

II

Having now said that an ombudsman cannot do all things, I hasten to add that he can do some things—and that the things he can do are worth doing.

1. I begin with what is often mentioned last if at all, namely, his capacity to help the bureaucracy. The ombudsman system is usually advocated because it protects citizens against officials. In my opinion, officials need protection too.

Demands for municipal action are unrelenting in America. More and more services are sought. More and more regulation is sought, so long as it is regulation of the other fellow. Within the recent past, for example, energetic efforts have been launched to force New York City to impose restrictions on automobile mechanics, television repairmen and used car salesmen; "noise pollution" has joined water pollution and air pollution as a problem for which an official solution is demanded; fresh controls over homes for the aged have been advocated. Most public employees are decent, responsible people—at least, that must be the supposition of those who ask for additional governmental activity. Yet, at the very same moment that further public services are being urged, the general attitude toward public servants in American communities tends to be suspicious and hostile, if not downright contemptuous. A change is badly needed if good people are to be recruited and retained in the public service. The ombudsman system helps bring about that change.

Wherever an ombudsman has functioned, the citizenry's confidence in its employees has mounted. The ombudsman has acquitted as well as convicted; difficulties that had not before been publicly perceived have been explained persuasively; the ombudsman's existence has encouraged belief that grievances will be objectively explored, not callously ignored. In my judgment every ombudsman has helped create a climate of opinion in which good government has had a chance to become better government. Without faking his findings, he has built good will within the community.

He has helped officialdom in another way as well. He has given subordinate officials a forum to which they can bring grievances against their superiors. Civil servants comprise only a small percentage of the population in the five countries with measurable experience in ombudsmanship, but they and their organizations bulk large in the ombudsmen's work loads. Let no one suppose that American civil servants need no similar haven.

As an indication to the contrary, the United States Senate has approved a bill creating a Board on Employee Rights to protect 3,000,000 federal employees against unwarranted invasions of privacy. The Senate committee in charge of the bill characterized the existing grievance procedures as ineffective, cumbersome and time consuming and said that "the fearful tenor of letters and telephone calls from throughout the country indicates that employees fear reprisals for noncompliance with improper requests or for filing of complaints and grievances".¹ The availability of an ombudsman at the local level would afford protections where surely they are no less needed than in the federal public service.

2. The ombudsman can improve public administration by calling a higher official's attention to an episode of which he might otherwise never learn that reflects subordinates' inept discharge of responsibilities. Foreign ombudsmen's files contain an impressive number of cases in which corrective action was speedily taken by a superior officer who had not known about his staff's mistakes until the ombudsman had asked his opinion of what had been done. Legally, the complainant might have directly approached the administrative agency involved instead of the ombudsman, and possibly the result would have been equally favorable. Often, however, his complaint to the agency might have gone down the line instead of up. A nudge from the ombudsman is likely to move it upward. When that happens, a department head previously unaware of a deficiency is likely to make corrections gladly; most superiors know that subordinates' ineptitude rubs off on the superior's reputation. As the New Zealand ombudsman mildly observed in one of his reports, the matters coming to his office suggest that "in the lower ranks of a large department things can happen which are regarded as questionable when brought to the attention of the head of the department concerned".

Sometimes a constructive move can be made not only to correct the past error but to forestall future shortcomings by issuance or reissuance of general instructions, as has happened in New Zealand on many occasions. The bane of every

¹ S. REP. No. 534, to accompany S. 1035, 90th Cong., 1st Sess. 32 (1967).