

(c) A letter to the Ombudsman from a person in a place of detention or in a hospital or other institution under the control of an administrative agency shall be immediately forwarded, unopened, to the Ombudsman.

Comment: A provision of this nature has commonly been included in ombudsman statutes. It provides a measure of psychological assurance that everyone may have ready access to the Ombudsman without fear of reprisal.

SEC. 12. CONSULTATION WITH AGENCY.—Before announcing a conclusion or recommendation that criticizes an administrative agency or any person, the Ombudsman shall consult with that agency or person.

Comment: No provision need be made for giving specific notice that the Ombudsman has decided to investigate, if he does so decide. He will inescapably be in communication with the administrative agency when he needs its information or opinions. Formalities should be avoided lest a small organization be overborne by essentially ceremonial requirements.

At the point of announcing his conclusions, however, the Ombudsman should guard against his own mistakes by consulting those whom his findings may hurt. The requirement that he consult will not substantially impede his work, but will be a protection for all concerned against unwitting errors in fact, judgment, or expression.

SEC. 13. RECOMMENDATIONS.—(a) If, having considered a complaint and whatever material he deems pertinent, the Ombudsman is of the opinion that an administrative agency should (1) consider the matter further, (2) modify or cancel an administrative act, (3) alter a regulation or ruling, (4) explain more fully the administrative act in question, or (5) take any other step, he shall state his recommendations to the administrative agency. If the Ombudsman so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them;

Comment: Though the Ombudsman will rarely have reason to make a recommendation if he does not find an error in what the administrative agency has done or neglected to do, he should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus he may facilitate one agency's learning about and taking advantage of the experience of another.

Section 13 (a) contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. He is not a superior official, in a position of command. He cannot compel a change in an administrative act. His recommendation may, however, induce an agency to exercise whatever power it itself may still possess to right what the Ombudsman points out as a past mistake. Bearing in mind that consultation under Section 12 will precede recommendation under Section 13, one may safely predict that rashly critical opinions will not be expressed.

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

Comment: This subsection makes clear that the Ombudsman's duty extends beyond simply finding that an administrator acted in accord with existing statutory law; if the law itself produces unjust results, he should bring this to legislative notice. He is not meant to be a general social reformer, but he does have an obligation to take note of statutory provisions that cause unexpectedly harsh administration.

SEC. 14. PUBLICATION OF RECOMMENDATIONS.—The Ombudsman may publish his conclusions, recommendations, and suggestions by transmitting them to the _____ [title of Chief Executive] the _____ [name of legislative body] or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency or official he shall (unless excused by the agency or official affected) include the substance of any statement the administrative agency or official may have made to him by way of explaining past difficulties or present rejection of the Ombudsman's proposals.

Comment: Bringing his views into the open is the Ombudsman's sole means of gaining the public's support. This section permits publication even when an agency has accepted a recommendation. Publicity may be needed to call other administrators' attention to current developments and also to remind the public at large that the Ombudsman is functioning for the citizenry's benefit. Publicity, however, occurs at the end and not at the beginning of discussions