

thus suggest the occasions on which investigation would be suitable. Experience abroad leads me to believe that efforts to define jurisdiction have caused much laborious and essentially unproductive hairsplitting; a more general grant of power to investigate will eliminate some "legalistic" analysis in the beginning of the Ombudsman's work, but his own discretion will lead him to set sensible boundaries to the areas within which he will investigate, lest he be crushed by the burden of unproductive work.

(b) He may prescribe the methods by which complaints are to be made, received, and acted upon; he may determine the scope and manner of investigations to be made; and, subject to the requirements of this Act, he may determine the form, frequency, and distribution of his conclusions and recommendations;

Comment: Some foreign statutes require that complaints be written. Leaving matters of this kind to the Ombudsman's choice in the light of experience is preferable. Similarly, giving the Ombudsman power to shape his own investigations is desirable; any implication that he should utilize the same method at all times should be avoided, as should any requirement of formal hearings of an adversary nature. If a proceeding for the taking of testimony were in fact to occur, it should be perceived as an element of an investigation rather than as a proceeding in the nature of a trial. Hence its content need not necessarily be the same as would normally be demanded in a formal adjudicatory hearing.

(c) He may request and shall be given by each administrative agency the assistance and information he deems necessary for the discharge of his responsibilities; he may examine the records and documents of all administrative agencies; and he may enter and inspect premises within any administrative agency's control.

Comment: Experience elsewhere suggests that the Ombudsman will be given ready access to official papers or other information within the administrative agency. Cooperative working relationships have been readily established so that the Ombudsman's need for documentary material has not conflicted with the administrators' continuing need to use the same material. As for inspection of administrative offices and installations, this draft gives the Ombudsman power to inspect but imposes no duty to do so routinely, as has been required of the Ombudsman in several Scandinavian countries.

(d) He may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence the Ombudsman deems relevant to a matter under his inquiry.

Comment: Every existing Ombudsman statute provides very broadly for the use of compulsory process in order to obtain needed information. In point of fact, however, the subpoena power has virtually never been used abroad, since information has been freely given. Concern has nevertheless been expressed in this country that wide-ranging inquiries into public administration might lead to burdensome demands. Hence Section 18, below, takes pains to stress protections for witnesses, even though the occasions for bringing them into play are likely to be very few indeed.

(e) He may undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.

Comment: If foreign experience is an accurate guide, work on individual complaints will chiefly preoccupy the Ombudsman's energies and attention. Nonetheless, he should be clearly empowered to address himself to general problems (some of which, indeed, may not be reflected at all in current complaints) and should be free to work not only with other governmental bodies, but also with non-governmental research enterprises which, in the United States much more than in most other countries, provide a great deal of the manpower, insight, and enthusiasm that underlie governmental improvements.

SEC. 10. MATTERS APPROPRIATE FOR INVESTIGATION.—In selecting matters for his attention, the Ombudsman should address himself particularly to an administrative act that might be—

- (1) contrary to law or regulation;
- (2) unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functioning;
- (3) mistaken in law or arbitrary in ascertaining facts;
- (4) improper in motivation or based on irrelevant considerations;