

Ombudsmen and Prisons in Scandinavia

By Professor STANLEY ANDERSON*

"With law shall the land be built" is an ancient adage in the Nordic countries. It expresses a pervasive cultural value. The Ombudsman institution is a modern expression of this value, some of whose other expressions include openness in government, parliamentary scrutiny, and alternative ways to appeal administrative decisions. As an example of multiple protection, Sweden and Finland each have a Supreme Administrative Court in addition to the ordinary court hierarchy. In Sweden, limited government is further buttressed by a separation of Government from administration: Cabinet Members (other than the Foreign Minister) do not head ministries.¹

Prisons provide an exception to the maxim that Ombudsman offices work best where least needed. Because of their institutionalization, prisons are in greater need of an Ombudsman. Yet, judging from the Scandinavian experience, the office seems to work just as well for prisons as for other less totalitarian institutions. Recent developments in the manner of operation of Ombudsman offices in American prisons indicate that Ombudsman can be even more effective with regard to places of confinement than they are in general. The concluding section of this paper suggests that the Nordic Ombudsman offices can improve their already impressive efficacy and efficiency in contributing to fairness within prisons.

SWEDEN

Ombudsmen are meant to serve as an antidote to delay, injustice, and impersonality in government administration. The original Ombudsman office was created for somewhat different reasons, however. The Swedish office was set up as a make-weight to preserve balance between the Swedish King and Parliament. In particular, the Ombudsman was an agent of Parliament to ensure that the courts applied the law impartially, free from Royal intervention.

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¹) See generally Nils Andrén, *Government and Politics in the Nordic Countries* (Stockholm: Almqvist & Wiksell, 1964) and Nils Herlitz, *Elements of Nordic Public Law* (Stockholm: Norstedt, 1969).

Although it has antecedents in Sweden and analogues elsewhere, the modern office of Ombudsman dates from the Swedish Instrument of Government of 1809. Article 96 directed the Parliamentary Ombudsman for Justice (*Riksdagens Justitieombudsman*, often referred to by the initials "JO," pronounced "yee-oh") "to supervise the observance of laws and statutes." This provision is continued in Chapter 12, Article 6, of the 1974 Instrument of Government.

Sweden is widely known for its progressive prison system.²⁾ Overall in the Swedish National Correctional Administration (*Kriminalvårdsstyrelsen*, literally "the Criminal Care Administration"), there are at least as many employees as there are wards, and the ratio is becoming even more favorable as the prison population continues to decline.

The JO uses two techniques to monitor prison administration: visitation and the investigation of complaints. While it is the latter which is most commonly associated with the modern Ombudsman institution, it was the former which was included in the Instructions formulated by the Estates of Parliament in 1810, directing the Ombudsman to inquire as to the basis for incarceration of those accused of crime, to visit the jails in the capital and in the provinces, and thereby to keep himself informed as to the care and maintenance of prisoners.

In his seminal study of *Ombudsman and Others*, Professor Walter Gellhorn points out that "[t]he modernization of Swedish penology . . . is widely attributed to Ombudsman who were outraged by conditions in isolated prisons which they had inspected."³⁾ In this same vein, the lengthy centenary appendix to the JO's Annual Report for 1910 notes that:

Throughout the entire existence of the Ombudsman office, prison authorities have been a target for the Ombudsman's special attention. [His] Reports contain numerous observations about the conditions of prisoners and proposals for reforming prison administration.⁴⁾

Indeed, the first four formal recommendations made by the charter Ombudsman, Friherre Lars August Mannerheim, had to do with incarceration. The very first of these, issued on Novem-

²⁾ See Michael S. Serrill, "Profile: Sweden," 3 *Corrections Magazine* (June 1977), pp. 11—14, 18—21, 26—34, and Davis A. Ward, "Inmate Rights and Prison Reform in Sweden and Denmark," 63 *The Journal of Criminal Law, Criminology and Police Science* (1972), pp. 250—54.

³⁾ *Ombudsmen and Others: Citizens' Protectors in Nine Countries* (Cambridge, Mass.: Harvard University Press, 1966), p. 222.

⁴⁾ O. F. Enbom and A. Eisen, eds., "Uppgifter om Justitieombudsmannens Ämbetsberättelse [hereinafter cited as *JO Report*], p. 17.

ber 21, 1811, urged that the lists of prisoners be made more accurate and complete. The monumental 1935 study of the Swedish Parliament indicates that "hardly any other subject within the Ombudsman's purview was the object of such a warm interest from Mannerheim's side as prison administration."⁵) As a prison reformer, Mannerheim was not working in a vacuum. John Howard had visited Stockholm in 1781; his works on the subject and those of other European scholars were studied and echoed in Sweden.

To keep up with increasing population and the growth of the administrative state, the Ombudsman office was expanded in 1968 to include three autonomous JO's, spelled by two autonomous deputies who substituted for the JO's whenever the latter were absent or overworked. The expansion was based upon a merger with the office of Military Ombudsman (*Militieombudsman*, or MO), and represented a net increase of one Ombudsman. (The MO had split off from the original JO office in 1915.)

In 1976, the deputies were eliminated, and the number of regular Ombudsman was increased to four, one of whom, Ulf Lundvik, is designated as Administrative Chief. The JO's are paid the same as judges of the Supreme Court. They are elected by Parliament to four-year terms. The office is staffed by about 25 additional jurists. It currently costs about \$ 1,750,000 a year to run the Swedish Ombudsman office, about ten percent of which can be attributed to prison work.

In the 1968 reorganization, Alfred Bexelius, who served as JO from 1957 to 1972, assumed responsibility for places of detention and social welfare agencies, as well as for supervision of Sweden's open record law.⁶) Bexelius visited an average of three prisons a year. When he retired in 1972, Judge Bexelius was replaced by Bertil Wennergren, who had previously served in turn as chief of staff and deputy Ombudsman. During the three years from 1972 to 1974, Mr. Wennergren carried out thirty inspection visits to prisons, spread out over 25 different institutions. Three facilities were visited twice, and one — Kumla prison — three times. In 1976, Wennergren was appointed to the Supreme Administrative Court. Although he had trebled the rate of prison inspections maintained by his predecessor, Wennergren still did not visit all of Sweden's seventy widely-dispersed prisons.

⁵) See Nils Alexanderson, "Justitieombudsmannen", vol. 16, *Sve-riges Riksdag* (1935), p. 99.

⁶) See Stanley Anderson, "Public Access to Government Files in Sweden," 21 *American Journal of Comparative Law* (1973), pp. 419—73.

The responsibility for prisons has now been assumed by JO Anders Wigelius, who has almost the same ambit of authority as Mannerheim had 165 years ago: places of incarceration and the judiciary, including judges, prosecutors, and police. The work of the other three JO's reflects the expansion of the Ombudsman office to include the vast administrative apparatus which has developed during the present century.

An average of ten visits a year to prisons cannot directly monitor the performance of individual facilities. While the occasional presence of the JO — every five years at Malmö prison, for example — may have a preventive impact, it is a matter of conjecture how much inspection visits add to the impact of the investigation of complaints, as far as prophylaxis is concerned. Visitation does give the Ombudsman an insight into the workings of the prison system, and helps to establish his expertise, both actual and perceived.

While the JO talks with individual prisoners during his inspection visits, this is not the predominant manner in which they express their grievances to him. Like other Swedish citizens, they write to the Ombudsman — and with much greater frequency. Roughly 3,200 complaints come in annually from Sweden's 8,000,000 population, or about one complaint for every 2,500 persons. Most of the complaints against prison administration come from the approximately 5,000 adults who are in prison at any given time. (Because the bulk of sentence are for less than three months, about 15,000 adults are in prison during part or all of a given year.) A basis of 300 inmate complaints from 5,000 potential complainants yields one complaint for every 17 inmates, about 150 times the rate of complaint from the entire population.

During the past twenty years, the number of complaints has risen steadily. Until recently, prisoner complaints kept pace. Their relative decline can be explained in part by a corresponding decline in inmate population. Throughout the first ten years of JO Bexelius's fifteen-year tenure, prison matters comprised a rather constant 8 % of all matters considered.

While the number of inmate complaints has declined over the past six years, the proportion of prison complaints found to be valid has risen, to provide a steady average of about 50 complaints a year which have given rise to censure, discipline, or prosecution of an official. On the whole, the percentage of inmate complaints found to be justified has been remarkably close to the overall percentage of complaints found to be justified, running about one in five of those investigated and one in seven of those registered. (See chart 1.)

Chart 1. The Swedish Ombudsman.

Complaints whose consideration was concluded:

	By JO Bexelius in:		3-yr. Ave.		By JO Wennergren in:		3-yr. Ave.		6-yr. Cum. Ave.
	1969	1970	1971	1972**	1973	1974	1975	1976	
(1) Total Complaints*	2539	2618	2893	2683	3351	3200	3113	3221	2952
(2) Complaints Against Prison Administration	390	371	350	370	365	279	236	293	332
(3) (2) as % of (1) [rounded]	15.5 %	14 %	12 %	14 %	11 %	8.5 %	7.5 %	9 %	11.5 %
(4) Total Complaints* Investigated	1692	1742	1630	1688	1895	1778	1819	1831	1759
(5) Total Prison Complaints Investigated	306	293	233	277	222	170	193	195	236
(6) (5) as % of (4) [rounded]	18 %	17 %	14.5 %	16.5 %	11.5 %	9.5 %	10.5 %	10.5 %	13.5 %
(7) Total Complaints Found To Be Justified*	281	417	418	372	456	372	367	398	385
(8) (7) as % of (4) [rounded]	16.5 %	24 %	25.5 %	22 %	24 %	21 %	20 %	21.5 %	22 %
(9) (7) as % of (1) [rounded]	11 %	16 %	14.5 %	14 %	13.5 %	11.5 %	12 %	12.5 %	13 %
(10) Total Prison Complaints Found To Be Justified	43	71	46	53	57	38	54	50	51
(11) (10) as % of (5) [rounded]	14 %	24 %	19.5 %	19 %	25.5 %	22.5 %	28 %	25.5 %	22 %
(12) (10) as % of (2) [rounded]	11 %	19 %	13 %	14.5 %	15.5 %	13.5 %	23 %	17.5 %	16 %

* By entire JO Office

** JO Wennergren replaced JO Bexelius on March 15, 1972

Out of 3,202 cases completed in 1975, 216 (6.5 %) dealt with prison administration. Forty-two of these were dismissed without investigation and 7 were referred to other agencies. Of the remaining 167, 40 (24 %) resulted in the imposition of an admonition. There were 437 admonitions in all that year, plus three prosecutions or disciplinary proceedings, stemming from the consideration of complaints. The 40 prison admonitions comprise 9 % of the total.

Swedish Ombudsmen are empowered to take up matters on their own initiative. While they may be stimulated to do this by newspaper accounts, it is the inspection visits which provide the most frequent occasion for the exercise of this power. In 1974, the Ombudsmen took up 566 matters on their own initiative, 27 on the basis of newspaper articles and 539 (about 95 %) growing out of inspection visits.

During his first ten years in office, Ombudsman Bexelius usually took up on his own initiative from one to four matters a year concerning prison administration. Trebling the frequency of prison visits led to the trebling of the number of matters which JO Wennergren took up on his own motion, as compared to his predecessor. An additional increase in the number of institutions visited would probably entail a further increase in the number of *sua sponte* matters.

Not surprisingly, the Ombudsman finds a higher proportion of cases subject to criticism among those which he takes up on his own motion. Currently, own-initiative matters are producing about 25 cases a year which have given rise to censure, discipline or prosecution of prison officials. (See chart 2.)

In 1975, the Ombudsmen took up 400 matters on their own initiative, of which 29 (7.25 %) were directed at prison administration. The number of admonitions from the 29 prison matters dropped to 10 (34.5 %).

Whether arising from complaints or spontaneously, the overwhelming majority of the justified cases have concluded with a mere reprimand. In recent years, about one of ten reprimands issued by Bexelius was to a prison official, as was about one out of eight issued by Wennergren. During the same period, the more serious prison cases which have led to disciplinary proceedings by the agency or prosecution in the courts have averaged only one a year, equally divided between JO Bexelius and JO Wennergren.

The following are recent examples of misconduct considered sufficiently grave to warrant disciplinary proceedings:

- a warder at a prison for giving an inmate medicine which had been prescribed for another person . . . ;

Chart 2. The Swedish Ombudsman.

Own initiative matters whose consideration was concluded:									
By JO Bexelius in:		By JO Wennergren in:							
1969	1970	1971	3-yr. Ave.	1972*	1973	1974	3-yr. Ave.	6-yr. Ave.	
1) Total Matters by Entire JO Office	384	352	343	360	356	462	549	456	408
2) Matters Concerning Prison Administration	24	10	15	16	30	56	59	48	32
3) (2) as % of (1) [rounded]	6 %	3 %	4.5 %	4.5 %	8.5 %	12 %	10.5 %	10.5 %	7.5 %
4) Total Matters Found To Be Justified	268	244	200	237	182	195	266	214	225
5) (4) as % of (1)	70 %	69.5 %	58.5 %	66 %	51 %	42 %	48.5 %	47 %	56.5 %
6) Prison Matters Found To Be Justified	3	2	5	3	16	34	32	27	—
7) (6) as % of (2) [rounded]	12.5 %	20 %	33 %	22 %	53.5 %	60.5 %	54 %	56 %	—
8) Total Complaints Investigated	1692	1742	1630	1688	1895	1778	1819	1831	1759
9) (1) plus (8)	2076	2094	1973	2048	2251	2240	2368	2286	2167
10) (1) as % of (9)	18.5 %	17 %	17.5 %	17.5 %	16 %	20.5 %	23 %	20 %	19 %

JO Wennergren replaced JO Bexelius on March 15, 1972

— a director of a prison for neglecting to send a judgement to the National Correctional Administration for the calculation of the term of imprisonment.⁷⁾

In another case:

— it was proved that a warder had assaulted a prisoner and the matter was forwarded to the public prosecutor, who prosecuted the warder.⁸⁾

In addition to these measures taken against government officials, the Ombudsman may also make recommendations to the Government for remedial legislation or other appropriate action. During the years 1972—74, inclusive, the JO's made sixteen formal proposals of this kind. Four of these concerned prisons, pointing out gaps or inconsistencies in the law or in its application.

In 1975, for example, the JO found that the courts were making many errors in applying the 1973 law which requires a deduction from sentence for any period which an offender has already spent in custody. In response to the Ombudsman's proposal:

The Government recommended the courts to look into their application of the rules in question and to report any errors to the Chief Public Prosecutor in order to give him the opportunity of appealing to the Supreme Court for the remedy of substantive defects.⁹⁾

While the manner of presenting statistics in the JO's annual reports tends to focus on the behavior of individuals, the bulk of the cases reported in these 600-page tomes comprises impersonal analysis of the administrative process. The cumulative index for 1911 to 1960 lists 87 case reports on prison administration, approaching two a year. JO Bexelius included 36 notes on the same subject over the three-year period from 1969 to 1971, and there are 43 over the three years from 1972 to 1974, for a six-year total of 79, an average of 13 a year. The Ombudsman office is a bully pulpit!

⁷⁾ Noted in "The Swedish Parliamentary Ombudsmen: Annual Report for 1973 — Summary in English," 1974 *JO Report*, p. 677. Summaries in English have been appended since the Annual Report for 1968; they are also published separately.

⁸⁾ Noted in the 1971 Summary in English, 1972 *JO Report*, p. 543. Usually, the complainant cannot substantiate his charge of brutality.

⁹⁾ The Swedish Parliamentary Ombudsman Office, *The Swedish Parliamentary Ombudsmen* (2d ed., Stockholm: Liber, 1976), pp. 16—17.

Among the topics to which the JO has addressed himself are the following: overcrowding; censorship of mail; abuse and overprescription of drugs; adequacy of medical services; the requirement that guards identify themselves by name upon request; the obligation of guards to speak truthfully when questioned by the Ombudsman, even though not subject to possible perjury charges as they would be if under oath.

Considerable comment in the annual reports has come from representations made to the Ombudsman by groups, both inmate liaison councils and outside lobbies, particularly KRUM, the National Swedish Association for Penal Reform (*Riksförbundet för Kriminalvårdens Humanisering*, literally the National Association for the Humanization of Criminal Care), subsidized by the state and composed of inmates, former inmates, and non-inmates. Founded in 1966, KRUM spread to Finland, to Denmark (as KRIM) and to Norway (as KROM) in 1967 and 1968.¹⁰⁾

Usually, the Ombudsman's advice is heeded. Rarely is there a stalemate, as reflected in the outcome of a case concerning four inmates held in prolonged solitary confinement at Kumla prison, in which "[t]he Ombudsman found . . . no ground for action but expressed a hope that similar solutions would be avoided in the future."¹¹⁾

In the prison context, as elsewhere, the Swedish JO is successfully carrying out the standard goals of an Ombudsman office to redress individual grievances and to improve administration. A recent testimonial to the sobering effect of the very existence of the Ombudsman has been provided by Gunnar Marnell, prison director for the Stockholm region, who says that he and his staff:

always have two questions at the back of their minds when they take administrative action: "How would this look in the headlines and what would the Ombudsman say about it?"¹²⁾

Partly because of the incremental improvement which the Ombudsman fosters, the overall impact of the office is supportive of the system. On the other side of the coin of rectification are the six out of seven inmate complaints which the Ombudsman considers to be unfounded. Thus, Thorsten Eriksson, former

¹⁰⁾ See Thomas Mathiesen, *The Politics of Abolition*, published as vol. 4, *Scandinavian Studies in Criminology* (Oslo: Universitetsforlaget, 1974), pp. 41—44.

¹¹⁾ Noted in "The Swedish Parliamentary Ombudsmen: Annual Report for 1974 — Summary in English", 1975 *JO Report*, p. 567.

¹²⁾ Quoted by Adam Raphael, "Ombudsmen and Prisons: The European Experience," 1 *Corrections Magazine* (January/February, 1975), p. 56.

Director General of the National Prison Administration, has been able to point to the Ombudsman's vindication of the authorities following a hunger strike in 1971 and organized prison escapes, strikes, and disputes in 1972.

The Ombudsman also supports the lower echelons. During the 1976—77 reporting year, for example Ombudsman Wigelius criticized a prison head for failing to give adequate instructions concerning the security arrangements for an inmate who escaped while on leave under guard. In another case, where prison staff had been taken hostage in an attempted escape, Wigelius responded to a complaint by the prison employees' union by urging the prison Administration to pay particular attention in the future to staff recommendations for preventive measures with regard to inmates about whom the staff have direct knowledge.

As these troublesome incidents indicate, even the best prison system is not good. In Sweden, unrest has grown out of reform and has fostered further, but limited, liberalization. The main points of confrontation have been the isolation wings of the maximum security facilities at Kumla and Österåker. The prison authorities and the inmates, led by KRUM, have been the main participants in a continuing debate. The Ombudsman office has been taken for granted by all parties. It has not itself been a matter of contention nor a major participant. If acceptance is success, then the Swedish Ombudsman office is very successful indeed.

FINLAND

One who is used to American penitentiaries is less susceptible to culture shock in Finland than elsewhere in Northern Europe. The Finnish prisons are generally old, and the inmate population is soaring just as it is currently in the United States.

After centuries as an integral part of the Swedish Kingdom, Finland became a Duchy of the Russian Czar in 1809, and gained independence in 1917. The 1919 Constitution provides for an Ombudsman. Article 49 enjoins the JO "to supervise . . . the upholding of the laws."¹³) Parliament's Instructions to the Finnish Ombudsman specify (Art. 1) that:

[he] shall take necessary . . . measures . . . whenever a judge or other official has in the performance of his duties been

¹³) The constitutional and statutory provisions for the Finnish Ombudsman office are appended to Michael Hidén, *The Ombudsman in Finland: The First Fifty Years* (University of California, Berkeley: Institute of Governmental Studies, 1973), pp. 181—91. Both Finnish and Swedish are official languages in Finland.

guilty of deceiving practice, partiality or gross negligence, has infringed upon the legal rights of a private person or has exceeded his authority.

The Ombudsman and the Chancellor of Justice (Swedish: *Justitiekansler*, abbreviated as JK) have overlapping jurisdiction, although neither will knowingly investigate a case currently under consideration by the other. The JK was a heroic figure in the Finnish struggle for independence, and he has always overshadowed the JO. In 1933, to even out the caseload, the JK was relieved of the obligation (though not deprived of the right) to handle prison and military matters. Consequently, most of the clientele in these two areas direct their complaints to the Ombudsman in the first place, and these are the traditional areas of emphasis for the Ombudsman. In recent years, the JK has had occasion to transfer from 20 to 60 cases a year to the JO, a substantial decline from previous decades. The Chancellor retains the responsibility for checking lists of prisoners submitted to him by the authorities.

The JO is paid the same as the JK, and both are on a par with the presiding justices of the Supreme Court and the Supreme Administrative Court. In 1972, the full-time position of Assistant Ombudsman was added to the Ombudsman office. The Assistant takes full responsibility for the cases which are assigned to him. The two Ombudsmen are elected by Parliament to staggered four-year terms. A Deputy Ombudsman is also chosen, to fill in on the very rare occasions when both Ombudsmen and Assistant are absent or incapacitated. The Ombudsman are assisted by seven jurists. While the Swedish office has one professional, whether JO or staff member, for every 265,000 citizens, the Finnish office has one professional for every 500,000. Finland has a population of four-and-a-half million inhabitants.

It costs about \$ 275,000 a year to run the Finnish Ombudsman office, of which an estimated one-eighth relates to places of incarceration. With approximately the same number of inmates, the Swedes spend an estimated \$ 175,000 a year for prison Ombudsmanry, five times the corresponding Finnish outlay of \$ 35,000.

Under the Working Regulations adopted by the Ombudsman in 1973 and 1974, responsibility for prison cases has devolved upon the Assistant Ombudsman. Article 1 provides that:

The Assistant Ombudsman will settle matters involving the carrying out of punishment, the procedure of prison officials, the ordering of persons into closed institutions, the conditions in penal and closed institutions, taxation and

the conduct of the police, if the Ombudsman has not in an individual case reserved the matter for his own settling.¹⁴⁾

As in Sweden, the Finnish JO's monitor prisons both by investigating complaints and through visitation. Article 10 of the Parliamentary Instructions directs the JO to:

conduct inspections in prisons, work-camps and in other comparable institutions and . . . to obtain information regarding the treatment of persons in such institutions and regarding other matters affecting such persons.

During Dr. Kaarlo Ståhlberg's term as JO (1970—1973), the Ombudsman averaged a total of 75 inspections a year, and devoted 33 working days to their accomplishment. Over the years, prison visits have comprised about 10 % of the total. By way of comparison, the three Swedish JO's averaged a total of 90 days a year on inspections. In 1972, for example, they carried out 113 inspections, twelve of which (10.5 %) were directed at prisons.

Dr. Jorma Aalto left his position as Deputy Chancellor of Justice to become Ombudsman at the start of 1974. In 1974, 41 days were used to carry out 104 inspections, 58 of them (including prison visits) by Assistant Ombudsman Aapo Lehtovirta. Mr. Lehtovirta had been Deputy Ombudsman before his appointment as Assistant Ombudsman in 1972. Earlier, he was staff counsel to a committee of Parliament. There is an informal political aspect to the appointments of Ombudsman and Assistant Ombudsman. One is allocated to the parties of the left and the other to the parties of the right.

During the past decade, the Finnish Ombudsmen have inspected an average of eight prisons a year. This enables them to visit each prison every other year. A substantial part of the JO's time in prison is spent talking with inmates. Leo Seppänen, Director of Helsinki Central Prison, complained to me that in recent years the Ombudsmen have not discussed the inmates' grievances with him, as they used to do in former years. Overall in 1974, 276 inmates were interviewed, fully 10 % of the population of the institutions visited, and some guards also took advantage of the opportunity. During 1970, the Ombudsman met with 287 inmates. Dr. Ståhlberg characterizes the meetings as follows:

¹⁴⁾ The Working Regulations are appended to *The Parliamentary Ombudsman in Finland: Position and Functions* (Helsinki: Government Printing Centre, 1976), p. 36, together with pertinent constitutional and statutory provisions. The Ombudsman consults with the Assistant Ombudsman on the division of subjects between them.

The inmates have most often asked about . . . their sentence or about matters which otherwise concern them personally, but many have also brought up matters which relate to conditions in prison. Most often, the questions have been cleared up on the spot, so that the individual did not find it necessary to write to the JO, and as for conditions in prison or the conduct of prison personnel, elucidation could be accomplished during the inspection visit. In a few cases, further investigation has been required.¹⁵⁾

Comparing the Finnish and Swedish Ombudsman offices, it appears that about the same amount of time and energy is devoted to prison inspection visits. The Finnish Ombudsmen are able to visit each prison every other year, while the Swedish JO's visits have been more sporadic, due to the larger number of smaller facilities found in that country. In either case, the time spent at a given institution is brief, and, as JO Ståhlberg puts it:

[I]t is not possible to carry truly thorough and exhaustive inspections . . . The inspections are more . . . of an opportunity for discussion, in which the civil servant in question has a chance to put forward his own views on issues concerning his work.¹⁶⁾

Sometimes, during an inspection visit, a number of inmates will bring up the same topic — e.g., medical care, canteen privileges, home leave, overcrowding — and the Ombudsman will address himself to it in his annual report. For example, in 1975, the Ombudsman stated:

The directors of the provincial prisons having brought the crowded conditions of the prisons to the notice of the Ombudsman on inspection-trips, and there having been a number of written complaints regarding the evils caused by lack of space, and the official explanations obtained having indicated that the total load-limit of the provincial prisons has been exceeded by fifty per cent during the last year, the attention of the Council of State is called to the crowded conditions of the provincial prisons.¹⁷⁾

¹⁵⁾ *Riksdagens Justitieombudsmans Berättelse över sin Verksamhet År 1970* [hereinafter cited as *FJO Report*], p. 69.

¹⁶⁾ Kaarlo Ståhlberg, "JO-ämbetet i Finland," 55 *Nordisk Administrativ Tidsskrift* (1974), p. 8.

¹⁷⁾ *Report of the Parliamentary Ombudsman 1975: Summary and Annotations* (Helsinki, 1977), p. 7. This is the first official summary in English of an annual report.

In the annual reports, JO Ståhlberg and JO Aalto have devoted less attention to prisons in the summary of inspection visits than did their predecessors, although they have not reduced the number of visits. The summaries may call attention to particular shortcomings — such as the inadequacy of one prison building constructed in the 1500's — but also often attest to the overall favorable impression which the Ombudsman has formed.

As in Sweden, the JO may take up matters on his own initiative. The Finnish Ombudsmen have taken much less advantage of this opportunity. While about 12 % of the total caseload in Sweden has been made of such matters over the past half-dozen years, only 3 % of the Finnish caseload — whether total or relating to prisons — has been spontaneous. With some variation from year to year, most of the matters taken up by the Finnish JO on his own initiative have stemmed from inspection visits.

While the number of incoming complaints is much larger than it was before World War II, it has not risen constantly over the past decade, as in Sweden and elsewhere, but has fluctuated around and averaged about 1,000 a year, or about one complaint for every 4,500 inhabitants. As for complaints by prison inmates against prison administration, however, the number declined sharply in recent years from one-sixth of total complaints to one-fifteenth of total complaints, before rising again in 1975 to one-eighth of total complaints. (See chart 3.)

In 1973, referring to inspection visits, Ombudsman Ståhlberg noted that “comparatively few complaints were made which directed themselves to personnel in prison administration.”¹⁸⁾ More generally, he notes that:

[I]n the beginning of the 1960's, the great majority of complaints came from prisons or similar institutions. Now, one-quarter or one-fifth of the caseload comes from these sources, owing to the great changes which have taken place within the prison system.¹⁹⁾

As an example of these changes, the author cites the abolition of indefinite imprisonment for dangerous criminals. Only part of the fraction which Dr. Ståhlberg cites has to do specifically with conditions in places of detention. The Swedish and Finnish JO's have jurisdiction over judges and prosecutors, which is not true elsewhere, and a substantial portion of their work relates to inmates as they are apprehended, convicted, sentenced, and transported to prison. Particularly in Finland, the JO pays a

¹⁸⁾ 1973 *FJO Report*, p. 137.

¹⁹⁾ Ståhlberg, “JO-ämbetet i Finland,” p. 12.

Chart 3. The Finnish Ombudsman.

Complaints whose consideration was concluded:									
(a) During the tenure of JO Risto Leskinen in:									
	1962	1963	1964	1965	1966	1967	1968	1969	8-yr. Ave.
(1) Total Complaints	805	787	1513	985	1060	1394	1177	1110	1104
(2) Complaints Against Prison Administration	128	105	271	173	211	242	191	164	186
(3) (2) as % of (1)	16 %	13.5 %	18 %	17.5 %	20 %	17.5 %	16 %	15 %	17 %
(4) Total Complaints Found To Be Valid	75	60	76	51	60	59	61	65	63
(5) (4) as % of (1)	9.5 %	7.5 %	5 %	5 %	5.5 %	4 %	5 %	6 %	6 %

(b) During the tenure of JO Kaarlo Ståhlberg in:									
	1970*	1971	1972	1973	3-yr. Ave.	(c) During the tenure of JO Jorma Aalto in:			
	1970*	1971	1972	1973	3-yr. Ave.	1974	1975	2-yr. Ave.	
(1) Total Complaints	1098	879	1080	1118	1026	900	1074	987	
(2) Complaints Against Prison Administration	120	56	62	89	69	58	133	95	
(3) (2) as % of (1)	11 %	6.5 %	5.5 %	8 %	6.5 %	6.5 %	12.5 %	9.5 %	
(4) Total Complaints Found To Be Valid	69	47	69	54	57	45	75	60	
(5) (4) as % of (1)	6 %	5.5 %	6.5 %	5 %	5.5 %	5 %	7 %	6 %	

* JO Ståhlberg replaced JO Leskinen on September 18, 1970

great deal of attention to the computation of sentences. If an inequity cannot be rectified in some other way, the Finnish JO turns, albeit rarely, to the President of the Republic, Urho Kekkonen, for an appropriate reduction through executive clemency.

With a prison population of approximately 5,800 in 1968, JO Risto Leskinen — who served as Ombudsman from 1962 to 1970, before assuming his present position as Chancellor of Justice — completed the investigation of 191 complaints about prison administration, or about one for every 30 inmates, 150 times the rate for the population taken as a whole (which is about the same ratio as in Sweden). From an average prison population of about 4,500 in 1973, JO Ståhlberg completed the investigation of 89 such complaints, or one for every 50 inmates, 90 times the rate for the population as a whole. In 1974, with a resurgent prison population averaging 5,000 inmates, the JO completed the investigation of 58 complaints, or one for every 86 inmates, 50 times the rate for the population as a whole. In 1975, with 5,500 inmates, the Ombudsman completed the investigation of 133 complaints, or one for every 41 inmates, 110 times the rate for the entire population. (These computations do not take into account the complaints received by the JK, numbering somewhat more than 700 annually in 1970, 1971, and 1972, and jumping to 1,000 in 1973.)

The Finnish Ombudsmen find 5 or 6 % of the complaints which they receive to be valid. (See chart 3.) The rate in Sweden is more than twice as high (see chart 1), although there is no strict comparability. In the statistical portions of his annual reports, the Finnish Ombudsman does not break down the results of his investigations by agencies. The cases which culminate in recommendation, reprimand, disciplinary proceedings, or criminal prosecution, and a few others, are summarized in notes which make up the bulk of the volumes. Each annual report runs between 100 and 200 pages.

By tabulating these case notes, I have been able to establish that the rate of validity for prison matters has been the same as the rate for all matters. (See charts 4 and 5.) One-sixth of Ombudsman Leskinen's caseload concerned prison administration, and about the same proportion of his case notes finding fault also related to prison administration. One-fifteenth of Ombudsman Ståhlberg's caseload concerned prison administration, and about the same proportion of his case notes which criticize or recommend remedial action also pertain to prison administration. As in Sweden, censure is the dominant mode of expression of criticism against individuals. Out of twelve reprimands issued in 1975, four had to do with incarceration (although not with prisons as such):

Chart 4. The Finnish Ombudsman.

Dispositions in case notes published by JO Risto Leskinen in:		1968				1969		4-yr. Ave.
		1966	1967	1968	1969	1969	6	
(1)	Total prosecutions	3	5	4	6			
(2)	Prosecutions of Prison Officials	0	0	1	1			
(3)	Criticism of Prison Officials	3	5	3	7			
(4)	Criticism of Prison Officials	24	23	22	21			
(5)	Disciplinary Proceedings	1	0	2	2			
(6)	Disciplinary Proceedings Against Prison Officials	0	0	0	1			
Totals		3 (10.5 %)	5 (18 %)	4 (14.5 %)	9 (31 %)	28	5 (18 %)	28
(7)	Recommendations	7	8	4	8			
(8)	Recommendations Concerning Prison Administration	0	1	0	3			
(9)	Other Matters	16	12	21	16			
(10)	Other Matters Relating To Prison Administration	1	1	7	3			
Totals		4 (8 %)	7 (14.5 %)	11 (21 %)	15 (28.5 %)	53	9 (17.5 %)	51

Chart 5. The Finnish Ombudsman.

Dispositions in case notes published by JO Kaarlo Ståhlberg in:		1970*	1971	1972	1973	3-yr. Ave.
(1)	Total Prosecutions	1	1	5	6	
(2)	Prosecutions of Prison Officials	0	0	0	0	
(3)	Criticism of Prison Officials	4	2	0	2	
(4)	Disciplinary Proceedings Against Prison Officials	0	0	1	4	
(5)	Disciplinary Proceedings Against Prison Officials	0	0	1	1	
(6)	Totals	4 (10 %)	2 (12 %)	1 (3 %)	3 (9.5 %)	2 (7.5 %)
(7)	Recommendations	6	4	10	8	
(8)	Recommendations Con- cerning Prison Admini- stration	3	0	2	0	
(9)	Other Matters	11	9	7	9	
(10)	Other Matters Relating To Prison Administration	1	0	1	0	
	Totals	8 (14.5 %)	2 (6.5 %)	4 (8 %)	3 (6 %)	3 (7 %)
	Totals	8 (14.5 %)	2 (6.5 %)	4 (8 %)	3 (6 %)	3 (7 %)

* JO Ståhlberg replaced
JO Leskinen on September 18, 1970

- Prison officials criticized because official assistance was not requested from the police in the course of transporting a prisoner, the transportation of the prisoner being organized in an inappropriate way causing needless strain on the prisoner;
- Presiding judge of a district court reprimanded for drafting a faulty prison-pass and faulty notice of the commission of a crime;
- The members and the referendary of a division of the Court of Appeal reprimanded for the faulty combining of punishments;
- The judge of a district court reprimanded for the faulty combining of punishments.²⁰⁾

In comparison to the extremely efficient Swedish office, the Finnish Ombudsman office appears to be somewhat desultory. Without any changes in formal regulations or personnel, its prison work could be done with greater éclat. Still, the same general characterizations can be made for the Finnish office as were made for the Swedish office. The JO helps a few individuals, not always or only those whose complaints are found to be justified. The bulk of complaints are handled within the agency. The Ombudsman helps to improve administration through the minor reforms which he stimulates, and by his subtle but pervasive influence in preventing official misbehavior. The latter is enhanced by the heavy overrepresentation in his annual reports of notes on cases whose charges he deems to be justified.²¹⁾ And, as in Sweden, the Ombudsman is part of the establishment — a homeopathic remedy within the body politic.

DENMARK

Danish prison administration is, in some ways, even more progressive than that of Sweden. This is most strikingly illustrated by the special treatment center at Herstedvester, which houses about 120 long-term inmates. This Detention Facility is headed by a psychiatrist and has a staff of 165, "including four

²⁰⁾ *Report of the Parliamentary Ombudsman 1975*, pp. 14—15. The 1974 annual report does not contain a single case note relating to prison administration.

²¹⁾ In *The Parliamentary Ombudsman in Finland*, the Finnish Ombudsman notes on p. 20 that he "usually sends his critical decisions concerning matters of prison administration to the Prison Administration Division of the Ministry of Justice which then as a rule includes the relevant parts of the decision in its circulars to the prisons."

psychiatrists, a medical doctor, four nurses, eight social workers, and four teachers."²²)

The Danes adopted a new Constitution in 1953, which mandated an Ombudsman office. Enabling legislation was enacted in 1954, and the first Ombudsman was appointed by Parliament in 1955. The Ombudsman serves for the term of Parliament, normally four years, and is paid the same salary as a Justice of the Supreme Court.

The first Danish Ombudsman, Stephan Hurwitz, was Professor of Criminal Law at the University of Copenhagen, and is a noted criminologist. On July 1, 1971, Lars Nordskov Nielsen replaced Professor Hurwitz as Ombudsman. Nordskov Nielsen came to the position from the Ministry of Justice, where he was a career jurist, doubling for a dozen years as Lecturer in Criminal Law at the University of Copenhagen. His last assignment prior to becoming Ombudsman was as Director of Prisons, a fulltime post which he held from 1967 to 1971, a period of reform in the Danish prison system. Most prison administrators in Denmark know Nordskov Nielsen personally.

With a current staff of twelve jurists, including several women, the Danish office serves a population of five million inhabitants. This works out to one professional for every 415,000 inhabitants, falling between Sweden and Finland on richness of staff. The cost of the Danish Ombudsman office is about \$ 500,000 a year. Roughly one-tenth of the amount can be allocated to the prison and jail work of the office.

For five of his sixteen years in office, Professor Hurwitz made no inspection visits. For another half-dozen years, he inspected only military installations. The Ombudsman's visits to prisons were limited to a six-year span from 1957 to 1962, when he went to eight prisons (two of them twice), and also visited a few jails, youth detention facilities, etc.

Although he inspected a number of state hospitals, military bases, youth homes and jails, Nordskov Nielsen did not visit an adult prison until 1976, when he went to Nyborg prison as the first in an intended series. Following this visit, the prison case-load went up. Later that year, during a two day visit to Horsens prison, the Ombudsman had interviews with 25 inmates who had asked to see him. Both of Denmark's Ombudsmen were familiar with prisons before assuming the position, and neither needed to visit places of detention merely for purposes of acclimatization.

²²) Michael S. Serrill, "Profile: Denmark," 3 *Corrections Magazine* (March 1977), p. 42. Danish jails, on the other hand, are disgraceful — like those in most of the world.

Chart 6. The Danish Ombudsman.

	Cases whose consideration was concluded during the tenure of Professor Stephan Hurwitz in:				Cases whose consideration was concluded during the tenure of Ombudsman Nordskov Nielsen in:				
	1966	1967	1968	1969	1972	1973	1974	1975	
				4-yr. Ave.				4-yr. Ave.	
Total Cases Received	1106	1095	1158	1130	1122	1741	1687	1889	1695
Total Cases Investigated	343	338	319	361	340	646	726	797	696
(2) as % of (1)	31 %	31 %	27.5 %	32 %	30.5 %	37 %	43 %	42 %	41 %
Prison Complaints Investigated	16	21	15	23	19	53	57	77	57
(4) as % of (2)	4.5 %	6 %	4.5 %	6.5 %	5.5 %	8 %	8 %	9.5 %	8 %
Total Cases Found To Be Justified	36	37	37	29	35	140	196	233	192
(6) as % of (2)	10.5 %	11 %	11.5 %	8 %	10.5 %	21.5 %	27 %	29 %	27.5 %
Prison Complaints Found Justified	3	2	1	2	2	9	13	32	16.5
(8) as % of (4)	19 %	9.5 %	6.5 %	8.5 %	11 %	17 %	23 %	41.5 %	29 %
Own-initiative Matters	11	14	17	16	15	100	71	120	90
(10) as % of (1)	1 %	1.5 %	1.5 %	1.5 %	1.5 %	5.5 %	4 %	6.5 %	5.5 %
Total Case Notes	41	44	41	33	40	83	102	134	104
Prison Case Notes	3	4	2	3	3	5	6	7	6
(13) as % of (12)	7 %	9 %	5 %	9 %	7.5 %	6 %	6 %	5 %	6 %

Only a bit more than 1 % of Professor Hurwitz's total case-load from 1966 to 1969 was made up of matters which he had taken up spontaneously. Under Nordskov Nielsen, the proportion has increased to more than 5 % — exceeding the Finnish level of own-motion activity, but falling short of the Swedish level. (See chart 6, and compare chart 2.)

Over the years of Professor Hurwitz's tenure as Ombudsman, the number of complaints rose to about 1100 per year. Of these, he investigated approximately 30 %. Prison complaints comprised about one out of eighteen complaints investigated. Dr. Hurwitz investigated only a score of prison complaints a year from 1966 to 1969, the last four typical years of his tenure. The reason for refusing to investigate is not given agency-by-agency, but the overall explanation in most cases is either that the matter is outside the Ombudsman's jurisdiction or that there is an appeal available to a higher administrative authority. The latter would seem to be more generally applicable to complaints about prison administration.

Under Nordskov Nielsen's stewardship, the total number of complaints has climbed to an average of 1700 a year — one for every 3,000 Danes — and the percentage of complaints investigated has risen to about 40 %. (See chart 6.) Prison complaints comprise about one out of twelve complaints investigated, for an annual average of more than 50 prison cases a year. Hurwitz was investigating about one-tenth as many prison cases as the Swedes; Nordskov Nielsen has been investigating about one-fourth as many cases as the Swedes. At least the latter ratio can be explained in part by the fact that only about 1,800 convicts occupy Denmark's prisons at any given time — a third as many as are found in Sweden. Nordskov Nielsen investigates one complaint for every 32 inmates, about 38 times the rate of complaint investigation for the entire population.

As in Sweden and Finland, the Danish Ombudsmen have found inmate complaints to be justified at about the same rate as they have found all complaints to be justified. During the years from 1966 to 1969, Professor Hurwitz found slightly more than 10 % of inmate complaints investigated to be justified and slightly more than 10 % of all complaints investigated to be justified. Under Nordskov Nielsen, the overall rate of complaints investigated and found to be justified jumped to 27.5 %, and the inmate ratio shot up correspondingly. (See chart 6.) It seems fair to conclude that the Danish, Finnish and Swedish Ombudsmen have not pulled their punches on inmate grievances.

There is an important difference in the mandate of the Danish Ombudsman, as compared to his counterparts in Sweden and Finland. The latter are mainly concerned with legality. The

Danish Constitution states (Article 55) that the Ombudsman shall supervise civil and military administration. The Parliamentary Directives instruct the Ombudsman (Article 3) to:

keep himself informed as to whether any person comprised by his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties.

The breadth of this charge allowed the Danish Ombudsman to assume a more straightforward humanitarian function in addition to his responsibility for monitoring legality. Professor Hurwitz did not permit the convenience or indifference of the bureaucracy automatically to override the comfort and pleasure of inmates. Often, he had only to ask the prison administration to comment upon a given complaint, and the authorities would suggest a mutually agreeable solution. The following are examples of the results of these creature-comfort cases:

- inmates may purchase coffee by mail, instead of being limited to the prison canteen (Case No. 11/1957);
- life term prisoners may keep their own radios even after installation of a central system (Case No. 56/1959);
- inmates may buy powdered coffee, and will be permitted a snack between breakfast (6:35 a.m.) and lunch (1 p.m.) while working on Saturdays (Case No. 6/1960);
- the period during which inmates could rest on their beds or drink coffee after supper was extended from one-half hour to a full hour (Case No. 45/1960);
- an inmate may wear a ring (Case No. 18/1965);
- inmates may keep birds (Case No. 13/1966);²³
- fluoridated toothpaste will be available for purchase by prisoners (Case No. 12/1967);
- an inmate may keep a photograph which shows his wife topless (Case No. 41/1967).

The repetitive themes of other case notes, whether prepared by Hurwitz or Nordskov Nielsen, are much more like those in Sweden and Finland, concerning visitors, parole, isolation, medical treatment and the sending and receiving of mail.

Some case notes reflect the role of the Ombudsman in monitoring primary grievance procedures. Case No. 74/1957 empha-

²³ This case note and five other prison case notes are translated in Mogens Lerhard, ed., *The Danish Ombudsman 1955—1969: Seventy-five Cases from the Ombudsman's Reports* (trans. R. Spink) (Copenhagen: Schultz, 1972). Case No. 13/1966 is found at pp. 88—89.

sizes the rudimentary principle that each new inmate, even one who has previously served time, must be given a copy of the regulations which govern the prison. In Case No. 31/1964, Hurwitz chided the Department for not replying to an inmate's complaint, even though the complainant had been released in the meantime.

Two of Professor Hurwitz's case notes grew out of the refusal of prison authorities to acknowledge collective complaints. In Case No. 27/1963, Hurwitz urged the Department of Corrections to reconsider that policy, but meanwhile, he opined, the inmates should at least be informed of it. In Case No. 24/1969, the policy was unchanged and no such notification had been given, but the Department did in effect reply to the petition after a delay of five months, and discussed its substance with the inmate council. The same petition also charged that the authorities did not give reasons for the decisions made in response to complaints about prison conditions. The Ombudsman accepted the Department's statement "that it is a firm practice to accompany decisions concerning complaints from inmates with explanations to the widest extent possible."²⁴)

In Case No. 29/1973, Ombudsman Nordskov Nielsen challenged the adequacy of the procedures followed in lodging and hearing a charge of refusal to work against an inmate. The Ombudsman reminded the Department of Criminal Care (as Corrections has been renamed) that other Danish prisons did not place an inmate in solitary confinement while awaiting a hearing on such a charge. He also expressed the opinion that there were irregularities in the hearing, in that the main witness against the inmate was interviewed by telephone rather than in person, that the standard applied to establish refusal to work was not specified, and that the sufficiency of the amount of work done by the inmate had not been thoroughly investigated. The Department accepted the Ombudsman's views, and the punishment was annulled.

During 1973, the Ombudsman considered three complaints lodged by KRIM, the Danish Association for Humane Criminal Policy. In the first of these, Case No. 33/1973, Nordskov Nielsen pointed out that it was improper for prison authorities to announce a general cancellation of furloughs for inmates on strike. Instead, an evaluation should be made in each individual case on the basis of the furlough's potential benefit to the inmate and the possibility that he might abuse it.

Case No. 84/1973 was based upon a complaint that an inmate had been denied the opportunity to see a representative of KRIM

²⁴) *Folketingets Ombudsmands Beretning for Året 1969*, p. 83.

because there was no prior "personal connection" between the inmate and the representative. Ombudsman Nordskov Nielsen recommended that the Department of Criminal Care establish a uniform basis for the application of this requirement, with high priority to the question of the inmate's need for outside assistance, particularly with regard to complaints about prison administration to which the institution itself was a party. The Ombudsman also urged the Department to see if there was a possibility of extending the public provision of defense counsel to include matters which arise out of incarceration.

In Case No. 93/1973, the Ombudsman informed the Department that, while it was proper to demand proof that KRIM was representing a particular inmate, it would seem reasonable for the institution to turn directly to the inmate for confirmation of that relationship. The Ombudsman criticized the Department either for not informing the inmate of the testimony which had been elicited against him, or for not noting in the record that he had been so informed. Nordskov Nielsen also felt that more than one of the five guards who were involved in the incident — placing the inmate in a holding cell and searching him by force after he had concluded a visit with his sister — should have been interrogated in the proceedings. Finally, on his own motion, the Ombudsman expressed the opinion that the conclusion reached that the inmate was guilty of "improper conduct" was not an adequate substitute for a statement of the determinate facts as they were found to have transpired. Nordskov Nielsen urged the Department of Criminal Care to establish more precise rules for disciplinary proceedings, particularly with regard to the right of the inmate to participate as a party. These rules, argued the Ombudsman, ought to require specific findings of fact and clearcut identification of the provisions which the inmate is found to have violated. Along the same lines, Case No. 40/1976 came from a complaint by an inmate made to one of the Ombudsman's assistants during a visit by the Ombudsman to Horsens penitentiary. The Ombudsman criticized the Department of Criminal Care for confirming a disciplinary punishment without having established a sufficient factual basis.

Each year, the Ombudsman's annual report contains a re-prise of cases on which administrative action is not yet forthcoming. In his 1974 report, Nordskov Nielsen reminded the Department of his continued interest in Case No. 93/1973, and in his 1975 report he noted that the regulations on the use of isolation cells have been promulgated. This appears to be a very effective device for following up on initial recommendations.

The use of a cumulative subject matter index enhances the precedential value of the case notes. The index in the 1975 annual

report has 103 entries covering the prison cases of the first twenty years of operation of the Danish Ombudsman's office.

The Danish experience shows that Ombudsmen knowledgeable about prisons can be effective without visiting penitentiaries. Stephan Hurwitz was able to monitor living conditions, and Lars Nordskov Nielsen is carrying out the classical Ombudsman function of establishing and refining due process, both as regards complaints by inmates and disciplinary proceedings against them. They have also shown that the job can be done without handling a large number of cases, by pursuing those which are taken up with thoroughness, persistence, and informed judgment.

It is unfortunate, however, that the Danes removed the courts from the Ombudsman's sphere of supervision when they enacted the Ombudsman statute in 1954. Still, they did so after considerable deliberation, and acted consequently to upgrade the Special Court of Complaints (*Den særlige Klageret*), one of whose functions is to hear charges of misbehavior — such as rudeness — brought against judges. The ambit of the Special Court is much narrower than that of an Ombudsman. In adopting Ombudsman statutes, subsequent lawmakers have followed the Danish example of judicial exclusion, but without seriously considering the matter. They have simply accepted the shibboleth of judicial independence. Certainly, judges should not be subjected to improper influence. This makes it all the more important to find appropriate ways of holding them accountable. The scrutiny of an Ombudsman office is one such way.

NORWAY

The Ombudsman office is not constitutionally mandated in Norway. It was created by ordinary legislation promulgated on June 22, 1962, which told the Ombudsman (Article 3):

[t]o endeavor to ensure that the public administration does not commit any injustice [*urett*, which may also be translated as “wrong”] against any citizen.

The first Ombudsman, Justice Andreas Schei, went to work on January 1, 1963. He was succeeded by Justice Erling Sandene on July 1, 1974. Each came to the office from the bench of the Supreme Court, chosen to serve for the term of Parliament, which is normally four years. Designated as Parliament's Ombudsman for Administration (*Stortingets Ombudsman for Forvaltningen*), the incumbent is commonly referred to as the Civil Ombudsman (*Sivilombudsmannen*), to distinguish him from the Military Ombudsman whose office was started in 1952.

Norway has a population of 4 million inhabitants. The Civil Ombudsman office has seven professionals. Taking the Military Ombudsman and his assistant into account gives one professional staff member for every 450,000 persons. It costs about \$ 300,000 a year to run the Norwegian Civil Ombudsman office, very little of which can be attributed to prison work.

The Civil Ombudsman does not have a power of inspection independent of his right to access in connection with the investigation of individual cases. He does have the authority to take up matters on his own initiative. Justice Schei exercised this power about 20 times a year, averaging 6 % of the cases investigated during his tenure, but representing a gradually declining proportion of total workload. (See chart 7.) In 1967 (the only year for which he supplies such information), the Norwegian Ombudsman took up four prisons matters on his own motion.

In his farewell memorandum, Ombudsman Schei suggested that Parliament ought to reconsider the question of giving the Ombudsman inspectoral power. Ombudsman Sandene has reinforced that suggestion. At their meeting in Copenhagen at the end of April, 1975, the Scandinavian Ombudsmen — including Justice Sandene — agreed:

that in the future they would place greater emphasis than before on the work of visitation [and] take up more cases on their own initiative.²⁵⁾

In 1975, Ombudsman Sandene and various members of his staff visited three prisons, for purposes of general orientation. They did not entertain complaints from inmates.

Rising in spurts, the total number of complaints received by the Ombudsman in Norway is currently about 1,500 a year, or one for every 2,650 Norwegians. (See chart 7.) (The Military Ombudsman handles an additional 270 cases a year.) About half of these are rejected, predominantly on the ground that the subject matter is beyond the Ombudsman's scope of authority or because the complainant has not exhausted his administrative remedies. In 1974, a full 500 complaints were rejected on the latter basis.

In his 1966 report, Justice Schei breaks down the greater part of the 212 complaints from inmates which were summarily rejected as follows:

31 outside the Ombudsman's competence;
68 failure to exhaust administrative remedies; and,
98 clearly unfounded.

²⁵⁾ "Ombudsmændene Vil Tage Flere Sager Op," *Nordisk Kontakt* (1975), p. 639.

Chart 7. The Norwegian Ombudsman.

		Cases received or investigated in:											
		1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976
Complaints													
Received		952	998	1089	952	1482	1402	1286	1453	1447	1934	1504	1357
Complaints													
of (1)		247	261	198	186	192	158	148	104	83	86	58	53
		26 %	26 %	18 %	19.5 %	13 %	11 %	11.5 %	7 %	5.5 %	4.5 %	4 %	4 %
Complaints													
Investigated		335	329	273	271	340	382	335	425	541	687	673	693
of (1)		35 %	33 %	25 %	28.5 %	23 %	27 %	26 %	29 %	37.5 %	35.5 %	44.5 %	51 %
Initiative													
Cases		28	16	14	35	25	26	19	23	21	14	28	22
of (1)													
		7.5 %	4.5 %	5 %	11.5 %	7 %	6.5 %	5.5 %	5 %	5 %	2 %	4 %	3 %
Prison													
Investi-		51	40	31	27	34	19	13	20	9	10	10	6
g w/ Cri-		14 %	11.5 %	11 %	9 %	9.5 %	4.5 %	3.5 %	4.5 %	1.5 %	1.5 %	1.5 %	1 %
g w/ Cri-		20.5 %	15.5 %	15.5 %	14.5 %	17.5 %	12 %	9 %	19 %	11 %	11.5 %	13.5 %	11.5 %
Cases Con-													
g w/ Cri-		86	64	53	82	63	89	82	83	87	126	261	271
or Rec.		9 %	6.5 %	5 %	8.5 %	4.5 %	6.5 %	6.5 %	5.5 %	6 %	6.5 %	17.5 %	20 %
of (1)		23.5 %	18.5 %	18.5 %	27 %	17.5 %	22 %	23 %	18.5 %	15.5 %	18 %	37 %	40 %
of (7)		68	60	53	55	61	63	62	54	54	59	59	82
Case Notes													
of (1)		2	4	7	4	6	3	2	2	4	1	0	0
of (15)		3 %	6.5 %	13 %	7.5 %	10 %	5 %	3 %	3.5 %	7.5 %	1 %	0 %	0 %

While total complaints have shot up from time to time, the number of inmate complaints has been steadily declining, from a high of 261 in 1966 to a low of 53 in 1976. As a percentage of total complaints, inmate complaints have dropped from 26 % to 4 %. Moreover, the Ombudsman has investigated a smaller proportion of inmate complaints. Prison complaints investigated plummeted from 14 % of total complaints investigated in 1964 to 1 % in 1976. (See chart 7.)

From an annual average prison population of approximately 1,500, the Ombudsman currently receives about 55 complaints a year, or one for every 25 inmates, which is about 100 times the rate of complaint from the population as a whole. In 1976, the Ombudsman investigated a total of about 700 matters, one for every 5,700 Norwegians. At the same time, he investigated 6 inmate complaints, or one for every 250 inmates, which is 23 times the rate of investigation for the entire population.

The downward trend of inmate complaints and their investigation is the result of a conscious policy on the part of the Ombudsman office. In his 1967 report, Justice Schei indicated that whenever appropriate, complaints from prisoners would be referred back to the prison administration or to other avenues of appeal, particularly the Supervisory Council (*Tilsynsrådet*) of each institution. Out of 64 complaints which the Ombudsman rejected on this basis in 1969, only four were later renewed; out of 46 in 1970, only five were later renewed.

The Supervisory Councils are composed of a judge and at least three other members appointed to two-year terms by the Department of Justice, which is the umbrella agency for the Prison Department (*Fængselsstyret*). Except that they have no power as such to judge offenses charged against inmates, the Norwegian Councils are very much like the Boards of Visitors of Penal Institutions in Great Britain.²⁶) Part of the visitation is devoted to private meetings with individual prisoners. The Administrative Regulations for the Councils warn the members (Paragraph 14.2) that:

in conversations with the inmates the members must display caution and not respond with expressions which the inmate can interpret as a promise of changes in treatment, as criticism of the administration or the institution's employees, or as a criticism of decisions which have been made.

²⁶) Neil P. Cohen, "The English Board of Visitors: Lay Outsiders as Inspectors and Decisionmakers in Prisons," 40 *Federal Probation* (December 1976), pp. 24—27.

The Ombudsman breaks down the 198 inmate complaints which he received in 1967 as follows:

- 18 unrelated to detention;
- 43 directed against police, prosecutors, judges;
- 44 parole and furlough determinations;
- 10 termination of parole; and,
- 83 treatment in prison.

The 83 complaints in the last category include the following topics: medical care, ventilation, working conditions, visiting and mail regulations, disciplinary procedures, and the behavior of officials.

Currently, the Ombudsman finds 20 % of complaints received and 40 % of those investigated to be justified — a much higher proportion than in previous years. (See chart 7.) In 1975, the Ombudsman found one out of ten inmate complaints received and one out of two investigated to be justified.

The Ombudsman's annual reports run more than 100 pages each, and usually contain about 60 case notes, until recently including three or four which concern prison administration. (See chart 7.) The latter run the gamut of familiar topics, with mail regulations as the most frequent single source of attention.

In a recent book in which he portrays his twelve years as Civil Ombudsman, Andreas Schei includes a number of inmate cases, such as the following:

- an inmates was reimbursed for the jacket which was ruined while in storage at prison, and the Department of Justice issued regulations establishing governmental responsibility for inmate property in its care;
- an inmate was allowed to use his own money (not earned in prison) to buy his daughter a birthday present, and the Prison Department acknowledged the general right of inmates to dispose of such funds;
- following a number of complaints, the Prison Administration issued a new regulation establishing that mail between an inmate and members of his family normally will not be read by prison officials.²⁷⁾

The Ombudsman has received several complaints from KROM, the Norwegian Association for Penal Reform (*Norsk Forening for Kriminalreform*). Twice he criticized prison authorities for

²⁷⁾ Andreas Schei, *Menigmann og myndighetene: tolv år som sivilombudsmann* (Oslo: Aschehoug, 1976), pp. 126—41.

holding back mail. In Case No. 25/1969, the authorities had refused to deliver letters from the editor of a KROM anthology asking inmates for permission to reprint their descriptions of prison life previously published in a prison newspaper. In Case No. 46/1972, the authorities had delayed a letter critical of prison authorities written to KROM by an inmate at Ullersmo prison.

On the other hand, in Case No. 43/1973, chief-of-staff Tore Sinding-Larsen, as substitute Ombudsman, upheld the prison administration in its refusal to transmit a circular letter of congratulations from KROM to the new Prisoners' Trade Union and photostatic copies of newspaper articles about the Union. The newspapers were otherwise available to inmates. The Ombudsman based his approval of this censorship on Prison Regulation Paragraph 64.5, which permits the authorities to withhold mail when:

there is reason to believe that the letter may have an unfortunate effect on [the inmate's] treatment or when other special reasons indicate that it should not be delivered to him.

On the basis of the reasoning in this last case, Thomas Mathiesen — criminologist at the University of Oslo and one of the founders of KROM — argues that the Ombudsman “is actually part of the administrative system which he is to supervise.”²⁸⁾

Over the dozen years in which he held office, Ombudsman Schei successfully resisted the efforts of inmates to use his office to by-pass lines of communication within the prison system. This is consistent with the overall policy of the Ombudsman not to interfere with the primary responsibility of an agency to keep its own house clean. (Justice Schei defended this general position in his reply to a letter published in a newspaper which criticized his handling of a case involving benefits to mothers.) Still, the Ombudsmen have gone out of their way to make the office accessible to citizens in the remote northern provinces, by permitting them to go to local attorneys who are paid by the state of help in formulating complaints. They have made no similar gesture to those prisoners whose isolation is equally debilitating.

In short, the Norwegian Ombudsmen — like their counterparts in Sweden, Finland, and Denmark — have treated prison administration just as any other branch of administration. This approach comports with the legislative mandate, and has been neither noted nor criticized in the Norwegian Parliament. By

²⁸⁾ *The Politics of Abolition*, p. 194.

virtue of this permissiveness, the Ombudsman could single out prisons for relatively more intervention, and the Parliament would probably not comment on that either. Generally, legislatures have not paid much attention to their Ombudsmen. In 1977, however, the Norwegian Parliament established a committee, headed by Justice Schei, to study the possible need for changes in the Ombudsman office.

The maximum security prison at Ullersmo, about 20 miles north of Oslo, is a modern facility which holds about 150 inmates (against a capacity of slightly more than 200). New prisoners are given an orientation document which includes a page on avenues of complaint. Inmates are pointed first to the prison Director, then to the Supervisory Council, next to the Prison Department, and finally to the Ombudsman. As for the last three, the brochure notes that:

Such complaints are . . . normally sent back to the prison for comment. The matter will therefore proceed more quickly if the complaint is sent through the Director.²⁹⁾

Of these four, the Ombudsman is the only external arbiter. By virtue of the manner of appointment and composition, as well as by virtue of their terms of reference, the Supervisory Councils are not an effective complaint mechanism. The Director and the Department suffer from self-judging, for which former Ombudsman Schei had chided them:

It is clear that civil servants who have to act on the spot and under such difficult conditions as in a prison, must feel a need for support from their superiors . . . And the Prison Administration, which understands the difficulties, will naturally stretch itself far . . . But if an arrangement for appeal or complaint to a higher authority is on the whole to have any value, then there must also in cases from the prisons be a genuine review, not just a cover-up . . . Decisions in concrete cases sometimes leave a doubt as to whether the higher prison authorities do not stretch themselves to the utmost to avoid repudiating the local prison leadership.³⁰⁾

²⁹⁾ *Orientering til Innsatte i Ullersmo Landsfengsel* (mimeo., January 1976), p. Q-1. The ombudsman has made it equally clear that inmates have a right to uncensored communication directly with him, and are not to be subjected to retaliation for exercising that right. See Schei, *Menigmann og Myndighetene*, pp. 183—85.

³⁰⁾ *Menigmann og Myndighetene*, p. 142.

The large number of inmate complaints which the Civil Ombudsman received during his first years are an indication of inmate dissatisfaction with in-house remedies. That this number has declined does not necessarily mean that the pre-existing mechanisms have been improved. They may indicate merely that the Ombudsman has not filled the gap. Justice Schei discouraged inmates from complaining to him, in the hope that the agency would upgrade its own procedures. This has not happened. I would urge the present Ombudsman to consider serving as a first line of redress for a time. Inmate complaints to the Ombudsman would undoubtedly soar. This would put pressure on the Prison Department and the Ministry of Justice to improve prison complaint procedures. If the complaint-handling job is going to be done, most administrators would rather do it themselves than have it done by an outsider.

CONCLUSION

Ombudsmen remedy marginal defects in basically sound systems. Given the modesty of this goal, the Scandinavian offices are successful, both in performance and in general acceptance. The same can be said of their work in prisons. In two related ways, however, the Nordic Ombudsmen could accomplish substantially more in prisons at little or no extra cost — by substituting (or, in the case of Denmark and Norway, adding) frequent, informal visits to prison in place of the present infrequent, formal visits.

First, the Swedish and Finnish offices ought to abandon prison visitation as they now practice it. This suggestion was first made in 1966 by Professor Walter Gellhorn, on the grounds that:

Every prison in Sweden is inspected monthly by the regional director of the National Prison Board. Annually it is inspected by a team of specialists — a structural engineer, an auditor, and so on. In between, traveling inspectors of the National Prison 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.³¹⁾

Similarly, with regard to Finland, Gellhorn argues that “a non-traditionalist may conclude some day that prison abuses can be controlled without forcing the Ombudsman personally to spend

³¹⁾ *Ombudsmen and Others*, p. 222.

so much time behind bars instead of behind his desk."³²) Indeed, this has now been demonstrated in Denmark and Norway, as well as in many of the other Ombudsman offices which are now found in Australia, Canada, New Zealand, and the United States. None has adopted the Swedo-Finnish system of inspections.

The inspectoral system is costly not only in time spent on the road, but in getting ready. The staff in the Swedish Ombudsman office put a great deal of effort into preparation for visits. Moreover, there is an intrinsic inequity and inefficiency in sporadic visits, especially given the shortness of prison terms. Only those inmates who happen to be incarcerated on visitation day — every second year in Finland and roughly every fifth year in Sweden — have the opportunity for a personal meeting with the Ombudsman. This is unfair to others and represents a distortion of focus. Taking individual complaints on a spot-check basis reveals that the complaints are being used for general supervisory purposes rather than for the investigation and resolution of individual grievances. It is the latter which is traditionally the primary function of Ombudsmen and the former which is secondary. Moreover, the quality of complaints which one receives on a now-or-never basis is bound to be poor. Inmates will inevitably take the opportunity to air personal problems, to gripe in general, or just to enjoy the Ombudsman's attention and to talk to someone from the outside.

On the other hand, prison visits lead the Swedish JO to take up matters on his own initiative (another device which has not been copied by extra-Scandinavian offices), and these comprise a substantial proportion of his prison workload. The same is true, but to a lesser extent, in Finland. The *sua sponte* matters are then handled in the same way as complaints, i.e., through written exchanges between the Ombudsman office and the agencies. This paperwork is costly, as documented by Gellhorn and reiterated by the prison officials I interviewed, particularly in Sweden. The problem with the inspectoral system in Sweden and with its diminution or elimination in Denmark and Norway, respectively, is, however, as I see it, not too much visitation, but too little.

The Scandinavian Ombudsman offices ought to visit prisons much more often. By reducing the elaborate preparations and by utilizing staff members in place of titular Ombudsmen for much more frequent visits to prisons, the rewards of inspection could be retained and enhanced while curtailing unnecessary paperwork. Going to maximum security facilities at least once a

³²) *Ombudsmen and Others*, p. 80.

week and other facilities one a month or so, deputy Ombudsmen could handle minor complaints on the spot on a continuing basis. Even the elucidation of facts in more serious matters could be simplified. The Ombudsman, freed from riding circuit, would have more time for deliberation. Finally, the inmates would have much easier and more uniform access to the Ombudsman's office.

This catalogue of benefits which flow from frequent visitation is not based upon mere speculation, but is borne out of the actual experience of the specialized Ombudsman offices which have been created in North America in Minnesota (since 1972), Canada (1973), Connecticut (1973), Iowa (1974), Kansas (1975), Michigan (1975), and Oregon (1977).³³ The question of transferability has now been reversed. The exportability of the Swedish institution of Ombudsman has been established by implementation in 65 nations, states, and cities around the globe. Can the innovations of these offices now be brought back to Scandinavia? With regard to the manner of receiving and investigating complaints from prison inmates, the answer, in my opinion, is affirmative. The present system of sporadic inspections falls of its own weight. The New World has found a device to replace it, about which I intend to write more fully in the near future.

A simple but telling indication of the impact of frequent prison visitation can be seen in a comparison of the number of prisoner complaints received each year by the following Ombudsman offices:

Minnesota	1 complaint for every 1.5 inmates
Iowa	1 complaint for every 5 inmates
Denmark	1 complaint for every 13 inmates
Sweden	1 complaint for every 17 inmates
Norway	1 complaint for every 20 inmates

In Iowa, prison complaints were registered at a rate 400 times that of the population as a whole — nearly three times the next highest inmate complaint ratio found in Sweden. (The work in Iowa is done by a single deputy, who works in a statewide office of general jurisdiction.)

³³) Minn. Stats. 241.407; Privy Council of Canada, Minutes of June 5, 1973, P.C. 1973—1431; Agreement of September 12, 1973, between the Hartford Institute of Criminal and Social Justice and the Connecticut Commissioner of Correction; Chapter 601G, Code of Iowa, as amended in February, 1974, to provide for a deputy to be "responsible for investigating complaints relating only to penal or correctional agencies;" Kan. Stats. Ann. 1975 Supp. 75—5230 and 75—5231; Sec. 2.139 of Mich. Stats. Ann.

The increased workload of prison Ombudsmen does not alter the essential makeup of the office: Ombudsmen for corrections are still judgelike, i.e., independent and impartial; they gain somewhat greater expertise by virtue of specialization; as indicated, their accessibility is enhanced; finally — and this is even more important in a prison context — they have full power of investigation but no power to compel adherence to their recommendations. Nor do prison Ombudsmen change the basic nature of incarceration, although they ameliorate it. Even one complaint per year per inmate presented to an Ombudsman represents only a small proportion of total complaints, most of which are handled in-house or up the chain of command, if at all.

In conclusion, all of the Ombudsman offices are effective, both in general and with regard to prisons, in rectifying occasional injustice and in weeding out error. These contributions are limited, but worthwhile. Although Ombudsmen can call attention to basic shortcomings, they cannot remedy them. It takes a legislative appropriation, for example, to come to grips with overcrowding in prison or with inadequate medical facilities. The Ombudsmen can and do make important and direct contributions to the improvement of internal grievance procedures for the consideration of complaints by inmates and to the fostering of procedural protection in the imposition of punishment upon inmates. In a word, Ombudsmen foster fairness within prisons.

Stanley Anderson