsman himself has had a chance to read it; and copies of all outgoing correspondence are also available for his perusal. The reporter brings roughly a third of the incoming complaints to the attention of members of the news association, either as items of local interest, as "human interest" stories, or as matters of sufficient general importance to claim the attention of the metropolitan press. While the newspapers do not publish everything that comes to their notice, complaints are frequently publicized before having been investigated.⁴² Time after time, civil servants, when discussing the Ombudsman's work, bitterly denounced this practice as unfair to them because,

41. See p. 6, *supra*.

42. The largest Swedish daily newspaper printed during August and September 1964 a number of stories based entirely on current and as yet wholly unevaluated complaints. The following are examples: The Ice Hockey Federation accused taxation authorities of having exceeded their powers; a civilian lawyer attached to the United Nations peace-keeping organization in the Congo accused taxation authorities of discriminating against non-military personnel in applying tax regulations to persons temporarily abroad; an advocate in a small city in central Sweden accused a just-retired district judge of having committed various improprieties, of which detailed examples were set forth, and of having conducted judicial affairs so that "The office of the court resembled a castle accessible only to persons with a specially designed key."

though ninety per cent of the complaints are later found to be unsound, an official's subsequent exoneration is often less prominently reported than the original accusation against him. The Ombudsman, taking note of the officials' dissatisfaction, publicly suggested in 1961 that the civil servants' organizations and the newspaper publishers' association should negotiate an agreement concerning press coverage.⁴³ But the suggestion has thus far been ignored. The publishers' association denies any unfairness, pointing to its policy, binding on all members, that news reports should be delayed until a person whose reputation may be involved has had opportunity to tell his side of the story. The policy is morally enforceable by the association's "court of honor" to which injured individuals may complain. The "court"—composed of a Supreme Court justice, journalists, and publishers—cannot award damages, but its judgments (some thirty-odd each year) are said to be regarded as "sentences" upon an improper publication. They are widely reprinted and are thought to be influential. This, the newspapers feel, is adequate protection of civil servants who may be recklessly or simply mistakenly accused. The civil servants vigorously dissent.

Another and less noticed consequence of publicizing complaints is its deterrent effect upon some persons who might otherwise bring matters to the Ombudsman's attention.⁴⁴ The legal adviser of a leading bank, for instance, described what seemed to be an official impropriety, but added that the bank's officers, after considering the likelihood of publicity were a complaint to be made, decided not to report the occurrence to the Ombudsman. A lawyer, representing a large commercial interest, spoke of episodes apparently suitable for consideration by the Ombudsman but not communicated to him: "We can look out for ourselves without his help and we simply don't like to get mixed up in a newspaper controversy."

One has the impression that the Swedish press rather conscientiously seeks to avoid needless embarrassment to complainants. For example, a complaint by a person who has been detained as an alcoholic will be published without using the complainant's name. Moreover, in many instances the newspapers do not identify by name or specific title the official complained against; they tend to discuss problems and not persons. Perhaps no more can be asked. In any event, Parlia-

43. A. Bexelius, *Hur JO-ämbetet arbetar*, [1961] *STATSVETENSKAPLIG TIDSKRIFT* 219.

44. The Ombudsman does not register anonymous complaints. In a few instances, however, matters revealed by anonymous complaints have later been investigated by the Ombudsman, ostensibly on his own motion.

ment has shown no enthusiasm whatsoever for legislative proposals, made from time to time, that publicity should be withheld until the Ombudsman has completed his action upon a complaint.

Relations between the Ombudsman and the press are cordial, though newspapers do not hesitate to criticize his judgments or to urge more vigorous attention to this or that area of public administration. Responding to journalistic complaints against officials' reticence, the Ombudsman has strongly upheld the newspapers' right to know.⁴⁵ Of course this has endeared the Ombudsman to newspapermen. As one leading editor exclaimed, "We look upon the Ombudsman as the responsible guardian of our freedom of the press, so we are eager to cooperate with him."

Thanks to that cooperation, the Ombudsman's criticisms and suggestions gain greatly added circulation. Editors with whom the matter was discussed acknowledged that they tended to emphasize cases with "human interest angles," while underplaying concededly more important matters that were "technical." A few of the most highly respected daily papers do give considerable attention to the superficially unexciting topics the Ombudsman has dealt with, thus adding to citizens' and officials' awareness of the Ombudsman's recommendations. At times they have built their own "editorial crusades" upon ideas provided by the Ombudsman's findings. All in all, the press has been a useful stimulator of Swedish interest in what might elsewhere be regarded as dull information. A journalist who had himself written much about the Ombudsman commented with satisfaction: "Sweden is blessed by having good civil servants. The public has come to expect high quality performances by them. When even a minor civil servant makes a serious error, our readers think that finding out about it is like reading a good detective story. It is a scandal and they want us to tell them all about it. And that is exactly what we try to do."

45. In 1962, for example, the Ombudsman criticized a hospital administration because it withheld from newspapers the names of applicants for a vacancy in an important position; the applicants had specifically requested confidentiality in order to avoid embarrassment to them. Similarly, in August of 1964 the newspapers reported with obvious satisfaction that the Ombudsman had demanded from the municipal government of Lycksele an explanation of its not answering reporters' questions about who had applied for an appointive post. Two of the three applicants had requested that their names not be disclosed. The local authorities had honored this request in order to protect the applicants against possible unpleasantness in their present employment. The Ombudsman obviously thought this an inadequate justification of silence, since in Sweden the right of privacy has been so largely subordinated to the right of publicity.

THE OMBUDSMAN AS UNOFFICIAL ADVISER

While the Ombudsman is known chiefly as critic and reformer, he serves also, much less conspicuously, as cherished adviser.

Many judges and officials seek the Ombudsman's opinion concerning matters upon which they have not yet acted. Quite properly, he declines to give rulings concerning hypothetical as well as real cases. He does not purport to be General Counsel to the Civil Establishment. He recognizes, too, the danger of advising how to dispose of problems whose facets may have been only partially revealed. Hence, more resolutely than some of his predecessors, he flatly rejects formal requests for opinions about pending cases.

He has been helpful, on the other hand, when a judge or other public official has asked by telephone or letter whether the Ombudsman has encountered a particular problem in the course of his work. In such instances the Ombudsman makes available the knowledge he has gained through the past performance of his duties. This, in a sense, simply projects the conversational exchanges that may occur during an inspection, when the Ombudsman gives and receives information about the conduct of public business. It serves as a species of preventive therapy, for it encourages uniform statutory interpretation and the utilization of correct procedures. A number of judges spoke warmly of the benefits they had received from the Ombudsman's informal advisory service—a service he does not mention in his annual reports nor stress in his comments elsewhere.

RELATIONSHIP OF THE OMBUDSMAN TO OTHER PUBLIC WATCHMEN

The preceding discussion, focusing as it has on the Ombudsman alone, may have suggested that he solitarily watches over Swedish law administration. In fact the Ombudsman's powers and duties are shared with others.

The Chancellor of Justice. Of most interest among the Ombudsman's fellow watchmen is the Chancellor of Justice. His office is the direct lineal descendant of the King's Ombudsman whose creation in the eighteenth century led to the nineteenth century demand for a parliamentary counterpart.⁴⁶ Today, though nominally still a "representative of the Crown" and, according to the Constitution (Art. 27), the "Supreme Ombudsman of the King," the Chancellor of Justice holds a non-political post for life. Neither a member of the Cabinet

46. See pp. 1-2, *supra*. Compare S. Rudholm, *The Chancellor of Justice*, in ROWAT, *op. cit. supra* note 14, at 17.

nor responsible to any minister, he is in fact entirely independent. Like the Ombudsman, he heads his own staff, separate and apart from all others. Unlike the Ombudsman, he submits no report to Parliament. The absence of that report is the chief vestigial remnant of the Chancellor's having once upon a time been the monarch's agent.⁴⁷

His functions are more varied than the Ombudsman's.⁴⁸ But in one important respect they are exactly parallel. About a quarter of the Chancellor's and his small staff's time is devoted, as is the Ombudsman's, to receiving complaints from citizens and officials about judges and other officials;⁴⁹ to inspection trips; to investigating, on his own motion, matters discussed in the press or elsewhere; to admonishing, sermonizing, formulating general recommendations, and prosecuting those whose blunders are egregious or whose acceptance of guidance is half-hearted. If one were to ask why two men, one called Justitieombudsman and one called Justitiekansler, should do exactly the same work in exactly the same way affecting exactly the same people, but without even a tenuous structural link between them, the only possible response would be Justice Holmes': "Upon this point a page of history is worth a volume of logic."⁵⁰

The activity of these two officers overlaps considerably, even though the Chancellor handles far fewer cases than does the Ombudsman. Analysis of the Chancellor's reports indicates that over a five-year span he has annually docketed an average of 260 new cases based on complaints or his own discoveries concerning the conduct of officials also subject to the Ombudsman's supervision.

47. Instead of reporting to Parliament, the Chancellor of Justice makes a report nominally to the King, in fact filed with the Ministry of Justice. The report is a public document and, as such, can be examined by the curious. But it is not printed for general distribution.

48. They include appearing as counsel in civil cases in which the State is defendant (twenty-five to fifty annually), acting in the King's behalf on letters addressed to the monarch by "supplicants" (of which there are only a few), exercising a somewhat vague supervision of enrolled advocates (who are members of a self-governing organization that renders usually final disciplinary judgments), giving advice concerning legal questions to the King in Council (that is, the Cabinet or a Minister; roughly, two hundred such matters annually), expressing opinions on legislative proposals before the Cabinet (a responsibility, or perhaps one should say an opportunity, he shares with many others), and prosecuting publishers who have abused the privileges recognized by the Freedom of the Press Act of 1949.

49. The Chancellor of Justice has said that when superior officers in one of the central administrative boards have reason to call for an investigation of one of their subordinates, they are more likely to turn to him than to the Ombudsman because, thanks to history, he is a "part of the Government" while the Ombudsman is linked with Parliament.

50. *N.Y. Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

TABLE IV. *Chancellor of Justice Cases That Overlap Ombudsman's*

	New cases filed	Decided	Balance at year's end
1960	235	230	69
1961	168	207	36
1962	264	220	80
1963	300	276	104
1964	335	338	101

The absence of friction or contrariety of results in the work of these two important officials is a tribute to their personal flexibility and the Swedish genius for reasoned discussion. Neither man is the superior of the other; a person who has complained unsuccessfully to one may with perfect propriety turn to his counterpart; no statute prescribes coordination of inspections and investigations. In short, all the preconditions of strife are present. Very occasionally the Chancellor and the Ombudsman do disagree in their legal reasoning, thus providing bemused administrators a choice of different guidelines. They attempt, however, to minimize confusion by private discussions over the lunch table several times weekly. The Chancellor of Justice before initiating an investigation on his own motion is likely to telephone the Ombudsman to inquire whether an investigation is already afoot. The two officials exchange notes concerning the "querulants" who may write to both of them simultaneously.⁵¹ One stands aside for the other when a prosecution is in the offing. And so they rub along, officially wholly unrelated and yet in fact collaborators holding equal rank in the governmental hierarchy, acting separately as general superintendents of law administration.

The Military Ombudsman. In 1915 the Ombudsman's work was divided. A second parliamentary Ombudsman, to be chosen in the same manner and with the same general powers as the Justitieombudsman, was created to deal with all matters pertaining to the military. His jurisdiction extends not only to the conduct of the armed forces themselves, but also to all officials whose salaries are paid out of military appropriations, thus including defense procurement. Marking off the boundaries of the new Ombudsman's duties in this way recognizes that modern military activities are a central element of civilian life and not merely the province of a small caste of professional sol-

51. The precise extent of duplication of complaints is not known, though the Ombudsman and the Chancellor confirm that they have many clients in common, who write to them simultaneously or successively. The Chancellor notes that chronically aggrieved persons file multiple complaints with him in the course of a year, so that the individual complainants are substantially fewer than the complaints received.

diers. The Ombudsman's absorption in civil administration was thought to necessitate a separate officer to guard citizens against abuses in military administration.

The Military Ombudsman (Militieombudsman) functions within his sphere much as the Ombudsman does in his. The two officers are mutually independent. They refer cases to one another when complaints have been misdirected or when an investigation by one of them discloses matters of interest to the other.

Most of the Military Ombudsman's business is an outgrowth of his own inspections. Complaints usually provide only about twelve per cent of his annual caseload of approximately 650, though during World War II, when general mobilization affected a large part of the population, complaints were much more numerous. Like the Ombudsman, the Military Ombudsman can admonish a named person, make general recommendations, or prosecute an official wrongdoer. The prosecutions are, in the main, for matters that in the United States would probably not be deemed suitable for the criminal courts at all, but rather for some form of administrative discipline—an official connected with defense industries who had been careless in handling secret documents, a commissioned officer who had insulted a non-commissioned officer, a commander who had punished draftees for having been drunk at a time when they were off duty and not on military premises, and so on.

Together the Military Ombudsman and his colleague on the civil side are supposed to cover the entire area of Swedish public administration. Of the two the Ombudsman has been far the more active. The two officers are not in conflict, since the dividing line between their respective jurisdictions is clear and neither has sought to expand his empire by encroaching upon the other. Because, very occasionally, problems of classifying complaints may arise or the two offices may confront common questions of statutory interpretation, the Ombudsmen confer together informally and irregularly. Additional coordination of their activities has thus far not seemed necessary.

The Public Prosecutors. In a strictly technical sense, the Ombudsman is only a public prosecutor. Other prosecutors are supposed to enforce penal laws within a defined geographical area. The Ombudsman is supposed to enforce them within a defined occupational area, namely, the public service.

Actually, even within that relatively narrow area, he does a far smaller share of the work than is commonly known. The prosecutors have not been freed from responsibility for making other officials toe

the mark. They have been superseded by the Ombudsman and the Chancellor of Justice as prosecutors of judges and of very high officials. But as to the generality of Swedish public servants, the local prosecutors have the same power as the Ombudsman to prosecute for ignorance, carelessness, bad manners, and slothfulness as well as for more serious venality. The Ombudsman may initiate a half dozen prosecutions in the course of a year,⁵² and the Chancellor of Justice and the Military Ombudsman may commence another eight or nine. Not all result in convictions. According to available judicial statistics, however, courts of first instance in 1961 convicted 125 civil servants of having committed crimes in their official capacities.⁵³ The figure was 129 in 1962 and 107 in 1963.⁵⁴ These totals show beyond doubt that less exalted prosecutors have independently brought to the courts many cases of the types with which Ombudsmen deal.

In theory a public prosecutor can only prosecute. He supposedly cannot content himself with scolding or advising as do the Ombudsman and the Chancellor. One distinguished scholar asserts flatly that Ombudsmen are different from other law enforcement officials chiefly because "unlike the public prosecutors, they are not subjected to a legality principle in the sense of being obliged to prosecute when they consider that a breach of duty has been committed."⁵⁵ In reality, public prosecutors do not choose to prosecute every case, any more than do the other guardians of official rectitude. In the great bulk of cases reported to them by irate citizens in the local community, the prosecutor does exactly what the Ombudsman does when he thinks that a "reminder" will accomplish as much as a more formal punishment. Some prosecutors freely acknowledge using the telephone more frequently than the criminal courts to correct what they regard as administrative improprieties. Statistical evidence strongly supports the view that obligatory prosecution is not a "legality principle" or, if it is one, that it weighs only lightly on practical men. In 1961 the Swedish

52. See Table III *supra*.

53. Of these, only four were for conduct such as bribery or embezzlement that would constitute a serious crime in all countries. The remainder were for relatively minor acts of omission or commission, usually under the heading of "breach of duty." Twenty-two acquittals occurred.

54. The convictions usually led only to imposition of fines. The courts did, however, order the dismissal or suspension of 16 officials in 1961, 13 officials in 1962, and 17 officials in 1963. An undetermined number of these removals from office seem to have been related to misconduct unconnected with official activities. The materials available in the Central Bureau of Statistics are not altogether clear in this respect.

55. S. Jägerskiöld, *The Swedish Constitution: A Survey*, 5 J. INDIAN L. INST. 1, 13 (1963).

police investigated 1079 alleged crimes by civil servants and concluded that accusations were well founded in 519 of these cases. In 1962, 1208 investigations produced evidence of offenses in 666 cases. Prosecutors control and guide police much more closely in Sweden than in the United States (in many places, indeed, the chief of police and the prosecutor were one and the same person until a statutory change occurred in 1965). Hence, one may fairly conclude that prosecutions were technically justifiable in virtually all the cases the police had reported. Since prosecutions were in fact commenced in only a minor fraction of those cases and since prosecutors do not habitually disregard police reports, one must conclude that other less drastic steps were taken instead. A confident assertion to this effect is impossible because the Supreme Prosecutor of Sweden recently stated that prosecutors must only prosecute, not admonish. If they believe that prosecution would be too drastic a measure, they have been explicitly instructed to refer the matter to the Supreme Prosecutor. He recalls receiving only about ten such referrals each year. Harmonizing the statements of the Supreme Prosecutor and his subordinates is beyond the capacities of a foreign interviewer.

Conflict between the Ombudsman and other prosecutors is rare. If a local prosecutor already has in hand a matter about which complaint has also been made to the Ombudsman, the Ombudsman defers to the prosecutor. Prosecutors, for their part, do not eagerly seek means of tweaking the Ombudsman's nose; they are not organizationally subordinate to him, but, like other officials, they are subject to his scrutiny. When a prosecution has been ordered by the Ombudsman (who rarely prosecutes personally), the order is obeyed without debate.⁵⁶ The public prosecutors, collectively, receive and act upon about as many complaints against civil servants as does the Ombudsman. As far as a foreign interviewer can discover, no atmosphere of rivalry or competition (or, one is tempted to add, even awareness that many cooks are engaged in stirring the same broth) has developed in any quarter.⁵⁷

56. If a prosecutor were to reject a case the Ombudsman deemed clearly prosecutable, the Ombudsman could, in fact, prosecute the prosecutor for breach of duty. That type of clash seems never to have arisen.

57. One prosecutor did express uneasiness about dropping a case without prosecution when a breach of duty has been found. "I can't believe that prosecution is the sensible step in every instance," he declared. "The other day a man very angrily complained right at this desk about having been treated offensively by a clerk in the post office. I called up the clerk's superior and he promised to speak to the clerk about it, warn him to watch his step in the future. That is all I did. I think it was the best way to handle the

THE OMBUDSMAN'S RELATIONS WITH THE COURTS

The Ombudsman's power over the courts is especially interesting to Americans, who think of judicial independence as the very foundation of the rule of law and who tend to equate judges' "independence" with their being unsupervised except by other judges. The Ombudsman acknowledges that foreigners often wonder whether his work undermines the independence judges should have. But he has no fears on that score. "I myself come from the ranks of judges," he has written, "and can assure that I have never heard a Swedish judge complain that his independent and unattached position is endangered by the fact that the [Ombudsman] may examine his activity in office."

Many judges of all ranks and of different degrees of experience, when interviewed in 1964, confirmed that the judiciary does not feel imperiled. One judge of long service, possibly more philosophic than his brethren, commented: "We have grown up in this system. None of us has ever known any other. We are used to the idea back of the Ombudsman. If we had been encountering it for the first time, perhaps it would have made us uncomfortable. But as things stand, I doubt that any Swedish judge feels any loss of independence when the Ombudsman looks at what he has been doing."

Abstractly, the Ombudsman is not concerned with the content of courts' decisions (which, in any event, he cannot revise in any way), but only with the question of whether a judge has been acting illegally. Since illegality, in the Swedish view, covers so extensive a territory, consideration of the judge's decisions may be an inescapable necessity. To suggest the most extreme possibility along this line, the Ombudsman could even prosecute for the crime of breach of duty judges who had rejected his views in prosecutions commenced at his behest. He could not disregard the decisions he opposed, but he could proceed against the deciders. This has in fact never occurred. So far as one can tell, judges have not the slightest worry that it ever will occur. Even so, part of the Ombudsman's work does involve review of the judges' decisions, not only their conduct.

The distinction can be made plainer by illustration. Poor judgment rather than poor judging was involved when, a few years ago, an ap-

thing, though I daresay the clerk was guilty of an offense. But now, if the complainant still wants to make an issue of it, he can go to the Ombudsman and complain not against the clerk but against me for not doing my duty as a prosecutor. Well, I don't much like that possibility. I am having to gamble, you see, that nobody will complain or that, if someone does, the Ombudsman will agree with my informal approach. If I just went ahead and prosecuted every case, nobody could say a word against me."

pellate judge was found guilty of having accepted compensation to help a lawyer prepare documents for use in litigation. The judge was not himself related to the litigation and no corruption of justice entered into the case, but the defendant was simply accused of improper behavior in acting as a lawyer's assistant. The Supreme Court before which his trial occurred convicted him and imposed a heavy fine. At about the same time three trial court judges were successfully prosecuted because they had heard and decided a forfeiture case, an *in rem* action, without first giving an interested person the prescribed formal notice. The judges had thought that formalities could be waived because the interested person's legal representative was actually present in the court when the case was heard. In this instance, in contrast to the example previously discussed, the Ombudsman was acting as a critic of judicial work rather than of a judge's personal behavior.⁵⁸

Cases like this do indeed cause a few judges to speak rather waspishly about the Ombudsman, whom they regard as sometimes a shade too censorious and self-righteous. On several occasions in widely scattered localities judges recounted with pleasure that the Ombudsman had had to eat humble pie at least once. Acting upon a private complaint during his first month in office, the Ombudsman had said that a court official had improperly attached the complainant's property in order to secure the payment of personal taxes. In accord with the Ombudsman's advice the impounded property was returned to its owner. Later, a Supreme Court judge convinced the Ombudsman that he had misinterpreted the applicable statute. Meanwhile, the tax debtor had dissipated the previously attached property and had been unable to pay his taxes in full, so that the public treasury was the loser. The Ombudsman bravely acknowledged his own error by reporting it to Parliament and, at the same time, paid out of his personal funds the amount of the lost revenue. This episode, not at all discreditable in

58. The judges' decision on the merits of the forfeiture case, incidentally, was affirmed on appeal. Moreover, the person from whom the required notice had been withheld did not recover the property in controversy, nor were any damages awarded in the proceeding against the judges. The judges were, however, fined approximately half a month's salary. One of them still becomes almost explosively red in the face when discussing the matter. He thinks, moreover, that his work in the community was made more difficult for a time by reason of his having been convicted as a malefactor, though the difficulty was not long-lived because, as he said, the public had no choice in the matter. He also thinks that press publicity about complaints to the Ombudsman against a judge tend to be harmful to judicial administration even after the judge has been exonerated, because the newspapers (he says) "blow up the charges out of all proportion." Despite all this, he characterizes the Ombudsman as "really a very pleasant fellow" and regards his work as highly useful.

itself, has gained currency among judges, as though they welcomed the reassurance that the Ombudsman can err just as they do.

Most judges, however, seem genuinely enthusiastic about the Ombudsman, whom they regard as an able jurist and a good human being. No judge who was interviewed in 1964 suggested that the present system of supervision should be abandoned.

APPRAISING THE OMBUDSMAN'S WORK

The Ombudsman has in recent years been so rapturously regarded abroad that his achievements have not often been evaluated. What he is supposed to accomplish is taken as the equivalent of what he has in fact accomplished. The following paragraphs attempt to appraise rather than merely describe. The underlying observations were perforce incomplete; scientific accuracy is not claimed.

Securing Uniformity in Law Interpretation. The doctrine of *stare decisis* does not compel lower courts in Sweden to follow the lead of the higher courts. This intensifies the risk, present in all legal systems, that principles and statutes may not be applied harmoniously throughout the country. This possibility becomes still greater when courts and other tribunals fail to write fully explanatory opinions tightly related to the facts of the cases under discussion.

One of the Ombudsman's important accomplishments is achieving uniformity. He does so by expressing his own opinion so persuasively that courts and administrators voluntarily follow his lead. Indeed, until the Ombudsman has sought to resolve differences, many judges and administrators have been unaware that the differences had occurred; they have not consciously disagreed with other authorities, but have been ignorant of their views.

The Ombudsman has remarked on many occasions that differing applications of a single rule of law do not necessarily connote illegality; all of the interpretations may be defensible though some must be deemed incorrect. When the Ombudsman becomes aware that various authorities have been applying a law in different ways, he may first ask many agencies or individual officials to explain to him their interpretation of the statute or rule. Then he may make an independent study of the pertinent legislative history. Finally, usually by setting forth his opinion in his annual report, he will present his own view of the law. His opinion, though assuredly not more binding than an opinion of the Supreme Court of Sweden, is highly persuasive. It brings home to scattered administrators the carefully considered thoughts of a respected jurist who has made a nationwide survey of

present practices, and most law appliers seem to welcome what he can tell them.⁵⁹

Some scholars have contended that the Ombudsman should not function as an oracle, but only as a prosecutor in pursuit of officials who have done wrong. They point out that his pronouncements about law may ultimately be rejected by courts. This, they say, may accentuate confusion, which could be avoided if the Ombudsman were to remain silent except when he is ready to prosecute. The Ombudsman has answered that interpretation of the law is often a necessary first step toward ascertaining whether a judge or civil servant has acted wrongly. Having made his interpretation, he sees no reason to keep it a secret from those who might be helped by knowing it. And so he publishes his views even when he has found no breach of duty.

The Ombudsman's 1962 report shows several good examples of this practice, clustering about the seizure of defendant's property in connection with litigation. Property may be sequestered for use in evidence (for example, a negotiable instrument alleged to be illegally possessed) or as security for the payment of damages and costs. Having reviewed the report of a commission upon whose recommendation certain changes in procedural law had been enacted, the Ombudsman concluded that several judges had been acting mistakenly in sequestration matters, though not in circumstances warranting prosecution. In all the specific cases that had led to his examining the general problem, the Ombudsman noted, the judges had now discarded their original interpretations and had said that they would in future adopt his.

Officials in many parts of Sweden spoke warmly of what they characterized as the "service" the Ombudsman has rendered them by thus clarifying difficult legal issues. A local police administrator, for example, declared: "The new law of criminal procedure when it came into force a few years ago was less clear, we thought, than statutes usually are. It caused us a lot of difficulty, and I think we would be in it still if the Ombudsman hadn't given us some standards we could apply in connection with seizure and arrest. The law prescribes time limits for various actions, and the police and the prosecutors were

59. Compare Jägerskiöld, *op. cit. supra* note 29, at 1092-93: Although the Ombudsman's interpretations "are not legally binding on courts or administrators, and it is generally realized that they may be erroneous and that a court may disavow them, a certain presumption exists that these interpretations are correct. The annual reports of the Ombudsman are carefully studied as evidence of the law. Thus, although it is not in itself a fault to act contrary to those opinions, it is nevertheless true that if an official can show that he has acted in accordance with such a statement by the Ombudsman, he has a considerable chance of being absolved from blame."

terribly confused about how to measure the limits. In fact, there were nearly as many opinions about the implications of those rules as there were police officers and prosecutors. Then the Ombudsman sent out his interpretations and did a lot to create a common practice all over the country."

The other side of the coin is, obviously enough, that the Ombudsman's legal analysis may sometimes be faulty. He works on many matters, aided by only a small staff. Even the ablest lawyer makes mistakes. A Stockholm prosecutor, one of the few outspoken critics of the present Ombudsman system, calls the Ombudsman's pronouncements "a sort of one-man lawgiving that is anachronistic in the twentieth century. It may have been all right in the seventeenth century. But who in modern times would think of creating a high court with only one member? Every appellate court reflects mankind's experience that two heads are wiser than one. Only in the case of the Ombudsman does it miraculously occur that one head is wiser than many."

The Generalist in a Specialized World. The possibility of error increases when a person whose training and experience are entirely in the law is called upon to be a compendium of governmental wisdom, as is the Ombudsman. Many of the earlier Ombudsmen concentrated upon courts and court-related activities. During the first one hundred years of the office, according to its present occupant, 71.4 per cent of the prosecutions commenced by Ombudsmen were directed against judges, prosecutors, and police. As recently as 1951 the then Ombudsman issued 140 admonitions to those groups and only 33 to all other (and far more numerous) governmental personnel.⁶⁰ The growth of important law administration outside the courts made this distribution of the Ombudsman's attention seem glaringly inappropriate. Responding to urging by Parliament and by scholars, the present Ombudsman has striven mightily to cover the entire field of government.

One does not gain the impression that the Ombudsman ascribes to himself an all-encompassing wisdom. He does not, however, limit himself to legal questions. He feels free to offer suggestions looking toward administrative improvement.⁶¹ Often those suggestions, the product of

60. These figures are derived from G. Petrén, *Justitieombudsmannens uppsikt över förvaltningen*, [1953] FÖRVALTNINGSRÄTTLIG TIDSKRIFT 79, 86-87, cited and quoted in Anderman, *op. cit. supra* note 29, at 236.

61. For example, he recently rejected a complaint against a prison administrator who had disciplined a prisoner for disobeying a valid prison regulation. At the same time, noting that the prisoner was a Finn and that the prison population included other Finns who could not read Swedish, the Ombudsman suggested that the prison regulations be printed in a Finnish translation in order to avoid future misunderstandings.

a fresh look by an intelligent eye, gain immediate and deserved acceptance.⁶² Sometimes they lead to a negotiated settlement when the administrators find the Ombudsman's initial proposals unacceptable, but nevertheless concede that changes of some sort should be made.⁶³

Still, "common sense" does not solve every problem. Government becomes increasingly complex and specialized year by year, responding as it must to the complications and specializations of human affairs. The Ombudsman, no matter how intelligent and diligent, cannot be expected to grasp all the implications of every branch of civil administration. While respecting him personally and giving him credit for a high measure of success, officials do at times remark that the Ombudsman "just did not understand our problem."⁶⁴

Whether or not that rather soft impeachment is sustainable, the Ombudsman does indeed seek to be a sort of social statesman in many fields that specialists find full of perplexities. His 1964 report deals, among other things, with detention of children under eighteen pending trial on delinquency charges, psychiatric examinations, provision of police protection for persons who have received threats of violence,

62. For example, in 1964 he proposed to a national inspection agency that it tighten its rules for protecting employees who complained to it concerning improper working conditions. The question arose when a young hairdresser was discharged after her employer had read a letter which her father had written to the inspection agency concerning his daughter's work place. While Swedish law concerning public access to official files had to be taken into account, the Ombudsman thought that additional safeguards could be devised for the future. The inspection agency agreed.

63. A few years ago a prisoner complained that the prison governor had forbidden his subscribing to a certain weekly magazine. The governor, who had legal power to restrict prisoners' privileges in order to maintain prison security, explained that this magazine caused unrest among prisoners by sometimes printing articles about prison conditions. He was upheld by the National Prison Board. The Ombudsman then questioned whether the prohibitory rule was valid, pointing out that other prison governors had not deemed it necessary. Finally, the Board proposed that prisoners should be allowed to have the magazine in question unless the governor were to find a particular issue to be dangerous, in which case he could restrict distribution of that specific issue. This compromise satisfied the Ombudsman and the prison governor. A high official of the National Prison Board referred to this episode as one that "shows we do not ignore the Ombudsman's word even when we disagree with it. His view has great weight. Mostly we think his judgment is very good. He tells us in advance about the 'possibility' of his decision and we have a chance to comment before a final decision is made, and sometimes we work out a decision that seems to us a bit better than the 'possibility.'"

64. Some examples, plucked from interviews and without any representation that the criticism of the Ombudsman is in each instance justified: (1) Ombudsman reprimanded school authorities for giving a "bad conduct mark" to a student newspaper editor who had printed an article not approved by the faculty adviser, saying that this was infringement of freedom of the press; some educators think that the Ombudsman fails to grasp the difference between irresponsible adolescents within an educational framework and more mature journalists in the great world. (2) An apparently drunken man was picked up

and creation of medical facilities other than hospitals to which police and other officials may speedily refer acutely ill persons for diagnosis and emergency treatment. Other recent reports have discussed such diverse matters as custody of children of persons divorced by agreement, provision of needed legal services for impecunious or ignorant defendants, and revocation of automobile drivers' licenses. An outside observer cannot escape wondering whether a general practitioner should be expected to cope with so broad a range of ills, without the aid of more elaborate technical resources than the Ombudsman can command.

Attentiveness to the Ombudsman's Recommendations. Earlier sections of this paper have commented upon the judicial and administrative response to the Ombudsman's "reminders." The more specific his recommendations are—the more, that is, they are tied to the facts of particular episodes—the more likely they will be accepted and acted upon. When he makes general proposals of statutory change or large-scale administrative revision, his suggestions receive respectful consideration, but they are not at all assured of being adopted.

In the past the Ombudsman addressed his legislative proposals directly to Parliament through his annual report. At present he usually sends them first to the Cabinet or to a particular minister, and then

by the police and put in a cell to "sleep it off." Relatives clamored for his release, saying that he was ill, not drunk. The police, who had heard that tale before, were unmoved. Soon afterward the man died in a hospital, to which he had been taken tardily. Autopsy showed the cause of death to have been the illness of which his relatives had spoken. The Ombudsman did not criticize what the police had done, but urged that, in future, the chief of police should be personally called when apparently serious drunkenness problems occurred, so that he could decide whether special measures should be taken. Said the head of the police force in a large city: "If the Ombudsman's advice were followed, I would never have a night's sleep. It's a fine idea, but it won't work." (3) A customs officer was prosecuted at the Ombudsman's behest because he had "covered up" for an informant who, under a pledge of secrecy, had given a tip that led to a smuggler's being apprehended and convicted. In the smuggler's trial and in official documents the customs officer had, in effect, represented that the detection of the smuggler had come about through official activity alone. The Ombudsman prosecuted for breach of duty. Said one official: "If we are not to be able to use tips from informers—and we certainly won't have many tips if we cannot protect our sources—this job will become pretty nearly hopeless. If the Ombudsman had to catch smugglers instead of officers, he would understand that." In the last cited example, the court before which the customs officer had been tried said that the defendant had "behaved incorrectly," but, because of the pressure of events that had influenced his behavior, he could not be held guilty of breach of duty. The Court of Appeals affirmed the acquittal. The Ombudsman did not appeal further, saying that appeal to the Supreme Court should be undertaken "only where important questions of principle are at stake. The courts have confirmed that [the customs officer] handled the matter incorrectly. There is, therefore, no need to review the decision of the Court of Appeal." 1964 REPORT OF THE OMBUDSMAN 15.

later informs Parliament of what he has done. Some sticklers for the niceties of parliamentary organization criticize this on the ground that the Ombudsman is an agent of the Parliament and not of the Government. But the Ombudsman's practice does seem to secure quicker and surer attention to his ideas than if he simply dropped them into Parliament's lap.

Even when instant acceptance does not occur, the Ombudsman's proposals may give direction to later events. He has, for example, long urged that administrators should be required to give reasons for their decisions, and he has often developed the theme of due administrative procedure.⁶⁵ In doing so, he followed a path previously marked by a distinguished Swedish authority on administrative law, Professor Nils Herlitz. At first the Ombudsman's recommendations were quietly ignored, perhaps chiefly because administrative agencies advised they were impracticable. Undaunted, the Ombudsman patiently repeated his advice, which gained support in many private quarters. In 1964, after years of work, an official commission, appointed by the Ministry of Justice (on Professor Herlitz's suggestion) to study the desirability of an administrative procedure act, submitted a report embodying many of the principles the Ombudsman had urged. If a statute finally emerges from all this, it will not properly be attributed to the Ombudsman (who, indeed, would not himself claim credit), but it will at least perhaps have been hastened by him.

In the sphere of governmental activity, the Ombudsman may be said to resemble a law revision commission charged with noticing the need for changes in laws that do not constantly interest pressure groups, political parties, or the press. Earlier Ombudsmen's efforts to humanize Sweden's prisons furnish a notable example. As recently as a dozen years ago a need was perceived for additional statutes that would bring scattered institutions within the reach of uniform rules. Statutory improvement of various aspects of judicial organization and administration may also be ascribed to suggestions by Ombudsmen.

65. In 1964, for instance, he pointed out the desirability of higher authorities' giving opportunity for comment on decisions by lower administrative authorities. A person seeking permission to purchase farm land, as required by the Land Acquisition Act of 1955, has three chances to succeed, first by asking a local farm committee for the permit, then by appealing to the Agricultural Board from an adverse decision, and finally by asking the King in Council (realistically, the Minister of Agriculture) to review unfavorable action by the Agricultural Board. But, unless he makes a special effort to see the file containing a decision adverse to him, he is not apprised of the grounds upon which his application has been denied. The Ombudsman proposed that in the future an adverse decision should be fully communicated to an applicant, whose exceptions to it should be received and considered by the next higher level of authority.

Without minimizing the Ombudsmen's good works as law reformers, one must nevertheless conclude that their annual reports have been extremely minor forces in shaping Sweden's legislation. "Parliament does not sit up and take notice whenever the Ombudsman has an idea about statutes," said one veteran member, "nor does the Government. The ministries think they know what's what without his telling them." "That is perfectly true," another member of Parliament agreed, "but I would add that if the Government doesn't pay any particular attention to his ideas, somebody in the Opposition is almost sure to do so. That at least keeps the idea alive. Sometimes a suggestion the Ombudsman initiates might lead, much later, to a motion in Parliament that brings results. Taking a broad look at the matter, though, I would have to say that the Ombudsmen have been better suited to applying existing law than to persuading Parliament to enact new law."

Unfairness to Officials. As has been described elsewhere in this paper, the Ombudsman has in late years initiated few prosecutions. Instead he has admonished officials who, in his opinion, have made mistakes. His annual reports, as well as the materials regularly available to the newspapers, identify the errant officials and explain why they have been censured. This practice, while seemingly milder than prosecution, has been strongly criticized. Civil servants, a well known writer has said, may have to "stand . . . in the pillory not only for grave faults but also for minor lapses which are in fact more or less excusable—an example will be made of them in order to show how administrative work should be carried on."⁶⁶ Since those in the pillory have not been tried and found guilty, the soundness of the Ombudsman's strictures has not been judicially tested. Some officials, noting that the Ombudsman's prosecutions are far from uniformly successful, suggest that his judgment may be equally fallible when he "gives a reminder." They question whether he should castigate an official whom he has found no cause to prosecute; they think he should keep condemnatory opinions to himself, except in so far as they may be formulated so generally as not to bring shame to a named individual.⁶⁷

The Ombudsman shrugs off these objections. His instructions from Parliament, he has observed, tell him to prosecute iniquitous, grossly negligent, and dangerous official behavior, not every picayune fault he

66. N. Herlitz, *Swedish Administrative Law: Some Characteristic Features*, 3 SCAND. STUD. IN LAW 89, 124 (1959).

67. For an especially well balanced presentation of this point of view, see Jügerskiöld, *op. cit. supra* note 29, at 1088-91.

may detect. The courts, moreover, will convict only when an official's mistake has been so blatant as to warrant imposition of punishment; so the Ombudsman thinks prosecution is a waste of everybody's time when in his own estimation punishment would be inappropriate even though an impropriety has occurred. Further, he says, an official aggrieved by the Ombudsman's treatment of him is always at liberty to complain to Parliament and to seek redress there.⁶⁸ Finally, the Ombudsman remarks that anyone who is outraged by having been castigated has only to say so—in which case the Ombudsman will "co-operate" by prosecuting instead of simply criticizing.⁶⁹

In truth, the fault lies with Swedish law rather than with the Ombudsman. Neither the Ombudsman nor a disagreeing official can go to court to resolve differences of opinion, except in the unwieldy and unwelcome form of a prosecution for crime. Many official acts may be wrong without being criminal, just as the judgments of lower courts are often wrong (at least in the eyes of appellate courts) though rendered in the utmost good faith. The Ombudsman's effectiveness would be greatly diminished were he forced to remain silent about non-criminal wrongs. On the other hand, methods might well be sought to permit access to the courts in those instances when a conscientious official thinks the Ombudsman has erred.

One assuredly unintended consequence of the present system, with its harsh choice between prosecution and denunciation, is that it accentuates the timidity of some public servants. While official excesses must be guarded against, modern Sweden, like all other modern countries, needs a great deal of official enthusiasm, vigilance, and devotion. If it were ever true that that government is best which

68. This has occurred in a very few instances, never (so far as anyone can recall) with any response by Parliament, though perhaps the Ombudsman may have been asked questions in private. The Ombudsman's independence from parliamentary pressures is rather scrupulously maintained.

69. 1964 REPORT OF THE OMBUDSMAN 115, discloses an example of this readiness. A prosecutor had promised a witness immunity from prosecution for tax evasion in order to induce him to testify concerning a fraudulent transaction from which he had profited. The defendant's lawyer questioned the propriety of the prosecutor's conduct. After consulting the Bar Association and the Supreme Prosecutor, the Ombudsman announced that the prosecutor, whom he named, had behaved wrongly, motivated by zeal rather than wickedness. Shortly afterward the prosecutor, in an article in a legal periodical, defended what he had done. The Ombudsman, remarking that the author's dissenting opinion perhaps suggested an intent to resume the practice the Ombudsman had found to be objectionable, asked whether the prosecutor would like to be prosecuted so that the courts could pass on the matter. Given a week to think about this generous offer, the prosecutor finally decided that perhaps it would be best to drop the argument then and there. For further discussion, see Lundvik, *op. cit. supra* note 14, at 46-48.

governs least, nobody believes this to be sound doctrine today. A civil servant of highest rank and great experience, particularly in provincial administration, remarked in relation to the Ombudsman's fault-finding: "My observation over the years has been that the men who are trying hardest to get things done are the ones most likely to be criticized. We have suggested that the Ombudsman should look at a man's whole record before prosecuting or denouncing him, because that would give some basis for saying whether or not he really is a bad actor. But the Ombudsman says this is none of his business; he is interested only in the act, not the actor. The upshot of that is that officials who want to be sure not to get into trouble don't try to find the quickest and simplest ways to do their jobs, but the safest. I have rarely heard of anyone's being held up before the public as a horrible example because he was not being vigorous enough. Nowadays the civil service needs vigor, but it isn't really encouraged to have it."

A police chief, whose general attitude toward the Ombudsman was markedly favorable, asserted that the Ombudsman's naming policemen who had made non-criminal mistakes was unfair to them and socially unsound as well. "A policeman has to act on the spur of the moment," he said. "Of course if you are sitting at a table afterward, with plenty of time to look at the laws and regulations, you may be able to show that he didn't do things correctly in some respect. But the policeman didn't have a chance to make a long study; he had to react quickly. I heartily agree that the Ombudsman ought to be constantly in every policeman's mind, a part of his conscience. But I don't think that the policeman ought to feel that a heavy hand is always about to fall on him. I'm afraid that that is what is happening. Sometimes policemen are not doing their whole duty, not because of laziness or bad discipline or anything like that, but simply because they are playing it safe."

A lesser police official in another city repeated this thought, commenting that he had heard fellow officers say explicitly that they had not taken steps they thought appropriate because they were unsure about the Ombudsman's views. "None of those fellows worries about being punished for doing too little," he added, "but he knows he can get into plenty of trouble for doing too much."

A prison administrator remarked that many prisoners had been badly disturbed a few nights previously by the shouts of a fellow-prisoner who had been denied a further dosage of sleeping pills; "when, next morning, I asked the guard who had been on duty why he had not tried to make the fellow shut up, he said, 'why should I put

my neck on the block? He is just the kind who would complain, and then I would be the one who had to defend myself.'"

The chairman of a municipal agency dealing with problems of alcoholism pointed to what he said had been a widely publicized criticism of a similar agency in a nearby community as an example of the Ombudsman's value. Then, almost as an afterthought, he remarked, "That criticism caused me a lot of trouble, though. My own committee became so cautious I had difficulty getting anything at all done, even the good things that needed doing very badly. The Ombudsman is necessary, but he also slows down the pace of our work. It is awfully hard to find the right balance."

The Burgomaster (a judge) of another city agreed that finding the right balance is indeed difficult. He put the matter this way: "The Ombudsman inhibits action by civil servants in much the same way as statutes influence citizens in general. Some citizens go right up to the line of permissibility that a statute has drawn. Others hang back, stopping far short of the line rather than run the risk of going across it. That is the way with officials. Some of them won't take a chance of getting into trouble and so they don't do things they probably could do—and should do—without being criticized."

Since the subtle motivations of human behavior are difficult to ascertain individually, let alone *en masse*, these characterizations of official attitudes have not been scientifically verified. An effort was made, however, to ascertain whether the Ombudsman's admonitions have enough impact on the individual's career to justify regarding the admonitions with fear and trembling. Extensive inquiries lead to the conclusion that the Ombudsman's finding fault causes some temporary pain and perhaps some loss of self-esteem in most instances, but that it rarely leaves permanent scars if the offense was not willful.

The same high official who had suggested that the Ombudsman discouraged vigor in civil servants also remarked: "Most of my friends who have risen to the top jobs have been prosecuted at one time or another. With us," he said with a chuckle, "it is a kind of family joke." The head of a metropolitan police department, himself a lawyer like most Swedish police administrators, first noted that no policeman had been prosecuted for a serious fault during at least the past eighteen years, and then went on: "The press keeps such a close eye on us that a headline saying the Ombudsman has criticized the police is almost the equivalent of a prosecution. A criticism by me doesn't impress my subordinates nearly as much as one by the Ombudsman." But, he added, "when it comes to making promotions and assignments, I rely

on my judgment, not the Ombudsman's, and I don't automatically lower a man's standing because the Ombudsman found fault with him." That kind of statement was made by a number of other high-ranking officials, including a provincial prosecutor, who asserted: "I would put it this way. A man who has been prosecuted or criticized by the Ombudsman is hurt in his public image, but not in his professional image. He might feel a bit awkward at the Rotary Club lunches for a few weeks perhaps, but his future career would not be affected."

Be that as it may, judges and civil servants talk much and freely about the hurtfulness of being included in the Ombudsman's list. Whether or not the hurt is as real as they believe it to be, their feelings about it seem to be genuine.

The Ombudsman as a Protector. The Ombudsman serves importantly as a protector of the innocent as well as a smiter of the wicked. By finding no fault in ninety per cent of the cases about which complaint has been made, he sets at rest what might otherwise be continuing rumors of wrongdoing. He may even be an insulator against the heat a hostile press has engendered.⁷⁰ His rulings serve to chart paths that can be followed safely in the future. When he identifies inadequate staffing as a cause of undesirable delays for which hard-working officials have been unjustly blamed, he may help achieve needed organizational reforms; as a court president said, "Advice from outside often succeeds after we judges have failed to get what is needed." And sometimes, especially in his reports of inspections, the Ombudsman gives praise that does much for public servants' morale.

Ungenerously compensated for work of social import, civil servants in every country often hear themselves denounced and only rarely lauded. That is not the greatest possible inducement to take up a career of public service. While the Ombudsman system is designed

70. In 1963 a child was atrociously murdered in Stockholm by a "sex maniac." The murderer killed again in similar circumstances before he was apprehended. The police were severely and frequently criticized in letters printed in the newspapers. Then the police master requested the Ombudsman to ascertain whether the police had been negligent or otherwise censurable. The newspapers, apprised of this, immediately ceased their agitation, leaving the police department in peace while the Ombudsman looked into the matter.

More than a year later the Ombudsman issued a 120-page report. He did find deficiencies in the organization of the detective work at the time and he criticized several police officers by name for not having adequately reported information they had received; their pieces might have fitted into a whole so that the main outlines of the picture could have been perceived more quickly by their superiors. But no cause for prosecution or further action was found, nor were any general recommendations made since the police department had already taken steps to improve its efficiency.

primarily to mete out blame rather than to give credit where credit is due, deserved protection and, occasionally, applause for the public's employees are desirable by-products of the Ombudsman's activities.

CIRCULATION OF THE OMBUDSMAN'S VIEWS

The theory underlying much of the Ombudsman's work, especially when he admonishes and instructs, is that his views will be known generally within all ranks of officialdom. He prepares his opinions, as he has said, not in a peremptory way, but with fully stated reasoning. This, he expects, will not only inform the person whose fault he has disclosed, but also other officials, thus "preventing a repetition of the faulty procedure. In this manner, knowledge of the substantive law is disseminated due to the fact that all important decisions [by the Ombudsman] are accounted for in the annual reports. Most officials read the reports, at least as regards their own administrative field."⁷¹

While the Ombudsman's annual report does indeed have an extraordinarily large readership, most officials do not in fact ever see it, let alone read it. The report is printed at present in an edition of only 3400 copies. Many of these go to Parliament, scholars, libraries in Sweden and abroad, journalists, and others who are not in the public service. About 2000 copies are sent directly by the Ombudsman's office to judges and administrators. When one recalls that Sweden employs approximately five hundred judges in active judicial service, with two or three hundred others on temporary detail to special commissions, ministries, and the like; some hundreds of prosecutors; and nearly 200,000 civil servants, one must conclude that access to the annual report is not easily had by all.

This conclusion is readily confirmed by direct observations, of which the following are a random sampling: the report does not reach a regional administrator of social insurance, a provincial agricultural director, the acknowledged head (though not the ceremonial head) of a sizeable city administration, police officers in general, local temperance and child welfare committees; many courts with plural judges receive one copy of the report; each provincial government receives six copies for the use of all its officials in all of its branches; in some offices in which the reports for the current and past years are displayed on bookshelves, they are in such unsullied condition that they have clearly never been passed from hand to hand. Furthermore, the reports had not been indexed for the past fifty years until, in 1965, an index

71. A. Bexelius, *The Swedish Institution of Justitieombudsman*, 27 INT. REV. OF ADMIN. SC. 243, 248 (1961).

was published for the period 1911-1960. Infrequent indexing makes continuing reference difficult even when copies are available.

This is not to suggest that the annual report remains unused. One can see, in some offices, indices prepared personally by conscientious readers; some copies are generously underlined and annotated; junior officials speak frequently of their impatience to see reports which their seniors are still studying. Since the Ombudsman's reports are not sprightly, being written in a rather heavy official style and without much appeal to the eye, the diligence with which many people read them is remarkable.

In the end, nevertheless, the Ombudsman's opinions would be scantily known were it not for their circulation in secondary sources. The role of the press has already been discussed.⁷² The newspapers can be depended upon to report the more flamboyant, easily understood matters. Technical rulings and, even more significantly, the generalizations that should emerge from specific cases must be circulated by more specialized publications. For example, a private organization reports some of the Ombudsman's decisions affecting social insurance; otherwise, they apparently remain unknown to administrators outside Stockholm. The National Social Board sends to 800 communal child welfare committees a circular letter which, among other things, informs them about current Ombudsman opinions, but without permanent form or indexing. A newspaper especially aimed at members of local temperance committees performs a similar service in connection with problems of alcoholism. A provincial agricultural administrator has no awareness of the Ombudsman's observations unless they lead the National Board of Agriculture to revise its standing instructions. In that event, the new instruction might (but need not) mention the reason for the change. A provincial prosecutor and police chief may dispatch bulletins and recommendations to local offices within his province, but he himself is scantily informed about current criticisms and suggestions concerning the activities of other provinces. Matters dealt with in the Ombudsman's inspection reports, but not afterward included in his annual reports, may never be known elsewhere. Thus, other provincial prosecutors were not apprised that one of their colleagues had been "given a reminder" to reactivate police training for wartime duties, nor did other provinces receive the instruction given to one of them concerning stays of execution pending the taking of an appeal to the King in Council. A provincial governor declares him-

72. See pp. 31-34, *supra*.

self too busy to read the Ombudsman's report except as he sees bits of it in the newspapers, but he is "confident that the senior civil servants do read it and in time it trickles down to the rest." He therefore sees no need to circulate the document or particularly relevant portions of it. A police officer of middle rank, in command of uniformed police in a large district, says that not much ever "trickles down" to him in any form from any source, but he does recall a recent circular letter from the provincial police chief: "I think that kind of distribution usually stops with the higher ups," he said wistfully, "though I enjoy reading about the Ombudsman in the papers now and then." The head of a major police force says that pertinent portions of the annual report are abstracted by a subordinate soon after it is delivered; the portions selected for further distribution are circulated among other members of his official family; if they call for instructions by him, he includes suitable paragraphs in the daily orders that are addressed to all under his command; for the rest, knowledge about the Ombudsman's activities depends upon a trade publication ("Swedish Police") and "just plain gossip, which is probably the best circulator of them all." The National Prison Board, after careful study by the legal division, sends out to all its units a circular letter analyzing especially interesting decisions by the Ombudsman, but the circular does not purport to be comprehensive. When decisions necessitate a specific change in existing practices, the Board issues its own orders accordingly, since (unlike some other administrations) it has clear legal power to give binding directives to all branches of the penal system.

This partial catalog suffices to show the chanciness that attends distribution of the wisdom the Ombudsman has produced. A better circulation system seems highly desirable, though the present somewhat haphazard methods have succeeded in producing surprisingly great awareness of the Ombudsman's work. What to a foreigner's eye appears somewhat chaotic may, indeed, merely be the normality of administration in a country accustomed to wide dispersal of authority.

ORGANIZATIONAL PROBLEMS

The Ombudsman performs all his duties with the aid of half a dozen law-trained assistants who work on a full-time basis, a few "specialists" who may be engaged for short periods to concentrate attention on a particular branch of administration, a handful of clerical employees, and a Deputy Ombudsman who was originally conceived

of as a temporary replacement when the Ombudsman was ill or on leave, but who is now active throughout the year. The Deputy has entire responsibility for the matters on which he acts.⁷³ He is, in fact, a second parliamentary Ombudsman who functions independently, but so much in the Ombudsman's shadow that everyone in Sweden prefers to believe he does not exist at all.

So small a group cannot supervise all officialdom. For the past several years a special commission, appointed by the Minister of Justice upon Parliament's request, has been considering how the workload may be made manageable. Simple and obvious expedients—such as permitting the Ombudsman to delegate his duty of inspection and to disregard petty grievances, complaints made flavorless by the passage of time, and attempted by-passings of internal administrative review—are likely to be proposed. These steps to lessen the Ombudsman's burden seem long overdue. More fundamental changes are made difficult by an almost mystical belief shared by citizens and officials throughout Sweden that the Ombudsman system's success depends upon assumption of absolutely complete responsibility by one man alone, the Ombudsman himself. The "personal touch" by a great father figure is what everyone wants to preserve.

In reality, as earlier portions of this paper have shown, Sweden already has more than one Ombudsman and seems to be no worse for the multiplicity. The Military Ombudsman created in 1915, the Chancellor of Justice, and the Deputy Ombudsman do Ombudsman's work—as do, in a somewhat unheralded way, the public prosecutors throughout the country.⁷⁴ This reality is rarely looked squarely in the face in Sweden. The ancient, more romantic conception of a knightly Ombudsman riding forth to battle singlehandedly against every official wrong continues to prevail.

Even more basic than the question of whether more than one Ombudsman could be gainfully employed (as, for example, by assigning supervision of judges to one, supervision of civil servants to another; or supervision of tax authorities to one, supervision of social insurance and welfare officials to another, supervision of other civil administrators to a third) is the question of whether the Ombudsman system is really the best means of administrative control. The answer to that question must turn, of course, on the availability of other means. Political institutions and traditions may induce an answer entirely appropriate for Sweden that would be entirely invalid elsewhere.

73. Compare Lundvik, *op. cit. supra* note 14, at 48.

74. See pp. 38-40, *supra*.

For one who thinks in American terms, the Ombudsman system seems a useful device for occasionally achieving interstitial reforms, for somewhat countering the impersonality, the insensitivity, the automaticity of bureaucratic methods, and for discouraging official arrogance. To rely on one man alone—or even on a few men—to dispense administrative wisdom in all fields, to provide social perspectives, to bind up personal wounds, and to guard the nation's civil liberties seems, on the other hand, an old-fashioned way of coping with the twentieth century.