[Excerpt From "Ombudsmen for American Government?"]

(Edited by Stanley V. Anderson)

APPENDIX: ANNOTATED MODEL OMBUDSMAN STATUTE

What follows is a "model" bill to establish the ombudsman system in American states and cities. The bill can be adapted to the needs of various states with little change. It is also suitable as a local enactment by a municipality that has constitutional or statutory authority to create its own governmental instrumentalities. The extent of allowable home rule must, of course, be considered closely by local counsel.

This draft builds upon foundations others have laid. Ralph Nader drafted the first ombudsman bill for consideration by an American legislature; it was introduced in Connecticut in 1963. The first model bill was creditably prepared by the Harvard Student Legislative Research Bureau. Both of the proposals leaned heavily on the New Zealand ombudsman statute of 1962, which itself had been influenced by the Danish law. Other American proposals have also been helpful, notably Senator Edward V. Long's bill to establish a District of Columbia ombudsman and the bill of Senator Jack E. Bronston and Assemblyman S. William Green to create an office of public redress in the State of New York.

A BILL To establish the Office of Ombudsman in _____

[Enactment clause in locally appropriate form]

SECTION 1. SHORT TITLE.—This Act may be cited as The _____ [insert name of state, city, or other entity] Ombudsman Act.

Comment: The "foreign-sounding word" *ombudsman* has gained wide usage in America and many other countries. Its distinctiveness makes it preferable to more usual official titles such as "commissioner" or "director." The position, new in American experience, deserves a new identification.

SEC. 2. DEFINITIONS.—As used in this Act, the term—

(a) "Administrative agency" means any department or other governmental unit, any official, or any employee of _____ [state, city, or other entity involved] acting or purporting to act by reason of connection with _____ [again insert name of state, city, or other entity] but it does not include (1) any court or judge or appurtenant judicial staff, (2) the members of the _____ [insert name of the legislative body, e.g, City Council] or the staffs of that body, its committees, or its members, or (3) the _____ [insert title of chief executive] or his personal staff.

Comment: Traditional immunization of courts against extra-judicial scrutiny argues against permitting an American ombudsman to inquire into a judge's behavior. Legislators and the chief executive are directly answerable to the electorate; their conduct in office tends in any event to be conspicuous and subject to continuous political examination. Other elected officials (such as, in some jurisdictions, members of regulatory bodies, law enforcement officials, and educational administrators) are less immediately involved in policy making and are engaged chiefly in administrative matters indistinguishable from those performed by non-elected officials generally. Their inclusion within the reach of the Ombudsman Act therefore seems desirable.

If a state bill were to be drafted, a fourth exception should be considered, as follows: "(4) any instrumentality of any political subdivision of the state." This would make clear that the state ombudsman should avoid dealing with municipal and county affairs, if state superintendence of local officialdom is deemed undesirable. In a state-wide bill prudence may also dictate a fifth specific exclusion to make indisputable that interstate bodies such as the Port of New York Authority or the Delaware River water resources board are not meant to be reached, though this specifically is perhaps not really needed: "(5) any instrumentality formed pursuant to an interstate compact and answerable to more than one state."